NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

DIVISION ONE
FILED: 9/12/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 11-0696
	)	
Appellee,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
PETER NORMANN,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-006785-001

The Honorable Paul J. McMurdie, Judge

CONVICTIONS VACATED; REMANDED

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J O H N S E N, Chief Judge

¶1 Peter Normann appeals his convictions on two counts of second-degree murder, Class 1 felonies, and one count of

manslaughter, a Class 2 felony, arising out of the deaths of three patients who underwent surgery at Normann's medical clinic. We hold the superior court erred in denying Normann's motion to sever the three charges for trial. Because we are unable to conclude the error was harmless, we vacate the convictions and remand for further proceedings.

FACTS AND PROCEDURAL BACKGROUND

¶2 Normann is a physician, board-certified in internal medicine, who held a medical license to practice in Arizona at the time of the patients' deaths. Following his graduation from medical school and a period of residency, he worked as an emergency room physician for a number of years. Normann opened his own medical practice in Arizona in 2005.

¶3 Between December 2006 and July 2007, three patients died after suffering complications while undergoing or recovering from cosmetic surgeries performed at Normann's medical clinic. Normann performed the surgeries on two of the three patients. Another doctor performed the surgery on the third patient; Normann assumed responsibility for the patient during the post-surgical recovery period. The medical examiner designated the manner of death in each case as either natural or an accident. The medical examiner determined that R.G., the first victim, died of "an adverse reaction to the medications administered for cosmetic liposuction." The medical examiner

found the second victim, A.S., died of "pulmonary fat embolization due to cosmetic surgery procedures." The medical examiner found the third victim, L.R., died from an "[a]dverse reaction to anesthesia/analgesia due to cosmetic surgery procedure."

¶4 Following an investigation prompted by a referral from the Arizona Medical Board, a grand jury returned a three-count indictment against Normann. Count 1 alleged Normann committed second-degree murder by, under circumstances manifesting extreme indifference to human life, recklessly engaging in conduct which created a grave risk of death and thereby caused the death of R.G. on December 12, 2006. Count 2 alleged Normann committed manslaughter by recklessly causing the death of A.S. on April 25, 2007. Count 3 alleged Normann committed second-degree murder by, under circumstances manifesting extreme indifference to human life, recklessly engaging in conduct which created a grave risk of death and thereby caused the death of L.R. on or between July 3 or July 4, 2007.[1]

¶5 At trial, the State presented evidence that Normann caused R.G.'s death by giving him too much Lidocaine for a

[1] The indictment further alleged that the three offenses were dangerous felonies because they involved intentional or knowing infliction of serious physical injury. Before submitting the issue of guilt to the jury, the superior court granted Normann's motion for judgment of acquittal on the allegations of dangerousness.

liposuction procedure, and then, after he went into respiratory and cardiac shock, recklessly depriving him of oxygen by incorrectly intubating him, failing to promptly call 9-1-1 for assistance, and physically preventing paramedics from correcting the faulty intubation. With respect to A.S., evidence was presented that Normann caused her death by inadvertently injecting fat into her bloodstream during a fat augmentation procedure and then, after she stopped breathing, by recklessly depriving her of oxygen by failing to immediately call 9-1-1 or provide proper emergency care, and by failing to inform paramedics or hospital staff of the fat augmentation procedure, which hindered timely recognition and treatment for her condition. As for L.R., evidence was presented that Normann recklessly failed to properly monitor her condition after another doctor performed liposuction on her and then failed to immediately call 9-1-1 when she went into respiratory arrest due to an adverse reaction to the anesthesia, caused a tear in her esophagus when he attempted to intubate her, resulting in pneumoperitoneum (air in her abdominal cavity), and failed to report the attempted intubation to the paramedics or hospital personal, hindering timely treatment. After the jury convicted Normann on all three charges, the superior court sentenced him to consecutive mitigated prison terms of ten years each on the two murder convictions and the presumptive five years' term of

incarceration on the manslaughter conviction. We have jurisdiction of Normann's timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (West 2013), 13-4031 (West 2013) and -4033(A)(1) (West 2013).[2]

