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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1256

Filed: 2 June 2020

Buncombe County, No. 17 CRS 333

STATE OF NORTH CAROLINA

v.

MILTON LEROY BYRD

Appeal by defendant from judgment entered 4 June 2018 by Judge Gary M. Gavenus in Buncombe County Superior Court. Heard in the Court of Appeals 7 January 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General James Bernier, Jr., for the State.

Anne Bleyman for defendant-appellant.

BRYANT, Judge.

Where the record provides substantial evidence that defendant committed the offense of felonious common law obstruction of justice with deceit and intent to defraud by appearing before a trial court and falsely representing to the court that he was a physician and falsely representing himself as holding a medical doctorate (M.D.) and a doctorate of philosophy (Ph.D.), the trial court properly denied

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defendant's motion to dismiss the charge of felonious common law obstruction of justice. Accordingly, we hold the trial court committed no error.

On 10 September 2017, a Buncombe County grand jury indicted defendant Milton Leroy Byrd on the charge of felony common law obstruction of justice. The matter came on for trial during the 29 May 2018 session of Buncombe County Superior Court, the Honorable Gary M. Gavenus, Judge presiding.

The evidence presented at trial tended to show that defendant had testified as a witness in a trial court hearing before the Buncombe County Family Court in 2016 in the case of *Arias v. Piland*. During the 2016 proceeding, which was a contempt hearing on the violation of a custody order, defendant was called to testify as an expert witness on the therapeutic medical use of cannabis. In support of his credentials, defendant provided his curriculum vitae (hereinafter "CV"), which reflected that he had attended medical school at the Pritzker School of Medicine at the University of Chicago, was a specialist in respiratory care, and was a medical doctor. Defendant also provided a letter detailing his qualifications.

I am Dr. Milton L. Byrd, with degrees and credentials, in medicine, education, and religion. I hold an MD/PhD education in Respiratory Therapy, From [sic] the University of Chicago 1982. I am a class "B" physician as designated in 1982 by the American Medical Association (AMA); as well as, hold a medical title by the AMA as a Perinatal Pediatric Specialist in Respiratory care. I hold lifetime medical credentials from the National Board of Respiratory Care with no expiration, due to my MD educational background with the AMA.

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Defendant endorsed his letter as follows: “Dr. Milton L. Byrd, MD/PhD, R.R.T., R.R.T.-N.P.S., R.P.F.T., D.D., D.M. O.M., Thanatologist, B.S., H.Ed/A, P.Ed/a.” The trial court allowed defendant to testify as an expert in the field of therapeutic medicine. In a 2017 criminal proceeding held in Buncombe County Superior Court—State of North Carolina versus Monroe Gordon Piland—which involved the father who had been the subject of the contempt proceeding in Family Court, the father gave notice of intent to call defendant as a medical expert. At this point, a prosecutor began investigating defendant’s credentials, which led to the charges in the instant case.

During defendant’s trial, the State called Dana Levinson, Assistant Dean of the Pritzker School of Medicine at the University of Chicago. The medical school has never offered a respiratory therapy program for which a participant could obtain a doctorate. Moreover, with regard to defendant, neither the Pritzker School of Medicine Registrar nor the University of Chicago main campus Registrar had any record of defendant’s enrollment or graduation.

The Dean did acknowledge that in the 1980s, the University of Chicago had offered a six-week course in respiratory therapy. The University of Chicago Hospital and Clinics, an educational affiliate teaching hospital located on the campus of the University of Chicago, but with a separate administrative structure and no degree conferring authority, issued certificates in accordance with the program. The Dean

also testified that she considered respiratory therapy an “allied health program.” Those programs were conducted by healthcare professionals, such as nurses, speech-language pathologists, occupational therapists, etc. who were not doctors but were engaged in the healthcare of patients. The Pritzker School of Medicine did not offer degrees in allied health programs. Moreover, the Dean testified that she had never heard of an M.D./Ph.D. in respiratory therapy.

In regard to his educational background, defendant testified that the University of Tampa had awarded him a Bachelor of Science degree in 1975 for a double major in health education and administration, and physical education and administration with a focus in training. Defendant further testified: that on 30 June 1981, the Sarasota Vocational Technical Center, in Sarasota Florida, certified that he had completed 1,320 hours in the respiratory therapy technician program in the Health Occupations Division; and, that on 5 February 1982, the University of Chicago Hospitals and Clinics, “according to the agreement of accreditation awarded to this program by the American Medical Association, the Educational Program of Respiratory Therapy,” certified that defendant was recognized “as a graduate respiratory therapist.”

