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NO. COA14-1074
NORTH CAROLINA COURT OF APPEALS

Filed: 17 March 2015

STATE OF NORTH CAROLINA

v.

Cleveland County
Nos. 13 CRS 52746-47

DAVID WAYNE ISENHOUR, JR.

Appeal by Defendant from judgments entered 12 December 2013 by Judge William R. Bell in Cleveland County Superior Court. Heard in the Court of Appeals 23 February 2015.

Attorney General Roy Cooper, by Assistant Attorney General Carole Biggers, for the State.

Don Willey for Defendant.

STEPHENS, Judge.

Defendant David Wayne Isenhour, Jr., appeals from judgments entered upon jury verdicts finding him guilty of identity theft and obtaining property by false pretenses. The trial court sentenced Isenhour to an active term of 8 to 19 months imprisonment for his conviction for obtaining property by false pretenses and a consecutive term of 14 to 26 months imprisonment for identity theft. The court suspended the latter sentence and ordered that

Isenhour be placed on supervised probation for 36 months. Isenhour gave notice of appeal in open court.

Isenhour's sole argument on appeal is that the trial court erred in denying his motion to dismiss the charges against him because the State failed to present substantial evidence that he affirmatively and knowingly made a false representation that he was another man named Joshua Williamson, and thereby fraudulently obtained value from another person. We disagree.

In evaluating a defendant's motion for dismissal, "the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [the] defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (citation and internal quotation marks omitted), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). "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) (citation omitted). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every

reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994) (citation omitted), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995).

To prove that a defendant has committed the offense of identity theft, the State must present substantial evidence that he

knowingly obtain[ed], possesse[d], or use[d] identifying information of another person, living or dead, with the intent to fraudulently represent that [he] is the other person for the purposes of making financial or credit transactions in the other person's name, to obtain anything of value, benefit, or advantage, or for the purpose of avoiding legal consequences

N.C. Gen. Stat. § 14-113.20(a) (2013). Similarly, to prove that a defendant has committed the offense of obtaining property by false pretenses, the State must show that he

knowingly and designedly by means of any kind of false pretense whatsoever . . . obtain[ed] or attempt[ed] to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value

N.C. Gen. Stat. § 14-100(a).

In the present case, the State's evidence at trial tended to show that Isenhour was admitted to Kings Mountain Hospital on 16 March 2013 and remained there receiving care until 18 March 2013. Isenhour was admitted to the hospital using the name and Medicaid card of his girlfriend's estranged husband, Joshua Williamson, and while there received care costing \$21,537.65. Nurses who cared for Isenhour testified that they had no specific recollection of providing care to him, but that the standard operating procedure they used for dispensing medications to a patient in their care required that they ask the patient for his name and date of birth, that they could only accept a response from the patient, and that they could only dispense the medication if the patient's response matched their records.

On appeal, Isenhour discounts the nurses' testimony, arguing it is merely evidence of habit or routine practice and is contradicted by the testimony of his girlfriend, Melanie Williamson, who testified that she was the only person who told hospital staff that Isenhour was Joshua Williamson. Isenhour asserts that because his girlfriend was the only person who gave direct testimony as to who gave the name of her estranged husband Joshua Williamson to hospital staff, the State failed to present

substantial evidence that Isenhour affirmatively and knowingly made a false representation that he was Joshua Williamson.

This argument fails. North Carolina Rule of Evidence 406 provides that

[e]vidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

N.C. Gen. Stat. § 8C-1, Rule 406 (2013). Moreover, it is well established that properly admitted evidence of habit or routine "can be used to prove an element of a criminal offense." *State v. Fowler*, 353 N.C. 599, 621-22, 548 S.E.2d 684, 700 (2001) (citation omitted), *cert. denied*, 535 U.S. 939, 152 L. Ed. 2d 230 (2002); *see also State v. Simpson*, 299 N.C. 335, 346-48, 261 S.E.2d 818, 825-26 (1980) (holding that evidence of habit or routine practice can be used to establish an essential element of the offense charged). Here, the testimony from Isenhour's girlfriend contradicting that from the nurses of their habit and practice created a conflict in the evidence that was for the jury to resolve. *See, e.g., State v. Scott*, 356 N.C. 591, 596, 573 S.E.2d 866, 869 (2002) (observing that, in the context of a motion to dismiss, "[c]ontradictions and discrepancies do not warrant

dismissal of the case but are for the jury to resolve"). Accordingly, we conclude that the State presented sufficient evidence to overcome Isenhour's motion to dismiss, and we therefore hold that the trial court did not err in denying the motion.

NO ERROR.

Chief Judge MCGEE and Judge HUNTER, JR. concur.

Report per Rule 30(e).