IN THE COURT OF APPEALS OF IOWA

No. 0-527 / 99-1242
Filed October 25, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KERRI LYNN BLOCK,
Defendant-Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Pottawattamie County, Gordon C. Abel, Judge.

Kerri Block appeals from the convictions and sentences, following a bench trial. **CONVICTIONS AFFIRMED; SENTENCES VACATED; CASE REMANDED FOR RESENTENCING.**

Linda Del Gallo, State Appellate Defender, and Martha J. Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney General, Richard Crowl, County Attorney, and Jeffrey R. TeKippe, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

VAITHESWARAN, J.

Kerri Lynn Block gave seventeen-year-old Carl "Scooter" Salmons and two other boys Xanax and methadone pills. Salmons ingested the pills and died several hours later. The State charged Block with involuntary manslaughter and various counts of distributing drugs to minors. The district court adjudged Block guilty and sentenced her to concurrent prison terms on the distribution charges and a five year prison term on the manslaughter charge, to be served consecutively. On appeal, Block contends the State did not prove her conduct was reckless or was the proximate cause of Salmons's death, both required elements of an involuntary manslaughter conviction. She also claims the district court did not explain its sentencing decision. We affirm the convictions but vacate the sentences and remand for resentencing.

I. Background Facts and Proceedings

Salmons, Montana Witherspoon and Joe Gittins grew up together. They knew Block through another acquaintance. On October 21, 1998, the three boys, all minors, met Block at a local fast food restaurant where she worked. Block asked the boys if they were interested in taking some Xanax and morphine pills with her later in the evening. The boys said they were interested.

The group reconvened that evening at the house of Joe's sister, Julie. Block took the boys to a back room and gave them each one Xanax and another pill that Joe believed was morphine but was later identified as methadone, a related synthetic opiate. After taking the drugs, Block and the boys left the home, ostensibly to buy Julie a telephone calling card. Joe and Salmons

returned several hours later. Joe acted violently and Salmons slurred his words and appeared very white.

Salmons's father picked Salmons up from Julie's house at approximately 3:00 A.M. After returning home, Mr. Salmons asked his son to empty his pockets. He discovered a woman's purse, which Salmons stated belonged to his adult girlfriend, Rebecca Kennedy. Mr. Salmons examined the contents and discovered a prescription pill bottle with Kennedy's name, containing "seven or eight pills," later identified as Xanax.

The following afternoon, at approximately 2:00 P.M., Salmons's mother checked on Salmons and discovered he was breathing oddly and there was dried blood on his mattress. She called an ambulance and unsuccessfully attempted to resuscitate him. Salmons was taken to a hospital, where he died.

The State charged Block with one count of involuntary manslaughter, in violation of Iowa Code section 707.5 (1997), three counts of distributing a schedule IV controlled substance (alprazolam[1]) to a minor in violation of Iowa Code section 124.406(1)(c), and three counts of distributing a schedule II controlled substance (methadone) to a minor in violation of Iowa Code section 124.406(1)(a). All counts were tried to the district court. The court adjudged Block guilty and sentenced her to terms not exceeding two years on the alprazolam distribution counts and terms not exceeding twenty-five years on the methadone distribution counts, to be served concurrently. The court additionally imposed a term not exceeding five years on the involuntary manslaughter count,

[1] This drug is a generic form of Xanax.

to be served consecutively to the sentences on the other counts. This appeal followed.

II. Sufficiency of the Evidence

Block does not challenge her distribution convictions, but focuses instead on the sufficiency of the evidence to support her involuntary manslaughter conviction. She specifically maintains the State failed to prove recklessness and causation.

We review a challenge to the sufficiency of the evidence for correction of errors at law. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997). The district court's findings of guilt are binding on appeal if supported by substantial evidence. *Id.* Evidence is substantial if it could convince a rational fact finder of the defendant's guilt beyond a reasonable doubt. *State v. Hopkins*, 576 N.W.2d 374, 377 (Iowa 1998). We consider all the record evidence, not just the evidence supporting guilt, but view the evidence in the light most favorable to the State. *Id.*

A. Recklessness

Iowa Code section 707.5(1) states, "[a] person commits a class "D" felony when the person unintentionally causes the death of another person by the commission of a public offense other than a forcible felony or escape." Our highest court has construed this provision to require that the underlying public offense be committed recklessly. *See State v. Rohm*, 609 N.W.2d 504, 511 (Iowa 2000); *State v. Conner*, 292 N.W.2d 682, 686 (Iowa 1980). The court has defined recklessness as conduct showing a willful and wanton disregard for the safety of others. *Rohm,* 609 N.W.2d at 511. The conduct ordinarily should be "conscious and intentional, creating an unreasonable risk of harm to others,

where such risk is or should be known" to the offender. *State v. Kemes*, 262 N.W.2d 602, 605 (Iowa 1978).

The record contains sufficient evidence to establish Block acted recklessly in giving the boys Xanax and methadone. Block planned to meet with the boys for the express purpose of using these drugs with them. She even discussed with them the possibility of "blasting" morphine into their system with syringes and needles. Block later provided all three boys with a pill form of methadone drug, together with a Xanax tablet. She also took Salmons to the back bedroom of Julie's house at least two more times after distributing the first batch of drugs, leading to an inference she provided Salmons with additional drugs.

Block nevertheless urges the evidence is insufficient because: (1) the boys frequently used drugs; (2) the boys willingly took the proffered pills; (3) she took the same pills; and (4) Salmons looked and acted normal when he returned to Julie's apartment.

