IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1340

Filed: 2 October 2018

Mecklenburg County, Nos. 16 CRS 209692–94, 22639, 209687

STATE OF NORTH CAROLINA

v.

WILLIAM DAVIS

Appeal by defendant from judgments entered 12 April 2017 by Judge Jesse B. Caldwell III in Mecklenburg County Superior Court. Heard in the Court of Appeals 9 August 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Marc X. Sneed, for the State.

Anne Bleyman for defendant.

DIETZ, Judge.

Defendant William Davis appeals his convictions for possession of a stolen vehicle, attempted common law robbery, resisting a public officer, possession of marijuana, and attaining habitual felon status.

As explained below, we hold that there was sufficient evidence to support the charge of attempted common law robbery; that the trial court acted within its sound

discretion when it excused a juror for cause after the juror indicated that his emotions could prevent him from fairly deciding the habitual felon issue; and that the indictments sufficiently named Davis and were not defective. We therefore find no error in the trial court's judgments.

Facts and Procedural History

On 14 March 2016, Ryan Jett was driving a silver 2002 Mitsubishi Montero Sport owned by his mother's company, Teresa Auto Sales. At around 1:00 p.m., Jett exited a gas station to find that the car had been stolen. Shortly after, Jett informed his mother who reported the incident to the police. Jett's mother told police that the car contained a briefcase with a barber card with Jett's name on it as well as a set of hair clippers.

That same day, David Paolino was driving his work truck when he was passed by a silver SUV with its front end smashed, swerving in and out of the lane erratically. Paolino allowed the driver of the SUV to pass him but caught up to it when the driver stopped the SUV at an exit ramp, holding up traffic. At that point, the driver got out of the SUV, walked up to Paolino, and asked him for a ride. When Paolino refused, the driver demanded that Paolino "get the f**k out of the car" and grabbed Paolino's arm and attempted to pull him out of the car. After a brief struggle, Paolino stepped on his gas pedal and managed to escape. Shortly thereafter, Paolino called the police and reported the incident.

Later that afternoon, Mohammed Safari, an employee at the Enterprise Rent-A-Car located on Brookshire Boulevard, noticed a man yelling in the intersection outside. When Safari looked outside, he saw a man run into the Enterprise parking lot and get into one of the rental cars. Safari ran to the parking lot and yelled at the man to get out of the vehicle. Upon seeing Safari, the man grabbed a black suitcase and ran away into the woods. After the incident, Safari saw several police cars speed up to the intersection and Safari pointed them in the direction the man had run.

That afternoon, Officers Chelsea Kidder and Jennifer Wolfe were on patrol when they received a call describing a robbery. The suspect was last seen running towards the Enterprise Rent-A-Car on Brookshire Boulevard. The officers arrived at the scene and spoke to Safari, who pointed them in the direction of the suspect. As the officers followed in that direction, they saw someone matching the description of the suspect running down the road and ordered him to stop and get on the ground. The individual complied.

The officers handcuffed the individual and began searching him to ensure that no weapons were on him. During the pat-down, the suspect resisted and appeared to reach for his waistband. Officer Wolfe checked the suspect's waistband for weapons and found a car key and a pill bottle in his pocket but no weapons. Officers also found a suitcase which contained hair clippers. Officers identified the suspect as Defendant William Davis.

Safari later identified Davis as the man in the Enterprise Rent-a-Car parking lot. Paolino identified Davis as the person who attempted to pull him from his vehicle earlier that day. The car key was the key to Jett's stolen car and Jett identified the hair clippers as the ones stolen from the car. Officers arrested Davis on multiple charges.

Following trial, a jury convicted Davis of possession of a stolen vehicle, attempted common law robbery, resisting a public officer, and possession of marijuana. In a second phase of trial, the jury convicted Davis of attaining the status of a habitual felon. The trial court sentenced Davis to consecutive terms of 74 to 101 months in prison and 67 to 93 months in prison. Davis timely appealed.

Analysis

I. Motion to Dismiss

Davis first argues that the trial court erred by denying his motion to dismiss the charge of attempted common law robbery. As explained below, we reject this argument.

