

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA11-574
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

STATE OF NORTH CAROLINA

v.

Caldwell County
Nos. 07 CRS 52158, 08 CRS 1860

LAKENYA LARAE BONILLA

Appeal by defendant from judgment entered 1 October 2008 by Judge J. Gentry Caudill in Caldwell County Superior Court. Heard in the Court of Appeals 28 November 2011.

Attorney General Roy Cooper, by Assistant Attorney General Melody R. Hairston, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Kathleen M. Joyce, for defendant-appellant.

ELMORE, Judge.

Lakenya Larae Bonilla (defendant) appeals from judgment entered after a jury found her guilty of common law robbery. We find no error.

On 4 July 2007, Cindy Cascell, a homeless woman living in Lenoir, was walking near the Fast Stop convenience store when she noticed a group of seven people in the parking lot of the

convenience store. She approached the group and asked if they had drugs for sale. They indicated that they did and told Ms. Cascell to meet them on a side street. Ms. Cascell had a "bad feeling" and changed her mind. She put her money back in her pocket and turned to walk away. As she turned to walk away, she was grabbed by the hair, punched, and sprayed with pepper spray. The group disappeared, and Ms. Cascell noticed her purse and some of her cash was missing. Ms. Cascell ran to the store, and the lady in the store called the police. Defendant was arrested with co-defendant Derrick Banner on 10 July 2007. Defendant was indicted on one count of common law robbery and one count of conspiracy to commit common law robbery. Defendant and Banner were tried jointly on 30 September 2008. A jury found defendant guilty of common law robbery, and not guilty of conspiracy to commit common law robbery. The trial court sentenced defendant to a term of ten to twelve months' imprisonment. Defendant appeals.

Defendant argues that the trial court committed plain error when it offered inadequate jury instructions that failed to clarify the issues and apply the law to the particular facts of the case. Defendant contends that the trial court should have been prompted to adopt very clear, specific language in its jury

charge because: (1) the testimony was "conflicting" and "confusing" due to the number of people involved in the incident and the witnesses' use of nicknames during some of the testimony; (2) the joint trial with co-defendant Banner created confusion regarding the roles each individual played in the incident; (3) some witnesses had pleaded guilty to reduced charges in exchange for their testimony; and (4) testimony of one of the investigating officers was confusing.

Defendant did not object to the jury instructions at trial; therefore, we review for plain error. *State v. Goforth*, 170 N.C. App. 584, 587, 614 S.E.2d 313, 315 (2005). "Under the plain error standard, defendant must show that the instructions were erroneous and that absent the erroneous instructions, a jury probably would have returned a different verdict." *Id.* (citations omitted).

"[A] [jury] charge is to be construed as a whole." *State v. Williams*, 299 N.C. 652, 660, 263 S.E.2d 774, 779 (1980). "If, when so construed, it is sufficiently clear that no reasonable cause exists to believe that the jury was misled or misinformed, any exception to it will not be sustained even though the instruction could have been more aptly worded." *Id.* at 660, 263 S.E.2d at 779-80 (citations omitted).

Here, the trial court instructed the jury members that they were the sole judges of the credibility of the witnesses and the weight to be given any evidence. The trial court instructed the jury regarding a witness having an agreement with the prosecution for a charge reduction and regarding a witness who was an accomplice. The trial court instructed the jury on the elements of common law robbery, and it told the jury it could find either defendant guilty if "joined in a common purpose to commit common law robbery." The trial court further instructed the jury that it was to determine "guilt or innocence as to each defendant independently and as to each charge independently." Viewed as a whole, we find no error with the jury instructions.

No error.

Judges McGEE and McCULLOUGH concur.

Report per Rule 30(e).