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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-928

Filed: 17 November 2020

Robeson County, No. 16 CRS 50686

STATE OF NORTH CAROLINA

v.

ABU BAKR RAHMAN

Appeal by defendant from judgment entered 27 June 2019 by Judge Mary A. Tally in Robeson County Superior Court. Heard in the Court of Appeals 8 September 2020.

*Attorney General Joshua H. Stein, by Assistant Attorney General Thomas J. Felling, for the State.*

*Cooley Law Office, by Craig M. Cooley, for defendant.*

DIETZ, Judge.

Defendant Abu Bakr Rahman was convicted of attempted obtaining property by false pretenses for his involvement in a scheme to stage a two-vehicle accident and then collect insurance proceeds for fake injuries. On appeal, Rahman argues that the indictment was fatally defective and that there was insufficient evidence to send the charge to the jury.

We reject these arguments. As explained below, the indictment asserted facts supporting every element of the offense, couched in the language of the statute, and it was therefore a valid indictment. The additional information that Rahman contends was missing from the indictment properly should have been pursued through a motion for a bill of particulars.

Likewise, the State presented substantial evidence of each essential element of the offense—that Rahman made false representations about the accident and his resulting injuries that were calculated to deceive the authorities and insurance companies, and did deceive them, and by which Rahman attempted to obtain an insurance payment for fake injuries. Accordingly, the trial court properly denied Rahman’s motion to dismiss.

### **Facts and Procedural History**

In 2015, a highway patrol trooper responded to a two-vehicle accident in Robeson County. At the scene, the trooper saw what appeared to be the aftermath of a collision between a car and a mini-van. Shalonda McLellan, the driver of the mini-van, had five other passengers, including Defendant Abu Bakr Rahman. Malika Baldwin, the driver of the car, had two other passengers with her.

After investigating the accident and interviewing the two drivers, the trooper concluded that the car made a left turn onto the highway from a private driveway and collided with the mini-van, which was traveling on the highway. The trooper

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spoke only with the drivers, but his accident report lists Rahman as an injured party.

Baldwin, the driver of the car that turned onto the highway, submitted a claim to her insurer, Sentry Insurance Company. Her insurance policy included liability coverage for injuries to the occupants of the mini-van, including Rahman. Rahman asserted that he suffered injuries related to a bulging disc in the accident and contacted Sentry Insurance to inquire about the status of his claim for payment under the policy.

During Sentry Insurance's investigation of the claims on its policy, the company discovered through social media posts that all occupants of the car and mini-van involved in the accident were relatives of each other or in relationships with relatives of each other. The company also discovered that all the vehicle occupants also were connected to the owner of the property on which the accident occurred. Ultimately, after further investigation by an accident reconstruction expert, Sentry Insurance concluded that the accident was staged. Sentry Insurance reported their findings to the North Carolina Department of Insurance, which began an investigation. The State ultimately brought multiple charges against many of the people involved in the accident on the grounds that they had all cooperated to stage the accident, fake resulting injuries, and collect insurance proceeds.

Rahman was indicted on charges of insurance fraud, attempting to obtain property by false pretenses, and conspiracy to obtain property by false pretenses.

After a trial, the jury convicted Rahman of attempted obtaining property by false pretenses. The trial court sentenced Rahman to 12 to 24 months in prison. Rahman appealed.

### **Analysis**

#### **I. Jurisdictional defect in the indictment**

Rahman first argues that the trial court lacked subject matter jurisdiction because the indictment was defective. At the outset, we note that this issue is raised for the first time on appeal. Ordinarily, in criminal prosecutions, issues not raised and preserved by the defendant at trial cannot be raised for the first time on appeal. But a valid indictment “is essential to the jurisdiction of the trial court to try an accused.” *State v. Ellis*, 368 N.C. 342, 345, 776 S.E.2d 675, 678 (2015). Thus, “the facial validity of a criminal pleading may be challenged for the first time on appeal.” *Id.*

“The law disfavors application of rigid and technical rules to indictments; so long as an indictment adequately expresses the charge against the defendant, it will not be quashed.” *State v. Rankin*, 371 N.C. 885, 887, 821 S.E.2d 787, 790–91 (2018). The essential purposes of an indictment are “to identify the offense being charged with certainty, to enable the accused to prepare for trial, and to enable the court, upon conviction, to pronounce the sentence.” *Id.*

Thus, to be valid, an indictment ordinarily need only allege “all the essential

elements of the offense endeavored to be charged.” *State v. Mostafavi*, 370 N.C. 681, 685, 811 S.E.2d 138, 141 (2018). An indictment that “asserts facts supporting every element of a criminal offense” using allegations that are “couched in the language of the statute” is sufficient under this standard. *Id.*

With these principles in mind, we turn to the essential elements of obtaining property by false pretenses, which are: “(1) a false representation of a 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 one person obtains or attempts to obtain value from another.” *State v. Cronin*, 299 N.C. 229, 242, 262 S.E.2d 277, 286 (1980); N.C. Gen. Stat. § 14-100.

