

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-259

Filed 31 December 2024

Wake County, Nos. 20 CR 145-910; 20 CR 146-910; 19 CR 206013-910; 19 CR 206014-910

STATE OF NORTH CAROLINA

v.

DIAMON NAVAYE MCPHERSON AND JASMINE MONTE SPRUILL, Defendants.

Appeal by defendants from judgments entered 14 March 2023 by Judge Keith O. Gregory in Wake County Superior Court. Heard in the Court of Appeals 8 October 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Marissa K. Jensen, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Brandon Mayes, for defendant-mother.*

*Joseph P. Lattimore, for defendant-father.*

THOMPSON, Judge.

Diamon McPherson (defendant-father) and Jasmine Spruill (defendant-mother), collectively, defendants, appeal from a judgment entered upon a jury's verdict finding them guilty of felony child abuse. On appeal, defendants contend that

the trial court erred in denying their motions to dismiss due to insufficiency of the evidence and that the trial court erred in allowing an expert witness to provide an improper legal opinion during her testimony. After careful review, we discern no error.

### **I. Factual Background and Procedural History**

Defendants are the biological parents of the minor child, B.S., born 22 December 2018. At trial, the State offered the testimony of an expert witness, a pediatrician, who saw B.S. on 26 December 2019, 4 January 2019, and 22 January 2019. The doctor testified that at these appointments, there was nothing abnormal, and B.S. exhibited full range of motion in all his limbs.

However, on 15 February 2019, defendant-mother brought B.S. in for a pediatric appointment wherein the pediatrician observed swelling in B.S.'s left thigh. After receiving an X-ray, another pediatrician determined that B.S.'s left leg was broken and contacted a social worker. Further imaging of B.S. revealed "at least seventeen different fractures" to B.S.'s body including fractured ribs, femur, radius, and ulna.

Defendants were indicted for felony child abuse inflicting serious bodily injury. The matter came on for trial at the 6 March 2023 Criminal Session of Wake County Superior Court. On 14 March 2023, defendants were found guilty upon a jury's verdict of felony negligent child abuse inflicting serious bodily injury. Pursuant to the jury's

guilty verdict, defendants were sentenced to twenty-two to thirty-nine months in the custody of the North Carolina Division of Adult Corrections. Defendants entered timely oral notice of appeal in open court.

## **II. Discussion**

### **A. Standard of review**

A motion to dismiss due to insufficiency of the evidence “presents a question of law and is reviewed *de novo* on appeal.” *State v. Norton*, 213 N.C. App. 75, 78, 712 S.E.2d 387, 390 (2011). “In order to overcome a motion to dismiss, the State must introduce more than a scintilla of evidence of each essential element of the offense and that the defendant was the perpetrator of the offense.” *State v. Davy*, 100 N.C. App. 551, 556, 397 S.E.2d 634, 636—37 (1990). “In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994) (citation omitted).

### **B. Motion to dismiss**

Defendants argue that the trial court erred in denying defendant-father’s motion to dismiss because “there was insufficient evidence that any omissions in seeking treatment caused any injury to B.S.[.]” and “the State did not present sufficient evidence of negligent child abuse resulting in serious bodily injury.” We will address each argument in turn.

**1. Negligent omission**

In order to convict a defendant for felony negligent child abuse, the State must establish that (1) defendant is a parent or any other person providing care to or supervision of a child less than sixteen years of age; (2) defendant's willful act or negligent omission in the care of the child showed a reckless disregard for human life; and (3) that the act or omission resulted in serious bodily injury to the child. N.C. Gen. Stat. § 14-318.4(a4) (2023). Moreover, our Court has held that "when an adult has exclusive custody of a child for a period of time during which the child suffers injuries that are neither self-inflicted nor accidental, there is sufficient evidence to create an inference that the adult intentionally inflicted those injuries." *State v. Liberato*, 156 N.C. App. 182, 186, 576 S.E.2d 118, 120–21 (2003). This testimony has been considered "sufficient circumstantial evidence by which a jury could infer that [the] defendant intentionally inflicted the injuries upon" the child. *Id.* at 186, 576 S.E.2d at 121.

Here, defendants were the biological parents and the *lone* caretakers of B.S. Defendants had *exclusive* care and custody of B.S. from the time he was born until he presented at the doctor with a broken femur. Testimony offered at trial theorizes that the injuries that B.S. sustained were of the "highest specificity for non-accidental trauma or abuse," and occurred while B.S. was in the exclusive care and custody of defendants. As established in *Liberato*, this testimony creates an inference that defendants inflicted the injuries on B.S. at some point *after* 22 January but *prior to*

STATE V. MCPHERSON

*Opinion of the Court*

15 February 2019, when B.S. was discovered to have the multitude of injuries. Expert witness testimony estimated that “rough estimates or windows of time were given as to when the earlier fractures were inflicted, ranging from ten to twenty-five days . . . [and] there was a twenty-three-day gap between B.S.’s last regular visit [where no injuries to the minor child were observed] and the visit when he presented with the femur fracture.”

