IN THE COURT OF APPEALS OF IOWA

No. 2-126 / 11-0459
Filed March 14, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CARRIE JOAN HOON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes, Judge.

Carrie Hoon appeals her conviction for involuntary manslaughter. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Michael J. Walton, County Attorney, and Jerald Feuerbach, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

Twenty-one-year-old Jennifer Hoon died from methadone intoxication. She obtained methadone pills from her aunt, Carrie Hoon,[1] the day before the lethal overdose. The question in this appeal is whether Carrie Hoon can stand convicted of involuntary manslaughter for delivering the pills to her niece. The defendant contests the prosecution's proof of recklessness and causation. The defendant also alleges the jury did not receive proper instructions.

Because a rational jury could find substantial evidence that Hoon's reckless delivery of the methadone caused her niece's death, we affirm the verdict. As for the jury instructions, we find no error in the district court's decision not to define legal causation. Finally, Hoon is unable to show that counsel was ineffective for failing to seek jury instructions conveying the tort law principles of comparative fault and assumption of risk.

I. Facts and Prior Proceedings

Carrie Hoon—a recovering drug addict—refilled her prescription for methadone pills on March 3, 2009. On the afternoon of March 5, 2009, her two nieces, Jennifer and Casondra, came to her house asking for methadone.[2] Jennifer's father, Randy, and her half-sister, Kayla, waited in the car. According to Casondra, they paid Hoon for fourteen pills: four for Casondra, ten for Jennifer, and Hoon threw in one "free" pill to split. Hoon insisted in her interview

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[1] For ease of reference, throughout the decision we will refer to the defendant by her last name "Hoon" and the rest of the family members by their first names.

[2] Jennifer had been complaining to family members that she had an excruciating tooth ache. A few days earlier, Jennifer's father, Randy, took her to the emergency room where she was given Vicodin for the pain. When the pain didn't subside, Jennifer called her aunt several times seeking stronger pain medication.

with a police detective that she "wouldn't take money from her nieces," but admitted giving two pills to Jennifer and three pills to Casondra. At trial, Hoon denied supplying Jennifer any methadone and suggested maybe her nieces took a prescription bottle containing ten to twelve pills from her coffee table.

At the time of her death, Jennifer suffered from depression and had a serious substance abuse problem. She took narcotics not prescribed for her and drank alcohol to excess. Casondra testified that Jennifer got "messed up" on a daily basis from smoking marijuana, using methadone, or both. Jennifer was not in good condition the day she went to Hoon's house for the pills. Kayla testified she was worried about her sister, recalling Jennifer was "too high. Her eyes were . . . closing; . . . she couldn't really stand up. She wasn't focusing right." Casondra described Jennifer as "wobbly" and "nodding out." Casondra testified that she asked Hoon not to give Jennifer any more pills.

That night Randy, Kayla, Casondra, and Jennifer "hung out and watched movies and smoked pot" in Jennifer's bedroom. Casondra testified she did not know how many methadone pills Jennifer took, but that they caused her to "nod out"—so before leaving, Casondra made sure Jennifer did not have access to her cigarettes, lest she inadvertently start a fire.

Around 9:00 a.m. the morning of March 6, 2009, Randy heard his daughter snoring in her bed. When he checked again at 11 a.m., Jennifer's skin was cold and she was unresponsive. Paramedics were called but could not revive Jennifer. An autopsy determined she died from an overdose of methadone that depressed her normal breathing. The therapeutic range for

methadone is between 50 to 1000 nanograms per milliliter, and the level in the victim's blood at the time of her death was 416 nanograms per milliliter. The pathologist testified:

> She certainly had a higher level of methadone in her blood earlier. During this period of unconsciousness for several hours, her body was still metabolizing the methadone. In other words, her body was still breaking down the drug while she was deeply unconscious. Therefore, the level was certainly higher, if not much higher, some hours earlier, but I don't know how much higher.

Searches of Jennifer's bedroom turned up two small baggies containing about four grams of marijuana, drug paraphernalia, Vicodin tablets, and three methadone pills. That same day, police searched Hoon's home, finding a bottle containing one-hundred methadone pills. Hoon had filled a prescription for three-hundred pills four days earlier. The prosecutor did the math in his closing argument:

> Only 100 pills are found. 300 are prescribed, and the defendant gets 300 methadone tablets on March 3rd. She is taking—supposed to take approximately ten a day. We went through it. Ten on March 3rd, ten on March 4th, ten on March 5th, ten on March 6th and then the search warrant is executed. How many is that? Forty. How many should be left? 260. How many are left? 100. There's pills missing, obviously, and where did those pills go?

