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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-433

Filed: 6 December 2016

Wake County, No. 14 CRS 201449

STATE OF NORTH CAROLINA,

v.

WILLIAM CREAMONT BEARY, Defendant.

Appeal by Defendant from Judgment and Commitment entered 31 August 2015 by Judge Henry W. Hight Jr. in Wake County Superior Court. Heard in the Court of Appeals 19 October 2016.

Attorney General Roy Cooper, by Assistant Attorney General J. Joy Strickland, for the State.

Megerian & Wells, by Franklin E. Wells, Jr., for Defendant-Appellant.

INMAN, Judge.

William Creamont Beary ("Defendant") appeals from a judgment of conviction entered upon a jury verdict finding him guilty of felony hit and run. Defendant contends that the trial court erred in denying his motion to dismiss because the State offered insufficient evidence that Defendant knew or should have known that there had been a collision that resulted in serious injury or death. After careful review, we hold that the trial court did not err in denying Defendant's motion to dismiss.

Factual & Procedural History

The State's evidence at trial tended to show the following:

On 16 January 2014, around 9:30 p.m., Melvin Bailey ("Bailey") was traveling in his sport utility vehicle in the right hand lane of New Hope Road in Raleigh. Bailey saw a dark van about 75 yards in front of him strike something that "looked like a bag spinning off" the van onto the road. The object that had been struck was the height of a standing human. It landed on the other side of the road, across the yellow line. Bailey observed the dark van's brake lights display for "about two counts," and then the van continued driving. As he traveled closer to the scene of the collision, Bailey began to believe the van had struck a person. When Bailey's vehicle was approximately 45 yards from where the object had landed, he knew it was a person "because she was trying to get up." Bailey said it was hard to see her because she was wearing a dark outfit. Seconds later, a second vehicle struck the person. Bailey called 911, got out of his car, and ran to assist the person. The person died from her injuries and was later identified as Justice Yasmeen Leshaun Smith ("Ms. Smith").

The second vehicle to hit Ms. Smith was driven by Elizabeth Gray ("Gray"). Gray was driving in the left hand lane of New Hope Road when she saw a woman lying prone in the road. Almost immediately after seeing the woman, Gray ran over her. Gray testified that "my brain registered there is a body in the road as I hit her." Immediately after impact, Gray stopped, jumped out to check on the woman, and

began waving for help. Gray noticed that there was a streetlight out "close to where [her] car ultimately stopped, so . . . it was very dark . . . pitch black." Gray was unable to recall if other vehicles were traveling around her when the accident occurred, because "[e]verything just got obliterated from my mind at that point."

Richard Horvath ("Horvath") saw both the van and Gray's car strike Ms. Smith when he was driving in the opposite lane on New Hope Church Road. Horvath first saw Ms. Smith from a distance of more than five car lengths away before she was struck by the van. Horvath's wife, Elsa Maria Jiminez-Salgado, who was a passenger, looked up from her phone and observed Ms. Smith lying prone in the road before the second vehicle struck her. Horvath stopped his vehicle and returned to see if he could help.

After 10:00 p.m. that night, Defendant called his cousin Cecil McBride ("McBride") twice and then texted him "911" after McBride did not answer Defendant's phone calls. Defendant met with McBride and showed him the van Defendant was driving, stating "something had hit his vehicle." McBride told Defendant that the van looked like it "hit someone" and that the windshield looked like it had been struck by a person's head. Later that night, Defendant went to see his girlfriend, Rhonda Moore ("Moore"). He initially told her "somebody threw something at the car" and asked her to look at the van, which belonged to her. Moore fell back asleep and Defendant woke her up again, stating that McBride had "seen

something . . . on the news about a lady being hit[.]" Moore went and looked at the van. The next morning, Moore called the police to file a report in order to get her van fixed. Officer Eric Crawford went to Moore's work place for purposes of the report. Moore told Officer Crawford that the previous night, Defendant "seemed really scared or in a panic state . . . saying that he thinks he was involved in a wreck last night and possibly could have been a person that he had struck, but he wasn't sure and he did not want to stop."

