NO. COA07-1231

NORTH CAROLINA COURT OF APPEALS

Filed: 17 June 2008

STATE OF NORTH CAROLINA

v. Mecklenburg County
No. 06 CRS 201955

TREVOR LAVAR WHITE

Appeal by defendant from judgment entered 17 July 2007 by Judge Nathaniel J. Poovey in Mecklenburg County Superior Court. Heard in the Court of Appeals 9 June 2008.

Attorney General Roy Cooper, by Special Deputy Attorney General LeAnn M. Rhodes, for the State.

Bryan Gates for defendant appellant.

McCULLOUGH, Judge.

Defendant appeals from a judgment entered upon his conviction for uttering a forged instrument under N.C. Gen. Stat. § 14-120 (2007). We find no error.

On 12 January 2006, defendant entered a BB&T bank on Hickory Grove Road in Charlotte, North Carolina, and attempted to cash a check for $800.00. The face of the check identified the account holders as Lillian M. Berry and Ellen Morrison "for Lillie M. Mason." It was undated, signed in Mason's name, made payable to defendant, and was not endorsed. Defendant presented the check and his driver's license to senior teller Patricia Beck, who determined

that the account had been closed and that Mason's signature on the check did not match her signature card on file with the bank. After a fellow teller spoke to Berry by telephone, Beck called the police. She kept defendant in the bank by explaining that she needed to contact the account holder. As she waited for the police, Beck saw two men enter the bank and stand at her teller window with defendant.

Berry testified that the account in question belonged to her mother, Lillie Mason, and had been closed soon after her death in 2000. Berry had signing privileges on the account pursuant to a power of attorney. Morrison was Berry's sister but did not have a checkbook for the account. Berry had not written the check to defendant or to anyone else. She believed that the check was taken from her house during a break-in "a couple of weeks" prior to 12 January 2006.

Charlotte Mecklenburg Police Officer Anthony Robert Smereka arrived at the bank at approximately 5:00 p.m. on 12 January 2006. Defendant and Donnell Jeremy White were standing outside the bank. A third man was standing beyond the automatic teller machines, fifty to seventy-five feet away from the building. Smereka arrested defendant after speaking to Beck and securing the suspect check. Smereka noted that defendant's name appeared to have been written in a different handwriting and with a different pen than the rest of the check.

Defendant testified that earlier that day he agreed to cash the check for a man he knew as "Doughboy." Doughboy used

defendant's identification card to write his name on the front of the check. Doughboy "was suppose[d] to endorse [the check], saying he was signing it over to [defendant] . . . ." Defendant did not see Doughboy endorse the check, however, and did not notice whether he had filled out the rest of the check. Defendant presented the check and his identification card to the teller. When the police arrived, Doughboy ran. Defendant told the officer what had happened. Although he did not know Doughboy well, defendant later saw him on television and learned that his name was Daniel David Weber.

On appeal, defendant claims that the trial court erred in denying his motion to dismiss for insufficiency of evidence. He contends that the State failed to prove that he knew the check was forged or that he intended to defraud the bank. Defendant further contends that the evidence did not show an "uttering," as proscribed by N.C. Gen. Stat. § 14-120, because he did not endorse the check before handing it to Beck. Finally, defendant contends that there was no evidence that "the check in this case was . . . apparently capable of effecting a fraud," inasmuch as anyone in Beck's position would have verified the status of Mason's account before cashing the check.

In reviewing the trial court's denial of a motion to dismiss, we must determine whether the evidence, taken in the light most favorable to the State, would allow a rational juror to find defendant guilty of the essential elements of the offense beyond a reasonable doubt. *State v. Warren*, 348 N.C. 80, 102, 499 S.E.2d

431, 443 (1998), *cert. denied*, 525 U.S. 915, 142 L. Ed. 2d 216 (1998), *cert. denied*, 359 N.C. 286, 610 S.E.2d 714 (2005). "The essential elements of the crime of uttering a forged check are (1) the offer of a forged check to another, (2) with knowledge that the check is false, and (3) with the intent to defraud or injure another." *State v. Hill*, 31 N.C. App. 248, 249, 229 S.E.2d 810, 810 (1976) (citations omitted). "There is a presumption that one in possession of a forged instrument, who attempts to obtain money or goods with that instrument, has either forged or consented to the forging of the instrument." *State v. Seraphem*, 90 N.C. App. 368, 373, 368 S.E.2d 643, 646 (1988) (citation omitted).

