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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-717

No. COA20-892

Filed 21 December 2021

Washington County, Nos. 18 CRS 50008, 50009

STATE OF NORTH CAROLINA

v.

IVEY LEE BASNIGHT, JR.

Appeal by defendant from judgment entered 16 January 2020 by Judge Wayland J. Sermons, Jr., in Washington County Superior Court. Heard in the Court of Appeals 1 December 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Gwenda L. Laws, for the State.

Paul F. Herzog for defendant-appellant.

TYSON, Judge.

¶ 1 Ivey Lee Basnight, Jr. (“Defendant”) appeals from a jury’s verdicts finding him guilty of two counts of felony child abuse inflicting serious physical injury. We find no error.

I. Background

¶ 2 Defendant and Myiesha Johnson Bond are the parents of a son, J.J., and

daughter, A.J. (initials used to protect juveniles' identity). Defendant and Bond never lived together. An unnamed county's department of social services became involved with Defendant and Bond around 2012. Defendant and Bond had multiple court appearances with their children and the department of social services. In July 2012, the district court placed custody of A.J. and J.J. with Defendant.

¶ 3 In October 2017, J.J., was eight years old, and A.J. was seven years old, and were living with Defendant. Defendant allowed both children to stay overnight with their godmother, whose name was not elicited at trial. The children's godmother noticed marks and bruises on both children. The children's godmother took them to Vidant Chowan Hospital on 15 October 2017.

¶ 4 Both children were examined by Richard Lynch, MD at the emergency department. During the examination, Dr. Lynch asked both children what had happened. J.J. told Dr. Lynch he had been "beaten with a belt" by his father. A.J. told Dr. Lynch she had been "beaten with a stick" by her father.

¶ 5 Dr. Lynch examined J.J. and found "bruising and abrasion of the skin around the abdomen and flank[.]" "two [bruises to] the left thigh," and "three bruises on the right thigh, lower buttocks." The bruises had a "purple discoloration" and the abrasion had "the top layer of skin gone, along with some mild swelling[.]" Dr. Lynch stated the pattern of bruising indicated J.J. had been struck by "a fairly solid linear object." Dr. Lynch also examined A.J. and noted "bruising on her buttock and leg

area.”

¶ 6 Both children were examined at TEDI BEAR Children’s Advocacy Center by Ann Parsons, NP on 27 October 2017. Ms. Parsons documented four bruises of various sizes on A.J. at the “top front of her genital area,” a “J-shaped mark on her right hip,” “a combination of marks,” a “roundish dark mark and then a two by one-and-a-half-centimeter dark mark.” She observed J.J. had a series of eight bruises and “parallel liner marks” from the lowest part of the chest to the back of his thighs of both legs. Ms. Parsons diagnosed both A.J. and J.J. as suffering “physical abuse and neglect.”

¶ 7 Social worker Mary Curry conducted a forensic interview with both children at TEDI BEAR on 27 October 2017. Ms. Curry’s interview with A.J. and J.J. were recorded and admitted into evidence over Defendant’s objection as State’s Exhibit 7 and 8, respectively, at Defendant’s trial.

¶ 8 Defendant was indicted with two counts of felony child abuse causing serious physical injury on 13 November 2018. Prior to Defendant’s trial, and unrelated to the events in which Defendant was charged, J.J. died in 2019. The jury found Defendant guilty of two counts of felony child abuse inflicting serious physical injury and sentenced Defendant to consecutive active sentences of 17 to 30 months. Defendant gave oral notice of appeal.

II. Jurisdiction

¶ 9 This Court possesses jurisdiction pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) (2019).

III. Issue

¶ 10 Defendant argues he received ineffective assistance of counsel upon his trial counsel's failure to request a *voir dire* prior to admitting State's Exhibit 7, Ms. Curry's recorded interview with A.J.

IV. Ineffective Assistance of Counsel

¶ 11 Defendant argues his trial counsel's failure to request a *voir dire* prior to the trial court's admission of State's Exhibit 7 deprived him of effective assistance of counsel.

A. Standard of Review

¶ 12 In order to show ineffective assistance of counsel, a defendant must satisfy the two-pronged test announced by the Supreme Court of the United States in *Strickland v. Washington*, 466 U.S. 668, 80 L. Ed. 2d 674 (1984). The *Strickland* test for ineffective assistance of counsel has also been adopted by the Supreme Court of North Carolina for similar issues arising under the North Carolina Constitution. See *State v. Braswell*, 312 N.C. 553, 324 S.E.2d 241 (1985).

¶ 13 To show ineffective assistance of counsel, Defendant "must show that his counsel's conduct fell below an objective standard of reasonableness." *Id.* at 561-62, 324 S.E.2d at 248 (citing *Strickland*, 466 U.S. at 688, 80 L. Ed. 2d at 693).

¶ 14

Pursuant to *Strickland*,

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable.

Strickland, 466 U.S. at 687, 80 L. Ed. 2d at 693.

¶ 15

When reviewing an ineffective assistance of counsel claim, "this Court engages in a presumption that trial counsel's representation is within the boundaries of acceptable professional conduct." *State v. Roache*, 358 N.C. 243, 280, 595 S.E.2d 381, 406 (2004) (citation omitted). Our Supreme Court stated it "ordinarily do[es] not consider it to be the function of an appellate court to second-guess counsel's tactical decisions[.]" *State v. Lowery*, 318 N.C. 54, 68, 347 S.E.2d 729, 739 (1986).

B. Analysis

¶ 16

Defendant's counsel actively participated in the pre-trial evidentiary hearing regarding the admissibility of State's Exhibit 7. The trial court ruled the State's Exhibit 7 to be admissible for corroborative purposes only. Defendant did not challenge the limiting instruction given and concedes the trial court "gave

appropriate instructions to the jury . . . and in his closing instructions to the jury.” Defendant cannot show his counsel’s performance was deficient. Defendant does not meet the first prong of *Strickland*. Defendant’s argument is overruled.

V. Conclusion

¶ 17 Defendant has not shown prejudicial and reversible error in the trial court’s admitting State’s Exhibit 7 as corroborative evidence with a limiting instruction to the jury. Defendant has not shown his trial counsel’s performance was so deficient to render his representation ineffective.

¶ 18 Defendant received a fair trial, free from prejudicial errors he preserved and argued. We find no prejudicial error in the jury’s verdicts or in the judgments entered thereon. *It is so ordered.*

NO ERROR.

Judges ARROWOOD and GRIFFIN concur.

Report per Rule 30(e).