

**584 N.Y.S.2d 770**  
**79 N.Y.2d 673, 595 N.E.2d 845**  
**The PEOPLE of the State of New York, Respondent,**  
**v.**  
**Joel STEINBERG, also known as Joel Barnet Steinberg, Appellant.**  
**Court of Appeals of New York.**  
**June 11, 1992.**

Page 771

[79 N.Y.2d 675] [595 N.E.2d 846] Perry S. Reich, Steven M. Schapiro, Lindenhurst, and Mel Sirkin, New York City, for appellant.

[79 N.Y.2d 677] Robert M. Morgenthau, Dist. Atty. (Mark Dwyer, Patricia Curran, Alan Gadlin, Paula Milazzo and Donald J. Siewert, New York City, of counsel), for respondent.

[79 N.Y.2d 678] OPINION OF THE COURT

KAYE, Judge.

Defendant's appeal from a conviction of first degree manslaughter, involving the death of six-year-old Lisa Steinberg, centers on his contention that only a person with medical expertise can form the requisite intent to cause serious physical injury to a child by failing to obtain medical care. We conclude that this contention, as well as the several others defendant advances, lack merit, and that the Appellate Division order sustaining the conviction, 170 A.D.2d 50, 573 N.Y.S.2d 965, should be affirmed.

I.

In the evening of November 1, 1987, defendant and Hedda Nussbaum were at home in their one-bedroom Greenwich Village apartment, with their two "adopted" children, Lisa, then six years old, and Mitchell, 16 months old. Nussbaum was in the kitchen with Lisa while defendant dressed in the bedroom for his dinner appointment with a friend. Lisa went into the bedroom to ask defendant to take her with him. Moments later, defendant carried Lisa's limp body out to Nussbaum, who was then in the bathroom, and they laid the child on the bathroom floor. Lisa was unconscious, having [79 N.Y.2d 679] experienced blunt head trauma of great force, and her breathing was raspy. According to Nussbaum, defendant later admitted that he had "knocked [Lisa] down and she didn't want to get up again."

While Nussbaum attempted to revive Lisa, defendant continued dressing. Defendant told Nussbaum to let her sleep, promised to awaken the child upon his return, and then left for dinner. Nussbaum did not seek medical care for Lisa because she believed defendant had supernatural healing powers, and felt that calling for assistance would be considered a sign of disloyalty.

Defendant returned about three hours later, at 10:00 P.M., retrieved a file relating to his oil well investments, and left again. When he came back a few minutes later, Nussbaum urged him to revive the still-unconscious child. Defendant declined--explaining that they "ha[d] to be relating when she wakes up"--and he instead freebased cocaine for the next several hours. Finally, at 4:00 A.M., after Nussbaum's repeated urgings, defendant carried Lisa from the bathroom floor to the bedroom, where her breathing seemed to sound better. Defendant rested his arm on Lisa, and continued talking to Nussbaum.

At 6:00 a.m., when Nussbaum left the room, defendant called out that Lisa had stopped breathing. Defendant initially rejected Nussbaum's offer to call 911, but finally acceded when his attempts to resuscitate the child failed. Police and paramedics arrived shortly after being summoned, administered oxygen, and rushed Lisa to the hospital.

At the hospital, defendant explained that Lisa had gone to bed complaining of a stomach ache, and had vomited during the night, but that he believed she was otherwise all right until he checked on her around 6:00 a.m. and discovered that her breathing was coarse. In fact, the doctors determined that Lisa, who was in a coma, was suffering from severe head injuries--a result of blunt trauma--and placed her on life support equipment. Lisa's condition did not improve, and neurological tests performed on November 3 indicated that she was brain dead. Life support was discontinued on November 5.

Defendant was indicted for second degree (depraved indifference) murder, first degree manslaughter, and seven charges that were severed or dismissed. Defendant was acquitted of murder but convicted of manslaughter, and the Appellate Division affirmed the conviction. We find no error and accordingly also affirm.

