



[U][T] State v. Coatney

596 S.E.2d 472 (2004) | Cited 0 times | Court of Appeals of North Carolina | June 1, 2004

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

Defendant Talbert Dean Coatney was charged with the 8 December 2001 armed robbery of the Scotchman convenience store in Clarkton, North Carolina. The State's evidence tends to show that on the evening in question, a man, later identified as defendant, entered the Scotchman convenience store in Clarkton and asked the cashier on duty, Virginia Graham, to use the bathroom. When defendant exited the restroom, he inquired of Graham as to whether the store sold beer. Defendant subsequently retrieved a can of beer and placed it on the front counter. At this time, defendant made some physical motion that indicated that he had a gun, while saying, "Ma'am I have a gun. I want the money in the cash register." Graham saw a lump, which appeared to be a gun, under defendant's shirt in the front of his waistband. Scared that defendant would shoot her, Graham gave defendant \$90.00 to \$95.00 in bills from the cash register. Before leaving, defendant told Graham, "Don't do anything for five minutes or I will shoot back in the building."

After defendant left the store, Graham hid behind a structure and called law enforcement. She then looked out of a window and observed defendant take off his shirt and flee toward the highway. Defendant ran into the woods, removing more of his clothing, thereby losing most of the money taken in the robbery.

Officers of the Bladen County Sheriff's Department responded to the scene. Deputy Charles Weathers viewed the store surveillance tape, which recorded the robbery from behind the counter, and identified defendant as the robber. Investigator Scott Pait also reviewed the tape and in a subsequently filed report stated, "It is obvious that [defendant] is the subject demanding the money from the clerk, and the tape shows him reaching toward his waistband as if he has a weapon under his shirt."

Bladen County Sheriff's Department officers found defendant at his home and placed him under arrest within a half an hour after the robbery. After being transported to the Sheriff's Department and given his Miranda rights, defendant admitted to robbing the store and telling the store clerk that he had a gun. Defendant, however, denied having threatened to shoot back into the store when he left. Officers did not recover a gun.

At the close of the State's evidence, defendant moved to dismiss the charge against him based upon



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insufficient evidence. The trial court denied that motion. Defendant did not present any evidence. The jury subsequently found defendant guilty as charged, and the trial court sentenced him to a presumptive sentence of 133-169 months imprisonment. Defendant appeals.

On appeal, defendant argues only that the trial court erred in denying his motion to dismiss. Specifically, defendant contends that the State failed to present sufficient evidence that he actually possessed a gun, so as to submit the subject offense to the jury. We disagree.

A motion to dismiss based upon insufficient evidence is properly denied if the evidence, in the light most favorable to the State and giving the State every reasonable inference to be drawn therefrom, tends to establish every element of the offense charged and that the defendant is the perpetrator of that offense. *State v. Jarrett*, 137 N.C. App. 256, 262, 527 S.E.2d 693, 697 (2000). The evidence must be substantial, more than merely whimsical. *Id.* "Substantial evidence has been defined as 'that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.'" *State v. Carrilo*, 149 N.C. App. 543, 548, 562 S.E.2d 47, 50 (2002)(quoting *State v. Porter*, 303 N.C. 680, 685, 281 S.E.2d 377, 381 (1981)).

To obtain a conviction for robbery with a dangerous weapon (armed robbery), the State must prove that the defendant unlawfully took or attempted to take personal property from another or from a business, with the use or threatened use of a firearm or other dangerous weapon, implement or means, thereby endangering or threatening the life of a person. *State v. Hartman*, 344 N.C. 445, 473, 476 S.E.2d 328, 344 (1996), cert. denied, 520 U.S. 1201, 137 L.Ed. 2d 708 (1997). The State must prove "that the victim reasonably believed that the defendant possessed, or used or threatened to use a firearm in the perpetration of the crime." *State v. Lee*, 128 N.C. App. 506, 510, 495 S.E.2d 373, 376 (1998). To meet this burden, "[t]he State need only prove that the defendant represented that he had a firearm and that circumstances led the victim reasonably to believe that the defendant had a firearm and might use it." *Id.* "[I]t is not necessary for the State to prove that the defendant displayed the firearm to the victim." *State v. Bartley*, 156 N.C. App. 490, 496, 577 S.E.2d 319, 323 (2003); see *State v. Williams*, 335 N.C. 518, 438 S.E.2d 727 (1994)(finding no error in the defendant's conviction of armed robbery and utilizing a mandatory presumption that the defendant possessed a firearm, where defendant entered a convenience store and pulled an object "wrapped in something" from his pocket and demanded money from the cashier and the cashier believed the object to be a gun, despite the defendant's testimony that he did not own nor "mess with guns"); *State v. Lee*, 128 N.C. App. 506, 495 S.E.2d 373 (1998)(finding no error in the judgment of the trial court and approving the trial court's use of the mandatory presumption that defendant possessed a firearm, where the defendant covered the victim's head and threatened to shoot her if she resisted and subsequently robbed the victim, despite the fact that the victim never saw the gun).

While defendant would argue to the contrary, we conclude that there is sufficient evidence that defendant used or threatened to use a firearm and threatened the life of Virginia Graham during the 8 December 2001 robbery of the Scotchman convenience store. The victim testified that defendant



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told her he had a gun and gestured as though he had a gun; that there was a bulge at the waist of defendant's pants, under his shirt; that she believed that bulge to be a gun; and that she was scared defendant would actually use that gun to shoot her if she did not comply with his demands during the robbery. The victim further testified that defendant threatened to shoot back into the store if she attempted to call for help before he could get away.

In accordance with Williams, Lee and their progeny, we conclude that the evidence here entitled the State to a mandatory presumption that defendant used a firearm or dangerous weapon and endangered or threatened the victim's life. Moreover, like those cases, evidence that defendant did not actually possess a gun was not sufficient to counter the mandatory presumption which arose from the State's evidence that defendant possessed and utilized a firearm in the commission of the subject robbery. We conclude, therefore, that the trial court did not err in denying defendant's motion to dismiss.

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

No error.

Judges TIMMONS-GOODSON and CALABRIA concur.

Report per Rule 30(e).

