IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1013

Filed 18 November 2026

Lincoln County, Nos. 24CR000177-540, 24CR216692-540

STATE OF NORTH CAROLINA

v.

REGINALD LEE FORNEY

Appeal by Defendant from judgment entered 27 February 2025 by Judge J. Thomas Davis in Lincoln County Superior Court. Heard in the Court of Appeals 28 October 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Jason Caccamo, for the State-Appellee.

Irons & Irons, P.A., by Ben G. Irons, II, for Defendant-Appellant.

COLLINS, Judge.

Defendant Reginald Lee Forney appeals from judgment entered upon jury verdicts finding him guilty of robbery with a firearm and attaining violent habitual felon status. Defendant argues the trial court erred by (1) denying his motion to continue to permit him to retain private counsel, (2) refusing to instruct the jury on common law robbery, and (3) giving the State's requested special jury instruction concerning the presumption arising from the use of an implement appearing to be a

firearm. We find no error.

I. Background

Defendant was indicted on 8 April 2024 on the charges of robbery with a dangerous weapon, possession of a firearm by a felon, and attaining violent habitual felon status. The State dismissed the charge of possession of a firearm by a felon prior to trial.

On 27 January 2025, Defendant moved to continue the matter so he could retain private counsel. The motion was heard on 4 February 2025 and was denied.

The matter came on for trial on 24 February 2025. The evidence at trial tended to show the following:

Defendant had a probation proceeding scheduled at the Catawba County courthouse on 19 January 2024. That morning, Defendant and his girlfriend, Misty Hayes, drove from his mother's residence in Maiden, North Carolina, to the courthouse in his mother's white 2009 Saturn Aura. Defendant's probation officer, Sarah Biederman, saw Defendant at the courthouse that morning wearing a black-and-white zip-up hooded jacket, khaki pants, and dark-colored shoes. The proceeding concluded sometime between noon and 1:00 p.m., and Biederman testified that Defendant departed before the morning session ended.

After they left the courthouse, Defendant and Hayes traveled through portions of Lincoln County, visiting various commercial locations. They eventually arrived at a Family Dollar store in Lincolnton.

At approximately 2:25 p.m., Theresa Richard, a longtime Family Dollar employee, encountered a man who had initially entered the store claiming he needed to use the restroom. After leaving and returning, the man approached Richard carrying what appeared to be an assault rifle–a long firearm with a white tip on the barrel–directly at her. He was wearing a black-and-white hooded jacket, tan pants, and a black face mask or neck gaiter that covered his face from the nose down. He demanded access to the cash register and threatened to shoot her. When Richard refused, the man moved behind the counter, removed the cash drawer containing approximately $800, and fled. Richard grabbed her phone, ran toward the back of the store, and called 911.

Hayes testified that Defendant returned to the waiting vehicle carrying what appeared to be a long gun and a black box. Defendant ordered Hayes to drive away, and they returned to Maiden. During the drive, Defendant sat in the passenger seat trying to pry open the box.

Law enforcement obtained surveillance footage from nearby businesses and identified a white Saturn Aura connected to the robbery. Officers traced the car to Defendant's mother's residence. When officers conducted a consensual search of the car on the evening of the robbery, they recovered a black face covering. A later search warrant executed at the residence yielded clothing in Defendant's hamper matching the clothing worn by both Defendant earlier that day at the probation proceeding and the robbery suspect captured on surveillance video.

Defendant testified and denied participating in the robbery.

The jury found Defendant guilty of robbery with a firearm and thereafter found Defendant guilty of attaining violent habitual felon status. The trial court sentenced Defendant to life imprisonment without parole. Defendant gave timely notice of appeal.

II. Discussion

A. Motion to Continue

Defendant first argues the trial court committed structural error by denying his request for a continuance to retain private counsel. We disagree.

