

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2010-P-0027
JONATHAN H. DUKES,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2009 CR 0490.

Judgment: Affirmed.

Victor V. Viglucci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Jill R. Flagg, 333 South Main Street, Akron, OH 44308 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Jonathan H. Dukes, appeals the Order and Journal Entry of the Portage County Court of Common Pleas, finding him guilty, following a jury trial, of Murder, Aggravated Burglary, and Aggravated Robbery, and imposing an aggregate prison term of twenty-five years to life. The issue to be determined is whether the victim’s decision to terminate life support constitutes an independent, intervening cause of the victim’s death. For the following reasons, we reject Dukes’ argument, and affirm the judgment of the court below.

{¶2} On August 17, 2009, the Portage County Grand Jury returned a three-count Indictment against Dukes. The first count was for Murder, an unclassified felony in violation of R.C. 2903.02(B) and 2929.02, according to which Dukes “cause[d] the death of Richard A. Lowther as a proximate result of committing or attempting to commit an offense of violence that is a felony of the first or second degree.” The second count was for Aggravated Burglary, a felony of the first degree in violation of R.C. 2911.11(A)(1) and (B), according to which Dukes “by force, stealth, or deception trespass[ed] in 2954 Tallmadge Road, Rootstown, Ohio, an occupied structure ***, when another person [was] present, with purpose to commit therein a criminal offense, and *** recklessly inflicted *** physical harm on Richard A. Lowther.” The third count was for Aggravated Robbery, a felony of the first degree in violation of R.C. 2911.01(A)(3), according to which Dukes, “in attempting or committing a theft offense, *** recklessly inflict[ed] or attempt[ed] to inflict, serious physical harm on Richard A. Lowther.”

{¶3} On August 21, 2009, Dukes was arraigned and entered a plea of “not guilty” to the charges contained in the Indictment.

{¶4} On December 17, 2009, the trial court entered an Order authorizing \$3,000 for defense counsel to retain the services of a medical expert. The court subsequently increased this amount to \$5,000.

{¶5} On February 17, 18, 22, 23, 24, and 25, 2010, Dukes’ case was tried before a jury.

{¶6} The following testimony, relevant to the present appeal, was presented at trial.

{¶7} Michael Leigh, a lieutenant and paramedic with the Rootstown Fire Department, testified that, in the morning hours of July 2, 2009, he received a dispatch of an assault at a residence on Tallmadge Road. Upon arrival, Leigh found Lowther lying on the ground in an enclosed porch area in front of the residence. Leigh reported that Lowther gave the following account of what had happened: “[H]e stated that he had fallen asleep in the chair, he was awoken by the doorbell. When he answered the door there was a small petite brunette at the door, stated she was having car problems and needed to use a phone. He basically went to let her in and in the process he states he was attacked from behind by a very tall, big black man is what he stated. Grabbed by the mouth, twisted and threw him to the ground.”

{¶8} Lieutenant Leigh placed a C-collar (a cervical collar or neck brace) on Lowther, secured him to a backboard, and transported him to Robinson Memorial Hospital in Ravenna, Ohio.

{¶9} Christie LaPrairie, a registered nurse in the emergency department of Robinson Memorial Hospital, testified that, a little after 3:00 a.m., on July 2, 2009, Lowther was brought to the emergency department. According to LaPrairie, Lowther gave the following account of his injuries: “[H]e said that a short girl with long brown hair came to his house, knocked on the door, asked if she could come in to use the phone because she had a flat tire. And that he said another, a black man followed behind her, [t]hat he was knocked to the ground, sat on and had his neck twisted.”

{¶10} John Gusz, M.D., the director of the trauma center at Robinson Memorial Hospital, testified that he examined Richard Lowther in the morning of July 2, 2009. Gusz determined that Lowther had a significant spinal cord injury. According to a CAT scan, there was “very distinct breakage” between the sixth and seventh cervical

vertebrae. A physical examination revealed that Lowther had lost sensation below the level of the nipple and was having some difficulty breathing. Lowther was transported by life-flight to Akron City Hospital.

{¶11} Shawn Lowther, one of Richard Lowther's children, testified that he was regularly with his father throughout the month of July. Shawn described his father's health as gradually declining over time. Shawn testified that his father had been using a ventilator to breathe for about three weeks. During the final week of July, Richard Lowther decided to have the ventilator removed. According to Shawn, it was his father's decision to remove the ventilator, although the decision was discussed by the family. Shawn testified that the ventilator was removed on July 29, and that his father died about ten to twelve hours later on July 30, 2009.

