

IN THE COURT OF APPEALS OF IOWA

No. 7-960 / 07-0608
Filed January 16, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT EUGENE MARTIN,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, James S. Heckerman, Judge.

Robert Martin appeals his judgment and sentence for homicide by vehicle, leaving the scene, and driving with a suspended or revoked license. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard Bennett, Assistant Attorney General, Matthew Wilber, County Attorney, and Shelly Sedlak, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

VAITHESWARAN, J.

Robert Martin appeals his judgment and sentence for homicide by vehicle, leaving the scene, and driving with a suspended or revoked license. See Iowa Code §§ 707.6A (2005); 321.261, .263 (Supp. 2005); 321J.21 (2005). He contends there was insufficient evidence to support the district court's finding of guilt on the homicide by vehicle charge.

The State was required to prove Martin "unintentionally cause[d] the death of another by operating a motor vehicle while intoxicated." Iowa Code § 707.6A. A reasonable fact-finder could have found the following facts. Martin consumed approximately ten beers during the day. Although he did not have a driver's license, he got into his ex-wife's car and began driving. Rain was falling. Martin was driving fifty-three miles per hour on a fifty-mile-per-hour portion of a highway. He lost control of the car and went into a ditch, hitting an elderly man. The man died. After the accident, Martin called his ex-wife and told her he just hit a man. Martin took the license plates off his ex-wife's car and fled the scene. He was later apprehended and tested for alcohol in his system. His blood alcohol level was twice the legal limit of .08. A subsequent breath test reading was .126. This evidence amounts to substantial evidence in support of the district court's determination that Martin unintentionally caused the death of the man by driving while intoxicated. *State v. Dalton*, 674 N.W.2d 111, 116 (Iowa 2004).

Notwithstanding this evidence, Martin argues the district court failed to consider "another cause intervening, with which [he] was in no way connected, and but for which death would not have occurred." In Martin's view, that other cause was hydroplaning.

“[F]or an intervening act to relieve a defendant of criminal responsibility for homicide, the intervening act must be the *sole* proximate cause of death.” *Id.* at 118 (citation omitted) (emphasis in original). While there was evidence of hydroplaning, a deputy sheriff testified that the car Martin was driving stopped hydroplaning, touched the road surface, and skidded 236 feet before it came to rest in the ditch. He stated a person needed to be able to react to hydroplaning by letting off the gas and holding the steering wheel straight. He surmised that Martin instead “panicked, hit the brakes to stop and lost control.” A reasonable fact-finder could have found that Martin’s intoxication affected his judgment or motor skills which, in turn, caused him to drive too fast for the conditions or react inappropriately. Based on this evidence, a reasonable fact-finder could have found that hydroplaning was not the sole proximate cause of death.

We affirm Martin’s judgment and sentence.

AFFIRMED.