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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-891

No. COA22-225

Filed 20 December 2022

Richmond County, No. 15 CRS 52250

STATE OF NORTH CAROLINA

v.

WHITNEY KAEANNA STEEN

Appeal by defendant from judgment entered 20 July 2021 by Judge Stephan R. Futrell in Richmond County Superior Court. Heard in the Court of Appeals 30 November 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Michael T. Henry, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for defendant-appellant.

ARROWOOD, Judge.

¶ 1 Whitney Kaeanna Steen ("defendant") appeals from judgment entered upon her conviction for felony child abuse inflicting serious bodily injury. Defendant contends the trial court erred in failing to instruct the jury on the lesser-included offense of felony child abuse inflicting serious physical injury. For the following reasons, we hold the trial court did not err.

I. Background

¶ 2 On 30 August 2015, around 6:45 p.m., EMS and the Richmond County Sheriff's Office were dispatched to 293 Rosalyn Road for a "pediatric patient that had traumatic injuries[.]" Upon arrival, EMS found 21-month-old K.C.S.[1] unresponsive and a helicopter was called to transport the child. While K.C.S. was still on scene being treated by EMS, Lieutenant Joshua Chermak ("Lt. Chermak") with the Richmond County Sheriff's Office arrived. When he checked on K.C.S., who was being treated by EMS in the back of the ambulance, he observed the child had "bruising and swelling [to] the face and [to] the abdomen area" and informed his superior that a detective was needed on scene "as soon as possible[.]"

¶ 3 Shortly thereafter, Agent James Davis ("Agent Davis), who was with the Richmond County Sheriff's Office at the time, arrived and took pictures of the child to document the injuries. Agent Davis "observed a large amount of swelling on the left side of [K.C.S.'s] face and a large amount of swelling and bruising to [his] left rib cage area." Agent Davis also noticed and documented that K.C.S. had "a large amount of bruising around the left forehead region where the hair line is[,]" "some bruising . . . around the eyes[,] and a small amount of dry blood around [his] nose."

¶ 4 Defendant told law enforcement K.C.S. "was running around and ran into a

[1] Initials are used throughout to protect the identity of the minor child.

dresser" knocking himself unconscious. Defendant further stated that in an effort to wake K.C.S. up, she "continu[ously] shook" him. Both law enforcement officers and the EMS supervisor who treated K.C.S. suspected defendant was not telling the truth based on K.C.S.'s condition and his injuries being "inconsistent with a typical fall that a child would be able to do by themselves."

¶ 5 After K.C.S. was transported by helicopter to UNC Hospital, Detective Brandon Fuller ("Detective Fuller") arrived to process the crime scene. Significantly, Detective Fuller documented the dresser the child allegedly ran into. On top of the dresser were numerous items that were not knocked over or displaced, like one would expect if someone had run into the dresser. Furthermore, a red substance that appeared to be blood on the dresser was tested with luminol spray and did not react the way the chemical would for blood. This led detectives to believe the substance on the dresser was not actually blood.

¶ 6 While on scene investigating, detectives spoke with defendant's neighbor, who stated that he heard several loud noises coming from the shared wall between the duplexes. He described the noises as "very, very loud" and "hard noises" which caused vibrations on the floor so significant they "shook [his] couch." The neighbor told detectives the noises "sounded almost as if [someone] w[as] throwing a body against the wall."

¶ 7 While the Richmond County Sheriff's Office was investigating at the scene,

K.C.S. was treated in the pediatric ICU. An evaluation found K.C.S. had a subdural hemorrhage, retinal hemorrhages in the back of his eyes, a skull fracture, a liver laceration, pulmonary contusions, or bruises on his lungs, and fourteen rib fractures in various stages of healing. Due to the nature of these injuries, doctors were concerned K.C.S. had been abused and contacted the Beacon Child Protection Team, a specialized unit called to consult when there are concerns about child abuse or neglect.