"In reviewing a motion to dismiss based on the sufficiency of the evidence, the scope of the court's review is to determine whether there is substantial evidence of each element of the charged offense." *State v. Hardison*, 243 N.C. App. 723, 726, 779 S.E.2d 505, 507 (2015). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* "The evidence must be

considered in the light most favorable to the State and the State is entitled to every reasonable inference that might be drawn therefrom." *Id.*

Common law robbery is defined as "the felonious taking of money or goods of any value from the person of another, or in his presence, against his will, by violence or putting him in fear." *State v. Stewart*, 255 N.C. 571, 572, 122 S.E.2d 355, 356 (1961). It is not necessary for the State to prove both violence and fear; either is sufficient. *State v. Moore*, 279 N.C. 455, 458, 183 S.E.2d 546, 547 (1971). Attempted common law robbery consists of two elements: "(1) defendant's specific intent to commit the crime of common law robbery, and (2) a direct but ineffectual act by defendant leading toward the commission of this crime." *State v. Whitaker*, 307 N.C. 115, 118, 296 S.E.2d 273, 274 (1982). To prove specific intent, "a particular combination of speech and action may constitute such overwhelming evidence that the one who speaks and acts is motivated by a specific intent that no other conclusion is reasonable." *Id.* at 119, 296 S.E.2d at 275.

Davis argues that the State failed to present sufficient evidence of attempted common law robbery because it failed to prove that Davis acted violently towards Paolino or that Paolino was fearful of Davis. With regards to violence, "the degree of force used is immaterial, so long as it is sufficient to compel the victim to part with his property." *State v. Carter*, 186 N.C. App. 259, 262, 650 S.E.2d 650, 653 (2007). As for fear, it does not matter how slight the cause creating the fear may be. *Id.* at 263,

650 S.E.2d at 653. "If the transaction is attended with such circumstances of terror, such [as] threatening by word or gesture, as in common experience are likely to create an apprehension of danger and induce a man to part with his property . . . , the victim is put in fear." *Id.*

Here, the State's evidence, viewed in the light most favorable to the State, showed that Davis approached Paolino's vehicle and demanded that Paolino "get the f**k out of the car." Davis then grabbed Paolino's arm and attempted to pull Paolino out of the vehicle or force him to open the door so he could steal the car. After a brief struggle, Paolino stepped on the gas and sped away.

Davis argues that the altercation was brief, that Paolino was not injured, that Davis was unarmed, and that approaching a stranger in a car and demanding that they "get the f**k out of the car," standing alone, is not an act of "violence." But all of these arguments fail because, under the doctrine of common law robbery, "the degree of force used is immaterial, so long as it is sufficient to compel the victim to part with his property." *Id.* at 262, 650 S.E.2d at 653. The State's evidence was sufficient for a reasonable mind to conclude that Davis grabbed Paolino in an effort to force him from his car so he could steal it. This satisfies the violence requirement of attempted common law robbery. Accordingly, the trial court properly denied Davis's motion to dismiss.

II. Striking Juror Number 6 for Cause

Davis next contends that the trial court abused its discretion when it excused juror number 6 for cause. As explained below, the trial court's decision to remove this juror was well within the trial court's sound discretion.

"The test for determining when a prospective juror may be excused for cause is whether his views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *State v. Roache*, 358 N.C. 243, 268, 595 S.E.2d 381, 399 (2004). A juror's "bias or inability to follow the law does not have to be proven with unmistakable clarity, and the decision as to whether a juror's views would substantially impair the performance of his duties is within the trial court's broad discretion." *State v. Gregory*, 340 N.C. 365, 394, 459 S.E.2d 638, 655 (1995). Accordingly, the trial court's decision "will not be disturbed absent an abuse of discretion." *State v. Blakeney*, 352 N.C. 287, 299, 531 S.E.2d 799, 810 (2000).

Here, after the jury convicted Davis in the first phase of trial and were told they would now begin a second phase to address Davis's status as a habitual felon, the court informed the parties that "one of the jurors, number 6, has become very upset. He states that he doesn't know that he can proceed in this matter, that he was fine with the verdicts as they were." The juror explained to the court that he had a friend struggling with drug addiction who was going through "this specific situation,

the word felony." The juror indicated that he "was fair and impartial in the first part, but I didn't know all the details. I imagine my friend in the same situation."

