

IN THE COURT OF APPEALS OF IOWA

No. 1-535 / 91-417

FILED

JAN 29 1992

CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

673

MARVIN JOHN ADAIR,

Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

Defendant appeals his conviction, following a jury trial, for involuntary manslaughter. **AFFIRMED.**

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

Bonnie J. Campbell, Attorney General, Martha E. Boesen, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Clinton L. Spurrier, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

SACKETT, J.

Defendant-appellant Marvin Adair appeals his conviction of involuntary manslaughter in violation of Iowa Code section 707.5(1) (1991).

Defendant's conviction followed a jury trial where he was accused of causing the death of Gary Anderson. Anderson died from a fall he experienced when he was exchanging blows with the defendant. The defendant's sole contention is there was not sufficient evidence to support a finding beyond a reasonable doubt that his conduct in causing the death of Anderson was reckless. Defendant claims the trial court erred in not sustaining his motion for a judgment of acquittal. We affirm.

Involuntary manslaughter is defined under Iowa Code section 707.5(1) (1991) as follows:

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.

Recklessness is a required element in involuntary manslaughter. State v. Conner, 292 N.W.2d 682, 686 (Iowa 1980). Recklessness is defined as conscious and intentional conduct evidencing either a wanton or willful disregard for the safety of others and creating an unreasonable risk that is known or should be known to the perpetrator. See State v. Caldwell, 385 N.W.2d 553, 556 (Iowa 1986); State v. Kernes, 262 N.W.2d 602, 605 (Iowa 1978).

We review the record in the light most favorable to the State when considering questions of sufficiency of evidence. State v. Martin, 341 N.W.2d 728, 729 (Iowa 1983); State v. Hall, 287 N.W.2d 564, 565 (Iowa 1980). In conducting this review we may make any legitimate inferences and presumptions which we may fairly and reasonably deduce from the evidence in the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984).

We must determine in reviewing all the evidence whether there is substantial evidence from which a rational juror could find evidence to support a finding of recklessness beyond a reasonable doubt. See State V. Robinson, 288 N.W.2d 337, 341 (Iowa 1980).

The underlying offense was an assault. The State must show both that there was an assault and it was committed recklessly. State V. McFadden, 320 N.W.2d 608, 610 (Iowa 1982). The defendant does not dispute the assault. However, to show the assault was committed recklessly the State must show the defendant was engaged in conduct that evidenced a wanton and willful disregard for the safety of others and consciously and intentionally created an unreasonable risk of harm. See State v. Caldwell, 385 N.W.2d 553, 556 (Iowa 1986); State v. Kernes, 262 N.W.2d 602, 605 (Iowa 1978). The defendant contends his actions did not rise to this level of recklessness.

The defendant punched Anderson in the face two times. The defendant ultimately hit him a third time, and defendant and Anderson were knocked to the ground. Anderson died as a result of a head injury he received when he fell to the ground. Anderson had bruises and lacerations on his face as a result of the altercation, but the the bruises and lacerations were not life threatening. There was substantial evidence of recklessness. We affirm.

AFFIRMED.