Officer D.B. Moreland ("Officer Moreland") of the Raleigh Police Department came to Defendant's home and asked Defendant to come to the police station for an interview. Defendant agreed to do so. At the police station, Defendant told Sergeant Seal Hoolan that he knew something had hit his vehicle but was not aware it was a person. Defendant said not stopping was "stupid," but that he didn't want his girlfriend to find out he was coming from another woman's house. Drug testing later determined that Defendant had ingested marijuana at some point, but did not determine whether he had used it on the night Ms. Smith was struck and killed. Officer Moreland served Defendant with a warrant for his arrest for felony hit and run.

Defendant was indicted on 10 February 2014 for felony hit and run resulting in serious bodily injury or death. He pled not guilty and was tried before a jury. At the close of State's evidence, Defendant moved to dismiss the charge and the motion

was denied. Defendant did not testify or present any evidence. Defendant was found guilty and was sentenced to 21-35 months imprisonment. Defendant gave timely notice of appeal in open court.

Standard of Review

"This Court reviews the trial court's ruling with respect to a motion to dismiss for insufficient evidence on a *de novo* basis." *State v. English*, __ N.C. App. __, __, 772 S.E.2d 740, 744, *review denied*, __ N.C. __, 776 S.E.2d 201 (2015). A motion for dismissal must be denied if "there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense." *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 411, S.E.2d at 595. "Such evidence can be either direct or circumstantial." *State v. Williams*, 235 N.C. App. 211, 215, 760 S.E.2d 382, 385 (2014). If there is sufficient evidence, then it is left for the jury to determine the weight and credibility of all evidence before it. *Id.* at 211, 760 S.E.2d at 383. "On appellate review, this Court 'must view the evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference.' " *State v. Mason*, 222 N.C. App. 223, 226, 730 S.E.2d 795, 798 (2012) (quoting *State v. Locklear*, 322 N.C. 349, 358, 368 S.E.2d 377, 382-383 (1988)).

Analysis

Defendant contends that the trial court erred in denying his motion to dismiss because there was insufficient evidence that he knew or should have known that the collision was with a person and that serious bodily injury or death resulted. We disagree.

A motorist's duty to stop in the event of an accident is defined by statute. "The driver of any vehicle who knows or reasonably should know: (1) [t]hat the vehicle which he or she is operating is involved in a crash; and (2) [t]hat the crash has resulted in serious bodily injury . . . or death to any person; shall immediately stop his or her vehicle at the scene of the crash." N.C. Gen. Stat. § 20-166(a) (2015). Section 14-32.4 of the North Carolina General Statutes defines serious bodily injury as "bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization." N.C. Gen. Stat. § 14-32.4(a) (2015).

Defendant does not dispute that the State presented sufficient evidence that he was involved in a crash resulting in serious bodily injury. He argues, however, that the State failed to present sufficient evidence that he knew or reasonably should have known what had occurred. Defendant argues that because the accident occurred at night in a dark area of roadway, because Ms. Smith's dark clothing made it difficult

for her to be seen in the road, and because Defendant maintained to all witnesses that he did not immediately know he hit a person, the evidence was insufficient to support the *mens rea* element of felony hit and run. Defendant argues that the evidence in this case, at best, arouses only a strong suspicion that he knew or reasonably should have known that his vehicle was involved in a crash resulting in serious injury. He cites *State v. Malloy*, in which the North Carolina Supreme Court reversed the defendant's conviction for possession of stolen property, holding that if the evidence, taken in the light most favorable to the State, "is sufficient only to raise a suspicion as to . . . the commission of the offense . . . , the motion to dismiss must be allowed . . . even though the suspicion aroused by the evidence is strong." 309 N.C. 176, 179, 305 S.E.2d 718, 720 (1983).

Here, the State presented evidence that witnesses on or around the scene observed a person being hit by the van. Bailey, who was traveling in the same direction approximately 75 yards behind Defendant's van, testified that "as I was coming around the corner, I noticed something that caught my eye in the distance. It looked like a bag spinning off of a car in the road. The closer I got to it, the more my focus went to it, and that it was a person." Horvath, who was traveling in the opposite direction of Defendant's van, watched from a distance of more than five car lengths away the van strike Ms. Smith. Horvath testified that "[i]t was kind of dark, so it was very hard to see, but I saw that it was like a person." He explained that he

"assume[d] it was a person because it was tall, so it wouldn't be like an animal or something like that[.]" Horvath's wife, Jiminez-Salgado, testified that when she looked up from her phone, she "saw a person" in the road, "before the second hit."

