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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-936

Filed 06 June 2023

Union County, Nos. 18 CRS 52801, 18 CRS 708510-11

STATE OF NORTH CAROLINA

v.

JEDIDIAH DAVID CRABTREE

Appeal by defendant from judgments entered 28 March 2022 by Judge Nathan H. Gwyn, III, in Union County Superior Court. Heard in the Court of Appeals 9 May 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Torrey D. Dixon, for the State.*

*Dysart Willis, by Drew Nelson, for defendant.*

ARROWOOD, Judge.

Jedidiah David Crabtree (“defendant”) appeals from convictions adjudging him guilty of felony serious injury by vehicle, displaying a fictitious registration card or tag on his vehicle, driving without displaying a current registration card, operating a vehicle without insurance, and operating a vehicle with an expired inspection sticker. Defendant contends the trial court erred by failing to instruct the jury pertaining to

intervening causation, but additionally, defendant requests this Court to reconsider our statutory interpretation of N.C. Gen. Stat. § 20-141.4(a3) regarding proximate cause. For the foregoing reasons, we find the trial court did not err, and we are bound by previously established precedent.

I. Background

Faith Church Road consists of a two-lane road, one lane traveling in each direction, and passes through a small, rural community. On the evening of 4 June 2018, Brandy Seneff (“Ms. Seneff”) was traveling on Faith Church Road when she observed on the opposite side of the road, “a little boy” “standing . . . by the mailbox behind the white line.” Ms. Seneff “slowed down” because she was unaware “of what he was going to do” and she “didn’t want him to run out in the road[.]” The boy “was still standing in the same place” as she drove past.

Travelling in the opposite direction, was defendant in a gold Honda and a male individual in the passenger seat. According to Ms. Seneff, the men were “joking around” and “laughing.” As she passed defendant, she looked in the rearview mirror and suddenly “saw [the boy] in the air.” Ms. Seneff called 911, did a U-turn, and found the boy “laying in the ditch[.]”

Ms. Seneff remained at the scene for two hours waiting for the arrival of State Highway Patrol. Defendant also exited his vehicle and waited with Ms. Seneff; she “could clearly smell alcohol” coming from his breath. She testified that she waited in

order “to be there to tell them what happened” because “[she] could smell alcohol on [defendant]” and she believed “they needed to do something about that.”

When Lieutenant Joheliah Wilson (“Lieutenant Wilson”) of the State Highway Patrol arrived on scene, she was informed by a sheriff’s deputy that a “child had been struck by” a vehicle, and defendant was identified as the driver. Lieutenant Wilson placed defendant in the front passenger seat of her patrol vehicle in order to receive his account of the incident and take his witness statement. Defendant explained that he was “coming home from work” when he noticed “the child standing on the shoulder of the roadway[.]” Defendant stated that the child “ran out into the roadway” and he attempted to dodge the child, but “he hit him anyway.”

Lieutenant Wilson “detected” a “[m]oderate to strong” “odor of alcohol coming from [defendant’s]” breath and person and she questioned “how much” alcohol he had consumed. Defendant asserted he had not had anything to drink “since the night before.”

Lieutenant Wilson testified to her observations of the scene. There were skid marks “starting in the right lane of travel” crossing “into the oncoming lane.” Based on the location of the skid marks and the vehicle’s damage, Lieutenant Wilson determined the point of impact was “approximately” “the center line of the highway” and “there were no indications” that the vehicle entered the grassy area along the side of the road.

When Trooper Kyle King (“Trooper King”) arrived on scene and removed defendant from Lieutenant Wilson’s vehicle, he “immediately” smelled the odor of alcohol and began to conduct the standardized field sobriety tests. Trooper King performed the “portable breath test[,]” which indicated a positive result, as well as the “walk-and-turn test” and “one-legged stand test[,]” each indicating positive signs of impairment. Defendant also admitted to ingesting methadone earlier that day. Additionally, Trooper King noted defendant “was a little unsteady on” his feet, his speech was “slightly mumbled or slurred[,]” and his eyes “were red and glassy.” Based on his observations, it was Trooper King’s opinion, “defendant had consumed a sufficient amount of an impairing substance that his mental or physical faculties were appreciably impaired.” At 7:43 p.m., the results of defendant’s chemical analysis revealed a blood alcohol concentration of 0.08.

The child sustained serious life-altering injuries, “predominant[ly] . . . on the left side of his body[.]” His injuries included “intraventricular and parenchymal hemorrhage . . . , left radius or ulna fracture, left tibial avulsion fracture, left tibial spine fracture, pulmonary contusion, [and] respiratory failure[.]” He needed long-term rehabilitation and “to learn how to breathe, eat, walk, [and] talk” again.

At trial, for defendant’s charge of felony serious injury by vehicle, defendant requested a special jury instruction pertaining to proximate cause. In addition to the typical language regarding proximate cause, defendant’s proffered instruction stated:

However, I further instruct you that a natural and

continuous sequence of causation may be interrupted or broken by another intervening cause. This occurs when a second occurrence, which was not reasonably foreseeable by the [d]efendant, causes its own natural and continuous sequence which interrupts, breaks, displaces or supersedes the consequences of the [d]efendant's actions. Under such circumstances, the intervening event not reasonably foreseeable by the first person, insulates the [d]efendant and would be the sole proximate cause of the injuries.

