NO. COA14-276

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

STATE OF NORTH CAROLINA

v. Davie County
Nos. 12 CRS 51007-09

STEVEN KEITH JASTROW,
Defendant.

Appeal by defendant from judgment entered 16 September 2013 by Judge Ted S. Royster, Jr. in Davie County Superior Court. Heard in the Court of Appeals 11 September 2014.

Attorney General Roy Cooper, by Special Deputy Attorney General June S. Ferrell, for the State.

Michael E. Casterline, for defendant-appellant.

DIETZ, Judge.

Defendant Steven Keith Jastrow appeals from his conviction and sentence on two counts of attempted robbery with a dangerous weapon and one count of conspiracy to commit robbery with a dangerous weapon.

Jastrow served as the "inside man" in a scheme to rob a known drug dealer at his home. On the night of the robbery, the drug dealer's brother also was present, forcing Jastrow's co-conspirators to split up and separately confront both brothers

to demand drugs and money. Jastrow argues that one of his attempted robbery convictions must be set aside because, although there were two victims, there was only one attempted robbery, not two separate ones. He also argues that he cannot be held responsible for the separate robbery of the drug dealer's brother, which he contends was not part of the conspirators' original plan. Finally, Jastrow argues that the trial court erred by granting his request to represent himself without first conducting the proper statutory inquiry.

For the reasons set forth below, we hold that there was sufficient evidence to support Jastrow's conviction on two separate counts of attempted robbery with a dangerous weapon. We also hold that the trial court conducted a proper inquiry under N.C. Gen. Stat. § 15A-1242 before permitting Jastrow to represent himself. Accordingly, we find no error.

Facts and Procedural History

In September 2011, Jastrow lived at home with his mother, step-father, and half-brother, along with two other men, Ryan Bernatz and Kyle Horton. Bernatz and Horton were drug users and had begun running low on money and drugs. Jastrow, Bernatz, and Horton hatched a plan to rob one of Jastrow's friends, Patrick Smith. Jastrow occasionally bought marijuana from Patrick and

believed Patrick would be a good person to rob because he was young, did not have a gun, and would not fight back. Jastrow also told his co-conspirators that the front door of Patrick's house always was left unlocked.

Horton testified that the group discussed the planned robbery between five and seven times. They decided Jastrow would be the "inside man" for the robbery because he knew Patrick and had previously been to his house. Jastrow drew Bernatz and Horton a map of Patrick's house and illustrated where Patrick's bedroom was located and where the money and drugs would be found.

On 3 October 2011, Horton gave Jastrow twenty dollars to purchase marijuana from Patrick in order to scope out Patrick's home. Once inside, Jastrow texted Bernatz and told him that Patrick's brother, Hugh Smith, also was present at the home and was sitting on the couch in the living room.

After waiting in the car for about an hour, Bernatz, armed with a machete, and Horton, carrying a gun, made their way to the front door of the house. Horton opened the front door and immediately approached Hugh on the couch. Bernatz went straight to the back bedroom where Jastrow and Patrick were located. Horton approached Hugh with the gun drawn and told him to

"[g]ive up the stuff. Get on the ground. Don't make a move. Get on the ground. Give up the stuff." Horton testified that by "stuff," he meant "[d]rugs and money. Basically this is a robbery." When Hugh did not comply, Horton hit him on the head with the gun. When Hugh continued to resist, Horton yelled for Bernatz saying "[g]et in here before I have to hurt this guy."

At the same time that Horton first approached Hugh, Bernatz went straight back to Patrick's bedroom and opened the door. Bernatz pointed the machete at Patrick and asked him "[w]here is it?" and told him to "[g]ive it up. I know you have it. Where is it[?]"

After hearing Horton yell for help from the living room, Bernatz exited Patrick's bedroom and hit Hugh on the head with the blunt end of the machete. Patrick then jumped on Bernatz's back and an altercation broke out between Horton, Bernatz, Patrick, and Hugh. During the altercation, Horton fired his gun at Patrick. He then fired his gun three more times at Hugh. Horton and Bernatz fled from the house into the woods.

Jastrow was not involved in this violent melee and left the house either during the fight or just after it ended. Bernatz called Jastrow, attempting to locate him, but Bernatz's cell phone died shortly into the conversation. All three men

eventually made it back to Jastrow's house. The next day, Jastrow spoke to the police, portrayed himself as an innocent bystander, and told the police he did not know the men who robbed Patrick and Hugh.

In early October 2011, law enforcement received an anonymous phone call naming Bernatz and Horton as potential suspects in the robbery. Officers went to Jastrow's school to speak with him about Bernatz and Horton. While interviewing Jastrow at his school, the officers realized that Jastrow was lying because his story had changed from his initial statement. The police later executed a search warrant at Jastrow's home and recovered incriminating evidence.

