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NO. COA06-8

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

STATE OF NORTH CAROLINA

v.

Rockingham County
No. 04 CRS 52271

CAROLINE JOHNSON AIKEN

Appeal by defendant from judgment entered 8 June 2005 by Judge W. Douglas Albright in Rockingham County Superior Court. Heard in the Court of Appeals 20 September 2006.

Attorney General Roy Cooper, by Assistant Attorney General Leonard G. Green, for the State.

Marilyn G. Ozer, for defendant-appellant.

LEVINSON, Judge.

Defendant (Caroline Johnson Aiken) appeals judgment entered upon her conviction for second degree murder. We find no error.

The pertinent facts may be summarized as follows: On 15 July 2004, a group of friends including defendant and Algene Aiken (the deceased, herein Aiken) gathered in the yard of Jim Millner, located in Eden, North Carolina. Defendant and Aiken stayed at Millner's about 20-30 minutes. When defendant and Aiken left Millner's yard, they left in a vehicle Aiken drove while defendant rode in the passenger's seat. Aiken backed the car out of the driveway into the street and pulled up to a stop sign at an

intersection, which was about 60 or 70 feet from Millner's home. Instead of proceeding through the intersection, the vehicle remained stationary at the corner for a few "minutes."

Margret Carter, who was present in Millner's backyard on the day in question, testified that she initially saw defendant lean over as if she was showing him some type of affection while the car remained at the intersection. However, Carter further testified that she observed defendant's arm reaching out of one of the car's windows with what she thought looked like a knife. A few minutes later, the vehicle returned to the vicinity of Millner's home and Carter observed that Aiken was bleeding from his chest and subsequently heard Aiken say, "take me to the hospital." Carter also testified that defendant had her hand over Aiken's chest and stated, "I am sorry. I didn't mean to do it."

Additionally, Garnett and Stuart Edwards were in a vehicle in the vicinity and were stopped at the same intersection as defendant and Aiken. Garnett Edwards, the driver, saw the defendant lean over Aiken and make four or five stabbing motions with an object that appeared to be a screwdriver as Aiken was "defending himself." Stuart Edwards, the passenger, heard defendant speaking loudly and also saw an object in her hand that looked like a screwdriver which she "swung" at Aiken four or five times.

Brian Ziglar was also driving in the area when the incident of 15 July 2004 occurred. Zigler observed a woman lean over on the driver's side of the car with her back almost to the windshield. The woman was "fussing at [Aiken], going off and carrying on."

Ziglar further testified that defendant pulled a shiny object, which appeared to be a knife, up in the air and "stabbed" at the man three or four times as he raised his arm.

When local law enforcement arrived at the scene, defendant reached inside the car on the passenger side and removed a bone handled knife, which she handed to Officer John Whitsett. In defendant's statement to Detective Greg Light, defendant stated that she got angry when she observed hand signals between Margret Carter and Aiken, which defendant interpreted as an indication that the two would meet together at some point in the future. Defendant then stated that when she and Aiken were in the vehicle, "I reached into my pocketbook and got my knife out and opened it. I then started swinging at him with the knife. I then stabbed him in the chest and blood started coming out." When Sergeant Light told defendant that the hospital had called and Aiken had died, she fell to the floor "and she was visibly upset, crying, yelling."

Dr. Anthony Macri, a pathologist at Morehead Hospital in Eden, North Carolina, conducted an autopsy of Aiken's body. He testified that the cause of death was a single two and a half inch deep stab wound that pierced a large blood vessel in Aiken's right lung. The wound caused massive bleeding in the right side of Aiken's chest which caused his lung to collapse. Dr. Marci testified that the injury to Aiken was "inconsistent with an accident."

Additionally, on at least two previous occasions before the subject incident that resulted in the death of Aiken, defendant and Aiken were involved in altercations in which defendant threatened

Aiken with violence. For example, on 13 July 2004, two days before the subject incident, Rockingham County Deputy Sheriff Nori Kaneko responded to a 911 call for assistance at Bob Trail in Stoneville, North Carolina. Kaneko found Aiken and defendant engaged in an argument. He separated the couple and asked the defendant to step back into the mobile home. Deputy Kaneko noticed a small pocketknife in defendant's right hand. He repeatedly asked her to drop it and was forced to pull his service revolver. On 9 July 2004, Warren Hairston, a friend of Aiken, was talking with him in the parking lot of a barber shop. Aiken was sitting in the car when defendant drove up. Defendant went over to Aiken's car and began cursing loudly at him, at which point he rolled the window up to within two inches of being closed. The defendant then stated, "If you roll the window down, I'll cut your damn fingers off." As defendant was leaving, she said, "I'll kill your damn a[--]."

