

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 15 1989

CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

AARON RUFUS FREED,)

Defendant-Appellant.)

245

9-115
88-798

Appeal from the Iowa District Court for Buena Vista County on change of venue from Cherokee County (No. 5094), Frank B. Nelson, Judge.

Defendant appeals from his conviction, following a jury trial, for felony involuntary manslaughter arising from a highway collision. **AFFIRMED.**

George W. Wittgraf of Sayre & Wittgraf, Cherokee, for defendant-appellant.

Thomas J. Miller, Attorney General; Amy M. Anderson, Assistant Attorney General; and John A. Wibe, County Attorney, for plaintiff-appellee.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.

HABHAB, J.

Defendant Aaron Rufus Freed appeals from his conviction, following a jury trial, for felony involuntary manslaughter arising from a highway collision.

Defendant Aaron Freed was one of two drivers involved in a collision on January 8, 1987, at approximately 8:00 A.M. The other driver was killed in the accident. There were no witnesses to the accident, but an investigating officer determined that the Freed vehicle had been in the wrong lane at the time of the impact.

Freed was charged with the class D felony of involuntary manslaughter, a violation of Iowa Code section 707.5(1). That statute provides that felony involuntary manslaughter occurs "when [a] person unintentionally causes the death of another person by the commission of a public offense other than a forcible felony." The public offense underlying this charge was failure to yield half the roadway.

The jury found Freed guilty of the crime charged. Freed has appealed from the resulting conviction and sentence.

On appeal, defendant challenges (1) the sufficiency of the evidence to prove recklessness or commission of a public offense, (2) the trial court's denial of his request for jury instructions on circumstantial evidence and recklessness, and (3) the imposition of a sentence of

incarceration rather than probation. We affirm defendant's conviction and sentence.

Our standard of review for sufficiency of the evidence challenges is well settled. The verdict will be upheld where there is substantial evidence to support the charge. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. Id. The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). Circumstantial evidence is equally as probative as direct evidence so long as it raises "a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." State v. Hamilton, 301 N.W.2d 471, 479 (Iowa 1981).

The accident investigator testified in his opinion both defendant's and the deceased's vehicles were in the same lane at the time of the initial collision, with defendant's northbound truck traveling left of the center line in the southbound lane. The State presented the testimony of several witnesses which indicated defendant did not sleep

and was drinking beer the night of January 7th and early morning hours of January 8th preceding the collision. One witness testified he observed defendant's truck driving south in the northbound lane of Highway 59 at 4:30 A.M. January 8, 1987. Two witnesses observed defendant's driving soon before the accident. One witness testified defendant was driving with his left tires across the center line in the witness's lane of travel. The other witness stated he considered having to "take the ditch" when he met defendant's pick-up truck that morning traveling in the witness's southbound lane but going north.

Conviction of involuntary manslaughter in violation of Iowa Code section 707.5(1) (1987) requires proof beyond a reasonable doubt that defendant unintentionally caused the death of another person by the reckless commission of a public offense other than a forcible felony. State v. McFadden, 320 N.W.2d 608, 610 (Iowa 1982); State v. Conner, 292 N.W.2d 682, 686 (Iowa 1980).

Applying the above-stated principles to the facts of this case, we find sufficient evidence in the record for the jury to reasonably conclude defendant recklessly failed to yield one-half of the highway to an approaching vehicle, a public offense, thereby causing the death of another person when defendant's vehicle collided with another vehicle.

Defendant contends the trial court abused its discretion by refusing to give defendant's suggested instructions on circumstantial evidence and the definition of recklessness. The trial court has wide discretion in formulating jury instructions, and defendant is not entitled to a particularly-worded instruction if those given, as a whole, adequately cover the substance of the requested instruction. U.S. v. Krapp, 815 F.2d 1183, 1187-88, cert. denied 108 S. Ct. 174, 98 L. Ed. 2d 127. The trial court does have a duty to give instructions which fully and fairly advise the jury of the issues they must decide and the applicable law. State v. Rupp, 282 N.W.2d 125, 126 (Iowa 1979). A review of the instructions given on circumstantial evidence and the meaning of recklessness indicate the trial court did not abuse its discretion by refusing to word the instructions as defendant requested. The additional cautionary language regarding circumstantial evidence which defendant requested was deemed unnecessary in State v. Connell, 275 N.W.2d 197, 205 (Iowa 1977). See also State v. Florie, 411 N.W.2d 689, 697 (Iowa 1987). As stated earlier, circumstantial and direct evidence are equally probative.

Defendant requested certain language be substituted in the trial court's recklessness instruction which he feels would have given the jury a better understanding of the term when applied to a driver. The trial court's

recklessness instruction was patterned after the II Iowa Uniform Jury Instruction No. 217. The Iowa Supreme Court is reluctant to disapprove uniform jury instructions and use of a very similar instruction was found to be proper in an involuntary manslaughter case. See State v. Doss, 355 N.W.2d 874, 881 (Iowa 1984), and State v. Caldwell, 385 N.W.2d 553, 556 (Iowa 1986). The instructions, as given, were proper.

Finally, defendant contends the sentencing judge abused his discretion by imposing a sentence of incarceration rather than a suspended sentence. He argues the judge made this decision based solely on the death involved, which is a necessary incident of the charge of involuntary manslaughter. State v. Dvorsky, 322 N.W.2d 62, 67 (Iowa 1982). A review of the sentencing court's language indicates the court relied on many factors, including defendant's age, his conduct since the accident, and the contents of the presentence investigation report, as well as the nature of the offense. Based on this record, we cannot say the sentencing court abused its discretion. Defendant's conviction and sentence is affirmed.

AFFIRMED.