

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-257

NORTH CAROLINA COURT OF APPEALS

Filed: 21 October 2008

STATE OF NORTH CAROLINA

v.

Rutherford County  
No. 06 CRS 4998-4999

ARTHUR LEE OXENDALE

On a writ of certiorari from judgment entered 25 January 2007 by Judge Laura J. Bridges in Rutherford County Superior Court. Heard in the Court of Appeals 15 September 2008.

*Attorney General Roy Cooper, by Assistant Attorney General Gregory P. Honey, for the State.*

*Appellate Defender Staples S. Hughes, by Assistant Appellate Defender Barbara S. Blackman, for defendant-appellant.*

ELMORE, Judge.

Defendant was found guilty of possession of a counterfeit instrument and habitual felon status. He was sentenced on 25 January 2007 to a minimum term of imprisonment of 100 months and the corresponding maximum term of 129 months. His petition for a writ of certiorari was allowed on 4 January 2008.

The issue presented by defendant's sole assignment of error is whether the court erred by denying defendant's motion to dismiss for insufficient evidence the charge of possession of counterfeit instrument. Upon a motion to dismiss, the trial court determines whether there is 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). In this state it is "unlawful for any person to . . . possess any counterfeit instrument, with the intent to injure or defraud any person, financial institution or governmental unit[.]" N.C. Gen. Stat. § 14-119 (2007). Defendant argues the evidence is insufficient to establish the element of intent to injure or defraud.

The State's evidence tends to show that on 2 November 2005, a detective with the Rutherford County Sheriff's Department passed by a vehicle being operated by defendant, who the detective knew did not have an operator's license. The detective activated his blue light and stopped the vehicle. Defendant emerged from the vehicle. The officer asked defendant to show his driver's license. Defendant responded that he did not have one. Defendant also stated he had some "funny money" in his wallet because he was working with the Secret Service. The officer arrested defendant for driving while license revoked or suspended. The officer also searched defendant's wallet and found a counterfeit fifty dollar bill. The officer contacted a local Secret Service agent to verify whether defendant was working for the Secret Service. The agent responded in the negative. The officer also found in defendant's wallet a check dated 11/02/2005, purportedly signed by "Arthur Miller," a man who the officer knew was deceased prior to the date of the check. The check was made payable to "James Tilly." The officer found in defendant's wallet an identification card and

driver's license in the name of "James Tilly" and a picture of James Tilly. The officer knew both James Tilly and defendant. The officer stated that Tilly and defendant looked "a lot alike" and that if you did not know them well, "you would assume that it was the same people [sic]."

Defendant gave a statement to the officer indicating that he received the check from the perpetrators of a breaking and entering at the residence of Arthur Miller. He caused another person to make the check payable to James Tilly because he had James Tilly's identification card and he "needed money."

An agent for the United States Secret Service testified that the bill in defendant's possession was counterfeit and that defendant was not working for the Secret Service. Defendant did not present any evidence.

When ruling upon a motion to dismiss, the court must consider the evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference that may be deduced from the evidence and leaving contradictions or discrepancies in the evidence for the jury to resolve. *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992). "Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence." *State v. Stone*, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988) (citations omitted).

"Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

*State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980) (citations omitted). One's intent "is seldom, if ever, susceptible of proof by direct evidence. It must ordinarily be proven by facts and circumstances from which it may be inferred." *State v. Little*, 278 N.C. 484, 487, 180 S.E.2d 17, 19 (1971) (citations omitted). These facts and circumstances may include "the acts and conduct of the defendant and the general circumstances existing at the time of the alleged commission of the offense charged." *State v. Riggsbee*, 72 N.C. App. 167, 171, 323 S.E.2d 502, 505 (1984) (citing *State v. Bell*, 285 N.C. 746, 208 S.E.2d 506 (1974) and *State v. Norman*, 14 N.C. App. 394, 188 S.E.2d 667 (1972)).

The evidence in this case shows that in addition to a counterfeit bill of currency, defendant possessed a stolen check on the account of a deceased person and made payable to a person very similar in appearance to defendant. According to his statement, defendant caused the check to be made payable to James Tilly because he had James Tilly's identification card and he "needed money." Given this evidence of defendant's stated intent to obtain cash or a thing of value by fraudulent means, a jury could reasonably find that defendant possessed the counterfeit bill with similar intent to defraud.

No error.

Judges WYNN and GEER concur.

Report per Rule 30(e).