

To: Larry Toon, Esq.
From: Kai Marshall-Otto
Re: Criminally Negligent Homicide - N.Y. Penal Law § 125.10
Date: November 21, 2011

Statement of Facts: On September 26, 2011, Defendant Thomas Stanley returned home after being hospitalized for various ailments. Defendant was upset because his wife, victim Blanche Stanley, had not visited him over Memorial Day or paid for him to have cable access in his hospital room.

Once home, Defendant consumed a six pack of beer. About an hour later victim arrived and the two began to fight. Defendant became so agitated during the argument that he picked up a glass beer mug and "hurled" it at victim. The first mug did not hit victim, but Defendant continued to throw more. The fourth mug hit victim in the head, and she fell to her knees. While she was down, Defendant threw one more mug at victim and missed. When victim threatened to leave, Defendant lit her clothes on fire, and she screamed and left the house.

Victim entered the hospital the next day, complaining of drowsiness, nausea, amnesia, slurred speech, double vision and seizure. Within two hours, victim was sent home when her blood pressure and temperature were found to be normal. She died five hours later.

Victim's death was caused by a subdural hemorrhage brought on by a subdural hematoma. Because the hematoma was at least 72 hours old on September 27, victim's hematoma must have developed prior to the day of the fight, September 26. What initially caused the hematoma is unknown. The examination of victim revealed that she sustained a blunt impact to the head from an unknown object, thrown from 4-5 feet away. The Staten Island Daily has reported that a "curvilinear mark" was found on Victim's head, but the medical examiner's report does not state that specific fact.

In order to discover victim's subdural hematoma, the hospital should have performed a CT or MRI scan. Generally, emergency surgery is required to drain the hematoma and control the bleeding. A patient will have to remain in the hospital and may require additional treatment after surgery. Although surgery can save the patient, rates of death of individuals with acute subdural hematomas range from 36 to 79%. Further injury to the hematoma can increase risk of death by between 5-10%.

Question Presented: Whether the defendant is guilty of criminally negligent homicide pursuant to N.Y. Penal Law § 125.10 (McKinney 2009), where defendant struck victim with one of five thrown glasses, victim had an unknown preexisting health condition which was worsened by the blow, and the hospital was negligent in diagnosing victim's symptoms?

Short Answer: Probably. Defendant caused victim's death because the glass that he threw at victim's head accelerated her hematoma, and therefore, her death. Hospital negligence will not be considered a superseding cause. A court will likely find that death of victim was a foreseeable outcome of Defendant's acts, despite lack of knowledge of victim's preexisting condition, due to the severity of his acts. Thus, the State will likely be able to prove that Defendant is guilty of criminally negligent homicide pursuant to N.Y. Penal Law § 125.10 (McKinney 2009).

Discussion: Mr. Stanley is being charged with criminally negligent homicide. N.Y. Penal Law § 125.10 (McKinney 2009). In order for him to be convicted, the prosecution must prove that Defendant, (1) "with criminal negligence," (2) caused the "death of another person." Id. Defendant will likely be found to have caused victim's death, and the severity of his

acts and the circumstances surrounding them will likely bring his acts to the level of criminal negligence. See id.

N.Y. Penal Law § 15.05 (McKinney 2009) defines criminal negligence:

A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

A risk of death is "apparent from the fact that a death occurred," but it also must be substantial enough that a reasonable person would have a duty to perceive it. People v. Johnson, 131 A.D.2d 697, 698 (N.Y. App. Div. 1987). A determination of criminal negligence will be based largely on the foreseeability of the outcome of defendant's conduct; this determination is based on the inherent risk of defendant's acts as well as on the circumstances related to victim. See Generally People v. Lewis, 165 A.D.2d 901, 902 (N.Y. App. Div. 1990); People v. Hiraldo, 117 Misc.2d 33, 34-38 (N.Y. Sup. Ct. 1998).

A court will take into account victim's circumstances in determining whether defendant failed to perceive a risk of death in his actions. See Hiraldo, 117 Misc.2d at 34-37; People v. Beckles, 113 Misc.2d 185, 187 (N.Y. Sup. Ct. 1982) (evidence of the character of the place where victim was attacked was not introduced, detracting from defendant's culpability). In Hiraldo, defendant punched and slapped victim before attempting to run away. 117 Misc.2d at 34-35. Victim collapsed shortly after giving chase, and died of a heart attack six days later. Id. at 34-35. The court found that although defendant's acts were condemnable, his heart condition was neither immediately apparent nor was there public information about it. Id. Thus,

defendant did not fail to perceive a risk that he should have perceived. Id. Here, there was no description of the room in which victim was attacked. Beckles, 113 Misc.2d at 187. Also, the hematoma being suffered by victim was neither known publicly or by defendant nor would it be perceptible to an average individual. See Hiraldo, 117 Misc.2d at 34-35. Therefore, criminal negligence cannot be predicated on victim's circumstances in the case at hand. See id.; Beckles, 113 Misc.2d at 187.

