IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-579

No. COA20-666

Filed 19 October 2021

Guilford County, Nos. 18CRS087054-087059

STATE OF NORTH CAROLINA

v.

JAMES ROSS INMAN, Defendant.

Appeal by Defendant from judgments entered 17 March 2020 by Judge John O. Craig III in Guilford County Superior Court. Heard in the Court of Appeals 8 September 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Matthew L. Liles, for the State.

Mark Montgomery for Defendant.

GRIFFIN, Judge.

¶ 1 Defendant James Ross Inman appeals from the trial court's judgments entering jury verdicts finding Defendant guilty of multiple crimes arising from the armed robbery of a cellphone store. Defendant contends that, due to a fatal variance between the indictment and the evidence presented at trial, the trial court erred by denying his motion to dismiss a charge of armed robbery with a dangerous weapon of

two store employees. Defendant does not allege a variance regarding any evidence material to the crime of armed robbery in North Carolina. We discern no error.

I. Factual and Procedural History

¶ 2 This case arises from the armed robbery of a T-Mobile telephone store in Greensboro. The State's evidence presented at trial tended to show the following:

¶ 3 Around noon on 26 October 2018, two men covered their faces and entered the T-Mobile store. One of the men was carrying a handgun. Using the handgun, the men forced the two employees who were currently working in the store into a back room. The men forced one employee to get down on the ground on her hands and knees and instructed the other employee to open the store's safes and cash registers to fill a duffle bag with cash and cellphones. That employee snuck a tracking device into the duffle bag alongside the cash and cellphones.

¶ 4 When the two men emerged from the back room, they encountered a customer who had entered the T-Mobile store with cash in her hand to pay a bill. The men "snatched the money out of [the customer's] hand, [and] told [her] to get on the floor." The two men fled from the store with the duffle bag full of cash, cellphones, and the tracking device.

¶ 5 Police followed the tracking device and apprehended Defendant and his accomplice, along with over $1000 in cash and a duffle bag filled with cell phones.

Analysis of Defendant's personal cellphone revealed that the phone was near the T-Mobile store around noon on 26 October 2018.

¶ 6 Defendant presented no evidence at trial. At the close of the State's evidence, and the close all evidence presented at trial, Defendant moved to dismiss a charge of armed robbery with a dangerous weapon from the T-Mobile store employees due to a fatal variance between the indictment and the evidence presented at trial. The trial court denied Defendant's motion.

¶ 7 The jury convicted Defendant of armed robbery with a dangerous weapon, common law robbery, false imprisonment, conspiracy to commit robbery with a dangerous weapon, and two counts of second-degree kidnapping. The trial court entered judgment and sentenced Defendant to active, consecutive terms of imprisonment totaling 160 to 252 months. Defendant timely appeals.

II. Analysis

¶ 8 Defendant argues that the trial court erred by denying his motion to dismiss the charge of armed robbery with a dangerous weapon of the two store employees. Defendant asserts "there are fatal variances between the indictment and the evidence as to the robbery of the employees" and, therefore, "that conviction must be set aside." We review the denial of a motion to dismiss, including motions made on the basis of a fatal variance, to determine whether, in the light most favorable to the State, there was substantial evidence of each essential element of the offense charged and the

defendant was the perpetrator of the offense. *State v. Mason*, 222 N.C. App. 223, 225–26, 730 S.E.2d 795, 798 (2012) (citations omitted).

¶ 9 "It is a rule of universal observance in the administration of criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment." *State v. Jackson*, 218 N.C. 373, 376, 11 S.E.2d 149, 151 (1940). "The allegation and proof must correspond." *Id.* "A variance between the criminal offense charged and the offense established by the evidence is in essence a failure of the State to establish the offense charged." *State v. Waddell*, 279 N.C. 442, 445, 183 S.E.2d 644, 646 (1971). However, "[a] variance is not material, and is therefore not fatal, if it does not involve an essential element of the crime charged." *State v. Norman*, 149 N.C. App. 588, 594, 562 S.E.2d 453, 457 (2002).

¶ 10 These rules arise from constitutional due process, "to insure that the defendant is able to prepare his defense against the crime with which he is charged, and to protect the defendant from another prosecution for the same incident." *Id.* Essentially, when reviewing a defendant's claim of variance between their indictment and the evidence presented at trial, we assess whether the evidence presented at trial in support of each essential element of the crime charged corresponds with the allegations in the indictment against which the defendant was on notice to defend.

¶ 11 N.C. Gen. Stat. § 14-87 codifies the crime of armed robbery with a dangerous weapon. N.C. Gen. Stat. § 14-87 (2017). As described in N.C. Gen. Stat. § 14-87, to

prove the crime of armed robbery the State must show 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. Beaty*, 306 N.C. 491, 496, 293 S.E.2d 760, 764 (1982).

¶ 12 Defendant's indictment in the present case specified that goods valued at certain monetary amounts were stolen in the presence of the two T-Mobile employees by threatening the use of a handgun:

> The jurors for this State upon their oath present that on [26 October 2018] and in [Guilford County] [D]efendant named above unlawfully, willfully and feloniously did steal, take and carry away another's personal property, three thousand three hundred thirty one dollars ($3,331.00) in good and lawful United States currency and eleven thousand ($11,000.00) in assorted cellular telephones, from the person or presence of [Store Employee #1]. [D]efendant committed this act by means of an assault consisting of having in possession and threatening the use of a firearm, to wit: a handgun, hereby the lives of [Store Employee #2] and [Store Employee #1] were threatened and endangered.

