IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-222

No. COA19-953

Filed 18 May 2021

Wake County, No. 16 CRS 214241

STATE OF NORTH CAROLINA

v.

WILLIAM LEE BELL

Appeal by defendant from judgment entered 20 September 2018 by Judge Thomas H. Lock in Superior Court, Wake County. Heard in the Court of Appeals 9 September 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Amy Kunstling Irene, for the State.

Paul F. Herzog for defendant-appellant.

STROUD, Chief Judge.

¶ 1 Defendant appeals from his conviction of involuntary manslaughter for the death of two-year-old Chase Eaddy. Defendant argues the trial court plainly erred by instructing the jury on involuntary manslaughter and allowing Defendant to be questioned on cross-examination about the search history on his phone, which included searches for pornography. We conclude there was no error by the trial court

where Defendant invited any potential error regarding the instruction on involuntary manslaughter and opened the door to the testimony regarding his search history on his phone.

I. Background

¶ 2 The trial of this case took over three weeks, and this factual summary addresses only the facts pertinent to the issues on appeal. Defendant and Ebony Eaddy worked together at Home Depot. Ebony and Defendant had an intimate relationship starting in late 2015 or early 2016. Ebony and her two-year-old son, Chase, would regularly stay overnight at Defendant's house. Defendant lived with his parents and had a three-year-old son, Bill.[1] Defendant often watched Chase for Ebony while watching Bill and his two nieces. Bill loved professional wrestling. Defendant and Bill would frequently mimic wrestling moves, and Bill had many wrestling action figures.

¶ 3 In October of 2015, while Defendant was watching Chase for Ebony, he sent Ebony a picture of a bruise on Chase's face. Defendant told her the bruise happened while Bill and Chase were playing, and Chase hit his face on a table. On another occasion, Defendant watched Chase overnight for Ebony, and when Ebony picked him up the next morning, he had a mark on his face that looked like a burn. Defendant

[1] A pseudonym is used to protect the identity of the minor child.

told her he did not notice it or know how it happened.

¶ 4 On Thursday, 12 May 2016, Ebony and Chase stayed overnight with Defendant. Around 10:00 PM Ebony put Chase down for bed and went to take a shower, and Bill was using a tablet in the living room. When Ebony returned to the bedroom after her shower, Chase was turned differently than she had left him. Chase's eyes were puffy and he had two cuts on the side of his face. Ebony asked Defendant if Chase had fallen out of the bed, and Defendant told her Chase had got up and he put him back to bed. Ebony asked Bill if he had hit Chase, and Bill told her no. The next morning when Ebony took Chase to daycare, she told staff at the daycare he had gotten accidentally kicked in the face on a playground. The daycare contacted child protective services, and child protective services met with Ebony that same day. Ebony told the social worker that Chase had gotten hurt while swinging on a playground. The social worker told Ebony to keep a closer eye on Chase and that she would have another meeting with a different social worker.

¶ 5 On 18 May 2016, Ebony and Chase stayed the night with Defendant. On the morning of 19 May 2016, Ebony overslept for work and asked Defendant to watch Chase. Defendant agreed and Ebony left him money to purchase diapers. Defendant watched Chase while Defendant's father went to the store to get diapers. He tried to give Chase a bath, but he refused to stay in the tub. Defendant then gave Bill a bath while Chase watched TV in Defendant's bedroom. Bill left to get toys from

Defendant's bedroom to play with while he took a bath. After Bill finished his bath, Defendant noticed that Chase's mouth was open and his eyes were rolled back. Defendant's parents called 911 while Defendant tried to contact Ebony. Ebony arrived and rode in the front of the ambulance. Shortly after arriving at the hospital, Ebony was told that Chase had passed away.

¶ 6 Defendant and his parents were interviewed by detectives on 19 May 2016. Child Protective Services also talked to Defendant, his parents, and Ebony on the same day. Defendant denied harming Chase and reported that he did not know how Chase had gotten hurt, but he told the detectives:

> To me, it seemed like something jumped on him. I don't know. Say, like somebody take the breath from out your stomach. And you just, like -- like that. At first, that's what I thought it could have been. I know my son's into wrestling, but I didn't think he would do that to him . . . .

