

accompanying it. That showing has been met here. The natural, probable, and practically certain consequence of sending a driverless locomotive down curving tracks at full speed will be the result punished by the statute.

In holding that section 1992 does not require specific intent to wreck a train, we are in agreement with every other appellate court to consider this issue * * * Mr. Youts knowingly set in motion—literally and figuratively—the events which caused the train to wreck. That is all section 1992 requires. We hold that the jury was presented with sufficient evidence to find Mr. Youts guilty. * * * AFFIRMED.

D. Recklessly

People v. Hall

999 P.2d 207 (Colo. 2000)

JUSTICE BENDER delivered the Opinion of the Court.

We hold that Nathan Hall must stand trial for the crime of reckless manslaughter. While skiing on Vail mountain, Hall flew off of a knoll and collided with Allen Cobb, who was traversing the slope below Hall. Cobb sustained traumatic brain injuries and died as a result of the collision. The People charged Hall with felony reckless manslaughter.

At a preliminary hearing to determine whether there was probable cause for the felony count, the county court found that Hall's conduct "did not rise to the level of dangerousness" required under Colorado law to uphold a conviction for manslaughter, and the court dismissed the charges. On appeal, the district court affirmed the county court's decision. The district court determined that in order for Hall's conduct to have been reckless, it must have been "at least more likely than not" that death would result. Because the court found that "skiing too fast for the conditions" is not "likely" to cause a another person's death, the court concluded that Hall's conduct did not constitute a "substantial and unjustifiable" risk of death. Thus, the district court affirmed the finding of no probable cause.

The charge of reckless manslaughter requires that a person "recklessly cause[] the death of another person." § 18-3-104(1)(a), 6 C.R.S. (1999). For his conduct to be reckless, the actor must have consciously disregarded a substantial and unjustifiable risk that death could result from his actions. * * *

We hold that under the particular circumstances of this case, whether Hall committed the crime of reckless manslaughter must be determined by the trier of fact. Viewed in the light most favorable to the prosecution, Hall's conduct — skiing straight down a steep and bumpy slope, back on his skis, arms out to his sides, off-balance, being thrown from mogul to mogul, out of control for a considerable

distance and period of time, and at such a high speed that the force of the impact between his ski and the victim's head fractured the thickest part of the victim's skull — created a substantial and unjustifiable risk of death to another person. A reasonable person could infer that the defendant, a former ski racer trained in skier safety, consciously disregarded that risk. * * *

On April 20, 1997, the last day of the ski season, Hall worked as a ski lift operator on Vail mountain. When he finished his shift and after the lifts closed, Hall skied down toward the base of the mountain. The slopes were not crowded.

On the lower part of a run called "Riva Ridge," just below where the trail intersects with another called "North Face Catwalk," Hall was skiing very fast, ski tips in the air, his weight back on his skis, with his arms out to his sides to maintain balance. He flew off of a knoll and saw people below him, but he was unable to stop or gain control because of the moguls.

Hall then collided with Cobb, who had been traversing the slope below Hall * * * Hall's blood alcohol level was .009, which is less than the limit for driving while ability impaired. A test of Hall's blood for illegal drugs was negative.

[After conducting a preliminary hearing to review the evidence], the county court considered whether there was sufficient evidence to find probable cause that Hall recklessly caused Cobb's death. The county court reviewed other Colorado manslaughter cases where courts found substantial and unjustified risks of death resulting from conduct such as firing a gun at a person or kicking an unconscious person in the head. The court found that Hall's conduct — which the court characterized as skiing "too fast for the conditions" — did not involve a substantial and unjustifiable risk of death and "does not rise to the level of dangerousness required under the current case law" to sustain a count of manslaughter. Because Hall's conduct did not, in the court's view, involve a substantial and unjustifiable risk of death, the court found that the prosecution failed to provide sufficient proof that Hall acted recklessly. The county court therefore dismissed the manslaughter count.

* * * To provide background for our explanation of recklessness, we review the history of culpable mental states. Depending on the specific crime charged and the jurisdiction, juries might be instructed to determine whether the defendant acted with "'felonious intent,' 'criminal intent,' 'malice aforethought,' 'guilty knowledge,' 'fraudulent intent,' 'wilfulness,' 'scienter,' . . . or 'mens rea,' to signify an evil purpose or mental culpability." *Morissette v. United States*, 342 U.S. 246 (1952). * * *

To demonstrate that Hall committed the crime of manslaughter, the prosecution must provide sufficient evidence to show that the defendant's conduct was reckless.

§ 18-3-104(1)(a). Thus, we focus on describing the mental state of recklessness and determining whether Hall's conduct meets that definition. * * *

As Colorado's criminal code defines recklessness, "A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that a result will occur or a that circumstance exists." § 18-1-501(8). Thus, in the case of manslaughter, the prosecution must show that the defendant's conduct caused the death of another and that the defendant:

- 1) *consciously disregarded*
- 2) *a substantial and*
- 3) *unjustifiable risk that he would*
- 4) *cause the death of another.*

We hold that whether a risk is unjustifiable must be determined by assessing the nature and purpose of the actor's conduct relative to how substantial the risk is. Finally, in order for conduct to be reckless, the risk must be of such a nature that its disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise.