¶ 8 K.C.S. was evaluated by Nurse Practitioner Holly Gross ("Ms. Gross"), from the Beacon team. Ms. Gross was particularly concerned about the number and placement of bruises on K.C.S. and found his combination of injuries to be "highly correlated with abus[ive] head trauma[,]" and his liver laceration to be consistent with a "compressive force to the abdomen[.]" Furthermore, she concluded the rib fractures at various stages of healing indicated that there was at least one prior incident of abuse. Although K.C.S. had a pre-existing genetic condition, doctors concluded that this did not contribute to any of his injuries. K.C.S. remained hospitalized for eleven days and for his safety he was not allowed visitors.

¶ 9 As part of their investigation, the sheriff's office obtained a warrant for the contents of defendant's cell phone. The information from the cell phone revealed disturbing messages between defendant and K.C.S.'s father, Nikkita Dominique Core ("Mr. Core") going back to January 2015. Many of the deleted messages detailed

physical abuse of K.C.S. at the hands of defendant and her resentment of K.C.S.'s special needs.

¶ 10 For example, defendant texted Mr. Core that because he chose another woman, "[K.C.S.] gotta pay for it[,]" and stated she was "tired of cutting [her] face and hurting the kids when [she's] mad at [Mr. Core]." Defendant texted Mr. Core on multiple occasions that K.C.S. was bruised, she was going to continue to hurt K.C.S., and on one occasion told Mr. Core that if he did not do anything, he would be "burying [his] son." In another message, defendant stated that if Mr. Core told people she "beat on [K.C.S.], that's exactly what [she was] gonna do"

¶ 11 The contents of defendant's cell phone also demonstrated her frustration with K.C.S.'s special needs. Defendant messaged Mr. Core that she "want[ed] her life back," was "miserable" because she was "stuck with a special needs child 24/7," and she was "tired" of her life revolving around K.C.S. Furthermore, defendant stated that "nobody else want[ed] [K.C.S.]" and "if [she] would have known [K.C.S.] was going to come out [with special needs], [she] would have definitely t[aken] [Mr. Core] up on" his offer to pay for her abortion.

¶ 12 Messages from Mr. Core to defendant showed he was aware of the abuse. In fact, Mr. Core messaged defendant on more than one occasion asking her to stop hurting K.C.S. and asking how he could prevent defendant from hurting his son.

Additionally, Mr. Core messaged defendant specifically acknowledging she "beat him bad" as if he were "a grown man[,]" and "literal[ly] abuse[d] him[.]"

¶ 13 The messages between defendant and Mr. Core continued until 31 August 2015, the day after K.C.S. had to be transported to the hospital by helicopter. On that day, Mr. Core messaged defendant telling her to "delete all" the photographs defendant used to send him of K.C.S. "with marks" on him. Mr. Core also told defendant to delete their entire conversations and again stated she should get rid of "all those f***** up pic[s] [o]f [K.C.S.] in [her] gallery[.]" When defendant did not respond, Mr. Core asked, "did you delete all that s***[?]" Defendant replied, "yeah, but I think they [sic] going to take my baby from me."

¶ 14 On 14 September 2015, a Richmond County Grand Jury indicted defendant for felony child abuse and attempted first-degree murder. The matter came on for trial on 12 July 2021 in Richmond County Superior Court, Judge Futrell presiding. After jury selection, but prior to the beginning of the State's case, a juror approached the bailiff and confessed to knowing defendant and one of the witnesses, defendant's sister Sherelle Wood ("Ms. Wood"), and stated that they both asked her not to disclose this information during the selection process.

¶ 15 The juror testified, in exchange for immunity, that defendant and Ms. Wood FaceTimed her on 12 July 2021, the first day she reported for jury duty, and told her

to "act like [she] [did not] know them[,]" so she could be on the jury in hopes she would vote not guilty. In light of this misconduct, the trial court revoked defendant's bond and remanded her to custody for the duration of the trial and issued bench warrants for defendant and Ms. Wood. Based on this information, defense counsel moved for a mistrial, arguing that it was his intention for defendant to take the stand and the fact that she could be impeached with this incident was "prejudicial[.]" This juror was discharged, defendant's motion for mistrial was denied, and the trial continued.