{¶12} Richard Lowther's Discharge Summary from Akron City Hospital was introduced into evidence and provided the following summary of treatment:

{¶13} The patient was taken to the operating room for spinal fusion [on about July 2, 2009]. The patient was extubated postoperatively, and for the first 3 days was able to control his airway; however, was reintubated on July 6 due to probable aspiration and the inability to clear his secretions. A consultation was obtained with critical care medicine and it was felt that he would probably require assisted ventilation for some time, if not for the remainder of his life. *** We were unable to completely wean him from mechanical ventilation. Therefore, he was returned to the operating room on July 10, where he had a tracheostomy with gastrostomy placed. Postoperatively, he had waxing and waning of mental status, but never had an improvement in his extremity neurologic exam. Multiple discussions were held with the patient and the patient's family regarding spine rehab and his need for transfer to a long-term acute care facility. The patient stated on multiple occasions that he did not wish to be placed in an LTAC and in fact stated that he did not want to be ventilator dependent for the remainder of his life. A consultation was obtained with palliative care service who interviewed the patient and his family on multiple occasions. It was their wishes and the patient's wish that ventilatory support be withdrawn and he/they understood that he could die from doing this.

{¶14} The palliative care provider's Consult Note for July 28, 2009, stated: Lowther "does not exhibit the capacity to express his own wishes or to make medical decisions. He has reportedly expressed wishes contrary to current medical life sustaining treatment when fully capable and under no duress. His family has expressed that they would like to honor his expressed wishes and feel that they are consistent with his prior beliefs and actions."

{¶15} The palliative care provider's Consult Note for July 29, 2009, noted that "Mr. Lowther does not wish to stay on the ventilator" and "knows that the medical team expects that he will die off the ventilator." The Note further stated: "Decision making is clearly by expressed wishes this morning. On review of the ventilator logs, discussion with staff, and my previous note, his lesser communication yesterday may have been due in part to a worsening respiratory status, and more difficulty with vocalization. The seeming lack of following command may have been some form of frustration and/or delirium with the acute change."

{¶16} Dorothy Dean, M.D., a deputy medical examiner with the Summit County Medical Examiner's Office, performed the autopsy on Richard Lowther. She testified, consistent with the Certificate of Death, that Lowther "died from complications of the spinal cord injury due to blunt force trauma to the neck," and that his death was proximately caused by the injuries he received on July 2, 2009. Dean described the injuries to Lowther's spine as a dislocation between the sixth and seventh cervical vertebrae and fractures of the same. Dean testified that there was bruising and swelling in Lowther's spinal cord from the fourth cervical vertebra to the seventh. At the time of his death, Lowther was unable to eat or breathe for himself, was incontinent, and was

largely paralyzed from the shoulders down. Dean further testified that Lowther had developed pneumonia as a result of aspiration and artificial ventilation.

{¶17} Jonathan Arden, M.D., a forensic pathologist, testified on behalf of Dukes. Prior to testifying before the jury, Dr. Arden was voir dired regarding his qualifications with respect to offering an opinion as to Lowther's cause of death and whether the ventilator was removed with his informed consent. Arden testified that, during his professional career, he has practiced as a pathologist and, outside of medical school, does not have clinical experience. With regard to his expertise in the area of informed consent, Arden testified: "it is a concept that was taught to me during medical school, it's something that I'm aware of and I do have an interest in legal medicine and medical ethics and those are things that I do pursue in what I've described in the informal or independent sense, that is among the topics of things that I do read in the medical literature."

{¶18} The trial court ruled that Dr. Arden "is a qualified forensic pathologist who can express opinions on forensic pathology," but "he has not been qualified as an expert in informed consent or clinical treatment of people with spinal injuries or on ventilators and for that reason I will not allow him to express his opinion on that."

{¶19} Defense counsel proffered that Dr. Arden, if permitted, would have testified that the medical professionals treating Lowther failed to meet the standard of care for obtaining his informed consent to withdraw the ventilator and that this failure amounted to gross negligence so as to constitute an independent and intervening cause of death.

