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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0639**

State of Minnesota,
Respondent,

vs.

Andre Lorenzo Watts,
Appellant.

**Filed March 13, 2017
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-15-21777

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Cheri A. Townsend, Assistant County Attorney (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Andre Lorenzo Watts appeals his conviction of criminal vehicular operation. Watts argues that (1) the district court plainly erred by allowing the state to

constructively amend the complaint during the court trial and (2) the evidence was insufficient to establish that his driving was the proximate cause of the collision. Because we conclude that the complaint was not constructively amended and that the evidence supports the finding that appellant caused the collision, we affirm.

FACTS

At approximately 5:00 p.m. on August 5, 2015, Watts was driving a rented U-Haul van on a residential street in Minneapolis. There were cars parked, and people standing, on both sides of the street. Four-year-old K.J. was near the street with family members in front of her grandmother's home. K.J.'s father T.E., K.J.'s aunt T.D.E., and S.L.F. were among those gathered in the general area. When Watts turned onto the residential street, he noticed multiple people, including K.J., standing on the side of the street. While driving up the street, Watts struck K.J. after she entered the street from between two parked cars. Watts knew that he had hit K.J. and that he had likely caused her some type of injury.

After hitting K.J., Watts slowed but then accelerated away from the scene after forming a subjective belief that people in the area were going to physically harm him. Watts testified that he fled after hearing someone threaten his safety and seeing people rush into the street and point towards the U-Haul. T.E. pursued Watts in a minivan, but he lost sight of the U-Haul after approximately five minutes and returned to the scene of the collision. As a result of the collision, K.J. suffered several fractures, received stitches, required the use of a wheelchair for several months, and underwent physical therapy.

After leaving the scene, Watts did not immediately attempt to communicate with police. Rather, Watts parked the U-Haul and contacted his brother to tell him what had

happened. Watts then met his brother, and they drove past the scene in a different car to see what they could learn about the outcome of the collision. Next, Watts went to his brother's house where, between 50 minutes and one hour after the collision, Watts called 911 to report his involvement.

Watts was charged with criminal vehicular operation (great bodily harm) in violation of Minn. Stat. § 609.2113, subd. 1(7) (2014). The complaint stated:

Charge: Criminal Vehicular Operation - Great Bodily Harm -
Driver Who Causes Collision Leaves Scene

Minnesota Statute: 609.2113.1(7), with reference to:
609.2113.1

Maximum Sentence: 5 YEARS AND/OR \$10,000

Offense Level: Felony

Offense Date (on or about): 08/05/2015

...

Charge Description: That on or about 8/5/2015, in Hennepin County, Minnesota, ANDRE LORENZO WATTS did, by operating a motor vehicle, cause a collision that caused great bodily harm to Victim and ANDRE LORENZO WATTS left the scene of that collision.

Watts waived his right to a jury trial. During the court trial, T.D.E.—the only witness to see the collision—testified that Watts was driving between 30 and 35 miles per hour when he hit K.J. In addition, S.L.F. told police that he was standing 10 to 15 feet away when he heard “the thump from the van hitting [K.J.]” and turned to see “[K.J. come] out of the tail end of the van.” S.L.F. estimated that Watts was driving between 20 and 25 miles per hour at the time. Watts testified that he had slowed down and was traveling below 10 miles per hour at the time of the collision.

After the state had presented the testimony of four witnesses, there was a discussion on the record regarding the state's case and the two alternative ways in which a person commits criminal vehicular operation under Minn. Stat. § 609.2113, subd. 1(7). The state observed that this statute references leaving the scene of the accident in violation of either subdivision 1 or subdivision 6 of Minn. Stat. § 169.09 (2014), and asserted that it "is alleging that both of those provisions have been violated." Watts's attorney stated that he did not have any objection to proceeding under the complaint as initially charged or to amending the complaint to expressly reference section 169.09, subdivisions 1 and 6. The district court concluded this discussion by stating:

As long as the charging statute was correct in the complaint, which I understand that it was, and, Defense Counsel doesn't have any objection, I won't require an amendment to the complaint. Everybody I think has notice of, of what the charges are; and it doesn't sound like . . . there's anything that we need to do in addition.

