FILED
APR 26 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed April 26, 1983

vs.)

REX ORVILLE RICHENBERGER,) 3-49/68672

Defendant-Appellant.)

Appeal from Marshall District Court - Carl D. Baker, Judge.

Defendant appeals his conviction of involuntary manslaughter in violation of Iowa Code § 707.5(1). AFFIRMED.

James D. Robertson of Haupert, Robertson & King, Marshalltown, for defendant-appellant.

Thomas J. Miller, Attorney General, and Steven M. Foritano, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ.

PER CURIAM

Defendant appeals his conviction of involuntary manslaughter in violation of Iowa Code § 707.5(1). He claims that there was insufficient evidence of recklessness to sustain the trial court's guilty verdict. We affirm.

Defendant was charged by information with involuntary manslaughter in connection with an accident in which the truck he was driving south was struck in a rural intersection by a westbound automobile whose two occupants were killed. The evidence is undisputed that defendant drove through a stop sign at the intersection without stopping, but he testified that this was done on his mistaken belief that the car was going to turn north. The case was tried to the court which concluded that defendant was reckless for his failure to stop when he had the ability to do so but did not. He was found guilty of the offense charged, was given a suspended sentence and was placed on probation.

In this appeal, defendant challenges the sufficiency of the evidence in the record to support a finding of recklessness. Challenges to sufficiency of the evidence were discussed in State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981):

> In reviewing a motion for a directed verdict based upon insufficiency of the evidence in a criminal case, we view the evidence in a light most favorable to the State. All of the evidence must be considered, and all legitimate inferences that may be deducted therefrom will be accepted. A trial court's refusal to direct a verdict for a defendant will withstand challenge if there is any substantial evidence in the record tending to support the charge. Substantial evidence means such evidence as could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. (Citations omitted)

Defendant was charged under Iowa Code § 707.5(1) which defines involuntary manslaughter in these terms: ". . . when the person unintentionally causes the death of another person by the commission of a public offense other than a forcible felony or escape." The supreme court construed this statute to include a requirement of recklessness as an element of involuntary manslaughter. State v.

Conner, 292 N.W.2d 682, 686 (Iowa 1980). Under Iowa Code § 702.16, a person acts "recklessly" when "he or she willfully or wantonly disregards the safety of persons or property."

With these principles in mind, we conclude that the record contains sufficient evidence of recklessness to support defendant's conviction and that the trial court properly overruled defendant's motion for judgment of acquittal. It is undisputed that defendant saw the stop sign in time so that he could have come to a complete stop, but that he chose to go through the intersection without stopping. The record supports the court's findings that "the defendant was not confronted by any sudden emergency which prevented him from obeying the stop sign. The conclusion must be that the manner in which defendant operated the truck was reckless."

Defendant's conviction and sentence are affirmed.

AFFIRMED.