IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-744

Filed: 7 April 2015

Orange County, Nos. 10 CRS 051930—31, 13 CRS 000068

STATE OF NORTH CAROLINA

v.

GARY ANDERSON BARKER, JR., Defendant.

Appeal by defendant from judgment entered 1 November 2013 by Judge W. Douglas Parsons in Orange County Superior Court. Heard in the Court of Appeals 6 January 2015.

Attorney General Roy Cooper, by Special Deputy Attorney General David N. Kirkman, for the State.

Michele Goldman for defendant-appellant.

BRYANT, Judge.

Where an indictment for the offense of obtaining property by false pretenses alleges the ultimate facts of the offense, including the acts of misrepresentation, the indictment is not facially defective. The trial court did not commit error, plain or otherwise, in the admission of evidence, including evidence admitted under Rule 404(b).

On 22 April 2013, defendant Gary Anderson Barker, Jr., was indicted on two counts of obtaining property by false pretenses and for being an habitual felon. The charges came on for trial during the 28 October session of Orange County Superior

Court, the Honorable W. Douglas Parsons, Judge presiding. At trial, the evidence tended to show the following.

In May of 2010, defendant approached Nellie Harward at her home and told her that her roof needed repainting. Ms. Harward, who was eighty-five years old, was persuaded by defendant and paid him $2,200.00 to repaint the metal roof of her home with black paint. Defendant also told Ms. Harward he would repair a shed in her backyard which housed her laundry equipment. Ms. Harward signed agreements with defendant for the work on her home and shed. Defendant worked on the roofing and siding of the shed, and rewired the shed. Ms. Harward paid defendant in two checks in the amount of $3,400.00 and $3,900.00, for a total of $7,300.00, for the shed repairs.

Ms. Harward stated that as soon as it began to rain, the roof of her newly repaired shed began to leak and continued to do so each time it rained, damaging her new clothes dryer. Ms. Harward also stated that the black paint defendant had used on her roof quickly began to flake and peel off, causing leaks in the ceiling of her home. When Ms. Harward asked defendant to repair the roofs on her home and shed to stop the leaks, defendant claimed his repairs did not cause the leaks. After defendant refused to repair the leaking house and shed roofs, Dennis LaRue, a neighbor of Ms. Harward's, fixed the roof of her home and replaced her backyard shed. LaRue noted the shoddy work and substandard materials used by defendant and

testified regarding them at trial. Ms. Harward ultimately paid $8,000.00 to have her shed replaced in order to correct the "work" defendant performed on it.

Also, in May of 2010, Ms. Geraldine Hoenig was approached by defendant who claimed Ms. Hoenig's roof needed repair. After inspecting her roof, defendant told Ms. Hoenig she also needed to repair the roof decking on her home because the wood was rotten. Defendant told Ms. Hoenig that he could repair her roof for $6,800.00 and her chimney for $900.00. Ms. Hoenig borrowed $4,000.00 from the bank to pay defendant. Then, defendant demanded she pay him an additional $2,800.00 so he could special-order white shingles for her roof; Ms. Hoenig returned to her bank and borrowed these additional funds which she paid to defendant.

Defendant and his work crew began to work on Ms. Hoenig's roof, but after removing the shingles surrounding the roof's perimeter, defendant covered the exposed areas with roofing felt and did not return to complete the job. The roofing felt soon blew off of the roof, causing the roof to leak. When Ms. Hoenig called defendant, defendant claimed he could not finish her roof until the white shingles had arrived. Defendant then told Ms. Hoenig he would need another payment to complete the work, and when she told defendant she could only give him an additional $200.00, defendant accepted the money. Defendant never returned to finish the roofing repairs for Ms. Hoenig.

A subsequent investigation revealed no sign of rotten wood on Ms. Hoenig's roof; rather, the damage observed appeared to have been recently caused by a hammer. It was also determined that defendant had not placed an order for white shingles, despite telling Ms. Hoenig that he had. Ms. Hoenig's roof was later repaired by another roofing company at no cost to her.

The State presented additional testimony by Bill Grice, Zona Norwood, and Helen Stinson. Mr. Grice testified that defendant had contracted with his late father, eighty-six-year-old William F. Grice, to repair his father's roof in May 2010. Mr. Grice stated that he had observed his father arguing with defendant because defendant wanted additional monies paid before he would finish the roof repairs. Mr. Grice further stated that his father's roof had to be replaced about three years later due to leaks caused by defendant's poor workmanship.