On 10 September 2012, the State indicted Jastrow on two counts of felony attempted robbery with a dangerous weapon, two counts of attempted murder, and one count of felony conspiracy to commit robbery with a dangerous weapon. The State later dismissed the two counts of attempted murder, but Jastrow went to trial on the remaining charges.

At the close of the State's evidence, Jastrow moved to dismiss one charge of robbery with a dangerous weapon for insufficient evidence, but the court denied the motion. Jastrow did not present any evidence at trial.

The jury found Jastrow guilty of all charges and he was given consecutive sentences of 64 to 86 months for one count of attempted robbery with a dangerous weapon and 64 to 86 months for conspiracy to commit robbery with a dangerous weapon and attempted robbery with a dangerous weapon. Jastrow timely appealed.

Analysis

I. Sufficiency of the Evidence

Jastrow first argues that the trial court erred in denying his motion to dismiss one of the counts of attempted robbery with a dangerous weapon because there was insufficient evidence to support two separate attempted robbery convictions.

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quotation marks omitted).

When a defendant moves to dismiss, "the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged . . . and (2) of

defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78, 265 S.E.2d 164, 169 (1980). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994).

Jastrow was charged with two counts of attempted robbery with a dangerous weapon. The statute governing this offense criminalizes "attempts to take personal property from another" as well as attempts to take personal property "from any place of business, residence, or banking institution or any other place where there is a person or persons in attendance." N.C. Gen. Stat. § 14-87(a) (2013).

Jastrow argues that the evidence at trial shows that he robbed a single residence in the presence of two people, rather than separately robbing two people at a residence. Jastrow relies on *State v. Potter*, 285 N.C. 238, 204 S.E.2d 649 (1974),

and similar cases to support his theory that, although there were two people in the house, only one robbery took place.

The cases on which Jastrow relies are readily distinguishable: they involve defendants who robbed a *business* of its personal property by taking it from multiple employees present on the business premises. In *Potter*, for example, our Supreme Court held that only one robbery took place where the defendant obtained the bank's property from two tellers at two different cash registers. 285 N.C. at 254, 204 S.E.2d at 659.

That is not the situation here. To be sure, the evidence suggests that Jastrow and his co-conspirators initially planned to rob only Patrick, whom they knew to have drugs and money. But when the robbery occurred, the two victims, Patrick and Hugh, were in different rooms. One armed robber, wielding a machete, went into Patrick's bedroom and demanded drugs and money from him. At the same time, the second robber, wielding a gun, approached Hugh and likewise demanded drugs and money.

This case thus presents different facts from *Potter* because "the persons threatened were not employees of one employer victimized by the taking of the employer's property. Each person threatened was a victim, each being robbed of his personal

property." *State v. Johnson*, 23 N.C. App. 52, 56, 208 S.E.2d 206, 209 (1974) (distinguishing *Potter*).

In sum, viewing the evidence in the light most favorable to the State, and giving the State the benefit of every reasonable inference, we hold that there was sufficient evidence to support two separate attempted robbery convictions. From this evidence, the jury could have concluded that Jastrow and his co-conspirators attempted to rob Hugh of his own drugs, money, or other personal property in addition to whatever drugs and money they hoped to rob from Patrick.

Jastrow also argues that there is insufficient evidence to support the second conviction for attempted robbery with a dangerous weapon because Jastrow only participated in the plan to rob Patrick, not Hugh. This argument conflicts with our case law.

In *State v. Ferree*, this Court held that "[a] defendant who enters into a common design for a criminal purpose is equally deemed in law a party to every act done by others in furtherance of such design." 54 N.C. App. 183, 184-85, 282 S.E.2d 587, 588 (1981). Thus, if two or more persons join together to commit a crime, "each of them, if actually or constructively present, is not only guilty as a principal if the other commits that

particular crime, but he is also guilty of any other crime committed by the other in pursuance of the common purpose." *Id.* at 185, 282 S.E.2d at 588.

There was sufficient evidence to convict Jastrow on two separate counts of attempted armed robbery under *Ferree*. On the night of the robbery, Jastrow entered Patrick's house and secretly communicated with his co-conspirators through text messages, informing them that Patrick was not alone and that Hugh also was in the house. He did not ask his co-conspirators not to rob Hugh, nor did he try to call off the robbery. To the contrary, one of the co-conspirators testified that after learning Hugh was present, Jastrow indicated a desire to follow through with the plan, texting messages such as "where are you guys at? Are you guys coming in or not? It's getting late. Okay?" More importantly, after discovering that Patrick was not alone and that Hugh also was present, Jastrow began texting his co-conspirators about the drugs and money that he saw inside the house, referring now to what "they" both had, rather than just to what Patrick had.

