

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORLANDO PASTRANA LOPEZ, A/K/A  
ORLANDO LOPEZ PASTRANA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40659

**FILED**

MAY 05 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction for murder in the second degree by making available a controlled substance causing death. Because we conclude that Orlando Patrana Lopez's arguments lack merit, we affirm his judgment of conviction.

Lopez argues that the State failed to present sufficient evidence that heroin provided by Lopez was the cause of the victim's death. "The standard of review for sufficiency of the evidence upon appeal is whether the jury, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt."<sup>1</sup> Sufficient evidence exists "if the evidence, viewed in the light most favorable to the prosecution, would allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt."<sup>2</sup> Moreover, the jury determines the weight and credibility to give various testimony.<sup>3</sup>

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<sup>1</sup>Leonard v. State, 114 Nev. 1196, 1209, 969 P.2d 288, 297 (1998) (quoting Kazalyn v. State, 108 Nev. 67, 71, 825 P.2d 578, 581 (1992), modified on other grounds by Byford v. State, 116 Nev. 215, 235, 994 P.2d 700, 713-14 (2000)).

<sup>2</sup>Id. at 1209-10, 969 P.2d at 297.

<sup>3</sup>Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002).

Lopez argues that heroin alone did not kill the victim, and that the victim's independent act of using cocaine should operate as an intervening cause of death that supercedes Lopez's act. Toxicologist Dr. William Anderson testified that separating the effect of the two drugs was difficult, and that he could not definitively state that heroin was the sole cause of death. A defendant's act, however, need not be the sole cause of injury or death. In Etcheverry v. State, we concluded that, in a motor vehicle collision, the effect of alcohol consumption "to any extent in contributing to [the victim's] injuries, no matter how small, may be enough to show proximate cause."<sup>4</sup> While neither Dr. Anderson nor Dr. Alane Olson, the forensic pathologist, could rule out the possibility that the cocaine use or the head injuries were contributing causes of death, both agreed that heroin overdose was the primary cause of death. Moreover, the level of drugs associated with heroin found in the victim's blood and urine samples was consistent with lethal levels. The victim's physical reactions were also more consistent with heroin overdose.

Furthermore, to excuse the defendant's act, the defendant must demonstrate that, "due to a superseding cause, he was in no way the 'proximate cause' of the result."<sup>5</sup> To supersede the defendant's original act, an intervening cause must break the chain of causation, or be "the sole cause of the injury."<sup>6</sup> Dr. Anderson testified that the level of cocaine in the victim's system and the victim's head injuries were not lethal. Because neither could have caused the victim's death by itself, the victim's

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<sup>4</sup>107 Nev. 782, 785, 821 P.2d 350, 351 (1991).

<sup>5</sup>Id.

<sup>6</sup>Id.

cocaine use and his head injuries were not the sole cause of death. Therefore, we conclude that sufficient evidence exists to support the jury's verdict that the head injury and drug use were not intervening causes of death that superceded Lopez's conduct.

Lopez also contends that Jury Instruction No. 28 misinformed the jury as to probable cause. Lopez argues that the instruction is inapplicable here because the victim intentionally ingested cocaine, which Lopez argues was a superceding cause of death. Jury Instruction No. 28 reads:

Proximate cause is that cause which is natural and a continuous sequence, unbroken by any other intervening causes, that produces the death and without which the death would not have occurred.

A proximate cause of death can be said to be that which necessarily sets in operation the factors that accomplish the death. An intervening cause of death will supersede the original cause of death where the intervening cause is an unforeseeable, independent, non-concurrent cause of death. In order to be an intervening cause, it must effectively break the chain of causation.

The contributory negligence of the decedent directly contributing to his death does not exonerate the defendant unless the decedent's negligence was the sole cause of his death.

With the exception of the intervening cause explanation, the instruction is a verbatim copy of the instruction used in Williams v. State.<sup>7</sup> We noted that a preexisting condition is not generally an intervening or superseding cause.<sup>8</sup> Furthermore, "[i]n the normal meaning of the words, . . . an

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<sup>7</sup>See Williams v. State, 118 Nev. 536, 550, 50 P.3d 1116, 1126 (2002).


<sup>8</sup>Id., at 551, 50 P.3d at 1126


“intervening” or “superseding” cause which relieves the criminal actor of responsibility is one which “breaks the chain of causation” after the defendant's original act.”<sup>9</sup> Here, the victim’s cocaine use was a preexisting condition to Lopez’s criminal act. The intervening cause explanation added by the State is a correct statement of law.<sup>10</sup> As stated above, there is no evidence that the victim’s cocaine use was the sole cause of the victim’s death, or that it broke the chain of causation. Furthermore, the instruction does not relieve the State from its burden of proving that Lopez’s acts proximately caused the victim’s death.

Accordingly, because the State presented sufficient evidence from which a jury could reasonably find Lopez guilty beyond a reasonable doubt, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

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<sup>9</sup>Id. (quoting People v. Autry, 43 Cal.Rptr.2d 135, 140 (Ct. App. 1995)).

<sup>10</sup>Bostic v. State, 104 Nev. 367, 370, 760 P.2d 1241, 1243 (1988) (“An intervening act will supersede the original culpable act where the intervening act is an unforeseeable, independent, non-concurrent cause of the injury; the intervening cause must, effectively, break the chain of causation.”); see also Williams, 118 Nev. at 550, 50 P.3d at 1125.

cc: Hon. Janet J. Berry, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk