

CHAPTER ELEVEN: HOMICIDE

SHOULD THE DEFENDANT BE CONVICTED OF MISDEMEANOR MANSLAUGHTER?

PEOPLE V. DATEMA

533 N.W.2d 272 (Mich. 1972)

Opinion By: Boyle, J.

We granted leave to consider whether the misdemeanor-manslaughter rule should be abandoned .. [a]fter careful consideration of the record, we decline the invitation to decriminalize responsibility for a death found to have been caused in fact by a person who struck his wife "a powerful blow" with the specific intent to injure her. ...

Facts

In the early morning hours of December 22, 1988, defendant and his wife, Pamela Datema, were sitting in their living room with two friends. All four had been smoking marijuana and both defendant and his wife had been drinking throughout the evening. As the evening wore on, the conversation turned to the topic of previous romances, and the defendant and his wife began to argue about various paramours with whom they had slept. During the argument, Mrs. Datema started to rise from her chair, claiming to have had sexual intercourse with other men in front of defendant's sons. As she rose, defendant slapped her once across the face with an open hand. Mrs. Datema slumped back into her chair, screamed that she hoped defendant would "go to Florida and stay there," then slipped from the chair onto the floor. Initially, defendant and the two others present in the room thought that Mrs. Datema had passed out from drinking too much but, after five to ten minutes, they became concerned and tried to wake her. When they were unable to do so, they called an ambulance. Mrs. Datema never regained consciousness and died soon after.

The medical examiner testified that Mrs. Datema had a blood-alcohol level between 0.03 and 0.05 percent. He stated that death was caused by a tear in an artery in the head that occurred as a result of defendant's blow. Although the three eyewitnesses called by the prosecution testified that defendant had slapped his wife once with an open hand and that the slap was not a hard one, the medical examiner testified that to cause death, even under the circumstances, the blow had to have been a powerful one and "would have to be with probably all the force that one could muster."

Most people, when slapped, reflexively stiffen their necks and avoid serious injury. Occasionally, however, when a person is intoxicated, the reflexes do not react quickly enough, and a blow could result in a tearing. Generally, a higher blood-alcohol level is necessary, but the ingested marijuana, which was not able to be tested, was undoubtedly a contributing factor.

Issue

The jury convicted defendant of involuntary manslaughter. Defendant was convicted as a second-felony offender and sentenced to 7 to 22-1/2 years in prison. Defendant filed an appeal, contending that, if the unlawful act that results in death is not committed recklessly or with gross negligence, the crime should no longer be recognized as a form of common-law involuntary manslaughter. ... building.

Reasoning

In Michigan, the penalty for manslaughter is codified, but the definition is left to the common law. ... Common-law manslaughter has two broad categories: voluntary and involuntary. ... Involuntary manslaughter is a catch-all concept including all manslaughter not characterized as voluntary: Every unintentional killing of a human being is involuntary manslaughter if it is neither murder nor voluntary manslaughter nor within the scope of some recognized justification or excuse....

The prosecution was not relieved of its burden of proving that defendant intended to injure his wife. When a person assaults another with the specific intent to injure, and death is caused, the person should be held responsible for some level of homicide.... It is logical that if an assault and battery causes death, rather than serious injury, the penalty should be increased beyond aggravated battery....

Unlike murder, involuntary manslaughter contemplates an unintended result and thus requires something less than an intent to do great bodily harm, an intent to kill, or the wanton and willful disregard of its natural consequences. An intent to injure or gross negligence strikes the appropriate balance in this crime, which by definition criminalizes an unintended result, i.e., death.

As has been pointed out, intentional, willful, or wanton violation of a statute, designed for the protection of human life or limb, as in the involuntary manslaughter statute, is the *mens rea* requirement for manslaughter. ... Thus, where a traffic regulation makes it unlawful to drive without a license, an inadvertent failure to renew a license will not be sufficient for guilt of manslaughter, whereas a person who has no license because he failed the driver's test, and nonetheless ventures onto the highway, has willfully violated a regulation established for the protection of life and limb, and is criminally negligent. Similarly, one who intends to injure another is culpably negligent (at least) his intentional act causes the death of another.

