

**IN THE COURT OF APPEALS OF IOWA**

No. 2-116 / 09-1531  
Filed March 28, 2012

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**PEGGY SUE KING,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Benton County, Patrick R. Grady,  
Judge.

Defendant appeals from her conviction of homicide by vehicle.

**AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger and James Kivi,  
Assistant Attorneys General, and David C. Thompson, County Attorney, for  
appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**EISENHAUER, C.J.**

Peggy Sue King appeals from her conviction of homicide by vehicle, claiming the evidence was insufficient to prove her intoxication was a proximate cause of the victim's death. Guided by the supreme court's recent resolution of the identical issue in *State v. Adams*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 2012), we affirm.

**I. Background**

At approximately 2:00 a.m. on July 28, 2007, King was driving on a paved, two-lane county road when she entered a well-known S-curve that intersects with a gravel road. The posted speed limit was fifty-five miles per hour, and just before the S-curve, a sign cautioned drivers not to exceed fifty miles per hour. King's passenger-side tires briefly dropped off the paved surface, and her vehicle began to skid. Her corrective measures were unsuccessful, and her vehicle crossed the road before leaving the road and hitting an embankment. King and her son, who were in the front seat, were both injured. The son's girlfriend, a passenger in the back seat, suffered a broken neck and died. King's alcohol concentration at the time of the accident was 0.126.

King was charged with homicide by vehicle, in violation of Iowa Code section 707.6A(1) (2007), and operating while intoxicated, in violation of section 321J.2. Following a trial to the court, King was convicted of both charges. As to the homicide by vehicle charge, the court framed the issue as:

Iowa Code § 707.6A(1), as relevant here, requires the State to prove beyond a reasonable doubt that on the night in question, Peggy King was operating a motor vehicle in Benton County, Iowa, that at the time she was driving, she had an alcohol concentration

of .08 or more and as a result of that alcohol consumption, she unintentionally caused the death of another.

The court found:

Here the evidence clearly establishes beyond a reasonable doubt that Peggy King was operating her motor vehicle while having a blood alcohol content that was one and one-half times the legal limit. The major issue in dispute is whether that intoxication was a proximate cause of the accident that resulted in Brittney Glime's death. This Court finds beyond a reasonable doubt that King's consumption of alcohol impaired her ability to control her vehicle and her judgment as to the proper speed to drive on what she knew through experience was a potentially dangerous stretch of road. This caused her tire or tires to ever so briefly leave the traveled portion of the road and she was unable, due to speed and impairment, to restore her path of travel to that dictated by the road. Even if this Court were to accept Adam King's testimony that he grabbed the steering wheel once the vehicle began to swerve, that did not break the causal link between King's initial loss of control and the vehicle leaving the roadway that resulted in the loss of Brittney's life. This Court finds beyond a reasonable doubt that Peggy King is guilty of Homicide by Vehicle.

## **II. Scope of Review**

Our review of claims of insufficient evidence to support a conviction is for correction of errors at law. *State v. Hansen*, 750 N.W.2d 111, 112 (Iowa 2008). The district court's findings of guilt are binding on us on appeal if supported by substantial evidence. *State v. Hearn*, 797 N.W.2d 577, 579 (Iowa 2011). Evidence is substantial if it could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006). To determine whether substantial evidence supports the district court's verdict, we consider all the evidence in the light most favorable to the court's decision. *State v. Taylor*, 689 N.W.2d 116, 131 (Iowa 2004). We draw all legitimate inferences in support of the verdict. *Id.* However, evidence that

“merely raises suspicion, speculation, or conjecture is insufficient.” *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992).

### III. Merits

On appeal, King argues there was insufficient evidence to prove her intoxication was a proximate cause of the accident that resulted in the death of her passenger. She points to testimony the S-curve is recognized as a dangerous curve and has consistently posed a danger to drivers. There is evidence gravel from the intersecting gravel road spills onto the paved surface, which she claims lessens the ability of drivers to control vehicles in the curve. She argues there is no proof her intoxication, as opposed to the mere act of driving a vehicle on the dangerous curve, caused the accident.