The State also presented evidence that the damage to Defendant's van was consistent with hitting a person. McBride, Defendant's cousin, testified that upon seeing the van after the accident and observing "the windshield was smashed on the driver's side and . . . the damage on the door," he "just automatically assumed that [Defendant] hit someone." He said to Defendant, "man, it looks like you hit someone" and indicated that the windshield looked like it had been struck by a person's head.

In *State v. Williams*, 235 N.C. App. 211, 215, 760 S.E.2d 382, 385, this Court held that "[t]he State can establish the knowledge element of the offense of felonious hit and run by showing either that [the] defendant actually knew, or that he reasonably should have known, that the vehicle which he was operating struck a person." The defendant in *Williams* argued that he was entitled to a new trial because his trial counsel failed to move for dismissal at the close of all evidence. *Id.* at 214, 760 S.E.2d at 384-85. This Court held that the defendant could not show prejudice because it was not probable that the motion, if made, would have changed the outcome of his trial. *Id.* at 216, 760 S.E.2d at 386. This Court noted evidence that the defendant knew his vehicle had struck something, and the "impact caused substantial damage to the right front of the vehicle." *Id.* at 216, 760 S.E.2d at 385.

Here, the State's evidence shows that Defendant acknowledged knowing that the van he was driving hit something, that Defendant initially lied to his girlfriend about how the van was damaged, and that Defendant's cousin—whose help Defendant sought shortly after the impact—told Defendant that the van's windshield looked like it had been struck by a person's head. This evidence, considered in the light most favorable to the State, is sufficient to support a reasonable inference that Defendant knew or should have known at the time of impact that he had struck a person, was distressed and sought his cousin's advice, initially lied to his girlfriend to hide his crime, and acknowledged to her within hours of the impact that he thought he had hit a person.

Defendant cites *State v. Glover*, 270 N.C. 319, 154 S.E.2d 305 (1967), and *State v. Ray*, 229 N.C. 40, 47 S.E. 2d 494 (1948), for the general observation that knowledge is an essential element of felony hit and run. Both of these decisions preceded the amendment of N.C. Gen. Stat. § 20-166 in 1983 to add the phrase "or reasonably should know" to the *mens rea* element of felony hit and run. 1983 N.C. Sess. Laws ch. 912, § 1. The amendment provides for culpability based on objective evidence without the necessity of proving subjective knowledge.

Here, the State presented evidence of Defendant's behavior immediately following the collision from which a reasonable juror could infer that Defendant had actual knowledge that he had struck a person. After 10 p.m. on the night of the collision, Defendant called McBride twice. When McBride did not answer

Defendant's calls, Defendant texted him "911" two times. McBride called Defendant back and Defendant asked McBride to meet him, stating that he needed to talk to McBride. Defendant was "pretty nervous" when he and McBride met. McBride told Defendant the van looked like it had struck a person. Later that night, Defendant woke Moore up when he arrived home and initially said that somebody had thrown something at the van. Defendant then told Moore that McBride had "seen something . . . on the news about a lady being hit[.]" Defendant "seemed really scared or in a panic state . . . saying that he thinks he was involved in a wreck last night and possibly could have been a person that he had struck, but he wasn't sure and he did not want to stop."

In sum, the evidence, when considered in the light most favorable to the State, was sufficient to show that Ms. Smith could be seen in the road at the time Defendant's vehicle struck her and to show that the collision significantly damaged the front of Defendant's van, leaving the impression of Ms. Smith's skull on the windshield. Added to the undisputed facts that Defendant struck Ms. Smith and that he left the accident when others stopped immediately, the State presented evidence sufficient to support a finding of guilt of felonious hit and run.

Conclusion

The trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

Judges DAVIS and ENOCHS concur.

Report per Rule 30(e).