Ms. Norwood testified that she was approached by defendant in May of 2010 about needing repairs to the flashing on the chimney of her home where she had resided for forty-four years. Defendant offered to repair the flashing for $40.00. After defendant went onto her roof to repair the chimney flashing, defendant told Ms. Norwood that her roof had significant damage all over it due to hail. Defendant urged Ms. Norwood to call her insurance company and that he would fix her roof for whatever price the insurance company would agree to. However, Ms. Norwood's insurance adjuster found no sign of hail damage to the roof. Another roofer whom

Ms. Norwood called for a second opinion also found no evidence of hail damage, although he did notice that the repairs to the chimney flashing were not done properly. The second roofer also found what he determined to be evidence of intentional damage to Ms. Norwood's roof: a new nail had been partially driven into the roof just below the chimney, and the placement of the nail was such that it would cause the roof to leak. The second roofer repaired the damage to Ms. Norwood's roof for $100.00.

Ms. Stinson testified that she was approached by defendant in September of 2009 about needing repairs to her roof. Ms. Stinson, who was seventy-eight years old, stated that after going onto her roof, defendant claimed that she needed her entire roof replaced. Ms. Stinson eventually paid defendant in three checks in the amount of $425.00, $1,600.00, and $2,000.00, totaling $4025.00, to have her roof repaired. However, after opening a large hole in her roof, defendant failed to fix the hole or finish repairing her roof. Defendant did not respond to Ms. Stinson's phone calls when she tried to reach him. Ms. Stinson had to pay another roofer $3,000.00 to repair the hole in her roof.

The State presented during the trial a video-recording of defendant's post-arrest interview. During the interview defendant, when questioned about the repairs he performed for Ms. Harward and Ms. Hoenig, defended his workmanship and denied any wrongdoing.

On 1 November, a jury convicted defendant on two counts of obtaining property by false pretenses. Defendant plead guilty to the habitual felon charge. The trial court sentenced defendant to 96 to 125 months in prison, and ordered defendant to make restitution to Ms. Harward in the amount of $7,300.00 and to Ms. Hoenig in the amount of $7,000.00. Defendant appeals.

On appeal, defendant argues that (I) his indictments for obtaining property by false pretenses were facially invalid. Defendant further contends the trial court (II) committed plain error in admitting an exhibit, and (III) erred in admitting Rule 404(b) witness testimony.

I.

In his first argument, defendant sets forth three major contentions which we review separately based on the standard of review applicable to each.

Validity of Indictments

Defendant contends his indictments alleging obtaining property by false pretenses were facially invalid because they failed to "intelligibly articulate" defendant's misrepresentations. We disagree.

"[W]here an indictment is alleged to be invalid on its face, thereby depriving the trial court of its jurisdiction, a challenge to that indictment may be made at any time, even if it was not contested in the trial court." *State v. Wallace*, 351 N.C. 481,

503, 528 S.E.2d 326, 341 (2000) (citations omitted). "On appeal, we review the sufficiency of an indictment *de novo*." *State v. McKoy*, 196 N.C. App. 650, 652, 675 S.E.2d 406, 409 (2009) (citation omitted).

"An indictment couched in the language of the statute is generally sufficient to charge the statutory offense. It is also generally true that indictments need only allege the ultimate facts constituting the elements of the criminal offense." *State v. Singleton*, 85 N.C. App. 123, 126, 354 S.E.2d 259, 262 (1987) (citing *State v. Palmer*, 293 N.C. 633, 638, 239 S.E.2d 406, 410 (1977)).

> Obtaining property by false pretenses is defined as (1) a false representation of a past or 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 the defendant obtains or attempts to obtain anything of value from another person [pursuant to N.C. Gen. Stat. §] 14-100(a). A key element of the offense is that the representation be intentionally false and deceptive.

State v. Compton, 90 N.C. App. 101, 103, 367 S.E.2d 353, 354 (1988) (citations omitted).

The indictments challenged by defendant are as follows. Indictment 10 CRS 51390A, concerning Ms. Hoenig, alleged that

> [t]he jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did knowingly and designedly with the intent to cheat and defraud obtain U.S. currency in the amount of $7,000.00 from Geraldine Hoenig by means of a false pretense which was calculated to deceive and did deceive.