¶ 7 Defendant did not recall hearing Chase crying out and told the detectives he had tried to figure out what "could have got Chase hurt." He did not want to believe Bill could have hurt Chase, but he told the detectives he knew how wild his son could be and that "he really -- he will jump on you at any moment in time without you even knowing. So I was just thinking of everything, did [Bill] jump on [Chase] to get on him, in that face [sic] or something like that."

¶ 8 The State presented evidence regarding the immediate cause of Chase's death. Chase had approximately 200 milliliters of blood in his abdominal cavity, and he had

internal abdominal injuries. Specifically, Chase's omentum had tears in several areas, his mesentery was injured, there was a tear in his liver, and there was a tear in his duodenum. The doctor who performed Chase's autopsy determined Chase died because of "fairly significant abdominal injuries" that were not consistent with "a simple accident of a fall from standing height or even from a bed" and was the result of "an inflicted injury and not a simple accident."

¶ 9 Investigators who visited Defendant's home after Chase's death noted the "chaotic and noisy" atmosphere in the home. They also noted that Bill seemed to have "the run of the house" and was eager to demonstrate his "wrestling moves." For example, he got up on the arm of a sofa and jumped off, landing on his two-foot tall Spider-Man doll. He repeatedly jumped off people and furniture and often mimicked professional wrestling moves he had seen on TV.

¶ 10 Defendant was indicted on a single charge of first degree murder. Defendant was tried at the 27 August 2018 Criminal Session of the Superior Court, Wake County, before the Honorable Thomas H. Lock. The trial court submitted two issues to the jury: first degree murder, based upon felony murder, with the underlying felony as felonious child abuse; and involuntary manslaughter, based on two theories: criminal negligence, or that Defendant acted unlawfully by misdemeanor child abuse. The jury found Defendant not guilty of murder but guilty of involuntary manslaughter. Defendant was sentenced to 16 to 29 months imprisonment and given

credit for time already served in confinement. Defendant timely appealed.

II. Involuntary Manslaughter

¶ 11 Defendant argues "the trial court committed plain error when [it] instructed the jury on involuntary manslaughter." However, we conclude any potential error was invited where Defendant's counsel indicated at trial that involuntary manslaughter should be submitted to the jury:

> THE COURT: All right. What says the defense as to the possible verdicts for the jury, understanding, of course, you don't think anything should be submitted and certainly don't think first-degree should be submitted, but going past that what do you contend to be the possible verdicts?
>
> MR. ARBOUR: Respectfully, I think -- let me just say with the murder two -- I don't think there's anything for murder one, and I think I just laid my arguments out for that. If you operate under the assumption that if it's not murder one and it's some type of murder, then it takes you down to murder two. But I try to fit it and I don't see how it fits into any of the theories. *I think respectfully the only charge that should be submitted to the jury is involuntary manslaughter* for guilt or innocence, and that's -- basically I think it would be based upon some neglect theory of his failure to properly supervise the children.

(Emphasis added.)

¶ 12 This argument is overruled. *See State v. Barber*, 147 N.C. App. 69, 74, 554 S.E.2d 413, 416 (2001) ("[A] defendant who invites error has waived his right to all appellate review concerning the invited error, including plain error review." (citing *State v. Roseboro*, 344 N.C. 364, 373, 474 S.E.2d 314, 318 (1996))).

III. Evidence

¶ 13 Defendant argues "the trial court committed plain error by allowing the prosecutor to cross-examine [Defendant] about the pornographic searches on his cell phone, and his preferences in pornographic films."

A. Standard of Review

¶ 14 Because Defendant's counsel did not object to this evidence, our standard of review is plain error. *See* N.C. R. App. P. 10(a)(4). "For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). "To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error 'had a probable impact on the jury's finding that the defendant was guilty.'" *Id.*

B. Analysis

¶ 15 Defendant argues the evidence related to his phone search history was inadmissible under North Carolina Rules of Evidence 404(b) and 608(b), and the evidence was prejudicial. Defendant contends the evidence regarding his phone searched was intended to attack his credibility and was not admissible under Rule 608(b). He also contends the evidence was not admissible under Rule 404(b) because it was "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith." N.C.

Gen. Stat. § 8C-1, Rule 404(b) (2019).

