

Court of Appeals, State of Michigan

ORDER

People of MI v Jodie Mae Hall

Alton T. Davis
Presiding Judge

Docket No. 270015

Joel P. Hoekstra

LC No. 2005-200928-FH

Pat M. Donofrio
Judges

The Court orders that the motion for reconsideration is GRANTED, and this Court's opinion issued June 12, 2007, is hereby VACATED. A new opinion is attached to this order.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 19 2007

Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JODIE MAE HALL,

Defendant-Appellant.

UNPUBLISHED

June 12, 2007

No. 270015

Oakland Circuit Court

LC No. 05-200928-FH

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from her conviction of operating a motor vehicle under the influence of intoxicating liquor (OUIL) causing death, MCL 257.625(4), entered after a jury trial. Defendant has not shown that it is more probable than not that any error in the jury instructions was outcome determinative, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was driving her SUV northbound on South Milford Road in Highland, Michigan. The SUV collided with the rear of a school bus that was stopped at an intersection while waiting to make a left turn. Defendant's 10-year-old daughter, Samantha, a front seat passenger in the SUV, was killed in the accident. The prosecution's theory was that defendant was driving while intoxicated, and that her intoxicated state prevented her from stopping the SUV in time to avoid the collision. Defendant's theory was that she became distracted when her large dog jumped into the front seat from the rear of the SUV, and that the collision occurred due to this distraction.

A witness who was driving northbound behind the bus and the SUV stated the bus was clearly visible for at least one-quarter mile. The witness stated that the SUV made no attempt to slow down or to go around the bus after the bus stopped in the intersection. A member of the traffic crash reconstruction unit found no evidence that the SUV had braked prior to the collision, and opined that defendant should have been able to stop the SUV based on her speed and the distance between the SUV and the bus. The witness stated that alcohol consumption slows perception and reaction time, and opined that even if the dog had jumped into the front seat when the SUV was only 100 or 200 feet behind the bus, defendant could have attempted to brake the vehicle. A nurse who treated defendant in the emergency room testified that defendant was extremely belligerent, and smelled heavily of alcohol. The nurse testified that a physician attempted to

speaking with defendant about defendant's daughter, but that defendant was too intoxicated to carry on a conversation.¹

Defendant testified that she and her daughter left a restaurant shortly before the collision occurred. Defendant acknowledged that she had consumed three and one-half glasses of wine during dinner, and stated that while she felt the effects of the alcohol, she believed that she was capable of driving safely. Defendant stated that as she approached the intersection, her dog, which weighed 80 to 90 pounds, jumped into the front seat and frightened Samantha. Defendant attempted to push the dog back into the rear of the SUV, became distracted, and failed to brake her vehicle. Defendant estimated that she was no further than 200 feet from the bus when she became distracted. Defendant stated that her dog's action surprised her because the dog had never jumped into the front seat of the vehicle prior to that occasion.

Defendant requested that the trial court read a proposed instruction on intervening causation based on *People v Schaefer*, 473 Mich 418; 703 NW2d 774 (2005), overruled in part on other grounds in *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006).² Defendant's position was that the dog jumping into the front seat was the factual cause of Samantha's death. The trial court declined to read defendant's proposed instruction, finding that *Schaefer* was inapplicable because the conduct at issue--defendant's driving of the SUV and her failure to stop--had to constitute the factual cause of a death before the existence of an intervening superseding cause could be considered to determine if proximate cause existed. The trial court found that CJI2d 15.11(6) adequately defined factual and proximate causation.

During closing argument, defense counsel argued that the dog's act of jumping into the front seat broke the chain of causation, and that defendant's actions did not proximately cause Samantha's death.³ The jury found defendant guilty as charged. The trial court sentenced defendant to two and one-half to 15 years in prison, with credit for one day.

¹ The parties stipulated that defendant's blood alcohol content (BAC) was .16%.

² The precise wording of the requested instruction is not reflected in the record. The *Schaefer* Court noted that in criminal jurisprudence, causation is comprised of factual causation and proximate causation. Whether a defendant's action was a factual cause of the result depends on whether that result would have occurred in the absence of the defendant's conduct. Whether the conduct was a proximate cause of the result depends on whether the result was a direct and natural consequence of the defendant's conduct such that the law would recognize the causation. *Id.* at 435-436. An intervening, superseding cause will negate proximate causation. To constitute a superseding cause, an intervening cause must have been objectively and reasonably foreseeable. *Id.* at 436-437. In determining whether a person is guilty of OUIL causing death, factual causation must be established in that the victim's death would not have occurred but for the defendant's operation of the vehicle. If factual causation exists, the defendant's conduct must also be shown to have been the proximate cause of the death, including consideration whether there was an intervening superseding cause. *Id.* at 438.

³ Although defense counsel seemed to take the position when arguing for the additional instruction that defendant's conduct did not constitute the factual cause of Samantha's death, counsel's closing argument focused on the concept of proximate cause.

We review jury instructions in their entirety to determine whether the trial court committed error requiring reversal. Jury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them. Even if somewhat imperfect, instructions do not create error if they fairly presented the issues for trial and sufficiently protected the defendant's rights. Error does not result from the omission of an instruction if the charge as a whole covered the substance of the omitted instruction. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). We review a claim of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

To prove the offense of OUIL causing death, a prosecutor must establish beyond a reasonable doubt that: (1) the defendant operated a motor vehicle while intoxicated; (2) the defendant voluntarily decided to drive, knowing that he or she had consumed alcohol and might be intoxicated; and (3) the defendant's operation of the vehicle caused the victim's death. *Schaefer, supra* at 434. The operation of the vehicle must cause the death, but that causation need not be related to the defendant's intoxication. *Id.* at 433.

Defendant argues that the trial court erred by failing to instruct the jury that the existence of an intervening superseding cause can negate the existence of proximate cause. Defendant contends that the instruction read to the jury was incomplete because it did not include this explanation, and that the trial court's denial of her request to read an additional instruction deprived her of the right to present a defense.

Defendant did not dispute that she was operating the vehicle when the fatal collision occurred, and the parties stipulated that defendant had a BAC of .16% at the time of the collision. Thus, the only issue in dispute was whether defendant's operation of the vehicle caused Samantha's death. As noted, in determining whether a person is guilty of OUIL causing death, both factual causation, i.e., the victim's death would not have occurred but for the defendant's operation of the vehicle, and proximate causation must be established. CJI2d 15.11, the instruction read to the jury, was amended after *Schaefer, supra*, was decided. Defendant correctly asserts that the trial court did not specifically instruct the jury that in determining whether defendant's action was the proximate cause of Samantha's death, the jury should consider whether any intervening superseding cause existed. However, defense counsel argued vigorously that the dog's act of jumping into the front seat was completely unanticipated and therefore broke the chain of causation. The trial court instructed the jury that it must find that defendant's action was both the factual and the proximate cause of Samantha's death. The instructions, while perhaps imperfect, fairly presented the issues and protected defendant's rights. *Canales, supra*.

Schaefer, supra, emphasizes that for an intervening cause to be a superseding cause, the intervening cause must have been foreseeable "based on an objective standard of reasonableness." *Schaefer, supra* at 437. Thus, the jury was entitled to conclude that even if the dog jumped into the front seat and distracted defendant, this act was reasonable foreseeable for an unrestrained animal, and did not supersede defendant's operation of the SUV as the cause of Samantha's death. Reversal is not warranted because defendant has not shown that it is more probable than not that any error was outcome determinative. See *People v McKinney*, 258 Mich

App 157, 163; 670 NW2d 254 (2003).

Affirmed.

/s/ Alton T. Davis
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio