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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-310

Filed 19 November 2024

New Hanover County, No. 20 CRS 3360

STATE OF NORTH CAROLINA

v.

JOEL CHRISTOPHER GARNER, Defendant.

Appeal by defendant from judgment entered 1 November 2023 by Judge G. Frank Jones in the Superior Court of New Hanover County. Heard in the Court of Appeals 9 October 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Reginaldo Enrique Williams, for the State.*

*Richard Croutharmel for defendant-appellant.*

DILLON, Chief Judge.

A jury convicted Defendant Joel Christopher Garner, his parents, and his girlfriend of negligent child abuse inflicting serious bodily injury, stemming from the death of his infant daughter, who died during a night when she was sleeping in the same bed as Defendant and his girlfriend. We conclude Defendant received a fair trial, free of reversible error.

I. Background

On 16 December 2019, Defendant's girlfriend gave birth to their daughter, Allison.<sup>1</sup> Tests conducted upon Allison's birth indicated that THC and Subutex were present in her system, thus prompting the New Hanover County Department of Social Services (DSS) to intervene on Allison's behalf.

Before releasing Allison from the hospital, DSS required a safety assessment to be completed and a temporary safety provider to be designated for Allison. The safety assessment's action plan mandated: (1) the parents will utilize the temporary safety providers, paternal grandparents; (2) the parents will not have unsupervised contact with Allison; (3) the parents will undergo random drug tests; and (4) the parents will not be under the influence of any illegal substances nor abuse alcohol. Defendant initialed next to each of the four directives and signed the plan. Defendant received his own copy of the plan.

A DSS social worker at the hospital emphasized to Defendant's mother, one of the designated safety providers, that "no one can co-sleep with [Allison]. . . . if you're tired, do not fall asleep with this baby" because "there is a risk that the baby will be smothered."

Evidence later presented at trial established that Defendant and his girlfriend violated the safety plan many times in the month following Allison's birth and release

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<sup>1</sup> A pseudonym.

from the hospital. Defendant and his girlfriend often slept in the same room with Allison, even to the point of placing the infant on the bed between themselves. Additionally, Defendant's girlfriend later testified that, during that month, Defendant used nonprescribed drugs including Adderall, cocaine, and meth, and that he would smoke weed with her.

Defendant's girlfriend testified that during the evening of 19 January 2020, she used prescribed and unprescribed drugs before going to bed. Later that night, after Allison had woken up in her bassinet, Defendant's girlfriend placed Allison on the couple's bed between herself and Defendant, which was "something [she] did pretty often."

The next morning, Defendant's girlfriend awakened when Defendant screamed that Allison "wasn't breathing." Once officers responded to the scene, Defendant reported that when he woke up, around 6:15 am, he saw his girlfriend lying in the bed next to him and "two feet sticking out from underneath" her.

During an investigation of the scene, officers seized from Defendant's bedroom and bathroom: (1) "two cut straws . . . [a]nd a couple of different pills"; (2) a "syringe from the floor underneath [Defendant's] bed"; (3) "a contact lens case and several syringes from the bathroom"; and (4) an eyeglass case that had "glasses and a syringe" in it. Officers also found "numerous [ ] syringes located from some trash cans and trash bags."

A state crime lab forensic scientist found the controlled substance

buprenorphine on multiple of the seized items, and also identified one of the seized pills as the controlled substance alprazolam (Xanax). A forensic toxicologist found the presence of alprazolam and nordiazepam in a blood sample taken from Defendant on the morning of Allison’s death.

Another expert examined the downloaded contents of Defendant’s mobile phone. The examination showed that on at least three separate days in January, Defendant—in his messages to his girlfriend—discussed obtaining drugs, relapsing, sharing pills, or using drugs.

At trial, Defendant objected to the proposed pattern jury instruction regarding felony child abuse. The trial court denied Defendant’s request to modify the jury instructions and charged the jury with the unmodified pattern jury instruction.

The jury convicted Defendant of felony child abuse, and Defendant was sentenced accordingly. Defendant appeals.

## II. Analysis

On appeal, Defendant argues that the trial court reversibly erred it gave a certain pattern jury instruction to the jury after denying his proposed modification.

“We examine de novo whether a jury instruction correctly explains the law.” *State v. Copley*, 386 N.C. 111, 119 (2024) (internal quotation marks omitted).

During the charge conference at trial, the court proposed the use of pattern jury instruction 239.55C to describe the elements of felony child abuse, the third element of which instructed that the State

must prove that the Defendant willfully failed to comply with the . . . temporary safety provider plan **which amounted to** a grossly negligent omission.

(Emphasis added). However, Defendant requested that the instructions be modified as to charge that the State

must prove that the Defendant willfully failed to comply with the . . . temporary safety provider plan **which the State contends is** a grossly negligent omission.

(Emphasis added). In support of his request, Defendant argued that, without the proposed modification, the instruction seems to be *telling* the jury—rather than allowing them to find—that failure to comply with the temporary safety provider plan was *per se* a grossly negligent omission. Defendant explained that, if read with the assumption that a violation of the safety plan *is* a grossly negligent omission, the only issue left for the jury to decide is whether the safety plan was violated. Therefore, the Defendant infers, an issue as to whether Defendant’s action constituted a grossly negligent omission was improperly taken away from the jury.

However, immediately following the above instruction, the trial court also defined for the jury “grossly negligent omission[,]” stating that “[a] grossly negligent omission is a wanton omission done with a conscious or reckless disregard for the rights and safety of others.”

Our Supreme Court has instructed that “the trial court is not required to give the exact instructions requested by a defendant.” *State v. Morgan*, 359 N.C. 131, 169 (2004). And “requested instructions need only be given in substance if correct in law

and supported by evidence.” *Id.*

Here, the instruction requested by Defendant could be construed as an incorrect statement of the law in that it could be read to suggest the State had to prove that *the State was contending* that a violation of the plan amounted to a grossly negligent omission. In any event, we conclude the trial court’s instruction was a correct explanation of the law and was, therefore, appropriate. The jury was instructed that the jury could not convict Defendant unless they found that Defendant’s act was “criminally negligent,” meaning that “judging by reasonable foresight, it was done with such gross recklessness or carelessness as to amount to a heedless indifference to the safety and rights of others” and that any violation by Defendant of the plan was “a wanton omission done with a conscious or reckless disregard for the rights and safety of” Allison. Perhaps the instruction could have been clearer; however, Defendant’s alternative instruction could be construed as an incorrect statement of the law, as explained above.

In any event, the record shows that the jury sent a question to the judge during deliberations requesting a “further explanation on the definition of criminal negligence,” which suggests that the jury understood that they had to find Defendant’s actions to be negligent, rather than assuming any violation of the plan was *per se* negligent. The judge chose not to give any further clarification but simply told the jury to apply the instructions it had already been given. We note and reject Defendant’s argument that the trial court’s refusal to further define “criminal

negligence” beyond the instruction already given was reversible error. Here, the evidence, as explained above and as contained in the record, was overwhelming of Defendant’s guilt.

III. Conclusion

We conclude that the trial judge properly instructed the jury and that Defendant otherwise received a fair trial, free of reversible error.

NO ERROR.

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).