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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-750

Filed: 6 February 2018

Buncombe County, No. 15 CRS 83040

STATE OF NORTH CAROLINA

v.

DELILAH LAVINYA WILSON

Appeal by defendant from judgment entered 13 October 2016 by Judge Marvin P. Pope, Jr. in Buncombe County Superior Court. Heard in the Court of Appeals 12 December 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General J. Joy Strickland, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Katz, for defendant.

DIETZ, Judge.

Defendant Delilah Wilson appeals her conviction for felony hit and run resulting in serious injury or death. At trial, Wilson acknowledged that she left the scene of the accident but asserted that her failure to remain at the scene was justified because, had she remained, she would have faced a significant risk of psychological

injury. The statute governing felony hit and run excuses from criminal liability a driver who leaves because "remaining at the scene places the driver . . . at significant risk of injury." N.C. Gen. Stat. § 20-166(a).

On appeal, Wilson argues that the trial court erred by denying her request for a special jury instruction that "injury" as that term is used in the statute can be either physical or psychological. Instead of that special instruction, the trial court used the pattern jury instruction, which uses only the word "injury" without further definition.

As explained below, we hold that the pattern jury instruction contained the substance of Wilson's special instruction, and thus the trial court did not err in declining to use Wilson's proposed special instruction and instead using the pattern jury instruction. Accordingly, we find no error in the trial court's judgment.

Facts and Procedural History

On the night of 26 March 2015, Travis Henson was driving home when he saw hazard lights on the side of the road and stopped to see what was going on. Henson found a woman looking over a moped and a man, later identified as Robert Miller, lying on the ground motionless in a pool of blood. When Henson went to check on the injured man, the woman returned to her car and drove away. EMS arrived and tried to revive Miller, but he was pronounced dead at the scene. Highway patrol troopers arrived at the scene to investigate the accident and relayed a description of the fleeing vehicle to state and local law enforcement.

Several miles from the scene of the accident, law enforcement officers spotted a vehicle with a damaged front left headlight and a flat front left tire. Officers pulled the car over and approached the driver, later identified as Defendant Delilah Wilson. Wilson told the officers that she hit something down the road, but didn't know what it was. Wilson told the officers she was going back to see what she hit, but did not mention anything about hitting a person.

Law enforcement later determined that Wilson struck and killed Miller with her car and then left the scene. Among other evidence, officers found a piece of Miller's moped stuck under the hood of Wilson's car. In addition, officers confirmed that, immediately after the time of the accident, Wilson conducted an internet search on her phone for "what to do when you've hit someone on a moped" and for a lawyer.

The State charged Wilson with felony hit and run resulting in serious bodily injury or death. At trial, Wilson testified that, at first, she thought she hit a deer, but then saw Miller's body in the road. She said that she noticed Miller was extremely injured and ran to her car to call for an ambulance. But when she got to her car, "things started getting hazy," she realized Miller wasn't going to live, and she "was really freaked out."

Wilson left the scene and called a friend. She said she left because "I knew if I stayed that that pain and that fear wasn't going to stop; and like I had had a traumatic childhood and, you know, I don't think I was thinking at the time." She

stated that she knew leaving the scene was wrong and that she intended to go back to help, but her car was too damaged. Wilson testified that remaining at the scene would have placed her at risk of mental injury and that she had to take leave from work after the accident for anxiety, panic attacks, and flashbacks.

During the charge conference, Wilson requested a special jury instruction to be added to the pattern jury instruction concerning leaving the scene of an accident to avoid significant risk of injury. Wilson asked the trial court to explain that "[a]n injury can be either a physical or psychological injury." The trial court denied the request for the special instruction and instructed the jury according to the pattern instruction:

> The Defendant may be justified or excused in failing to remain at the scene of a crash if the Defendant left the scene of the crash to call for law enforcement, medical assistance, or to remove herself or others from significant risk of injury.

During jury deliberations, the trial court received a note from the jury that "one of our jurors has informed us that he is an attorney . . . and he has tried to cite several case studies. We stopped him and explained only the facts presented in this case are relevant and your instructions." The trial court brought the juror in to question him about the issue. The juror stated that he was a lawyer, but "did not cite any studies." When asked what he did, he told the court that

> When we were talking about one of the elements of the crime, particularly the leaving – not coming back or leaving

> the scene to avoid injury, I said – as Defense Counsel said in his closing argument, I believe that injury is not limited to simply physical injury. I said just as he said that, I think that's true. I think it's elementary that your brain is part of your body, and that's all I said. I did not go on to say that I've done this research or this research or this research or nothing like that. And I agree, and I even agree that closing arguments are not evidence to be, you know – there's no substantive evidence in closing argument. I agree with that.

