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NO. COA13-203
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 10 CRS 058159, 240514-17,
240519

LEAH ANNE WALTON,
Defendant.

Appeal by defendant from judgments entered 15 August 2012 by Judge Eric L. Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 23 September 2013.

Roy Cooper, Attorney General, by Tammera S. Hill, Assistant Attorney General, for the State.

Glover & Petersen, P.A., by James R. Glover and Ann B. Petersen, for defendant-appellant.

MARTIN, Chief Judge.

Defendant, Leah Anne Walton, was charged with assault with a deadly weapon inflicting serious injury; manslaughter; possession of marijuana, a schedule VI controlled substance; possession of drug paraphernalia; violation of registration provisions of N.C.G.S. § 20-313; and reckless driving.

Defendant was found guilty of assault with a deadly weapon inflicting serious injury; involuntary manslaughter; misdemeanor possession of marijuana; possession of drug paraphernalia; operating a vehicle with no insurance; and reckless driving. The trial court arrested judgment on the reckless driving charge. She appeals from the judgments entered upon the other verdicts.

At trial, evidence tended to show that on 22 August 2010, Susan Karabulut and Lisa McIe were employees of the White Oak Manor nursing home located on the east side of Craig Street in Charlotte. At approximately 7:50 a.m., they were sitting outside on the curb taking a break from work. Defendant was driving her automobile in a southerly direction on Craig Street in the right-hand, or west, lane. Defendant's automobile crossed into the north bound, or east, lane and then onto the sidewalk on the east side of Craig Street, striking both Ms. Karabulut and Ms. McIe and dragging them under the car, which came to rest on the west side of Craig Street. Ms. Karabulut was pronounced dead at the scene; Ms. McIe suffered multiple injuries requiring a lengthy hospitalization and extensive rehabilitation, resulting in permanent disability.

Defendant told the investigating officer that she had reached into the floorboard to retrieve her pocketbook to get

her cigarettes when she ran across the roadway and struck Ms. Karabulut and Ms. McIe. She later gave a taped interview in which she said she was employed at Earth Fare in Charlotte, which was a 25-30 minute drive from her apartment. She was supposed to be at work at 8:00 a.m. on 22 August, and did not wake up until 7:30 a.m. She left her apartment at about 7:45 a.m. Craig Street was a part of her route to work, and she had previously seen nursing home employees, including Ms. Karabulut and Ms. McIe, and others on Craig Street in front of White Oak Manor. After she turned onto Craig Street she reached to pick up her purse and look for a cigarette, taking her eyes off the road. She felt a "hard bump" and realized that she was on the wrong side of the road. She did not know that she had hit anyone until she regained control of her car and stopped.

A consensual blood test showed that defendant had no alcohol in her blood, but did have metabolites of marijuana and cocaine, diazepam and hydrocodone, which are controlled substances, and citalopram, which is an anti-anxiety medication. Evidence showed that she had taken the anti-anxiety medication after the accident. A pill bottle containing marijuana was found in defendant's car. Defendant admitted that she had shared a gram of cocaine with her boyfriend and another person two days prior to the accident and, on the night before the

accident, had taken a Xanax pill, drank some beers, and smoked some marijuana. The officers investigating the accident testified that defendant did not appear, however, to be impaired.

Other evidence tended to show that the posted speed limit on Craig Street was 30 miles per hour and that the speed of defendant's vehicle when she crossed the center of Craig Street and hit the opposite curb was estimated to have been between 41 and 44 miles per hour.

On appeal, defendant challenges the trial court's denial of her motion to dismiss the charges of involuntary manslaughter and assault with a deadly weapon inflicting serious injury.

When a defendant makes a motion to dismiss, the question before a trial court is "whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79,

265 S.E.2d 164, 169 (1980). To determine if there is substantial evidence, a trial court considers all admitted evidence "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 32, 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995). We review a trial court's denial of a motion to dismiss *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007).

Defendant first argues that the State failed to provide substantial evidence to support a finding of culpable negligence necessary to convict her of involuntary manslaughter. We find her argument to be without merit.

Involuntary manslaughter is an unlawful killing of a person in the absence of "malice, premeditation, deliberation, intent to kill, and intent to inflict serious bodily injury." *State v. Greene*, 314 N.C. 649, 651, 336 S.E.2d 87, 89 (1985). The State may prove involuntary manslaughter by establishing that an unlawful killing was the result of: (1) "an unlawful act not amounting to a felony," or (2) "culpably negligent conduct." *Id.* at 651-52, 336 S.E.2d at 89.

Culpable negligence "is such recklessness or carelessness, proximately resulting in injury or death, as imports a

thoughtless disregard of consequences or a heedless indifference to the safety and rights of others.'" *State v. Colson*, 262 N.C. 506, 519, 138 S.E.2d 121, 130 (1964) (quoting *State v. Cope*, 204 N.C. 28, 30, 167 S.E. 456, 458 (1933)). A court can find culpable negligence if a defendant willfully, wantonly, or intentionally violates a safety statute. *Id.* (quoting *State v. Hancock*, 248 N.C. 432, 435, 103 S.E.2d 491, 494 (1958)). If a defendant inadvertently or unintentionally violates a statute, to constitute culpable negligence, that violation must be accompanied by a reckless disregard for a foreseeable consequence of a dangerous nature, "'amounting altogether to a thoughtless disregard of consequences or of heedless indifference to the safety of others.'" *Id.* (quoting *Hancock*, 248 N.C. at 435, 103 S.E.2d at 494).

When we consider the evidence in a light most favorable to the State, there is substantial evidence that defendant acted with thoughtless disregard or indifference towards the safety of others. Defendant was driving approximately 41 miles per hour when she knew the speed limit was 30 miles per hour and the suggested speed limit for the area where the accident occurred was 25 miles per hour. Furthermore, she was not paying proper attention to her driving in an area she knew to be frequented by pedestrians, averting her eyes from the road in order to reach

for her pocketbook and look for a cigarette. She was driving on the wrong side of the street and did not apply her brakes until after she felt a "hard bump" and struck the victims. We conclude there was sufficient evidence that a reasonable mind could accept to support the conclusion that defendant behaved in a culpably negligent manner, and the motion was properly denied.

Next, defendant argues that the trial court should have dismissed the assault with a deadly weapon inflicting serious injury charge because the State failed to prove the element of intent. We likewise find this argument unpersuasive.

Assault with a deadly weapon inflicting serious injury requires actual intent to inflict injury; however, intent may be implied through the presence of culpable negligence. *State v. Jones*, 353 N.C. 159, 164-65, 538 S.E.2d 917, 923 (2000).

As discussed above, culpable negligence is present when a defendant's inadvertent or unintentional violation of a statute is accompanied by a foreseeable dangerous consequence "amounting altogether to a thoughtless disregard of consequences or of heedless indifference to the safety of others.'" *Colson*, 262 N.C. at 519, 138 S.E.2d at 131 (quoting *Hancock*, 248 N.C. at 435, 103 S.E.2d at 494).

As we have already discussed, there is substantial evidence that defendant acted in a culpably negligent manner, from which

the intent element of assault with a deadly weapon inflicting serious injury may be implied. Therefore, the trial court properly denied defendant's motion to dismiss the charge of assault with a deadly weapon inflicting serious injury.

No Error.

Judges GEER and STROUD concur.

Report per Rule 30(e).