The district court found Watts not guilty of criminal vehicular operation (great bodily harm) in violation of Minn. Stat. § 609.2113, subd. 1(7), but found him guilty of the lesser-included crime of criminal vehicular operation (substantial bodily harm) in violation of Minn. Stat. § 609.2113, subd. 2(7) (2014). In finding that each of the requisite elements of the lesser-included offense had been proved beyond a reasonable doubt, the district court found that Watts failed to immediately stop at the scene of the collision in violation of section 169.09, subdivision 1, and that he also failed to give notice of the collision to police by the quickest means of communication in violation of section 169.09, subdivision 6.

Watts appeals.

DECISION

I. The state did not constructively amend the complaint during trial.

Watts argues that the district court committed plain error and deprived him fair notice of the charges against him by allowing the state to constructively amend the complaint during trial to allege that he committed criminal vehicular operation by failing to call police after the collision by the quickest means available in violation of Minn. Stat. § 169.09, subd. 6. Watts maintains that the complaint's initial allegation was limited to him failing to stop in violation of section 169.09, subdivision 1. Because Watts did not object to the district court considering violations of both subdivision 1 and subdivision 6 of section 169.09, we apply a plain error standard of review in determining whether Watts is entitled to relief. *State v. Ramey*, 721 N.W.2d 294, 297 (Minn. 2006) (citing Minn. R. Crim. P. 31.02). “Under the plain-error doctrine, the appellant must show that there was (1) an error; (2) that is plain; and (3) the error must affect substantial rights.” *State v. Kelley*, 855 N.W.2d 269, 273-74 (Minn. 2014).

The complaint alleged that Watts committed criminal vehicular operation by leaving the scene of the collision in violation of Minn. Stat. § 609.2113, subd. 1(7). That statute establishes that criminal vehicular operation occurs “where the driver who causes the accident leaves the scene of the accident in violation of section 169.09, subdivision 1 or 6.” Minn. Stat. § 609.2113, subd. 1(7). The complaint's citation to section 609.2113, subdivision 1(7), plainly indicated that Watts was charged with criminal vehicular operation by leaving the scene of the accident, which, by the terms of that statute, could be established through a violation of either subdivision 1 or subdivision 6 of section 169.09.

The respective portions of section 169.09 state:

Subdivision 1. Driver to stop for collision; injury or death.

The driver of any motor vehicle involved in a collision shall immediately stop the vehicle at the scene of the collision, or as close to the scene as possible, and reasonably investigate what was struck. If the driver knows or has reason to know the collision resulted in injury to or death of another, the driver in every event shall remain at the scene of the collision until the driver has fulfilled the requirements of this section as to the giving of information. The stop must be made without unnecessarily obstructing traffic.

....

Subdivision 6. Notice of personal injury. The driver of a vehicle involved in a collision resulting in bodily injury to or death of another shall, after compliance with this section and by the quickest means of communication, give notice of the collision to the local police department if the collision occurs within a municipality, to a State Patrol officer if the collision occurs on a trunk highway, or to the office of the sheriff of the county.

Minn. Stat. § 169.09, subds. 1, 6.

Although the complaint did not quote language from section 609.2113, subdivision 1(7), or expressly reference or quote language from section 169.09, subdivisions 1 or 6, the accompanying statement of probable cause included specific allegations indicating that Watts's actions—his failure to stop after the collision and his failure to notify police by the quickest means—were both within the scope of the charged offense. Notably, regarding Watts's failure to notify police by the quickest means, the statement of probable cause alleged that approximately one hour elapsed between Watts leaving the scene of the collision and his call to police, and that “[Watts] was not able to answer why he took so

much time to drive around, why he did not just call police or why he did not just drive to the police station to report the incident.”

The complaint alleged that Watts violated section 609.2113, subdivision 1(7), which plainly indicates that criminal vehicular operation by leaving the scene involves a violation of either subdivision 1 or subdivision 6 of section 169.09. And the statement of probable cause included allegations regarding Watts’s violation of both subdivision 1 and subdivision 6 of Minn. Stat. § 169.09. We therefore conclude that the state gave proper notice of the changes and did not amend the complaint—constructively or otherwise—to include an additional charge based on a violation of section 169.09, subd. 6. Accordingly, the district court did not err by considering the two ways that Watts could have committed criminal vehicular operation.