Defendant was convicted of second degree murder and sentenced to a term of 180 - 225 months incarceration. From this judgment defendant appeals contending, *inter alia*, that the trial court erred in refusing to instruct the jury on the charge of involuntary manslaughter because there was evidence from which the jury could find that defendant stabbed Aiken unintentionally or as a result of culpable negligence. We disagree.

The trial court must give a requested instruction, at least in substance, if a defendant requests it and the instruction is correct in law and supported by the evidence. In determining whether the evidence supports an instruction requested by a defendant, the evidence must be interpreted in the light most favorable to him. The trial judge making the

decision must focus on the sufficiency of the evidence, not the credibility of the evidence. Failure to give the requested instruction where required is a reversible error.

State v. Reynolds, 160 N.C. App. 579, 581, 586 S.E.2d 798, 800 (2003) (citations omitted).

"Involuntary manslaughter is the unintentional killing of a human being without malice, proximately caused by (1) an unlawful act not amounting to a felony nor naturally dangerous to human life, or (2) a culpably negligent act or omission." *State v. Evans*, 149 N.C. App. 767, 775, 562 S.E.2d 102, 107 (2002) (internal quotation marks omitted). "Culpable negligence is defined as an act or omission evidencing a disregard for human rights and safety." *State v. James*, 342 N.C. 589, 595, 466 S.E.2d 710, 714 (1996).

In the instant case, as defendant's actions were naturally dangerous to human life, we are left to ascertain whether the record could support an unintentional killing of Aiken without malice by means of a culpably negligent act or omission.

Defendant argues the following evidence supports a jury instruction on involuntary manslaughter: testimony by Officer Johnson and Margret Carter that defendant stated the stabbing of Aiken was an "accident" and that she "didn't mean to do it"; defendant's realization that when she stabbed Aiken she stopped and held Aiken's chest to stop the bleeding; and defendant's assertion that despite using threatening language and gestures, including showing a knife in the past, she had not previously injured Aiken.

However, the gravamen of the evidence which defendant relies on is comprised of after-the-fact self-serving declarations. On these facts, these declarations do not support culpable negligence. See *State v. Stanton*, 319 N.C. 180, 191, 353 S.E.2d 385, 392 (1987) (citing *State v. Brower*, 289 N.C. 644, 224 S.E.2d 551 (1976) (“[t]estimony of a self-serving declaration made by a defendant following an alleged crime is incompetent as substantive evidence”), *State v. Campbell*, 42 N.C. App. 361, 364-65, 256 S.E.2d 526, 529 (1979) (trial court did not err in failing to instruct the jury on involuntary manslaughter where there was no direct evidence of an unintentional killing and all probative evidence tended to support that defendant intentionally shot the victim), and *State v. Hancock*, 28 N.C. App. 149, 152, 220 S.E.2d 167, 169 (1975) (defendant’s subjective self-serving statement that he thought the gun was empty without evidence of other facts and circumstances to raise an inference of an unintentional act was insufficient to warrant an instruction on involuntary manslaughter)).

In contrast to defendant’s assertion, the record contains plenary evidence of an intentional stabbing. Several witnesses testified that defendant leaned over and stabbed Aiken several times with an object that appeared to be a knife or screwdriver. In addition, defendant admitted that she was angry at Aiken for engaging in “hand signals” with another woman and, as a result, “reached into [her] pocketbook and got [her] knife out” and “started swinging at him with the knife” and “stabbed him in the

chest." Dr. Macri testified that, in his opinion, the two and a half inch deep stab wound was inconsistent with an accidental or unintentional injury. And on at least two occasions prior to the events of 15 July 2004, defendant threatened Aiken with violence, including brandishing a knife on one occasion.

We conclude the trial court did not err by failing to give an instruction on involuntary manslaughter. This assignment of error is overruled.

We have evaluated defendant's remaining argument on appeal and conclude that it is without merit.

No error.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).