Viewed in the light most favorable to the State, and giving the State the benefit of every reasonable inference, these facts are sufficient to show that the attempted robbery of Hugh was in

pursuit of the group's common purpose to plan and execute a robbery to acquire drugs and money from both Patrick and Hugh. Accordingly, the trial court did not err in denying Jastrow's motion to dismiss.

II. Jastrow's Request to Represent Himself

Jastrow next argues that the trial court erred in allowing him to proceed *pro se* because the trial court failed to make a proper inquiry into whether his waiver of counsel was knowing, intelligent, and voluntary. Specifically, Jastrow argues that the trial court failed to satisfy the statutory requirements of Section 15A-1242 of the General Statutes, which governs a trial court's decision to permit self-representation.

"Before allowing a defendant to waive in-court representation by counsel . . . the trial court must insure that constitutional and statutory standards are satisfied." *State v. Thomas*, 331 N.C. 671, 673, 417 S.E.2d 473, 475 (1992). "A defendant must first clearly and unequivocally waive his right to counsel, and elect to proceed *pro se*. Thereafter, the trial court must determine whether the defendant knowingly, intelligently and voluntarily waived his right to in-court representation by counsel." *State v. Anderson*, 215 N.C. App. 169, 170, 721 S.E.2d 233, 234 (2011), *aff'd per curiam*, 365 N.C.

466, 722 S.E.2d 509 (2012) (internal citations and quotation marks omitted).

To assist with this determination, the General Assembly enacted a statute that requires trial courts to inquire about the defendant's intent to represent himself and conclude that the defendant satisfies a three-factor test:

> A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:
>
> (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
>
> (2) Understands and appreciates the consequences of this decision; and
>
> (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments.

N.C. Gen. Stat. § 15A-1242 (2013). In assessing the adequacy of this statutory inquiry, "the critical issue is whether the statutorily required information has been communicated in such a manner that defendant's decision to represent himself is knowing and voluntary." *State v. Carter*, 338 N.C. 569, 583, 451 S.E.2d 157, 164 (1994). Our Supreme Court has held that the inquiry

required by N.C. Gen. Stat. § 15A–1242 satisfies constitutional requirements. *Thomas*, 331 N.C. at 674, 417 S.E.2d at 476.

Here, Jastrow clearly and unequivocally expressed his desire to fire his appointed counsel and represent himself during this criminal proceeding. Before the trial began, the court addressed Jastrow's request to represent himself. The court discussed with Jastrow the benefits of keeping his appointed attorney and the potential harmful consequences of self-representation, as required by Section 15A-1242. To be sure, this colloquy between the trial court and Jastrow is not as cogent as in most cases. But that is because Jastrow repeatedly interrupted the court or refused to answer straightforward questions. Jastrow's behavior apparently stems from his belief that he is not bound by the laws of North Carolina and the United States, and that the trial court could not exercise jurisdiction over him.

For example, as the court attempted to explain to Jastrow the benefits of his appointed counsel, the following exchange took place, which is representative of Jastrow's overall behavior:

> THE DEFENDANT: For the record, I do not transverse. I am juris property in personam. I am me. Therefore, no one else can represent me.

> THE COURT: You are saying you don't want anybody else?
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> THE DEFENDANT: For the record, I do not transverse. I am me. Nobody can represent me.
>
> THE COURT: We would be in a lot of trouble if I didn't transverse. We would not get anything done.
>
> THE DEFENDANT: I do not transverse. I am only here on special appearance to challenge subject matter jurisdiction and personal jurisdiction. Can this court show it has subject matter jurisdiction? Once jurisdiction is challenged, it cannot be decided and must be decided underneath legal precedence. I would like to state for the record once jurisdiction is challenged, the Court cannot proceed when it appears that the Court lacks jurisdiction. The Court has no authority but to reach authority and to dismiss merits. Melrow versus United States. There's no discretion to lack jurisdiction under Julius versus U.S. What's challenged jurisdiction cannot be assumed, it must be proved to exist. This would be Stuck versus Medical Examiners. All of these legal precedence showing that jurisdiction subject matter or personal jurisdiction, once challenged cannot just be assumed, it must be decided. It must be proven. In this courtroom, this commercial court, this admiralty maritime law court is not a common law court. It is a commercial court. Underneath General Statutes it is the color of the law, regulations of color of the law on that.

Simply put, Jastrow's obstinate behavior and his insistence that the trial court had no jurisdiction over him made it

difficult for the court to succinctly walk through the Section 15A-1242 factors. But we are satisfied that, when the record is reviewed as a whole, the trial court's discussion with Jastrow was sufficient to satisfy the statutory criteria.

