# ILLINOIS OFFICIAL REPORTS

**Appellate Court**


***People v. Cook*, 2011 IL App (4th) 090875**

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| Appellate Court Caption | THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SHAI-TAN L. COOK, Defendant-Appellant. |
| District & No. | Fourth District<br>Docket No. 4-09-0875 |
| Argued<br>Filed | July 12, 2011<br>September 9, 2011 |
| Held<br>(*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*) | In a prosecution for aggravated DUI and other traffic offenses arising from an automobile accident that resulted in the death of a state trooper, the appellate court rejected defendant's contentions that the State failed to prove beyond a reasonable doubt that defendant's DUI violation was the proximate cause of the trooper's death and that the trial court erroneously instructed the jury on proximate cause, but defendant's convictions for driving with a BAC of 0.08 or greater and driving under the combined influence of alcohol and other drugs were vacated pursuant to the one-act, one-crime rule and his conviction for causing the trooper's death by driving under the influence of alcohol was affirmed. |
| Decision Under Review | Appeal from the Circuit Court of Sangamon County, No. 07-CF-1314; the Hon. Leslie J. Graves, Judge, presiding. |
| Judgment | Affirmed in part and vacated in part; cause remanded with directions. |

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| Counsel on Appeal | Michael J. Pelletier, Karen Munoz, and Michael Delcomyn, all of State Appellate Defender's Office, of Springfield, for appellant.<br><br>John P. Schmidt, State's Attorney, of Springfield (Patrick Delfino, Robert J. Biderman, and Luke McNeill, all of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People. |
| Panel | JUSTICE COOK delivered the judgment of the court, with opinion.<br>Justices Steigmann and Pope concurred in the judgment and opinion. |

## OPINION

¶ 1 Defendant, Shai-Tan L. Cook, appeals three convictions of aggravated driving under the influence (DUI) based on his involvement in a fatal car accident. Defendant was sentenced to concurrent, 14-year prison terms on the three counts at issue on appeal. Defendant presents three arguments for our review: (1) the State failed to prove, beyond a reasonable doubt, that his DUI violation was the proximate cause of the death; (2) the trial court erroneously instructed the jury on the element of proximate cause; and (3) his convictions violate the "one-act, one-crime" rule. We reject defendant's arguments regarding proximate cause and jury instructions and accept his one-act, one-crime argument, vacating two of the three convictions. We affirm in part, vacate in part, and remand with directions.

¶ 2 I. BACKGROUND

¶ 3 Defendant's convictions arose from his involvement in a fatal car accident that occurred at approximately 2:40 a.m. on October 28, 2007. That night, defendant was among a large group of patrons at J.D.'s, a now-defunct bar outside Illiopolis. Before traveling to J.D.'s, defendant had already consumed several alcoholic beverages at a Halloween party. Once there, he continued drinking. All told, by his own accounts, defendant drank at least four or five beers and at least two shots of vodka that night.

¶ 4 The owner of J.D.'s ordered all the patrons to exit the bar when a fight broke out inside. The fight continued in the parking lot, where the other customers were slow to leave. Two police officers who were already at J.D.'s on an unrelated matter attempted to break up the fight. When their efforts stalled, the owner of J.D.'s "maced everybody." Illinois State Police trooper Brian McMillen, who was nearby on I-72, responded to a call for backup.

¶ 5 J.D.'s was located south of I-72 on Dye Road, an undivided, two-lane highway with a speed limit of 55 miles per hour. When defendant and his passenger left J.D.'s, they found themselves in a line of traffic traveling north on Dye toward the interstate. The relative

position of five of the cars was described in testimony at defendant's trial. The first of these was driven by Aretha Currie, the second by Tamara Apholone, the third by Justin Taylor, the fourth by defendant, and the fifth by Tarise Bryson.

¶ 6 As these drivers headed north, Trooper McMillen drove south on Dye toward J.D.'s from the interstate. When Currie saw Trooper McMillen's car with its overhead lights activated, she drove onto the shoulder and stopped. Apholone did the same. Whether these drivers were able to stop before Trooper McMillen passed in the opposite direction is not revealed by the record.