Similarly, an expert witness testified that B.S.’s injuries were “100% consistent with child abuse[,]” and that the broken femur had occurred within a week prior to discovery by the pediatrician. A skeletal survey and x-rays of B.S.’s body revealed at least seventeen different fractures, including injuries that were, again, of the “highest specificity for non-accidental trauma or abuse,” and a third expert witness testified that the injuries occurred as a result of *multiple instances*, as the injuries were in various stages of healing when they were observed. This testimony was sufficient to establish, again, at the motion to dismiss stage, that after inflicting the injuries, defendants waited days, possibly even weeks to seek medical treatment for B.S.’s injuries.

Considering the elements of N.C. Gen. Stat. § 14-318.4(a4), with “all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor[,]” we conclude that the trial court did not err in denying defendant’s motion to dismiss due to insufficiency of the evidence because the State

has presented sufficient circumstantial evidence of a “negligent omission in the care of the child [that] showed a reckless disregard for human life.” Therefore, we conclude that the trial court did not err in denying defendant’s motion to dismiss on this ground.

**2. Serious bodily injury**

Next, defendants contend that the trial court erred in denying the motion to dismiss because “none of B.S.’s injuries constituted serious bodily injury under the statute and case law.” We do not agree.

A serious bodily injury is defined as “[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 to the function of any bodily member or organ, or that results in prolonged hospitalization.” N.C. Gen. Stat. § 14-318.49(d)(1) (2023). In cases involving allegations of child abuse, “the age and particular vulnerability of a minor victim” are considerations in determining what constitutes a serious bodily injury. *State v. Bohannon*, 247 N.C. App. 756, 761, 786 S.E.2d 781, 786 (2016).

Here, the injuries B.S. suffered were of a type “highly[-]specific for non-accidental trauma or child abuse” and B.S. had to be “administered morphine for his pain, which is uncommon for a seven[-]week[-]old infant.” Again, based on “testimony from four different expert witnesses, rough estimates or windows of time were given

as to when the earlier fractures were inflicted, ranging from ten to twenty-five days . . . [and] there was a twenty-three-day gap between B.S.'s last regular visit [where no injuries to the minor child were observed] and the visit when he presented with the femur fracture.”

Considering this evidence in the light most favorable to the State, resolving all inferences in the State's favor, we conclude that the State presented sufficient competent evidence of “serious injuries” or a “protracted condition[s] causing extreme pain” to overcome defendant-father's motion to dismiss. For this reason, we conclude that the trial court did not err in denying defendant's motion to dismiss due to insufficiency of the evidence.

**C. Expert witness testimony**

Finally, defendant-father contends that “the trial court reversibly erred by allowing Dr. Witman to provide an improper legal opinion when she described the defendants' failure to seek treatment and then concluded this was neglect of B.S.” Again, we do not agree.

Trial courts are given “wide latitude of discretion when making a determination about the admissibility of expert testimony.” *State v. Bullard*, 312 N.C. 129, 140, 322 S.E.2d 370, 376 (1984). “Given such latitude, it follows that a trial court's ruling on the qualifications of an expert's opinion will not be reversed on

STATE V. MCPHERSON

*Opinion of the Court*

appeal absent a showing of abuse of discretion.” *State v. Liggons*, 194 N.C. App. 734, 743, 670 S.E.2d 333, 340 (2009).

Rule 704 of the North Carolina Rules of Evidence provides that “testimony in the form of an opinion or inference is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” N.C. Gen. Stat. § 8C-1, Rule 704 (2023). However, it has long been established that an expert witness may not “testify to a particular legal conclusion or that a legal standard has or has not been met.” *State v. Fisher*, 336 N.C. 684, 703–04, 445 S.E.2d 866, 877 (1994). Specifically, “[a]n expert may not testify regarding whether a legal standard or conclusion has been met *at least where the standard is a legal term of art which carries a specific legal meaning not readily apparent to the witness.*” *State v. Parker*, 354 N.C. 268, 289, 553 S.E.2d 885, 900 (2001) (internal quotation marks and citation omitted) (emphasis added).