First, the trial court informed Jastrow that his appointed counsel was willing to continue representing him and described the benefits of keeping his counsel, emphasizing that his counsel was "a very competent attorney. He represents his clients diligently to the best of his ability."

Second, the trial court fully informed Jastrow of the charges he faced and the possible range of punishment he could receive if convicted, stressing that he could receive "up to 201 months" for the Class D felonies and "up to 85 months" for the class E felony.

Finally, Jastrow's responses to the trial court indicated that he understood and appreciated the consequences of waiving his right to counsel at trial. Jastrow was unsatisfied with the arguments his appointed counsel put forward in his defense, and wished to represent himself to assert what he believed were meritorious legal defenses, but were in fact a series of frivolous arguments about the trial court's jurisdiction and the government's ability to prosecute Jastrow in a court of law.

Viewed objectively, it was certainly not in Jastrow's interests to proceed *pro se* and assert these arguments. But the Sixth Amendment does not permit a trial court to deny a request for self-representation simply because the defendant would be better off keeping his lawyer. As the U.S. Supreme Court explained in *Faretta v. California*, "[i]t is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts." 422 U.S. 806, 834 (1975). Nevertheless, when a defendant knowingly, voluntarily, and intelligently chooses to reject his Sixth Amendment right to counsel and to represent himself, "his choice must be honored out of that respect for the individual which is the lifeblood of the law." *Id.* (internal quotation marks and citation omitted).

Here, Jastrow's conduct and his responses to the court's questions demonstrated that he understood the consequences of waiving counsel and that he chose to do so because he believed his own legal arguments and defense at trial would be better than those provided by his appointed counsel. That decision was knowing, intelligent, and voluntary. Accordingly, we hold that the trial court conducted the necessary inquiry and properly

permitted Jastrow to represent himself under N.C. Gen. Stat. § 15A-1242.

We note that Jastrow's conduct later in the case confirmed that his request to represent himself was knowing, intelligent, and voluntary. During jury selection, Jastrow questioned jurors to ensure that "me being my own counsel, being in personan [sic]" would not affect their decision. In his opening statement, Jastrow told the jury "[t]here is not many times you will see an individual stand up before the jurists competent to handle his own affairs and represent himself." Finally, during trial, Jastrow continued to assert legal arguments concerning the court's jurisdiction and his belief that he could not be subjected to prosecution by the State. These facts confirm the trial court's conclusion—based on its colloquy with Jastrow before trial—that Jastrow's decision to represent himself was knowing, intelligent, and voluntary. That decision was part of a strategy Jastrow employed to appear sympathetic to the jury and to raise legal arguments (albeit frivolous ones) that his counsel was unwilling to assert.

Although we find no error in the trial court's Section 15A-1242 colloquy, we take this opportunity to remind trial courts that our Supreme Court has approved a series of 14 questions

that can be used to satisfy the requirements of Section 15A-1242. *See State v. Moore*, 362 N.C. 319, 328, 661 S.E.2d 722, 727 (2008). "While these specific questions are in no way required to satisfy the statute, they do illustrate the sort of 'thorough inquiry' envisioned by the General Assembly when this statute was enacted and could provide useful guidance for trial courts when discharging their responsibilities under N.C.G.S. § 15A-1242." *Id.*

The trial court in this case did not ask many of the questions the Supreme Court approved in *Moore*. Given Jastrow's refusal to answer even the most straightforward questions from the court, and his tendency to launch into lengthy, nonsensical tirades about jurisdiction and sovereignty, it is unlikely that asking the *Moore* questions in this case would have added to the trial court's inquiry.[1] But in most cases, the best practice is for trial courts to use the 14 questions approved in *Moore*, which are set out in the Superior Court Judges' Benchbook provided by the University of North Carolina at Chapel Hill School of Government. This will ensure that the court addresses

[1] Indeed, in the middle of trial, Jastrow was arraigned on other, unrelated charges and again insisted on representing himself. In that colloquy, the trial court asked the *Moore* questions and Jastrow, predictably, refused to answer most of them, stating that "I do not acknowledge anything that the Court is trying to tell me and I do not transverse."

each of the statutory criteria and also will assist with appellate review.

Conclusion

For the foregoing reasons, we hold that there was sufficient evidence to support Jastrow's conviction on two counts of attempted robbery with a dangerous weapon. We also hold that the trial court conducted the required inquiry under N.C. Gen. Stat. § 15A-1242 and properly permitted Jastrow to represent himself. Accordingly, we find no error.

NO ERROR.

Judges STEELMAN and GEER concur.