¶ 7 Behind Currie and Apholone, Taylor steered his entire car into the southbound lane. He and Trooper McMillen unsuccessfully attempted to avoid colliding. Trooper McMillen's car was traveling 93 miles per hour and Taylor's 30 miles per hour. The passenger sides of their cars made contact, sending Trooper McMillen's car into the northbound lane at 83 miles per hour and disabling his car's electrical functions, including its headlights and overhead lights. As it skidded into the lane of oncoming traffic, Trooper McMillen's car spun clockwise a quarter turn, throwing its tail end onto the shoulder and leaving its front end in the roadway. Defendant's car then struck the driver-side passenger compartment of Trooper McMillen's car perpendicularly. Defendant had cut his speed from 45 to 38 miles per hour before impact; Trooper McMillen's car, spinning out of control, had slowed to 77 miles per hour. Behind defendant, Bryson had begun slowing when he first noticed Trooper McMillen's police lights–by his account, approximately 5 or 10 seconds before the accident; when he anticipated the second collision, he steered his car into the field abutting the shoulder to avoid further collision. Trooper McMillen was killed upon the impact of his car with defendant's. Defendant and his passenger sustained injuries requiring hospitalization. Taylor was uninjured.

¶ 8 Both Taylor and defendant were intoxicated at the time of the accident. Taylor had a blood-alcohol concentration (BAC) of 0.164 and some "over-the-counter cold medicine" was detected in his system. Based on samples taken at the hospital, defendant's BAC was determined to have been between 0.109 and 0.119 at the time of the accident. Tests also revealed the presence of the controlled substances ketamine and methylenedioxymethamphetamine (MDMA) in defendant's blood and urine, respectively.

¶ 9 In November 2007, the State charged defendant with 11 offenses. Seven of these charges were for aggravated DUI premised on defendant's alleged violations of various subsections of the DUI statute: count I charged defendant with driving under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2006)); count II, driving with a BAC of 0.08 or greater (625 ILCS 5/11-501(a)(1) (West 2006)); count III, driving under the combined influence of drugs other than alcohol (625 ILCS 5/11-501(a)(4) (West 2006)); count IV, driving under the combined influence of alcohol and other drugs (625 ILCS 5/11-501(a)(5) (West 2006)); and counts V through VII, driving with any amount of a drug in his system resulting from unlawful consumption (625 ILCS 5/11-501(a)(6) (West 2006)). According to the charges, counts I through V were aggravated on the grounds that defendant, while committing a DUI offense, was involved in a motor vehicle accident resulting in the death of another person (625 ILCS 5/11-501(d)(1)(F) (West 2006)); count VI, that defendant, while committing a DUI offense, drove a vehicle which he knew or should have known was not covered by

liability insurance (625 ILCS 5/11-501(d)(1)(H) (West 2006)); and count VII, that defendant, while committing a DUI, operated a vehicle without a driver's license (625 ILCS 5/11-501(d)(1)(G) (West 2006)). The remaining counts charged traffic offenses: count VIII, failure to yield right of way to an emergency vehicle (625 ILCS 5/11-907(a)(1) (West 2006)); count IX, failure to reduce speed to avoid an accident (625 ILCS 5/11-601(a) (West 2006)); count X, operating an uninsured vehicle (625 ILCS 5/3-707(a) (West 2006)); and count XI, driving without a valid license (625 ILCS 5/6-101(a) (West 2006)). Count IX was later dismissed by motion of the State.

¶ 10 In August 2009, following a jury trial, defendant was convicted of counts I, II, IV, VI through VIII, X, and XI, as charged. Additionally, defendant was convicted of DUI under count V. In October 2009, the trial court sentenced defendant to (1) 14 years' imprisonment, each, on counts I, II, and IV; (2) 365 days in jail on count V; (3) 6 years' imprisonment, each, on counts VI and VII; and (4) statutory fines on counts VIII, X, and XI. All sentences of incarceration were to be served concurrently. Defendant was accorded credit toward his sentences for 679 days served.

¶ 11 This appeal, concerning only defendant's convictions on counts I, II, and IV, followed.

¶ 12 II. ANALYSIS

¶ 13 A. Proximate Cause

¶ 14 First, defendant argues the State failed to prove him guilty of aggravated DUI on counts I, II, and IV. Specifically, he claims the State failed to prove that his DUI violation was the proximate cause of Trooper McMillen's death. See 625 ILCS 5/11-501(d)(1)(F) (West 2008). He also argues Taylor's DUI violation was an intervening, superseding cause. We disagree and hold the State presented evidence from which the jury could conclude defendant's DUI was a proximate cause of Trooper McMillen's death.

¶ 15 Where a defendant challenges the sufficiency of the evidence upon which he was convicted, an appellate court will affirm if, "viewing the evidence in the light most favorable to the State, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Internal quotation marks omitted.) (Emphasis in original.) *People v. Wheeler*, 226 Ill. 2d 92, 114, 871 N.E.2d 728, 740 (2007). We will not set aside a criminal conviction on grounds of insufficient evidence unless the proof is "so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." *Id.* at 115, 871 N.E.2d at 740.

