NO. COA07-606

NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2007

STATE OF NORTH CAROLINA

v. Randolph County
Nos. 04 CRS 056796-97

VENANCIO RESA

Appeal by defendant from judgments entered 15 December 2006 by Judge W. Douglas Albright in Randolph County Superior Court. Heard in the Court of Appeals 30 November 2007.

Attorney General Roy Cooper, by Assistant Attorney General Tracy C. Curtner, for the State.

Michael J. Reece, for defendant-appellant.

TYSON, Judge.

Venancio Resa ("defendant") appeals from judgments entered after a jury found him to be guilty of malicious conduct by a prisoner pursuant to N.C. Gen. Stat. § 14-258.4, impaired driving pursuant to N.C. Gen. Stat. § 20-179, and reckless driving to endanger pursuant to N.C. Gen. Stat. § 20-140(B). We find no error.

I. Background

The State's evidence tended to show that in the early morning of 9 October 2004, Meredith Millikan ("Millikan") was driving on Highway 220 to Asheboro when she observed a truck in front of her

swerve, hit the bridge at the Randleman dam, and wreck. Debris flew off of the truck and struck Ms. Millikan's vehicle, causing her to stop as well. A truck driver stopped to assist and a 911 call was made.

Randleman Fire Department Captain Darryl Foreman responded and was the first to arrive at the scene. He found defendant in the backseat of his vehicle, slightly slumped over. Next to arrive was Randleman Fire Department Assistant Chief Brian Causey ("Chief Causey") who found defendant to be more aroused, very belligerent, cursing, and threatening. Due to defendant's behavior, Chief Causey called law enforcement to respond immediately to the scene and help.

Emergency Medical Services supervisor Ronald Thompson found defendant to be uncooperative and threatening in response to his attempts to assist him. Mr. Thompson testified that, at one point, he observed defendant climb over from the back seat to the front seat, attempt to start the vehicle, and try to leave. He further testified that defendant appeared to be under the influence of something.

Members of the Randleman Police Department and Randolph County Sheriff's Department arrived and found defendant to be in the same combative state. Randleman Police Officer Jonathan Leonard ("Officer Leonard") testified that he first saw defendant sitting in the front seat of the vehicle with his hands gripped firmly on the steering wheel. Defendant would not release the steering wheel when the attending personnel attempted to remove him from the

vehicle. Eventually, Randolph County Sheriff's Deputy Hunt threatened defendant with a taser stun gun and ordered defendant to exit his vehicle. After defendant exited his vehicle, he was handcuffed and placed in Officer Leonard's patrol car until State Highway Patrol Trooper Brown ("Trooper Brown") arrived to take charge of the scene and the investigation. When Trooper Brown arrived, defendant was placed inside his patrol car.

Once inside Trooper Brown's patrol car, Trooper Brown left defendant in the front seat and returned to talk with some of the other officers and emergency personnel to determine what had happened. While Trooper Brown was conducting his investigation, Officer Leonard observed defendant spit directly onto the passenger side glass of Trooper Brown's patrol car. Officer Leonard told Trooper Brown, who went back to his patrol car, opened the door, and told defendant not to spit in his car anymore. Trooper Brown then closed the door and resumed his investigation.

Defendant then spit a second time onto the passenger side glass. Trooper Brown returned to the car, again opened the door, and again told Defendant not to spit in his car. Defendant then "just reared back and hocked and spit at me." Defendant's spit did not hit Trooper Brown because he jumped out of the way. Trooper Brown pushed defendant's face into the back seat, which caused defendant to have a burst and bleeding lip. Trooper Brown retrieved a biohazard mask from the back of his patrol car and placed it onto defendant's face in order to keep him from spitting. Defendant was transported to jail.

Defendant consented to taking an Intoxilyzer test which yielded a blood alcohol level of .17. Trooper Brown testified that, in his opinion and based on his observations, defendant was impaired due to alcohol. In order to perform the Intoxilyzer, the biohazard mask was removed. Following the chemical analysis and while Trooper Brown was completing his paperwork, defendant resumed spitting on the floor. Trooper Brown told him not to spit, and defendant replied, "F--k you. I'll spit if I want to. You can't tell me not to spit."

While being presented by Trooper Brown to the magistrate for completion of the booking and bail process, defendant claimed he had not been in a wreck, that Trooper Brown had simply pulled his vehicle over, and Trooper Brown was lying. Defendant then became so belligerent and non-cooperative that the magistrate ordered defendant to be placed into a holding cell in order to finish the process.

Defendant did not present any evidence and moved to dismiss at the close of the evidence. The trial court denied his motion.

A jury found defendant to be guilty of impaired driving, malicious conduct by a prisoner, and reckless driving. The trial court imposed consecutive prison sentences of twelve months and eighteen to twenty-two months for impaired driving and malicious conduct by a prisoner. The court suspended an additional consecutive sentence of sixty days imprisonment for reckless driving and placed defendant on supervised probation for sixty months. Defendant appeals.

II. Issue

Defendant's sole argument on appeal is the trial court erred in refusing to instruct the jury on voluntary intoxication in connection with the charge of malicious conduct by a prisoner.

III. Voluntary Intoxication

Defendant contends the trial court erred in refusing to instruct the jury on voluntary intoxication as a defense to the charge of malicious conduct by a prisoner. We disagree.

"Although voluntary intoxication is no excuse for crime, where a specific intent is an essential element of the offense charged, the fact of intoxication may negate the existence of that intent." *State v. Bunn*, 283 N.C. 444, 458, 196 S.E.2d 777, 786 (1973) (citation omitted). "[I]ntoxication does not negate a general intent[]" and provides no defense to a general intent crime. *State v. Jones*, 339 N.C. 114, 148, 451 S.E.2d 826, 844 (1994), *cert. denied*, 515 U.S. 1169, 132 L. Ed. 2d 873 (1995); *see also State v. Coffey*, 43 N.C. App. 541, 544, 259 S.E.2d 356, 358 (1979) ("Intoxication is not a defense unless the crime charged requires a specific intent[.]").

Because malicious conduct by a prisoner is a general intent crime defendant had no right to the requested instruction. *State v. Robertson*, 161 N.C. App. 288, 293, 587 S.E.2d 902, 905 (2003); *Jones*, at 148, 451 S.E.2d at 844. This assignment of error is overruled.

IV. Conclusion

The trial court did not err in denying defendant's request for the instruction of voluntary intoxication. Defendant had a fair trial free from prejudicial errors he preserved, assigned, and argued. We find no error.

No Error.

Judges GEER and STEPHENS concur.

Report per Rule 30(e).