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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-172

No. COA20-474

Filed 20 April 2021

Nash County, No. 18 CRS 52921

STATE OF NORTH CAROLINA,

v.

LACREISHA RENE MCDOUGAL, Defendant.

Appeal by defendant from judgment entered 21 November 2019 by Judge Cynthia King Sturges in Nash County Superior Court. Heard in the Court of Appeals 24 March 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Benjamin T. Spangler, for the State.

Meghan Adelle Jones, for Appellant-Defendant

CARPENTER, Judge.

¶ 1 Lacreisha Rene McDougal ("Defendant") appeals pursuant to N.C. Gen. Stat. § 15A-1444(a) and N.C. Gen. Stat. § 7A-27 from judgment entered after a jury found her guilty of one count of uttering a forged instrument pursuant to N.C. Gen. Stat. §14-120 and one count of obtaining property by false pretenses pursuant to N.C. Gen. Stat. § 14-100. Defendant contends that the trial court erred in denying her motion

to dismiss the charges because the State failed to prove the requisite knowledge and intent elements of the crimes.

I. Factual & Procedural Background

¶ 2 The evidence at trial tended to show the following: on 26 July 2018, Defendant presented a check in the amount of $792.46 to Pamela Allen ("Ms. Allen"), a teller supervisor, at the Southern Bank branch located on Sunset Avenue in Rocky Mount, North Carolina. The check was drawn on a "Sessoms Packing in Ahoskie" business checking account held at Southern Bank and was made out to "Lacreisha R. McDougal." Ms. Allen testified that the check "appear[ed] to be real." She proceeded to cash it after verifying Defendant's driver's license, handwriting her driver's license information on the check, and obtaining a fingerprint from Defendant. The bank's internal risk management department later contacted the branch regarding the authenticity of the check.

¶ 3 A former owner of Sessoms Packing Company ("Sessoms Packing"), 79-year-old Rossa Sessoms ("Ms. Sessoms"), testified for the State. Although she admitted at trial to having some memory issues, she testified to the following: she "kn[ew] that something happened with a check" belonging to Sessoms Packing; Sessoms Packing was no longer in business as of the date of the trial; Sessoms Packing banked with Southern Bank, and its business checks were imprinted with the name of the bank as well as a "little pig at the top"; only she had written and signed checks for the

company; and she did not recall Defendant ever working for her small business nor did she remember ever writing her a check. When asked if her home had ever been broken into, Ms. Sessoms responded, "I can't recall that date."

¶ 4 The daughter of Rossa Sessoms, Patricia Reddick ("Ms. Reddick"), testified as to her mother's involvement in Sessoms Packing and her knowledge of the business check cashed by Defendant. Specifically, she testified that "someone had written—forged some of her [mother's] checks." According to Ms. Reddick, she had received a phone call from Ms. Sessoms telling her that the bank contacted her about the check and assured her it was working to resolve the situation. Furthermore, Ms. Reddick knew that Ms. Sessoms had spoken with the police about the check incident. Ms. Reddick testified that Sessoms Packing was not in operation on 25 June 2018—the day before Defendant is alleged to have presented the check. Moreover, Defendant was never an employee of Sessoms Packing.

¶ 5 Michaela Moore ("Ms. Moore") also testified for the State. Ms. Moore identified Defendant in open court as the same person who came to her house in June 2018 and went by the names, "K" and Krea. Ms. Moore was first notified by Taleshia Jones ("Ms. Jones"), her good friend and her children's godmother, about a job opportunity to complete survey questions for compensation. Ms. Moore then met with Ms. Jones and K, who were accompanied by three men, in a park to discuss the application process. At the time, K wore a long synthetic ponytail down the middle of her back.

After meeting in the park, Ms. Jones and K suggested they "go somewhere more private." The three women then headed to Ms. Moore's home to discuss the job. Ms. Moore completed an employment application, which she recalled was from "Sessoms Packing of Ahoskie." K told Ms. Moore to send her copies of her "ID" and social security card so she could be put on the payroll. Ms. Jones provided a survey package to Ms. Moore, and Ms. Moore completed two surveys from the package during their visit. Ms. Jones advised Ms. Moore that "the guys . . . would contact [her] to go and cash these [payroll] checks." Approximately ten days later, two men came to her house. The men gave her two checks drawn on a "Sessoms Packing of Ahoskie" account in the amount $700 and told her that she would receive only $200 because the rest of the money would go toward buying equipment for her job. The men proceeded to drive her to two separate Southern Bank locations where she cashed one check at each location.