DISCUSSION

A. Severance of the Charges.

¶6 Before trial, Normann moved to sever the three charges, asserting he was entitled to severance as a matter of right under Arizona Rule of Criminal Procedure ("Rule") 13.4(b). That rule provides that when offenses have been "joined only by virtue of Rule 13.3(a)(1)," the defendant is entitled to severance "as of right" unless evidence of the other offense or offenses would be cross-admissible if the offenses were tried separately. Ariz. R. Crim. P. 13.4(b). In opposing the motion, the State agreed that joinder of the offenses was based on Rule 13.3(a)(1), but argued severance was not required because evidence related to each charge would be cross-admissible to show knowledge and lack of accident or mistake if the offenses were tried separately. After oral argument, the court denied the motion for severance by minute entry order, stating: "The Court finds the probative value of the evidence concerning

[2] Absent material revision after the date of the alleged offense, we cite a statute's current version.

Counts 1 and 2 as it relates to Count 3 substantially outweighs the potential for unfair prejudice." Normann renewed the motion to sever at the close of evidence, but the superior court again denied it.

¶7 We review the denial of a motion to sever for abuse of discretion. *State v. Prince*, 204 Ariz. 156, 159, ¶ 13, 61 P.3d 450, 453 (2003). Moreover, "rules on joinder and severance are intended to further not only liberal joinder but also *liberal severance*. Where there is any doubt, it must be resolved in favor of the defendant." *State v. Roper*, 140 Ariz. 459, 462, 682 P.2d 464, 467 (App. 1984) (citations omitted).

¶8 Rule 13.3(a) states in pertinent part:

> Provided that each is stated in a separate count, 2 or more offenses may be joined in an indictment, information or complaint, if they:
>
> (1) Are of the same or similar character . . . .

Ariz. R. Crim. P. 13.3(a). Upon request, a defendant is entitled to severance of offenses joined only by virtue of their same or similar character under Rule 13.3(a)(1), "unless evidence of the other offense or offenses would be admissible under applicable rules of evidence if the offenses were tried separately." Ariz. R. Crim. P. 13.4(b).

¶9 On appeal, the State argues for the first time that the superior court's ruling denying severance should be upheld

because the three offenses were properly joined pursuant to Rule 13.3(a)(2) as "based on the same conduct or otherwise connected in their commission." Charges joined pursuant to Rule 13.3(a)(2) shall be severed on a defendant's motion when "necessary to promote a fair determination of the [defendant's] guilt or innocence." Ariz. R. Crim. P. 13.4(a). Because the State did not present this argument to the superior court, we will not address it.

¶10 Addressing severance pursuant to Rule 13.4(b), the superior court could deny Normann's motion for severance only if evidence related to each of the charges would have been admissible at separate trials on each of the other two charges. Ariz. R. Crim. P. 13.4(b); *State v. Prion*, 203 Ariz. 157, 162, ¶ 30, 52 P.3d 189, 194 (2002). Put differently, to be cross-admissible, it is not enough that evidence of one offense would be admissible at trial on one of the other offenses. Rather, evidence of each offense must be admissible as to every other offense.

¶11 Because each charged offense constitutes "other act" evidence with regard to the other offenses, cross-admissibility is governed in the first instance by Arizona Rule of Evidence 404(b). *See State v. Ives*, 187 Ariz. 102, 106, 927 P.2d 762, 766 (1996).

¶12 Arizona Rule of Evidence 404(b) generally prohibits evidence of other acts to show a propensity to act in a particular manner. *State v. Hargrave*, 225 Ariz. 1, 8, ¶ 10, 234 P.3d 569, 576 (2010); *see also State v. Roscoe*, 145 Ariz. 212, 216, 700 P.2d 1312, 1316 (1984) (other-act evidence "is inadmissible to prove the bad character of the perpetrator"). Evidence of other acts may be admitted, however, for other purposes, such as proving "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Ariz. R. Evid. 404(b). Before admitting evidence under Rule 404(b), the superior court must find (1) that the evidence is offered for some proper purpose unrelated to character under Rule 404(b), (2) that the evidence is relevant to prove that purpose and (3) that any probative value of the evidence is not substantially outweighed by unfair prejudice. *State v. Anthony*, 218 Ariz. 439, 444, ¶ 33, 189 P.3d 366, 371 (2008).