Holding

We conclude that if an assault and battery is committed with a specific intent to inflict injury and causes unintended death, the actor may be found guilty of (at least) involuntary manslaughter. We express no opinion with regard to the merits of the misdemeanor-manslaughter rule in ... contexts other than assault and battery. Pursuant to the dissenting opinion, the most defendant could be charged with is assault and infliction of serious injury ... an offense that carries a maximum one year jail sentence or a \$ 500 fine.

We reject the suggestion that progressive notions of jurisprudence require absolution for an unintended death under circumstances from which the fact finder may infer from a powerful blow an intent to injure that factually causes death. While we agree with the dissent that "misdemeanors are crimes, and defendants who commit them are subject to punishment under the law," when one strikes another with "probably all the force that one can muster," the proper charge is manslaughter and not assault.

Dissenting, Cavanagh, J.

Like the common-law felony murder rule, the unlawful-act misdemeanor-manslaughter rule ...should be abrogated. Pursuant to the unlawful-act misdemeanor-manslaughter rule, a defendant may be convicted of involuntary manslaughter where it has been shown that the defendant committed the unlawful act that proximately caused death. Proof of the *mens rea* for manslaughter is presumed to exist on the basis of a showing of the *mens rea* required for the underlying misdemeanor.... [L]iability for a homicide is imposed without an independent showing of a *mens rea* with regard to the homicide. To eliminate the perpetuation of such an injustice, this Court should abolish the unlawful-act misdemeanor-manslaughter rule. Because the Court has already recognized the suitability of a gross negligence standard for the other forms of common-law involuntary manslaughter, I would now adopt a uniform gross negligence standard to be applied to all forms of common-law involuntary manslaughter.... an intent to injure will not constitute gross negligence in all cases merely because death results from the defendant's act. Specifically, an intent to injure will not constitute gross negligence where the defendant's act failed to encompass a high risk of death or serious bodily injury, or where the defendant did not willfully disregard such risks.

The instant case is another example of a situation in which it could be shown that the defendant had a specific intent to injure, but perhaps could not be shown that the defendant willfully disregarded a high risk of death or serious bodily injury. The prosecutor's medical expert testified that the cause of death in this case was "very rare," and "very unusual," and that people could receive "similar blows frequently and [not] die and perhaps [not even be] severely injured." This testimony strongly suggests that a high risk of death or serious bodily injury was not created when the "defendant slapped [his wife] once across the face with an open hand." Notably, the prosecutor characterizes the victim's death in this case as "entirely unexpected" and a "very rare cause of death."

If a defendant is not shown to have been grossly negligent with respect to human life, but is shown to have had a specific intent to injure and death proximately resulted from his acts, the defendant would not be allowed to escape all punishment--contrary to the majority's suggestion otherwise. Misdemeanors are crimes, and defendants who commit them are subject to punishment under the law.

The unlawful-act manslaughter doctrine should be abolished because in most cases it is unnecessary--gross negligence will be sufficient where liability for involuntary manslaughter is warranted....The rule has been abolished in England and in at least some American jurisdictions, rejected by the Model Penal Code, and criticized by commentators. The misdemeanor-manslaughter rule should be abandoned because there was no good reason for adopting it and there is no good reason for keeping it. ...This case provides the Court with an excellent opportunity to abolish the unlawful-act

misdemeanor-manslaughter rule once and for all. I would do so now, and thereby ensure that common-law liability for homicide will only be imposed where culpability for death has been proven.

Questions

1. Outline the argument of the majority in affirming Datema's conviction for involuntary manslaughter under the theory of misdemeanor manslaughter.
2. Contrast this with the argument of the dissent.
3. Would the argument of the majority or of the dissent yield the fairest result in this case?