¶ 6 According to Scott Cofield ("Investigator Cofield"), an investigator with the Hertford County Sheriff's Office, Ms. Sessoms called his office to file a complaint after she was contacted by her bank regarding suspicious checks written on her business account. Investigator Cofield testified that he subpoenaed records from the bank including video surveillance depicting individuals cashing the Sessoms Packing checks as well as copies of checks that Ms. Sessoms had turned over to it. Ms. Sessoms had no knowledge of the "two or three computerized checks" written on her

Sessoms Packing account that were made out to either Defendant or Ms. Moore. Based on his review of Ms. Sessoms' check register, Investigator Cofield testified that there was no evidence that the checks at issue were stolen. Because some checks were cashed outside of Investigator Cofield's jurisdiction, he contacted Sergeant Steven Ezzel ("Sergeant Ezzel") in the fraud and financial crimes unit of the Rocky Mount Police Department and turned over to him all relevant evidence on the case.

¶ 7 Sergeant Ezzel testified that Defendant cashed check number 24940 at the Sunset Avenue Southern Bank location. Using a law enforcement database, Sergeant Ezzel ran the driver's license number that Ms. Allen handwrote on Defendant's cashed check. A search of the number returned driver's license images of Defendant. Sergeant Ezzel also compared images of Defendant with still-shots taken at the bank, and "was able to make a positive identification that they were the same person." According to Sergeant Ezzel, he met with Ms. Moore, and she told him that K had done most of the talking during her interview for the survey completing job. K also told her that when Ms. Moore got paid, she and Ms. Jones would then get their pay. Sergeant Ezzel showed Ms. Moore Defendant's driver's license image and the bank still-shots, and she confirmed K or Krea, was the same person.

¶ 8 Sergeant Ezzel also contacted Ms. Sessoms for additional information. She told him that she was not missing any checks, and his research confirmed that there were three checks in her register bearing the same check numbers as those presented

by Defendant and Ms. Moore. She also told him that "she never signs a check until she writes it." Following his investigation, Sergeant Ezzel brought the matter to the magistrate, who found probable cause to issue warrants for the arrest of Defendant and Ms. Moore.

¶ 9 On 1 August 2019, an arrest warrant was issued, which charged Defendant with uttering a forged instrument pursuant to N.C. Gen. Stat. § 14-120 and obtaining property by false pretenses pursuant to N.C. Gen. Stat. § 14-100. On 4 February 2019, a Nash County Grand Jury indicted Defendant on one count of uttering a forged instrument, one count of obtaining property by false pretense, and one count of solicitation to commit a crime. Defendant entered a plea of not guilty. On 20 November 2019, a jury trial began in the Nash County Superior Court before the presiding judge, the Honorable Cynthia Sturges. After the close of the State's evidence, Defendant moved to dismiss the case. The trial court denied Defendant's motion. Defendant presented no evidence. On 21 November 2019, the jury returned a verdict of guilty on the charges of uttering a forged instrument and obtaining property by false pretenses. It also returned a verdict of not guilty for the charge of solicitation to commit a crime. Defendant, by and through counsel, gave oral notice of appeal before the trial court's judgment was entered. On 21 November 2019, the trial court entered judgment upon conviction for obtaining a forged instrument, imposing 10 to 21 months' imprisonment, and uttering a forged instrument, imposing

6 to 17 months' imprisonment to run consecutively. The trial court amended its judgment and sentence, suspending the 6-to-17-month-sentence and ordered 24 months of supervised probation.

II. Jurisdiction

¶ 10 As an initial matter, we address Defendant's petition for writ of certiorari. On 5 September 2020, Defendant filed, contemporaneously with her brief, a petition for writ of certiorari "[s]hould this Court find that [her] notice of appeal is not in compliance with Appellate Rule 4 . . . ."

