IN THE COURT OF APPEALS OF IOWA

No. 2-484 / 91-1659

FILED
DEC 29 1992
CLERK SUPREME COURT

**STATE OF IOWA,**

Appellee,

vs.

**ALBERT LEE LADEHOFF,**

Appellant.

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Appeal from the Iowa District Court for Buena Vista County, Joseph J. Straub, Judge.

Ladehoff appeals from his convictions, following a jury trial, of vehicular homicide and failing to stop at the scene of an accident. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Amy M. Anderson and Charles Thoman, Assistant Attorneys General; and Corwin Ritchie, County Attorney, for appellee.

Heard by Donielson, P.J., Habhab, J., and Keefe, S.J.* Schlegel, J., takes no part.

*Senior Judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

DONIELSON, P.J.

The defendant, Albert Lee Ladehoff, appeals from his convictions, following a jury trial, of vehicular homicide and failing to stop at the scene of an accident.

On July 9, 1990, a driver discovered the body of a bicyclist near the roadside on U.S. Highway 7 between Alta and Storm Lake. The following day, James Curren heard about the accident at work. Coincidentally, he had had a visitor at his home that same evening who had been in an accident. Curren told the police Ladehoff had visited his house in a drunken condition and had told Curren he had hit a pheasant. That night, Curren had observed extensive damage to Ladehoff's vehicle.

The State charged Ladehoff with vehicular homicide, in violation of Iowa Code section 707.6A (1989), and failing to stop at the scene of the accident, in violation of Iowa Code sections 321.261(1) and 321.261(2) (1989). Ladehoff's theory of defense was that he was not the proximate cause of the accident because the victim acted negligently in operating the bicycle on a public highway without proper safety equipment. Ladehoff presented two witnesses who testified they had a hard time seeing the bicycle on the night of the accident. An investigating officer also testified the bicycle lacked the required headlamp and a rear reflector.

Both the State and Ladehoff objected to the district court's proposed instruction on proximate cause,

Instruction No. 17. Ladehoff argued the last paragraph confused the definition of proximate cause which was already defined earlier in the instruction. As a result of the objections, the court revised the instruction. Following the revision, Ladehoff renewed his objection. However, without ruling on Ladehoff's objection, the court submitted it to the jury. The jury found Ladehoff guilty as charged, and the district court entered judgment and sentenced him to concurrent prison terms.

Ladehoff appeals. He contends the district court abused its discretion in overruling his objection to the jury instruction defining proximate cause. He also contends the court abused its discretion in submitting an instruction on proximate cause without instructing the jury on intervening and superseding causes. The State argues Ladehoff failed to preserve error by not obtaining a ruling on his objection to Instruction No. 17 and by not requesting an instruction on intervening and superseding causes.

We agree Ladehoff failed to preserve error. When Ladehoff reasserted his objection regarding the definition of proximate cause, he failed to obtain a ruling on the objection. Accordingly, Instruction No. 17, as modified, was submitted to the jury. The supreme court has recognized the rule that, "when a motion is not ruled on in the trial court, and there is no request or demand for ruling, error has not been preserved." State v. Walker,

304 N.W.2d 193, 195 (Iowa 1981) (citations omitted). See Iowa R. Civ. P. 196 (objections to jury instructions "shall be made and ruled on before arguments to the jury").

Therefore, as there is no finding that the district court overruled his objection, we find Ladehoff has failed to preserve error on his claim that the district court abused its discretion in overruling Ladehoff's objection.

In addition, we find Ladehoff never raised the issue of a need for an instruction on intervening and superseding causes at trial. Even though Ladehoff had three separate opportunities to request such an instruction, on each occasion he failed to do so. First, in the proposed jury instructions submitted to the district court, Ladehoff made no mention of an instruction on intervening and superseding causes. Second, in Ladehoff's original objection to Instruction No. 17., Ladehoff did not address the need for such an instruction. Finally, after the instruction had been revised by the district court, Ladehoff again made no reference to the need for an instruction on intervening and supervening causes in his renewed objection.

Ladehoff may not add new objections to the jury instructions following trial. "[I]f the defendant makes an objection to an instruction at trial court, he is bound to that objection on appeal." State v. LeCompte, 327 N.W.2d 221, 223 (Iowa 1982). We have repeatedly held that ordinarily, matters not raised in the trial court, including constitutional questions, cannot be effectively

asserted for the first time on appeal. State v. Lyon, 223 N.W.2d 193, 194 (Iowa 1974). Therefore, we find Ladehoff did not properly preserve this issue for review.

As we find Ladehoff did not properly preserve either issue for review, we affirm the conviction and judgment of the district court.

The costs of this appeal are taxed to Ladehoff.

For the reasons stated, we affirm the judgment of the district court.

**AFFIRMED.**