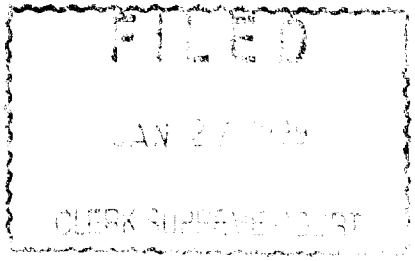
IN THE COURT OF APPEALS OF IOWA

No. 8-716 / 98-0189
Filed January 27, 1999



STATE OF IOWA,
Appellee,

vs.

LUKE J. ABRAMS n/k/a
LUKE J. NIELSEN,
Appellant.

Appeal from the Iowa District Court for Story County, Timothy J. Finn, Judge.

Luke Abrams appeals from the district court's restitution order requiring him to pay the medical and burial expenses of homicide victim. **AFFIRMED.**

James W. Thornton of Harrison, Brennecke, Moore, Smaha & McKibben, Marshalltown, until withdrawal, and then Rory E. Calloway, Ames, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, Mary E. Richards, County Attorney, and Stephen H. Holmes, Assistant County Attorney, for appellee-State.

Heard by Huitink, P.J., and Mahan and Zimmer, JJ.

HUITINK, P.J.

Luke Abrams appeals from the district court's restitution order requiring him to pay the medical and burial expenses of homicide victim. We affirm.

I. Background Facts and Proceedings.

Luke Abrams and Michael Runyan were charged with first-degree murder in connection with a the death of Harold "Uri" Sellers.

In exchange for his testimony against Runyan, Abrams was allowed to plead guilty to reduced charges of going armed with intent (a class D felony), and accessory after the fact (an aggravated misdemeanor).

The district court accepted Abrams' guilty pleas to both charges in conformity with the plea agreement. Abrams was sentenced to an indeterminate five-year term of incarceration on the felony count and a consecutive indeterminate two-year sentence on the aggravated misdemeanor count.

On the State's subsequent application for restitution, the district court ordered Abrams and Runyan to pay Sellers' medical and burial expenses. On appeal, Abrams contends the district court erred in ordering him to make restitution. He argues the conduct resulting in his convictions neither caused nor aggravated Sellers' injuries.

II. Standard of Review.

We review the district court's restitution order for an abuse of discretion. *State v. Tutor*, 538 N.W.2d 894, 896 (Iowa App.1995).

III. The Merits.

Restitution is authorized only by statute. *State v. Wagner*, 484 N.W.2d 212, 215 (Iowa App.1992). It is a mandatory part of sentencing in Iowa and is defined in fairly broad terms. *Id.*; Iowa Code § 910.1(3)(1997). Restitution orders are not limited by the parameters of the offense committed, but may be extended to any damages sustained by the victim of a crime which, with some exceptions, would be recoverable against the offender in a civil action. *State v. Holmberg*, 449 N.W.2d 376, 377 (Iowa 1989). Consequently, in each instance, the State must prove by a preponderance of the evidence a causal connection exists between the criminal act and the victim's damages. *Id.*; *State v. Starkey*, 437 N.W.2d 573, 574 (Iowa 1989); *State v. Mai*, 572 N.W.2d 168, 171 (Iowa App. 1997). A trial court abuses its discretion and exceeds its statutory authority when it orders restitution for losses not causally related to the offenses. *Tutor*, 538 N.W.2d at 896.

Abrams was charged with aiding and abetting Runyan in going armed with intent. The factual basis supporting Abrams' guilty plea must accordingly include proof Runyan went armed "with a dangerous weapon with the intent to use without justification such weapon against the person of another." Iowa Code § 708.8 (1994). Under an aiding and abetting theory, this factual basis must also show Abrams knew of or shared Runyan's specific intent to use a dangerous weapon, in this case, a knife, against Sellers. *State v. Tott*, 255 N.W.2d 105, 109 (Iowa 1977).

The record indicates these fundamental elements of proof were thoroughly explained to Abrams and he expressly acknowledged that he understood them. Because Abrams tendered an *Alford* plea,[1] the district court made the following record:

> THE COURT: . . . my understanding of an *Alford* plea is that you are not going to admit that you are guilty; *but it's your belief that if you went to trial, there's sufficient evidence in this record that you would be found guilty* and that you believe it's in your best interests to take the plea agreement that the State has offered you rather than run the risk of going to trial on the charge.
>
> THE DEFENDANT: Yes.

Abrams correctly notes that conviction of this offense does not require proof he caused Sellers' death. He accordingly claims there is no causal link between the conduct forming the basis of his conviction, aiding and abetting Runyan in going armed with intent, and Sellers' injury or death. *See State v. Ihde*, 532 N.W.2d 827, 829 (Iowa App. 1995)(damage must have been caused by offender's criminal act).

As noted earlier, the State must establish a causal connection between Abrams' criminal conduct and Sellers' injuries and resulting damages. The test of proximate causation in a civil negligence action is defined as follows: The general rule is that an actor's conduct is the proximate or legal cause of harm to another if: (1) his

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[1] An *Alford* plea allows a defendant to plead guilty without admitting the elements of the offense. In such a plea, the defendant acknowledges the evidence strongly negates the defendant's claim of innocence and enters the plea to avoid a harsher sentence. *Committee on Professional Ethics & Conduct v. Sturgeon,* 487 N.W.2d 338, 340 (Iowa 1992); *See North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

conduct is a "substantial factor" in bringing about the harm; and (2) there is no other rule of law relieving the actor of liability because of the manner in which his negligence resulted in the harm. *See Hayward v. P.D.A., Inc.*, 573 N.W.2d 29, 32 (Iowa 1997). Proximate cause is premised on foreseeability of results. *See State v. McFadden*, 320 N.W.2d 601, 613 (Iowa 1982). Additionally:

> The acts of two or more persons may work concurrently as the efficient cause of an injury and in such case each of the participating acts or omissions is regarded in law as a proximate cause.

State v. McFadden, 320 N.W.2d at 611 (quoting *Pennsylvania v. Peak*, 12 Pa. D. And C.2d 379, 382 (1958)).

We are unable to reconcile Abrams' causation argument with his acknowledgment that the State could prove he shared or knew of Runyan's intent to use the knife against Sellers. Sellers' injury or death was clearly a foreseeable result of Runyan's intention. The district court properly concluded Abrams' conduct as an aider and abettor to the offense of going armed with intent was a substantial factor in bringing about the harm resulting in Sellers' death.

Because our resolution of this issue is dispositive, with need not address the remainder of Abrams' claims. The judgment of the district court is affirmed.

AFFIRMED.