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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-823

Filed: 6 August 2019

Onslow County, No. 16 CRS 50907

STATE OF NORTH CAROLINA

v.

EDWARD HUGH FELTS

Appeal by Defendant from judgments entered 10 April 2018 by Judge Charles H. Henry in Superior Court, Onslow County. Heard in the Court of Appeals 4 June 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.

Richard Croutharmel for Defendant-Appellant.

McGEE, Chief Judge.

Edward Hugh Felts (“Defendant”) was indicted for and convicted of (1) intentional child abuse inflicting serious bodily injury, (2) negligent child abuse resulting in serious bodily injury, and (3) contributing to the delinquency and neglect of a juvenile in violation of N.C. Gen. Stat. § 14-316.1 (2017). Because Defendant’s indictment for negligent child abuse resulting in serious bodily injury failed to allege

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that Defendant's negligent omission in failing to obtain medical care resulted in serious bodily injury to the child, we must vacate the trial court's judgment for that offense and remand the matter for a new sentencing hearing consistent with this opinion.

The matter came on for trial on 3 April 2018. The State's evidence at trial tended to show that Defendant and Mary Wilson ("Ms. Wilson") each had children from prior relationships. Ms. Wilson's children from previous relationships included her son, J.M., and her daughter, S.W. ("the children"). Kathleen Wise ("Ms. Wise"), an investigator with the Department of Social Services in Onslow County who was assigned to investigate S.W.'s case, testified Ms. Wilson obtained a Section 8 home in Jacksonville, North Carolina in November 2015, based on her report of domestic violence allegedly committed by Defendant. According to Ms. Wise, due to Ms. Wilson's domestic violence allegations against him, Defendant was not allowed to live at the home under the terms of the lease. Nevertheless, Defendant moved into the home with Ms. Wilson and the children. Defendant's son from a prior relationship, G.F., visited on the weekends. Defendant had recently lost his job and became the primary caregiver of the children when Ms. Wilson went to work.

S.W., who was four years old at the time, was admitted into the intensive care unit at Vidant Medical Center on 26 January 2016, after collapsing and becoming unresponsive at her mother's home. S.W. had two black eyes, abrasions on her chin,

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and bruising on her cheeks, neck, and inside both of her ears. She also had bruises on her chest, along her collar bone, on her abdomen, and on the tops of her feet. Behind her left knee, she had linear bruises consistent with a hand print injury. Dr. Coral Steffey (“Dr. Steffey”), a pediatrician at Vidant Medical Center, was admitted at trial as an expert witness in pediatrics and child medical evaluations and reviewed S.W.’s medical records. According to Dr. Steffey, the placement and amount of bruising on S.W.’s body was more consistent with abuse than accidental bruising, as “she had far, far more bruises that were in areas that we would not anticipate her having bruises, if they were from accidents.” S.W. was also very underweight, weighing only twenty-nine pounds. Within three weeks of being admitted to the hospital, S.W. gained nine pounds while only being fed through a tube.

Upon her arrival at the hospital, S.W. also had diffuse retinal hemorrhages in both eyes, which, according to Dr. Steffey, were indicative of severe trauma caused either by a shaking or slamming of her head. A CT scan of S.W.’s head revealed a small right-sided acute subdural hemorrhage and asymmetry of the ventricles, indicating swelling in her brain. S.W. also had a fractured right collar bone that had begun to heal.

After arriving at the hospital, S.W. was able to move her right side, follow commands, and open her eyes. However, on 28 January 2016, her condition deteriorated. A follow-up CT scan that day showed increased swelling in the brain.

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In order to avoid a herniation¹ of her brain, S.W. underwent surgery to remove part of her skull. A CT angiogram was conducted on 29 January 2016, which showed discoloration on the right side of S.W.'s brain indicating damage to the brain tissue from a stroke. Because doctors were unable to find any blood clots or damage to S.W.'s carotid artery, doctors indicated the only explanation for the damage was that the carotid artery had been compressed, depriving her brain of oxygen long enough to cause the tissue to die. Due to the timing of the symptoms and swelling, the doctors opined that the injury occurred sometime between twelve hours to four days prior to 28 January 2016.

The explanations provided by Defendant for S.W.'s injuries were not consistent with the nature and extent of S.W.'s injuries. The doctors determined the injuries were nonaccidental and that the trauma occurred on at least two separate occasions.

The Onslow County Department of Social Services ("DSS") sent a referral for physical abuse to the Onslow County Sheriff's Office on 27 January 2016. An officer of the Sheriff's Office executed a search warrant at the family's home on the afternoon of 27 January 2016, and interviewed Defendant and Ms. Wilson. Defendant told the officer that Ms. Wilson had called him on 26 January 2016 to come to the home because S.W. was unresponsive. Defendant stated that, after he arrived at the home around 4:00 p.m., Ms. Wilson drove S.W. to the hospital while he remained at the

¹ A herniation of the brain occurs when the brain swells to a point where parts of the brain are forced out of the bottom of the skull.