While the instant appeal was pending, the supreme court heard, considered, and decided *State v. Adams*, issuing its decision on January 20, 2012. In addressing the identical question raised in this appeal, the court ruled:

We conclude it is the State’s burden under section 707.6A(1) to prove a causal connection between the defendant’s intoxicated driving and the victim’s death. Although *the statute does not impose a burden on the State to prove a specific causal connection between the defendant’s intoxication and the victim’s death, it does require proof of a factual causal connection between a specific criminal act—“intoxicated driving”—and the victim’s death.* Put another way, the statute demands more than mere proof that the defendant’s driving caused the death of another person. A defendant may be found guilty of homicide by vehicle only if the jury finds beyond a reasonable doubt that his criminal act of driving under the influence of alcohol caused the victim’s death.

*Adams*, \_\_\_ N.W.2d at \_\_\_ (emphasis added). After examining some of its precedents on proximate cause, the court described the application of its holding to the question of causation:

However, in our most recent discussion of causation principles in a criminal case, we clarified that when “causation does surface as an issue in a criminal case, our law normally requires us to consider if the criminal act was a factual cause of the harm.” *State v. Tribble*, 790 N.W.2d 121, 126–27 (Iowa 2010). Except where multiple acts contribute to cause a consequence, the determination of factual causation turns simply on whether “the harm would not have occurred absent the [defendant’s] conduct.” *Id.* at 127 (quoting Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 26, at 346 (2010)).

Our review of this case leads us to conclude that this is just such a “normal” case in which “our law . . . requires us to consider if the criminal act was a factual cause of the harm.” *Id.* at 126–27. As our decision in this case makes clear, *the causation question in a prosecution under Iowa Code section 707.6A(1) asks whether the victim’s death would have occurred in the absence of the defendant’s criminal act—intoxicated driving.*

*Id.* at \_\_\_\_ (emphasis added).

In the case before us, the district court considered the evidence whether King’s “intoxication was a proximate cause of the accident that resulted in Brittney Glime’s death.” Answering the question in the affirmative, the court found beyond a reasonable doubt King’s “consumption of alcohol impaired her ability to control her vehicle and her judgment as to the proper speed to drive on what she knew through experience was a potentially dangerous stretch of road.” It also found a tire or tires of her vehicle went off the traveled portion of the road, she was unable to restore the direction her vehicle was traveling because of her speed and impairment, and the vehicle swerved and left the road, resulting in the death of a passenger.

The district court, as fact finder, heard testimony and received exhibits from which facts and reasonable inferences supporting the court’s findings may be gleaned. King drank several beers over the course of the evening and early morning hours before driving. Tests revealed the alcohol in her body exceeded

one and one-half times the legal limit. The accident investigator did not find any scuff marks before the point where the vehicle's passenger-side tires left the pavement, so it does not appear the vehicle slid on gravel on the roadway. At the point where the tires came back on the paved surface, the scuff marks show the vehicle was traveling about sixty-eight miles per hour and was decelerating. The posted speed limit on the road is fifty-five miles per hour. A warning sign before the curves cautions a speed of fifty miles per hour. King had lived in the area for about twenty years and had driven through the curves many times. She knew the curves could be dangerous. King admitted, "I was just driving too fast." The victim died from injuries sustained in the accident. King violated Iowa Code section 321J.2(1)(b) (operating while intoxicated).

We conclude substantial evidence in the record supports the findings of the district court.

The fighting issue on appeal is whether the State had to prove King's *intoxication* was a proximate cause of the victim's death. The supreme court has determined, as noted above, the State must prove the criminal act, operating a motor vehicle while intoxicated, was a proximate or factual cause of the victim's death. See *id.* at \_\_\_ ("Although the statute does not impose a burden on the State to prove a specific causal connection between the defendant's intoxication and the victim's death, it does require proof of a factual causal connection between a specific criminal act—'intoxicated driving'—and the victim's death."). In this case, the district court's findings, including that King's intoxication was a proximate cause of the victim's death, are more than sufficient to satisfy what is required under *Adams*. See *id.* at \_\_\_ (asking "whether the victim's death would

have occurred in the absence of the defendant's criminal act—intoxicated driving”).

The State proved all the elements necessary for the district court to find King guilty of homicide by vehicle as set forth in Iowa Code section 707.6A(1) (“A person commits a class ‘B’ felony when the person unintentionally causes the death of another person by operating a motor vehicle while intoxicated, as prohibited by section 321J.2.”). We affirm the district court.

**AFFIRMED.**