IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-607

Filed: 3 March 2020

Pitt County, No. 17CRS50855

STATE OF NORTH CAROLINA

v.

LATRIAL DEONTRA SCOTT, Defendant.

Appeal by Defendant from judgment entered 29 May 2018 by Judge J. Carlton Cole in Pitt County Superior Court. Heard in the Court of Appeals 4 February 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Jason P. Caccamo, for the State.

Paul F. Herzog for Defendant-Appellant.

INMAN, Judge.

Latrial Deontra Scott ("Defendant") appeals his conviction following a jury verdict finding him guilty of intentional child abuse inflicting serious bodily injury. Defendant argues that the trial court erred in (1) allowing admission of his internet searches concerning how to pass polygraph examinations; and (2) failing to consider two mitigating factors during sentencing. After careful review, we hold that Defendant has failed to demonstrate error.

I. FACTUAL AND PROCEDURAL BACKGROUND

The evidence introduced at trial tends to show the following:

Defendant and Jedtejha Arnold ("Arnold") had a healthy baby girl together named Jane[1] on 6 November 2016. Defendant and Arnold were not in a relationship when Jane was born, but Defendant took care of her when Arnold started working again in December. Arnold's mother also helped with Jane. Defendant was living with his mother during this time.

In December, Jane was taken to the emergency room two times for vomiting and exhibiting odd behavior in her sleep.

In early January 2017, when she returned home from her job, Arnold noticed bruises on Jane's body. She asked Defendant about the bruises. Defendant responded: "I didn't do nothing. I wouldn't harm my baby." The next day, Arnold took Jane for a two-month check-up, and the pediatrician said Jane "looked pretty normal."

Arnold took Jane to the emergency room again on 15 January, and to a follow-up visit on 17 January, because she was continuing to vomit. Physicians "reassure[ed]" Arnold that Jane's health otherwise looked normal and asked her to return in one week. Over the next few days, Arnold noticed that Jane "was getting back to being herself."

[1] We use the above pseudonym to preserve the juvenile's anonymity.

On 20 January, Defendant arrived at Arnold's residence around 5:30 pm to watch Jane while Arnold went to work. Arnold fed Jane and put her to sleep before leaving shortly before 7:00 pm. While at work, Arnold text messaged Defendant about discounts on clothes that her employer, retailer Ross clothing, was having that night. She asked Defendant to come to the store with Jane so they could try on the clothes, but Defendant responded that he was not coming because he was sick. Defendant then stopped responding to Arnold's text messages and phone calls for the remainder of her work shift.

When Arnold returned home around 11:10 pm, she discovered Defendant asleep on the floor and Jane positioned on the couch. Defendant woke up and told Arnold that something was wrong with Jane because she was not eating or drinking. Arnold then picked up Jane and saw that she was unresponsive and her eyes were rolling into the back of her head. Jane gave an abnormal cry different than what Arnold recognized and she took Jane to the emergency room. Defendant did not to go to the hospital, telling Arnold he was sick and had work in the morning.

That same night at the hospital, doctors discovered that Jane had skull, rib, and leg fractures, and internal bleeding in the brain. Doctors also saw that Jane had rib fracture calluses that "implie[d] healing and therefore an older or prior injury." Jane was admitted to the intensive care unit, required four brain surgeries, and remained in the hospital for about three months.

When doctors informed Arnold of Jane's injuries in the early morning of 21 January, she called Defendant about ten times, but he never answered. After speaking with child protective services, at 5:34 am Arnold sent Defendant a text message asking if Jane had fallen. Defendant responded five minutes later and said that Jane fell off the bed while he was in the shower. Defendant denied any wrongdoing when Arnold told him Jane had rib fractures. Around noon that same day, Defendant visited Jane at the hospital and stayed for about five minutes.

Following Defendant's arrest on 31 January, Officers seized Defendant's cell phone. Pursuant to a search warrant, Officers searched the phone and discovered that on 22 January, the day after Arnold informed him of Jane's injuries, Defendant searched on the internet about how to "cheat," "pass," and "beat" a polygraph and lie detector test.

On 13 March 2017, Defendant was indicted for intentional child abuse inflicting serious bodily injury.

Defendant's case came on for trial on 21 May 2018. Defendant's trial counsel filed a pre-trial motion in limine arguing, in pertinent part, that the probative value of Defendant's internet searches on polygraph tests was substantially outweighed by the likelihood of undue prejudice and should be excluded pursuant to Rule 403 of the North Carolina Rules of Evidence. Following a hearing on defense counsel's motion, the trial court ruled that the internet search history was admissible. Over defense

counsel's line objection at trial, the State admitted Defendant's internet searches into evidence. Defendant presented no evidence at trial.