When a motion to continue is based upon a constitutional right, the trial court's decision to grant or deny the motion presents a question of law reviewed de novo. *State v. Melton*, 294 N.C. App. 91, 93-94 (2024), *aff'd*, 387 N.C. 538 (2025).

The right to counsel includes, within limits, the right to be represented by retained counsel of one's choosing. *State v. McFadden*, 292 N.C. 609, 612 (1977). That right, however, is not absolute and must be balanced against the orderly administration of justice and the need for prompt disposition of criminal charges. *State v. Chavis*, 141 N.C. App. 553, 562 (2000); *State v. Foster*, 105 N.C. App. 581, 584 (1992). Our Supreme Court recently affirmed that "when a trial court is faced with a defendant's request to substitute his court-appointed counsel for the private counsel of his choosing, it may only deny that request if granting it would cause significant prejudice or a disruption in the orderly process of justice." *Melton*, 294 N.C. App. at

96 (quotation marks and citation omitted).

Here, Defendant moved for a continuance less than one month before trial. At the hearing, the prosecutor informed the court that the case stood first on the priority trial calendar. When the trial court asked whether Defendant had retained an attorney prepared to enter an appearance, Defendant responded only that he was "getting one" and still needed to speak with attorneys. Defendant identified no retained attorney and produced no evidence that a retained attorney had agreed to represent him.

Defendant emphasizes the trial court's statement praising appointed counsel as "one of the finest defense attorneys I have ever known." The record, however, shows that the trial court's ruling rested on Defendant's failure to identify retained counsel and the imminent trial setting and not solely on counsel's competence. The trial court repeatedly focused on whether substitute counsel existed and could timely proceed.

Unlike in *State v. Goodwin*, where the trial court misapprehended the law and employed the incorrect standard in resolving the defendant's request for new counsel, 267 N.C. App. 437, 441 (2019), the trial court here did not deny Defendant's motion upon a finding that appointed counsel was effective. Rather, the record reflects that the trial court considered the impending trial date, the priority status of the case, and Defendant's inability to identify retained counsel who was prepared to appear.

Consistent with *Melton*, *Chavis*, and *Foster*, we conclude that the trial court

properly balanced Defendant's constitutional interests against the orderly administration of justice and the need for prompt disposition of criminal charges, and it did not err by denying the motion to continue.

B. Lesser-Included Instruction

Defendant next argues the trial court erred by refusing his request to instruct the jury on common law robbery. We disagree.

We review challenges to jury instructions de novo. *State v. Wise*, 269 N.C. App. 105, 106 (2019).

A defendant is entitled to an instruction on a lesser-included offense only when evidence would permit a rational juror to conclude the defendant committed the lesser offense but not the greater offense. *State v. Millsaps*, 356 N.C. 556, 562 (2002). However, where the State's evidence is positive as to every element of the greater offense and no evidence supports only the lesser offense, the instruction need not be given. *State v. Peacock*, 313 N.C. 554, 558 (1985). In evaluating whether evidence supports an instruction on a lesser-included offense, we "view the evidence in the light most favorable to the defendant." *State v. Ryder*, 196 N.C. App. 56, 64 (2009) (citation omitted).

"The elements of [armed robbery] are: (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. Hill*, 365 N.C. 273, 275 (2011) (quotation

marks and citations omitted). The elements of common law robbery are "the felonious, non-consensual taking of money or personal property from the person or presence of another by means of violence or fear." *State v. Smith*, 305 N.C. 691, 700 (1982) (citations omitted). "[C]ommon law robbery is a lesser included offense of armed robbery with a dangerous weapon, the difference being that common law robbery does not require proof that the defendant used a firearm or dangerous weapon." *Wise*, 269 N.C. App. at 106-07 (quotation marks and citation omitted).

The dispute here concerns whether the evidence would permit a rational juror to find that the object used during the robbery was not a firearm or dangerous weapon.

Richard testified that Defendant pointed what appeared to be an assault rifle directly at her and threatened to shoot her. Hayes likewise testified that Defendant exited the store carrying a long gun.