We find substantial evidence that defendant knowingly offered a forged check to BB&T with the intent to defraud the bank of $800. 00. The State established that the purported drawer of the check had been deceased and her account closed since 2000. The signature on the check did not match the sample on the drawer's signature card. Moreover, defendant admitted that he saw Doughboy, not Mason, write defendant's name on the front of the check as the payee. He further acknowledged that he was attempting to cash the check when he presented it to the teller. This evidence was sufficient to show that the check was forged, that defendant knew of the forgery, and that he acted with the requisite intent to defraud. Defendant's failure to endorse the check was immaterial, inasmuch as "[t]he mere offer of the false instrument with fraudulent intent constitutes an uttering." *Id.* (citation omitted); *see also State v. Kirkpatrick*, 343 N.C. 285, 287, 470

S.E.2d 54, 55 (1996) (holding that an "uttering is accomplished either when an individual passes or delivers a forged instrument or *attempts* to pass or deliver a forged instrument."). Similarly, the fact that Beck detected the forgery before the "'successful consummation'" of the fraud had no bearing on defendant's completion of an uttering under N.C. Gen. Stat. § 14-120. *State v. Greenlee*, 272 N.C. 651, 657, 159 S.E.2d 22, 26 (1968) (citation omitted).

Defendant next claims that the indictment was jurisdictionally defective, because it failed to (1) name the owner of the account upon which the check was drawn, and (2) describe "the nature of the forgery." We disagree.

In order to vest the trial court with subject matter jurisdiction, "[a]n indictment charging a statutory offense must allege all of the essential elements of the offense." *State v. Snyder*, 343 N.C. 61, 65, 468 S.E.2d 221, 224 (1996) (citation omitted). An indictment must also provide sufficient notice of the specific charge to allow the accused to prepare a defense and to protect him from a second prosecution for the same act. *State v. Russell*, 282 N.C. 240, 243-44, 192 S.E.2d 294, 296 (1972). An indictment is sufficient "if it express[es] the charge against the defendant in a plain, intelligible, and explicit manner[.]" N.C. Gen. Stat. § 15-153 (2007).

As noted above, "[t]he essential elements of the crime of uttering a forged check are (1) the offer of a forged check to another, (2) with knowledge that the check is false, and (3) with

the intent to defraud or injure another." *Hill*, 31 N.C. App. at 249, 229 S.E.2d at 810 (citations omitted). The indictment in this case alleges as follows:

> [T]hat on or about the 12th day of January, 2006, in Mecklenburg County, Trevor Lavar White did unlawfully, willfully and feloniously utter, publish, pass, and deliver as true to Branch Banking and Trust a falsely made, forged, and counterfeited check, drawn on Branch Banking and Trust Company, a North Carolina banking corporation, payable to Trevor White, in the amount of $800.00. The defendant acted for the sake of gain and with the intent to injure and defraud and with knowledge that the instrument, which was apparently capable of effecting a fraud, was falsely made, forged, and counterfeited.

These allegations clearly include "all the essential elements of the offense, that is, the offering of the forged instruments to another with the knowledge of the falsity of the checks and with intent to defraud." *State v. McAllister*, 287 N.C. 178, 190, 214 S.E.2d 75, 84 (1975). The indictment gives adequate notice of the specific charge, including the date and location of the offense and the drawee, payee, and dollar amount of the forged check. Although "it is sufficient to allege in the indictment an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded[,]" N.C. Gen. Stat. § 15-151 (2007), the indictment needlessly identifies the bank to which the check was uttered. *See McAllister*, 287 N.C. at 190, 214 S.E.2d at 84 (holding that indictments under § 14-120 need "not specify to whom the checks were uttered."); *State v. Sisk*, 123 N.C. App. 361, 366, 473 S.E.2d 348, 352 (1996) ("[T]he name of the bank does not speak to the essential elements of the offense charged, and thus it

'should be disregarded.'") (citation omitted), *aff'd in part, dismissed in part*, 345 N.C. 749, 483 S.E.2d 440 (1997). Accordingly, we overrule this assignment of error.

Defendant has identified a clerical error on the judgment entered by the trial court. Although the judgment correctly states that defendant was found guilty by a jury, the court mistakenly marked the box indicating that defendant's presumptive sentence was imposed "pursuant to a plea arrangement[.]" Defendant does not suggest any possible prejudice arising from this stray mark. Because we find the clerical error to be completely harmless, we need not remand to the trial court to correct it. *See State v. Leonard*, 87 N.C. App. 448, 451-52, 361 S.E.2d 397, 399 (1987), *disc. review denied*, 321 N.C. 746, 366 S.E.2d 867 (1988).

No error.

Judges HUNTER and STEELMAN concur.

Report per Rule 30(e).