> This property was obtained by means of approaching the victim and claiming that her roof needed repair, and then overcharging the victim for either work that did not need to be done, or damage that was caused by the defendant, with no intention of providing professional services to the victim in return for the U.S. currency that he fraudulently acquired.

Indictment 10 CRS 51931A, concerning Ms. Harward, alleged that

> [t]he jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did knowingly and designedly with the intent to cheat and defraud, obtain or attempt to obtain U.S. currency in the amount of $7,300.00 from Nellie Harward by means of a false pretense which was calculated to deceive and did deceive. This property was obtained by means of approaching the victim and claiming that her shed roof needed repair, and at the time the defendant intended to use substandard materials and construction to overcharge the victim.

Defendant's argument that the indictments fail to articulate the misrepresentations committed by defendant lacks merit. The indictments clearly state that defendant, on separate occasions, obtained property (money) from Ms. Hoenig and Ms. Harward by convincing each victim to believe that their roofs needed extensive repairs when in fact their roofs were not in need of repair at all. In each indictment, the State gave the name of the victim, the monetary sum defendant took from each victim, and the false representation used by defendant to obtain the money: by defendant "approaching [Ms. Hoenig] and claiming that her roof needed repair, and then overcharging [Ms. Hoenig] for either work that did not need to be done, or

damage that was caused by the defendant[.]" As to Ms. Harward, the false representation used by defendant to obtain the money was "by . . . claiming that her shed roof needed repair, [with defendant knowing] at the time [that he] intended to use substandard materials and construction to overcharge [Ms. Harward]." Each indictment charging defendant with obtaining property by false pretenses was facially valid, as each properly gave notice to defendant of all of the elements comprising the charge, including the element defendant primarily challenges: the alleged misrepresentation (i.e., that defendant sought to defraud his victims of money by claiming their roofs needed repair when in fact no repairs were needed, and that defendant initiated these repairs but either failed to complete them or used substandard materials in performing whatever work was done). *See State v. Cronin*, 299 N.C. 229, 238, 262 S.E.2d 277, 283 (1980) (holding that an indictment alleging the defendant had deceived a bank through false representations was facially sufficient, because "[i]f the false pretense caused the victim to give up his property, it logically follows that the property was given up because the victim was in fact deceived by the false pretense."). Defendant's challenge to the indictments as facially invalid is, therefore, overruled.

Sufficiency of the Evidence

Defendant further argues that even if the indictments were facially valid, the State did not meet its evidentiary burden of proof. Specifically, defendant contends

the State's evidence only showed that defendant "charged a lot for poor quality work," rather than demonstrating that defendant "obtained the property alleged by means of a misrepresentation," and that as a result, the trial court erred in denying defendant's motion to dismiss.

> In order to justify the denial of a motion to dismiss for insufficient evidence, the State must present substantial evidence of (1) each essential element of the [charged offense] and (2) 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. On appeal, we view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences. We review a trial court's decision to deny a motion to dismiss for insufficient evidence *de novo*.

State v. Privette, 218 N.C. App. 459, 470—71, 721 S.E.2d 299, 308—09 (2012) (citations and quotations omitted).

> The gist of obtaining property by false pretense is the false representation of a . . . fact intended to and which does deceive one from whom property is obtained. The [S]tate must prove, as an essential element of the crime, that defendant made the misrepresentation as alleged. If the [S]tate's evidence fails to establish that defendant made this misrepresentation but tends to show some other misrepresentation was made, then the [S]tate's proof varies fatally from the indictments.

State v. Linker, 309 N.C. 612, 614—15, 308 S.E.2d 309, 310—11 (1983) (citations omitted).

The State presented evidence through the testimony of Ms. Harward and Ms. Hoenig. Each testified that defendant approached them at their respective homes by claiming he had noticed roof damage on their homes while driving through their neighborhood. Each of them gave defendant money, $7,300.00 and $7,000.00, respectively, based on his representation that repairs were needed. Ms. Hoenig discussed how defendant initially claimed only a small repair to her roof was needed, before inspecting the roof and claiming that significant repairs were needed. Ms. Hoenig stated that although defendant began to repair her roof by removing several rows of shingles, defendant then abandoned the job; Ms. Hoenig was forced to call another roofer to repair the damage after her partially unshingled roof began to leak.