{¶20} Before the jury, Dr. Arden testified that the removal of the ventilator was the proximate cause of Lowther's death, i.e., but for the removal of the ventilator,

Lowther would not have died on July 30, 2009. Arden noted that Lowther's injuries did not place him in a terminal condition. Lowther was not ventilated because he was unable to breathe (the diaphragm muscle still functioned), but because of secretions and probable aspiration in the lungs. Moreover, the swelling of Lowther's spinal cord was a condition that could be resolved over time. "[T]he direct effects of the injury and the direct complications of the injury were not at that point placing him in a condition where he was terminal or likely to die imminently. The fact that he could have survived for some significantly longer period with the assistance of the ventilator, the fact that the medical condition was not yet settled as to whether he would have required that indefinitely or not, and the fact that once it was removed was when he died is the basis for that opinion."

{¶21} At the close of Dr. Arden's testimony, defense counsel moved the trial court for a continuance to obtain an expert on the issue of informed consent. The court overruled the motion, stating: "I'm going to overrule the motion for continuance, the basis for that is the Court allocated five thousand dollars for medical testimony which I believe has been used. *** The Court in looking at the exhibits doesn't see any issue on an informed consent and, further, the law is very clear in the State of Ohio that if there is medical negligence that is not an intervening cause."

{¶22} Following the trial court's charge to the jury, defense counsel moved the court for an instruction on independent, intervening cause. The court overruled the motion on the grounds that it was Lowther's decision to remove the ventilator and he is not a third party, despite defense counsel's objection that it was the physician's failure to obtain informed consent that constituted a third party intervention.

{¶23} On February 25, 2010, the jury returned a unanimous verdict finding Dukes guilty of all charges.

{¶24} On March 3, 2010, a sentencing hearing was held. At the close of the hearing, the trial court sentenced Dukes to a term of imprisonment of fifteen years to life for Murder, ten years for Aggravated Burglary, and ten years for Aggravated Robbery. The sentences for Aggravated Burglary and Aggravated Robbery were ordered to be served concurrently with each other and consecutively with the sentence for Murder, for an aggregate sentence of twenty-five years to life. Additionally, the court advised him of a five-year period of post-release control.

{¶25} On March 4, 2010, the trial court entered a written Order and Journal Entry, memorializing Dukes' sentence.

{¶26} On April 2, 2010, Dukes filed his Notice of Appeal. On appeal, Dukes raises the following assignments of error:

{¶27} “[1.] The trial court erred by denying Mr. Dukes' motion for a continuance to find an expert to testify regarding the standard of care required by a physician who faces a patient who decides to terminate life support.”

{¶28} “[2.] The trial court erred by barring defense evidence regarding medical negligence.”

{¶29} “[3.] The trial court erred by not allowing the testimony of Mr. Dukes' expert pathologist on the issue of informed consent and the assessment of competency before a patient decides to terminate life support as an intervening cause of the victim's death.”

{¶30} “[4.] The trial court erred by failing to instruct the jury on independent, intervening causation.”

{¶31} “[5.] Defense counsel was ineffective by failing to present evidence regarding the gross deviation of the standard of care in the medical treatment of the victim.”

{¶32} The common legal issue, determinative of all of Dukes’ assignments of error, is whether there was sufficient evidence of an independent, intervening act to break the causal connection between Lowther’s death and the injuries he sustained on July 2, 2009. As acknowledged in his appellate brief, “[t]he sole defense to the murder charge was that Mr. Dukes was not legally responsible for the death of Mr. Lowther because he was not the proximate cause of his death.”

{¶33} “It is a fundamental principle that a person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts.” *State v. Johnson* (1978), 56 Ohio St.2d 35, 39. Accordingly, “one who inflicts injury upon another is criminally responsible for that person’s death, regardless of whether different or more skillful medical treatment may have saved his life.” *Id.* at 40. As the trial court correctly noted, “medical treatment for homicide victims is not an intervening cause.” *State v. Carter*, 64 Ohio St.3d 218, 226, 1992-Ohio-127. While simple negligence is insufficient to break a causal connection, “gross negligence or willful maltreatment will relieve the defendant from liability.” *State v. Hanna*, 95 Ohio St.3d 285, 2002-Ohio-2221, at ¶45 (citation omitted); *Johnson*, 56 Ohio St.2d at 40 (“gross or willful maltreatment of the patient by the medical personnel” may constitute “an independent intervening cause of the patient’s death”) (citations omitted). Thus, for example, if a victim dies of infection caused by the negligence of medical personnel in the course of treating injuries inflicted by the defendant, the causal connection is not broken. *State v. Beaver* (11th Dist.1997), 119 Ohio App.3d 385, 394 (“[a]ssuming *arguendo* that the

infection was, in fact, caused by the negligence of the attending surgeons, this alone is not sufficient to break the chain of direct causation”); *State v. Banks*, 8th Dist. No. 76271, 2000 Ohio App. LEXIS 2630, at *20 (“[t]he injuries need not be the sole cause of death as long as they constitute a substantial factor for the death”).