Hoon agreed to speak with Davenport police detective William Thomas. Hoon only admitted giving Jennifer two pills. When the detective told Hoon that the pathologist's findings suggested the level of methadone in Jennifer's system was more consistent with twelve pills, Hoon insisted Jennifer must have had another source for the drug. Hoon and her husband testified at trial that they had hidden some of the methadone pills before the police searched their home and the officers did not find them.

On May 26, 2009, the State charged Hoon with delivery of a controlled substance, in violation of Iowa Code section 124.401(1)(c) (2009), and involuntary manslaughter, in violation of section 707.5(1). Her case went to trial on January 18, 2011. The jury returned verdicts of guilty on both counts on January 21, 2011. In this appeal, Hoon challenges only her conviction for involuntary manslaughter.

II. Standards of Review

The issues raised by Hoon call for three different standards of review. First, we review her challenge to the sufficiency of the evidence for legal error. Iowa R. App. P. 6.907; *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). We uphold the jury's verdict if it is supported by "substantial evidence." *Id.* The term "substantial" describes evidence from which a reasonable fact finder could determine a defendant's guilt beyond a reasonable doubt. *Id.* We review the facts in the light most favorable to the verdict and consider not only evidence bolstering the verdict, but all reasonable inferences which could be derived from the evidence. *Id.*

Second, while we review Hoon's preserved claims concerning the jury instructions for errors at law, we evaluate the related claim that the district court should have given the defendant's requested instruction for an abuse of discretion. *See State v. Marin*, 788 N.W.2d 833, 836 (Iowa 2010). A court's error in refusing to give a particular instruction warrants reversal unless no prejudice appears on the record. *Id*.

Third, we review de novo Hoon's claim that her trial counsel was constitutionally remiss in not requesting certain modified civil jury instructions.

See Rohm, 609 N.W.2d at 509. To prove ineffective assistance, a defendant must show by a preponderance of the evidence that: (1) counsel failed to perform an essential duty and (2) prejudice resulted from that failure. *State v. Ondayog*, 722 N.W.2d 778, 784 (Iowa 2006). To satisfy the duty prong, a defendant must show that counsel failed to act as a "reasonably competent practitioner" would have. *State v. Henderson*, 804 N.W.2d 723, 725 (Iowa Ct. App. 2011). We entertain a strong presumption that counsel performed within the normal range of competency. *Id*. To satisfy the prejudice prong, a defendant must show a reasonable probability that but for counsel's omission, the results of the proceeding would have been different. *State v. Dalton*, 674 N.W.2d 111, 119 (Iowa 2004).

III. Analysis

A. Sufficiency of the Evidence for Involuntary Manslaughter

The State accused Hoon of the public-offense alternative of involuntary manslaughter, requiring proof that she "unintentionally cause[d] the death of another person" by recklessly delivering a controlled substance. *See* Iowa Code § 707.5(1); *see also Rohm*, 609 N.W.2d at 511 (reaffirming that an essential element of involuntary manslaughter is the commission of the underlying offense in a reckless manner). The underlying offense of delivery of a controlled substance requires proof that the defendant transferred a controlled substance to another person. Iowa Code §§ 124.101(7) (defining delivery as "the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship"), 124.401(1)(c).

Transfer means the "conveyance of right, title or interest" in property from one person to another "by sale, gift or other process." *State v. Grady*, 215 N.W.2d 213, 214 (Iowa 1974).

On appeal, Hoon alleges the State failed to show that (1) she acted recklessly in delivering the methadone to Jennifer, or (2) her actions caused the victim's death.[3] We will address both of these elements in turn.

1. Recklessness

Reckless conduct shows a willful or wanton disregard for the safety of others. *State v. Ayers*, 478 N.W.2d 606, 608 (Iowa 1991). The district court provided the jurors with the *Ayers* definition, and additionally instructed them that recklessness is "more than a lack of reasonable care which may cause unintentional injury." The court described recklessness as "conduct which is consciously done with willful disregard of the consequences." The court further instructed:

> For recklessness to exist, the act must be highly dangerous. In addition, the danger must be so obvious that the actor knows or should reasonably foresee that harm will more likely than not result from the act. Though recklessness is willful, it is not intentional in the sense that harm is intended to result.

