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NO. COA10-52

NORTH CAROLINA COURT OF APPEALS

Filed: 21 September 2010

STATE OF NORTH CAROLINA

v.

Caldwell County  
Nos. 05 CRS 7565  
06 CRS 4025

TIMOTHY DAYTON SPEARS

Appeal by defendant from judgment entered 15 May 2007 by Judge W. Erwin Spainhour in Caldwell County Superior Court. Heard in the Court of Appeals 13 September 2010.

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

*Michael E. Casterline, for defendant-appellant.*

MARTIN, Chief Judge.

On 26 February 2009, this Court issued a writ of certiorari to review a judgment entered on a jury verdict finding defendant guilty of uttering a forged paper, and on his guilty plea to attaining habitual felon status. For the following reasons, we find no error.

The State's evidence tended to show that in the fall of 2004, defendant was dating Jennifer Hare<sup>1</sup>, who was living with her father, Ross L. Price. Defendant spent time at Mr. Price's house

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<sup>1</sup>Her surname appears alternatively as "Hair" in the transcript and State's brief.

almost every day for several months. In November 2004, Mr. Price was getting ready to pay his bills and discovered that two checks, numbers 507 and 508, were missing. Mr. Price notified the sheriff's office and the bank and obtained a copy of check number 508. The handwriting on the check was not that of Mr. Price. Check number 508 was dated "11/27/04" and was drawn payable to "Tim Spears" in the amount of \$250.00. The check bore the handwritten name of Ross L. Price on the signature line as payor and had the words "Tree Removal" following the word "Memo." At trial, Mr. Price testified that he did not write the check, that he never owed defendant for any tree removal, and that he had never written a check to defendant.

An investigation showed that check number 508 was cashed at Owen's Express convenience store. Al White, a former employee of Owen's Express, testified at trial that between 27 November and 29 November 2004, defendant came into the store and presented the check for cashing. Mr. White stated that he knew defendant, knew members of Mr. Price's family, and knew defendant "had something to do with their family." Mr. White initialed the check, wrote an identification number on the back of the check, and cashed the check for defendant.

Detective Chris Martin of the Caldwell County Sheriff's Office questioned defendant after he was taken into custody. After waiving his *Miranda* rights, defendant told Detective Martin that Ms. Hare had stolen the checks and that defendant had "passed" the checks at the convenience store to obtain some narcotics.

Defendant then gave Detective Martin a written statement, which read, "On Sunday 11/28/04 I cashed a check at Owens supperette [sic] for \$250.00 I got from Jennifer Hare[.] [A]nother check was tore [sic] up and I got drugs and etc. with it. Tim Spears 12/3/04." At trial, Detective Martin was also shown the number written on the back of the check and confirmed that it did not appear to match defendant's driver's license number.

A jury found defendant guilty of uttering a forged check. After the jury was unable to reach a verdict as to the forgery charge, the trial court declared a mistrial and dismissed the forgery charge. Defendant subsequently pled guilty to attaining habitual felon status. The trial court sentenced defendant to 108 to 139 months imprisonment.

Defendant contends the trial court erred by sustaining the State's objections to defense counsel's questions on cross-examination of two witnesses, the victim and the store clerk. Defendant asserts the trial court denied him the opportunity to present evidence "which could have supported the inference that [defendant] didn't know he was cashing a forged check[.]"

Under the North Carolina Rules of Evidence, trial courts should "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." N.C. Gen. Stat. § 8C-1, Rule 611(a) (2009). However, "[a] witness may

be cross-examined on any matter relevant to any issue in the case, including credibility." N.C. Gen. § 8C-1, Rule 611(b). "On appeal, the trial court's decision to limit cross-examination is reviewed for abuse of discretion, and rulings in controlling cross examination will not be disturbed unless it is shown that the verdict was improperly influenced." *State v. Jacobs*, 172 N.C. App. 220, 228, 616 S.E.2d 306, 312 (2005) (internal quotation marks omitted).

On cross-examination, defense counsel asked the victim, Mr. Price, if his daughter Jennifer Hare "was charged with writing worthless checks." The trial court sustained the State's objection. Defense counsel also asked Mr. Price if his daughter had "some drug offenses." The trial court again sustained the State's objection. During cross-examination of the store clerk, Mr. White, defense counsel asked him if Jennifer Hare shopped regularly at the convenience store. The trial court sustained the State's objection. Defense counsel asked to be heard and the jury was escorted outside the courtroom. Defense counsel informed the court that warrants had been issued against Ms. Hare for worthless checks she had written to the same store. The State countered that the evidence was not relevant and that the clerk was not the proper witness to ask. Defense counsel then informed the court that he would ask the clerk if Ms. Hare "frequently traded there." The trial judge stated that he would allow the store clerk to answer the question. When the jury came back, the trial court overruled the State's objection. Defense counsel asked the store

clerk if Ms. Hare traded at the store, and he replied, "On occasion."

Here, the record shows that the trial court ultimately overruled the State's objection and permitted defense counsel to question the store clerk. Thus, defendant's argument as to the store clerk is without merit. Defendant argues that the evidence he attempted to solicit from Mr. Price would have shown that defendant did not know that the check was forged. Defendant attempted to make an offer of proof that was delayed by the trial court. However, defendant made no attempt to raise this issue again. *State v. Ginyard*, 122 N.C. App. 25, 33, 468 S.E.2d 525, 531 (1996) ("In order to preserve an argument on appeal which relates to the exclusion of evidence, including evidence solicited on cross-examination, the defendant must make an offer of proof so that the substance and significance of the excluded evidence is in the record."). Thus, defendant has not preserved this issue for review.

Moreover, assuming *arguendo*, that the trial court did abuse its discretion by sustaining the State's objections, defendant cannot meet his heavy burden of showing that the asserted error had a probable impact on the jury's determination of guilt. The evidence presented at trial showed that defendant came into the convenience store, presented the check to the clerk for cashing, checks 507 and 508 were missing from Mr. Price's checkbook, Mr. Price did not make check 508 payable to defendant in the amount of \$250 for tree removal, and defendant admitted cashing a check in

the amount of \$250 and tearing up another check. We conclude the error, if any, was not prejudicial in light of the overwhelming evidence of defendant's guilt.

To the extent that defendant asserts a constitutional violation, defendant did not raise this issue at trial, and we decline to address it now. *See State v. Ryals*, 179 N.C. App. 733, 741, 635 S.E.2d 470, 475 (2006), *disc. review denied*, 362 N.C. 91, 657 S.E.2d 27 (2007). Further, because of our disposition, we need not address defendant's argument that his habitual felon status should be set aside on the grounds that his conviction for uttering a forged check was in error. Accordingly, we find no error.

No error.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).