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NO. COA04-349

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2004

STATE OF NORTH CAROLINA

v.

Wake County
No. 03CRS57101

WILLIAM RUSSELL CONWAY

Appeal by defendant from judgment entered 14 October 2003 by Judge J.B. Allen in Wake County Superior Court. Heard in the Court of Appeals 29 November 2004.

Attorney General Roy Cooper, by Assistant Attorney General Joseph E. Herrin, for the State.

Paul T. Cleavenger for defendant-appellant.

STEELMAN, Judge.

Defendant William Russell Conway was charged with the 6 July 2003 armed robbery of Rack Room Shoes, located on Capital Boulevard in Raleigh. The evidence tended to show that on the date in question defendant was seen by Rack Room store clerk Ronald Peacock, standing in front of an adjacent store. Shortly thereafter, defendant entered the store and later left with a bulge under his shirt. Peacock assumed that the bulge was a pair of sneakers and shouted for defendant to stop. Defendant continued out of the store. Peacock gave chase, and caught up with

defendant after about 50-100 feet. Defendant then turned around and asked Peacock: "It mean that much to you? You know what I'm saying." Defendant then pulled a knife on Peacock and told him to come and get the shoes. Fearful of being stabbed, Peacock turned around and went back to the store. A co-worker had already called the police.

Peacock gave Officer R.E. Nantz of the Raleigh Police Department a description of the thief. Officer Nantz apprehended defendant shortly thereafter. Defendant was wearing the stolen sneakers at the time that he was apprehended. A frisk of defendant's outer clothing revealed a knife. Officer Nantz then took defendant back to the store, where Peacock positively identified him as the thief. At trial, both Peacock and Stephen Shearer, assistant manager at the Capital Boulevard Rack Room store, identified defendant as the person who had been in the store on 6 July 2003 and had been followed by Peacock.

Defendant testified on his own behalf. While he admitted to the theft, and to pulling the knife out of his pocket after Peacock chased him, defendant denied threatening Peacock with the knife. Defendant insisted that he only "showed [Peacock] the knife." Defendant stated that after the knife was "shown," Peacock went back into the store, and abandoned his pursuit of defendant. Defendant testified on cross-examination that he used the knife to "clean out [his] nails," and that he did not consider it a weapon.

At the close of the evidence, defendant moved to dismiss the charge against him. The trial court denied the motion. The jury

subsequently found defendant guilty, and the trial court sentenced defendant to an active term of 77-102 months imprisonment from the presumptive range. Defendant appeals.

In his sole assignment of error, defendant contends that the trial court erred in denying his motion to dismiss. We disagree.

"In reviewing the denial of a defendant's motion to dismiss, this Court determines only whether the evidence adduced at trial, when taken in the light most favorable to the State, was sufficient to allow a rational juror to find defendant guilty beyond a reasonable doubt on each essential element of the crime charged." *State v. Cooper*, 138 N.C. App. 495, 497, 530 S.E.2d 73, 75, *aff'd per curiam*, 353 N.C. 260, 538 S.E.2d 912 (2000). The State must be given the benefit of every favorable inference to be drawn from the evidence. *Id.* Contradictions and discrepancies must be resolved in favor of the State. *State v. Lucas*, 353 N.C. 568, 581, 548 S.E.2d 712, 721 (2001).

In order to obtain a conviction of robbery with a dangerous weapon pursuant to N.C. Gen. Stat. § 14-87, the State must show that defendant (1) unlawfully took or attempted 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. The defendant's use or threatened use of a dangerous weapon must precede or be concomitant with the taking, or be "so joined by time and circumstances with the taking as to be part of one continuous transaction." *State v. Brewton*, 342 N.C. 875, 877-78, 467 S.E.2d

395, 397 (1996) (*quoting Olson*, 330 N.C. at 566, 411 S.E.2d at 597).

In the case *sub judice*, defendant argues that there was not sufficient evidence to show that he obtained the stolen shoes with the requisite force or threat of force to sustain a conviction of robbery with a dangerous weapon. In essence, defendant contends that the display of the weapon did not "precede" nor was it "concomitant with the taking," so as to support a conviction of robbery with a dangerous weapon.

This Court rejected a similar argument in *State v. Barnes*, 125 N.C. App. 75, 479 S.E.2d 236 (1997). In *Barnes*, the defendants entered the victim's store, obtained merchandise and left without paying for it. After being confronted outside by store personnel, one of the defendants displayed a handgun, facilitating the two defendants' escape. Defendants argued on appeal that the theft was complete when they exited the store with the merchandise. This Court rejected that argument and explained that, for purposes of robbery, "just because a thief has physically taken an item does not mean that its rightful owner no longer has possession of it." *Barnes*, 125 N.C. App. at 79, 479 S.E.2d at 238. The Court noted that when a store employee is still actively attempting to retain possession of the property taken from the merchant-employer, the display of a weapon is considered necessary to complete the taking. *Id.* Accordingly, the Court concluded that the attempt to take the property from the store by force was inseparable from the rest of the transaction, and upheld defendants' convictions for armed robbery.

Similarly, in the case at bar, the evidence is uncontroverted that defendant entered Rack Room Shoes on Capital Boulevard on 6 July 2003, and left the store with a pair of sneakers without paying for them. The evidence also shows that one of the store employees gave chase, and that defendant, when confronted by the employee some 50-100 feet away from the store, turned and pulled out a knife. Upon seeing the knife, which was described at trial as a "fixed-blade," "very sharp" knife-- capable of "inflict[ing] serious injury," the store employee abandoned the chase and returned to the store to await the arrival of law enforcement. We conclude, as did the Court in *Barnes*, that the evidence in the light most favorable to the State, was sufficient to submit the charge of robbery with a dangerous weapon to the jury.

Having so concluded, we hold that defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges HUNTER and ELMORE concur.

Report per Rule 30(e).