As well as being substantial, a risk must be unjustifiable in order for a person's conduct to be reckless. Whether a risk is justifiable is determined by weighing the nature and purpose of the actor's conduct against the risk created by that conduct. See MPC, § 2.02, cmt. at 125 (Tentative Draft No. 4) * * *.

If a person consciously disregards a substantial risk of death but does so in order to advance an interest that justifies such a risk, the conduct is not reckless. For example, if a surgeon performs an operation on a patient that has a seventy-five percent chance of killing the patient, but the patient will certainly die without the operation, then the conduct is justified and thus not reckless even though the risk is substantial.

In addition to the separate analyses that are applied to determine whether a risk is both "substantial" and "unjustified," the concept of a "substantial and unjustifiable risk" implies a risk that constitutes a gross deviation from the standard of care that a reasonable law-abiding person would exercise under the circumstances. Both the Model Penal Code and the New York Code, which the General Assembly followed in drafting the Colorado criminal code, expressly define a "substantial and unjustifiable risk" as one that is a gross deviation from the reasonable standard of care. See MPC, § 2.02 at 226; N.Y. Penal Law, § 15.05. A substantial and unjustifiable risk must constitute a "gross deviation" from the reasonable standard of care in order to justify the criminal sanctions imposed for criminal negligence

or reckless conduct, as opposed to the kind of deviation from the reasonable standard of care that results in civil liability for ordinary negligence.¹²

* * * In addition to showing that a person created a substantial and unjustifiable risk, the prosecution must demonstrate that the actor "consciously disregarded" the risk * * * Although recklessness is a less culpable mental state than intentionally or knowingly, it involves a higher level of culpability than criminal negligence. * * * [T]he court may infer that the defendant was subjectively aware of that risk, but the court cannot hold the defendant responsible if she were actually unaware of a risk that a reasonable person would have perceived.

Hence, in a reckless manslaughter case, the prosecution must prove that the defendant acted despite his subjective awareness of a substantial and unjustifiable risk of death from his conduct. Because absent an admission by the defendant such awareness cannot be proven directly, * * *.

The final element of recklessness requires that the actor consciously disregard a substantial and unjustifiable risk of a particular result, and in the case of manslaughter the actor must risk causing death to another person. The risk can be a risk of death to another generally; the actor does not have to risk death to a specific individual. * * *

[W]e must consider the facts in the light most favorable to the prosecution and we must draw all inferences against the defendant. Furthermore, the prosecution does not have to satisfy the much higher burden of proof necessary to convict Hall of reckless manslaughter. Rather, it need only establish sufficient evidence so that a reasonably prudent and cautious person could entertain the belief that Hall committed the crime.

* * * Hall was out of control and unable to avoid a collision with another person. All the witnesses said Hall was not traversing the slope and that he was skiing straight down the fall line. Hall was back on his skis, with his ski tips in the air and his arms out to his sides to maintain balance. Allen said that Hall was bounced around by the moguls on the slope rather than skiing in control and managing the bumps. * * * Obviously, this opinion does not address whether Hall is ultimately guilty of any crime. Rather, we hold only that the People presented

¹² We note that both criminal negligence and recklessness require that the actor's conduct involve a "gross deviation" from the standard of care that a reasonable person would exercise under the circumstances in each case. Thus, the same risk will suffice for either criminally negligent or reckless conduct. However, the standards are sufficiently distinct to justify unequal penalties because in the case of reckless conduct the actor must be aware of the risk he creates, while criminally negligent conduct requires only that he failed to perceive the risk.

sufficient evidence to establish probable cause that Hall committed reckless manslaughter, and the court should have bound Hall's case over for trial. * * * Thus, we remand this case to the district court for trial.

NOTES & QUESTIONS

1. *Criminal Recklessness*. Should the prosecutor have charged this case as a criminal action? What is the key fact that shows Hall's conduct was reckless? Is it his status as a ski instructor, the presence of alcohol, conditions on the ski slope at the time of the collision, or his making a jump at a high rate of speed where others may be present? If the case proceeds to trial, should defense counsel call Hall as a witness? If one had similar facts and the accused had a reputation among the other ski instructors as "a guy who skis on the edge" and who participates in "extreme sports" as a hobby, should the defendant be called as a witness?

2. *Standard of Review*. The *Hall* case is at the pre-trial stage. The Colorado Supreme Court in *Hall* considered the evidence in the light most favorable to the government. The reason is that the dismissal of the charges is the equivalent of a grant of summary judgment, so appellate review of the facts is made in the light most favorable to the losing party below, in this case the prosecution. Note that the court is careful to point out that its analysis is not a factual resolution of the case.

E. Negligently

State v. Larson

103 P.3d 524 (Mont. 2004)

Justice JIM REGNIER delivered the Opinion of the Court.

Defendant Mark Theodore Larson (Larson) was convicted by a jury * * * on one count of negligent homicide, a felony, and one count each of the following misdemeanors: driving under the influence, speeding and failure to wear a seatbelt. Larson appeals his convictions. We affirm.

* * * The State's evidence at trial showed during the evening hours of November 10 and early morning hours of November 11, 2001, Larson and two college friends, Morgan and Clare, were drinking in his vehicle and in various bars and residences in the Conrad and Dutton area.

At about 3:30 a.m., Larson was driving his pickup at a high rate of speed south on the frontage road between Conrad and Brady when it veered off the right