II. The evidence was sufficient to support the district court’s determination that Watts committed criminal vehicular operation.

Watts argues that the evidence is insufficient to sustain his conviction of criminal vehicular homicide (substantial bodily harm) because he was driving prudently and K.J.’s conduct of entering the street constituted an independent, superseding cause. Therefore, according to Watts, his driving conduct was not the proximate cause of the collision.

This court analyzes insufficient-evidence arguments by determining “whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the [fact-finder] to reach its verdict.” *Staunton v. State*, 784 N.W.2d 289, 297 (Minn. 2010) (quotation omitted). A guilty verdict will remain undisturbed if the fact-finder, “acting with due regard for the presumption of innocence

and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that [the] defendant was proven guilty of the offense charged.” *Id.* (quotation omitted). “The district court’s factual findings will not be disturbed unless they are clearly erroneous.” *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). This court assumes that the district court believed the state’s witnesses and disbelieved contrary evidence. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998).

A driver is guilty of criminal vehicular operation (substantial bodily harm) “where the driver who causes the accident leaves the scene of the accident in violation of section 169.09, subdivision 1 or 6.” Minn. Stat. § 609.2113, subd. 1(7). Watts’s insufficient-evidence argument focuses on section 609.2113, subdivision 1(7)’s causation requirement. While the statute does not define “cause,” Minnesota law requires the state to prove that Watts’s driving was the proximate cause of the collision. *See State v. Jaworsky*, 505 N.W.2d 638, 643 (Minn. App. 1993) (stating that in a criminal vehicle homicide case, the defendant’s act must have been the proximate cause of the injury), *review denied* (Minn. Sept. 30, 1993). A proximate cause is “something that played a substantial part in bringing about the death or injury.” *State v. Nelson*, 806 N.W.2d 558, 562 (Minn. App. 2011) (quotation omitted) (explaining that Minnesota courts apply the civil substantial-factor definition of causation in criminal vehicular homicide and operation cases), *review denied* (Minn. Feb. 14, 2012).

Watts argues that he was not the proximate cause of the collision because he was driving prudently and below the speed limit. The district court expressly discredited Watts’s testimony that he had slowed down to below ten miles per hour as he approached

the site of the collision and found that he was driving a large vehicle too fast for the conditions presented on the residential street. This finding is consistent with Watts's own testimony in which he acknowledged seeing people—including K.J.—standing on the side of the street prior to the collision. Moreover, multiple witnesses estimated that Watts was traveling between 20 and 35 miles per hour prior to the collision. Accordingly, the district court's factual findings regarding Watts's driving are not clearly erroneous and are consistent with the determination that his driving conduct played a substantial part in bringing about K.J.'s injuries.

Watts further argues that he was not the proximate cause of the collision because K.J.'s conduct constituted an intervening, superseding cause. An intervening, superseding act relieves a defendant of criminal liability where it breaks the chain of causation set in operation by a defendant's negligence. *State v. Hofer*, 614 N.W.2d 734, 737 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000). Under Minnesota law,

[f]or an intervening cause to be considered a superseding cause, the intervening cause must satisfy four elements: (1) its harmful effects must have occurred after the original negligence; (2) it must not have been brought about by the original negligence; (3) it must have actively worked to bring about a result which would not otherwise have followed from the original negligence; and (4) it must not have been reasonably foreseeable by the original wrongdoer.

Id. (quotation omitted). Here, as previously noted, Watts's own testimony established that he observed K.J. and others standing near the street before the collision. Consistent with this testimony, the district court found that Watts "was aware there were people standing on the side of the street, including a young girl, who could foreseeably step into the driving

lane. Those conditions dictated that he proceed at a very slow speed, which he did not do.” Because the record supports the district court’s determination that K.J.’s action was reasonably foreseeable, Watts is unable to establish that such conduct breaks the chain of causation and relieves him of criminal liability. *See id.* at 738 (rejecting driver’s argument that victim’s act of crossing street in violation of traffic signal was a superseding cause in collision relieving driver of criminal liability for criminal vehicular homicide).

Accordingly, the evidence presented and reasonable inferences drawn therefrom, when viewed in a light most favorable to the court’s findings, are sufficient to support the district court’s determination. *See Staunton*, 784 N.W.2d at 297. We therefore affirm Watts’s conviction.

Affirmed.