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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

JEREMY KNOWLTON, *Appellant*.

No. 1 CA-CR 18-0772
FILED 9-19-2019

Appeal from the Superior Court in Navajo County
No. S0900CR201700394
The Honorable Dale P. Nielson, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Nicholas Chapman-Hushek
Counsel for Appellee

The Brewer Law Office, Show Low
By Benjamin M. Brewer
Counsel for Appellant

STATE v. KNOWLTON
Decision of the Court

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Maria Elena Cruz and Judge Kent E. Cattani joined.

T H U M M A, Judge:

¶1 Defendant Jeremy Knowlton appeals his convictions and resulting sentences for negligent homicide, aggravated assault and two counts of furnishing alcohol to a minor. Because Knowlton has shown no error, his convictions and resulting sentences are affirmed.

FACTUAL AND PROCEDURAL HISTORY

¶2 One night in April 2017, 16-year old E.J. met with his friend F.N., who was also 16, and Knowlton, who was 22. Knowlton was driving a Chevy Cavalier and F.N. was in the passenger seat. E.J. got in the back seat and the three drove around Holbrook. At some point, Knowlton bought some alcohol, which he shared with E.J. and F.N. The group continued to drive around until Knowlton crashed the car. E.J. and F.N. were ejected from the car. F.N. suffered multiple injuries and died. E.J. suffered abrasions and a bump on his head.

¶3 Knowlton, whose blood alcohol level at the time of the crash was .234, was charged with one count of second degree murder, a Class 1 felony (count 1); one count of aggravated assault, a Class 3 felony (count 2) and two counts of furnishing alcohol to a minor, Class 1 misdemeanors (counts 3 and 4). After trial, the jury found Knowlton guilty of the lesser-included offense of negligent homicide, a Class 4 felony (count 1) and guilty as charged for the remaining counts. The jury also found that the negligent homicide and aggravated assault were dangerous offenses and that the State had proven four aggravating circumstances. Knowlton was sentenced to concurrent prison terms for the felony convictions and received credit for time served on the misdemeanors. This court has jurisdiction over Knowlton's timely appeal pursuant to Article 6, Section 9, of the Arizona

STATE v. KNOWLTON
Decision of the Court

Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1), 13-4031 and 13-4033(A)(2019).¹

DISCUSSION

¶4 Knowlton raises three issues on appeal: (1) whether the superior court committed fundamental error when it instructed the jury to decide the issue of dangerousness during the aggravation phase; (2) whether Knowlton was prejudiced by the jury's allegedly inconsistent verdicts as to counts 1 and 2; and (3) whether the court abused its discretion by not providing a jury instruction defining the term "aggravating circumstance."

I. The Court Properly Instructed The Jury On Dangerousness.

¶5 During the guilt phase, although the court provided a jury instruction defining "dangerousness," the court did not instruct the jurors to determine whether the charged offenses were dangerous, and the verdict forms did not reference such a determination. Knowlton did not object to proceeding in this manner.

¶6 After the jury convicted Knowlton of the lesser included offense of negligent homicide for count 1 and the charged offenses for the other counts, the court proceeded to the aggravation phase. Outside of the presence of the jury, defense counsel argued that a dangerousness determination must be made during the guilt phase, and because the jury's verdicts did not include such a finding, Knowlton's crimes could not be deemed dangerous offenses. The court rejected that argument, concluding that dangerousness was an enhancement to be addressed during the aggravation phase. The court then instructed the jury "to determine whether or not, having found the defendant guilty of negligent homicide . . . that was a dangerous offense. And so the verdict form will look like this, and you'll mark dangerous or nondangerous, and that has to be a unanimous verdict, and that will also apply to aggravated assault." The jurors found that counts 1 and 2 were dangerous offenses.