¶13 Although the superior court did not explicitly address Evidence Rule 404(b) in its order denying the motion to sever, the State argues we should affirm the court's decision because evidence of each offense would be cross-admissible to prove Normann acted recklessly after surgical complications arose in each case by employing inadequate equipment and staff, improperly performing life-saving techniques and failing to

promptly call 9-1-1 "because the other acts show the defendant had knowledge of the risk and its consequences." *See* A.R.S. § 13-105(10)(c) (West 2013) (defining "recklessly").

¶14 Under this argument, however, the probative value of the evidence of the three offenses would flow solely in one direction – from the earlier to the later. For example, while the circumstances of the death of the first patient in December 2006 would inform Normann as he treated the second and third patients in subsequent months, the circumstances of the deaths of the second and third patients could not have informed Normann as he treated the first. The cases the State cites that allow admission of prior convictions for drunk driving or other reckless conduct to prove a defendant's later awareness of the risks of his subsequent charged conduct therefore are inapposite. *See, e.g., State v. Woody*, 173 Ariz. 561, 562-63, 845 P.2d 487, 488-89 (App. 1992) (previous arrests admissible because "relevant to establish that defendant had grounds to be aware of the risk his drinking and driving while intoxicated presented to others); *see also United States v. Tan*, 254 F.3d 1204, 1210-11 (10th Cir. 2001).

¶15 The State cites *United States v. Latney*, 108 F.3d 1446 (D.C. Cir. 1997), for the proposition that evidence of a *subsequent* similar act may be admissible to show a defendant's knowledge and intent with respect to a prior act. The defendant

in *Latney* was charged with aiding and abetting the distribution of crack cocaine in September 1994; his defense was that he was merely a bystander to that crime. *Id*. at 1448. The trial court admitted evidence that the defendant was arrested eight months *after* the charged offense with crack and considerable cash in his house and car. *Id.* In analyzing the defendant's argument that the subsequent incident was not admissible pursuant to Evidence Rule 404(b), the court of appeals held the trial court did not err by allowing the evidence because it was relevant to whether the defendant knew that a drug transaction was afoot on the earlier occasion and intended to participate in it. *Id.* at 1450 (proof that defendant had knowledge of crack in 1997 may make it more likely that he "was versed in crack manufacturing in 1996").

¶16 The flaw in the State's reliance on *Latney* is the nature of the "knowledge" for which the State offered the evidence at issue here. The State correctly argues that a defendant's subjective knowledge at the time of an offense may bear on whether he acted recklessly at the time of the offense. *See* A.R.S. § 13-105(10)(c) (defendant must be "aware of and consciously disregard[] a substantial and unjustifiable risk" of death). In *Latney*, the "knowledge" at issue was the defendant's familiarity with the crack cocaine trade; the argument the court of appeals adopted was that the fact that the defendant knew

about selling crack in 1997 tended to show he knew about selling crack in 1996. 108 F.3d at 1450.

¶17 Here, the State argues evidence of each of the three incidents was relevant to prove that Normann knew of "the dangers posed by the drugs he used, that his office had inadequate equipment and staff, that he could not properly perform life-saving techniques, that he needed to promptly call 911, and he needed to give emergency personnel all pertinent information." But, by contrast to the situation in *Latney*, the State argues here that Normann *learned of these risks in the course of each subsequent incident*. That is, for example, the State argues that Normann allegedly learned that he could not properly intubate a patient in distress when he tried but failed to do so in the case of the second patient. Assuming that is so, the knowledge Normann gained by his alleged failure in that case might be relevant to actions he took with respect to a later patient who required emergency care. But what Normann may have learned by his alleged failure to properly intubate the second patient is not relevant to the state of his knowledge when he set about to treat the first patient some months before.[3]

[3] The State also cites *United States v. Mohr*, 318 F.3d 613 (4th Cir. 2003). *Mohr* is a civil-rights case in which the court admitted evidence of "two subsequent acts of" a police officer's "intentional misuse of a police dog" to show the officer's mental state when she released her police dog on a prior occasion. *Id.* at 617-19. The government successfully argued

¶18 Although, as the State argues, other-act evidence may be admissible under Evidence Rule 404(b) to prove a defendant acted intentionally or knowingly, the jury here was not asked to determine whether Normann acted intentionally or knowingly. The causes of death of each of the three victims are varied, with no common thread of alleged intentional acts in each case, and, as Normann argues, the superior court granted his motion for judgment of acquittal on the State's allegations of dangerousness, ruling there was insufficient evidence that the offenses involved intentional or knowing infliction of serious physical injury.