¶ 11 Rule 4 of the North Carolina Rules of Appellate Procedure provides two means by which a party may "appeal from a judgment or order of a superior or district court rendered in a criminal action: (1) giving oral notice of appeal at trial, or (2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment." N.C. R. App. P. 4(a).

¶ 12 N.C. Gen. Stat. § 15A-1444 provides circumstances by which a defendant may appeal. "A defendant who has entered a plea of not guilty to a criminal charge, and who has been found guilty of a crime, is entitled to appeal as a matter of right *when final judgment has been entered*." N.C. Gen. Stat. § 15A-1444(a) (2019) (emphasis added). Our Court has interpreted this section of the Criminal Procedure Act to mean that "[o]ral notice of appeal must be given *after* the entry of judgment." *State v.*

Miller, 246 N.C. App. 330, 335, 783 S.E.2d 512, 515 (2016), *rev. on other grounds*, 369 N.C. 658, 800 S.E.2d 400 (2017); *see also* N.C. R. App. P. 4(a); *State v. Ervin*, 253 N.C. App. 408, 798 S.E.2d 815 (2017) (unpublished).

¶ 13 Rule 21 of the North Carolina Rules of Appellate Procedure allows this Court to issue a writ of certiorari "in appropriate circumstances." N.C. R. App. P. 21(a)(1). Our Court has held that "where a defendant has lost his right of appeal through no fault of his own, but rather as a result of the actions of counsel, failure to issue a writ of *certiorari* would be manifestly unjust." *State v. Gardener*, 225 N.C. App. 161, 165, 736 S.E.2d 826, 829 (2013) (citing *State v. Hammonds*, 218 N.C. App. 158, 163, 720 S.E.2d 820, 823 (2012) (granting a writ of certiorari after defense counsel failed to comply with Rule 4 of the North Carolina Rules of Appellate Procedure by filing an insufficient notice of appeal and by giving improper oral notice of appeal to the trial court); *see also* N.C. R. App. P. 2.

¶ 14 Here, Defendant concedes that her counsel's oral notice of appeal was premature. Accordingly, Defendant lost her right to appeal "by failure to take timely action . . . ." N.C. R. App. P. 21(a)(1). Therefore, the Court may issue a writ of certiorari if the circumstances are appropriate. *See id.*

¶ 15 Defendant asks the Court to exercise its discretion to issue a writ of certiorari and hear the merits of her case. On 10 September 2020, the State filed its response to Defendant's petition arguing that "Defendant's failure to give proper notice of

appeal divests this Court of jurisdiction to hear her direct appeal." However, the State concedes that it is within the Court's discretion to grant the petition. By order entered 11 September 2020, Defendant's petition for writ of certiorari was referred to this panel to rule on the merits of her petition. Since the record reveals Defendant's intent to appeal, Defendant lost her right to appeal through her counsel's action, and the State does not appear to be misled by the mistake, Defendant should not lose her right to appeal. *See Gardener*, 225 N.C. App. at 165, 736 S.E.2d at 829; *State v. Springle*, 244 N.C. App. 760, 781 S.E.2d 518 (2016) (citations omitted) (stating that "a defect in a notice of appeal should not result in loss of appeal as long as the intent to appeal . . . can be fairly inferred from the notice and the appellee is not misled by the mistake"). Therefore, we grant Defendant's petition in our discretion.

¶ 16 This Court has jurisdiction to address Defendant's appeal pursuant to N.C. Gen. Stat. § 15A-1444(a) (2019) and N.C. Gen. Stat. § 7A-27 (2019).

III. Issues

¶ 17 We now turn to the merits of Defendant's appeal. The issues are whether: (1) the trial court erred in denying Defendant's motion to dismiss the charge of uttering a forged instrument by finding substantial evidence of Defendant's intent to defraud and knowledge that the check was forged; (2) the trial court erred in denying Defendant's motion to dismiss the charge of obtaining property by false pretense by finding substantial evidence of intentional false and deceptive representation.

IV. Motion to Dismiss

¶ 18 On appeal, Defendant argues that the trial court erred in denying her motion to dismiss because the State did not present sufficient evidence to prove that she was guilty of either uttering a forged instrument or obtaining property by false pretenses. We disagree.

