NO. COA02-407

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

STATE OF NORTH CAROLINA

v. Nash County
Nos. 99CRS13782,
HALIMEH SHEHADEH 01CRS5275-5277

Appeal by defendant from judgments entered 17 January 2002 by Judge William C. Griffin, Jr., in Nash County Superior Court. Heard in the Court of Appeals 7 October 2002.

Attorney General Roy Cooper, by Assistant Attorney General Floyd M. Lewis, for the State.

Paul T. Cleavenger for defendant appellant.

McCULLOUGH, Judge.

Defendant Halimeh Shehadeh was charged with felonious welfare fraud under N.C. Gen. Stat. § 108A-39 (2001) in Nash County. Defendant was also charged with felonious welfare fraud under N.C. Gen. Stat. § 108A-39 (2001), felonious welfare fraud under N.C. Gen. Stat. § 108A-53 (2001), and felonious welfare fraud under N.C. Gen. Stat. § 108A-64 (2001) in Edgecombe County. The Edgecombe County cases were transferred to Nash County and consolidated for trial with the Nash County case. The State's evidence tended to show that defendant is the mother of a minor child, Alexander Scott Shehadeh (d.o.b. 5-3-95). Until DNA test

results showed otherwise, Darren Colley believed that he was the minor child's father. Defendant and Colley had ended their relationship prior to Alexander being born, and lived separately. Just weeks after birth, defendant left the minor child at the home of Colley's mother. Thereafter, the minor child began to live with Colley, who believed the child to be his son, and continued to so reside until just a week before his fourth birthday. While the minor child lived with Colley, Colley provided the child with clothing and food. Defendant specifically told Colley that she was not receiving any assistance from social services at this time. In March 1999, Colley learned that defendant was receiving a social services check for the minor child, and he reported her to Nash County Social Services. Defendant subsequently took physical custody of the minor child after the child was pawed in the face by a dog and had to be treated in a hospital emergency room. Colley was called to the emergency room and when he arrived, defendant was already there with a man, whom Colley indicated to be the minor child's biological father.

According to Colley and the mother, during the time that the minor child lived with them, defendant would pick him up and keep him overnight from anywhere between two (when the child was young) to seven (after the child was potty trained) days a month. Between 1995 and 1999, defendant lived at a number of different addresses, but never in the same place for more than six months. At this time, defendant applied for, and received public assistance in both Nash and Edgecombe Counties. In her applications, defendant

indicated that she had physical custody of the minor child, and knew that physical custody of the minor child was a material factor in her receiving the requested assistance. According to DSS guidelines, defendant was not entitled to the assistance received if the minor child was not in defendant's physical custody for more than half a month.

Defendant presented evidence which tended to show that the minor child always resided with her, and only visited Colley and his mother on occasion. Defendant testified that in the six years since his birth, the minor child had only spent between 30 and 45 nights away from her. Defendant stated that she was entitled to public assistance from March through August 1995 because Alex was living with her. As to the public assistance received from April through December 1997, defendant explained that those payments were not for the minor child but another child that she gave up for adoption. Defendant stated that the adoption agency was supposed to have reimbursed DSS for the public assistance payments made during that time.

Nash County DSS records showed that the minor child was present in defendant's home during three visits in November and December 1998. Notably, however, the records showed that there were no visits in defendant's home in 1995, 1996, or 1997. Edgecombe County DSS records show that defendant had reported the minor child missing in August 1995, but the child was later found in the home of a man with whom defendant had left him. Though defendant specifically denied living at Wesleyan College at any

time between 1995 and 1999, Nash County DSS records indicated that during a 1996 office visit, defendant reported to her social worker that she was living with a friend at Wesleyan College, and the minor child was with Colley as the child could not stay with her at Wesleyan. In fact, DSS records showed that while living at Wesleyan College, Protective Services investigated a report by defendant's mother that defendant's living conditions were unstable.

A jury found defendant guilty on all counts. The trial court entered judgment on the jury's verdicts, suspending defendant's sentences and placing her on supervised probation for 36 months. Defendant appeals.

By her sole assignment of error on appeal, defendant argues that the trial court erred in intervening in the questioning of a certain State's witness. We disagree.

N.C. Gen. Stat. § 8C-1, Rule 614(b) (2001), specifically provides that the trial court may "interrogate witnesses, whether called by itself or by a party." Further, the North Carolina Supreme Court has previously held that "[i]t is proper for a trial judge to direct questions to a witness which are designed to clarify or promote a better understanding of the testimony being given." *State v. Hunt*, 297 N.C. 258, 263, 254 S.E.2d 591, 596 (1979). "In fact the trial judge has a duty to question a witness in order to clarify the testimony being given or 'to elicit overlooked, pertinent facts.'" *State v. Efird*, 309 N.C. 802, 808-09, 309 S.E.2d 228, 232 (1983) (quoting *State v. Monk*, 291 N.C. 37,

50, 229 S.E.2d 163, 171 (1976)). Such questioning amounts to prejudicial error only when the jury could reasonably infer that by their tenor, frequency or persistence, the questions intimated an opinion as to a factual issue, the witness's credibility, or the defendant's guilt, in derogation of the prohibitions of N.C. Gen. Stat. § 15A-1222 (2001). *State v. Whittington*, 318 N.C. 114, 125, 347 S.E.2d 403, 409 (1986); *State v. Blackstock*, 314 N.C. 232, 236, 333 S.E.2d 245, 248 (1985); *see also* N.C. Gen. Stat. § 15A-1222 (2001) ("The judge may not express during any stage of the trial, any opinion in the presence of the jury on any question of fact to be decided by the jury.").

In the present case, the record shows that the prosecutor questioned Donna Manning, a Nash County DSS caseworker, about the "overpayment" made to defendant by her agency. The trial court interjected, and began to question Manning in an attempt to clarify for the jury which public assistance program, Edgecombe County or Nash County, paid defendant $404.00 and what Manning meant by the term "overpayment." We conclude that the court's questioning does not show any expression of any opinion as to any factual issue, Manning's credibility, or defendant's guilt. Instead, the trial court's questions were propounded in a manner to be of benefit to the jury and its understanding of the proffered testimony, as contemplated by Rule 614(b) and well-settled case law. Accordingly, this assignment of error is overruled.

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

No error.

Chief Judge EAGLES and Judge HUDSON concur.

Report per Rule 30(e).