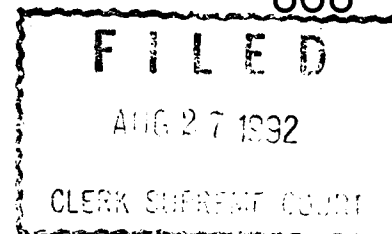


IN THE COURT OF APPEALS OF IOWA

No. 2-148 / 90-1928



STATE OF IOWA,

Appellee,

vs.

JIMMY TORRES, JR.,

Appellant.

Appeal from the Iowa District Court for Buchanan
County, Joseph Moothart, Judge.

Torres appeals his conviction of involuntary
manslaughter and assault causing bodily injury to his
wife. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S.
Lipman, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Bruce Kempkes,
Assistant Attorney General, and Allan W. Vanderhart, County
Attorney, for appellee.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

OXBERGER, C.J.

Defendant, Jimmy Torres, Jr., lived with his wife, Brenda, and his sixteen-year-old uncle, Steven, in Independence, Iowa. On February 2, 1990, Jimmy, Brenda, and Steven went to an Independence bowling alley for Brenda's bowling league. While at the bowling alley, Brenda consumed alcoholic beverages to the point of intoxication. She spoke of Jimmy in derogatory terms. Eventually Brenda laid her head down on a table and fell asleep. At approximately 1:30 a.m. on February 3, 1990, Jimmy, Steven, and Brenda returned to their home. Brenda was angry and commented about a woman who had been playing cards with Jimmy in the bowling alley. Brenda went upstairs in a bad mood while Jimmy watched television with Steven for approximately five minutes.

Jimmy then went upstairs, and a verbal and physical altercation occurred between Jimmy and Brenda. The trial court found Jimmy struck Brenda a number of times about the face and head and tore her clothing in the altercation. Jimmy grabbed a telephone and a lamp made from a glass jug that were located on a table to the east of the bed, and he threw them on the floor. The lamp broke, and Jimmy kicked it on his way out of the room.

Brenda got up from the bed and approached the door to the bedroom. She tripped and fell and suffered an incised wound to the left groin area that severed both the left femoral artery and vein. Brenda called out that she was

hurt and had been cut. Jimmy returned to the room to assist her and helped her walk back to the bed. He placed a pillow on the cut in an attempt to stop the bleeding. Brenda asked for a wet rag because she was hot. Jimmy ran downstairs, got a wet cloth, and returned to the bedroom. He placed the cloth on her face. Brenda was swallowing but not speaking. The severe bleeding had stopped. Jimmy ran downstairs and called 911. He indicated to the dispatcher that Brenda was not breathing, and he requested an ambulance. Within four minutes, police officers began to arrive. By the time the ambulance personnel arrived, Brenda had died from exsanguination.

On March 13, 1990, the State filed a trial information charging Jimmy Torres with one count of involuntary manslaughter and a second count of assault causing bodily injury. Jimmy waived his right to a jury trial and the matter proceeded to trial by the court. The district court found Jimmy guilty of the offenses as charged and sentenced him to a term of imprisonment not to exceed two years. Jimmy appeals.

Jimmy claims the trial court erred in failing to grant his motion for a judgment of acquittal based on the insufficiency of the evidence to support his conviction for involuntary manslaughter. In reviewing the sufficiency of the evidence to support a conviction, we review all evidence in the light most favorable to the verdict. State v. Robinson, 288 N.W.2d 337, 341 (Iowa 1980). The record

must contain substantial evidence to support the guilty verdict, such that a rational finder of fact could find guilt beyond a reasonable doubt. Id.

Jimmy was convicted of involuntary manslaughter in violation of Iowa Code section 707.5(2) (1989). The Code defines this crime:

A person commits an aggravated misdemeanor when the person unintentionally causes the death of another person by the commission of an act in a manner likely to cause death or serious injury.

Iowa Code § 707.5(2) (1989). We note the ultimate burden is on the State to prove every fact necessary to constitute the crime with which the defendant is charged. State v. Gibbs, 239 N.W.2d 866, 867 (Iowa 1976) (citing In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073, 25 L. Ed. 2d 368, 375 (1970)). We find the State established each of the elements of involuntary manslaughter beyond a reasonable doubt.

I. Reckless

The first element of this crime is the commission of a reckless act. The element of recklessness is essential in order to hold an individual criminally responsible for involuntary manslaughter. State v. Kernes, 262 N.W.2d 602, 605 (Iowa 1978) (citations omitted). The legislature has defined recklessness: "A person is 'reckless' or acts recklessly when the person willfully or wantonly disregards the safety of persons or property." Iowa Code § 702.16 (1991). Ordinarily recklessness must involve conduct which

is conscious and intentional, creating an unreasonable risk of harm to others, where such risk is or should be known to the defendant. Kernes, 262 N.W.2d at 605 (citations omitted); see Iowa Criminal Jury Instruction 200.20.

