

**IN THE COURT OF APPEALS OF IOWA**

No. 3-755 / 12-1856  
Filed September 5, 2013

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

**vs.**

**AUSTIN DAVID HANSEN,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Austin David Hansen appeals from his conviction of homicide by vehicle.

**AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brook K. Jacobsen and Jeremy Westendorf, Assistant County Attorneys, for appellee.

Considered by Eisenhauer, C.J., and Vaitheswaran and Doyle, JJ.

**DOYLE, J.**

Austin Hansen appeals from his conviction of homicide by vehicle—unintentionally causing the death of another by operating a motor vehicle while intoxicated, in violation of Iowa Code section 707.6A(1) (2009), following a bench trial. Hansen contends the evidence was insufficient to prove his intoxication was a proximate cause of the victim's death. We affirm.

***I. Background Facts and Proceedings.***

From the testimony at trial, a reasonable fact finder could find the following facts. On the evening of November 12, 2010, Hansen picked up his friend Kaley Kennison in his truck, and they drove to a bar to meet friends. Both Hansen and Kennison consumed alcohol at the bar. In the early hours of November 13, they left that bar and went to another establishment with friends, where Hansen drank some more. At some point, Hansen was kicked out of the bar and left, unbeknownst to Kennison.

Kennison learned Hansen had left her at the bar, and she was angry and began walking home. After several phone calls back and forth, Hansen went back and picked her up. Hansen then drove toward Kennison's home. During the drive, Kennison was sitting next to Hansen in his truck. Kennison was still angry about being left at the bar, and they bickered back and forth. At approximately 1:20 a.m., in a residential area on 13th Street, Hansen's truck smashed into a driveway retaining wall.

Amber Gordon lived near the accident scene. Just before the accident, as she was backing her car out of her driveway, she saw another vehicle coming towards her at a very high speed. She saw no other vehicles or other cars pass

by—none before the speeding vehicle and none after. The vehicle seemed to be bouncing back and forth, both up and down and side to side. She heard a sound “kind of like screeching tires,” coinciding with the vehicle bouncing, but she did not see anything consistent with the vehicle slamming on its brakes. She believed the vehicle was traveling about sixty miles-per-hour in the twenty-five miles-per-hour speed zone. She then saw the vehicle speed up and veer towards the retaining wall, smashing into the wall.

A resident who lived near the accident scene called 911, and officers immediately responded. Officer Gavin Carmen arrived first and saw Hansen sitting on the ground next to driver’s side door of the truck holding Kennison in his lap. Hansen was yelling, trying to get Kennison to respond to him. Kennison was gasping for air with irregular gasps of breaths. Officer Carmen checked and found Kennison had a pulse, but she was unresponsive. While he was near Hansen and Kennison, he detected an odor of alcohol, but he could not tell from whom the odor emanated. While waiting for the ambulance, Officer Carmen spoke with Hansen about the accident. Officer Carmen found Hansen appeared alert and seemed to understand what was going on.

Officer Brian Johannsen was second to respond, and while waiting for the ambulance, he viewed the accident scene. He saw tire tracks on the street that went up into the nearby yard and “tore up some grass.” The tracks then went over the curb and into a driveway. Hansen’s truck hit a vehicle parked in the driveway and the driveway retaining wall. The tire tracks were very long, approximately 100 feet ahead of the driveway. The front end of the truck was totaled.

The ambulance arrived, and Kennison was rushed to the hospital. While waiting for the second ambulance to arrive, Hansen was up walking around and talking on his cell phone. Officer Johannsen and another nearby officer heard Hansen say on his phone, "I fucked up bad."

The officers offered Hansen a place to sit in a squad car while waiting for the ambulance so Hansen would be protected from the cool weather and rain. As Lieutenant Dan Brown helped Hansen into the car, he smelled alcohol coming from Hansen. Hansen was thereafter taken by ambulance to the hospital.

