Cite as 2011 Ark. App. 258

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-547

	Opinion Delivered APRIL 6, 2011
COREY LAMBERT APPELLANT	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. CR-2008-875-5]
V.	
	HONORABLE JODI DENNIS, JUDGE
STATE OF ARKANSAS APPELLEE	
	AFFIRMED; MOTION TO WITHDRAW GRANTED

ROBIN F. WYNNE, Judge

Corey Lambert appeals from his conviction on charges of attempted murder in the first degree, aggravated robbery, and theft of property. Counsel for appellant has filed a motion to withdraw in which he argues that there are no meritorious arguments for reversal of the conviction. Counsel has also filed a brief explaining why there would be no merit to an appeal. Appellant has filed a document containing his points for reversal. We affirm and grant the motion to withdraw.

On December 15, 2008, the State charged appellant by information with the following offenses: attempted capital murder, aggravated robbery, possession of a firearm by certain persons, and theft of property. Appellant successfully moved to sever the possession-of-a-firearm-by-certain-persons charge. During the period leading up to the trial, appellant

requested on several occasions that the trial judge assign to him a different public defender. Appellant's main issues with his attorney were his allegations that his trial counsel did not file the motions he wanted filed and that she was not working hard enough on his case. The trial judge denied appellant's requests for a different attorney.[1]

Natalie Hall testified at the trial that while she was working at the Stitch and Clean in Pine Bluff on November 24, 2008, she was robbed by a man wearing black gym shoes, red sweat pants, a red jacket, and a black t-shirt. She testified that the person who robbed the store pointed a gun at her, and she gave him all of the money in the cash register. Police officers later brought Ms. Hall to the scene of an incident on 29th Street, where she identified a man lying on a stretcher as the one who had robbed the store.

Archie Rhoden with the Pine Bluff Police Department testified that he was working as a bike-patrol officer when he responded to the call regarding the robbery at the Stitch and Clean. Officer Rhoden interviewed Natalie Hall, obtained a description of the suspect, and put out notice for other officers to be on the lookout for the suspect. While Officer Rhoden and Natalie Hall were standing outside of the Stitch and Clean, Rhoden heard six or seven gunshots. When Officer Rhoden arrived on the scene of the shots, he saw appellant lying on the ground with another officer applying pressure to a head wound sustained by appellant. Officer Rhoden also saw a revolver lying on the ground. Officer Rhoden testified on cross-examination that he saw appellant was wearing red pants and a black t-shirt but he did not see a bandana.

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[1]Appellant is represented by different counsel on appeal.

John Ella Marshall testified that she was sweeping her front porch when she saw a police car come down the street and a "guy in a coat" walking down the street. Marshall testified that when the officer stopped and got out of his car, the other guy pulled a gun and shot twice. Marshall then went inside her home, and when she next looked out, she saw someone on the ground wearing handcuffs. Marshall stated that she did not get a good look at the person who shot at the officer but she did notice that he was wearing a red coat and dark-colored pants.

Officer Greg Holland testified that he responded to a call about a shooting and, when he arrived on the scene, he saw that appellant was injured and began administering first aid. Officer Holland testified that appellant was wearing a red top, a red bottom, a dark-colored shirt, and a blue bandana. Officer Traci McDonel, who was working for the crime-scene unit on November 24, 2008, testified that she recovered a thirty-eight-caliber Smith & Wesson revolver, a red New York Yankees hat, a red jacket, $143 that had been taken from the jacket pocket, a blue bandana, and shell casings from the scene. Officer McDonel testified that the revolver had three live rounds and two spent rounds. Officer McDonel further testified that the Stitch and Clean reported that $143 had been taken during the robbery.

Officer Terry Wingard testified that he was responding to the call from the Stitch and Clean when he noticed a male, identified as appellant, in a red jumpsuit. He stopped and got out of his car to question appellant. As Officer Wingard got out of his vehicle, appellant started running, looked back, and fired his gun. Officer Wingard then fired five rounds. Appellant went to the ground and threw his gun. Officer Wingard placed appellant in handcuffs and called for an ambulance.