¶19 The State further argues evidence of each offense was cross-admissible to rebut Normann's defense that the deaths resulted from mistake or accident. *See* Ariz. R. Evid. 404(b). The State argues that the circumstances of the three patients' deaths rebut Normann's claim of accident "because the idea that *three* such unfortunate instances would befall one person within seven months is objectively improbable, and demonstrates the involvement of a criminal element." In support, the State cites *State v. Lee*, 189 Ariz. 590, 599, 944 P.2d 1204, 1213 (1997)

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that the subsequent acts were "necessary to prove" the officer acted willfully in the prior charged offense. *Id.* at 618. While the charged offense required the government to establish that the officer acted willfully *or* recklessly, the court in *Mohr* did not address how later acts of recklessness would be relevant to the earlier charged act for any purpose other than to show propensity to commit the act.

("The unlikeliness of this happening twice tends to show that neither [incident] was accidental." (citation omitted)).

¶20 But the reasoning of *Lee* and the other like cases the State cites does not apply here. In *Lee*, the defendant was charged in two unrelated murders; his defense was that he shot each victim in self-defense. *Id*. at 595, 599, 944 P.2d at 1209, 1213. The supreme court held evidence of the two killings was cross-admissible because of the unlikelihood that the two victims each would have attacked the defendant, as he claimed. *Id*. at 599, 944 P.2d at 1213. *Lee* cited *State v. Hernandez*, 7 Ariz. App. 200, 437 P.2d 952 (1968), a "till-tapping" case decided prior to Arizona's adoption of the Rules of Evidence, in which the court held evidence of the defendant's presence at a prior robbery was admissible to show he was guilty in a subsequent robbery. 7 Ariz. App. at 201-04, 437 P.3d at 953-56.[4] In the charged offense in *Hernandez*, the defendant allegedly was a decoy who diverted the attention of a service station attendant while an accomplice robbed the cash register. *Id*. at 201, 437 P.2d at 953. The court held the superior court did not err by admitting evidence that another service station was

[4] Unrelated to the issue here, *Hernandez* held that circumstantial evidence "must not only be indicative of guilt but must be inconsistent with every reasonable hypothesis of innocence." *Id.* at 202, 437 P.3d at 954. That is no longer the rule in Arizona. *See State v. Harvill*, 106 Ariz. 386, 391, 476 P.2d 841, 846 (1970).

robbed in similar fashion a few months before while the defendant was present and diverted the attendant's attention. *Id*. at 202, 437 P.2d at 954. The court observed that it was undisputed that the defendant's presence facilitated both robberies; the only question was whether he had acted "wittingly or unwittingly." *Id*. at 203, 437 P.2d at 955. As to this issue: "That the one 'assist' may have been accidental would be a likely possibility, but that two such instances were coincidental is substantially less likely." *Id*.; *see also State v. Lee*, 25 Ariz. App. 220, 226, 542 P.2d 413, 419 (1975) (defendant's presence at two other similar robberies was admissible to show his presence at the site of the charged robbery was intentional; "while appellant might have unwittingly been on the premises in one such incident, the likelihood that two other incidents were also unwitting is unlikely").

¶21 In each of these cases, the other acts were relevant to show that the charged conduct was purposeful, not accidental or coincidental. But the jury here was not asked to decide whether Normann purposefully caused each of the three patients to die. He was charged instead with recklessly causing their deaths by how he treated them after each suffered separate and distinct surgical complications. Although Normann argued the deaths were accidents, he did not mean that he accidentally performed certain procedures on the patients. His "accident"

argument was that the distinct surgical complications that befell the three patients were accidents, or that at worst, he acted negligently and not recklessly in treating the patients.