On 29 May 2018, the jury found Defendant guilty of intentional child abuse inflicting serious bodily injury. During sentencing, defense counsel requested the trial court to consider two statutory mitigating circumstances, that Defendant had a good reputation in the community and had a positive employment history. The trial court declined to consider the two factors and sentenced Defendant in the presumptive range of 157 to 201 months in prison.

Defendant gave oral notice of appeal.

II. ANALYSIS

A. Internet Search Evidence

Defendant does not argue that his internet searches of polygraph tests were irrelevant to his trial. N.C. Gen. Stat. § 8C-1, Rule 401 (2017) (defining relevant evidence as evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"). Defendant contends that the trial court erroneously admitted his internet searches into evidence because their probative value was substantially outweighed by their unfairly prejudicial nature. We disagree.

Rule 403 prohibits the admission of otherwise relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." N.C. Gen. Stat. § 8C-1, Rule 403 (2017). In other words, Rule 403 seeks to exclude evidence that has an "undue tendency to suggest decision on an improper basis, commonly, though not necessarily, as an emotional one." *State v. DeLeonardo*, 315 N.C. 762, 772, 340 S.E.2d 350, 357 (1986) (quotation marks and citation omitted). We review a trial court's decision to admit evidence under Rule 403's balancing test for abuse of discretion. *State v. Bedford*, 208 N.C. App. 414, 419, 702 S.E.2d 522, 528 (2010) (citation omitted).

Defendant argues that his internet searches were unduly prejudicial because "[e]vidence about polygraph tests and their results are completely inadmissible" in North Carolina. Defendant is correct that our Supreme Court in *State v. Grier* held that "polygraph evidence is no longer admissible in any trial," even if the parties stipulate to its admissibility. 307 N.C. 628, 645, 300 S.E.2d 351, 361 (1983). The Court's "decision was grounded on the sensitive interrelationship between the reliability of the examiner in interpreting the results and the reliability of the [polygraph] machine itself," *State v. Singletary*, 75 N.C. App. 504, 506, 331 S.E.2d 166, 168 (1985), as well as "the possibility that the jury may be unduly persuaded by

the polygraph evidence." *Grier*, 307 N.C. at 643, 300 S.E.2d at 360. But this Court has held that "not every reference to a polygraph test will necessarily result in prejudicial error." *State v. Willis*, 109 N.C. App. 184, 192, 426 S.E.2d 471, 476 (1993) (citations omitted). The Supreme Court has not overruled *Willis*.

Here, the evidence does not concern a polygraph test taken by Defendant or its results, but Defendant's inquiry about how to avoid telling the truth without detection in the event he took a polygraph examination. This evidence is not prohibited by *Grier*.

Defendant's internet searches occurring one day after Arnold informed him of Jane's injuries are probative of Defendant's consciousness of guilt. *See State v. McDougald*, 336 N.C. 451, 459, 444 S.E.2d 211, 215 (1994) (holding the trial court did not abuse its discretion under Rule 403 because "evidence of the defendant's escape [from prison] was highly probative in that it tended to show the defendant's consciousness of his guilt"). Rather, Defendant's internet searches on how to "beat," "cheat," and "pass" a polygraph test "could only be viewed as having a *due* tendency to suggest a decision on a *proper* basis." *State v. Jackson*, 235 N.C. App. 384, 396, 761 S.E.2d 724, 733 (2014) (quotation marks and citations omitted) (emphasis in original). The trial court therefore did not abuse its discretion in admitting the evidence of Defendant's internet search history on polygraph tests.

B. Mitigating Factors at Sentencing

Defendant next argues that the trial court erroneously sentenced him without first considering two mitigating factors. Defendant has no right to appellate review of this issue.

Defendants sentenced in the presumptive range have no direct appeal as a matter of right. *State v. Daniels*, 203 N.C. App. 350, 355, 691 S.E.2d 78, 81 (2010) (citing N.C. Gen. Stat. § 15A-1441(a1) (2009)). Because Defendant was sentenced in the presumptive range for his conviction of intentional child abuse inflicting serious bodily injury and has not petitioned for review by writ of certiorari, we need not address this issue. *State v. McDonald*, 163 N.C. App. 458, 468, 593 S.E.2d 793, 799 (2004) (citing N.C. Gen. Stat. § 15A-1441(a1)).

III. CONCLUSION

For the foregoing reasons, the trial court did not err in admitting Defendant's internet searches on polygraph tests and we hold that Defendant has no right to challenge his sentence in the presumptive range.

NO ERROR.

Judges BRYANT and DILLON concur.

Report per Rule 30(e).