¶ 16 Section 11-501(d)(1) of the Illinois Vehicle Code (625 ILCS 5/11-501(d)(1) (West 2008)) defines the offense of aggravated DUI. In relevant part, a person commits aggravated DUI when, in committing a DUI offense, he is involved in an accident that results in the death of another person, when the DUI violation was a proximate cause of the death. 625 ILCS 5/11-501(d)(1)(F) (West 2008).

¶ 17 Generally, a "proximate cause" is "[a] cause that directly produces an event and without which the event would not have occurred." Black's Law Dictionary 234 (8th ed. 2004). In the context of civil liability, " '[p]roximate cause'–in itself an unfortunate term–is merely the limitation which the courts have placed upon the actor's responsibility for the consequences

of the actor's conduct. *** As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability." Prosser and Keeton on Torts § 41, at 264 (W. Page Keeton *et al.* eds., 5th ed. 1984). Although proximate cause as a prerequisite for liability originated in torts, "the civil concepts of proximate cause are equally applicable to criminal cases." *People v. Hudson*, 222 Ill. 2d 392, 402, 856 N.E.2d 1078, 1084 (2006).

¶ 18 Proximate cause "is established if an injury was foreseeable as the type of harm that a reasonable person would expect to see as a likely result of his or her conduct." (Internal quotation marks omitted.) *People v. Johnson*, 392 Ill. App. 3d 127, 131, 924 N.E.2d 1019, 1022 (2009). "Although the foreseeability of an injury will establish [proximate] cause, the extent of the injury or the exact way in which it occurs need not be foreseeable." (Internal quotation marks omitted.) *Id.*

¶ 19 Initially, defendant argues his DUI was not the proximate cause of Trooper McMillen's death because the accident was unforeseeable. To the contrary, the dangers of drunken and drugged driving are widely familiar. See *People v. Martin*, 266 Ill. App. 3d 369, 380, 640 N.E.2d 638, 646 (1994) ("[I]n the case of a defendant convicted of DUI, the law holds him accountable for precisely those harms actually risked by his conduct–namely, that he might seriously injure pedestrians on or next to the roadway, or that he might crash his vehicle into other vehicles on the roadway, seriously injuring their occupants. All of this is fully foreseeable, and no stretch of logic is required to view the injuries caused as those actually risked by the conduct of driving drunk."). The jurors in this case were entitled to conclude that a reasonable person in defendant's position should have anticipated danger stemming from the intoxication of defendant and the other drivers leaving J.D.'s at the same time, amplified by the time of day, the undivided, two-way traffic of the road on which defendant traveled, and the road's 55-mile-per-hour speed limit. These conditions warranted an increased awareness while driving; instead of driving with extraordinary caution, defendant drove while impaired by the effects of drugs and alcohol on his perception, coordination, and reflexes. In addition, the jury could have permissibly inferred that defendant should have been alerted more imminently to the danger when he observed Trooper McMillen's car approaching quickly from ahead with its overhead emergency lights on and when he should have observed Taylor's car cross into the southbound lane–before the first collision occurred.

¶ 20 Defendant makes much of the crash-reconstruction expert's testimony that only 1.23 seconds elapsed between the first collision and the second, during which no ordinary, sober driver in defendant's position could have reacted. Had defendant driven with the caution and awareness the jury could have reasonably found he lacked due to his impairment, however, the jury could have found the fatal collision would have been avoidable as defendant would have anticipated the impending accident before Trooper McMillen's and Taylor's cars collided. That is, the evidence allowed the jury to measure defendant's reaction time from a point earlier than the first collision, lending to its determination that defendant should have avoided or mitigated the damage of the second collision. The verdict in this respect is not so improbable or unsatisfactory that it should be overturned.

¶ 21 Defendant further argues Taylor's illegal driving was an intervening and superseding cause of Trooper McMillen's death. An "intervening cause" is "[a]n event that comes

between the initial event in a sequence and the end result, thereby altering the natural course of events that might have connected a wrongful act to an injury." Black's Law Dictionary 234 (8th ed. 2004). A "superseding cause" is "[a]n intervening act or force that the law considers sufficient to override the cause for which the original tortfeasor was responsible, thereby exonerating that tortfeasor from liability." Black's Law Dictionary 235 (8th ed. 2004).

¶ 22 Here, Taylor's act neither intervened in nor superseded defendant's DUI offenses as a cause of Trooper McMillen's death. Trooper McMillen was killed directly by the collision of his car with defendant's, while defendant's DUI violation was ongoing. The fact that Taylor's swerving into the southbound lane was unexpected does not eliminate defendant's responsibility. The jury could reasonably have found that a sober driver would have reacted more appropriately to Trooper McMillen's oncoming emergency lights before Taylor crossed into the southbound lane. Accordingly, defendant's argument that the State's evidence failed to establish the element of proximate cause is unpersuasive.

