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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-121

Filed: 7 January 2020

Wake County, No. 04 CRS 88496-97

STATE OF NORTH CAROLINA

v.

ANDERSON SHELDON HAZELWOOD

Appeal by defendant from order entered 27 June 2017 by Judge Mary Ann Tally in Superior Court, Wake County. Heard in the Court of Appeals 20 August 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Teresa M. Postell, for the State.*

*Appellate Defender Glenn Gerding by Assistant Appellate Defender Daniel K. Shatz, for defendant-appellant.*

STROUD, Judge.

Defendant argues his indictments for second degree murder were facially invalid because they included the language “kill and slay” instead of “kill and murder.” Based upon the North Carolina Supreme Court’s ruling in *State v. Tart*,

STATE V. HAZELWOOD

*Opinion of the Court*

\_\_\_ N.C. \_\_\_, 824 S.E.2d 837 (2019), Defendant's indictments were sufficient to confer jurisdiction. We therefore affirm the trial court's order.

I. Background

In 2006, Defendant was convicted of two counts of second degree murder and one count of felony speeding to elude arrest. In his prior appeal of this case, this Court described the facts:

Around 10:00 p.m. on 23 October 2004, Trooper Brian W. Jones (Trooper Jones) with the North Carolina State Highway Patrol initiated a traffic stop of Defendant's car after observing Defendant driving erratically and above the posted speed limit. Defendant initially stopped his car, but as Trooper Jones approached Defendant's car, Defendant drove off at a high rate of speed. Trooper Jones returned to his vehicle and followed Defendant as he fled the traffic stop. During an ensuing high-speed chase, Defendant lost control of his vehicle and collided with a tree. Defendant's two passengers, girlfriend Shavonda Renee Commissiong (Ms. Commissiong), and her five-year-old son Jalien Anthony Commissiong, both died in the collision. Defendant was also injured in the crash and was taken by ambulance to Wake Medical Center.

Two days later, Trooper Jones visited Defendant in the hospital. After Trooper Jones advised Defendant of his Miranda rights, Defendant gave a statement to Trooper Jones. Trooper Jones testified that in the statement, Defendant said that prior to the collision, Ms. Commissiong "told [Defendant] to stop, but [Defendant] told her [he] wasn't going to go to jail tonight."

At trial, Defendant stipulated that he was guilty of two counts of involuntary manslaughter. The trial court instructed the jury on second-degree murder and involuntary manslaughter, as well as felony and misdemeanor operation of a motor vehicle to elude arrest. The jury found Defendant guilty of the greater offenses.

## STATE V. HAZELWOOD

### *Opinion of the Court*

*State v. Hazelwood*, 187 N.C. App. 94, 96-97, 652 S.E.2d 63, 65 (2007) (alterations in original). This Court found no error by the trial court in Defendant's case. *Id.* at 97, 652 S.E.2d at 65. Defendant's petitions for review to the North Carolina and United States Supreme Courts were denied. *State v. Hazelwood*, 363 N.C. 133, 673 S.E.2d 867, *cert. denied*, 588 U.S. 1013, 175 L.Ed.2d 385 (2009).

On 6 June 2017, Defendant filed an application for a writ of habeas corpus alleging his indictments were facially invalid. After a hearing, Judge Mary Ann Tally denied his request through an order entered 27 June 2017. Defendant petitioned this Court for a writ of certiorari to review the denial of his writ of habeas corpus. In its discretion, this Court granted Defendant's petition for writ of certiorari.

### II. Defendant's Indictments

Defendant argues that the use of the words "kill and slay" instead of "kill and murder" in his indictments for second degree murder were defective and did not confer jurisdiction on the superior court.

[I]t is well-established that "when an indictment is alleged to be facially invalid, thereby depriving the trial court of its jurisdiction, it may be challenged at any time, notwithstanding a defendant's failure to contest its validity in the trial court." We review the sufficiency of an indictment *de novo*.

*State v. Stroud*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 815 S.E.2d 705, 709 (citations omitted), *appeal dismissed, review denied*, \_\_\_ N.C. \_\_\_, 817 S.E.2d 573 (2018).

STATE V. HAZELWOOD

*Opinion of the Court*

Three days after Defendant submitted his brief to this Court, the North Carolina Supreme Court issued *State v. Tart*, \_\_\_ N.C. \_\_\_, 824 S.E.2d 837, which addressed the same issue Defendant raises on appeal.<sup>1</sup> Our Supreme Court held:

We hold that the use of the term “slay” instead of “murder” in an indictment that also includes an allegation of “malice aforethought” complies with the relevant constitutional and statutory requirements for valid murder offense indictments and serves its functional purposes with regard to both the defendant and the court.

*Id.* at \_\_\_, 824 S.E.2d at 841. Accordingly, *State v. Tart* is controlling on Defendant’s sole argument raised on appeal, and this argument is overruled. We affirm the trial court’s order.

AFFIRMED.

Chief Judge McGEE and Judge MURPHY concur.

Report per Rule 30(e).

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<sup>1</sup> Defendant submitted motions to allow supplemental briefing and oral argument on the retroactivity of *State v. Tart*. Both motions were denied by this Court due to the fact that jurisdiction can be challenged at any time, and, therefore, the interpretation of this issue by our Supreme Court is applicable to Defendant. See *State v. Chandler*, 364 N.C. 313, 318-19, 697, S.E.2d 327, 331-32 (2010) (holding no “significant change” to the law where no prior decision was overruled and the opinion was the result of application of existing law).