Defendant relies principally upon evidence that the instrument featured a white tip and testimony from certain witnesses that they could not say with certainty whether the weapon was real. But uncertainty by witnesses concerning the precise nature of a weapon does not constitute affirmative evidence that the implement was not a firearm. *State v. Thompson*, 297 N.C. 285, 288-89 (1979). Because witnesses generally cannot safely test whether a firearm is real during the course of a robbery, the law does not require such proof. *Id.*; *see also State v. Quick*, 60 N.C. App. 771, 773 (1983). No witness affirmatively testified the instrument was fake, a toy, or

incapable of endangering life. Nor did Defendant offer evidence tending to establish that proposition. Instead, Defendant denied involvement altogether.

Viewed in the light most favorable to Defendant, the evidence showed only uncertainty concerning the weapon's precise character. It did not constitute affirmative evidence from which a jury could reasonably conclude Defendant committed common law robbery but not robbery with a firearm.

Accordingly, the trial court did not err by refusing the requested lesser-included instruction.

C. Special Jury Instruction

Defendant finally argues that the trial court abused its discretion by giving the State's requested special instruction concerning the presumption applicable when a defendant uses an implement appearing to be a firearm.

"A request for a special instruction which deviates from the pattern jury instruction qualifies as a special instruction." *State v. Young*, 294 N.C. App. 518, 524 (2024) (citations omitted). We review a trial court's decision to give a special instruction for abuse of discretion. *State v. Nicholson*, 355 N.C. 1, 66 (2002).

The trial court instructed the jury on the sixth and seventh elements of robbery with a firearm as follows:

> Sixth, that the defendant had a firearm in defendant's possession at the time the defendant obtained the property or that it reasonably appeared to the alleged victim that a firearm was being used, in which case you may infer that the said instrument was what the defendant's conduct

> represented it to be.
>
> And seventh, that the defendant obtained the property by endangering or threatening the life of Theresa Richard with a firearm.

The trial court instructed the jury as follows:

> When a person commits a robbery by the use or threatened use of an implement which appears to be -- which appears to the alleged victim to be a firearm, the law presumes in the absence of affirmative evidence to the contrary that the instrument is what his conduct represents it to be, an implement endangering or threatening the life of a person being robbed.

The challenged instruction closely tracked language approved by our Supreme Court in *State v. Williams*:

> [W]hen a person commits a robbery by the use or threatened use of an implement which appears to be a firearm or other dangerous weapon, *the law presumes*, in the absence of any evidence to the contrary, that the instrument is what [the defendant's] conduct represents it to be–an implement endangering or threatening the life of the person being robbed.

335 N.C. 518, 521 (1994) (quoting *State v. Joyner*, 312 N.C. 779, 782 (1985)).

Defendant contends the instruction eliminated the jury's ability to decide whether it reasonably appeared to the victim that a firearm was being used. We are unpersuaded.

The trial court separately instructed the jury in accordance with the pattern instruction that the State was required to prove Defendant possessed a firearm or that it reasonably appeared to the victim that a firearm was being used. Only after

setting forth that element did the trial court provide the special instruction.

Jury instructions must be considered contextually and as a whole. *State v. Johnson*, 196 N.C. App. 330, 333 (2009). When the charge here is read in its entirety, the trial court did not instruct the jury to disregard reasonableness. Rather, the trial court instructed the jury to first determine whether the evidence established the appearance of a firearm before considering the evidentiary presumption recognized in *Williams*. Because the special instruction accurately reflected controlling North Carolina law and did not conflict with the remaining portions of the charge, the trial court acted within its discretion in giving it.

Accordingly, Defendant has failed to show an abuse of discretion.

III. Conclusion

The trial court properly denied Defendant's motion to continue, correctly refused to instruct the jury on common law robbery, and did not abuse its discretion by giving the State's requested special instruction. We find no error.

NO ERROR.

Judges GORE and GRIFFIN concur.