A. Standard of Review

¶ 19 We review "the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted).

> A motion to dismiss for insufficient evidence is properly denied if there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. All evidence, both competent and incompetent, and any reasonable inferences drawn therefrom, must be considered in the light most favorable to the State. Additionally, circumstantial evidence may be sufficient to withstand a motion to dismiss when a reasonable inference of defendant's guilt may be drawn from the circumstances. If so, it is the jury's duty to determine if the defendant is actually guilty.

State v. Blakney, 233 N.C. App. 516, 518, 756 S.E.2d 844, 846 (2014), *disc. rev. denied*, 367 N.C. 522, 762 S.E.2d 204 (2014) (citations and quotations omitted). "The State is entitled to every reasonable inference to be drawn from the evidence. Contradictions and discrepancies do not warrant dismissal of the case; rather, they

are for the jury to resolve." *State v. Franklin*, 327 N.C. 162, 172, 393 S.E.2d 781, 787 (1990).

B. Uttering Forged Instrument

¶ 20 In her first assignment of error, Defendant challenges the sufficiency of the State's evidence as to whether she knew the check she cashed was forged and whether she intended to defraud another. Defendant argues the trial court erred by denying her motion to dismiss because "the State presented no evidence of [the] essential elements of knowledge or [fraudulent] intent." We disagree.

¶ 21 "The essential elements of the crime of uttering a forged check are (1) the offer of a forged check to another, (2) with knowledge that the check is false, and (3) with the intent to defraud or injure another." *State v. Hill*, 31 N.C. App. 248, 249, 229 S.E.2d 810, 810 (1976); *see also* N.C. Gen. Stat. § 14-120 (2019). This Court has held that an individual in possession of a forged check who attempts to cash it or transfer it, is presumed to have either forged or consented to the forging of the check. *State v. Roberts*, 51 N.C. App. 221, 223–24, 275 S.E.2d 536, 537, *disc. rev. denied*, 303 N.C. 318, 281 S.E.2d 657 (1981). "[T]he mere offer of the false instrument with fraudulent intent constitutes an uttering or publishing, the essence of the offense being, as in the case of forgery, the fraudulent intent regardless of its successful consummation." *State v. Kilpatrick*, 343 N.C. 285, 287–88, 470 S.E.2d 54, 55–56 (1996) (citations and quotations omitted).

¶ 22 Defendant relies on *State v. Brown* to support her contention that the State failed to present substantial evidence she knew the check was forged, and therefore, failed to show her criminal intent to defraud another. 217 N.C. App. 380, 720 S.E.2d 414 (2011). The facts of *Brown* can be readily distinguished from the case at bar. In *Brown*, the defendant was an apparent victim of a scam, although there may have been evidence of his own wrongdoing. *Id.* at 381, 383, 720 S.E.2d at 415–16. He was approached by a third-party who asked him to cash a business check at the defendant's bank in exchange for compensation. *Id.* at 382, 720 S.E.2d at 415. The defendant agreed to cash the check even though it was "strange," and he was not sure whether the payee of the check worked for the business from which the check was written. *Id.* at 381, 720 S.E.2d at 415. The *Brown* Court held that the trial court erred in denying the defendant's motion to dismiss because the State presented insufficient evidence of forgery. *Id.* at 383–84, 720 S.E.2d at 416.

¶ 23 In this case, the State presented substantial circumstantial evidence to show Defendant knew the computer-generated check drawn on the Sessoms Packing business account she cashed, was a forged instrument, and that she acted with the requisite intent to defraud the bank by cashing it. The State's evidence presented at trial relating to these elements tends to show that Defendant had no legitimate connection to Sessoms Packing or Ms. Sessoms. She presented the check at Southern Bank, the bank on which the check was drawn, despite not having an account at the

bank. The evidence also tended to show Ms. Sessoms' home, where her business check register was kept, had been broken into prior to Defendant cashing the check. Ms. Sessoms was the only signatory of her business checks, and she never signed her checks in advance. Additionally, the legitimate checks, bearing the same numbers as the computer-generated checks that were cashed, remained intact in Ms. Sessoms' check register.