¶ 23 B. Jury Instructions

¶ 24 Next, defendant argues he was denied a fair trial because the jury was inadequately instructed on the issue of proximate cause. Specifically, defendant claims the pattern jury instruction given in this case failed to apprise the jury that, generally, a defendant may proximately cause only the foreseeable consequences of his actions and to address the possibility that Taylor's driving was an intervening, superseding cause. We disagree.

¶ 25 Initially, we note defendant forfeited this argument by failing to raise it at trial and in a written, posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1129 (1988). "Generally, a defendant forfeits review of any putative jury instruction error if the defendant does not object to the instruction or offer an alternative instruction at trial and does not raise the instruction issue in a posttrial motion." *People v. Herron*, 215 Ill. 2d 167, 175, 830 N.E.2d 467, 472 (2005). This rule "encourages the defendant to raise issues before the trial court, allowing the court to correct its own errors before the instructions are given, and consequently disallowing the defendant to obtain a reversal through inaction." *Id.* at 175, 830 N.E.2d at 472-73; see also *People v. Ford*, 19 Ill. 2d 466, 478-79, 168 N.E.2d 33, 40 (1960) ("An accused may not sit idly by and allow irregular proceedings to occur without objection and afterwards seek to reverse his conviction by reason of those same irregularities.").

¶ 26 In spite of this forfeiture, defendant asks us to review the jury instructions for plain error. Under the plain-error doctrine, we will review an otherwise forfeited issue where a clear and obvious error occurs and either (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or (2) the "error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010). The first step in a plain-error analysis is to determine whether a clear and obvious error occurred. *Id.* at 189, 940 N.E.2d at 1059. "If error is found, the court then proceeds to consider whether either of the two prongs of the plain-error doctrine have been satisfied. Under both prongs,

the burden of persuasion rests with the defendant." *Id.* at 189-90, 940 N.E.2d at 1059.

¶ 27 We begin our analysis of defendant's argument by examining whether the jury instructions given in this case were so deficient as to constitute a clear and obvious error. In general, jury instructions "convey the legal rules applicable to the evidence presented at trial and *** guide the jury's deliberations toward a proper verdict." *People v. Mohr*, 228 Ill. 2d 53, 65, 885 N.E.2d 1019, 1025 (2008). The trial court is accorded discretion "to determine which issues are raised by the evidence and whether an instruction should be given." *Id.* at 65, 885 N.E.2d at 1026. The jury should not be instructed on matters not raised by the evidence. *Id.* "The task of a reviewing court is to determine whether the instructions, considered together, fully and fairly announce the law applicable to the theories of the State and the defense." *Id.* We review the jury instructions for abuse of discretion, *i.e.*, whether the "jury instructions are not clear enough to avoid misleading the jury." (Internal quotation marks omitted.) *Id.* at 66, 885 N.E.2d at 1026.

¶ 28 "Whenever Illinois Pattern Jury Instructions, Criminal (4th ed. 2000) (IPI Criminal 4th), contains an instruction applicable in a criminal case, giving due consideration to the facts and the governing law, and the court determines that the jury should be instructed on the subject, the IPI Criminal 4th instruction shall be used, unless the court determines that it does not accurately state the law." Ill. S. Ct. R. 451(a) (eff. July 1, 2006). In this case, the jury was instructed on proximate cause, pursuant to the pattern jury instruction entitled "Definition Of Proximate Cause In Aggravated Driving Under The Influence–Accident As Enhancing Factor," as follows: "The term 'proximate cause' means any cause which, in the natural or probable sequence, produced the death. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the death." See Illinois Pattern Jury Instructions, Criminal, No. 23.28A (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 23.28A).

¶ 29 The trial court properly instructed the jury using IPI Criminal 4th No. 23.28A. When it determined an instruction on proximate cause was justified by the evidence, the court was required to use IPI Criminal 4th No. 23.28A unless it inaccurately stated the law. As defendant accepted this instruction without objecting, the court was denied the opportunity to judge the accuracy of the instruction expressly. However, had the court concluded the instruction contained no inaccurate statement regarding the law of proximate cause, that conclusion would not have constituted an abuse of discretion.