On appeal, Hoon argues that her act of supplying methadone pills to her niece was not done with willful disregard of the consequences. Hoon claims she did not perceive her criminal conduct as dangerous. Her purely subjective view

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[3] The defendant's motion for judgment of acquittal discussed the causation issue, but did not challenge the State's proof of recklessness. To preserve error, ordinarily the defense motion must identify the specific grounds raised on appeal. *See State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). Because the State does not challenge error preservation on this basis, we will address both the recklessness and causation issues.

is not determinative. The test is whether her conduct was fraught with such a high degree of danger that she knew *or should have foreseen* that harm would flow from it. *See State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993) (quoting William L. Prosser, *Handbook of the Law of Torts*, § 34, at 185 (4th ed. 1971) for the proposition that knowledge of the risk is "almost never admitted, and can be proved only by the conduct and the circumstances" when using an objective standard).

When measured through an objective lens, the high degree of danger posed by the delivery of methadone pills to her already "messed up" niece should have been readily apparent to a reasonable person in Hoon's position. Hoon herself was a recovering drug addict, who understood the potency of the methadone pills that she ingested on a daily basis. She also knew her niece had substance abuse problems and told the detective that she recognized Jennifer was "high" on March 5 when she came to Hoon's house asking for pills. In addition, a reasonable person in Hoon's position would have understood from Jennifer's desperate and persistent efforts to obtain the pills that she would likely take them immediately and without moderation. Hoon's delivery of a powerful, prescribed narcotic to a young addict, already under the influence of drugs, constituted reckless criminal conduct.

State v. Rohm, 609 N.W.2d 504 (Iowa 2000) is instructive. Our supreme court held Rohm acted recklessly by purchasing a large quantity of high-alcohol content liquor and "permitting the liquor to remain in the possession of her sons in an area of the house she knew would be occupied by underaged persons

prone to consume" it. *Id*. at 511. Hoon's delivery of methadone carried a similar high level of dangerous temptation for her vulnerable niece. We find substantial evidence of the defendant's recklessness.

2. Causation

To support a manslaughter conviction, the State must prove the defendant's reckless conduct caused the victim's death. *Ayers*, 478 N.W.2d at 608. Just as in civil tort cases, both factual and legal (or proximate) cause may come into play in criminal cases. *State v. Adams*, ___ N.W.2d ___, ___ (Iowa 2012) (citing *State v. Tribble*, 790 N.W.2d 121, 126–27 (Iowa 2010)). Normally, Iowa courts are called to consider whether the criminal act was the factual cause of harm; in other words, whether the harm would have occurred absent the defendant's actions.[4] *Id*. But where multiple acts contribute to a consequence, the inquiry shifts to legal causation.[5] *Id*.

To satisfy the proximate or legal causation element, our courts have required the defendant's act to create "the kind of dangerous condition that would make such events more likely to occur." *See State v. Fox*, ___ N.W.___, ___ (Iowa Ct. App. 2011) (quoting *State v. Murray*, 512 N.W.2d 547, 550 (Iowa 1994)).

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[4] "Factual causation is often expressed in terms of the sine qua non test: but for the defendant's conduct, the harm or damage would not have occurred." *State v. Marti*, 290 N.W.2d 570, 585 (Iowa 1980).

[5] Our supreme court has yet to address "whether the 'legal cause' aspect of the former proximate cause doctrine has any continuing viability in criminal cases after [its] decision in *Thompson v. Kaczinski*." *Adams*, ___ N.W.2d at ___ n.7 (citing *Thompson v. Kaczinski*, 774 N.W.2d 829, 839 (Iowa 2009), which adopted the Restatement (Third) of Torts formulation of causation in civil cases and substituted the "scope of liability" inquiry for the former concepts of "proximate cause" and "legal cause").

Murray discussed legal causation in the following useful terms:

> [A]n act is a cause of an event if two conditions are satisfied: the event would not have occurred without the act; the act made the event more likely. The first condition is necessary to distinguish the attempted from the completed crime, the second to rule out cases in which, while the event in question would not have occurred but for the act, the act did not create the kind of dangerous condition that would make such events more likely to occur.