{¶34} In addition to considering the law relative to medical negligence as an intervening cause, we must also consider the effect of Lowther’s decision to have the ventilator removed.¹ Here, the law is clear that “[s]elf-inflicted harm attributable to a victim’s weakened conditions are quite normal and do not break the causal chain.” *State v. Smith*, 4th Dist. No. 06CA2893, 2007-Ohio-1884, at ¶29 (citation omitted). Stated otherwise, a victim’s response to conditions created by the defendant’s criminal actions, such as the decision to refuse medical treatment necessitated by the defendant’s conduct, does not typically break the chain of causation. *United States v. Martinez* (C.A.6, 2009), 588 F.3d 301, 321 (citations omitted). “Courts have confronted whether a victim’s removal from life support renders a homicide verdict against the weight of the evidence and have rejected the contention that there was insufficient evidence to support a conviction when the victim expired following his or her removal from life support.” *State v. Pelham* (2003), 176 N.J. 448, 462-463, and the cases cited therein; *People v. Caldwell* (1998), 295 Ill.App.3d 172, 180 (“[t]he cause of her death was not the removal of the ventilator, but the criminal act that defendant performed which generated the need for the life support in the first instance”).

1. Dukes argues in his appellate brief that, assuming Lowther was fully competent, his decision to remove the ventilator when his condition was not terminal amounted to “legal suicide.”

{¶35} We turn to Dukes' second assignment of error, wherein he argues that the trial court effectively barred the defense from introducing evidence of medical negligence, by denying his request for an expert on the issue of informed consent.

{¶36} It is generally recognized that due process may require a criminal defendant to be provided with expert assistance when it is necessary to provide an adequate defense. *State v. Mason*, 82 Ohio St.3d 144, 149, 1998-Ohio-370, citing *Ake v. Oklahoma* (1985), 470 U.S. 68, 77. "In the absence of a particularized showing of need," however, "due process *** does not require the provision of an expert witness." *State v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, at ¶22. "[D]ue process, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Section 16, Article I of the Ohio Constitution, requires that an indigent criminal defendant be provided funds to obtain expert assistance at state expense only where the trial court finds, in the exercise of a sound discretion, that the defendant has made a particularized showing (1) of a reasonable probability that the requested expert would aid in his defense, and (2) that denial of the requested expert assistance would result in an unfair trial." *Mason*, 82 Ohio St.3d at 150.

{¶37} Dukes asserts that he was entitled to expert assistance to establish that the conduct of medical personnel was grossly negligent with respect to obtaining Lowther's informed consent to remove the ventilator and/or their failure to assess his competency to make such a decision. Given that Lowther's condition was not terminal, Dukes maintains the failure to obtain informed consent could constitute gross negligence sufficient to break the causal connection. We disagree.

{¶38} There is virtually no evidence in the record that Lowther's decision to remove the ventilator was uninformed and/or due to mental incompetency. Dukes

claims in his appellate brief that “Mr. Lowther was not informed that his ventilator may only be needed temporarily.” Neither the trial transcript nor the medical records supports this assertion. In fact, there is no evidence at all about the specific content of the conversations that were had with Lowther prior to his decision to remove the ventilator. The medical records describe Lowther’s continued dependence on the ventilator as probable and likely.² There is no reason to believe, based on the record before us, that this information was not communicated or made known to Lowther and his family. While Dukes may claim that Lowther was not fully informed about the actual probability of prolonged dependence on the ventilator, he cites to nothing in the record that substantiates this claim.