¶ 24 Defendant's knowledge that the check was fraudulent and her intent to defraud is further supported by Ms. Moore's testimony relating to Defendant's involvement and leadership in an apparent fraud scheme in which she hired Ms. Moore for a bogus job and paid her with fraudulent checks. The fraudulent checks Ms. Moore received resembled the check made out to and cashed by Defendant. Finally, Defendant was in possession of the forged check and attempted to cash it at the bank; thus, she is presumed to have either forged the check or consented to the forging of the check. *See Roberts*, 51 N.C. App. at 223–24, 275 S.E.2d at 537. The issue of whether the teller believed the check was real and legitimate is immaterial to Defendant's knowledge as to the falsity of the forged check. *See Kilpatrick*, 343 N.C. at 287–88 , 470 S.E.2d at 55–56.

¶ 25 Defendant next contends that "any evidence that the check was fraudulent or forged should not be considered." Specifically, Defendant points to Ms. Reddick's testimony and argues that since the testimony is based on hearsay, this Court cannot

consider it. We disagree.

¶ 26 Defendant made no objection to the admissibility of Ms. Reddick's testimony at trial; therefore, Defendant failed to "preserve [the] issue for appellate review." N.C. R. App. P. (10)(a)(1); *see also In re J.C.L.*, 374 N.C. 773, 845 S.E.2d 44 (2020) (holding testimony to which the defendant failed to object at trial was competent evidence and any subsequent argument made on appeal as to its admissibility was waived). Assuming *arguendo* that Defendant had objected at trial to this testimony, there remains substantial evidence as to her knowledge and intent even excluding Ms. Reddick's testimony.

¶ 27 Considered in the light most favorable to the State, there is substantial circumstantial evidence of each essential element of uttering a forged instrument.

C. Obtaining Property by False Pretenses

In her second assignment of error, Defendant argues that the State failed to prove all essential elements of the crime of obtaining property by false pretenses because it did not show Defendant acted with fraudulent intent. We disagree.

¶ 28 The elements of obtaining property by false pretenses are: "(1) a false representation of a subsisting fact or a future fulfillment or event, (2) which is calculated and intended to deceive, (3) which does in fact deceive, and (4) by which one person obtains or attempts to obtain value from another." *State v. Cronin*, 299 N.C. 229, 242, 262 S.E.2d 277, 286 (1980); *see also* N.C. Gen. Stat. § 14-100(a) (2019).

"[T]he false pretense need not come through spoken words, but instead may be by act or conduct." *State v. Parker*, 354 N.C. 268, 284, 553 S.E.2d 885, 897 (2001). "[W]hen a person obtains something of value by means of misrepresentations with intent to deceive the victim, the requisite intent to cheat or defraud exists." *Cronin*, 299 N.C. at 242, 262 S.E.2d at 285. Our Supreme Court has also stated that "behind the mere writing of a worthless check lies a cleverly devised plan to deceive. This is the very essence of a false pretense . . . ." *State v. Freeman*, 308 N.C. 502, 512–13, 302 S.E.2d 779, 785 (1983).

¶ 29 Here, Defendant's presentation of a computer-generated check to Southern Bank to be cashed was a false representation by Defendant as to the legitimacy of the check. *See* N.C. Gen. Stat. § 14-100 (2019). Defendant "obtain[ed] something of value"—cash—"by means of mispresent[ing]" the worth and authenticity of the check. *See Cronin*, 299 N.C. at 242, 262 S.E.2d at 285. By presenting the check, she "inten[ded] to deceive the victim," Southern Bank, because Defendant knew she was not entitled to the money. *See id.* at 242, 262 S.E.2d at 285. Thus, "the requisite intent to cheat or defraud exists" in the case *sub judice*. *See id.* at 242, 262 S.E.2d at 285.

V. Conclusion

¶ 30 The State presented substantial evidence of Defendant's requisite fraudulent intent and knowledge that the check she cashed was forged. Based on the evidence,

a "reasonable inference of [D]efendant's guilt [could] be drawn from the circumstances" as to the crimes of uttering a forged instrument and obtaining property by false pretenses. *See Blakney*, 233 N.C. App. at 518, 756 S.E.2d at 846. We hold the trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

Judges ARROWOOD and HAMPSON concur.

Report per Rule 30(e).