IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-285

Filed: 15 November 2016

Edgecombe County, No. 13CRS051079

STATE OF NORTH CAROLINA

v.

ANDREW LEE JEFFREYS, Defendant.

Appeal by Defendant from judgment entered 11 June 2015 by Judge Walter H. Godwin, Jr., in Edgecombe County Superior Court. Heard in the Court of Appeals 6 September 2016.

Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Anne J. Brown, for the State.

Hollers & Atkinson, by Russell J. Hollers, III, for the Defendant.

DILLON, Judge.

Andrew Lee Jeffreys ("Defendant") appeals from a jury verdict finding him guilty of involuntary manslaughter. We find no error in Defendant's conviction.

I. Background

Defendant was indicted for involuntary manslaughter in connection with the death of Michael Parrisher. The State's evidence presented at trial tended to show that Defendant and Mr. Parrisher went together to purchase heroin, that Defendant

injected Mr. Parrisher with heroin, that Mr. Parrisher eventually passed out, that Defendant did not seek aid for Mr. Parrisher and prevented others from seeking aid, and that Mr. Parrisher died shortly thereafter. Specifically, the evidence showed as follows:

On the night of 11 October 2012, Defendant and Mr. Parrisher went to a house where they purchased and used heroin. As they were leaving, they encountered a married couple, ("Ms. Poole" and "Mr. Poole"), who were also at the house to purchase and use heroin. Defendant told Ms. Poole that he had to "inject Mr. Parrisher with the heroin because [Mr. Parrisher] was unable to . . . find his vein."

Shortly after leaving the house, Defendant called Mr. Poole and requested help in getting Mr. Parrisher home safely because he had passed out in his vehicle. Mr. and Ms. Poole met Defendant on the road and immediately noticed Mr. Parrisher "hanging out of the truck on the driver's side." A neighbor approached the vehicle and asked if everything was okay and if they needed help, to which Defendant replied that Mr. Parrisher "had these episodes," that "[Mr. Parrisher] was okay," and that "everything was okay." Mr. Poole helped Defendant carry Mr. Parrisher from the driver's side of the vehicle to the front passenger seat and fastened his seat belt. Mr. Parrisher was unresponsive. Defendant then drove the vehicle to Mr. Parrisher's home, and Mr. and Ms. Poole followed in their vehicle.

After arriving at Mr. Parrisher's home, Defendant told the Pooles that Mr. Parrisher was breathing but was still unresponsive. Ms. Poole told Defendant that she wanted to use a cell phone to call 911 for emergency medical assistance. However, Defendant refused to allow Ms. Poole to call 911 and ultimately took the cell phone away from her. Defendant told Ms. Poole that Mr. Parrisher had used some heroin and had been drinking, but stated that he did not want to call the police because he did not want to get into trouble. Ms. Poole then suggested that she would walk next door to seek help from the neighbor, an off-duty police officer, who had a marked police car in his driveway. Defendant declined, and instead called a friend named Debbie Sue and informed Ms. Poole that Debbie Sue would check on Mr. Parrisher.

At trial, Debbie Sue testified that Defendant had called her for "advice on what to do" with Mr. Parrisher, but that Defendant did not inform her that Mr. Parrisher had used drugs that night and did not request her help. Rather, Defendant told Debbie Sue that Mr. Parrisher was talking, walking around, and going into his home. Debbie Sue's boyfriend also spoke with Defendant during the phone call, and testified at trial that Defendant had told him that Mr. Parrisher was "in the truck but . . . was talking . . . and said he was going in the house."

Defendant and Mr. and Ms. Poole then left the scene to purchase and use cocaine, leaving Mr. Parrisher in his vehicle parked in front of his home. Roughly thirty minutes later, Defendant and Mr. and Ms. Poole returned. While the Pooles

remained in their vehicle, Defendant checked on Mr. Parrisher. Defendant told the Pooles that Mr. Parrisher "was okay and [was] just sleeping." The Pooles and Defendant then left the scene a second time. Defendant's girlfriend testified that Defendant later told her that when he returned to Mr. Parrisher's vehicle with the Pooles, Mr. Parrisher was "unresponsive . . . and wasn't talking." She also stated that "it was kind of understood that the second time when [Defendant] went back to [return] the wallet that [Mr. Parrisher] was unresponsive and he wasn't moving and . . . that was when [Defendant] knew [that Mr. Parrisher was dead]."

The following day, Mr. Parrisher's body was discovered by Debbie Sue's boyfriend, buckled into the front passenger seat of the vehicle. A toxicology report showed that Mr. Parrisher died as a result of combined heroin, cocaine, and alcohol toxicity.

II. Analysis

A. Motions to Dismiss

Defendant first contends that the trial court erred by denying his motions to dismiss the charge of involuntary manslaughter due to insufficient evidence. Specifically, Defendant argues that his failure to provide aid was not the proximate cause of Mr. Parrisher's death because his death was not "reasonably foreseeable" to Defendant under the circumstances. We disagree. When considered in the light most favorable to the State, there is substantial evidence that Defendant acted with

culpable negligence, proximately resulting in the death of Mr. Parrisher. It was thus proper for the trial court to deny Defendant's motions to dismiss and to submit the case to the jury.

