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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-397

Filed: 21 April 2020

Randolph County, Nos. 15 CRS 54486, 54067

STATE OF NORTH CAROLINA

v.

JAMES ALBERT HAYNER

Appeal by defendant from judgment entered 29 August 2018 by Judge Susan E. Bray in Randolph County Superior Court. Heard in the Court of Appeals 7 January 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Ebony J. Pittman, for the State.

Wyatt Early Harris Wheeler LLP, by Stanley F. Hammer, for defendant-appellant.

ZACHARY, Judge.

Defendant James Albert Hayner appeals from a judgment entered upon his convictions for elder neglect resulting in serious injury and involuntary manslaughter. After careful review, we conclude that Defendant received a trial free from reversible or prejudicial error.

Background

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Defendant's mother, Thelma Ruth Hayner, suffered from advanced dementia, among myriad other health issues. She was mostly immobile, and therefore required assistance for ambulation and daily tasks, including using the bathroom and getting dressed. She previously lived in an assisted living facility in New York and had a monthly income of roughly \$1,400. In 2015, Defendant removed Thelma from the nursing home and brought her to North Carolina to live with him.

On 25 February 2015, Defendant took Thelma to Dr. Lynley Holt at White Oak Family Physicians to establish her as a new patient. Dr. Holt referred Thelma to Home Health for assistance with medication management, physical therapy, and hygiene. Home Health care was terminated on 26 March 2015 because of Thelma's refusal to participate — a direct consequence of her advanced dementia. Home Health therefore transitioned Thelma's care to family members, including Defendant, who "were aware" of the responsibilities they were undertaking in assuming her care, "and felt comfortable being able to proceed with what was needed."

In June 2015, Defendant twice left town for a number of days with his wife and daughter, leaving Thelma behind, alone. Defendant enlisted the help of Noelle Kirkman, an acquaintance from church, to feed his cats while he was away. Defendant did not give Kirkman any instructions regarding "the care or upkeep" of Thelma. Rather, she was instructed to "feed the cats" twice per day and to "open [Thelma's] door and just see and then close it back." In order to open Thelma's door,

Kirkman “ha[d] to take a latch off[,]” effectively unlocking it from the outside while Thelma remained confined to her room. Kirkman never gave Thelma food or water, and “never saw [Thelma] with food in her hand,” although she saw wrappers for “little peanut butter and jelly sandwiches” on the floor around the chair on which Thelma had been placed.

On one occasion, Kirkman found Thelma on the bedroom floor. When she picked Thelma up and “placed her back in her chair[,]” Kirkman “saw that there was blood . . . on the floor from her fall.” She “called the Hayners immediately to ask them what they wanted [her] to do and if [she] should call 911, and they said no.”

Caring for Thelma became increasingly burdensome for Defendant. After Defendant’s wife told Dr. Holt that she did not have “the capability to wait on [Thelma] hand and foot[,]” Dr. Holt advised her of different ways to have Thelma moved to an assisted living facility, including presenting Thelma at a hospital emergency department. Defendant did not take steps to place Thelma in a nursing home, or take her to a hospital emergency department, but instead continued to keep her in his home.

On 4 September 2015, while changing Thelma’s adult diaper, Defendant noticed a substantial bedsore on Thelma’s left hip, and called EMS. When EMS found Thelma, she was unresponsive and laying in her own stool. Thelma was admitted to Randolph Hospital that same day “due to multiple decubitus wounds with UTI and

apparent elder neglect.”¹ In the emergency department, Thelma “was found to have multiple large deep decubitus extended down into her pelvic bones, which appeared initially infected, covered in stool.” Thelma was nonverbal and bedbound. While at Randolph Hospital, Thelma “underwent surgical debridement of her wounds.”

That same day, Randolph Hospital made an adult protective services referral regarding Thelma to Randolph County Department of Social Services (“DSS”). In that the report alleged neglect and other injuries, DSS “took it as an abuse case[.]” Nicolette Martinez of DSS went to Randolph Hospital to investigate. As Martinez approached Thelma’s hospital room, she could smell the necrotic tissue present in Thelma’s wounds, which caused Thelma to smell “like a dead body[.]”

