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NO. COA06-294

NORTH CAROLINA COURT OF APPEALS

Filed: 5 December 2006

STATE OF NORTH CAROLINA

v.

Mecklenburg County  
No. 04 CRS 257184

RAMSES HARRIS CORDERO,  
Defendant.

Appeal by defendant from a judgment entered 18 July 2005 by Judge Michael E. Helms in Mecklenburg County Superior Court. Heard in the Court of Appeals 1 November 2006.

*Attorney General Roy Cooper, by Assistant Attorney General Jill A. Bryan, for the State.*

*Jon W. Myers for defendant-appellant.*

BRYANT, Judge.

Ramses Harris Cordero (defendant) appeals a judgment entered on 18 July 2005, consistent with a jury verdict finding him guilty of uttering a forged instrument. For the reasons below, we find defendant received effective assistance of counsel at his trial.

*Facts and Procedural History*

The evidence presented at trial by the State tended to show that on 17 December 2004, defendant entered a World Check Cashiers on South Tryon Street in Charlotte, North Carolina, with a check in the amount of \$429.89. Defendant presented the check for cashing to Perlma Medina (Medina) who worked as a teller at the store.

Before cashing the check Medina attempted to verify its authenticity. Based upon her inquiries she became concerned that the check had been forged and called the police. Officers with the Charlotte-Mecklenburg Police Department responded to the call and arrested defendant at the store. Medina gave a written statement to the investigating officers where she indicated that defendant told her the check he presented was his payroll check.

On 14 March 2004, the Grand Jury of Mecklenburg County returned an indictment charging defendant with uttering forged paper, pursuant to N.C. Gen. Stat. § 14-120. Defendant was tried before a jury on 18 July 2005 in the Superior Court of Mecklenburg County, the Honorable Michael E. Helms, presiding. At trial, no testimony was given concerning any conversation defendant may have had with World Check Cashiers' employees while he attempted to cash the check. Rather than attempt to refresh Medina's recollection about defendant's comments surrounding the check, the State moved to introduce her entire statement into evidence. Defense counsel did not object to the introduction of Medina's statement, did not request that the statement only be allowed into evidence for corroborative purposes, did not request a limiting instruction, and did not request that the statement be redacted.

On 18 July 2005 the jury returned a verdict of guilty of uttering a forged instrument and the trial court entered judgment consistent with the jury verdict, sentencing defendant to six to eight months imprisonment. The trial court suspended defendant's sentence, required defendant to serve sixty days imprisonment and

placed defendant on supervised probation for thirty-six months. Defendant appeals.

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Defendant's sole argument on appeal is whether his trial counsel's failure to object to the introduction of a written statement from one of the State's witnesses constitutes ineffective assistance of counsel (IAC). "To prevail on a claim of ineffective assistance of counsel, a defendant must first show that his counsel's performance was deficient and then that counsel's deficient performance prejudiced his defense." *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006) (citing *Strickland v. Washington*, 466 U.S. 668, 80 L. Ed. 2d 674 (1984)).

Deficient performance may be established by showing that "counsel's representation fell below an objective standard of reasonableness." Generally, "to establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome."

*Id.* (quoting *Wiggins v. Smith*, 539 U.S. 510, 534, 156 L. Ed. 2d 471, 493 (2003)). This Court's review of IAC claims "will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing." *State v. Fair*, 354 N.C. 131, 166, 557 S.E.2d 500, 524 (2001), *cert. denied*, 535 U.S. 1114, 153 L. Ed. 2d 162 (2002). Based on our review of the record before

this Court, we conclude that we may address defendant's IAC claim on the merits.

