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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-275

Filed: 15 December 2015

Burke County, No. 13CRS001745, 14CRS000346

STATE OF NORTH CAROLINA

v.

LEE EDWARD HUTCHENS, Defendant.

Appeal by Defendant from judgments entered 11 July 2014 by Judge Anderson D. Cromer in Burke County Superior Court. Heard in the Court of Appeals 24 September 2015.

*Attorney General Roy A. Cooper, by Assistant Attorney General Barry H. Bloch, for the State.*

*Cooley Law Office, by Craig M. Cooley, for the Defendant.*

DILLON, Judge.

Lee Edward Hutchens (“Defendant”) appeals from a jury verdict finding him guilty of involuntary manslaughter and two counts of assault with a deadly weapon inflicting serious injury (“AWDWISI”).

I. Background

This case arises from a two-car collision that resulted in the death of Michael Piercy. The State’s evidence tended to show that on 12 March 2013 Defendant

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experienced a “hypoglycemic incident” and lost consciousness due to low blood sugar while driving his vehicle on a two-lane highway, crossed the center line, and collided with another vehicle. The passengers in the other vehicle were Amanda and Michael Piercy and two of their young daughters (the “Piercy children”). Michael Piercy was killed on impact.

Medical personnel and law enforcement responded to the scene almost immediately. A paramedic and a police officer both testified that Defendant was “slumped over” and “incoherent” shortly after the accident. Amanda Piercy suffered superficial injuries as a result of the crash. One child had a head injury and minor lacerations, and the other child had a broken leg.

Defendant was tried by a jury for one count of involuntary manslaughter (for Michael Piercy’s death) and for two counts of AWDWISI (for the injuries suffered by the two Piercy children). The trial court denied Defendant’s motions to dismiss at the close of the State’s evidence and at the close of all evidence.

The jury found Defendant guilty of all three charges. Defendant was sentenced to 13 to 25 months for the involuntary manslaughter conviction and received suspended sentences of 20 to 36 and 25 to 42 months for the AWDWISI convictions. Defendant timely appealed.

II. Standard of Review

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On appeal, Defendant challenges the trial court's denial of his motions to dismiss the involuntary manslaughter and AWDWISI charges. When reviewing a trial court's denial of a motion to dismiss, we consider whether there is substantial evidence (1) of each essential element of the offense charged, or a lesser included offense, and (2) that defendant was the perpetrator. *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980). Substantial evidence is the "amount of relevant evidence necessary to persuade a rational juror to accept a conclusion." *State v. Mann*, 355 N.C. 294, 301, 560 S.E.2d 776, 781 (2002). In conducting this review, we consider all evidence in a light most favorable to the State. *State v. Powell*, 336 N.C. 762, 768, 446 S.E.2d 26, 29 (1994). Additionally, the defendant's evidence should be disregarded unless it is favorable to the State or does not conflict with the State's evidence. *State v. Scott*, 356 N.C. 591, 596, 573 S.E.2d 866, 869 (2002).

III. Analysis

Defendant argues that there was insufficient evidence to establish that he acted with culpable negligence. We disagree.

Our Supreme Court has instructed that proof that the defendant acted with culpable negligence is sufficient to support a conviction for both involuntary manslaughter and AWDWISI. *See State v. McGill*, 314 N.C. 633, 637, 336 S.E.2d 90, 92-93 (1985) (holding that involuntary manslaughter may be proven where the proximate cause of the killing is shown to be the defendant's culpably negligent act);

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*State v. Jones*, 353 N.C. 159, 164-65, 538 S.E.2d 917, 922-23 (2000) (holding that a defendant “who operates a motor vehicle in a manner such that it constitutes a deadly weapon” may be convicted of AWDWISI as long as there is “culpable or criminal negligence from which [intent] may be implied”). Culpable negligence is “such recklessness, ‘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. Massey*, 271 N.C. 555, 557, 157 S.E.2d 150, 153 (1967).

The State’s main theory of culpable negligence at trial was that Defendant knew or should have known that it was not reasonably prudent for him to continue operating his vehicle after identifying that he was experiencing the effects of low blood sugar. The State offered evidence which tended to show the following: Defendant is a Type II diabetic, a condition that, at the time of trial, he had treated for sixteen (16) years with several prescribed medications. On the day of the collision, Defendant smoked marijuana and snorted a hydrocodone pill with a neighbor. Later in the day, another neighbor observed Defendant “staggering” and offered to help Defendant find someone to drive him on his errands, an offer which Defendant declined. Shortly thereafter, Defendant drove a friend home and began swerving and driving erratically and appeared lethargic. His friend offered to drive. Defendant declined, instead choosing to pull over to eat a small snack to increase his blood sugar level. His driving improved temporarily. Shortly afterward, however, Defendant lost

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consciousness and lost control of his vehicle, swerving across the center line of the road and colliding with the Piercy family's vehicle. The State medical expert testified that the foods Defendant consumed after noticing symptoms of low blood sugar were insufficient to ensure that he had recovered enough to continue driving and that Defendant did not adequately control his diabetic condition with proper medication on the day of the collision.

Despite evidence offered by Defendant's expert witness which conflicted with the State's theory, we find that, *when viewed in the light most favorable to the State*, there was substantial evidence from which the jury could find that Defendant acted with culpable negligence. Thus, the question of whether Defendant was guilty beyond a reasonable doubt was properly left to the jury. *State v. Fowler*, 353 N.C. 599, 621, 548 S.E.2d 684, 700 (2001).

IV. Conclusion

We believe that the State presented substantial evidence that Defendant acted with culpable negligence. Accordingly, we affirm the trial court's denial of Defendant's motions to dismiss.

NO ERROR.

Judges HUNTER, JR., and DIETZ concur.

Report per Rule 30(e).