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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-485

Filed 07 February 2023

Polk County, No. 19CRS62

STATE OF NORTH CAROLINA

v.

DONNY TRAY RUFF, Defendant.

Appeal by Defendant from judgment entered 5 January 2022 by Judge William H. Coward in Polk County Superior Court. Heard in the Court of Appeals 15 November 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Kathryne E. Hathcock, for the State.

Appellate Defender Glenn Gerding, by Assistant Public Defender Max Edward Ashworth, III, for Defendant.

DILLON, Judge.

Defendant, Donny Tray Ruff appeals from a judgment entered upon a jury verdict finding him guilty of driving while impaired. On appeal, Defendant argues for the first time that the trial court failed to determine the reliability of the testimony and report presented by an SBI forensic chemist.

I. Background

Defendant was arrested for driving while impaired after his truck collided with another car. During the collision, the other car was totaled. Law enforcement and witnesses at the scene described Defendant as so severely impaired that people had to shout at him to get his attention and that someone had to “do an actual physical shaking of him to get him awake, to arise, so he didn’t burn his leg with his own cigarette.” A trooper on the scene noted that Defendant “wasn’t very coherent, wasn’t alert per se.” Defendant performed very poorly on all roadside tests he attempted. During the balance test, he placed his arm on the hood of the patrol car, rested his head in his hand, and fell asleep. Defendant admitted to taking 15 milligrams of oxycodone. The trooper believed Defendant was impaired by drugs. Defendant consented to a blood sample for analysis by the SBI, which showed the presence of oxycodone/oxymorphone, a metabolite of oxycodone, a muscle relaxant commonly known as Flexeril, and a derivative of fentanyl.

On 1 July 2019, Defendant was indicted by the Polk County Grand Jury for impaired driving. During trial, the State introduced testimony and a lab report from an SBI chemist. The trial court admitted the chemist’s testimony and his lab report over Defendant’s general objections.

The jury returned a guilty verdict against Defendant for driving while impaired. The trial court sentenced Defendant to 12 months in prison.

On appeal, Defendant argues, for the first time, that the trial court did not

properly evaluate the reliability of the chemist's methodology, pursuant to Rule 702 of our Rules of Evidence.

II. Analysis

“In order to preserve a question for appellate review, a party must have presented the trial court with a timely request, objection, or motion, stating the specific grounds for the ruling sought if the specific grounds are not apparent.” *State v. Eason*, 328 N.C. 409, 420, 402 S.E.2d 809, 814 (1991). *See also* N.C. R. App. P. 10(b)(1) (2019).

During trial, Defendant did not object to the admission of the chemist's testimony and lab report based on the specific grounds he raises in this appeal. Defendant objected when the State offered the chemist as an expert, but failed to state the specific grounds for doing so. However, Defendant stated Sixth Amendment as a ground when objecting to the admission of the lab report and testimony. In any event, Defendant never raised the issue of reliability under Rule 702. Accordingly, we conclude that the basis for Defendant's objection was not obvious. As a result, Defendant failed to properly preserve the issue of reliability for appeal. *Eason*, 328 N.C. at 420, 402 S.E.2d at 814 (“[t]his Court will not consider arguments based upon matters not presented to or adjudicated by the trial tribunal.”)

Assuming *arguendo* the issue raised on appeal was preserved, we conclude the trial court did not err by allowing in State's evidence.

This Court reviews a trial court's ruling on the admissibility of expert testimony for abuse of discretion. *State v. McGrady*, 368 N.C. 880, 893, 787 S.E.2d 1, 11 (2016). An abuse of discretion occurs when the trial court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision. *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988). Trial courts are "afforded wide latitude when making a decision about the admissibility of expert testimony." *State v. Bullard*, 312 N.C. 129, 140, 322 S.E.2d 370, 376 (1984).

Defendant challenges the admission of the SBI report and testimony under Rule 702 of the North Carolina General Statutes, which states:

"a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion, or otherwise, if all of the following apply: (1) the testimony is based upon sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case."

N.C. Gen. Stat § 8C-1, N.C. R. Evid. 702(a) (2019).

First, Defendant argues that the lab report and testimony were unreliable because the testifying chemist relied upon raw data generated by other SBI analysts. However, the testifying chemist conducted his own independent analysis of the data, in accordance with SBI procedures and methodology. Our Supreme Court has held that an expert may base his opinion upon the research of another analyst provided

the expert performs his own independent analysis of the research. *State v. Brewington*, 367 N.C. 29, 31-32, 743 S.E.2d 626, 627-28 (2013) (testifying witness gave opinion formed because of her own analysis based on testing done by a prior analyst).

Next, Defendant challenges the reliability of the gas chromatograph-mass spectrometer (“GCMS”) instrument the testifying chemist used to extract the raw data. This argument is without merit because GCMS is accepted by North Carolina courts as a reliable instrument for chemical analysis. *State v. Ortiz-Zape*, 367 N.C. 1, 4, 743 S.E.2d 156, 158 (2013). *See also State v. Dobbs*, 208 N.C. App. 272, 702 S.E.2d 349 (2010).

III. Conclusion

We conclude that Defendant received a fair trial, free of reversible error.

NO ERROR.

Chief Judge STROUD and Judge GORE concur.

Report per Rule 30(e).