Defendant argues the State could not have met its burden without the statement found in Medina's prior written statement indicating defendant asked her to cash his "payroll check." Defendant's argument is misplaced. The North Carolina Supreme Court has held that "[b]y definition a prior statement is admitted only as corroboration of the substantive witness and is not itself to be received as substantive evidence.'" *State v. Francis*, 343 N.C. 436, 446, 471 S.E.2d 348, 353 (1996) (quoting *State v. Stills*, 310 N.C. 410, 415, 312 S.E.2d 443, 447 (1984)). Additionally, "prior consistent statements are admissible even though they contain new or additional information so long as the narration of events is substantially similar to the witness' in-court testimony." *State v. Williamson*, 333 N.C. 128, 136, 423 S.E.2d 766, 770 (1992) (citation omitted). This Court has further held that "[e]vidence of prior consistent statements is admissible for the limited purpose of affirming a witness's credibility, and upon proper request a defendant is entitled to both a limiting instruction at the time of its admission and a jury instruction as to its limited purpose." *State v. Ferebee*, 128 N.C. App. 710, 715, 499 S.E.2d 459, 462 (1998) (citation omitted). "However, 'an instruction limiting admissibility of testimony to corroboration is not required unless counsel specifically requests such an instruction.'" *State v. Borkar*, 173 N.C. App. 162, 169, 617 S.E.2d

341, 345 (2005) (quoting *State v. Smith*, 315 N.C. 76, 82, 337 S.E.2d 833, 838 (1985)).

In the case at hand, the failure of defendant's trial counsel to object to the admission of Medina's statement or request a limiting instruction or redaction of the statement might be considered sound trial strategy. At the close of the State's evidence, defendant's trial counsel moved to dismiss the charges on the ground that the State had not presented substantial evidence as to the element that defendant knew the check was false. The following colloquy ensued:

[Prosecutor]: No, her statement's entered into evidence; it states that. That the Defendant said that it was his payroll check, and on the memo line of the check it says refund. But since there was no cross-examination, I couldn't ask any further questions. The statement is in evidence.

[Defense Counsel]: Well, it's in, Your Honor, as corroborative, not substantive evidence.

[The Court]: Counsel, you made no objection to the admission. I thought that went a little too smoothly, quite frankly. You didn't object to the introduction of that statement. There were no limitations placed upon it in its admission, and I realize it should have been entered for purposes of corroborating her testimony here, but I'm not sure that it was.

[Defense Counsel]: Well, Your Honor, I didn't object to it, because it was admissible on the grounds of corroboration. I'm only going to object to something if it's inadmissible.

[The Court]: Counselor, you know the rules. If there's a limitation, your objection should be made. I'll rule on it, and admit it for the purpose, limited purpose. You made no objection. Therefore, it's at issue in is unlimited. [sic] However, there is a bit of slight of hand by the State.

Defendant's trial counsel's argument that prior consistent statements are only admissible as corroborative evidence, while consistent with our case law, was not upheld by the trial court. It is possible defendant's trial counsel did not object or otherwise move to limit the admission of Medina's statement at the time it was introduced as evidence because he did not want to draw attention to the weakness of the State's evidence on whether defendant knew the check was false. This could indeed be deemed sound trial strategy. Thus, defendant cannot show his trial counsel's performance was deficient.

Even assuming *arguendo* the performance of defendant's trial counsel was deficient for not objecting to the admission of, or requesting a limiting instruction on or redaction of, Medina's prior written statement, defendant was not prejudiced by his trial counsel's actions. The offense of uttering forged paper "comprises three essential elements: (1) the offer of a forged check or other instrument to another; (2) with knowledge that the instrument is false; and (3) with the intent to defraud or injure another." *State v. Thompson*, 62 N.C. App. 585, 586, 303 S.E.2d 85, 86 (1983); see also N.C. Gen. Stat. § 14-120 (2005). This Court has further held that 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, 223-24, 275 S.E.2d 536, 537, *disc. rev. denied*, 303 N.C. 318, 281 S.E.2d 657 (1981). Defendant's argument addresses only the element of whether

defendant knew or should have known that the check was false. However, under the *Robert's* presumption, the element of defendant's knowledge that the check was false is met regardless of the trial court's admission of Medina's prior written statement as substantive evidence.

Thus, defendant cannot show ineffective assistance of counsel, and as such cannot show that he was prejudiced by his trial counsel's actions such that the result of the proceeding would have been different. Because we hold defendant was not prejudiced by the actions of his trial counsel, we overrule his assignment of error and affirm the judgment of the trial court.

Affirmed.

Judges MCGEE and STEELMAN concur.

Report per Rule 30(e).