Kennison was pronounced dead at the hospital, and the accident investigation became a possible vehicular homicide investigation. Lieutenant Martin Beckner was called to assist with the investigation, and he went to the hospital. There, he spoke with Hansen as Hansen received medical treatment. Hansen was lucid, coherent, and very cooperative, and he described the accident to Lieutenant Beckner. When Hansen was speaking, the lieutenant noticed the odor of alcohol.

Hansen told Lieutenant Beckner he was driving on 11th Street in Cedar Falls, though he was actually driving on 13th Street. Hansen explained:

There was some kind of vehicle that was in front of [Hansen's vehicle] as he was driving his truck. [Hansen] noticed brake lights. That was the only thing that he noticed of the vehicle that was some distance in front of him. The brake lights drew his attention. They were close enough that he felt that he needed to brake hard to avoid from striking that vehicle that was—had their brake lights on.

Hansen admitted to Lieutenant Beckner that he hit the brakes and that he swerved. Hansen told Lieutenant Beckner that after the impact, Kennison's head ended up in his lap.

Lieutenant Beckner determined that the horizontal gaze nystagmus test should be administered, and the test was administered to Hansen while he was lying on a cot at the hospital. Based upon the results of that test, Lieutenant Beckner opined that Hansen was impaired.

Lieutenant Beckner then requested a preliminary breath test, and Hansen agreed and submitted to the test. Thereafter, the implied consent advisory was read to Hansen, and Hansen agreed to give a blood sample. The implied consent test result indicated a blood-alcohol content of 0.111 percent. After the blood sample was drawn, a search warrant was completed and executed, and blood and urine samples were obtained. Those samples were obtained more than five hours after the accident.

Later that afternoon, Hansen was interviewed by Lieutenant Dennis O'Neill at the Cedar Rapids police station, and the interview was video recorded. Hansen told Lieutenant O'Neill he and Kennison had bickered back and forth on the drive back from the bar. Hansen stated Kennison was sitting next to him on the seat, and she was alternating between "kissing on him" and yelling at him. Hansen told Lieutenant O'Neill he was coming to a stop sign, and he saw brake lights in front of him, so he hit his brakes. He stated he was not sure if he slipped off the brakes and hit the gas pedal; the last thing he remembered was "bang." Lieutenant O'Neill asked if he fishtailed or swerved into the wall, and Hansen explained he saw taillights, he went to push on the brakes, he looked back to his right, and the last thing he knew was "wham." The next thing he remembered was seeing smoke.

During the interview, Hansen gave this same account of the accident to Lieutenant O'Neill two other times. Lieutenant O'Neill specifically asked Hansen if he saw Kennison getting moved around the seat or anything during his final seconds of driving, and Hansen shook head to indicate "no." Hansen again stated he thought he had hit the brakes but must have slipped and hit the gas pedal, explaining it was the "only way [he could] wrap his brain around it."

On December 10, 2010, the State filed a trial information in the district court charging Hansen with homicide by vehicle, in violation of Iowa Code section 707.6A(1). Hansen waived his right to a jury trial, and the case against Hansen was tried to the bench in May 2012. There, Hansen gave a very different explanation for his crash. Hansen testified:

[Kennison] was sitting beside me with her back towards the windshield and . . . because of the stop sign, . . . I had pushed on the brake and she had slid off the front of the seat and [got] pinned between my shin and the dashboard, and my foot slipped off the gas—or off the brake and hit the gas.

Hansen testified Kennison, after sliding off of the seat, pinned his foot to the accelerator, and he was unable to move his foot. Hansen acknowledged he had not told the officers this story when he spoke with them, but he testified that he told them what he could remember at the time but did not explain himself in detail like he should have. Hansen admitted that nowhere in his recorded statement did he tell Lieutenant O'Neill that Kennison had slid off the seat. Hansen also testified it was possible that the starburst cracking pattern visible in the center of his windshield was made by Kennison's head striking the windshield.

The district court found Hansen guilty as charged: homicide by vehicle while under the influence of an alcoholic beverage.

Hansen now appeals. He contends the evidence was insufficient to prove his intoxication was a proximate cause of Kennison's death.