¶ 16 During his direct testimony, Defendant testified that he was "messing around on my phone" once before Ebony left on the morning of 19 May 2016, again before trying to get Chase to take a bath, and while Bill was in the tub all on 19 May 2016:

> Q. What made you think she had to start work at 10:15?
>
> A. Oh, she told me she had to be at work at 10:15.
>
> Q. That's what she told you, 10:15?
>
> A. Yeah.
>
> Q. Go ahead.
>
> A. So after that, I leave out of the room, and I go into the living room and I sit on the couch and start *messing around on my phone*. And next thing you know, I end up dozing off on the couch, and Ebony is in my face handing me -- waking me up, handing me $10 to buy some Pampers or something like that and saying that she's running late for work, she don't got time to take him to daycare.
>
> . . . .
>
> So after that, that's when I said it's bath time. And Chase started crying because he don't like to get in the bath. And so I go to the bathroom, start running the water and stuff, and *I mess around on my phone* for quite some time. So my dad, he left out already for the Pampers, and that's when I start preparing the bath and stuff up.
>
> . . . .
>
> Q. All right. Go ahead.
>
> A. So as [Bill's] playing in his tub, in the tub with his toys, I'm sitting on the toilet seat, not using it, just sitting

> up there, just watching him in the tub and *messing around in my phone*.

(Emphases added.) On cross examination, the State asked Defendant about "messing around on your phone":

> Q. You talked several times about the 19th of May, that you were messing around on your phone. Do you recall that?
>
> A. Yes.
>
> Q. And you often would mess around on your phone; correct?
>
> A. Yes.
>
> Q. And you know that the police department seized your phone as a result of this investigation and got a search warrant to look through it; correct?
>
> A. Yes. I signed consent.
>
> Q. Actually, you gave them your pass code? Don't you recall watching that?
>
> A. Yeah, and I signed the paper too.
>
> Q. Did you hear the detectives say that they went ahead and got a search warrant because you did not consent?
>
> A. Yeah, he told me he was going to get one anyway, but I told them all right. I gave my consent.
>
> MS. SHEKITA: May I approach the witness?
>
> THE COURT: Yes.
>
> BY MS. SHEKITA:Q. Mr. Bell, I'm going to approach

and show you State's Exhibit 65-A, which is a portion of the cell phone extraction that was admitted in State's Exhibit 65. I'm going to ask if you can look at this and see that there -- it starts with page No. 960 here, and ends with 1077. Can you see that?

A. Yes.

Q. And at the top, I want you to follow along with me. It says, "Web History." Do you see that?

A. Yes.

Q. In these 117 pages, can you see that there are numbers from one to 2177? Can you see that?

A. One –

Q. And then you flip over to the end, and the last number there on the web history is 2177. Do you see that?

A. 21 –

MS. SHEKITA: May I re-approach, Judge?

THE COURT: Yes.

THE DEFENDANT: Oh, 2177. I see it.

BY MS. SHEKITA:
Q. In those 2177 web searches that extend from approximately May to February of 2016, look through that, if you would, for a moment.

(Brief pause.)

THE DEFENDANT: Go through the whole package?

BY MS. SHEKITA:
Q. Just flip through it, if you would.

(Brief pause.)

THE DEFENDANT: All right.

BY MS. SHEKITA:
Q. Of those 2177 web searches, the majority of those involve searches for pornography; isn't that true?

A. Yeah.

Q. To include "come in mouth" and "blow jobs"; correct?

A. Yeah. A little more than that, yeah.

Q. Excuse me?

A. A little bit more than that, yeah.

Q. Additional pornography to that?

A. Yes.

Q. But a lot of them involve fellatio?

A. Yeah.

Q. And they're at all hours of the day; would you agree? Did you get a chance to look at the timestamp?

A. I didn't look at the times but –

Q. On 5/18 alone –

A. 8:30 -- yeah, about most -- a lot of times of day.

Q. On 5/18 alone, there are 69 different searches. Most of them all involve pornography; correct?

THE COURT: What date?

MS. SHEKITA: 5/18.

BY MS. SHEKITA:
Q. Do you see that?