Ms. Harward testified that after she asked defendant to simply "nail down" part of her shed's roofing, defendant claimed the shed's entire roof needed to be replaced. After the shed's roof was replaced, Ms. Harward stated that the roof began to leak immediately, damaging her clothes dryer; defendant's substandard repairs required Ms. Harward to purchase a new shed.

We disagree with defendant that such evidence was insufficient to support the charges of obtaining property by false pretenses. Rather, this evidence demonstrates that defendant deliberately targeted Ms. Harward and Ms. Hoenig, two elderly women, for the purpose of defrauding each of them by claiming their roofs needed significant repairs when, as the State's evidence showed, neither woman's roof needed

repair at all. The State presented additional evidence which tended to show that within the same general timeframe, defendant had targeted other elderly individuals as well, each time approaching the individual at his or her home and claiming that their roof needed a small repair. Upon inspecting the roof, defendant would then claim the roof needed more significant (and costly) repairs. In each instance, defendant would either begin but never complete the roof repair, or would do a substandard job on the repair. Such evidence was more than sufficient to sustain the charges of obtaining property by false pretense against defendant, as the evidence demonstrated that defendant deliberately targeted elderly individuals for the purpose of defrauding those persons based on false roof repair claims.

Defendant also attempts to support his argument by contending that even if the State presented evidence of a false representation by defendant, such evidence would constitute a fatal variance because the $7,000.00 obtained from Ms. Hoenig and the $7,300.00 obtained from Ms. Harward "was not the subject of any purported misrepresentation." Rather, defendant asserts he "legitimately earned at least some portion" of each amount and, as such, the indictments were defective. Defendant's argument lacks merit for, as already discussed, the indictments were facially sufficient as to what property defendant obtained from his victims by means of false representations. Moreover, although defendant claims he "legitimately earned at least some portion" of the $7,300.00 Ms. Harward paid him for other home repair

services, a review of the trial transcript indicates that Ms. Harward paid this sum to defendant solely for defendant's "work" on her shed, a shed which had to be replaced with an entirely new structure due to the damage caused by defendant. Likewise, Ms. Hoenig's payment of $7,000.00 to defendant was solely for her roof to be repaired, and these "repairs" consisted of defendant removing three rows of shingles from the edge of her roof and then abandoning the job, causing the roof to leak and forcing Ms. Hoenig to contact another roofer to fix the damage. Defendant's contention that the indictments were defective because he "legitimately earned at least some portion" of these monies is without any merit, as the evidence indicated that for each victim, defendant engaged in work which caused significant damage to each victim's property, causing each victim to expend resources of time and/or money to complete work that was never finished or repair damage based on the shoddy work performed by defendant. Viewed in the light most favorable to the State, the evidence was sufficient for a jury to find defendant made a false representation to each of his victims and committed the crime of obtaining property by false pretenses. Defendant's challenge to the trial court's denial of his motion to dismiss is overruled.

Jury Instructions

Defendant next argues that even if the indictments were sufficient, the trial court erred in its jury instructions because the trial court failed to specify the misrepresentation made by defendant or the property defendant received. First, and

perhaps most importantly, defendant failed to object to the trial court's jury instructions. Therefore, this issue must be reviewed for plain error. *See State v. Lawrence*, 365 N.C. 506, 516, 723 S.E.2d 326, 333 (2012) (citation omitted).

> [T]he plain error rule . . . is always to be applied cautiously and only in the exceptional case where, after reviewing the entire record, it can be said the claimed error is a "*fundamental* error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done," or "where [the error] is grave error which amounts to a denial of a fundamental right of the accused," or the error has " 'resulted in a miscarriage of justice or in the denial to appellant of a fair trial' " or where the error is such as to "seriously affect the fairness, integrity or public reputation of judicial proceedings" or where it can be fairly said "the instructional mistake had a probable impact on the jury's finding that the defendant was guilty."

Id. at 516—17, 723 S.E.2d at 334 (citing *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983)). However, "even when the 'plain error' rule is applied, [i]t is the rare case in which an improper instruction will justify reversal of a criminal conviction when no objection has been made in the trial court." *Id*. at 517, 723 S.E.2d at 333—34 (citations and quotation omitted).