¶22 Under these circumstances, admitting evidence of one of the patient's deaths to disprove "coincidence" in Normann's post-surgical treatment of another patient would be allowing the evidence to show that because Normann acted recklessly in the one, he acted recklessly in the other. But by adopting Evidence Rule 404(b), our supreme court has decided that Arizona does not allow evidence of a character trait such as recklessness to prove "action in conformity therewith." Ariz. R. Evid. 404(b)(a).

¶23 Given the absence of a valid basis for the cross-admissibility of evidence of the three offenses, the superior court erred in denying Normann's motion to sever. *State v. Aguilar*, 209 Ariz. 40, 51, ¶ 38, 97 P.3d 865, 876 (2004).

B. Harmless Error Analysis.

¶24 "When an issue is raised and erroneously ruled on by the trial court, we are required to review for harmless error." *State v. Speers*, 209 Ariz. 125, 133, ¶ 32, 98 P.3d 560, 568 (App. 2004). Error will be deemed harmless only "if we can say, beyond a reasonable doubt, that the error did not contribute to or affect the verdict." *State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993).

¶25 We cannot conclude that the denial of Normann's motion to sever was harmless. Because the three offenses were tried together, the jury learned in great detail how three patients died under Normann's care in a span of just seven months. In the process, it heard countless pieces of evidence, beyond those discussed above, that were relevant to one charge but which might not have been admissible in the other two. As a result, one or more jurors may have found the State proved recklessness with respect to one of the charges, and then improperly used that to infer Normann had a propensity to act recklessly in the actions giving rise to the other two charges. Because we cannot conclude beyond a reasonable doubt that the joint trial did not contribute to or affect the verdicts, the convictions and sentences must be vacated. *See Aguilar*, 209 Ariz. at 51, ¶ 38, 97 P.2d at 876 (failure to sever three unrelated counts of sexual assault when record did not support cross-admissibility constitutes reversible error).

C. Sufficiency of Evidence.

¶26 Normann argues insufficient evidence supports his convictions, arguing the jury could not reasonably have concluded he acted recklessly, or, with respect to the two

counts of second-degree murder, that his conduct created a grave risk of death.[5]

¶27 The issue of sufficiency of the evidence "is one of law, subject to *de novo* review on appeal." *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011). In considering claims of insufficient evidence, we look only to see whether substantial evidence exists to support the verdicts. *State v. Scott*, 177 Ariz. 131, 138, 865 P.2d 792, 799 (1993); *see also* Ariz. R. Crim. P. 20(a) (superior court shall enter judgment of acquittal "if there is no substantial evidence to warrant a conviction"). This inquiry is different from the harmless error analysis discussed above. There, we considered whether the erroneous admission of evidence may have contributed to the verdicts. Here we consider whether the State offered otherwise admissible evidence sufficient to cause a jury to convict Normann of each of the charged offenses. "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996) (citation omitted). We view the facts in

[5] Although we vacate Normann's convictions and remand for new separate trials based upon the failure to sever the charges, we must address his sufficiency-of-the-evidence arguments because, were we to agree that the evidence was insufficient, the prohibition against double jeopardy would bar the State from retrying Normann. *Burks v. United States*, 437 U.S. 1, 11 (1978).

the light most favorable to upholding the verdicts, *State v. Girdler*, 138 Ariz. 482, 488, 675 P.2d 1301, 1307 (1983), and will reverse a conviction for insufficient evidence only if "there is a complete absence of probative facts to support [the jury's] conclusion," *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988).

¶28 As charged here, a person commits second-degree murder when, "[u]nder circumstances manifesting extreme indifference to human life, the person recklessly engages in conduct that creates a grave risk of death and thereby causes the death of another person." A.R.S. § 13–1104(A)(3) (West 2013). A person commits reckless manslaughter by "[r]ecklessly causing the death of another person." A.R.S. § 13-1103(a)(1) (West 2013). Proving an action was recklessly performed requires the State to show

> that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

A.R.S. § 13-105(10)(c). Second-degree murder is distinguishable from reckless manslaughter in that it requires proof of "circumstances manifesting extreme indifference to human life"

and the creation of "a grave risk of death." *State v. Walton*, 133 Ariz. 282, 291, 650 P.2d 1264, 1273 (App. 1982).

