

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-515

COMMONWEALTH

vs.

ROBERT CURTIS, JR.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

A Superior Court jury convicted the defendant of involuntary manslaughter in violation of G. L. c. 265, § 13, and assault and battery on an elderly or disabled person in violation of G. L. c. 265, § 13K (a<sup>1/2</sup>). On appeal, the defendant argues that the evidence was insufficient to support his conviction for involuntary manslaughter. Specifically, the defendant claims that the evidence did not prove beyond a reasonable doubt that his conduct (1) caused the victim's death, and (2) was wanton or reckless. The defendant also argues that the judge did not properly instruct the jury regarding voluntary intoxication.<sup>1</sup> We affirm.

---

<sup>1</sup> The defendant makes no separate argument with respect to his assault and battery conviction.

Background. We summarize the facts the jury could have found, viewing the evidence in the light most favorable to the Commonwealth. See Commonwealth v. Latimore, 378 Mass. 671, 676-677 (1979). On the night of December 26, 2017, after consuming approximately ten "nips" of vodka, the defendant visited his longtime friend, Ralph Lawcewicz (victim). When the defendant arrived at the victim's residence, the victim was playing cards with William Ladd. The defendant was drunk and fell to the floor shortly after entering. As he got up, he mumbled that he was about to hit somebody. The defendant asked the victim if he "had anything," which Ladd understood to mean alcohol or drugs. When the victim responded that he did not, the defendant became angry.

There was a confrontation between the defendant and the victim, which Ladd recorded on his cell phone. We have reviewed the audio and visual recording that was admitted in evidence and played for the jury. As they stood facing each other, the victim told the defendant, "Ah, sit the fuck down please. Get out of my fucking face." The defendant stared at the victim with his hand extended and asked if they were "all right." The victim responded, "Everything is fine, ok? You tell me if everything's all right." The defendant said to the victim, "You know what is about to happen." Seconds later, the defendant suddenly lunged at the victim and knocked him to the floor. The

victim yelled for Ladd to help him as the defendant continued the attack. Ladd saw the defendant's body over the victim with the defendant's "arms moving."

Ladd drove to the defendant's parents' house and asked the defendant's father for help. When the defendant's father entered the victim's apartment shortly thereafter, he found the defendant standing and "staring in space." The victim was seated on the floor, conscious, but in distress. The defendant's father called 911 and responding emergency personnel performed cardiopulmonary resuscitation (CPR) on the victim at the scene. The victim was pronounced dead at the hospital approximately twelve hours later.

An autopsy revealed that the victim suffered from severe cardiovascular disease. There was evidence of an old injury to the heart muscle, and the victim's brain showed evidence of a previous stroke. The toxicology report revealed the presence of cocaine in the victim's blood. Based on his examination of the victim's body, the toxicology report, and the videotape of the attack, the medical examiner opined that the cause of the victim's death was "cardiac arrest in a person with hypertensive and arteriosclerotic cardiovascular disease following a physical altercation with a contributory cause of recent cocaine use." The medical examiner's opinion was based, in part, on his

conclusion that the victim's cardiac arrest occurred immediately after the stress of the physical altercation.

The defendant testified that he was a functioning alcoholic and that he was so drunk on December 26, 2017, that he had no memory of what occurred at the victim's apartment. The defendant knew that the victim had "heart issues" and that the victim had previously suffered a stroke. The defendant also knew that the defendant suffered from seizures and was disabled.

Discussion. 1. Sufficiency. "Involuntary manslaughter is an unlawful homicide unintentionally caused by an act which constitutes such a disregard for probable harmful consequences to another as to amount to wanton or reckless conduct" (quotation and citation omitted). Commonwealth v. Carrillo, 483 Mass. 269, 275 (2019). See Model Jury Instructions on Homicide 85-86 (2018) (involuntary manslaughter). The defendant argues that the evidence was insufficient to prove beyond a reasonable doubt that his actions (1) caused the victim's death, and (2) were wanton and reckless. We review these claims to determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Latimore, 378 Mass. at 677, quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979).

a. Causation. A defendant's act is the proximate cause of death where the act, "in the natural and continuous sequence, produce[d] the death, and without which death would not have occurred" (quotation and citation omitted). Commonwealth v. Rhoades, 379 Mass. 810, 825 (1980). "The defendant's acts need not be the sole or exclusive cause of death" to sustain a conviction for homicide. Commonwealth v. Santiago, 425 Mass. 491, 504 (1997), S.C. 427 Mass. 298, and 428 Mass. 39, cert. denied, 525 U.S. 1003 (1998). "Where a defendant causes an injury which, along with other contributing factors or medical sequella of the injury, leads to death, jurors may determine that the defendant's acts were the proximate cause of the injury." Commonwealth v. Perry, 432 Mass. 214, 225 (2000).