¶ 16 As part of the State's case-in-chief, two experts testified as to the gravity of K.C.S.'s condition. Ms. Gross, an expert in "pediatrics, child maltreatment, and child medical evaluations[,]" testified as to K.C.S.'s condition while he was hospitalized. Specifically, Ms. Gross testified that K.C.S. was physically abused and the injuries he sustained prior to his hospitalization created a substantial risk of death, caused a permanent or protracted condition that causes extreme pain, and resulted in a prolonged hospitalization of eleven days. Additionally, Ms. Gross stated that despite the mother's statement that she "shook" K.C.S. when he was unresponsive, violent shaking could not explain all of K.C.S.'s injuries.

¶ 17 Furthermore, Ms. Gross stated that defendant's story that K.C.S. was injured when he was "running" and ran into a dresser was unlikely, given that K.C.S. was evaluated by his primary care physician mere days before the incident and the physician noted K.C.S. was developmentally delayed and not walking yet. Lastly,

Ms. Gross stated that K.C.S.'s subdural hematoma was "highly correlated" with "significant trauma[,]" such as being involved in a "high-speed, head-on collision[,]" or being "ejected from a car." However, Ms. Gross testified that this type of injury is not consistent with a minor traffic incident.

¶ 18 Dr. Molly Berkoff ("Dr. Berkoff"), an expert in pediatrics and child abuse pediatrics, also testified as to K.C.S.'s condition. Dr. Berkoff evaluated K.C.S. in an outpatient clinic on 25 September 2015. Dr. Berkoff also concluded K.C.S. had been "maltreated on at least more than one occasion[,]" and that shaking could not have explained all of his injuries. Additionally, Dr. Berkoff agreed that K.C.S.'s injuries created a substantial risk of death and a permanent or protracted condition that caused extreme pain and that required prolonged hospitalization. Moreover, Dr. Berkoff stated that because K.C.S. was delayed in walking, defendant's statement that K.C.S. injured himself by running into a dresser "was not a plausible explanation" for his injuries. However, Dr. Berkoff did testify that the injuries could have been caused by K.C.S. being thrown against a wall.

¶ 19 At the close of the State's evidence, defense counsel made a motion to dismiss arguing the State had not proven all the elements of the crime charged and renewed his earlier motion for a mistrial. Both motions were denied, and defendant began presenting her evidence.

¶ 20 Several of defendant's family members spoke in her defense, including her

older brother, Christopher Steen ("Mr. Steen"). Mr. Steen testified that on 30 August 2015, defendant had been in a minor car accident where she slid off the road into a ditch with K.C.S. in the back seat, secured in his car seat. Despite Mr. Steen's testimony that there were no injuries, and no damage to the vehicle that showed the vehicle had been in any collision, he opined that perhaps K.C.S.'s injuries came from the car accident. Furthermore, defendant's younger brother, Terrance Stefan Bass ("Mr. Bass"), testified that "everyone" was shaking K.C.S. to wake him up while they waited for EMS to arrive and denied stating to defendant, in law enforcement's presence, that she "killed [K.C.S.]" However, defendant presented no evidence to contradict the State's experts regarding the severity of K.C.S.'s injuries.

¶ 21 During the defense's case, the State expressed concern that family members were testifying about "shaking" K.C.S., and how these statements could constitute admissions to negligent child abuse under state law. Defense counsel construed this as an attempt to intimidate his witnesses, stating that it sounded like the State was warning the witnesses that they "better watch what [they] say on the stand." After the defense rested, they made another motion to dismiss, and a motion for mistrial based on the State's statement that the witnesses who "shook [K.C.S.] could possibly be charged with a felony." The trial court denied both motions and found "that the State's inquiry was not intimidating or meant to be intimidating of the witnesses."

¶ 22 Thereafter, the State presented rebuttal evidence regarding the minor car

accident Mr. Steen testified to. Detective Mitchell Watson ("Detective Watson") testified that when law enforcement learned of the incident with defendant's vehicle, they called a car accident reconstructor to "rule out any accidental issues that may have caused [K.C.S.'s] injuries." Detective Watson testified that there was no report made about the accident, no injuries were reported, and no reason to believe, based on the condition of the vehicle, that it was involved in any significant impact. At the close of all evidence, defense counsel renewed his motion for mistrial and motion to dismiss. Both motions were denied.