{¶39} With respect to competency, Shawn Lowther’s testimony contains no suggestion that his father was not competent to make the decision to remove the ventilator. He stated that he was shocked when his father first suggested removing the ventilator and needed to understand the reasoning behind it.³ The Akron City Discharge Summary notes that “[m]ultiple conversations were held with the patient *** regarding spine rehab and his need for transfer to a long-term acute care facility,” and that Lowther “stated on multiple occasions that he did not wish to be placed in an LTAC.” The Consult Notes of the palliative care provider stated that, on July 28, 2009, Lowther was unable “to express his own wishes or to make medical decisions.” However, on the following day, Lowther “was very clear about his own wishes, and was

2. Discharge Summary: “it was felt that he would probably require assisted ventilation for some time.” Consult Note of July 28, 2009: “he will very unlikely be able to breathe enough to sustain his own life.” Dr. Arden interpreted the records to mean that the issue of prolonged assisted ventilation “was not a medically decided issue.” This interpretation is consistent with the prognosis of the medical records.

3. While not explained in Shawn Lowther’s testimony, the Consult Notes record that Richard Lowther “saw his father die a ‘slow death’ that he asked his children to never put him through,” a sentiment he expressed years earlier during a period of cardiac distress.

able to explain, historically, why he felt the way he did [about not wishing to be placed in long-term acute care].” This record does not demonstrate that the medical personnel were unaware or indifferent to Lowther’s mental condition. They do reflect a firm conviction, expressed by Lowther in periods of lucidity, not to continue artificial ventilatory support. Given this record, it was not reasonably probable that an expert on the issue of informed consent would have demonstrated gross negligence on the part of medical personnel in obtaining Lowther’s consent to remove the ventilator.

{¶40} Assuming, arguendo, that Lowther was not accurately apprised of the likelihood of the continued necessity of the ventilator and/or was not competent to render an informed decision to remove the ventilator, the failure of medical personnel in these respects would not have amounted to gross negligence sufficient to break the causal connection between the injuries incurred on July 2, 2009, and the circumstances of his death. Dr. Arden admitted that the cause of Lowther’s death was “the withdrawal of ventilatory support following the cervical spinal injury he received,” and that both occurrences “are *** involved in that the injury sets the scene and the circumstances.” In Ohio, “a person has a right to die,” and medical personnel are “required by a legal duty to accede to a patient’s express refusal of medical treatment.” *Anderson v. St. Francis-St. George Hospital Hosp., Inc.* (1996), 77 Ohio St.3d 82, 84. Given that Dukes’ conduct was the proximate cause of the injury rendering Lowther unable to breathe independent of a ventilator, he is responsible for any consequences that reasonably flow from that circumstance, such as the decision, whether informed or not, to remove the ventilator. Cf. *Pelham*, 176 N.J. at 465 (“removal of life support, as a matter of law, may not constitute an independent intervening cause for purposes of lessening a criminal defendant’s liability”).

{¶41} The second assignment of error is without merit.

{¶42} Under the fourth assignment of error, Dukes argues the trial court erred by failing to instruct the jury regarding “intervening causes” and “independent, intervening causes of death.” The relevant instructions as contained in 4 Ohio Jury Instructions, Section 409.65, are as follows:

{¶43} Intervening causes. The defendant is responsible for the natural consequences of the defendant’s unlawful act, even though death was also caused by the intervening act of another person or agency.

{¶44} Independent, intervening cause of death. If the defendant inflicted an injury not likely to produce death, and if the sole and only cause of death was something else or someone else, the defendant who inflicted the original injury is not responsible for the death.

{¶45} The Ohio Supreme Court has held that “if the [defendant’s] requested instructions contain a correct, pertinent statement of the law and are appropriate to the facts they must be included, at least in substance, in the court’s charge to the jury.” *State v. Nelson* (1973), 36 Ohio St.2d 79, paragraph one of the syllabus, overruled on other grounds by *State v. Fanning* (1982), 1 Ohio St.3d 19. A court, however, “may refuse to give an instruction as to a matter which is not applicable to the facts governing the case.” *State v. Scott* (1986), 26 Ohio St.3d 92, 101 (citation omitted). “It is within a trial court’s sound discretion to determine whether the evidence presented at trial is sufficient to require a particular jury instruction.” *State v. Strickland*, 11th Dist. No. 2005-T-0002, 2006-Ohio-2498, at ¶24, citing *State v. Mitts*, 81 Ohio St.3d 223, 228, 1998-Ohio-635; *State v. Lessin*, 67 Ohio St.3d 487, 494, 1993-Ohio-52 (“it is within the sound discretion of the trial court to determine whether the evidence presented at trial is sufficient to require that instruction be given”).

