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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1313

Filed: 15 January 2019

Transylvania County, No. 16 CRS 51714

STATE OF NORTH CAROLINA

v.

JONATHAN ANTONIO RICHARDSON, Defendant.

Appeal by Defendant from judgment entered 14 June 2017 by Judge Eric C. Morgan in Transylvania County Superior Court. Heard in the Court of Appeals 20 December 2018.

*Attorney General Joshua H. Stein, by Assistant Attorney General Anna M. Davis, for the State.*

*Julie C. Boyer, for defendant-appellant.*

HUNTER, JR., Robert N., Judge.

Jonathan Antonio Richardson (“Defendant”) appeals following a jury verdict convicting him of robbery with a dangerous weapon. On appeal, Defendant argues the trial court erred by denying his motions to dismiss because the State failed to produced sufficient evidence of the use or threatened use of a deadly weapon. We find no error.

### **I. Factual and Procedural Background**

On 5 December 2016, a Transylvania County Grand Jury indicted Defendant for felony larceny of a motor vehicle and felonious robbery with a dangerous weapon. Prior to the commencement of trial, Defendant pleaded guilty to felony larceny of a motor vehicle.

On 13 June 2017, the court called the case for trial. The evidence tended to show the following. On 15 October 2016, Defendant and his girlfriend lived in a tent behind the “One Stop” gas station. They waited all day looking for a ride to a friend’s home. Around 10:45 p.m., the victim arrived at the gas station to purchase food and a drink. As the victim left the gas station, Defendant asked the victim if she would give them a ride. The victim agreed.

Defendant sat in the back right passenger side of the vehicle, and his girlfriend sat in the back left driver’s side of the vehicle. Defendant and his girlfriend had difficulty giving directions to the victim. The victim pulled over on the side of the road to figure out where to go, and Defendant got “antsy” and “lost control.” He climbed over the seat, told the victim to move over, and tried to take the vehicle from her.

Defendant admitted to having a knife in his possession that night, but claimed he held an Ingles card against the victim’s neck and sawed it back and forth.

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Defendant threatened, “If you don’t cooperate, you’re going to die[.]” Defendant told the victim to get out of her truck, and the victim complied.

Around 11:00 p.m., Patricia Bass drove down Crab Creek Road when she saw a truck stopped on the side of the road. She stopped her vehicle fifty feet behind the truck. The victim emerged from the truck and ran towards Bass, “wa[ ]ving her arms” saying, “Help me.” When the victim reached Bass’s vehicle, the truck drove off from the scene, and the victim stated, “There goes my truck.” The victim called 911. Bass overheard the victim tell the 911 operator she picked up hitchhikers, but they did not seem to know where they were going. Bass also overheard the victim report Defendant held a knife against her throat. The State played the recording of the call to the jury.

Detective Geoff Bishop interviewed the victim on 31 October 2016. During the interview, the victim stated she no longer believed Defendant held a knife to her throat. She believed it was “some type of file at that point.”

On 25 October 2016, authorities located Defendant, his girlfriend, and the victim’s vehicle in San Diego, California. Officers arrested Defendant and searched the room he was staying in and the victim’s vehicle. Officers recovered several items, including a black, folding pocketknife.

At the close of the State’s evidence, Defendant consented to allowing his trial counsel to state that during closing arguments he was guilty of the offense of common

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law robbery. Defendant moved to dismiss the remaining charge of robbery with a dangerous weapon. The trial court denied his motion. At the close of all evidence, Defendant renewed his motion to dismiss. The trial court denied his motion

The jury found Defendant guilty of robbery with a dangerous weapon. The court sentenced Defendant to an active term of 80 to 108 months imprisonment. Defendant gave oral notice of appeal.

### **II. Standard of Review**

“Upon defendant’s motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant’s being the perpetrator of such offense. If so, the motion is properly denied.” *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation omitted). “Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The evidence must be considered in the light most favorable to the State as the State is entitled to every reasonable inference that might be drawn therefrom.” *State v. Hardison*, 243 N.C. App. 723, 726, 779 S.E.2d 505, 507 (2015) (citation omitted), *disc. review denied*, 368 N.C. 685, 781 S.E.2d 609 (2016). “Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve.” *Fritsch*, 351 N.C. at 379, 526 S.E.2d at 455. We review a denial of a motion to dismiss *de novo*. *State v. Bagley*, 183 N.C. App. 514, 523, 644 S.E.2d 615, 621 (2007).

### **III. Analysis**

Defendant argues the trial court erred in denying his motions to dismiss the robbery with a dangerous weapon charge. Specifically, Defendant contends because the victim initially believed the instrument held up against her neck was a knife and then later believed it was a file, the State failed to establish the element of the use or threatened use of a deadly weapon. We disagree.

The offense of robbery with a dangerous weapon, as defined under N.C. Gen. Stat. § 14-87 (2017), “ ‘consists of the following essential elements: (1) the unlawful taking or an attempt to take personal property from the person or in the presence of another (2) by use or threatened use of a firearm or other dangerous weapon (3) whereby the life of a person is endangered or threatened.’ ” *State v. Holt*, 241 N.C. App. 577, 582, 773 S.E.2d 542, 545 (2015) (quoting *State v. Faison*, 330 N.C. 347, 358, 411 S.E.2d 143, 149 (1991)). “A deadly weapon is generally defined as any article, instrument or substance which is likely to produce death or great bodily harm. . . . A pocketknife is also unquestionably capable of causing serious bodily injury or death.” *State v. Sturdivant*, 304 N.C. 293, 301, 283 S.E.2d 719, 725-26 (1981).

In the present case, Bass testified that in the victim’s 911 call immediately following the incident, the victim told dispatchers Defendant held a knife to her throat. Furthermore, Defendant admitted to having a pocketknife in his possession at the time of the robbery. Officers found a pocketknife during their search of the

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victim's vehicle and Defendant's room in San Diego. Although the victim told Detective Bishop in an interview two weeks after the incident she no longer believed Defendant held a knife to her throat, but, instead, he held a file to her throat, any contradictions in the evidence were for the jury to resolve. *Fritsch*, 351 N.C. at 379, 526 S.E.2d at 455. Viewing the evidence in the light most favorable to the State, the State produced sufficient evidence of this element. Accordingly, the trial court did not err in denying Defendant's motions to dismiss.

**IV. Conclusion**

For the foregoing reasons, we find no error in the judgment.

NO ERROR.

Chief Judge McGEE and Judge INMAN concur.

Report per Rule 30(e).