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NO. COA08-9

NORTH CAROLINA COURT OF APPEALS

Filed: 19 August 2008

STATE OF NORTH CAROLINA

v.

TOSHA RENAE MCDUGAL a/k/a/
TIGRESS SYDNEY ACUTE MCDANIEL

Cabarrus County
Nos. 03 CRS 15545
03 CRS 15553
03 CRS 15555

Appeal by defendant from judgment entered 6 October 2006 by Judge Thomas D. Haigwood in Superior Court, Cabarrus County. Heard in the Court of Appeals 18 August 2008.

Attorney General Roy Cooper, Special Deputy Attorney General Daniel S. Johnson, for the State.

Brock, Payne & Meece, P.A., by C. Scott Holmes, for defendant-appellant.

WYNN, Judge.

Defendant appeals from convictions of financial identity fraud and obtaining property by false pretenses. We find no merit to her arguments on appeal.

At trial, the State presented evidence tending to show that Defendant Tosha Renae McDougal, also known as Tigress Sydney Acute McDaniel, attempted to purchase goods at Burlington Coat Factory and Champs Sports Store in September 2003 in Concord, North Carolina, with checks and an identification card with the name of Teresa A. Rickman. After the checks presented by Defendant were

declined at both stores, the store manager at Burlington Coat Factory asked an on-duty, plainclothes police officer present in the store to look over the check and identification offered by Defendant. When the officer learned that the number on the Kentucky identification presented by Defendant did not exist, he called for uniformed officers, who arrested Defendant.

A search of Defendant's purse uncovered a California identification card in her name, as well as several other pieces of identification and personal items. Police then located Defendant's rented vehicle, which contained multiple bags of merchandise, checks printed with various bank names, additional blank printable checks, and a printer. During the subsequent investigation, police also found a Teresa A. Rickman in Kentucky, who informed police that her identification card had been stolen.

Following the jury's verdict of guilty of one count of financial identity fraud and three counts of obtaining property by false pretenses, the trial court entered judgment and sentenced Defendant to thirteen to sixteen months' imprisonment for the identity theft conviction, to be followed by three consecutive terms of six to eight months in prison for each of the obtaining property by false pretenses convictions.

Defendant appeals, arguing that the trial court erred by (I) failing to dismiss the indictments as fatally defective because they did not allege an entity capable of owning property; (II) admitting hearsay statements made by the victim; and (III) failing

to dismiss the charge of financial identity fraud for insufficient evidence of lack of consent.

I.

First, Defendant asserts that the indictments for obtaining property by false pretenses are defective because they fail to list corporate entities that are capable of owning property. Specifically, Defendant contends that the names "Burlington Coat Factory" and "Champs Sports Store" referenced in the indictment are not valid corporate names.

In defining the offense of obtaining property by false pretenses, the General Assembly specifically excluded the property ownership requirement as follows:

. . . it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that the party accused did the act with intent to defraud, *without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value*[.]

N.C. Gen. Stat. § 14-100 (2003). Given this express statutory language, Defendant's contention and citations to *State v. Thornton*, 251 N.C. 658, 111 S.E.2d 901 (1960) and *State v. Thompson*, 6 N.C. App. 64, 169 S.E.2d 241 (1969), are without merit, as those cases involved indictments for embezzlement and larceny, respectively. The indictments against Defendant for obtaining property by false pretenses were not required to allege the ownership of the property in question. As such, they were not defective, and this assignment of error is rejected.

II.

Next, Defendant argues that the trial court improperly admitted hearsay testimony of a police officer as to statements made to him by Teresa Rickman, the victim of Defendant's identity theft, that her identification was stolen several months prior to Defendant's arrest.

Because Defendant failed to object to this testimony at trial, she contends that its admission constituted plain error, such that, absent the testimony, "the jury probably would have reached a different result." *State v. Roseboro*, 351 N.C. 536, 553, 528 S.E.2d 1, 12 (quotation omitted), *cert. denied*, 531 U.S. 1019, 148 L. Ed. 2d 498 (2000); *see also State v. Gregory*, 342 N.C. 580, 586, 467 S.E.2d 28, 32 (1996) ("Plain error includes error that is a fundamental error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done; or grave error that amounts to a denial of a fundamental right of the accused; or error that has resulted in a miscarriage of justice or in the denial to [the] appellant of a fair trial."); N.C. R. App. P. 10(c)(4).

Here, even assuming *arguendo* that the admission of the testimony was in error, Defendant has failed to demonstrate that such error affected the outcome of her trial or that the jury would have reached a different verdict if the testimony had been disallowed. Although Defendant contends that the officer's testimony was highly prejudicial because it was the sole evidence offered by the State that Defendant used Ms. Rickman's

identification without her consent, we note that lack of consent is not an element of the crime of financial identity fraud. Rather, the statute defining this offense provides as follows:

(a) A person who 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, or for the purpose of avoiding legal consequences is guilty of a felony punishable as provided in G.S. 14-113.22(a).

N.C. Gen. Stat. § 14-113.20(a). Thus, the elements of this offense no longer include lack of consent of the person to whom the identity belonged. See Act of 31 October 2002, ch. 175, sec. 4, 2002 N.C. Sess. Laws 175 (removing the element of lack of consent from the statute and making the amended statute applicable to offenses committed on or after 1 December 2002).

Because the objected-to testimony was relevant only to the question of lack of consent, which was not necessary to the State's case against Defendant, we hold that Defendant has failed to show plain error in its admission.

III.

Finally, Defendant contends that the trial court erred by failing to dismiss the charge of financial identity fraud for insufficient evidence of lack of consent. Because lack of consent is not an element of the crime charged and is thus not required to be shown by the State, this argument is without merit.

No error.

Judges ELMORE and GEER concur.

Report per Rule 30(e).