{¶46} In the present case, the trial court did not err by failing to give the requested instructions. With respect to the instruction on “intervening causes,” the substance of the charge was conveyed to the jury through the court’s instruction on causation: “Cause is an act in which the natural and continuous sequence directly produces the death of Richard A. Lowther and without which it would not have occurred. *** There may be *** one or more causes of an event, however, the defendant’s act was one cause and the existence of other causes is not a defense.”

{¶47} With respect to the instruction on “independent, intervening causes of death,” the evidence presented at trial was not sufficient to require that the instruction be given. This instruction would only be merited “if the sole and only cause of death was something else or someone else,” other than the injury inflicted by Dukes. As indicated above, there is no support in the record for the proposition that Lowther’s decision to remove the ventilator was the “sole and only cause of death.”

{¶48} Dr. Arden described Lowther’s death as the result of “the withdrawal of ventilatory support following the cervical spinal injury he received,” and testified that “the two things are both involved in that the injury sets the scene and the circumstances but that given that the injury itself was not actually life threatening at that point, the withdrawal of the ventilator really has to be the event that immediately led to his death.”

{¶49} Although maintaining that the removal of the ventilator was the “proximate” cause of death, Dr. Arden frankly admitted that but for the spinal cord injuries Lowther would not have required the use of a ventilator.

{¶50} Prosecutor: *** [W]hat was the cause of him having to be placed a ventilator or a respirator?

{¶51} Dr. Arden: My understanding is that after they took the breathing tube out and he developed some issues with the secretions and they believe he

had that aspiration phenomenon and they needed to put the tube back in to manage his lung function better and at some point he wasn't breathing adequately on his own so they assisted him with the ventilator.

{¶52} Prosecutor: So he was not breathing adequately on his own, he needed assistance from this ventilator, what was the cause of that need? From a medical standpoint, what was going on with his spine, his neck and the signals that were supposed to come from his brain?

{¶53} Dr. Arden: The causes of that need were the direct effect of the spinal cord damage that we just discussed and the secondary effect of having some secretions built up that he couldn't clear and having the episode of probable aspiration.

{¶54} Prosecutor: So but for the spinal cord injury he wouldn't have had those problems, probably wouldn't have needed a ventilator?

{¶55} Dr. Arden: Yes, sir.

{¶56} Given that the circumstances requiring Lowther to use a ventilator were the "direct effect" of the injuries inflicted on him, the removal of the ventilator cannot constitute the "sole and only cause of death." Thus, while the removal of the ventilator may constitute an intervening cause, it does not constitute an independent, intervening cause so as to relieve Dukes of responsibility for Lowther's death. This conclusion, based on the testimony of Dukes' own medical expert, is consistent with the law as set forth in the proposed jury instructions. In addition to the cases cited above, see *State v. Gatson* (Minn.2011), 801 N.W.2d 134, 148 ("Gatson failed to present evidence at trial that removing life support was a superseding intervening cause of Destiny's death because there was no evidence that the removal of life support was the sole cause of death"); *People v. Bowles* (Mich.2000), 607 N.W.2d 715, 718 ("[t]he victim's death was the 'natural and inevitable' result of the injuries inflicted by defendant, notwithstanding the temporary postponement of that result through artificial respiration").

{¶57} The fourth assignment of error is without merit.

{¶58} In light of the holding that the trial court did not err in denying Dukes an expert on informed consent and in refusing to give the proposed jury instructions on intervening causes, Dukes' other assignments of error may be dispensed with summarily. Since a lack of informed consent would not break the chain of causation, the court did not err by denying Dukes a continuance to obtain another expert to testify regarding the standard of care required by a physician who faces a patient who decides to terminate life support (first assignment of error). Likewise, the court did not err by not allowing Dr. Arden to testify on the issue of informed consent and the assessment of competency before a patient decides to terminate life support (third assignment of error). Finally, defense counsel was not deficient for failing to produce an expert on informed consent, because such testimony would not have changed the outcome of the trial (fifth assignment of error).

{¶59} For the foregoing reasons, Dukes' assignments of error are without merit. The judgment of the Portage County Court of Common Pleas, finding Dukes guilty of Murder, Aggravated Burglary, and Aggravated Robbery, is affirmed. Costs to be taxed against appellant.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.