512 N.W.2d at 550 (quoting *Brackett v. Peters*, 11 F.3d 78, 79 (7th Cir. 1993)). The court found that medical decisions to stop life support to a homicide victim were part of an unbroken chain of events set in motion by Murray's actions, leading to the victim's death. *Id*.

Our courts have also said proximate cause is based on the concept of foreseeability. *Ayers*, 478 N.W.2d at 608. In light of *Thompson v. Kaczinski*, 774 N.W.2d 829, 839 (Iowa 2009), it may be appropriate to refocus the causation analysis in criminal cases from the foreseeability-of-harm assessment to the risk standard discussed in the Restatement (Third) of Torts.[6] Under the new

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[6] In adopting the new risk standard, the *Thompson* court shared the drafters' policy reasoning and accompanying illustration to demonstrate the Restatement (Third)'s scope of liability standard:

> "An actor's liability is limited to those physical harms that result from the risks that made the actor's conduct tortious." *Id.* § 29, at 575. This principle, referred to as the risk standard, is intended to prevent the unjustified imposition of liability by "confining liability's scope to the reasons for holding the actor liable in the first place." *Id.* § 29 cmt. *d,* at 579–80. To illustrate the risk standard's application, the drafters provide an illustration of a hunter returning from the field and handing his loaded shotgun to a child as he enters the house. *Id.* cmt. *d,* illus. 3, at 581. The child drops the gun (an object assumed for the purposes of the illustration to be neither too heavy nor unwieldy for a child of that age and size to handle) which lands on her foot and breaks her toe. *Id.* Applying the risk standard, the hunter would not be liable for the broken toe because the risk that made his action negligent was the risk that the child would shoot someone, not that she would drop the gun and sustain an injury to her foot. *Id.*

standard, we would consider the risks that led to criminalizing the defendant's conduct, and ask if the harm to the victim was the result of any of those risks. *Fox*, ___ N.W.2d at ___ n.2.

Operating under the proximate-cause test, Hoon argues the State's evidence "did not demonstrate that it was more likely than not that harm would occur by virtue of the act in question." She claims she could no more foresee Jennifer's lethal overdose than the defendant in *Ayers* could foresee that selling a gun to a minor could culminate in the accidental shooting death of the minor's girlfriend. In *Ayers*, the defendant sold a stolen handgun to a minor for five dollars. *Ayers*, 478 N.W.2d at 607. A few days later, the minor was showing off the weapon at his birthday party when it accidentally discharged, killing his girlfriend. *Id.* The court deemed Ayers's criminal act to be "unquestionably reckless," but found no proximate cause because there was "no direct connection between Ayers and the act which killed the young victim." *Id*. at 608.

Ayers does not dictate the outcome in this case. No third party or outside force intervened between Hoon's act of supplying the drug to Jennifer and Jennifer's ingestion of the fatal dose. *See State v. Henning*, 545 N.W.2d 322, 325 (Iowa 1996) (finding that under Restatement (Second) of Torts causes may be considered superseding only if they "flow from (a) the acts of third persons, or (b) some other active force that operates in producing the harm with which the party on trial is charged."). Providing a powerful narcotic to an already impaired and addicted young person set in motion a chain of events that logically led to

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Thompson, 774 N.W.2d at 838.

the victim taking an unsafe amount of the controlled substance. Hoon's delivery of methadone to her niece created the kind of dangerous condition that would make a fatal overdose more likely to occur. We agree with the State's position that a rational jury could find "the reasonably foreseeable consequences of providing methadone to Jennifer included her serious injury or death."

We reach the same conclusion when we plug the facts into the risk standard from the Restatement (Third). We can reasonably infer that the legislature criminalized the delivery of controlled substances like methadone because such potent drugs may produce devastating effects on bodily functions, especially for people who do not have a doctor's approval for taking them. The reasons for holding Hoon criminally liable for the delivery in the first place encompassed the same risks that resulted in Jennifer's fatal overdose. We find substantial evidence supporting the jury's verdict that Hoon's reckless criminal act caused the victim's death.