We reject the first two assertions because it is established that a victim's voluntary participation in an unlawful act "does not of itself bar a defendant from being convicted of involuntary manslaughter. . . . " *State v. McFadden*, 320 N.W.2d 608, 611 (Iowa 1982); *see also State v. Hubka*, 480 N.W.2d 867, 869 (Iowa 1992); *Thiede v. State*, 106 Neb. 48, 182 N.W. 570, 574 (1921). Our supreme court's recent holding in *Rohm* is instructive. There, the court affirmed a mother's conviction for involuntary manslaughter where she purchased liquor for her sons and was present while they and their friends consumed the liquor, which ultimately resulted in the death of one of the minor friends. The court found the mother's conduct reckless based in part on evidence she purchased

liquor for the boys that contained a high alcohol content and allowed the liquor to remain in the basement where the youth were drinking. The court reached this conclusion despite evidence her sons told the mother what liquor to buy and gave her the money, as well as evidence she had no knowledge how much they were drinking.

Although the boys here were not novices at drug use, the record reflects none of the boys had taken morphine or methadone before, either alone or in combination with Xanax. Additionally, Block was with the boys the entire time, knew precisely how many pills they had taken and the combination of pills, and was able to observe the effects of the drug on Salmons. For these reasons, we find the boys' history of drug use and their willingness to take the drugs Block offered does not mitigate Block's conduct.

We also reject Block's third contention that her conduct was not reckless because she took the drugs as well. We view this fact in conjunction with evidence Block had recently completed a drug rehabilitation program. This program presumably required her to confront the adverse effects of her own drug use. Therefore, the fact she took the pills herself with knowledge of the potential risks-renders her conduct in giving the pills to the boys more rather than less reckless.

Finally, Block's assertion that Salmons looked and acted normal is contradicted by the testimony of Julie Gittins and Salmons's father, who both stated Salmons was white and slurred his speech. Based on this evidence we also reject her assertion Salmons's appearance mitigated her conduct. We

conclude Block acted recklessly when she gave Xanax and methadone to Salmons.

B. Causation

Block next contends there was insufficient evidence to establish her conduct was the proximate cause of Salmons's death. A defendant's conduct is the proximate cause of injury or death to another if (1) the conduct is a "substantial factor" in bringing about the harm and (2) no other rule of law relieves the defendant of liability. *State v. Hubka*, 480 N.W.2d 867, 869 (Iowa 1992).

A defendant can be relieved of criminal responsibility if an intervening act breaks the chain of causal connection between the defendant's actions and the victim's death. *State v. Garcia*, ____ N.W.2d ____, ____ (Iowa 2000). However, the intervening act must be a superceding cause of the harm. *State v. Ayers*, 478 N.W.2d 606, 608 (Iowa 1991). The intervening act must also be the sole proximate cause of the harm. *State v. Shimon*, 182 N.W.2d 113, 115 (Iowa 1970); *State v. Travis*, 497 N.W.2d 905, 908 (Iowa App. 1993).

Block does not appear to contest the first prong of the proximate cause test. Instead, she takes issue with the second prong, arguing an intervening act broke the causal chain of events. Specifically, Block maintains Salmons had access to Xanax pills in addition to those provided by her, and those additional pills could have caused his death.

The record does reflect Salmons had Xanax pills in his possession. However, the witnesses disputed whether Salmons took any of those pills. Julie Gittins testified Salmons said he was saving the bottle of Xanax pills to give back

to Kennedy. Her brother Joe, however, conceded Salmons might have taken a couple of Xanax after he got home, as there appeared to have been more pills in the bottle during the evening than were discovered the following afternoon. Additionally, Salmons's father apparently left the bottle of Xanax on the living room table before he went to bed, but the bottle was discovered the following afternoon in Salmons' bedroom, on his headboard.

Assuming based on this evidence that Salmons took more Xanax than Block provided, we nevertheless cannot conclude ingestion of this additional Xanax would have been the sole proximate cause of his death. The State's expert opined the combination of Xanax and methadone, not solely the ingestion of Xanax, caused Salmons's death. He reasoned young people previously unexposed to methadone may experience a particular sensitivity to that drug. Block's expert did not contradict this opinion, stating only that he would have performed additional tests before arriving at this conclusion. This testimony leads us to conclude that Salmons's possible ingestion of one or more of the bottled pills was not the sole proximate cause of his death. We further conclude the previously summarized testimony concerning Block's role in providing drugs to Salmons amounts to substantial evidence she proximately caused Salmons's death.

III. Sentencing

Block finally contends the district court did not provide sufficient reasons to support its sentencing decision and, in particular, did not explain why probation was denied or why the involuntary manslaughter sentence was to be served consecutively. When a challenged sentence falls within statutory limits, our

review is for abuse of discretion. *State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998).

Iowa Rule of Criminal Procedure 22(3)(d) requires a court to state on the record its reasons for selecting a particular sentence. "Although the reasons need not be detailed, at least a cursory explanation must be provided to allow appellate review of the trial court's discretionary action." *State v. Jacobs*, 607 N.W. 2d 679, 690 (Iowa 2000). A district court also must set forth reasons supporting its decision to impose consecutive sentences. *Id.*

The district court here stated:

> Very well. Miss Block, the Court has reviewed the record made in this case, reviewed my order following your trial to the bench, also reviewed the forms of verdict, and carefully reviewed the presentence investigation report. Based upon all of these facts and circumstances, the Court enters the following sentence:

The court then imposed the sentences. We need not reach the issue of whether these reasons were sufficient to support the decision to incarcerate Block. Because the court did not provide reasons for its decision to impose a consecutive sentence, the Iowa Supreme Court's holding in *Jacobs* mandates that we vacate the sentences and remand for resentencing.

CONVICTIONS AFFIRMED; SENTENCES VACATED; CASE REMANDED FOR RESENTENCING.