When Martinez returned to Thelma’s room, the nurses moved the sheet covering Thelma to enable Martinez to view and photograph Thelma’s wounds. According to Martinez, “[i]t took everything [she] had to not cry, to not throw up, to not cuss” because, despite having seen pressure ulcers or bedsores “at least 25 times prior to” the instant case, she “had never seen any . . . this bad before.”

Thelma’s pressure ulcers and wounds “[we]ren’t the type . . . that just appear in a few days. These [we]re wounds that took a little bit of time to . . . develop.” According to Martinez, some were so severe that muscle and bone were exposed and clearly visible. The wound on Thelma’s right leg was “a little bit bigger than a

¹ At trial, defense counsel noted that “decubitus ulcers” are bedsores.

quarter.” The wound on her back “cover[ed] about maybe three fifty-cent pieces.” “[T]he two very scary and disgusting pressure ulcers . . . on her buttocks and . . . upper thigh” were “roughly four inches in diameter”—approximately the “circumference of a coffee mug[.]” Thelma also had wounds and sores on her feet:

The one on her heel [wa]s bigger than a quarter; the one on her ankle [wa]s about the size of a nickle [sic]; the one on her toe [wa]s about the size of a dime; and then . . . one that’s kind of inside her instep . . . [wa]s about smaller than a dime.

The wound on her upper thigh was “[m]aybe the size of a saucer – smaller than a saucer.” The wound on her left hip was “down to tissue wound – tissue, bone and muscle” and was “almost the size of a dessert plate.”

Thelma’s lack of personal hygiene also caused concern. Specifically, Martinez observed that there “d[id] not appear to be any nail care” for Thelma, there “appear[ed] to be feces underneath her fingernails[.]” and “[h]er feet were very swollen.”

Martinez spoke with Defendant at Randolph Hospital on 4 September 2015. Defendant explained that he and his wife were Thelma’s caregivers, but that “his wife did not take care of her hardly any longer because [Thelma] would get hostile[.]” He noted that Thelma “was not in her right mind, and that he had to have her committed a couple of times[.]” most recently in January 2015, or December 2014.

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On 4 September 2015, Martinez shared the results of her investigation, including photographs she took of Thelma's wounds, with the Asheboro Police Department's criminal investigations division. Detective Russ Smith reviewed the photographs and initiated a criminal investigation. Among other items photographed at Defendant's home was a note, discovered in Thelma's room, that read "I will listen and clean my bathroom without being told." That same day, pursuant to a magistrate's order, Defendant was arrested for neglect of an elderly adult resulting in serious injury.

On 8 September 2015, Thelma was transferred from Randolph Hospital to Kindred Hospital. There, Thelma was diagnosed with, *inter alia*:

1. Advanced dementia.
2. Stage 4 left hip pressure ulcer.
3. Stage 4 sacral pressure ulcer extended to bilateral buttocks.
4. Stage 4 left and right ischial pressure ulcers.
5. Unstageable left lateral ankle pressure ulcer.
6. Unstageable right medial heel pressure ulcer.
7. Unstageable mid back pressure ulcers.
8. Stage 1 left lateral medial foot pressure ulcer.
9. Suspected deep tissue injury to the left lateral foot.
10. Urinary tract infection, present on admission.
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14. Severe protein-caloric malnutrition.
15. Debility.

Thelma was noted as being "basically completely dependent" on Defendant for daily life, with potential "failure to thrive[.]"

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On 17 September 2015, Thelma's adult protective services case came on for hearing. The trial court determined "that neglect had taken place; [and] that an adult protective services case was warranted[.]"

On 23 September 2015, Thelma died at Kindred Hospital. Dr. Lauren Scott, associate chief medical examiner with the Office of the Chief Medical Examiner of North Carolina, performed Thelma's autopsy. The autopsy report noted that law enforcement reports indicated "probable neglect" of Thelma "by [Defendant] who was her primary caretaker. . . . Per [a] report from law enforcement, [Defendant] left [Thelma] alone at home for nearly the entire month of June 2015 without care."

In her report, Dr. Scott concluded that Thelma's cause of death was most likely

a cardiac arrhythmia due to hypertensive cardiovascular disease. A cardiac arrhythmia is a physiologic mechanism of death which cannot be diagnosed at autopsy. Cardiomegaly can predispose to the development of a cardiac arrhythmia. It is likely that the *presence of severe ulcers with evidence of deep muscular infection contributed to overall debilitation and placed extra strain on the heart.* Therefore, based on autopsy and investigative findings as currently understood, it is my opinion that hypertensive cardiovascular disease is the cause of death, and that *dementia and decubitus ulcers in the setting of neglect contributed to death.*

(Emphases added).