¶ 13 Defendant argues, specifically, that the evidence failed to show the exact value of cash and cellphones stolen and failed to accurately state the identity of the property owner as each was stated in the indictment. Defendant is correct that the indictment alleges $3,331.00 in cash and $11,000.00 worth of cellphones were stolen, but the evidence at trial showed that only $1,100 in cash was stolen and no evidence was

presented showing the monetary value of the stolen cellphones recovered by police. Defendant is also correct that the indictment alleges the cash and cellphones were stolen from the two store employees, while evidence at trial showed the property was truly owned by the T-Mobile store itself.

¶ 14 However, North Carolina law does not require the State to prove these elements to prove a charge of armed robbery with a dangerous weapon. Our Courts have long held that "in an indictment for robbery the kind and value of the property taken is not material–the gist of the offense is not the taking, but a taking by force or putting in fear." *State v. Guffey*, 265 N.C. 331, 333, 144 S.E.2d 14, 16 (1965). "In such case it is not necessary or material to describe accurately or prove the particular identity or value of the property taken, further than to show it was the property of the person assaulted or in his care, and had a value." *State v. Mull*, 224 N.C. 574, 576, 31 S.E.2d 764, 765 (1944) (citation and quotation marks omitted). "An indictment for robbery will not fail if the description of the property is sufficient to show it to be the subject of robbery and negates the idea that the accused was taking his own property." *State v. Spillars*, 280 N.C. 341, 345, 185 S.E.2d 881, 884 (1972).

¶ 15 When presented with a similar set of circumstances in *State v. Burroughs*, this Court held "the specific owner or the exact property taken or attempted to be taken is mere surplusage." *State v. Burroughs*, 147 N.C. App. 693, 697, 556 S.E.2d 339, 342 (2001). In *Burroughs*, the defendant and an accomplice attempted to rob a

convenience store at gunpoint but were thwarted in commission of the robbery by an armed store employee. *Id.* at 694–95, 556 S.E.2d at 341. The resulting indictment stated

> the defendant named above unlawfully, willfully and feloniously did steal, take, and carry away and attempt to steal, take and carry away another's personal property, an unknown amount of U.S. Currency and the value of (unknown) dollars, from the presence, person, place of business, and residence of [the store employee]. The defendant committed this act having in possession and with the use and threatened use of firearms and other dangerous weapons, implements, and means, an assault consisting of having in possession and threatening the use of a firearm, a pistol, whereby the life of [the store employee] was endangered and threatened.

Id. at 696, 556 S.E.2d at 342.

¶ 16 The defendant argued that the indictment did not "properly specif[y] the name of the person from whose presence the property was attempted to be taken, whose life was endangered." *Id.* This Court held that the defendant could not show prejudicial error because "the alleged variance between the indictment's allegations and the evidence at trial were as to superfluous matters." *Id.* at 697, 556 S.E.2d at 342. The evidence in *Burroughs* showed that the defendant entered the convenience store with his handgun drawn and an intent to steal property from the store, "[r]egardless of the exact property [the] defendant intended to take upon his entry into the store and who owned that property." *Id.* at 697, 556 S.E.2d at 342–43. Contrary to the defendant's

arguments, the "indictment was sufficient to put [the] defendant on notice that he was charged with attempted robbery with a firearm." *Id.* at 696–97, 556 S.E.2d at 342.

¶ 17 Likewise, there was no material variance between the evidence presented and the language of the indictment in the present case. The indictment expressed that Defendant "unlawfully, willfully and feloniously did steal, take and carry away *another's* personal property." (Emphasis added). The indictment then stated that Defendant accomplished the taking "by means of an assault consisting of having in possession and threatening the use of a firearm," "from the person or presence of" a store employee, and thereby threatened the lives of both store employees. The indictment notified Defendant that he was charged with stealing valuable property that belonged to someone other than himself by endangering the owner or caretaker of the property. *See Mull*, 224 N.C. at 576, 31 S.E.2d at 765 (stating the armed robbery indictment need only "show it was the property of the person assaulted or in his care, and had a value"). The evidence at trial then showed that Defendant and his accomplice entered the T-Mobile store with a handgun drawn and did forcibly steal cash and cellphones by threatening to use the handgun. The allegations in the indictment and the evidence shown at trial each materially reflect the essential elements of the crime of armed robbery as described in N.C. Gen. Stat. § 14-87. The

exact property stolen and the particular owner of that property are immaterial to the crime charged.

¶ 18 As it was in *Burroughs*, evidence in this case of "the specific owner or the exact property taken or attempted to be taken is mere surplusage." *Burroughs*, 147 N.C. App. at 697, 556 S.E.2d at 342. Defendant has failed to show any prejudicial error because any variance between the indictment's allegations and the evidence presented at trial "were as to superfluous matters." *Id.* The State presented substantial evidence at trial which corresponded with the material allegations of Defendant's indictment for armed robbery.

III. Conclusion

¶ 19 We hold there was no fatal variance between Defendant's indictment for armed robbery of the two store employees and the evidence presented in support of that charge at trial. The trial court did not err by denying Defendant's motion to dismiss the charge of armed robbery.

NO ERROR.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).