After conferring with both parties, the trial court allowed the jury to continue deliberating without any reinstruction. Wilson's counsel stated that he did not have any objection to this and did not request reinstruction.

The jury convicted Wilson of felony hit and run resulting in serious injury or death. The trial court sentenced Wilson to 16-29 months in prison, suspended with three years of probation following an active sentence of 180 days in prison. Wilson timely appealed.

Analysis

Wilson argues that the trial court erred in denying her request for a special jury instruction that "injury" includes both physical and psychological injuries. As explained below, we reject this argument and find no error in the trial court's judgment.

"[Arguments] challenging the trial court's decisions regarding jury instructions are reviewed *de novo* by this Court." *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009). "A trial court must give a requested instruction that is a

correct statement of the law and is supported by the evidence." *State v. Conner*, 345 N.C. 319, 328, 480 S.E.2d 626, 629 (1997). But the trial court "need not give the requested instruction verbatim." *Id.* Instead, "an instruction that gives the substance of the requested instructions is sufficient." *Id.* Thus, to show that the refusal to give an instruction was error, the defendant "must show that the requested instructions were not given in substance and that substantial evidence supported the omitted instructions." *State v. Beck*, 233 N.C. App. 168, 171, 756 S.E.2d 80, 82 (2014).

Moreover, to establish reversible error in this context "[t]he defendant also bears the burden of showing that the jury was misled or misinformed by the instructions given." *Id.* "[W]hen instructions, viewed in their entirety, present the law fairly and accurately to the jury, the instructions will be upheld." *State v. Roache*, 358 N.C. 243, 304, 595 S.E.2d 381, 420 (2004).

The disputed instruction in this case concerns a defense to a hit and run charge based on the need to leave the scene to avoid significant risk of injury. Section 20-166 of the General Statutes makes it a felony for a driver to leave the scene of a crash that resulted in serious injury or death before law enforcement has completed their investigation. N.C. Gen. Stat. § 20-166(a). But the driver is excused from criminal liability for leaving the scene if leaving is necessary "to remove oneself or others from significant risk of injury." *Id.*

Wilson asked the court to instruct the jury that, with respect to the "significant risk of injury" described in the statute, "[a]n injury can be either a physical or psychological injury." The trial court declined to give this additional instruction and instead gave the pattern jury instruction which, like the statute itself, does not further define the word "injury."

Wilson is correct that "injury" can be either physical or mental. *See State v. Everhardt*, 326 N.C. 777, 780–81, 392 S.E.2d 391, 392–93 (1990); *State v. Simpson*, 187 N.C. App. 424, 429, 653 S.E.2d 249, 252 (2007). And Wilson presented evidence, largely through her own testimony, sufficient to justify giving a risk-of-injury defense instruction based on her purported mental trauma. Thus, because Wilson's requested instruction was a correct statement of the law and because it was supported by the evidence, Wilson was entitled to have her requested instruction given—at least in substance.

Nevertheless, we reject Wilson's argument because the trial court gave the requested instruction in substance. The trial court instructed the jury that Wilson would be excused from criminal liability for leaving the scene if she did so "to remove herself or others from significant risk of injury." This instruction did not place any limitation on the type of injury required to excuse Wilson's failure to remain at the scene. Because the term "injury" was not limited in any way, it included physical as well as psychological injuries. Indeed, Wilson's counsel argued extensively in closing

that Wilson was justified in leaving the scene because the risk of mental trauma amounted to a risk of significant injury. Moreover, there was no evidence that Wilson suffered a risk of any physical injury—meaning that this instruction necessarily addressed Wilson's psychological injuries because, if it did not, the court would not have given the instruction.

Wilson also asserts that the comments by the juror who was an attorney, and who was questioned by the court during deliberations, suggest that the jury was confused over whether the word "injury" could include psychological injuries. But nothing in that juror's statements suggests that the jury misapplied the law. To the extent Wilson argues that the juror's statements indicate that a further, clarifying instruction was needed at that point, Wilson did not request that the jury be re-instructed and thus this argument is waived. N.C. R. App. P. 10(a)(1).

In sum, we hold that the trial court's instructions to the jury included the substance of Wilson's requested instruction. Accordingly, the trial court did not err in declining to give the specific instruction that Wilson requested.

Conclusion

For the reasons discussed above, we find no error in the trial court's judgment.

NO ERROR.

Judges BRYANT and DILLON concur.

Report per Rule 30(e).