At the end of the State's case-in-chief and again at the close of all of the evidence, appellant moved for a directed verdict. Both motions were denied by the trial court. The jury found appellant guilty of attempted murder in the first degree, aggravated robbery, and theft of property. The trial court sentenced appellant to 720 months' imprisonment. Appellant has now appealed to this court.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), counsel for appellant has filed a motion to withdraw, in which he argues that there would be no merit to an appeal in the case. A motion of this type must be accompanied by an abstract and brief listing and discussing all rulings adverse to appellant and explaining why there would be no merit to an appeal. Ark. Sup. Ct. R. 4-3(k) (2010). We hold that counsel for appellant has complied with the requirements of Rule 4-3(k).

The only pretrial ruling that was adverse to appellant was the trial court's denial of his request for a different attorney. Appellant's appellate counsel states in his brief that an ineffective-assistance-of-counsel motion would not constitute an argument for reversal on direct appeal because appellant would be required to file a Rule 37 motion and raise that argument after the direct appeal is decided. Our supreme court has held that a direct appeal on a claim of ineffective assistance of counsel can be appropriate when it is raised before the trial court and the facts and circumstances surrounding the claim have been fully developed at the trial level. *See State v. Robinson*, 2011 Ark. 90. A direct appeal on the issue of ineffective assistance of counsel could not be pursued in this case because the trial court never specifically

ruled on that issue and appellant did not provide the trial court with specific information regarding his claim of ineffective assistance.

The only rulings at trial that were adverse to appellant were the rulings by the trial court denying appellant's motions for directed verdict. Therefore, we must consider whether there would be merit to a challenge of the trial court's denials of the motions for directed verdict.

Appellant was convicted of attempt to commit first-degree murder. A person attempts to commit an offense if he or she purposely engages in conduct that constitutes a substantial step in a course of conduct intended to culminate in the commission of an offense whether or not the attendant circumstances are as the person believes them to be. Ark. Code Ann. § 5-3-201(a)(2) (Repl. 2006). A person commits murder in the first degree if the person commits or attempts to commit a felony and, in the course of and in the furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of any person under circumstances manifesting extreme indifference to the value of human life. Ark. Code Ann. § 5-10-102(a)(1) (Repl. 2006). The evidence, viewed in the light most favorable to the State, demonstrated that appellant, in the process of fleeing a store he had just robbed at gunpoint, which conduct would constitute aggravated robbery, a Class Y felony, shot at a police officer two times. A jury could reasonably conclude that shooting at someone is a substantial step toward causing that person's death. The evidence presented by the State is sufficient to sustain a conviction for attempted first-degree murder.

Appellant was also convicted of aggravated robbery. A person commits aggravated robbery if, with the purpose of committing a felony or misdemeanor theft, or resisting apprehension immediately after committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force upon another person while armed with a deadly weapon. Ark. Code Ann. § 5-12-103(a)(1) (Repl. 2006). The evidence produced by the State demonstrated that appellant demanded money from an employee of the Stitch and Clean while brandishing a firearm. This evidence, if believed by the jury, would sustain a conviction for aggravated robbery.

The third offense for which appellant was convicted was theft of property. A person commits theft of property if he or she obtains the property of another person, by deception or by threat, with the purpose of depriving the owner of the property. Ark. Code Ann. § 5-36-103(a)(2) (Supp. 2009). The State presented evidence that appellant took money from the Stitch and Clean while openly brandishing a firearm. This evidence, if believed by the jury, would be sufficient to support a conviction for theft of property.

Appellant has submitted pro se points for reversal. Our review of the pro se points reveals that they do not raise any meritorious points for reversal. Appellant argues that the State produced insufficient evidence to support his conviction. As discussed above, the evidence presented was sufficient.

Affirmed; motion to withdraw granted.

GLADWIN and GLOVER, JJ., agree.