We are satisfied that the evidence was sufficient to support the jury's conclusion that the defendant's assault on the victim was the proximate cause of his death. The jury saw the videotape of the attack, heard Ladd's eyewitness account, and considered the medical examiner's expert opinion that the victim's death was caused by cardiac arrest following the stress of the physical altercation. There was no evidence that the victim was suffering from cardiac arrest prior to the attack. Based on all of the evidence, a rational juror could have concluded that although the victim's heart disease and cocaine use may have contributed to his cardiac arrest, the proximate

cause of the victim's death was the defendant's assault on the victim. Put another way, when the evidence is viewed in the light most favorable to the prosecution, it was sufficient to prove beyond a reasonable doubt that the defendant's assault and battery on the victim was the event that caused his death "in [a] natural and continuous sequence," Rhoades, 379 Mass. at 825, and that the victim would not have suffered a cardiac arrest, but for that assault and battery.<sup>2</sup>

b. Wanton or reckless conduct. To prove the crime of involuntary manslaughter by wanton or reckless conduct, the Commonwealth must prove beyond a reasonable doubt that the defendant engaged in conduct which he knew or should have known created "'a high degree of likelihood that substantial harm will result to another.'" Carrillo, 483 Mass. at 270, quoting Commonwealth v. Welansky, 316 Mass. 383, 399 (1944). "What must be intended is the conduct, not the resulting harm." Welansky, 316 Mass. at 398. "Wanton or reckless conduct is determined

---

<sup>2</sup> We are not persuaded by the defendant's argument that the defendant's act of striking the victim was too remote in time to be the proximate cause of the victim's death. The evidence showed that first responders administered CPR to the victim at the scene, soon after the assault. The victim was then transported to the hospital where he was placed on life support. He died of cardiac arrest at the hospital twelve hours later. The jury could have rationally concluded from this evidence that the defendant's assault on the victim was the event that led to the victim's death in a natural and continuous sequence.

based either on the defendant's specific knowledge or on what a reasonable person should have known in the circumstances."

Commonwealth v. Pugh, 462 Mass. 482, 496 (2012).

Here, there was evidence that the defendant had specific knowledge of the victim's poor health. The defendant had known the victim for thirty years and frequently visited him at his apartment. The defendant knew that the victim had heart problems, was a diabetic, and had previously suffered a stroke. This evidence permitted the jury to reasonably infer that the defendant was aware of the victim's heart disease when he forcefully knocked the victim to the ground and continued to beat him as he cried for help. A rational juror could have concluded that the defendant knew, or should have known, that his conduct created a high degree of likelihood that substantial harm would result.<sup>3</sup>

The defendant's argument that he was too drunk to form the mental state required for wanton and reckless conduct is unavailing. It is undisputed that the defendant had consumed a large quantity of alcohol and was under the influence of that alcohol at the time of the assault. Indeed, the judge

---

<sup>3</sup> Because we conclude that the evidence was sufficient to prove beyond a reasonable doubt that the defendant had specific knowledge of the victim's condition, we need not address whether the evidence was also sufficient to establish that a reasonable person would also have realized the risk of substantial harm.

instructed the jury that they could consider evidence of the defendant's intoxication in deciding whether he knew or should have known that his conduct created a high degree of likelihood that substantial harm would result. However, the jury also heard evidence that the defendant was a functioning alcoholic, that he was able to find the victim's residence and ask for drugs or alcohol, that he became angry when he was offered none, and that he was able to walk to his parents' home after the assault and to communicate with the police a short time later. This evidence, when considered in the light most favorable to the prosecution, was sufficient to support the jury's conclusion that the defendant knew, or should have known, that his conduct created a high degree of likelihood that substantial harm would result.

2. Voluntary intoxication instruction. In a case of involuntary manslaughter, "evidence of intoxication can be considered by the jury in connection with whether the defendant knew, or should have known, that his conduct created a high degree of likelihood that substantial harm would result to another." Commonwealth v. Iacoviello, 90 Mass. App. Ct. 231, 243-244 (2016). The defendant submitted a proposed jury instruction regarding voluntary intoxication which he argues was a combination of model instructions from the District and Superior Courts. The judge agreed to give a voluntary



intoxication instruction, but did not give it in the form proposed by the defendant. Rather, the judge instructed the jury consistent with the Supreme Judicial Court's model jury instruction on involuntary manslaughter. See Model Jury Instructions on Homicide at 90.<sup>4</sup> For the first time on appeal, the defendant claims that the judge's instruction was "terse and potentially confusing." We disagree. The model instruction given by the judge "clearly and correctly conveyed the applicable law." Commonwealth v. Randolph, 438 Mass. 290, 303 (2002). The judge was not required to use the exact language proposed by the defendant. See Commonwealth v. McGee, 467 Mass. 141, 154 (2014).

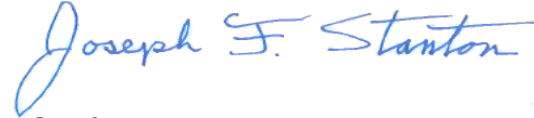
---

<sup>4</sup> The judge instructed the jury that, "in deciding whether the defendant knew or should have known his conduct created a high degree of likelihood that substantial harm would result to another, you may consider any credible evidence that the defendant suffered from a mental impairment or was affected by his consumption of alcohol or drugs. A defendant may have the requisite knowledge even if he suffered from a mental impairment or consumed alcohol or drugs, but you may consider such evidence in determining whether the Commonwealth has proved this element."

There was no error, much less a substantial risk of a miscarriage of justice.

Judgments affirmed.

By the Court (Massing,  
Kinder & Neyman, JJ.<sup>5</sup>),



Clerk

Entered: September 22, 2021.

---

<sup>5</sup> The panelists are listed in order of seniority.