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NO. COA01-1228

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

Cabarrus County
No. 99 CRS 12325

JONATHAN DANIEL POTEAT

Appeal by defendant from judgment entered 26 April 2001 by Judge Larry G. Ford in Cabarrus County Superior Court. Heard in the Court of Appeals 1 July 2002.

Attorney General Roy Cooper, by Assistant Attorney General Staci Tolliver Meyer, for the State.

Fred A. Biggers, for defendant-appellant.

BRYANT, Judge.

Defendant was charged by indictment with one count each of forgery of endorsement and uttering a forged endorsement. He was found guilty as charged. He was sentenced to a minimum of five months and a maximum of six months in prison. The sentence was suspended and defendant was placed on supervised probation for 60 months.

The State presented evidence tending to show that defendant and his cousin, Martha Sessoms ("Ms. Sessoms"), co-owned a business named "Clean Sweep Environmental Sales and Service" ("Clean Sweep"). On 29 January 1998, Auto-Owners Insurance Company issued

a check made payable to defendant and Ms. Sessoms in the amount of \$32,559.12 in payment of an insurance claim. Without Ms. Sessoms' knowledge or consent, defendant forged Ms. Sessoms' signature endorsing the check and deposited the check into the Clean Sweep checking account on 3 February 1998. Thereafter, defendant wrote checks on the Clean Sweep account in payment of defendant's personal debts. Defendant also wrote checks payable to himself and one check in the amount of \$1,000.00 payable to his father, Clyde Poteat ("Mr. Poteat"). The checks totaled the sum of \$29,286.00. When Ms. Sessoms discovered the forged endorsement and confronted defendant about it, defendant acknowledged that he had forged her signature and deposited the check but had not told her because he knew she would be upset.

Ms. Sessoms also testified, over defendant's objection, that about seven months prior to February 1998, defendant borrowed her automobile. In reviewing her bank statement later that month, she discovered that defendant had removed checks from her checkbook she had left in her automobile and written checks to himself totalling \$7,000.00. When she confronted defendant about the checks, defendant vowed to repay her.

Mr. Poteat, defendant's father, testified that he had no recollection of receiving a check from Clean Sweep in 1998 and that the endorsement signature on the back of the check was not his signature. Mr. Poteat further testified that defendant had forged Mr. Poteat's signature on a withdrawal form from Mr. Poteat's savings account at First Charter Bank. Mr. Poteat also observed

that money mysteriously began disappearing from his account at First Charter Bank prior to Christmas 1998. Upon investigation, Mr. Poteat discovered that defendant, without Mr. Poteat's knowledge or consent, had added defendant's name and signature to the account signature card. When confronted, defendant admitted taking money from his father's account. Defendant stated he would repay it.

I.

By his first assignment of error, defendant contends that the court erred by admitting evidence of other alleged bad acts by defendant, namely the forgery and uttering of Ms. Sessoms' checks, the forgery of Mr. Poteat's signature on the check and withdrawal slip, and the unauthorized withdrawals by defendant from Mr. Poteat's bank account. We disagree.

Rule 404(b) of the North Carolina Rules of Evidence states that evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show he acted in conformity with that character, but such evidence is admissible for other purposes, such as to show proof of motive, intent, plan, knowledge or absence of mistake, entrapment or accident. N.C.G.S. § 8C-1, Rule 404(b) (2001). Our Supreme Court has interpreted this rule as one of inclusion of evidence as long as the evidence is offered for a purpose other than to show that the person has the propensity or disposition to commit an offense of the nature charged. *State v. Coffey*, 326 N.C. 268, 278-79, 389 S.E.2d 48, 54 (1990).

The State offered the evidence in the present case for the purpose of showing intent, plan or knowledge. It has been held that evidence of similar acts of forgery or uttering is admissible to show intent. *State v. Painter*, 265 N.C. 277, 284, 144 S.E.2d 6, 16 (1965). When evidence is offered to show the existence of a plan or scheme, the test of admissibility is whether the incidents establishing the common plan or scheme are sufficiently similar and not so remote in time as to be more probative than prejudicial. *State v. Frazier*, 344 N.C. 611, 615, 476 S.E.2d 297, 299 (1996).

Here, the forgery of Ms. Sessoms' checks occurred within seven months of the incident at trial and involved the same victim, a relative. The forgeries of Mr. Poteat's signature also occurred within the same calendar year and involved a relative. One forgery of Mr. Poteat's signature involved a check arising out of the forgery of Ms. Sessoms' endorsement on the insurance check. The foregoing evidence permits a finding of the existence of a plan or scheme.

Therefore, we hold the evidence was properly admitted to show intent and plan. Defendant's first assignment of error is overruled.

II.

Defendant's remaining assignment of error is to the denial of his motion to dismiss at the close of the evidence. He contends the evidence is insufficient to support the conviction. We disagree.

Upon a motion to dismiss, the court must determine whether

there is substantial evidence (1) of each essential element of the charged offense and (2) of perpetration of the offense by the defendant. *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980). The evidence must be viewed in the light most favorable to the State, giving the State the benefit of every reasonable inference that may be drawn from the evidence. *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992). Contradictions and discrepancies in the evidence are to be disregarded and left for resolution by the jury. *State v. Earnhardt*, 307 N.C. 62, 67, 296 S.E.2d 649, 653 (1982).

The offense of forgery consists of three elements: (1) a false making or alteration of some written instrument; (2) with fraudulent intent; and (3) the instrument having the apparent capability of effecting a fraud. N.C.G.S. § 14-119(a) (2001); *State v. Seraphem*, 90 N.C. App. 368, 372, 368 S.E.2d 643, 646 (1988). When the forged item is a signature of a genuine person, the State must show that the signature was made without the authorization of the person whose signature is written. *State v. Phillips*, 256 N.C. 445, 448, 124 S.E.2d 146, 148 (1962).

To obtain a conviction of uttering a check with a forged endorsement, the State must prove the defendant (1) passed a check (2) containing a forged endorsement (3) knowing the endorsement is forged, and (4) acting for the sake of gain or with the intent to defraud. See N.C.G.S. § 14-120 (2001); *State v. Forte*, 80 N.C. App. 701, 702, 343 S.E.2d 261, 262 (1986). It may be presumed that one in possession of a forged instrument who attempts to obtain

money or goods with that instrument either forged or consented to the forging of the instrument. *State v. Roberts*, 51 N.C. App. 221, 222-23, 275 S.E.2d 536, 537 (1981).

The evidence of the State shows that without Ms. Sessoms' consent or authorization, defendant signed Ms. Sessoms' name endorsing the check and deposited the check into the Clean Sweep account. Without Ms. Sessoms' consent or knowledge, he used the proceeds of the check to pay his personal debts. This evidence was sufficient to withstand the motion to dismiss. The second assignment of error is also overruled.

We hold defendant received a fair trial, free of prejudicial error.

No error.

Judges MARTIN and HUNTER concur.

Report per Rule 30(e).