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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-864

Filed: 7 April 2015

Randolph County, No. 12 CRS 053047

STATE OF NORTH CAROLINA

v.

JAMES JOSEPH CARTER

Appeal by defendant from judgment entered 8 January 2014 by Judge David L. Hall in Randolph County Superior Court. Heard in the Court of Appeals 2 December 2014.

Attorney General Roy Cooper, by Assistant Attorney General Jason R. Rosser, for the State.

Edward Eldred for defendant-appellant.

McCULLOUGH, Judge.

Defendant appeals from his judgment of obtaining property by false pretenses. For the reasons set forth herein, we hold no error.

I. Background

On 9 July 2012, defendant was indicted for larceny by an employee. Subsequently, defendant was charged by superseding indictment with two counts of

obtaining property by false pretenses in violation of N.C. Gen. Stat. § 14-100. The first count alleged that on 20 December 2011, defendant

knowingly and designedly with the intent to cheat and defraud obtain a check numbered 00028108 from Ornamental Mouldings, LLC, a corporation, by means of false pretense which was calculated to deceive and did deceive. The false pretense consisted of the following: the defendant represented to an employee of Ornamental Mouldings, LLC, Linda Varner, that the bank of Ornamental Mouldings, LLC requested a check when in fact no such request had been made by the bank of Ornamental Mouldings, LLC.

The second count alleged that on 20 December through 21 December 2011, defendant

knowingly and designedly with the intent to cheat and defraud obtain United States currency in the amount of \$2,400 from Members Credit Union, a corporation, by means of false pretense which was calculated to deceive and did deceive. The false pretense consisted of the following: the defendant caused his wife to present a check drawn upon an account of Ornamental Mouldings, LLC, a corporation, and represent that the check was a good and lawful check when in fact defendant knew it was stolen, forged, and falsely made.

Defendant's trial came on for hearing at the 6 January 2014 session of Randolph County Superior Court, the Honorable David L. Hall, presiding. The evidence indicated that defendant served as the financial controller at Ornamental Mouldings, LLC ("Ornamental") in 2011. As the financial controller, defendant was responsible for the accounting system and financial reporting.

Defendant was the supervisor of the accounts payable clerk, Linda Varner. Varner testified that her duties included “matching the receiving papers and with the invoices and so forth and then entering the invoices that were due for payment into the system and cutting the checks.” Varner kept the check stock in a locked filing cabinet behind her desk, to which she possessed the key.

On 20 December 2011, defendant requested a blank check from Varner. Defendant explained to Varner that he needed the blank check to scan to JPMorgan Chase (“JPMorgan”), Ornamental’s bank. Varner gave defendant the blank check because JPMorgan had had previous problems processing Ornamental’s checks. Varner testified that she made a mental note to void the blank check given to defendant the next day.

On 21 December 2011, Varner conducted a “check run” which entailed downloading files “showing all the checks that had been cut[.]” Varner noticed a “batch that had already been downloaded the evening before with [defendant’s] initials on it.” Defendant had issued an invoice showing that Ornamental owed \$2,400.00 to Estes Express Lines, a freight carrier. However, instead of using the blank check Varner had given defendant the day before to pay the purported invoice, the \$2,400.00 check was written to defendant as the payee.

Varner went to her superior, Dawn Hartman, to report the \$2,400.00 check. Hartman approached Ronald Clark, the general manager of Ornamental and

supervisor of defendant, on 21 December 2011. Hartman told Clark that there appeared to be a fraudulent transaction. Clark asked Varner to review the invoices for Estes Express Lines and the invoices did not total up to \$2,400.00. Therefore, Clark issued a stop payment on the check and called defendant in the presence of the Human Resources manager, Dennis Lowe. Defendant told Clark that he had requested a blank check from Varner so he could scan and e-mail it to JPMorgan. He further stated that after he scanned the check, he shredded the check, sent the scanned copy to his e-mail, and sent the scanned copy to JPMorgan. Immediately after the conversation ended, Clark and Lowe searched the copy machine that maintains an electronic log of all scanned documents and found no evidence that defendant had scanned a document to his e-mail. Clark and Lowe also searched each shredder in their office and found no evidence of a shredded check.

Robert Semar, an internal auditor and security officer for the Members Credit Union, testified that on 21 December 2011, a check with the number 00028108 from Ornamental, was deposited at the Members Credit Union. The check was in the amount of \$2,400.00 and paid to the order of defendant. On the bottom left-hand corner of the check, the memo line states it was for a 401k loan. On 22 December 2011, Varner reviewed an image of the check on the JPMorgan Chase website and saw that it was made out to defendant. Defendant had endorsed the check and it was also signed by his wife, Gladys Carter.

Defendant testified during trial that he had printed out check number 00028108 out of the accounts payable system for Ornamental “for what I believed was a 401(k) loan.” Defendant stated that he had had a conversation with Clark regarding his intentions of taking out a 401(k) loan. In order to accomplish this, defendant testified that he obtained a check from Varner and entered the check as a transaction to himself in Ornamental’s system. Clark denied that defendant had ever requested a 401(k) loan from him.

Defendant’s wife, Gladys Carter, testified that she and her husband did not have any conversations regarding the check, but that he had left the endorsed check on their table at home. On 21 December 2011, she deposited the check into their shared checking account at Members Credit Union. Mrs. Carter withdrew \$400.00 in cash that day. On 22 December 2011, Mrs. Carter withdrew the remaining funds in their account except for \$25.00 in order to keep the account open.

