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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-728

No. COA 21-768

Filed 1 November 2022

Cumberland County, No. 18 CRS 1587

STATE OF NORTH CAROLINA

v.

WILLIAM HENDRIX, Defendant.

Appeal by Defendant from judgment entered 21 April 2021 by Judge James F. Ammons, Jr., in Cumberland County Superior Court. Heard in the Court of Appeals 23 August 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Orlando L. Rodriguez, for the State.

Lisa Miles for the Defendant.

DILLON, Judge.

¶ 1 Defendant was convicted of involuntary manslaughter after a woman died at his home from illegal drugs he supplied to her while he was present and had failed to render aid to her. He appeals from that judgment. We conclude Defendant received a fair trial, free of reversible error.

I. Background

¶ 2 Defendant William Hendrix regularly exchanged money or drugs for sex with women. On 7 October 2015, the victim, Ms. Coffman, agreed to have sex with Defendant in exchange for money or drugs. While in a bathroom at Defendant's home, Ms. Coffman attempted to inject a syringe of heroin into her arm. Defendant handed her a tourniquet which she used to help locate a vein in her arm.

¶ 3 After Ms. Coffman injected herself with heroin, Defendant attempted to have her perform oral sex on him, but she collapsed face down onto the bathroom floor. Defendant picked up the bag of heroin and exited the bathroom.

¶ 4 While Ms. Coffman remained collapsed on Defendant's bathroom floor, another woman, Ms. Beal, arrived at Defendant's home. They spent about three hours together. During this three-hour period, Ms. Beal checked on Ms. Coffman and expressed concern to Defendant about Ms. Coffman's condition. Defendant did not check on Ms. Coffman until towards the end of the three-hour period after Ms. Beal again went to the bathroom and then told Defendant that Ms. Coffman did not appear to be breathing. They called 911. Paramedics arrived and discovered Ms. Coffman had already died.

II. Analysis

¶ 5 Involuntary manslaughter is "the unintentional killing of a human being without malice, proximately caused by (1) an unlawful act not amounting to a felony nor naturally dangerous to human life, or (2) a culpably negligent act or omission."

State v. Hudson, 345 N.C. 729, 731-732, 483 S.E.2d 436, 438 (1997).

¶ 6 The trial court instructed the jury on two alternate theories; namely, that (1) Defendant acted unlawfully, which resulted in Ms. Coffman's death, and (2) Defendant was criminally negligent in failing to exercise a duty to render aid to Ms. Coffman. Defendant did not object to the disjunctive instruction.

¶ 7 On appeal, Defendant argues the trial court plainly erred by instructing the jury on the theory of criminal negligence, contending there was insufficient evidence to support this theory. We conclude that, even assuming there was insufficient evidence to support this theory, Defendant has failed to show that this error rose to the level of plain error.

¶ 8 Our Supreme Court has held that a defendant's failure to object to an instruction not supported by the evidence is subject to plain error review:

> [D]efendant fails to take into account the fact that, as long as a defendant lodges a contemporaneous objection to the delivery of an instruction [on a theory not supported by the evidence], the defendant's claim will be reviewed utilizing the more easily satisfied "reasonable probability" standard set out in N.C.G.S. § 15A-14439a) instead of the more "reasonable probability" standard enunciated for use in "plain error" situations[.]

State v. Malachi, 371 N.C. 719, 737, 821 S.E.2d 407, 420 (2018).

¶ 9 Here, the evidence was overwhelming to support the *other* theory on which the jury was instructed, namely, that Defendant had acted unlawfully in causing Ms.

Coffman's death. Specifically, the evidence showed that Defendant purchased the heroin for Ms. Coffman, his intent was to exchange the heroin for sex in his own home, he assisted Ms. Coffman with injecting the heroin into her arm, and the injection of heroin caused Ms. Coffman's death.

¶ 10 We do not agree with Defendant's contention that the disjunctive instruction was fatal. The two theories presented to the jury do not represent two separate offenses. Rather, they represent two distinct acts from which the jury could determine that Defendant committed the single crime of involuntary manslaughter. *See State v. Bell*, 359 N.C. 1, 29-30, 603 S.E.2d 93, 112-13 (2004).

¶ 11 We, therefore, conclude that Defendant received a fair trial, free from reversible error.

NO ERROR.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).