The trial court denied defendant's request and instructed the jury as provided by the pattern jury instructions:

Proximate cause is a real cause, a cause without which the victim's serious injury would not have occurred and one that a reasonably careful and prudent person could foresee would probably produce such injury or some other similar injurious result.

The defendant's act need not have been the last or nearest cause. It is sufficient if it concurred with some other cause acting at the same time which, in combination with it, proximately caused the victim's serious injury.

Defendant was found guilty of all charges and the trial court issued two judgments. In its first judgment for felony serious injury by vehicle, defendant was sentenced to 16-29 months imprisonment. The remaining convictions were consolidated into a single judgment, and the trial court issued a thirty-day sentence to run concurrently with the first judgment. Defendant timely appealed.

## II. Discussion

On appeal, defendant contends the trial court erred by failing to instruct the jury "concerning a potential intervening cause[.]" arguing the evidence "supported

the conclusion that the single proximate cause of the [boy's] injuries . . . was [his] decision to run in front of [defendant]'s vehicle[.]” We disagree.

“[W]here the request for a specific instruction raises a question of law, ‘the trial court’s decisions . . . are reviewed *de novo* by this Court.’” *State v. Edwards*, 239 N.C. App. 391, 393, 768 S.E.2d 619, 621 (2015) (citation omitted). “‘The proffered instruction must . . . contain a correct legal request and be pertinent to the evidence and the issues of the case.’” *State v. Craig*, 167 N.C. App. 793, 795, 606 S.E.2d 387, 388 (2005) (citation omitted). “‘However, the trial court may exercise discretion to refuse instructions based on erroneous statements of the law.’” *Id.* (citation omitted).

A. Instruction on Felony Serious Injury by Vehicle

Defendant asserts “the jury should have received an instruction concerning intervening causation” because the boy’s decision to run in the road was the proximate cause of his injuries, not his impaired driving. Defendant concedes this Court’s previous rejection of this argument, however, he requests this Court to determine, contrary to previously established precedent, that N.C. Gen. Stat. § 20-141.4(a3) (2022) requires the State to prove a person’s impaired driving be the sole proximate cause of a person’s injuries in order to sustain a conviction. We are unable to do so. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (“[A] panel of the Court of Appeals is bound by a prior decision of another panel . . . addressing the same question, but in a different case, unless overturned by an intervening decision from a higher court.”).

Under N.C. Gen. Stat. § 20-141.4(a3),

[a] person commits the offense of felony serious injury by vehicle if: (1) the person unintentionally causes serious injury to another person, (2) the person was engaged in the offense of impaired driving . . . , and (3) the commission of the offense [of impaired driving] is the proximate cause of the serious injury.

N.C. Gen. Stat. § 20-141.4(a3). We have previously interpreted this language to mean a defendant's impaired driving "need not be the *only* proximate cause of a victim's injury[.]" but a showing that defendant's impaired driving be "*one* of the proximate causes is sufficient." *State v. Leonard*, 213 N.C. App. 526, 530, 711 S.E.2d 867, 871 (emphasis in original) (citation omitted), *disc. review denied*, 365 N.C. 353, 717 S.E.2d 746 (Mem) (2011). An individual "commits the offense of impaired driving if he drives any vehicle upon any highway . . . [a]fter having consumed sufficient alcohol . . . he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more." N.C. Gen. Stat. § 20-138.1 (2022).

Here, the State's evidence tended to show that defendant was appreciably impaired at the time of the collision. Contrary to defendant's assertion that operating a vehicle with a blood alcohol concentration at 0.08, standing alone, is insufficient to establish proximate cause, our precedent indicates otherwise. *State v. Cox*, 253 N.C. App. 306, 319-20, 800 S.E.2d 692, 701 (citation omitted), *disc. review denied*, 370 N.C. 71, 803 S.E.2d 153 (Mem) (2017) (finding identical jury instruction regarding proximate cause proper). Moreover, defendant's performance on the field sobriety

tests indicated signs of impairment and Trooper King testified that based on his personal observations of defendant, defendant was impaired. *See State v. Mark*, 154 N.C. App. 341, 346, 571 S.E.2d 867, 871 (2002) (citations omitted), *aff'd per curiam*, 357 N.C. 242, 580 S.E.2d 693 (Mem) (2003) (“The opinion of a law enforcement officer . . . has consistently been held sufficient evidence of impairment, provided that it is not solely based on the odor of alcohol.”).

Accordingly, the trial court instructed the jury in accordance with the law as defendant’s impairment was a concurring cause of the collision. *See also Washington v. Davis*, 249 N.C. 65, 68, 105 S.E.2d 202, 204 (1958) (internal quotation marks omitted) (finding motorists have a duty when seeing a child “intending to cross” the street “to use proper care with respect to speed and control of his vehicle . . . [and] to recogniz[e] the likelihood of the child’s running across the street in obedience to childish impulses and without circumspection”). Defendant’s argument to the contrary is overruled.

### III. Conclusion

The trial court properly instructed the jury regarding proximate cause. We find no error.

NO ERROR.

Judges TYSON and RIGGS concur.

Report per Rule 30(e).