## ***II. Scope and Standards of Review.***

We review a claim that insufficient evidence supports a conviction for errors at law. *State v. Dewitt*, 811 N.W.2d 460, 467 (Iowa 2012). We view the record in the light most favorable to the State to determine whether the conviction is supported by substantial evidence in the record. *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011). Substantial evidence is that which would convince a rational factfinder of the defendant's guilt beyond a reasonable doubt. *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011). If the record contains substantial evidence, the district court's findings are binding. *Dewitt*, 811 N.W.2d at 467. Additionally, we may defer to the district court's credibility assessments if there is substantial evidence to support the court's findings, because the trier of fact is in a better position to evaluate credibility. *State v. Weaver*, 608 N.W.2d 797, 804 (Iowa 2000).

In assessing the sufficiency of the evidence, we make all legitimate inferences that may be fairly and reasonably deduced from the evidence. *Meyers*, 799 N.W.2d at 138. Circumstantial evidence is equally as probative as direct evidence. *Id.* Even so, the State holds the burden to prove each fact necessary to constitute the crime charged, "and the evidence presented must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture." *Brubaker*, 805 N.W.2d at 171 (internal quotation marks omitted).

### **III. Discussion.**

Iowa Code section 707.6A, “Homicide or serious injury by vehicle,” subsection (1) provides that a “person commits a class ‘B’ felony when the person unintentionally causes the death of another by operating a motor vehicle while intoxicated.” Our supreme court has recently restated that, in proving this offense, “the State must prove a causal connection between the defendant’s intoxicated driving and the victim’s death.” *State v. Adams*, 810 N.W.2d 365, 370-71 (Iowa 2012). The court explained:

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 [fact finder] finds beyond a reasonable doubt that his criminal act of driving under the influence of alcohol caused the victim’s death.

*Id.* at 371.

The district court found Hansen’s driving under the influence was the proximate cause of the injuries sustained by Kennison. The court found:

[Hansen’s] version of what happened before and at the time of the accident is inconsistent with the evidence in this case. The first time he told anyone the story about [Kennison] slipping off the seat and pinning his foot to the accelerator was at trial. His prior statements to the police never indicated anything other than that [Kennison] was arguing with him and was sitting in the middle seat without a seat belt and that he saw a car with its taillights on and he swerved and tried to hit the brake, his foot slipped off of it, and then the accident occurred.

. . . The path of the vehicle . . . shows that [Hansen] was impaired and that impairment affected his ability in recognizing his speed, believing he saw another car on the road when there was no other car in front of him contrary to his contention of seeing brake lights come on. His impairment and intoxication prevented



him from steering the car properly and applying the brakes to prevent this collision. The court does not believe [Hansen's] testimony at trial was credible and [his testimony] is not consistent with statements he made previously to the police, and was contrary to the observations by the State's civilian witness. In addition, the physical injuries sustained by [Kennison] to her facial area were consistent with the starring on the windshield of the car where she would have struck it with her face, which indicates that she was not sitting with her back to him and was not on the floor. His impairment is also evident from the fact that he thought he was 11th Street, which was two blocks away from the street he was actually on, and his actual knowledge at the time after the accident is apparent because he stated to someone he called on the phone that he had "Fucked up real bad."

Upon our review of the evidence, viewing it in a light most favorable to the State, we conclude there was sufficient evidence that Hansen's criminal act of driving under the influence of alcohol caused Kennison's death. Here, there was a dispute as to the factual causal connection between a specific criminal act—"intoxicated driving"—and Kennison's death. The district court was in a better position to determine the credibility of witnesses. Given Hansen's changed story and the forensic evidence conflicting with that story, we see no reason to disagree with the district court's credibility findings, and we agree with its reasoning in determining Hansen's criminal act of driving under the influence of alcohol caused Kennison's death. Consequently, viewing the evidence in the light most favorable to the State, we conclude the State presented substantial evidence from which a rational trier of fact could find that Hansen committed homicide by vehicle—unintentionally causing the death of another by operating a motor vehicle while intoxicated. Accordingly, we affirm the judgment of the district court.

**AFFIRMED.**