B. Jury Instructions

1. Proposed Instructions on Causation

At trial, Hoon asked for a separate jury instruction defining cause. Defense counsel proposed three alternative instructions. All three required the jury to first find "Jennifer Hoon would not have died except for the defendant's act of delivering methadone pills to Jennifer Hoon." The first alternative was based on *Ayers*, 478 N.W.2d at 608–09, and additionally required the jury to find "Jennifer Hoon was acting in furtherance of a common design or purpose with the defendant when Jennifer Hoon overdosed on methadone." The second

alternative, derived from Iowa Civil Jury Instruction No. 700.6,[7] required the jury to find that the defendant's delivery of the pills "created or substantially increased the risk" that Jennifer would die from an overdose and that the overdose was reasonably foreseeable. The third proposal—based on *Thompson*, 774 N.W.2d at 829—added the element that "Jennifer's death resulted from the risks that made it illegal for the defendant to deliver methadone to Jennifer Hoon."[8]

The district court offered to define "cause" by submitting an instruction modeled after Iowa Civil Jury Instruction No. 700.3 ("The conduct of a party is a cause of damage when the damage would not have happened except for the conduct."). The State favored the district court's proposal, but the defense objected, arguing: "If you give only the cause and effect but for, you ignore the proximate cause issues, which all the case law says has to be there for

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[7] **Superseding—Intervening Cause.** The defendant claims the conduct of _____[third person] [other active force] was the proximate cause of plaintiff's damages. In order to establish this defense the defendant must prove all of the following propositions: (1) The conduct of _____ [third person] [other active force] caused plaintiff's damages and occurred after the conduct of the defendant which you have found to constitute negligence. (2) The conduct of the defendant did not create or substantially increase the risk that the plaintiff would sustain damage through the conduct of _____ [third person] [other active force]. (3) The conduct of _____[third person] [other active force] was not reasonably foreseeable to someone in defendant's position. If the defendant has proven all of these propositions, then the plaintiff cannot recover damages.

[8] Despite offering language for an instruction based on Iowa Civil Jury Instruction 700.3A, defense counsel told the court the third alternative had yet to be accepted in the criminal context: "If we bring in the scope of liability stuff from Uniform Instruction 700.3A, I think you're going to be contradicting current criminal case law without any precedent for it." The State argues that counsel's statements waived Hoon's argument on appeal concerning the third alternative. We disagree. While the defense favored the first two options, counsel said if the court did not offer those to the jury, "I think we should use Instruction No. 3." Defense counsel accurately explained what our supreme court recently said itself in *Adams*, it is an open question after *Thompson* whether the criminal case law will replace the notion of proximate cause from the Restatement (Second) of Torts with a scope-of-liability and risk-standard analysis from the Restatement (Third) of Torts.

involuntary manslaughter." The district court rejected the defense request for an instruction on legal causation, and Hoon's counsel opted not to have the court submit the factual causation instruction alone, stating: "I think I would rather you don't instruct on causation at all, if we end up going that route."

On appeal, Hoon argues the district court erred by not submitting one of her three proposed causation instructions to the jury. She reasons that the jury did not have the opportunity to decide if Jennifer's own lack of moderation and her combination of the methadone with other drugs acted as intervening and superseding cause of her death.

We find no error in the district court's decision not to give Hoon's proposed instructions on legal causation. We recognize that proximate cause issues are most often jury questions. *See Ayers*, 478 N.W.2d at 608. For example, in *Marti*, the court turned back a defense challenge to a proximate cause instruction, finding that the trial court would not have been justified in determining, as a matter of law, that the victim's act of suicide was a superseding cause of her death. *Marti*, 290 N.W.2d at 586 (noting "question is for jury when reasonable minds may differ as to outcome of application of test for intervening, superseding cause"). But the inverse proposition does not control here. The district court was justified in determining the evidence did not support giving a proximate cause instruction in Hoon's case. *See Henning*, 545 N.W.2d at 325 (observing that *Murray*, 512 N.W.2d at 550, established that "whether circumstances call for the application of those rules of law relating to superseding causes is a question of law for the court").

In *Murray*, the court determined there was no basis for giving a jury instruction on superseding cause when the intervening force identified by the defendant was a "normal consequence" of the situation created by the defendant's conduct. *Murray*, 512 N.W.2d at 551 (finding that cessation of medication and nourishment through a feeding tube was a normal consequence of the situation created by Murray's criminal act of bludgeoning the victim).