> A. Yeah, I see it.
>
> Q. And that would have been on a day that you would have at least been watching your own son; correct?
>
> A. Yeah.
>
> Q. And perhaps [your niece]?
>
> A. Yeah.
>
> Q. And to be clear, of that, those 117 pages, that's part of the whole cell phone extraction that was done on your phone; correct?
>
> A. Correct.

At this point the cross examination moved to the topic of Defendant's relationship with Ebony.

¶ 17 Defendant's argument overlooks the purpose for which the evidence of his phone searches was offered. The State was not attempting to prove his bad character or reputation based on the subject of the phone searches. Defendant opened the door to the State's cross examination regarding his phone searches by his own testimony, and the purpose was to show Defendant was distracted and not watching the children.

¶ 18 We must consider Defendant's argument in the evidence presented in this case. Defendant was charged with first degree murder. The State contended Defendant had abused Chase and presented extensive evidence regarding prior injuries and safety concerns in the home. Defendant testified, denying he had ever harmed Chase,

and he presented other evidence in his defense to explain Chase's injuries. Defendant presented evidence which tended to show that Bill had unintentionally injured Chase by play-wrestling with him while Defendant was not watching the children. As Defendant's counsel noted regarding the jury instructions, Defendant's position at trial was that the case should be considered "based upon some neglect theory of his failure to properly supervise the children." In Defendant's testimony, he acknowledged he was not always in the room with the children while they were playing, and he had spent much time "messing around" on his phone when he was with them.

¶ 19 At trial, Defendant presented expert testimony from Dr. Patrick Lantz, a professor of pathology at Wake Forest School of Medicine and medical examiner for the western third of North Carolina. He had reviewed the information from the investigation, including Chase's medical records and videos and information regarding Bill's wrestling moves. He testified that it was "plausible" that a 3-and-a-half-year-old child jumping on to the abdomen of a 2-year-old child could account for the findings of Chase's autopsy. A biomechanical engineer who testified for Defendant explained that a 35-pound child could generate about 452 pounds of force by jumping from 18 inches off the ground onto a simulated child's torso; this force is equivalent to being hit by two refrigerators. Defendant also presented testimony from Caprice Coleman, a professional wrestler who had wrestled for World Wrestling

Entertainment. Based upon his review of videos of Bill's activities, he testified Bill seemed to mimic various professional wrestling moves, including the "Walls of Jericho" and the "Diving Double Foot Stomp," a/k/a "Coup de Grace," in which a wrestler would jump off the top rope and land with both feet on the stomach of the opponent. He also explained that, unlike a trained professional wrestler, Bill would not know how to avoid putting all of the force onto the stomach of his opponent.

¶ 20 Defendant's trial strategy and evidence regarding the theory that Bill injured Chase while play-wrestling was successful in that he was not convicted of first degree murder. Defendant admitted he was not always watching the children and he was distracted at times. Defendant's own evidence opened the door to the State's cross-examination of him regarding his phone searches.

> Because defendant opened the door to the testimony at issue, we need not address defendant's argument that the testimony was inadmissible because it was irrelevant or overly prejudicial. "The law has long been that, even where 'th[e] type of testimony is not allowed[,] . . . when a party first raises an issue, it opens the door to questions in response to that issue and cannot later object to testimony regarding the subject raised.'"

State v. Wilson, 151 N.C. App. 219, 226, 565 S.E.2d 223, 228 (2002) (alterations in original) (quoting *State v. Belfield*, 144 N.C. App. 320, 324, 548 S.E.2d 549, 551 (2001)). And even if Defendant did not testify on direct about the subject matter of his searches, his testimony about the phone searches allowed the State to cross-

examine Defendant about the number of searches and the subject matter. Defendant testified that he was "messing around" on his phone after starting a bath for Chase, and Chase and Bill were unsupervised during this time. The next time Defendant saw Chase he had already suffered fatal injuries. Chase had been injured multiple times while Defendant was responsible for watching him. While Defendant was supposed to be supervising the children, he was looking at his phone. Accordingly, this argument is overruled.

IV. Conclusion

¶ 21 Because Defendant invited any potential error regarding the instruction on involuntary manslaughter and opened the door to the testimony regarding his search history on his phone, we conclude there was no error by the trial court.

NO ERROR.

Judge COLLINS concur.

Judge MURPHY concurs in the result only.

Report per Rule 30(e).