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

STATE v. KNOWLTON
Decision of the Court

¶7 On appeal, Knowlton asserts that the jury found him guilty of counts 1 and 2 during the guilt phase but implicitly found neither crime to be dangerous. He thus argues a double jeopardy violation occurred, asserting the court improperly permitted the jury to “redeliberate” and again find him guilty of both counts (and that the counts were dangerous) during the aggravation phase. Because Knowlton did not object on double jeopardy grounds in the superior court, this court reviews for fundamental error. *State v. Escalante*, 245 Ariz. 135, 138 ¶ 1 (2018). To show such error, Knowlton must show that “(1) error exists, (2) the error is fundamental, and (3) the error caused him prejudice.” *State v. Smith*, 219 Ariz. 132, 136 ¶ 21 (2008) (citation omitted). Knowlton has made no such showing.

¶8 The verdict forms for dangerousness used in the aggravation phase did not result in the jury re-determining Knowlton’s guilt as to counts 1 and 2. Instead, the forms reiterated the prior guilty verdicts. The jury was not asked to deliberate on the issue of dangerousness during the guilt phase, so there was no implicit acquittal on dangerousness. Instead, the court correctly determined that the dangerous enhancements should be tried during the aggravation phase. *See State v. Larin*, 233 Ariz. 202, 211–12 ¶¶ 35–36 (App. 2013) (stating, in a non-capital sentencing, aggravators like dangerousness should be tried during aggravation phase); Ariz. R. Crim. P. 19.1. Knowlton has not shown fundamental error regarding the jury’s dangerousness determination.

II. Knowlton Has Not Shown Impermissible Inconsistent Verdicts.

¶9 Knowlton next argues that he was prejudiced by the jury’s “inconsistent verdicts” as to counts 1 and 2 because the mens rea for the aggravated assault conviction was reckless or intentional and the mens rea for negligent homicide was negligence. He argues that “[t]hese verdicts are logically inconsistent as a person cannot have both the mental state of intentionality and negligence when committing the same act at the same time.”

¶10 Knowlton is correct that the mens rea for aggravated assault is intentional, knowing, or reckless, A.R.S. §§ 13-1203, -1204, while the mens rea for negligent homicide is criminal negligence, A.R.S. § 13-1102; *State v. Nelson*, 214 Ariz. 196, 197 ¶ 8 (App. 2007). But the convictions for aggravated assault and negligent homicide do not necessarily conflict. The jury could have found that Knowlton’s state of mind was reckless as to E.J.’s aggravated assault and negligent as to F.N.’s homicide. Moreover, even assuming the verdicts were inconsistent, Arizona permits inconsistent verdicts. *See State v. Zakhar*, 105 Ariz. 31, 32 (1969) (“consistency between

STATE v. KNOWLTON
Decision of the Court

the verdicts on the several counts of an indictment is unnecessary"); *see also State v. Miranda*, 198 Ariz. 426, 429 ¶ 13 (App. 2000) (noting this court is bound to follow Arizona Supreme Court decisions). Accordingly, Knowlton has not shown impermissible inconsistent verdicts.

III. Knowlton Has Not Shown Error In The Aggravating Circumstances Jury Instructions.

¶11 Finally, Knowlton argues that the court abused its discretion by declining to provide the jury with his requested definition of aggravating circumstances during the aggravation trial. Knowlton asked the court to give the jury the following dictionary definition of "aggravating circumstances:" "[a] fact or situation that increases the degree of liability or culpability for a tortious or criminal act." The State objected, arguing that the definition of aggravating circumstance was "inherent in the nature of the name." The superior court then denied Knowlton's request.

¶12 The court did not err. The jury was required to determine whether the State had proven the existence of four aggravating circumstances. The jurors were not required to find that they believed the circumstances should "increase the degree of liability or culpability" for the offenses. In non-capital cases, like this one, the jury determines whether the State has proven an aggravating circumstance and, if it has, the court assesses the proper weight to attribute to that finding in determining the appropriate sentence. On this record, Knowlton has shown no error.

CONCLUSION

¶13 Knowlton's convictions and resulting sentences are affirmed.



AMY M. WOOD • Clerk of the Court
FILED: AA