At the close of all the evidence, defendant made a motion to dismiss which was denied by the trial court. On 8 January 2014, a jury found defendant guilty of all charges. Defendant was sentenced to six (6) to seventeen (17) months imprisonment. The trial court suspended the sentence and placed defendant on supervised probation for a period of thirty-six (36) months. Defendant appeals.

II. Standard of Review

“The denial of a motion to dismiss for insufficient evidence is a question of law, which this Court reviews *de novo*.” *State v. Bagley*, 183 N.C. App. 514, 523, 644 S.E.2d 615, 621 (2007) (internal citations omitted). “Upon a defendant's motion to dismiss for insufficient evidence, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged . . . and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied.” *State v. Cox*, 367 N.C. 147, 150, 749 S.E.2d 271, 274 (2013) (citation omitted). “Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *State v. Miller*, 363 N.C. 96, 99, 678 S.E.2d 592, 594 (2009) (citations and internal quotation marks omitted).

When ruling on a motion to dismiss for insufficient evidence, the trial court must consider the evidence in the light most favorable to the State, drawing all reasonable inferences in the State's favor. Any contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered.

State v. Williams, 207 N.C. App. 136, 138, 698 S.E.2d 542, 544 (2010) (citation omitted).

III. Discussion

On appeal, defendant argues that the trial court erred in denying his motion to dismiss the two counts of obtaining property by false pretenses. In regards to the first count, defendant argues there was insufficient evidence of a causal connection between any false representation he may have made and his ability to obtain the

blank check from Varner. Defendant also argues that there was insufficient evidence that he obtained the blank check from “another” because he was in lawful possession of the check stock. In regards to the second count, defendant argues that there was insufficient evidence that he caused his wife to present the check to Members Credit Union. Defendant’s arguments are without merit.

It is well established that

[t]he elements of obtaining property by false pretenses are (1) [a] false representation of a past or subsisting fact or a future fulfillment or event, (2) which is calculated and intended to deceive, (3) which does in fact deceive, and (4) by which the defendant obtains or attempts to obtain anything of value from another person.

State v. Everette, __ N.C. App. __, __, 764 S.E.2d 634, 638 (2014) (citation omitted).

Defendant cites to *State v. Davis*, 48 N.C. App. 526, 269 S.E.2d 291 (1980), for his contentions regarding a lack of causal connection in his case. In *Davis*, our Court held that the defendant’s motions for nonsuit should have been granted as to obtaining property by false pretenses. Serving as a town official with authority to draw checks, the defendant signed two checks. The expenditure of the funds was for the purchase of Amtrak train tickets, however, the vouchers prepared in support of these expenditures indicated that they were for the purchase of copies of a legal case and purchase of materials. Our Court held that “there is no evidence that the information written on the expense voucher, the alleged misrepresentation, was the means by which defendant obtained property from the Town.” *Id.* at 531, 269 S.E.2d

at 294. The *Davis* defendant had the authority to draw checks and the voucher could be filled out at the same time as the check was drawn. *Id.* at 529-31, 269 S.E.2d at 292-94. Therefore, although the voucher contained false information, the evidence did not indicate that the “voucher induced the Town to part with its money or in any way caused the payment to be made.” *Id.* at 531, 269 S.E.2d at 295. Instead, the *Davis* defendant used her position to obtain the checks and the vouchers served as a record of the transaction.

After careful review, we find the circumstances of the present case distinguishable from those found in *Davis*. Here, the evidence demonstrated that defendant would not have received a blank check from Varner had he not represented that he needed to scan a copy to Ornamental’s bank, JPMorgan. Varner testified that Ornamental “had been having quite a few problems” with “the reading and scanning of the checks from” JPMorgan. Thus, when defendant approached Varner to request a blank check “[t]o scan to JPMorgan,” she believed defendant and gave him a blank check to use for that purpose.

Furthermore, viewing the evidence in the light most favorable to the State, there was sufficient evidence to indicate that defendant was not in lawful possession of the blank check. Ornamental’s general manager testified that Varner, not defendant, was the custodian of the check stock. Clark testified that although defendant had authority over Varner, “[i]t would have been very inappropriate for

anyone, including [defendant], to make a demand on [Varner] to get access to the check stock.” Varner testified that she was responsible for the check stock, kept the check stock in a filing cabinet behind her desk, and had the key to the filing cabinet.

In regards to the second count of obtaining property by false pretenses, defendant asserts that there was insufficient evidence that he caused his wife to present and deposit the \$2,400.00 check at Members Credit Union. However, we find that defendant admitted to this fact in defendant’s exhibit number 3. Defendant’s exhibit number 3 consists of a memorandum sent to the Archdale Police Department by defendant, stating that “I endorsed [the check] and had Gladys Carter deposit it in our account with Members Credit Union, just as I had done with many other checks over the years from Ornamental Mouldings, LLC for various purposes.” Moreover, defendant testified that he took the check home and left it on the table. Mrs. Carter testified that she found the endorsed check on the table at home and that she was the one to “usually” deposit checks at the bank. Mrs. Carter testified that, “I just remember seeing the check and it was signed, and we’ve always, whenever we have checks, we just go ahead and pick them up and take them to the bank because we don’t want anybody to take our money.” Viewed in the light most favorable to the State, we hold that there was sufficient evidence that defendant caused Mrs. Carter to present the check to Members Credit Union and to deposit the funds into their account.

IV. Conclusion

Based on the foregoing, we hold that the trial court did not err by denying defendant's motion to dismiss two counts of obtaining property by false pretenses.

NO ERROR.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).