¶29 Contrary to Normann's argument, the evidence at trial was more than adequate to support the convictions. In challenging the sufficiency of the evidence to show recklessness, Normann cites the causes and manner of the deaths as determined by the medical examiner, and argues that all of the causes of death were risks inherent in the surgeries performed and that the deaths did not result from reckless conduct on his part.[6]

¶30 Normann's argument disregards evidence that he acted recklessly after the surgical complications arose and expert testimony that his reckless post-operative management was a cause of the deaths. For example, evidence was presented that Normann's clinic was not properly equipped with lifesaving equipment such as an adequate oxygen supply required when a patient arrests and that Normann inexcusably delayed calling 9-1-1 to obtain emergency assistance with all three patients. The jury reasonably could infer that, in light of his training and background as an emergency room physician, Normann was aware

[6] The State argued Normann committed several reckless acts and omissions that caused the deaths. Although the jury was instructed that it could convict him based on any of the alleged acts or omissions, they also were told that to return a guilty verdict, they must agree that he committed the same act or omission.

that his clinic's equipment was inadequate to handle the complications that arose with each of the three patients and that he consciously disregarded the substantial and unjustifiable risk those situations posed to their lives when he attempted to treat their conditions without immediately calling 9-1-1 for emergency assistance. *See People v. Protopappas*, 246 Cal. Rptr. 915 (App. 1988) (dentist convicted of second-degree murder failed to promptly summon emergency assistance).

¶31 In addition, there also was evidence that other reckless conduct by Normann contributed to the patients' deaths. First, evidence was presented that after R.G. stopped breathing, Normann improperly intubated him, by placing the tube in the esophagus rather than trachea, causing the already-inadequate oxygen flow to go into the patient's stomach rather than his lungs, perpetuating the respiratory arrest. A paramedic repeatedly sought to remove the intubation tube to reinsert it properly, but Normann prevented him from doing so, insisting that the tube placement was good despite all physical indications to the contrary. In the ambulance, Normann physically prevented the paramedic from adjusting the tube to restore the airway. The State's medical experts opined that R.G.'s respiratory arrest was caused by the medication given by Normann and the patient's death was caused by Normann's actions in depriving him of oxygen after he went into arrest.

¶32 The jury reasonably could conclude from this evidence that Normann recklessly caused R.G.'s death. The evidence permits the jury to find that the paramedic told Normann that his intubation tube was blocking the patient from receiving oxygen and that Normann consciously ignored the grave risk of death this presented. Furthermore, given Normann's training and background as an internist and emergency room physician, the jury additionally could conclude that his reckless conduct occurred under circumstances manifesting an extreme indifference to human life and that it constituted a gross deviation from the standard of care of a reasonable person under the circumstances. *See In re William G.*, 192 Ariz. 208, 214-15, 963 P.2d 287, 293-94 (App. 1997) ("gross" deviation defined as one that reasonable minds could find to be flagrant, extreme, outrageous, heinous or grievous).

¶33 The evidence likewise was sufficient to support the conviction for second-degree murder in the death of L.R. Normann assumed responsibility for L.R. after the doctor who performed her liposuction procedure left the clinic for the day. The record indicates that after Normann discovered L.R. had stopped breathing, he attempted to intubate her, but lacerated her esophagus in doing so. When paramedics arrived, Normann was doing chest compressions and mouth-to-mouth resuscitation on L.R. Because of the tear in her esophagus, Normann's efforts to

resuscitate L.R. forced air not into the patient's lungs, but rather into her chest and abdominal cavity. Normann failed to inform either the paramedics or hospital staff about the unsuccessful intubation, and only after a chest x-ray at the hospital was L.R. diagnosed as suffering from pneumoperitoneum. Medical experts opined at trial that L.R.'s death resulted from respiratory arrest, causing an anoxic brain injury, due in part to complications from her adverse reaction to anesthesia and the pneumoperitoneum caused by Normann's unsuccessful attempt at intubation.

