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NO. COA05-49

NORTH CAROLINA COURT OF APPEALS

Filed: 17 January 2006

STATE OF NORTH CAROLINA

v.

Wilkes County  
Nos. 04 CRS 50465  
04 CRS 1772

GENE STACY PARDUE

Appeal by defendant from judgment entered 29 July 2004 by Judge William Z. Wood, Jr. in Wilkes County Superior Court. Heard in the Court of Appeals 9 January 2006.

*Attorney General Roy Cooper, by Special Deputy Attorney General W. Richard Moore, for the State.*

*Allen W. Boyer for defendant-appellant.*

CALABRIA, Judge.

After a jury found Gene Stacy Pardue ("defendant") guilty of obtaining property by false pretenses, he pled guilty to attaining the status of a habitual felon. The trial court sentenced him to an active term of a minimum of 80 months and a maximum of 105 months in the custody of the North Carolina Department of Correction. Defendant appeals.

The State presented evidence tending to show that on 10, 11 and 12 January 2004, defendant presented to a Lowes Foods Store in North Wilkesboro five checks in the amounts of \$39.43, \$35.14, \$46.39, \$40.33 and \$32.97. In return, defendant received

merchandise and cash each time. All five checks came back marked "insufficient funds."

Defendant argues the trial court erred by admitting evidence of other worthless checks written by defendant not referenced in the indictment. These checks included a check presented by defendant to the same Lowes Foods store on 11 January 2004, and six other checks written by defendant during the previous year to Wal Mart, Lowes Foods and Winn Dixie stores.

North Carolina Rule of Evidence 404(b) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person...however, [it may] be admissible for other purposes, such as proof of motive...intent...plan, knowledge...or absence of mistake, entrapment or accident." N.C. Gen. Stat. § 8C-1, Rule 404(b) (2003). This Court has held that in a false pretenses prosecution, evidence that the defendant passed worthless checks in the past is admissible to show knowledge, intent and lack of mistake. *State v. Freeman*, 79 N.C. App. 177, 181, 339 S.E.2d 56, 58, *cert. denied*, 317 N.C. 338, 346 S.E.2d 144 (1986), *overruled on other grounds*, *State v. Rogers*, 346 N.C. 262, 485 S.E.2d 619 (1997). Here, the State presented evidence illustrating the defendant had previously passed a series of worthless checks to Wal Mart, Lowes Food, and Winn Dixie to show defendant's current intent, motive and/or plan to engage in similar behavior. Moreover, the judge instructed the jury to consider such evidence only for the limited purpose for which it was received and not as a means through which to convict. Thus, we hold the court

properly admitted the evidence and overrule this assignment of error.

The defendant also argues the trial court erred by denying his motion to dismiss the charges on the ground the evidence is insufficient to show he made a false representation to any person. When ruling on a motion to dismiss, "the trial court must determine only whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense." *State v. Crawford*, 344 N.C. 65, 73, 472 S.E.2d 920, 925 (1996). "In considering a motion to dismiss, the trial court must analyze the evidence in the light most favorable to the State and give the State the benefit of every reasonable inference from the evidence." *State v. Robinson*, 355 N.C. 320, 336, 561 S.E.2d 245, 256, *cert. denied*, 537 U.S. 1006. 154 L. Ed.2d 404 (2002). "[T]he rule for determining the sufficiency of evidence is the same whether the evidence is completely circumstantial, completely direct, or both." *State v. Wright*, 302 N.C. 122, 126, 273 S.E.2d 699, 703 (1981).

Our Supreme Court has held that "the writing and passing of a worthless check in exchange for property, *standing alone*, is sufficient to uphold a conviction for obtaining property under false pretenses." *Rogers*, 346 N.C. at 263, 485 S.E.2d at 620 (emphasis added). An additional representation beyond the passing of the worthless check is not required. *Id.*, 346 N.C. at 264, 485 S.E.2d at 620-21. Here, the State presented evidence that defendant wrote and passed worthless checks in exchange for

property and thus, by the reasoning in *Rogers, supra*, there was sufficient evidence to withstand defendant's motion to dismiss and uphold the conviction for obtaining property under false pretenses. This assignment of error is overruled.

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

No error.

Judges WYNN and JACKSON concur.

Report per Rule 30(e).