During the charge conference, defendant did not object to the trial court's proposed instructions, nor did defendant object during or after the trial court gave the following pertinent instructions to the jury:

> The defendant has been charged with two counts of obtaining property by false pretenses. For you to find the defendant guilty of each of these offenses, the State must prove five things beyond a reasonable doubt in each count:

> First, that the defendant made a representation to another about a past or subsisting fact or of a future fulfillment or event; second, that this representation was false; third, that this representation was calculated and intended to deceive; fourth, that the victim was in fact deceived by this representation; and fifth, that the defendant obtained or attempted to obtain property from the victim.
>
> In 10 CRS 5193A, if you find from the evidence beyond a reasonable doubt that on or about May 1, 2010, to June 1, 2010, the defendant made a representation to Geraldine Hoenig about a past or subsisting fact or of a future fulfillment or event and that this representation was false, that this reputation was calculated and intended to deceive, that Geraldine Hoenig was in fact deceived by it, and that the defendant thereby obtained property from Geraldine Hoenig, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.
>
> In 10 CRS 51931A, if you find from the evidence beyond a reasonable doubt that on or about May 1, 2010, to June 1, 2010, the defendant made a representation to Nellie Harward about a past or subsisting fact or of a future fulfillment or event and that this representation was false, that this representation was calculated and intended to deceive, that Nellie Harward was in fact deceived by it, and that the defendant thereby obtained or attempted to obtain property from Nellie Harward, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

Defendant's contention that the trial court erred in its jury instructions is without merit, as the trial court properly instructed the jury using the pattern jury instruction for the offense of obtaining property by false pretenses. *See* N.C. Gen.

Stat. § 14-100 (2013); N.C.P.I--Crim. 219.10 (2013). Defendant cites cases indicating the specificity required of an *indictment* alleging obtaining property by false pretenses, and the proof the State is required to put forth, including the representation alleged in the indictment. However, defendant also acknowledges, albeit while trying to distinguish it, a case where this Court noted that the trial court was not required to instruct the jury on a specific misrepresentation in the indictment alleging obtaining property by false pretenses. *See State v. Ledwell*, 171 N.C. App. 314, 320, 614 S.E.2d 562, 566 (2005) ("A jury instruction that is not specific to the misrepresentation in the indictment is acceptable so long as the court finds 'no fatal variance between the indictment, the proof presented at trial, and the instructions to the jury.' " (quoting *State v. Clemmons*, 111 N.C. App. 569, 578, 433 S.E.2d 748, 753 (1993)). Therefore, we can find no error in the trial court's instructions in the instant case.

However, even assuming *arguendo* the trial court's instructions were erroneous, we would still find no plain error as this Court has consistently found no plain error where a trial court has given the pattern jury instruction for the offense of obtaining property by false pretenses. *See State v. Grier*, 35 N.C. App. 119, 121, 239 S.E.2d 870, 871 (1978) (no plain error where the trial court charged the jury according to the pattern jury instruction for obtaining property by false pretenses). As such, the trial court did not commit error, much less plain error, in its jury

instructions for the offense of obtaining property by false pretenses. Defendant's argument is, therefore, overruled.

II.

Defendant next contends the trial court committed plain error in admitting an exhibit, a videotaped interview of defendant after his arrest. We disagree.

As defendant lodged no objection to the videotape when it was introduced into evidence and played for the jury, defendant's challenge on appeal can only be based on plain error. And, as we noted in *Issue I*, plain error is to be applied cautiously, and only in exceptional cases. Defendant bears the burden of establishing that the error he alleges is a fundamental error, prejudicial to him, that had a probable impact on the jury's verdict. *See Lawrence*, 365 N.C. at 516—17, 723 S.E.2d at 333—34. On the facts of this case, defendant is unable to meet his burden.