Here, the indictment alleged that “the defendant named above unlawfully, willfully and feloniously did knowingly and designedly, with the intent to cheat and defraud, obtain U.S. Currency from Sentry Insurance Company by means of a false pretense which was calculated to deceive and did deceive. The false pretense consisted of the following: by lying about the circumstances of a vehicle accident in which he was involved for financial benefit.”

These allegations, which assert “facts supporting every element of a criminal offense” and which are “couched in the language of the statute” are sufficient to render the indictment facially valid. *Mostafavi*, 370 N.C. at 685, 811 S.E.2d at 141.

In *Mostafavi*, for example, the indictment alleged that the defendant “obtained

United States Currency from Cash Now Pawn by means of a false pretense” and that the false pretense “consisted of the following: by pawning jewelry as his own property to sell when in fact the property had been stolen.” *Id.* at 683, 811 S.E.2d at 140 (brackets omitted and uppercase text altered). The Court held that these allegations “adequately advised defendant of the conduct that is the subject of the accusation.” *Id.* at 686, 811 S.E.2d at 141.

Particularly relevant here, the Supreme Court reasoned that, by describing how the defendant obtained the money by trading other stolen property, the indictment sufficiently identified the “transactions at issue” with respect to obtaining property by false pretenses. *Id.* at 685, 811 S.E.2d at 141. No further specificity was required, the Court noted, because, if the “defendant needed more information to mount his preferred defense, he could have requested a bill of particulars.” *Id.* at 685–86, 811 S.E.2d at 141 (brackets omitted).

Here too, by alleging that Rahman obtained “U.S. Currency from Sentry Insurance Company” by “lying about the circumstances of a vehicle accident in which he was involved for financial benefit,” the indictment advised Rahman of the conduct that is the subject of the accusation and identified the transaction at issue sufficiently. The indictment informed Rahman of the charges against him, enabled him to prepare a defense to those charges, and enabled the court, upon conviction, to pronounce a judgment sufficiently defined to protect against the risk of double

jeopardy.

Rahman contends that the indictment is nevertheless defective because it “doesn’t link the U.S. currency to a specific date or document,” “doesn’t identify who Mr. Rahman allegedly lied to,” and doesn’t explain “how the alleged lie(s) was connected to an improper financial motive.” But none of these facts are essential elements of the crime. The indictment alleged a false representation—a lie about the circumstances of a car accident—that was intended to deceive, that did in fact deceive, and by which Rahman obtained U.S. currency from Sentry Insurance Company. These factual allegations, couched in the language of the essential elements of the criminal statute, are all our case law requires. If Rahman wanted more details about the State’s theory of the case in order to prepare a defense, his recourse was a bill of particulars. *Mostafavi*, 370 N.C. at 686, 811 S.E.2d at 141. Accordingly, we reject Rahman’s argument and hold that the indictment was sufficient to confer subject matter jurisdiction on the trial court.

## **II. Motion to dismiss**

Rahman next challenges the trial court’s denial of his motion to dismiss for insufficient evidence. “This Court reviews the trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). In order to survive a motion to dismiss based on the sufficiency of the evidence, the State must present “substantial evidence (1) of each essential element of the offense

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charged . . . and (2) of defendant's being the perpetrator of such offense." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation omitted). "Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Smith*, 186 N.C. App. at 62, 650 S.E.2d at 33.

As discussed above, the essential elements of obtaining property by false pretenses are "(1) a false representation of a 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 one person obtains or attempts to obtain value from another." *Cronin*, 299 N.C. at 242, 262 S.E.2d at 286; N.C. Gen. Stat. § 14-100.

Here, the State presented ample evidence of each of these essential elements. First, the evidence showed that Rahman was involved in staging a car accident. The State presented detailed evidence from a relative of Rahman's girlfriend who was present when the accident was faked, described how it was staged, and explained how Rahman and others intended to use the fake accident to collect insurance proceeds.

An accident reconstruction expert also testified that the damage to the vehicles could not have occurred from the accident described by those involved. In addition, an insurance investigator described how he ultimately uncovered the fake accident scheme.

The State also presented evidence that Rahman falsely claimed he suffered injuries in the staged accident, and that he attempted to collect insurance proceeds



from Sentry Insurance Company through these false statements. Specifically, the State presented evidence that Rahman told a Sentry Insurance agent that he had been injured in the accident and that Rahman contacted Sentry Insurance to check on when his claim for personal injuries would be paid.

This evidence, taken in the light most favorable to the State, is substantial evidence of all the essential elements—Rahman made false representations about the accident and his resulting injuries that were calculated to deceive the responding authorities and Sentry Insurance Company, and which did deceive them (at least until the insurance company uncovered the scheme), and by which Rahman attempted to obtain an insurance payment for fake injuries. Thus, the trial court properly denied Rahman’s motion to dismiss.

### **Conclusion**

We find no error in the trial court’s judgment.

NO ERROR.

Chief Judge McGEE and Judge HAMPSON concur.

Report per Rule 30(e).