On 29 September 2015, an arrest warrant was issued charging Defendant with involuntary manslaughter. On 14 December 2015, a Randolph County grand jury returned true bills of indictment formally charging Defendant with (i) neglect of an

elderly person resulting in serious injury (15 CRS 54067) and (ii) involuntary manslaughter (15 CRS 54486).

On 28 August 2018, Defendant’s case came on for trial in Randolph County Superior Court before the Honorable Susan E. Bray. Defendant pleaded guilty, pursuant to *North Carolina v. Alford*, 400 U.S. 25, 27 L. Ed. 2d 162 (1970), to the charge of neglect of an elderly person resulting in serious injury, but not guilty to the charge of involuntary manslaughter. Following a bench trial, Judge Bray found Defendant guilty of involuntary manslaughter and accepted Defendant’s *Alford* plea to the charge of neglect.² The trial court consolidated the charges and found no aggravating factors, but six mitigating factors for sentencing purposes. The trial court sentenced Defendant to 13 to 25 months in the custody of the North Carolina Division of Adult Correction—a sentence within the presumptive range. Defendant gave notice of appeal in open court.³

I. Motions to Dismiss

On appeal, Defendant argues that the trial court erred in denying his motions to dismiss the charge of involuntary manslaughter because “the evidence presented

² Judge Bray did not accept Defendant’s *Alford* plea until after trial because the parties “agreed that the factual basis for the plea to neglect would be presented through the trial.”

³ Defendant subsequently filed a petition for writ of certiorari with this Court, seeking review of two additional unpreserved issues. This Court denied Defendant’s petition by order entered 15 January 2020.

was constitutionally insufficient to sustain a conviction of involuntary manslaughter.”⁴

A. Standard of Review

Upon a criminal defendant’s motion to dismiss, “the question for the 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 [the] defendant’s being the perpetrator of such offense. If so, the motion is properly denied.” *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993) (citation omitted). “Thus, if there is substantial evidence – whether direct, circumstantial, or both – to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the [finder of fact] and the motion to dismiss should be denied.” *State v. Fisher*, 228 N.C. App. 463, 471, 745 S.E.2d 894, 900 (citation omitted), *disc. review denied*, 367 N.C. 274, 752 S.E.2d 470 (2013). “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).

“In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any

⁴ Defendant fails to assert how the evidence was constitutionally insufficient. Accordingly, we do not address this portion of Defendant’s argument, but instead analyze the sufficiency of the evidence under our usual standard of review for this issue.

contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995).

“When presented with circumstantial evidence, the [trial] court must consider whether a reasonable inference of [the] defendant’s guilt may be drawn from the circumstances. If so, it is the [finder of fact’s] duty to determine if the defendant is actually guilty.” *State v. Noble*, 226 N.C. App. 531, 535, 741 S.E.2d 473, 478 (citations and internal quotation marks omitted), *disc. review denied*, 367 N.C. 251, 749 S.E.2d 853 (2013).

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).

B. Analysis

Defendant contends that the trial court erred by denying his motion to dismiss the charge of involuntary manslaughter because the State failed to prove that: (i) Defendant was culpably negligent through the omission of a duty, and (ii) Defendant’s alleged neglect was the proximate cause of Thelma’s death. We disagree.

Involuntary manslaughter is a common-law offense. *State v. Honeycutt*, 250 N.C. 229, 231, 108 S.E.2d 485, 486 (1959). “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.” *Fisher*, 228 N.C. at 471, 745 S.E.2d at 901 (citation omitted).

Culpable negligence, in the criminal context, 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) (citation omitted). To warrant a conviction for involuntary manslaughter, the State must show that the defendant’s act was a proximate cause of the victim’s death. *State v. Cummings*, 301 N.C. 374, 377, 271 S.E.2d 277, 279 (1980). “The act of the accused need not be the immediate cause of death. He is legally accountable if the direct cause is the natural result of the criminal act.” *Id.* (citation omitted). “There may be more than one proximate cause[,] and criminal responsibility arises when the act complained of caused or directly contributed to the death.” *Id.* (citations omitted).