Defendant argues that the trial court committed plain error when it admitted into evidence, without objection by defendant, a videotaped recording of his post-arrest interview with Detective Atack. Nevertheless, defendant now contends the admission of the video recording was highly prejudicial because the recording contained evidence regarding defendant's prior criminal history, drug use, and "habit of frequenting strip clubs[,]" and that this evidence of defendant's bad character violated Rule 404(b). Defendant's argument is unavailing though, because defendant knew the contents of the video, including those parts he now challenges, yet he chose

not to object to the video, either in its entirety or any portion of it, at trial. Under our adversarial system, parties must present their evidence and arguments at trial, and "have an obligation to raise objections to errors at the trial level. Any other approach would place an undue if not impossible burden on the trial judge." *Id.* at 512, 723 S.E.2d at 330 (citations and quotation omitted). Perhaps as a trial strategy, since he did not testify, defendant chose not to object and was able to use the video to assert an alibi defense, to describe events and interactions with the victims, including specific denials of wrongdoing, and to point to someone else as being responsible for the shoddy work alleged. Notwithstanding defendant's reasons for not objecting at trial, here, on appeal, he is unable to show that the trial court erred in admitting the videotape and its contents as evidence.

Further, even if we were to assume (which we refuse to do) that the admission of the video recording was error, defendant has not demonstrated prejudice from its admission. The State put forth witness testimony of Ms. Harward and Ms. Hoenig, the two victims alleged in the indictments, as well as Rule 404(b) witness testimony by four other individuals who had been subjected to defendant's fraudulent roof repair scheme. The videotape of defendant's interview was admitted into evidence only after six witnesses and Detective Atack had testified. As the testimony was both consistent and compelling in demonstrating that defendant actively sought to defraud elderly homeowners by claiming their homes needed roof repairs when, in fact, no such

repairs were needed, it is not probable that the jury could have reached a different verdict had the trial court not admitted the videotaped interview. Accordingly, defendant's argument is overruled.

III.

Finally, defendant argues that the trial court erred in admitting Rule 404(b) witness testimony. We disagree.

"[W]e . . . review the admission of . . . 404(b) testimony de novo." *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012). While "[e]vidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion," such evidence may be "admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident." N.C. Gen. Stat. § 8C-1, Rule 404(a), (b) (2013). We use a three-part test to determine whether evidence was properly admitted under Rule 404(b):

> First, is the evidence relevant for some purpose other than to show that defendant has the propensity for the type of conduct for which he is being tried? Second, is that purpose relevant to an issue material to the pending case? Third, is the probative value of the evidence substantially outweighed by the danger of unfair prejudice pursuant to Rule 403?

State v. Foust, 220 N.C. App. 63, 69, 724 S.E.2d 154, 159 (2012).

The State put on three Rule 404(b) witnesses: Mr. Grice, Jr., Ms. Norwood, and Ms. Stinson. Mr. Grice testified about his elderly father's experience with defendant, while Ms. Norwood and Ms. Stinson testified about their personal experiences with defendant. Each witness offered evidence which tended to show that defendant had deliberately targeted elderly individuals by approaching them at their homes and claiming their roofs needed repair. More specifically, the Rule 404(b) evidence was offered to show, and indeed demonstrated, that defendant acted according to a common plan or scheme, as well as showing knowledge, intent, and lack of mistake. The trial court in fact analyzed the Rule 404(b) evidence and found it to be relevant for a purpose other than propensity, and that it was admissible and relevant to plan, knowledge, and lack of mistake. The trial court then conducted a balancing test, finding that the probative value of the evidence outweighed the prejudicial effect. From our review, it appears the evidence was properly admitted under Rule 404(b).

The evidence defendant challenges shows that defendant would stop and approach an elderly victim at his or her house and claim that the victim needed minor roof repairs (defendant often claimed a few shingles were loose, and that this problem could be immediately fixed for about $40.00). After defendant or defendant's assistant would go onto the roof to "inspect" it, defendant would then claim that the roof needed extensive repairs and request immediate payment before those repairs could begin. After receiving payment, defendant would do some work on the roof

(which consisted of defendant removing roofing materials, such as shingles), before demanding additional money to complete the repair. In some instances, defendant would "complete" the repair, only to tell the victim the repair was fine when, in fact, the victim's roof was seriously leaking; in other instances, defendant would abandon the repair job entirely.

This evidence was properly admitted under Rule 404(b) because it demonstrated that defendant specifically targeted his victims pursuant to his plan and intent to deceive, and with knowledge and absence of mistake as to his actions. Further, the trial court gave limiting instructions to the jury as to the proper use of this evidence when the evidence was initially received, and again during the final jury charge. Accordingly, defendant's argument is overruled.

We find no error in the judgment of the trial court.

NO ERROR.

Judges STROUD and HUNTER, Jr., concur.