On cross-examination, defendant was asked to read from the transcript of a 10 April 2017 hearing in State v. Piland.¹

Q. . . . Can you go halfway down the page and where it says “Did you get a degree from the University of Chicago in 1982?” Can you tell the Court here what your answer was that day?

A. “Yes, sir.” Answer: “Yes, sir.”

Q. And just below that where the question is “Did you complete medical school at the University of Chicago?” Can you tell this jury what you said in court that day?

A. “Yes, sir.”

Q. . . . [W]here it says “Did you sit through three years of medical school at the University of Chicago and receive an MD degree like you said here in your resume, did you do that?” Will you please tell the jury what you said that day in court?

A. I said “Technically, yes”.

At the close of all the evidence and following instructions from the trial court, the jury returned a guilty verdict against defendant on the charge of felonious common law obstruction of justice. The trial court entered judgment in accordance with the jury verdict and sentenced defendant to an active term of six-to-seventeen months. The court suspended the active term and placed defendant on supervised probation for thirty-six months. Defendant appeals.

¹ On 10 April 2017, defendant was called as a witness on behalf of Piland during a post-conviction bond reduction hearing. Defendant was not proffered as an expert, but testified before the hearing court as to his educational background and credentials.

On appeal, defendant argues that his conviction for felonious obstruction of justice must be vacated because the evidence of secrecy, malice, deceit, intent to defraud, or intentionally making false representations was insufficient. Defendant argues the trial court erred by failing to grant his motion to dismiss the charge. We disagree.

In ruling on a motion to dismiss, the trial court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator. Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion.

State v. Winkler, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015) (citation omitted). “If, viewed in the light most favorable to the State, the evidence is such that a jury could reasonably infer that defendant is guilty, the motion must be denied.” *State v. Woodard*, 210 N.C. App. 725, 730, 709 S.E.2d 430, 434 (2011) (citation omitted). “The denial of a motion to dismiss for insufficient evidence is a question of law which we review *de novo*.” *State v. Rouse*, 198 N.C. App. 378, 381–82, 679 S.E.2d 520, 523 (2009) (citations omitted).

“Common law obstruction of justice, the offense with which [the] defendant was charged, is ordinarily a misdemeanor.” *State v. Blount*, 209 N.C. App. 340, 343, 703 S.E.2d 921, 924 (2011) (citation omitted). “[I]n order to convict [a] Defendant of the common law offense of obstruction of justice, the State [is] required to

demonstrate that Defendant ha[s] committed an act that prevented, obstructed, impeded or hindered public or legal justice.” *State v. Cousin*, 233 N.C. App. 523, 530, 757 S.E.2d 332, 338 (2014) (alterations in original). “While it is true that at common law, obstruction of justice was ordinarily treated as a misdemeanor offense, this Court has repeatedly recognized felony obstruction of justice as a crime under N.C. Gen. Stat. § 14-3(b).” *State v. Mitchell*, 259 N.C. App. 866, 878, 817 S.E.2d 455, 462 (2018) (citations omitted). Pursuant to our General Statutes, section 14-3 (“Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with ethnic animosity”), “[i]f a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a Class H felony.” N.C. Gen. Stat. § 14-3(b) (2019).

Defendant was indicted on the charge of felonious common law obstruction of justice.

The jurors for the State upon their oath present that on about the date(s) of offense shown and in the county named above the defendant named . . . unlawfully, willfully and feloniously did

Obstruct justice and attempt to obstruct justice by falsely representing himself to be a physician, and by falsely representing himself to hold a medical doctorate (MD) and a doctorate of philosophy (PhD). The false representations were for the purpose of fraudulently qualifying the

defendant to testify before the court as an expert witness. The false representations were made to the Buncombe County District Attorney, [to two other attorneys], and to judges receiving testimony from the defendant in civil and criminal matters involving litigant Monroe Gordon Piland. The offense was done infamously, in secrecy, and with malice; and was done with deceit and the intent to defraud.

As previously noted, the evidence at trial showed that defendant had been called to testify before the Buncombe County Family Court in 2016 as a witness in a contempt hearing in the civil matter of *Arias v. Piland*. During the contempt hearing, defendant proffered a letter highlighting his qualifications and a CV representing himself as having been conferred an M.D./Ph.D. by the Pritzker School of Medicine at the University of Chicago, with a specialty in respiratory therapy. Defendant was sworn as a witness before the court and answered questions from both Piland and Arias. As a result of defendant's representations, the trial court allowed defendant to testify as an expert in the field of therapeutic medicine.

