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NO. COA11-1015  
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

STATE OF NORTH CAROLINA

v.

Cleveland County  
No. 09 CRS 054858

LARRY EUGENE GRIER

Appeal by defendant from judgment entered 17 March 2011 by Judge Robert C. Ervin in Cleveland County Superior Court. Heard in the Court of Appeals 17 January 2012.

*Attorney General Roy Cooper, by Assistant Attorney General Donna B. Wojcik, for the State.*

*Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for defendant-appellant.*

HUNTER, Robert C., Judge.

Defendant Larry Eugene Grier appeals from the judgment entered after a jury found him guilty of identity theft and attempt to obtain property by false pretenses. Defendant argues that the trial court erred by denying his motion to dismiss both charges, and by denying his motion to continue. We find no prejudicial error.

On 19 August 2009, defendant attempted to purchase two televisions from a Sears store. Defendant had a piece of paper with the account information for a store credit card under the name of "Charles Herbison." Defendant provided the salesperson, Marquitt Jones, with Mr. Herbison's social security number, a North Carolina driver's license in Mr. Herbison's name, and the account information. Mr. Jones processed the sale, but he recognized defendant from two previous purchases he made using different names and notified his loss prevention manager, Frankie Bell.

Mr. Bell observed defendant on the store's closed-circuit television system and called police. When defendant attempted to pick up the televisions, Mr. Bell and the store manager prevented him from taking the televisions and attempted to stop him from leaving the store. Defendant fled the scene, but he was detained a short time later by police. After police apprehended defendant, Mr. Bell and Mr. Jones both identified him as the man who attempted to buy the televisions.

On 26 October 2009, the Cleveland County grand jury returned a two-count indictment against defendant for identity theft and attempt to obtain property by false pretenses. When the case came on for trial on 16 March 2011, defendant moved for

a continuance because he claimed trial counsel was unprepared to proceed on the identity theft charge. Defendant claimed that the State had previously stated it would dismiss the charge. The State explained it had intended to dismiss the charge because a witness was unavailable, but it now believed it could try the case without the witness. The trial court denied the motion to continue, and the jury found defendant guilty of both charges. Defendant gave oral notice of appeal.

Defendant's first two arguments on appeal are that the State's evidence was insufficient to withstand his motion to dismiss both charges. We address these arguments together and disagree.

"When a defendant moves to dismiss a charge against him on the ground of insufficiency of the evidence, the trial court must determine 'whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense.'" *State v. García*, 358 N.C. 382, 412, 597 S.E.2d 724, 746 (2004) (citation omitted), *cert. denied*, 543 U.S. 1156, 161 L. Ed. 2d 122 (2005). "In reviewing challenges to the sufficiency of evidence, we must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences."

*State v. Scott*, 356 N.C. 591, 596, 573 S.E.2d 866, 869 (2002) (citation and quotation marks omitted).

A person is guilty of identity theft if he "knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name, to obtain anything of value, benefit, or advantage[.]" N.C. Gen. Stat. § 14-113.20(a) (2009). For the purposes of this offense, "identifying information" includes another person's name, birthdate, and social security number. *State v. Barron*, 202 N.C. App. 686, 694, 690 S.E.2d 22, 28, *disc. review denied*, 364 N.C. 327, 700 S.E.2d 926 (2010).

In this case, the evidence demonstrates that defendant used the name, social security number, and credit card information from Charles Herbison, another person, to conduct a financial transaction. Contrary to defendant's argument that the State failed to prove that Mr. Herbison was an actual person, Mr. Jones testified that he was able to verify the credit card information provided by defendant. Also, Officer Seth Treadway, a patrol officer with the Shelby Police Department, testified without objection that another officer called Mr. Herbison using

the telephone number located on the sales receipt and discovered that Mr. Herbison did not purchase the merchandise. As a result of this conversation, defendant was placed under arrest. Accordingly, we hold that the State presented sufficient evidence to withstand defendant's motion to dismiss this charge.

As to the charge of attempt to obtain property by false pretenses, defendant argues that the evidence does not establish that his misrepresentations actually deceived Mr. Jones, which he contends is an essential element of the offense. Defendant acknowledges, however, that in prior cases we have held that actual deceit is not an element of attempt to obtain property by false pretenses. *State v. Wilburn*, 57 N.C. App. 40, 46, 290 S.E.2d 782, 786 (1982) (citations omitted). We note that we are bound by the holdings in prior cases deciding the same issue. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). Accordingly, we hold that defendant's argument lacks merit.

Finally, defendant contends that the trial court erred by denying his motion to continue. We disagree.

"A motion for a continuance is ordinarily within the sound discretion of the trial court, and its ruling thereon is not subject to review absent an abuse of discretion." *State v.*

*Weimer*, 300 N.C. 642, 647, 268 S.E.2d 216, 219 (1980) (citations omitted). Nevertheless,

[i]t is equally well established, however, that, when such a motion raises a constitutional issue, the trial court's action upon it involves a question of law which is fully reviewable by an examination of the particular circumstances of each case. Denial of a motion for a continuance, regardless of its nature, is, nevertheless, grounds for a new trial only upon a showing by defendant that the denial was erroneous and that this case was prejudiced thereby.

*State v. Searles*, 304 N.C. 149, 153, 282 S.E.2d 430, 433 (1981) (citations omitted).

In this case, although defendant contends the denial of the motion to continue violated his due process rights, he cannot demonstrate that he suffered any specific prejudice. The prosecutor acknowledged that he had previously stated he would dismiss the identity theft charge, but defendant was indicted for the offense of identity theft more than a year before the case came on for trial, giving him ample time to have prepared a defense. The State relied upon the same evidence and witnesses to establish both charges. In sum, as defendant has articulated no prejudice, we find that he has failed to demonstrate prejudicial error from the denial of his motion to continue.

No prejudicial error.

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Judges STEPHENS and HUNTER, Robert N., Jr. concur.

Report per Rule 30(e).