We review a trial court's denial of a motion to dismiss for insufficient evidence *de novo*. *State v. Cox*, 367 N.C. 147, 151, 749 S.E.2d 271, 275 (2013). The question for the trial court is whether "the [S]tate has presented substantial evidence on each element of the crime and substantial evidence that the defendant is the perpetrator." *State v. Fowler*, 353 N.C. 599, 621, 548 S.E.2d 684, 700 (2001) (citations omitted), *overruled in part on other grounds by State v. Tanner*, 364 N.C. 229, 695 S.E.2d 97 (2010). Substantial evidence is "relevant evidence that a reasonable person might accept as adequate . . . or would consider necessary to support a particular conclusion." *State v. Garcia*, 358 N.C. 382, 412, 597 S.E.2d 724, 746 (2004) (internal citations omitted). In conducting this inquiry, the trial court is to consider all evidence in the light most favorable to the State. *Id.* Discrepancies and contradictions in the evidence are for the jury to resolve and do not warrant dismissal. *State v. Gibson*, 342 N.C. 142, 150, 463 S.E.2d 193, 199 (1995); *see also Fowler*, 353 N.C. at 621, 548 S.E.2d at 700 ("If substantial evidence exists supporting [a] defendant's guilt, the jury should be allowed to decide if the defendant is guilty beyond a reasonable doubt.").

The elements of involuntary manslaughter are: "(1) an unintentional killing; (2) proximately caused by either (a) an unlawful act not amounting to a felony and not ordinarily dangerous to human life, or (b) culpable negligence." *State v. Hudson*, 345 N.C. 729, 733, 483 S.E.2d 436, 439 (1997). Culpable negligence is more than the actionable negligence necessary to sustain a recovery in tort. *State v. Everhart*, 291 N.C. 700, 703, 231 S.E.2d 604, 606 (1977). In the criminal context, 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).

We have previously recognized that a duty to aid arises when a person provides another person with a dangerous substance which causes them to fall ill. *See In re Z.A.K.*, 189 N.C. App. 354, 358-59, 657 S.E.2d 894, 896 (2008).

> Risk-creation behavior thus triggers duty where the risk is both unreasonable and foreseeable . . . . The orbit of the danger as disclosed to the eye of reasonable vigilance [is] the orbit of the duty. A duty arises based on evidence showing that a defendant should have recognized that [a victim], *or anyone similarly situated* might be injured by their conduct.

Little v. Omega Meats I, Inc., 171 N.C. App. 583, 593, 615 S.E.2d 45, 52 (2005) (emphasis added) (internal marks and citations omitted). We are guided by our Court's previous decision in *In re Z.A.K.*, a case where the defendant provided the

victim with ecstasy and failed to call for aid after the victim asked to go to the hospital, became sick, and began to foam at the mouth. *See In re Z.A.K*, 189 N.C. App. at 360, 657 S.E.2d at 897. In that case, the defendant told his father that everything was fine, falsely represented to a 911 operator that all was well, and stated "Oh, God, don't call the police there'll be trouble." *Id.* The victim in Z.A.K. died of mixed toxicity drug overdose and the defendant's conviction for involuntary manslaughter was upheld on appeal. Our Court acknowledged that, "[a]t the very least, [the defendant's] affirmative conduct precluded any other rescuer from rendering the aid allegedly necessary to prevent [the victim's injuries]." *Id.*

In this case, as in *In re Z.A.K.*, Defendant provided drugs to Mr. Parrisher and his conduct prevented others from providing potentially life-saving aid. The State's medical examiner offered opinion testimony that emergency medical treatment could have reversed Mr. Parrisher's condition prior to his death if he had received Narcan, a substance used to reverse heroin overdose. There was sufficient evidence from which the jury could infer that Defendant's actions constituted a breach of duty to Mr. Parrisher and that Defendant's recklessness or carelessness proximately resulted in Mr. Parrisher's death. *See id.* at 360, 657 S.E.2d at 897-98.

B. Closing Argument

In Defendant's second argument on appeal, he contends that the trial court erred by allowing the prosecutor to argue the specific facts of a reported appellate

case to the jury during closing argument. Defendant argues that the trial court's failure to intervene *ex mero motu* constitutes reversible error. We disagree.

We review the propriety of closing arguments to determine whether counsel's remarks were "grossly improper." *State v. Jones*, 355 N.C. 117, 133, 558 S.E.2d 97, 107 (2002). Because Defendant failed to object to the prosecutor's remarks at trial, "Defendant must show that the prosecutor's comments so infected the trial with unfairness that they rendered the conviction fundamentally unfair." *State v. Jones*, 231 N.C. App. 433, 437, 752 S.E.2d 212, 215 (2013) (internal marks omitted).

Our Supreme Court has recognized that "it is well settled that [our statutes] permit[] counsel, in his argument to the jury, to state his view of the law applicable to the case . . . and to read, in support thereof, from the published reports of decisions of this court." *Wilcox v. Glover Motors, Inc.*, 269 N.C. 473, 479, 153 S.E.2d 76, 81 (1967). However, counsel may not read the facts contained in a published opinion together with the result to imply that the jury in his case should return a favorable verdict for his client. *See id.*

In the State's closing argument, the prosecutor stated that "[the] courts in this state have upheld a case called [*In re Z.A.K.*]," recited a summary of the facts of that case, and stated that the defendant in *In re Z.A.K.* "was found guilty of involuntary manslaughter because he had a duty." We have carefully reviewed the record and conclude that the prosecutor's statements did not "stray so far from the bounds of

propriety as to impede [Defendant's] right to a fair trial." *State v. Small*, 328 N.C. 175, 185, 400 S.E.2d 413, 418 (1991); *see also Jones*, 231 N.C. App. at 437, 752 S.E.2d at 215. Accordingly, this argument is overruled.

NO ERROR.

Judges BRYANT and STEPHENS concur.

Report per Rule 30(e).