NO. COA02-287

NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2002

STATE OF NORTH CAROLINA

v. Gaston County
No. 00 CRS 56887

DANNY LEE WIKE

Appeal by defendant from judgment entered 30 October 2001 by Judge W. Robert Bell in Gaston County Superior Court. Heard in the Court of Appeals 21 October 2002.

Attorney General Roy Cooper, by Assistant Attorney General Chris Z. Sinha, for the State.

David Childers for defendant-appellant.

CAMPBELL, Judge.

On 7 August 2000, defendant was indicted for felonious child abuse. The case was tried at the 29 October 2001 Criminal Session of Gaston County Superior Court.

The State presented evidence at trial which tended to show the following: On 20 May 2000, Corporal Richard Abernathy of the Belmont Police Department was dispatched to the Heritage Inn to meet a social worker employed with the Department of Social Services. Abernathy met Helen Goode, who had received a report regarding the defendant and his three-year-old son, Brian Norris,

earlier that day. Upon entering the room occupied by defendant and Brian, Goode found Brian lying in bed, and observed bruises on Brian's body. Defendant admitted to spanking Brian with a belt because he had tried to open the door of their car while they were driving down the interstate. Defendant was arrested while social services took custody of Brian. Brian was then taken to Gaston Memorial Hospital where he was treated for his injuries.

Defendant was convicted of felonious child abuse and sentenced to a term of twenty-three to thirty-seven months imprisonment. Defendant appeals.

Defendant's sole argument on appeal is that there was insufficient evidence to support the conviction for felonious child abuse. Specifically, defendant contends there was no evidence that Brian suffered great pain and suffering sufficient to constitute a serious physical injury. Defendant notes that there were no open wounds or bleeding, no sign of sexual abuse, and no sign of internal injury. Additionally, Brian was described as cooperative and compliant with physicians, did not indicate that he was in pain, and suffered from no permanent injury. Finally, defendant notes that Brian did not require any treatment before his release.

After careful review of the record, briefs and contentions of the parties, we find no error. To survive a motion to dismiss, the State must present substantial evidence of each essential element of the charged offense. *State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997). "'Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support

a conclusion.'" *Id.* at 717, 483 S.E.2d at 434 (quoting *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992)). Defendant was charged with felonious child abuse. Pursuant to G.S. 14-318.4(a), to constitute a felony, the State must present evidence that the abuse resulted in serious physical injury. A "serious physical injury" has been defined as an injury "that cause[s] great pain and suffering." *State v. Phillips,* 328 N.C. 1, 20, 399 S.E.2d 293, 303, *cert. denied*, 501 U.S. 1208, 115 L. Ed. 2d 977 (1991). Our Supreme Court has stated:

> Whether a serious injury has been inflicted depends upon the facts of each case and is generally for the jury to decide under appropriate instructions. A jury may consider such pertinent factors as hospitalization, pain, loss of blood, and time lost at work in determining whether an injury is serious. Evidence that the victim was hospitalized, however, is not necessary for proof of serious injury.

State v. Hedgepeth, 330 N.C. 38, 53, 409 S.E.2d 309, 318 (1991).

In the instant case, defendant admitted to spanking Brian with a belt, but contends that he did not cause serious physical injury. However, the State presented evidence that Brian suffered multiple and severe bruises, including bruising to his testicles and scrotum; facial bruising around his right eye, left cheek and chin; bruising around his anus and inside his rectum; as well as bruising from his mid-back down to his buttocks. Brian also complained that his head hurt, and he had a "knot" on his head. Additionally, evidence was presented suggesting that the bruises were caused by the buckle as well as the strap of the belt. As argued by the State, great pain and suffering can be "logically inferred from

some of the highly sensitive locations" of Brian's injuries. Accordingly, we conclude that the evidence, when taken in the light most favorable to the State, was sufficient for a jury to determine that the injuries caused "great pain and suffering." *Phillips*, 328 N.C. at 20, 399 S.E.2d at 303.

No error.

Judges WYNN and McGEE concur.

Report per Rule 30(e).