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home with the other children. During a subsequent interview at the Sheriff's Office, Defendant told officers that at the time S.W. collapsed, both he and Ms. Wilson were in the home. Defendant was arrested at the Sheriff's Office on 27 January 2016 for intentional child abuse.

An investigative social worker interviewed Defendant at the jail on 29 January 2016. Defendant admitted he lied to officers about living in the home because he was fearful Ms. Wilson would lose her Section 8 housing. He told the social worker that, on 26 January 2016, shortly after Ms. Wilson left for work, he observed S.W. walking down the hallway. He then heard a thud and something slide down the hall, and saw S.W. lying on the floor. When he ran over to her, she was unresponsive and not breathing. He performed CPR on her until she began breathing again. Defendant told the social worker that, once he saw S.W. was breathing, he called Ms. Wilson. Ms. Wilson arrived at the home ten to fifteen minutes later and took S.W. to the hospital while Defendant stayed home and watched the other children. Defendant told the social worker he did not call emergency medical services because he wanted to first ask Ms. Wilson what she wanted to do. Defendant stated that S.W. had gotten the black eyes and abrasions from falling off a disassembled crib, but also said he did not understand all of the bruising on her, and that she might have gotten some of them from "horse playing with her siblings."

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Both Ms. Wilson's son J.M. and Defendant's son G.F. testified that Defendant would get angry with S.W. when she would cry, not answer him, or tell him what was wrong. G.F. testified that, on the weekend prior to S.W. being admitted to the hospital, he observed Defendant violently shake S.W.'s head. He later saw bruises and marks on S.W.'s face.

Defendant and Ms. Wilson were arrested and DSS took the remaining children into nonsecure custody and placed them in foster care. S.W.'s paternal aunt was granted guardianship of S.W.

S.W. spent one week in the intensive care unit before being moved to the rehabilitation unit. As a result of her head injuries, S.W. suffers from migraine headaches and mental retardation.

At the close of the State's evidence, Defendant moved to dismiss the charges. The trial court denied the motion. Defendant did not present any evidence and renewed his motion to dismiss, which the trial court denied. A jury found Defendant guilty of all three charged offenses. The trial court sentenced Defendant to a minimum term of 238 months to a maximum term of 298 months in prison for the intentional child abuse conviction. The trial court consolidated Defendant's convictions for negligent child abuse and contributing to the delinquency of a juvenile for judgment and sentenced Defendant to a consecutive term of thirty-four to fifty-three months of imprisonment. Defendant gave oral notice of appeal.

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I.

Defendant first argues his conviction for negligent child abuse must be vacated because the indictment was insufficient to confer subject matter jurisdiction upon the trial court as it failed to allege all of the essential elements of the offense. Specifically, Defendant contends the indictment failed to allege that S.W. suffered a serious bodily injury as a result of Defendant's failure to timely seek medical care for her. The State concedes this error, and we must agree.

"[A] valid indictment is necessary to confer jurisdiction upon the trial court." *State v. Murrell*, 370 N.C. 187, 193, 804 S.E.2d 504, 508 (2017). "A defendant can challenge the facial validity of an indictment at any time, and a conviction based on an invalid indictment must be vacated." *State v. Campbell*, 368 N.C. 83, 86, 772 S.E.2d 440, 443 (2015). We review the sufficiency of an indictment *de novo*. *State v. Everrette*, ___ N.C. App. ___, ___, 807 S.E.2d 168, 172 (2017).

"An indictment must allege lucidly and accurately all the essential elements of the offense endeavored to be charged." *State v. Brice*, 370 N.C. 244, 249, 806 S.E.2d 32, 36 (2017) (internal quotation marks omitted). If it does not, the trial court lacks jurisdiction over the defendant, and subsequent judgments are void and must be vacated. *State v. Rankin*, ___ N.C. ___, ___, 821 S.E.2d 787, 790 (2018); *see also State v. Wagner*, 356 N.C. 599, 601, 572 S.E.2d 777, 779 (2002).

N.C. Gen. Stat. § 14-318.4 provides as follows:

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A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class E felony if the act or omission results in serious bodily injury to the child.

N.C. Gen. Stat. § 14-318.4(a4) (2017). Thus, the essential elements of negligent child abuse under N.C.G.S. § 14-318.4(a4) are: (1) the defendant was providing care to the child, (2) the child was less than 16 years of age, (3) the defendant willfully failed to obtain medical care for the child that resulted in a grossly negligent omission, (4) the defendant's omission showed a reckless disregard for human life, and (5) the child suffered a serious bodily injury. *Id.*

In this case, Defendant's indictment for negligent child abuse resulting in serious bodily injury in violation of N.C.G.S. § 14-318.4(a4) alleged that Defendant

unlawfully, willfully and feloniously did show a reckless disregard for human life by committing a grossly negligent omission, in failing to obtain medical care for [S.W.] after she suffered a subdural hemorrhage, bilateral retinal hemorrhages, bruising to the face, head and body, in the care of [S.W.], who was 4 years old and thus under sixteen years of age. At the time the defendant committed the offense, the defendant was providing care for the child as a parental custodian.