## II.

First degree manslaughter requires proof that defendant, with intent to cause serious physical injury,<sup>[n 1]</sup> caused death (Penal Law § 125.20[1]). The People's theory, as charged to the jury, was that defendant performed both acts of commission (striking Lisa) and acts of omission (failure to obtain medical care), each with intent to cause serious physical injury, and that such acts caused Lisa's death. Defendant contends that failure to obtain medical care for a child cannot, as a matter of law, support the mens rea element of first degree manslaughter-- intent to cause serious physical injury--unless defendant has medical expertise, and would thereby know that serious injury will result from a lack of medical attention. That contention-- which he characterizes as the core question on this appeal--is meritless.

The Penal Law provides that criminal liability may be based on an omission (see, Penal Law § 15.05), which is defined as the failure to perform a legally-imposed duty (Penal Law § 15.00[3]).

Parents have a nondelegable affirmative duty to provide their children with adequate medical care (*Matter of Hofbauer*, 47 NY2d 648, 654-655; Family Ct Act § 1012[f][i][A]). Thus, a parent's failure to fulfill that duty can form the basis of a homicide charge (see, *People v Flayhart*, 72 NY2d 737; *People v Henson*, 33 NY2d 63).

Although *Flayhart* and *Henson* involved prosecutions for reckless manslaughter and criminally negligent homicide, the failure to obtain medical care can also support a first degree manslaughter charge, so long as there is sufficient proof of the requisite mens rea--intent to cause serious physical injury.

The revised Penal Law, in accord with the modern trend (see, 1 LaFare and Scott, Substantive Criminal Law § 3.5[b], at 305 [1986]), distinguishes between "intent" and "knowledge" (see, Penal Law §§ 15.05 [1], [2]; *People v Kaplan*, 76 NY2d 140). A person acts intentionally when there is a "conscious objective" to cause the result proscribed by statute (Penal Law § 15.05[1]; *People v Gallagher*, 69 NY2d 525, 529). By contrast, a person acts knowingly when there is an awareness that a particular element of a crime is satisfied (see, Penal Law § 15.05[2]; *People v Kaplan*, 76 NY2d at 144 n.3, supra). Thus, if intent is the governing mens rea (as it is here), the focus is on the defendant's conscious aim or purpose--the objective--in doing particular acts. Defendant's knowledge or awareness that the result will occur--while a factor the jury make take into consideration to infer intent--is itself not a prerequisite of intent.

Contrary to defendant's claim, even a person without specialized medical knowledge can have the intent to cause serious physical injury by withholding medical care. If the objective is to cause serious physical injury, the mental culpability element of first degree manslaughter is satisfied-- whether or not defendant had knowledge that the omission would in fact cause serious injury or death.

Defendant argues that "everyone" knows that failure to supply food to a child will lead to death, and thus intentional homicide is a proper charge under those circumstances (see, e.g., *Zessman v State*, 94 Nev 28, 573 P2d 1174; *Harrington v State*, 547 SW2d 616 [Tex Crim App]), but that the need for medical care is often a matter of opinion, and a layperson could not be expected to know the gravity of the situation. The distinction defendant would have us draw, as a matter of law, between defendants who have a medical background and those who do not, is unsupportable.

Putting aside defendant's attempt to import a knowledge requirement into a statute that has none, and putting aside that the mens rea for first degree manslaughter is intent to cause serious physical injury, not death--it is plain that defendant's argument centers on factual, not legal, distinctions. Certainly there are situations where the need for prompt medical attention would be obvious to anyone--a child bleeding profusely, for example, or a six-year-old girl laying unconscious after a blunt head trauma. Thus, defendant's argument that the failure to obtain medical care for a child may not, as a matter of law, support a homicide charge that requires intent must be rejected.

Accordingly, the order of the Appellate Division should be affirmed.