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Supreme Court affirms the murder conviction of an Albuquerque man for causing the death of a church security guard

SANTA FE – The state Supreme Court today upheld an Albuquerque man’s first-degree murder conviction for the death of a church security guard who he hit with a pickup truck in the church’s parking lot.

In a unanimous opinion written by Justice C. Shannon Bacon, the Court rejected arguments by Marc Ward that there was not enough evidence to support his conviction and that the trial court wrongly denied a request to instruct the jury on the crime of involuntary manslaughter.

The justices also concluded there was no harm by the trial court’s decision to admit certain evidence by prosecutors to rebut the defense’s characterization of the victim as the initial aggressor in the fatal incident.

Ward contended that he did not have the necessary criminal intent to commit willful and deliberate murder. The jury was instructed on the elements necessary for first-degree murder, second-degree murder, voluntary manslaughter, and self-defense.

The Court clarified in today’s opinion that the “mens rea” or state of mind necessary for a conviction of involuntary manslaughter is recklessness rather than “criminal negligence.” The Court directed one of its permanent rules committees to revise uniform jury instructions to reflect that new legal standard.

Ward was sentenced to life in prison for causing the death of Daniel Bourne, who approached the defendant’s truck in the parking lot to serve him with a trespass notice. Ward testified that he was watching a movie on a tablet in his truck and was startled by a flashlight in his mirror. He claimed he accidentally struck Bourne as he drove out of the parking lot and Bourne fired a gun at his truck.

Prosecutors introduced evidence that indicated Ward had circled back after striking Bourne and ran over him a second time. Two impacts could be heard on a recording from Bourne’s phone. He had started a video recording on the phone but the camera was covered for most of the incident. There also were two fluid trails from the radiator of Ward’s truck from a leak caused by a bullet that Bourne fired.

“From this circumstantial evidence, the jury could have reasonably concluded that after striking Victim the first time, Defendant purposefully circled around in his truck for the purpose of killing an already-incapacitated Victim,” the Court wrote. “This evidence of a second, purposeful strike is sufficient to support the jury’s finding that Defendant killed Victim with deliberate intent.”

The victim’s blood also was found on Ward’s jeans. Prosecutors contended that Ward got out of his truck after hitting Bourne and dragged his body into a nearby arroyo.

The Court concluded that an involuntary manslaughter jury instruction was not necessary in Ward’s trial “because Defendant’s testimony indicated he killed Victim purely by accident: that is, Defendant asserted he was unaware his actions put Victim at risk.”

The justices explained that “unless there is evidence indicating that a defendant was subjectively aware of the risk, an involuntary manslaughter instruction should not be given.” It is not a crime in New Mexico to accidentally cause a person’s death. Involuntary manslaughter is an unintentional killing but it requires “a culpable mental state that results in criminal liability,” the Court wrote.

The uniform jury instruction for involuntary manslaughter “requires a jury to find that the defendant ‘should have known of the danger involved’ by the defendant’s actions and ‘acted with a willful disregard for the safety of others.’ The term “*should have known*” corresponds to an ordinary civil negligence standard,” the Court stated.

The justices directed the rules committee to remove the “should have known” language from the uniform jury instruction, concluding that it “misstates the mens rea requirement of involuntary manslaughter and could mislead a jury.”

The “should have known” phrase allows jurors to convict a person of involuntary manslaughter “even if the jury believes the defendant was entirely unaware of the risk” of their actions, the Court explained. The requirement for a defendant to have “subjective knowledge” of the risk of their actions “raises the mens rea of involuntary manslaughter from criminal negligence to recklessness,” the Court wrote.

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To read the decision in *State v. Ward*, No. S-1-SC-40503, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/537965/index.do>