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CLERK SUPREME COURT



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, )
Plaintiffs-Appellees, ) Filed April 29, 1980
vs. )
TERRY GLENN PORTER, ) 0-55 / 63412
Defendant-Appellant. )

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Appeal from Wayne District Court - James E. Hughes, Judge.

Defendant appeals convictions for involuntary manslaughter, in violation of section 705.5(1), supplement to the Code 1977. Affirmed.

Sherman W. Phipps, Lamoni, for defendant-appellant.

Thomas Miller, Attorney General of Iowa, Kathy Krewer, Assistant Attorney General, and John Birdwell, Wayne County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

**PER CURIAM**

Defendant, Terry Glenn Porter, appeals convictions for involuntary manslaughter, in violation of section 705.5(1), supplement to the Code 1977. We affirm the convictions.

Porter was charged with two counts of involuntary manslaughter and three other crimes after an automobile-motorcycle accident in Lineville left two persons dead. A jury trial was held and a guilty verdict returned on the involuntary manslaughter charges. In returning the verdict, the jury answered interrogatories of the court stating Porter was guilty of involuntary manslaughter because he had operated his vehicle in a reckless manner. Porter asserts the jury verdict is erroneous since the reckless driving finding is not supported by the evidence. He also claims the proximate cause instruction of the trial court was erroneous.

I. Proximate cause instruction.

In its instructions to the jury, the trial court stated if the jury found Porter committed a public offense, it had to determine if the commission of that offense was "a proximate cause" of death of either or both of the accident victims. Porter asserts the instruction was incorrect because it did not require the jury to find the commission of the public offense was "the proximate cause" of death. Porter claims the difference in usage of "a" rather than "the" in the proximate cause instruction was prejudicial because the jury could view Porter's acts as a possibly related cause of death rather than the direct cause of death he says is mandated by section 707.5(1), supplement to the Code. Porter's argument, in effect, is the jury had to find his actions were the sole proximate cause of death. He argues his actions were not reckless because he was trying to recover a fallen cigarette when he crossed the center line. He also claims contributory negligence on the part of the victims caused the accident.

We find Porter's argument unpersuasive. In State v. Shimon, 182 N.W.2d 113, 115 (Iowa 1970), the court reviewed a challenge to a proximate cause instruction. There, the court stated even if the causes of death are concurrent, the defendant is not shielded from wrongdoing. Id. The court went on to say:

> The principle is well stated in the early case of State v. Selledy, supra: "* * * And it is no defense that the death of the deceased was caused by the negligence of others, as well as by that of the prisoner; for if the death of the deceased be caused, partly by the negligence of the prisoner, and partly by the negligence

> of others, the prisoner, and all those others, are guilty of manslaughter.

Id.

Although Selledy speaks of negligent manslaughter, its reasoning equally applies to the charge of involuntary manslaughter and its recklessness requirement. The court, in State v. Wallin, 195 N.W.2d 95, 99 (Iowa 1972), approved an instruction on manslaughter that stated, "(T)hen such conduct will be sufficient to justify your finding him guilty of the crime of manslaughter in the event his conduct was a proximate cause of the death. . . ." (Emphasis added.) We find the instruction challenged here was correct and did not prejudice Porter.

II. Substantial evidence supporting the verdict.

Porter contends since the jury finding of reckless driving was not supported by substantial evidence, the necessary elements of the crime of involuntary manslaugher were not proven. In reviewing a challenge to a jury verdict, we are bound by the verdict if it is supported by substantial evidence in the record. State v. Cuevas, 281 N.W.2d 627, 631 (Iowa 1979). We review the evidence in the light most favorable to the State, State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976), to determine whether the trier of fact could reasonably conclude Porter was guilty beyond a reasonable doubt. See State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). The Robinson rule requiring consideration of all evidence in the record on challenges such as this, however, is inapplicable here since Porter did not raise the issue at trial or on appeal. Id. at 340.

The record indicates Porter had been drinking prior to the accident. Further, it indicates prior to the accident he was exceeding the speed limit and crossed the center line immediately before the collison. From the evidence introduced, the jury reasonably could have found Porter was driving recklessly. While the defense presented evidence to rebut such a finding, the jury was the trier of fact and the judge of witness credibility. Based on the evidence in the record, the jury could conclude beyond a reasonable doubt Porter was driving recklessly and was guilty of involuntary manslaughter as charged.

Since the convictions were supported by substantial evidence, they must be affirmed.

AFFIRMED.