¶ 23 At the charge conference, defense counsel requested the jury be instructed on the accident defense, identification of defendant as the perpetrator, and the lesser-included offense of felony child abuse inflicting serious physical injury. The State objected to the lesser-included instruction, arguing defendant failed to introduce any evidence which contradicted the State's experts as to the extent of K.C.S.'s injuries and therefore defendant was not entitled to such instruction. The court declined to provide defendant's requested lesser-included instructions.

¶ 24 On 20 July 2021, the jury returned a verdict of guilty of felony child abuse inflicting serious bodily injury and defendant was sentenced to 150 to 192 months. On 21 July 2021, defendant filed a notice of appeal.

II. Discussion

¶ 25 On appeal, defendant's sole contention is that the trial court erred by failing to

instruct the jury on the lesser-included offense of felony child abuse inflicting serious physical injury. We disagree.

A. Standard of Review

¶ 26 Since defendant specifically requested the instruction for felony child abuse inflicting serious physical injury during the charge conference, this challenge was properly reserved for appellate review. *See State v. Hooper*, 2022-NCSC-114, ¶ 26. "Assignments of error challenging the trial court's decisions regarding jury instructions are reviewed *de novo*, by this Court." *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009) (citations omitted).

B. Lesser-Included Instruction

¶ 27 "An instruction on a lesser-included offense must be given only if the evidence would permit the jury rationally to find defendant guilty of the lesser offense and to acquit him of the greater." *State v. Millsaps*, 356 N.C. 556, 561, 572 S.E.2d 767, 771 (2002) (citation omitted).

> [W]hen the State's evidence is positive as to every element of the crime charged and there is *no conflicting evidence relating to any element of the crime charged*, the trial court is *not required to submit and instruct the jury on any lesser included offense*. The determining factor is the presence of evidence to support a conviction of the lesser included offense.

State v. Rhinehart, 322 N.C. 53, 59-60, 366 S.E.2d 429, 432-33 (1988) (emphasis added) (citations omitted). Accordingly, there must be some evidence "presented at

trial from which the jury could reasonably have found that defendant committed merely the lesser included offense . . . ." *Id.* at 60, 366 S.E.2d at 433.

¶ 28 In this case, defendant was charged with felony child abuse inflicting serious bodily injury under N.C. Gen. Stat. § 14-318.4(a3). "In order to prove felonious child abuse inflicting serious bodily injury, the State must prove that: '(1) the defendant was the parent of the child; (2) the child had not reached [sixteen years of age]; and (3) the defendant intentionally and without justification or excuse inflicted serious bodily injury.' " *State v. Bohannon*, 247 N.C. App. 756, 760, 786 S.E.2d 781, 786 (alterations in original) (citations omitted), *disc. review denied*, 369 N.C. 72, 793 S.E.2d 230 (2016). A "serious bodily injury" is defined as a "[b]odily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization." N.C. Gen. Stat. § 14-318.4(d)(1) (2021).

¶ 29 Here, the State presented evidence that met every required element of N.C. Gen. Stat. § 14-318.4(a3), (d)(1). To prove bodily injury, the only element at issue, the State had two experts who testified that K.C.S.'s injuries created a substantial risk of death, a permanent or protracted condition that caused extreme pain, and required prolonged hospitalization. The defendant did not present any evidence or experts to contradict the severity of K.C.S.'s injuries nor did she present any evidence

that these injuries did not meet the statutory definition of "serious bodily injury."

¶ 30 Therefore, the defendant failed to present any evidence "from which the jury could reasonably have found that defendant committed merely the lesser included offense . . . ." *Rhinehart*, 322 N.C. at 60, 366 S.E.2d at 433. Accordingly, we hold that the trial court was not required to instruct the jury on any lesser-included offense and did not err in its instructions to the jury.

III. Conclusion

¶ 31 For the foregoing reasons, we hold the trial court did not err.

NO ERROR.

Judges COLLINS and JACKSON concur.

Report per Rule 30(e).