¶ 30 Defendant's complaint that IPI Criminal 4th No. 23.28A inadequately states the foreseeability component of proximate causation is unfounded. In *Hudson*, 222 Ill. 2d at 401, 856 N.E.2d at 1083, the supreme court stated, "Although foreseeability is a necessary component of a proximate cause analysis, it need not be specifically mentioned in a jury instruction to communicate the idea of 'proximate' to a jury." The court immediately proceeded to endorse an instruction materially indistinguishable from the one used in this case:

> "Thus, the IPI civil jury instruction communicates the definition of 'proximate cause,' as '[any] cause which, in natural or probable sequence, produced the injury complained of. [It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs

with some other cause acting at the same time, which in combination with it, causes the injury.]' Illinois Pattern Jury Instructions, Civil, No. 15.01 (2005)." *Id.* at 401-02, 856 N.E.2d at 1083-84.

See also *Martin*, 266 Ill. App. 3d at 379, 640 N.E.2d at 645 (affirming the trial court's use of the predecessor to IPI Criminal 4th No. 23.28A and rejecting the defendant's argument that applying similar language to instruct civil and criminal juries on proximate cause, especially in trials involving "multiple or intervening causes," was erroneous). Consistently with the law on proximate cause, IPI Criminal 4th No. 23.28A incorporates the element of foreseeability in the phrase "in the natural or probable sequence." No more explicit or in-depth instruction was required to state fully and accurately the law on proximate cause as it relates to aggravated DUI.

¶ 31 Defendant also argues he was entitled to an instruction on intervening and superseding causes. However, as discussed in the previous section of this opinion, the evidence did not support defendant's claim that Taylor's driving superseded defendant's as the proximate cause of the fatal accident; thus, no instruction on the subject would have been warranted. Further, to the extent that the question of whether a cause supersedes another is one of foreseeability, we have already concluded the jurors were properly instructed on the issue of foreseeability.

¶ 32 As IPI Criminal 4th No. 23.28A adequately instructed the jury in this case on proximate cause, the trial court would not have abused its discretion by refusing an alternative or supplemental instruction had defendant tendered one. Accordingly, no corresponding clear and obvious error appears in the record, and we will honor defendant's forfeiture of this issue.

¶ 33 C. "One-Act, One-Crime" Rule

¶ 34 Finally, defendant argues his convictions of aggravated DUI on counts I, II, and IV violate the "one-act, one-crime" rule. The State concedes defendant's conviction on count II should be vacated in light of his conviction on count I but maintains his conviction on count IV should stand. We agree with defendant that he cannot stand convicted of and sentenced on more than one of these three counts.

¶ 35 A defendant may not be convicted of multiple offenses premised on a single act. *People v. King*, 66 Ill. 2d 551, 566, 363 N.E.2d 838, 844 (1977) ("Prejudice results to the defendant *** in those instances where more than one offense is carved from the same physical act."). In this context, an act is "any overt or outward manifestation which will support a different offense." *Id.* at 566, 363 N.E.2d at 844-45. Courts have interpreted this rule to prohibit convicting a defendant (1) of multiple counts of reckless homicide, premised on drunken driving, where a single victim was killed, or (2) under multiple subsections of the DUI statute for a single instance of driving, or (3) of multiple counts of an aggravated offense based on the same aggravating circumstance. See *People v. Lush*, 372 Ill. App. 3d 629, 631, 867 N.E.2d 1199, 1201 (2007) (vacating one of two reckless homicide counts involving the same victim); *People v. Kizer*, 365 Ill. App. 3d 949, 962, 851 N.E.2d 266, 276 (2006) (vacating one of two DUI convictions, one of which was based on the defendant's driving under the

influence of alcohol and the other on the defendant's having a BAC of 0.08 or greater); *People v. Bishop*, 218 Ill. 2d 232, 248-49, 843 N.E.2d 365, 375 (2006) (vacating one of two convictions for aggravated criminal sexual assault, in both of which the victim's pregnancy was the aggravating factor).

¶ 36 In this case, defendant committed a single act of driving having consumed the alcohol and illegal drugs that impaired him, and a single death resulted from the ensuing accident. Count I alleged Trooper McMillen's death was caused by defendant's driving under the influence of alcohol; count II, by defendant's driving with a BAC of 0.08 or greater; and count IV, by defendant's driving under the combined influence of alcohol and other drugs. As they are based on a single death resulting from a single instance of driving, defendant cannot stand convicted of counts I, II, and IV together. With no reason to prefer vacating any two of the convictions instead of the other, we accept defendant's request that we vacate his convictions and sentences on counts II and IV.

¶ 37 III. CONCLUSION

¶ 38 For the foregoing reasons, we affirm the trial court's judgment in part and vacate in part. We remand for issuance of an amended sentencing judgment consistent with this opinion. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 39 Affirmed in part and vacated in part; cause remanded with directions.