While the indictment alleged Defendant failed to obtain medical care for S.W. after she suffered multiple serious injuries, it failed to allege the essential element that Defendant's grossly negligent omission in failing to obtain medical care resulted in serious bodily injury to S.W. Because the indictment failed to allege an essential

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element of the offense, the indictment failed to confer subject matter jurisdiction upon the trial court for that charge. *See State v. Harris*, 219 N.C. App. 590, 597, 724 S.E.2d 633, 639 (2012) (holding that because indictment failed to allege every essential element of the charged offense, trial court lacked jurisdiction to enter judgment against the defendant for that offense). Accordingly, we must vacate Defendant's conviction for negligent child abuse. *See id.* at 598, 724 S.E.2d at 639.

II.

Defendant also contends the trial court erred in calculating his prior record level for sentencing purposes "because the trial court failed to use the most serious offense in each judgment in calculating prior record level points," resulting in "the trial court [erroneously] add[ing] one point because all the elements in a present offense were included in a prior offense."

"The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court, or . . . the jury, finds to have been proved in accordance with this section." N.C. Gen. Stat. § 15A-1340.14(a) (2017). One additional point should be added "[i]f all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level[.]" N.C.G.S. § 15A-1340.14(b)(6). We review the trial

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court's calculation of a prior record level *de novo*. *State v. Boyd*, 207 N.C. App. 632, 642, 701 S.E.2d 255, 261 (2010).

On appeal, Defendant contends the additional point under N.C.G.S. § 15A-1340.14(b)(6) was improperly added because the trial court was required to calculate his prior record level based on the most serious offense in each judgment. The State concedes this error, and we agree.

If an offender is convicted of more than one offense at the same time, the court may consolidate the offenses for judgment and impose a single judgment for the consolidated offenses. *The judgment shall contain a sentence disposition specified for the class of offense and prior record level of the most serious offense*, and its minimum sentence of imprisonment shall be within the ranges specified for that class of offense and prior record level, unless applicable statutes require or authorize another minimum sentence of imprisonment.

N.C.G.S. § 15A-1340.15 (b) (2017) (emphasis added).

In this case, Defendant received two consecutive sentences, each based on the trial court's determination that Defendant had a prior record level IV. According to the prior record level worksheet, the trial court assigned Defendant nine points for his prior convictions and attributed an extra point pursuant to N.C.G.S. § 15A-1340.14(b)(6), finding that "all of the elements of the present offense are included in any prior offense[.]" The additional tenth point elevating Defendant from a prior record level III to a prior record level IV was added, based on Defendant's previous

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conviction for contributing to the delinquency of a juvenile, for which he was again convicted in this case.

However, the trial court entered a consolidated judgment for Defendant's convictions of negligent child abuse and contributing to the delinquency of a juvenile. Negligent child abuse is a Class E felony, while contributing to the delinquency of a minor is a Class 1 misdemeanor. *See* N.C. Gen. Stat. §§ 14-318.4(a4), 14-316.1 (2017). Under N.C.G.S. § 15A-1340.15(b), the trial court was required to enter a sentence disposition for the class of offense and prior record level of the most serious offense of negligent child abuse. *See State v. Jacobs*, 202 N.C. App. 71, 75, 688 S.E.2d 726, 730 (2010) (“[W]hen separate offenses of different class levels are consolidated for judgment, the trial judge is required to enter a sentence for the conviction at the highest class.”). Thus, the “present offense” in the consolidated judgment for purposes of determining Defendant's prior record level is negligent child abuse. Defendant has not previously been convicted of negligent child abuse, and therefore the trial court erred in adding the additional point pursuant to N.C.G.S. § 15A-1340.14(b)(6).

Additionally, the trial court erred in using the additional point to sentence Defendant at a prior record level IV in the separate judgment for intentional child abuse. *See State v. Mack*, 188 N.C. App. 365, 380, 656 S.E.2d 1, 12 (2008) (stating that because the trial court used one sentencing worksheet to determine the

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defendant's prior record level for two sentences, this Court must "determine if the worksheet accurately reflects the defendant's prior record level for each sentence"). Defendant had not previously been convicted of intentional child abuse, and thus all the elements of the present offense were not included in a prior offense. Therefore, the trial court erred in adding the additional point pursuant to N.C.G.S. § 15A-1340.14(b)(6) in determining Defendant's prior record level for the offense of intentional child abuse.

Having vacated Defendant's judgment for negligent child abuse, we remand the matter to the trial court for a *de novo* sentencing hearing on his remaining convictions of intentional child abuse and contributing to the delinquency and neglect of a juvenile.

VACATED IN PART; REMANDED FOR RESENTENCING.

Judges DILLON and ZACHARY concur.

Report per Rule 30(e).