An analogous situation exists in Hoon's prosecution. Jennifer's voluntary ingestion of methadone was a normal consequence of being supplied the pills by Hoon. Hoon was not entitled to a jury instruction on legal causation because no reasonable fact finder could have viewed the victim's own actions as so extraordinary as to fall outside the class of normal events. *See id.* Likewise, Hoon was not entitled to an instruction that allowed the jurors to find the harm that actually occurred fell outside Hoon's scope of liability for reckless delivery of a controlled substance.

2. Proposed Instructions on Comparative Fault

Hoon alleges trial counsel was ineffective for not proposing that the district court instruct the jury on the tort theory of comparative fault. Specifically, she contends counsel had a material duty to ask for the following uniform instructions: Iowa Civil Jury Instruction No. 400.2 on damages and comparing fault; Iowa Civil Jury Instruction No. 400.7 on mitigating damages; Iowa Civil Jury Instruction No. 400.8 on a party's unreasonable failure to avoid an injury; and Iowa Civil Jury Instruction No. 400.9 on the unreasonable assumption of risk. Hoon acknowledges on appeal that these stock civil jury instructions would have

had to be modified to fit the criminal context, for example, the term "damages" would have had to be replaced by a reference to "the fatality which occurred."

The State characterizes the proposed instructions as a "radical" departure from the accepted criminal law governing manslaughter prosecutions. In support of its position, the State cites *State v. Hubka*, 480 N.W.2d 867, 869 (Iowa 1992) (concluding the defendant could not be relieved of criminal responsibility due to fact child-victims were not wearing seatbelts at the time of the collision); *State v. McFadden*, 320 N.W.2d 608, 611 (Iowa 1982) (holding that victim's "voluntary and reckless participation in [a] drag race does not of itself bar defendant from being convicted of involuntary manslaughter") and *State v. Williams*, 238 Iowa 838, 844, 28 N.W.2d 514, 518 (1947) (rejecting jury instruction claim because "contributory negligence is not a defense" to a vehicular homicide prosecution).

Counsel has a duty to request jury instructions that define the proper scope of a criminal offense. *See State v. Soboroff*, 798 N.W.2d 1, 10 (Iowa 2011). But counsel has no responsibility to propose instructions that are not supported by substantial evidence or do not accurately reflect the law. *See State v. Shanahan*, 712 N.W.2d 121, 142 (Iowa 2006).

Hoon's trial attorney cannot be said to have breached a material duty by not coming up with the novel idea to request the uniform civil jury instructions on comparative fault. It is true that some legal principles associated with civil tort litigation find proper application in criminal cases. *See Murray*, 512 N.W.2d at 550; *see also Marti*, 290 N.W.2d at 585–86 (agreeing instructions borrowed from tort cases involving cause in fact and intervening, superseding causes were

appropriate to address a situation where the defendant claimed his participation in suicidal girlfriend's death ended when he laid the gun down beside her). But the jury in this case was not called to apportion a percentage of damages between the criminal defendant and the victim. The victim was not a party to the prosecution. *Cf*. *Teggatz v. Ringleb*, 610 N.W.2d 527, 531 (Iowa 2000) (noting victim is not party to criminal restitution proceeding). We do not see how a civil plaintiff's duty to mitigate damages or to exercise reasonable care could be superimposed on the victim in a manslaughter prosecution. Finally, courts have rejected "unreasonable assumption of the risk" as a defense in criminal cases. *See, e.g.*, *Oatis v. State*, 726 So.2d 1230, 1234 (Miss. Ct. App. 1998) (observing "[f]or an officer to place himself in a position in which he knows he may be hurt is not a criminal law 'assumption of the risk' that prevents simple assault from occurring against the law enforcement officer."); *State v. Simmons*, 580 P.2d 564, 566 (Or. Ct. App. 1978) (noting general rule that tort concept of assumption of the risk is not a defense in a criminal prosecution).

The civil jury instructions identified on appeal are not accurate reflections of our criminal law. *See Williams*, 238 Iowa at 844, 28 N.W.2d at 518 (explaining that criminal law "was not designed merely for the protection of those innocent of negligence, but of all persons"). Accordingly, Hoon's trial counsel had no duty to urge that the court submit them to the jury.

AFFIRMED.