The court then permitted the parties to ask the juror fairly extensive questions about his ability to continue to serve. The juror's answers were equivocal. For example, he explained that he would follow the judge's instructions on the law but also explained that his emotions might overtake him and requested to be excused:

> THE COURT: Is it still, sir, your recommendation that you not be kept as a juror?
>
> JUROR NO. 6: I agree.
>
> THE COURT: Is it still your statement that even though you say you can be fair and impartial that you still have high emotions that would affect you at this phase? Is that a fair statement?
>
> JUROR NO. 6: I can separate my emotions at the trial. But at the same time, I can't control myself, my emotions.

In light of the juror's equivocal answers concerning his ability to set aside his personal situation and emotions and follow the law, there was an obvious risk that the juror would be substantially impaired in the performance of his duties as a juror. *Roache*, 358 N.C. at 268, 595 S.E.2d at 399. Accordingly, the trial court acted well within its broad discretion in removing the juror for cause and replacing him with an alternate.

III. Sufficiency of the Indictment

Finally, Davis argues that the indictments for the charges of breaking or

entering a motor vehicle, resisting a public officer, and possession of marijuana were fatally defective because they alleged the perpetrator's name as "William Davis, AKA Ryan Jet." At trial, the State moved as a "housekeeping matter" to amend the indictments to remove the words "AKA Ryan Jet." The trial court allowed the motion without objection. Davis argues that "Ryan Jet" was never an alias for Davis and that the indictments therefore were fatally defective.

The sufficiency of an indictment is a legal question that this Court reviews *de novo*. *State v. Marshall*, 188 N.C. App. 744, 748, 656 S.E.2d 709, 712 (2008). "[W]here an indictment is alleged to be invalid on its face, thereby depriving the trial court of its jurisdiction, a challenge to the indictment may be made at any time, even if it was not contested in the trial court." *State v. Williams*, 368 N.C. 620, 622, 781 S.E.2d 268, 270 (2016).

Our General Assembly has provided that an indictment "is sufficient in form . . . if it express[es] the charges against the defendant in a plain, intelligible, and explicit manner" and "shall not be quashed . . . by reason of any informality or refinement." N.C. Gen. Stat. § 15-153. Additionally, our Supreme Court has stated that "it is not the function of an indictment to bind the hands of the State with technical rules of pleading" and that "contemporary criminal pleadings requirements have been designed to remove from our law unnecessary technicalities which tend to obstruct justice." *Williams*, 368 N.C. at 623, 781 S.E.2d at 270–71.

With respect to the identity of the alleged offender, "[a]n indictment must clearly and positively identify the person charged with the commission of the offense." *State v. Simpson*, 302 N.C. 613, 616, 276 S.E.2d 361, 363 (1981). But misspelled names and other similar errors do not automatically render an indictment defective. "Names are used to identify people and if the spelling used, though inaccurate, fairly identifies the right person and the defendant is not misled to his prejudice, he has no complaint." *State v. Wilson*, 135 N.C. App. 504, 508, 521 S.E.2d 263, 265 (1999); *see also State v. Higgs*, 270 N.C. 111, 113, 153 S.E.2d 781, 782–83 (1967); *State v. Vincent*, 222 N.C. 543, 544, 23 S.E.2d 832, 833 (1943).

Here, the indictment named Davis as the perpetrator. Although the State now concedes that Davis was not also known as "Ryan Jet" (AKA is an initialism for "also known as"), the indictment fairly identified Davis as the defendant. Indeed, the State obtained superseding indictments for several of the charges before the case went to trial and those indictments used the name "William Davis" without "AKA Ryan Jet." All of the charges were tried together in a single proceeding. Thus, Davis was aware that he was the person charged with all of these crimes, and the mistaken "AKA" label did not prejudice him or prevent him from fairly defending against those charges. Accordingly, the indictments were not fatally defective and did not deprive the trial court of jurisdiction over these criminal proceedings. We therefore reject Davis's argument.

Conclusion

We find no error in the trial court's judgments.

NO ERROR.

Judges TYSON and BERGER concur.

Report per Rule 30(e).