

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-950

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

STATE OF NORTH CAROLINA

v.

DARNELL WAYNE MCCLURE

Davidson County
Nos. 05 CRS 1628
04 CRS 60542

Appeal by defendant from judgment entered 10 January 2006 by Judge Nathaniel J. Poovey in Davidson County Superior Court. Heard in the Court of Appeals 16 April 2007.

Attorney General Roy Cooper, by Assistant Attorney General Donna B. Wojcik, for the State.

Jarvis John Edgerton, IV, for defendant appellant.

McCULLOUGH, Judge.

Defendant appeals from a judgment imposed on convictions of obtaining property by false pretenses and habitual felon status. By the sole assignment of error argued in his brief, he contends the court erred by denying his motion to dismiss the charge of obtaining property by false pretenses. He argues the evidence fails to show that he made a false representation. For the following reasons, we find no error.

The State presented evidence tending to show that on 12 September 2004, defendant entered a Wal-Mart store and brought five items of merchandise to a cash register operated by his then-

girlfriend, Jennifer Hughes. Defendant directed Hughes not to charge him for the items or "he would make a scene in the store." Hughes scanned four of the items and then voided the entries. She scanned the fifth item, an electric razor priced at \$122.86, as a price inquiry. By so scanning the items and deactivating any security tags, Hughes enabled defendant to remove the items from the store without paying for them.

Later that day, defendant returned to the store and sought a refund for a titanium electric razor. The customer service clerk issued defendant a gift card in the amount of the price of the razor, \$122.86, plus the sales tax. Defendant then used the gift card at Hughes' register to purchase several items. Hughes testified that defendant told her he sold the gift card for the balance left remaining on the card.

Defendant's sister testified on defendant's behalf that Hughes had given defendant the razor on 11 September 2004.

At the close of all the evidence the court denied defendant's motion to dismiss the charge of obtaining property by false pretenses. The motion required the court to determine whether there was substantial evidence to establish each element of the offense charged and to identify the defendant as the perpetrator. *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651 (1982). The evidence must be examined in the light most favorable to the State, giving it the benefit of every reasonable inference that may be drawn. *State v. McKinney*, 288 N.C. 113, 117, 215 S.E.2d 578, 581 (1975). If there is substantial evidence - whether direct,

circumstantial or both -- to support a finding that the defendant committed the charged offense, then the case is for the jury and the motion to dismiss should be denied. *State v. Locklear*, 322 N.C. 349, 358, 368 S.E.2d 377, 382-83 (1988).

One is guilty of obtaining property by false pretenses when one makes a false presentation of a known fact, with the intent to deceive, and receives or attempts to receive something of value based on the false representation. N.C. Gen. Stat. § 14-100 (2005); *State v. Cronin*, 299 N.C. 229, 242, 262 S.E.2d 277, 286 (1980). Defendant contends the State failed to present any evidence that he, either by word or deed, made a false representation. He specifically argues the State offered no evidence that he ever represented that he paid for the razor he ultimately exchanged for the gift card.

The law does not support defendant's argument. In *State v. Rogers*, 346 N.C. 262, 264, 485 S.E.2d 619, 620-21 (1997), our Supreme Court reiterated that the presentation of a worthless check, standing alone, is sufficient to establish the element of a false representation. "[B]ehind the mere writing of a worthless check lies a cleverly devised plan to deceive. This is the very essence of a false pretense -- to obtain or attempt to obtain a thing of value with the intent to cheat or defraud." *State v. Freeman*, 308 N.C. 502, 512-13, 302 S.E.2d 779, 785 (1983).

We also find instructive the case of *State v. Saunders*, 126 N.C. App. 524, 485 S.E.2d 853 (1997), in which the defendant obtained from a Dillard Department Store clerk a credit

voucher/return receipt for merchandise he had not purchased. The defendant subsequently presented the voucher at another Dillard Department Store and received merchandise in return. This Court held the defendant's testimony that he presented the voucher and obtained merchandise constituted sufficient evidence of a false representation to sustain his conviction of obtaining property by false pretenses. *Id.* at 528, 485 S.E.2d at 856.

Here, defendant presented a razor that he had obtained fraudulently and received a refund in the form of a gift card for it, knowing that he came into possession of the razor by dishonest means. He obtained a thing of value with the intent to cheat or defraud. We hold this evidence is sufficient to support defendant's conviction of obtaining property by false pretenses.

No error.

Judges STEELMAN and LEVINSON concur.

Report per Rule 30(e).