¶34 From this evidence, the jury could find that given Normann's training and experience, he was aware of the risk his unsuccessful intubation created and that he consciously chose to fail to report it to emergency or hospital staff, which delayed corrective action. Finally, the evidence further supports findings that Normann's failure to recognize, let alone to report the harm he caused to L.R. by his unsuccessful intubation, was a gross deviation from the applicable standard of care and that, given L.R.'s medical condition, his reckless conduct occurred under circumstances manifesting an extreme indifference to human life.

¶35 To convict Normann of manslaughter, the State was required to establish that Normann recklessly caused the death of A.S. Evidence was presented that while rare, fat emboli can

occur as a recognized complication of a cosmetic surgical procedure and generally are not fatal if treated promptly. Normann's delay in calling 9-1-1, however, and his failure to disclose to emergency personnel or hospital staff that he performed the fat augmentation procedure that caused the fat emboli, arguably hindered prompt recognition and treatment of A.S.'s condition. The jury could find from his training and background that Normann was aware of the need to provide complete information regarding A.S.'s history to permit proper treatment and that he consciously ignored the substantial risk of death created by his failure to disclose the procedure he had performed. Further, given his training and background, the jury also could find that these post-surgical acts constituted a gross deviation from the applicable standard of care.

D. *Corpus Delicti* Doctrine.

¶36 Normann also argues the superior court erred by not excluding his statements because the State failed to establish *corpus delicti*. We review a ruling on the sufficiency of the evidence of *corpus delicti* for abuse of discretion. *State v. Morris*, 215 Ariz. 324, 333, ¶ 33, 160 P.3d 203, 212 (2007).

¶37 The *corpus delicti* doctrine ensures that a defendant's conviction is not based solely upon an uncorroborated confession or incriminating statement. *Id.* at ¶ 34. The doctrine requires that before such statements are admitted, the State must present

sufficient evidence to permit a "reasonable inference that the crime charged was actually committed by some person." *State v. Janise*, 116 Ariz. 557, 559, 570 P.2d 449, 501 (1977). Thus, if evidence aside from a defendant's statements does not establish *corpus delicti*, the statements cannot be used. *State v. Flores*, 202 Ariz. 221, 222, ¶ 5, 42 P.3d 1186, 1187 (App. 2002).

¶38 Viewed in a light most favorable to supporting the verdicts, sufficient evidence independent of Normann's statements supported a reasonable inference that his criminally reckless conduct caused the deaths of the three patients. Normann's delay in calling 9-1-1 in each case was shown through testimony by the responding paramedics and medical records and the written data automatically recorded by the external defibrillator Normann used on the patients after each arrested. His reckless conduct in preventing the correction of the improper intubation of R.G. and his failures to make the disclosures regarding the fat augmentation procedure performed on A.S. and the injurious intubation and pneumoperitoneum suffered by L.R. all were established by testimony from the responding paramedics and by the relevant medical records.

¶39 Considered together with the testimony from the State's medical experts regarding the roles these acts and omissions played in the deaths of the three patients, the evidence was more than sufficient to permit a reasonable

inference that Normann was criminally reckless in causing each of the deaths. Thus, the superior court did not abuse its discretion in admitting Normann's statements.[7]

CONCLUSION

¶40 For the foregoing reasons, we vacate the convictions and sentences and remand for further proceedings consistent with this decision.

_____/s/_____
DIANE M. JOHNSEN, Chief Judge

CONCURRING:

_____/s/_____
LAWRENCE F. WINTHROP, Judge

_____/s/_____
RANDALL M. HOWE, Judge

[7] We decline the State's request that we address as a matter of first impression whether the *corpus delicti* doctrine still is valid under Arizona law. Our supreme court recently decided a case involving *corpus delicti*, *State v. Chappell*, 225 Ariz. 229, 234, ¶¶ 8-10, 236 P.3d 1176, 1181 (2010), and its unquestioning application of the doctrine in that case evinces the doctrine's continuing validity. We do not have authority to modify or disregard the decisions of our supreme court. *State v. Smyers*, 207 Ariz. 314, 318 n.4, 86 P.3d 370, 374, n.4 (2004).