In *State v. Liggons*, the defendant made a similar argument to our current defendant, arguing that the trial court erred in allowing an expert witness to “offer her opinion that [the victim]’s head injuries were *serious*.” *Liggons*, 194 N.C. App. at 743, 670 S.E.2d at 340 (emphasis added). There, the expert witness testified that the victim’s “trauma was definitely very serious intracranial trauma with serious brain injury and serious orbital injury with all the bone damage that was suffered.” *Id.* at 744, 670 S.E.2d at 340. Defendant then argued that the expert “was not qualified to offer an opinion on the ultimate legal question in th[e] matter—whether [the victim] suffered ‘serious injury.’” *Id.*



Our Court vehemently disagreed, asserting that the defendant's argument "border[ed] on being frivolous" and that the expert witness's testimony was "not rendered inadmissible on the basis that it embraces an ultimate issue to be determined by the jury[.]" *id.* at 744, 670 S.E.2d 340–41 (citation omitted)—there, whether the victim had suffered a "serious injury."

In the present case, when asked whether she "ha[d] concerns about *medical neglect*[" the expert witness replied, "I would always have concerns about why no one sought medical attention the first time there were fractures. And I might say[,] I would say[,] *medical neglect and neglect – you know, neglect would dovetail here together.*" The witness further testified that "there's no way [defendants] could not notice that [broken femur], dressing a child – just looking at him really . . . [s]o yeah, it *was my medical opinion* and my conclusion that the baby had experienced *neglect* and *medical neglect.*"

Here, the State argues that the expert witness's "testimony constituted a permissible expert opinion regarding the underlying factual premises the jury had to consider in determining whether a grossly negligent omission existed in this case." Meanwhile, defendant's counsel objected to the testimony, arguing that it was an impermissible "opinion about neglect" that was *different* from her opinion about *medical neglect.*" Defendant argues on appeal that *neglect* is akin to a "legal term of art which carries a specific legal meaning not readily apparent to the witness[.]" *Parker*, 354 N.C. at 289, 553 S.E.2d at 900, unlike "serious injury" in *Liggons*.

STATE V. MCPHERSON

*Opinion of the Court*

However, in the present case, the ultimate legal issue for the jury to determine was whether there had been a “negligent omission” in seeking medical care by defendants pursuant to N.C. Gen. Stat. § 14-318.4(a4).

While we agree with defendant that the use of the terms “neglect” and “medical neglect” by the expert witness are more akin to “testi[mony] to a particular legal conclusion or that a legal standard has or has not been met[.]” *Fisher*, 336 N.C. at 703–04, 445 S.E.2d at 877, than a “serious injury” in *Liggons*;<sup>1</sup> however, we are not persuaded that the use of “neglect” or medical neglect” by the expert witness *per se* constitutes an impermissible testimony about a particular legal conclusion or that a legal standard has or has not been met.

Indeed, “testimony in the form of an opinion or inference is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” N.C. Gen. Stat. § 8C-1, Rule 704, and “expert opinion testimony is not rendered inadmissible on the basis that it embraces an ultimate issue to be determined by the jury.” *State v. Boyd*, 343 N.C. 699, 710, 473 S.E.2d 327, 332 (1996). Therefore, we conclude that the testimony by the expert witness in the present case, that B.S. “had experienced neglect and medical neglect[.]” embraced an ultimate issue to be determined by the jury, without explicitly stating whether a particular legal conclusion or legal standard

---

<sup>1</sup> On the other hand, unlike the term “serious injury” utilized by the expert witness in *Liggons*, which was part of the statute in that case, the language utilized by the expert witness in the present case, “neglect” or “medical neglect,” is *entirely absent* from N.C. Gen. Stat. § 14-318.4(a4).

had or had not been met. For this reason, we conclude that the trial court did not err in admitting the testimony of the expert witness.

However, assuming, *arguendo*, that the admission of the term “neglect” by the expert witness was in error, where an error in the admission of evidence has been preserved, as it was here, we review the issue for prejudicial error. Prejudicial error occurs where “there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.” N.C. Gen. Stat. § 15A-1443(a).

Upon our careful review of the case, we conclude that—even absent the testimony regarding “neglect” and “medical neglect,” there is not a reasonable possibility that a different result would have been reached at trial absent the testimony. The State presented overwhelming evidence of B.S.’s injuries and the fact that defendants did not seek medical treatment for B.S.’s injuries, all while B.S. was in the *exclusive* care of defendants. Therefore, we conclude that, even if the expert witness testimony was admitted in error, it did not constitute prejudicial error.

### **III. Conclusion**

We conclude that the trial court did not err in denying defendant-father’s motion to dismiss at the close of the State’s evidence, and that the trial court did not prejudicially err in allowing the expert witness’s testimony. For these reasons, we discern no error.

NO ERROR.

STATE V. MCPHERSON

*Opinion of the Court*

Judge GRIFFIN concurs.

Judge MURPHY concurs in result only.

Report per Rule 30(e).