We find Jimmy acted recklessly in beating the victim. Peter Stephens, M.D., the pathologist who conducted the autopsy, testified the victim had bruising on the inside of the upper and lower lips, bruises on the right cheek, right side of the chin, left cheek, contusions on left cheek and left ear, abrasions on left side of the chin, bruise on the left side of the neck at top of breastbone, bruise on left upper arm just below the eye level of the armpit, bruise on back left hand, a ragged laceration or tearing across the middle finger on the palm side of the hand, several small scratches on the palm side of the left wrist, five separate bruises on her skull, including one measuring three inches by one inch. He stated it was his opinion the injuries were the result of someone hitting her with a fist. He believed one bruise on the skull resulted from someone swinging something like a telephone at her head. He stated her several skull injuries would have left her stunned or dazed.

The victim's brassiere hook was clinging to her upper back. The trial court found the brassiere and blouse had been forcibly ripped off by the defendant. Numerous items were found strewn about the bedroom, including a shoe, flashlight, ashtrays, writing instruments, metal pan,

fingernail clippers, hairbrush, Mason jar, items of clothing, tweezers, makeup, bracelet, and a watchband.

The defendant, after beating his wife, committed another reckless act when he smashed a large, heavy glass lamp to the floor, leaving numerous pieces of broken glass in front of the only exit from the bedroom. The victim followed the defendant from the room, fell on the glass which severed her femoral artery and vein and she bled to death.

II. Causation

We find there is sufficient evidence to establish the second element of involuntary manslaughter, that Jimmy's actions caused his wife's death.

The element of proximate cause in criminal prosecutions serves as a requirement that there be a sufficient causal relationship between the defendant's conduct and a proscribed harm to hold him criminally responsible. State v. Marti, 290 N.W.2d 570, 584 (Iowa 1980). Proximate cause requires cause in fact, usually expressed as the sine qua non test that but for the defendant's conduct, the harm would not have occurred. Id. at 585.

In addition, proximate cause requires legal causation, id. at 584, and is based on the concept of foreseeability. State v. McFadden, 320 N.W.2d 608, 613 (Iowa 1982). "The foreseeability requirement, coupled with the requirement of recklessness, will prevent the possibility of harsh or unjust results in involuntary manslaughter cases." Id. at 613.

We agree with the trial court's finding:

The defendant did willfully disregard the safety of his wife when he broke the lamp on the floor, leaving large pieces of broken glass in the doorway. The act of breaking the lamp was conscious and intentional, was done with willful and wanton disregard of the consequences, and the defendant either knew or should have known that an unreasonable risk of serious injury to his wife was created by the broken glass. The State need not prove that harm was intended to result. Iowa Criminal Jury Instruction 200.20.

The State did prove that the defendant broke the lamp in a manner likely to cause serious injury. The defendant was either aware or should have been aware that the broken pieces of glass in the doorway to the bedroom would be likely to cause serious injury if stepped on by his wife. The likelihood of her stepping on the glass was increased by the fact that he had just struck her numerous times about the face and head and knew that she was intoxicated and in a partial state of undress.

We find that the existence of the glass did cause Brenda's death.

III. Intervening or Superseding Cause

The defendant claims none of his actions amounted to a "substantial factor" producing his wife's death, due to a chain of intervening or superseding causes, which, he says, included his wife's falling as she tried to follow him out of his bedroom.

An intervening cause can break the causal connection between the original wrong and the injury and become the proximate cause of the injury. Sayre v. Andrews, 259 Iowa 930, 942, 146 N.W.2d 336, 344 (Iowa 1966). "An intervening cause is an independent force 'which actively operates in producing harm to another after the actor's negligent act

or omission has been committed.'" State v. Marti, 290 N.W.2d 570, 586 (Iowa 1980).

We find Brenda's negligent act in falling or tripping over the glass is not an intervening or superseding cause. She was not suicidal. She was not reckless in her conduct. She was stunned or dazed from the blows to her head inflicted by the defendant.

IV. Conclusion

We adopt the following from the trial court's findings:

The State did prove that the defendant unintentionally caused the death of Brenda Torres. There is sufficient evidence of cause in fact. But for the defendant's conduct in breaking the lamp, Brenda Torres' death by exsanguination would not have occurred. There is also sufficient evidence of legal or proximate cause. The defendant's conduct was a substantial factor in bringing about Brenda Torres' death. (citations omitted). The fact that the defendant neither foresaw nor should have foreseen the extent of the injury or that the injury would result in death does not preclude a finding of legal causation. Restatement (Second) of Torts, Section 435(1) and Comment (a). It was reasonably foreseeable that the broken lamp could cause serious injury to a person who had just been beaten about the face and head and was intoxicated and partially undressed. Under the facts of this case, the resulting death is not 'so highly extraordinary as to prevent the actor's conduct from being considered a legal cause of it.' Restatement (Second) of Torts, Section 435(2) and Comment (d) (1965).

We conclude the evidence was sufficient to support a finding Jimmy Torres committed the crime of involuntary manslaughter.

AFFIRMED.

Habhab, J., concurs; Schlegel, J., dissents.

SCHLEGEL, J. (dissenting)

Jimmy Torres had no reason to suspect that his wife would follow him out the door of the bedroom. His actions prior to his leaving were irrelevant. Those actions did not evidence a wanton disregard for the life or safety of his wife--the definition of recklessness.

I would reverse the conviction.