In the instant case, the State presented sufficient evidence to sustain a conviction for involuntary manslaughter, and therefore, the trial court did not err in denying Defendant’s motion to dismiss. The evidence, when viewed in the light most favorable to the State, established the following:

Thelma suffered from advanced dementia, and required a caregiver. She was incontinent and unable to walk without assistance, communicate effectively, or manage her finances. As such, Thelma lived in a nursing home in New York, with a

monthly income of approximately \$1,400. In 2015, Defendant “moved [Thelma] out of that nursing home and brought her down . . . to North Carolina to live” in a mobile home with him and his family. Defendant and his wife cared for Thelma, and Defendant handled Thelma’s finances.

On 25 February 2015, Defendant took Thelma to Dr. Holt to establish her as a new patient. Because Thelma was wheelchair-bound, Dr. Holt referred Thelma to Home Health for physical therapy. However, as a result of her dementia, Thelma refused to participate. Home Health transitioned care to Defendant and his family. “[T]he family members were aware of this and felt comfortable being able to proceed with what was needed.” But after caring for Thelma became increasingly difficult for Defendant and his wife, Dr. Holt and Defendant’s wife discussed the process of how to have Thelma placed in an assisted living or memory unit. Dr. Holt told Defendant’s wife that, alternatively, if they were unsuccessful in placing Thelma in an assisted living or memory unit, they could take her to the emergency department of a hospital. Despite Dr. Holt’s advice, Defendant did not place Thelma in an assisted living facility or take her to a hospital.

Defendant kept a latch on Thelma’s bedroom door, which could not be accessed from inside of the bedroom. Defendant left Thelma home alone, locked inside of her bedroom for days at a time, while he and his family were away. Moreover, despite requesting that Kirkman check on his cats twice per day, Defendant failed to ensure

that Thelma's basic needs were met while the family was away. Defendant did not ask Kirkman to care for Thelma, other than to "open [Thelma's] door and just see and then close it back." Accordingly, Kirkman did not give Thelma food or water. Once, Kirkman found Thelma on her bedroom floor. When she called the Hayners, they told her not to call the paramedics.

Defendant was aware of Thelma's bedsores from changing her diapers daily. Not only did he notice the sore on her left hip in September 2015, but he was also aware of Thelma's history of bedsores, as evidenced by his statement to Martinez that he previously "had in-home healthcare for her because of a pressure wound after a hospital stay from a commitment. And that she was discharged from those services because of the wound healing."

When Martinez visited Thelma at Randolph Hospital to investigate the alleged abuse and neglect, she could smell the necrotic (dead) tissue present in Thelma's wounds before she entered the room. At trial, multiple witnesses testified to the severity and extent of Thelma's wounds and bedsores. The physicians and other experts testified that it would have taken weeks, if not months, to develop sores as severe as those from which Thelma suffered. The wounds were so severe that they placed additional stress on Thelma's weakened and malnourished body. According to the experts at trial, the wounds were a contributing cause of Thelma's death.

In sum, Defendant removed Thelma from her nursing home in New York and assumed the responsibility of caring for her. Defendant admitted to Detective Smith that “he felt like he didn’t take good enough care of the wound” that “had been there . . . *three to four weeks*[.]” and he “*felt like he had neglected his mother* because of that[.]” (Emphases added). Thus, Defendant acknowledged that he was aware of Thelma’s condition, that he did not properly care for her, and that he failed for an extended period of time to obtain medical treatment for her wounds. Moreover, the State presented sufficient evidence to establish that Defendant was legally accountable for Thelma’s death, in that Defendant’s actions—or inaction—directly contributed to her death, which was a natural result of neglect. *See Cummings*, 301 N.C. at 377, 271 S.E.2d at 279.

The State presented substantial evidence to support a finding that the offense charged was committed and that Defendant committed it. Accordingly, the trial court properly denied Defendant’s motion to dismiss the charge of involuntary manslaughter.

II. Dr. Scott’s Testimony

Defendant next argues that the trial court committed plain error when it admitted Dr. Scott’s testimony regarding Thelma’s cause of death, in that her testimony “was based on a palpably false premise that Defendant abandoned his mother during the month of June 2015.” We disagree.