The number and severity of blows inflicted by defendant is a significant factor in determining negligence. People v. Erby, 97 A.D.2d 380, 380 (N.Y. App. Div. 1983); Lewis, 165 A.D.2d at 902; People v. Dragoon, 256 A.D.2d 653, 653-54 (N.Y. App. Div. 1998). In Erby, defendant punched victim once in the face after a brief confrontation. 97 A.D.2d at 380. After sitting down in a daze, victim went home and was found dead the next morning. Id. The court found that one such punch in the face did not reach the level of criminal negligence. Id. In Lewis, criminal negligence was found when defendant struck passive victim multiple times, and returned to strike victim an additional time when he had already fallen to the ground and become unconscious. 165 A.D.2d at 902. In some cases, one blow may be sufficient to reach the level of criminal negligence. Dragoon, 256 A.D.2d at 653-54. In Dragoon, defendant punched victim from behind with such force that he was lifted into the air before falling onto the ground and suffering head injuries that led to his death. Id. The court found that defendant's "failure to perceive a risk was a 'gross deviation' from the standard of reasonable care." Id. at 654. Additionally, intoxication may add to the degree of criminal negligence. People v. Rooney, 441 N.E.2d 1113, 1113 (N.Y. 1982) (while not essential to a finding of criminal negligence, driver's intoxication could further support it).

In the case at hand, only one of the mugs thrown by Defendant hit the victim. See Erby, 97 A.D.2d at 380. However, Defendant attempted to hit victim multiple times, and a court may find such an attempt to be of a similar degree to that of defendant in Lewis. See 165 A.D.2d at 902. The complete passivity of victim will likely increase Defendant's culpability as well. See id. Furthermore, Defendant's one successful blow may be viewed as similarly extreme to Dragoon due to the nature of the object thrown (though the weight and thickness of the glass is unknown) and due to the fact that he "hurled" it. See 256 A.D.2d at 653-54. Finally, Defendant's intoxication while throwing the mugs may increase the level of criminal negligence already inherent in his acts. See Rooney, 441 N.E.2d at 1113. Although Defendant was not operating a motor vehicle, a court may find that his intoxication impaired his ability to perceive the danger of the force of his throws. See id. A court will likely find that these circumstances collectively bring Defendant's culpability to the level of criminal negligence. See Erby, 97 A.D.2d at 380; § 15.05.

The element of causation must be proven for a conviction of any degree of homicide. § 125.00; § 125.10. Evidence must show that the actual cause of death is not merely speculative. People v. Warner-Lambert Co., 414 N.E.2d 660, 665 (N.Y. 1980). There, evidence merely showed that defendant had created a condition that could lead to an explosion, but failed to show that defendant was responsible for the triggering cause of that explosion. Id. Causation will be established when the medical cause of death is consistent with the injuries inflicted upon victim by defendant. Erby, 97 A.D.2d at 380. In Erby, causation was established through the medical examiner's observation that the fracture and resulting

brain injuries that constituted victim's medical cause of death were consistent with victim's striking his head on the sidewalk upon falling. Id. That fall was caused by defendant's attack, and causation was established. Id. Here, the mark from the object that hit victim is consistent with something being thrown from four to five feet away. See id. Additionally, if media reports are correct, the curvilinear nature of the mark provides further evidence that the glass thrown by defendant was what caused the mark. See id. These facts are likely to prove that defendant's actions constituted the triggering cause of victim's hematoma being worsened. See id.; See Warner-Lambert Co., 414 N.E.2d at 665.

Accelerating an injury can establish causation: "one who has negligently forwarded a diseased condition, and thereby hastened and prematurely caused death, cannot escape responsibility, even though the disease probably would have resulted in death at a later time with his agency." McCahill v. N.Y. Transp. Co., 94 N.E. 616, 617 (N.Y. 1911). (Even though victim may have died of delirium and tremens at a later time, due to alcoholism, defendant's hitting victim with his car caused the death to happen sooner, and causation was therefore established). Here, although victim was already facing a risk of death between 36-79%, Defendant's actions worsened the injury and likely increased victim's risk of death by 5-10%. See id. These factors will be found to have caused victim to die sooner than she otherwise would have. See id.

A particularly fragile victim will also not break the chain of causation. People v. Kane, 107 N.E. 655, 657 (N.Y. 1915). In Kane, defendant was convicted of first degree murder when he shot his pregnant girlfriend; complications from a miscarriage, resulting from the shooting,

led to her death. 107 N.E. at 657. The court held that even if a victim dies of some unforeseen medical cause, defendant's actions still establish causation if they led to the ultimate cause of death. Id.; See also, Matter of Anthony M., 471 N.E.2d 447, 452 (N.Y. 1984) (causation established when stress from robbery led to victim's heart attack and death). Here, victim's preexisting condition made her more susceptible to objects hitting her head. Defendant's throwing of the mug would likely not have caused the death of victim if it were not for her preexisting condition. See id. However, Defendant will still be found to have caused victim's death. See id.; Matter of Anthony M., 471 N.E.2d at 452.

An intervening cause will rarely break the chain of causation. Kane, 107 N.E. at 657. There, the court considered the impact of potential negligence on the part of the hospital saying that its causal co-operation in victim's death is not a defense. A defense only exists where victim's death is solely attributable to the hospital's negligent treatment. Id. Here, the hospital was likely negligent for failing to identify and treat victim's injury. However, victim's resulting death will likely not be seen as solely attributable to the hospital's negligence since Defendant caused the acceleration of the injury that led to victim's death. See id.; McCahill, 94 N.E. at 617. Ultimately, a court will likely reject any defense based on a preexisting condition, acceleration, and medical negligence, and causation will be established. See id.; § 125.00; Kane, 107 N.E. at 657. Because a court is also likely to make a finding of criminal negligence in Defendant's acts, he will likely be convicted of criminally negligent homicide. See § 125.10; § 125.00; § 15.05; Erby, 97 A.D.2d at 380; Warner-Lambert Co., 414 N.E.2d at 665.