At defendant's trial for felony obstruction of justice, Arias's attorney gave the following testimony:

Q. So it was your understanding that [defendant] was testifying to support Mr. Piland's actions?

A. Dr. Piland's entire defense of his contempt was that there was no harm done to [a] minor child, that in fact [cannabis use] was a benefit to the minor child, the use. Dr. Piland, to his credit, never denied doing any of these things. And I'm sorry, and [defendant] presumably was brought in by Dr. Piland to be, he wanted him qualified as

an expert for the purposes, I guess, of the benefits of cannabis use.

Q. And the use of cannabis was essentially a major, a part of this hearing, was it not?

A. Yes. It was the linchpin to everything, the reason the withholding of the visitation by Ms. Arias, her reasoning for it, and as well as the reason for our motion for contempt.

Before the trial court and now on appeal, defendant briefly stated that he used “Dr.’ as an honorific because he was a doctor of divinity and a doctor of metaphysics.” But when questioned about his use of “Dr.” at his trial, defendant responded as follows:

Q. Do you have a medical doctorate from the Pritzker School of Medicine, yes or no?

A. No.

Q. Then why did you say you did?

A. . . . I’ve always tried to separate that because my medical practice was in the field of respiratory care, which I have the highest standards for and have achieved that and done that for decades up to the point I retired in good standing. My education was from the University of Chicago and I did have a two-year window where I could have sat for my medical doctorate board exams to be an MD, but I chose not to.

Regardless, the evidence presented at trial showed that defendant emphasized his 1982 certification for respiratory therapy from the University of Chicago Hospitals and Clinics on medical employment applications and records but did not

indicate that he had been conferred an M.D., Ph.D., or other commensurate level of education. When examined as to why he did not represent having obtained an education commensurate with an M.D. or Ph.D. on employment applications and records, defendant generally provided the following:

A. . . . I was told not to use [the M.D./Ph.D.] description because it wasn't the black-and-white thing like you talk about, even though it was my education.

Q. So you're saying your medical degree is not black and white?

A. I'm saying my medical degree is real, but trying to define it as an MD-PhD has been difficult because the legal standards at that time did not exist when I graduated.

. . . .

Q. What changed . . . ? [Why did you represent before a court that you had been conferred an M.D./Ph.D.?)

A. I was retired. I was not practicing medicine anymore. I could discuss my history. And you read in the very front of the top of the letter I described it as my education. Now, I put MD-PhD next to my name, because in my mind I have earned that level of education and I have stood by that all along, yet always explaining and separating between the fact that I didn't practice as an MD. I have always referred to the fact it's my education that got me to the level of expertise in the field of respiratory care. And there's no one that's achieved a higher level of education for the field of respiratory care than what I've done, as well as all the credentials I have, which are lifetime credentials because of that education.

. . . .

Q. You don't have [a] medical doctor[sic]; do you?

A. I have that education and I'm not practicing, so I think in my mind, you criticize me if you want and call me wrong if you want, but I have that education and I do stand by that fact I have that education. And there is nothing legally saying yet as of this date decades later for my profession to have quote, whether you call it a medical PhD or an MD-PhD or any other doctor prescription for the profession as of yet.

Notwithstanding that defendant had not represented himself as holding an M.D. or Ph.D. on employment applications or employment records, before our courts, defendant stated that he held an M.D. and Ph.D. from the Pritzker School of Medicine at the University of Chicago. Defendant attested to this status in the letter and CV he submitted to the Buncombe County Family Court during the 2016 civil action and testified to the same before the Buncombe County Superior Court during the 2017 criminal action, both involving Monroe Gordon Piland.

Viewing the evidence in the light most favorable to the State as to the charge of felonious obstruction of justice, the record provides substantial evidence that defendant committed the offense of felonious common law obstruction of justice with deceit and intent to defraud by falsely representing himself before a court as a physician and falsely representing himself as holding a medical doctorate (M.D.) and a doctorate of philosophy (Ph.D.), while those degrees and designations had not been conferred upon him. *See* N.C.G.S. § 14-3(b); *see also Cousin*, 233 N.C. App. at 530, 757 S.E.2d at 338. Thus, defendant's guilt on the charge of felonious common law

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obstruction of justice was properly for the jury. *See Winkler*, 368 N.C. at 574, 780 S.E.2d at 826.

Accordingly, we hold the trial court did not err by denying defendant's motion to dismiss the charge of felonious common law obstruction of justice.

NO ERROR.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).