Defendant challenges Dr. Scott's testimony regarding one of two potential "contributory conditions" for Thelma's cause of death: decubitus ulcers "*in the setting of neglect.*" (Emphasis added). Specifically, Defendant maintains that Dr. Scott's testimony was "bottomed on inaccurate information she received from law enforcement" that Thelma was left alone during the month of June 2015. In support of his argument, Defendant contends that Dr. Scott's "testimony about a 'setting of neglect' is highly unreliable" and that the admission of Dr. Scott's statement "affected the fairness of the proceeding and the integrity of the judicial process" because "[t]estimony regarding a 'setting of neglect' is central to the State's case[.]" Defendant further asserts that "absent the error it is highly probable that the [trial court] would not have found Defendant guilty, or even accepted Defendant's *Alford* plea."

However, "[a] defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct." N.C. Gen. Stat. § 15A-1443(c) (2019). In the instant case, "[t]he challenged testimony was elicited by the defense counsel and defense counsel did not object or make a motion to strike. Therefore, [the] defendant invited any error. [The] [d]efendant cannot now complain of this invited error." *State v. Batchelor*, 157 N.C. App. 421, 429, 579 S.E.2d 422, 428, *disc. review denied*, 357 N.C. 462, 586 S.E.2d 101 (2003); *see also State v. Carter*, 210 N.C. App. 156, 166, 707 S.E.2d 700, 707-08 ("Statements elicited by a defendant on cross-examination are, even if error, invited error, by which a defendant cannot be

prejudiced as a matter of law.” (citation omitted), *disc. review denied*, 365 N.C. 202, 710 S.E.2d 9 (2011). Moreover, it is clear from Defendant’s arguments that he is attempting to collaterally attack his guilty plea, which he may not do. Therefore, Defendant has waived appellate review of this issue.

Here, Defendant was not prejudiced by Dr. Scott’s statement in that defense counsel not only failed to object when Dr. Scott testified to the setting of neglect, but, in fact, *elicited testimony concerning the “setting of neglect”* and statements from law enforcement from Dr. Scott on cross-examination:

[DEFENSE COUNSEL:] So you received a report that [Thelma] was left without care for a period a month, is that right?

[DR. SCOTT:] That was the report that I received from law enforcement, yes.

Q. Would it surprise you to find that the witness who testified about that today said that she cared for the client’s cats for approximately a week?

A. The story’s certainly changed. It wouldn’t surprise me to find out anything.

Q. Okay. So the person who testified to that time where the Hayners were not available to care for Thelma . . . said this happened in June – she thought late June. But [Thelma] went to the doctor on June 24th and there were no wounds at that time. Does that surprise you at all?

A. Not necessarily.

Q. On the certification of cause of death – let’s see. It says Page 1 of 7 on the bottom left. I believe it’s in your notes

there or in what you were provided by the D.A. on the stand.

“Cause of death: Hypertensive cardiovascular disease.” Below that it says “Dementia and decubitus ulcers in a setting of neglect likely contributed to death.” Is that correct?

A. Yes.

Q. I believe you’ve already said that there is no complete certainty about any of this, is that correct?

A. That is correct.

Q. You’re more certain about the hypertensive cardiovascular disease than you are the other things. Am I also correct about that?

A. That’s correct. And I also feel that the hypertensive cardiovascular disease was the most important factor that might have led to a cardiac arrhythmia or electrical disturbance, but I do think that the presence of the decubitus ulcers did have a significant contributory factor. Hypertension was the most likely thing to have caused an arrhythmia while the decubitus ulcers were slightly less likely and were only contributory.

In brief, Defendant claims that the trial court erred by allowing Dr. Scott to testify about information that Defendant also explicitly elicited on cross-examination. Defendant cannot now complain of prejudice. Because a defendant who invites the error waives all appellate review, including plain error review, we need not address his arguments. *See Carter*, 210 N.C. App. at 167, 707 S.E.2d at 708 (“[A] defendant who invites error has waived his right to all appellate review concerning the invited error, including plain error review” (citation omitted)).

Conclusion

The trial court did not err by denying Defendant's motions to dismiss the charge of involuntary manslaughter due to insufficient evidence. Moreover, Defendant waived his plain-error challenge to the trial court's admission of certain expert testimony by eliciting the same testimony from the same witness during cross-examination. Accordingly, we affirm the trial court's judgment.

AFFIRMED.

Judges BRYANT and COLLINS concur.

Report per Rule 30(e).