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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0458**

State of Minnesota,
Respondent,

vs.

Justen Paul Linskie,
Appellant

**Filed March 26, 2018
Affirmed
Worke, Judge**

St. Louis County District Court
File No. 69DU-CR-15-3687

Lori Swanson, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Ross, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his conviction of criminal vehicular homicide—leaving the scene of a collision causing death, arguing that the state failed to prove that he caused the

victim's death, and the district court erred by not instructing the jury on the mens rea element of the offense. We affirm.

FACTS

On October 13, 2015, shortly after 6:00 p.m., K.J., S.O., and B.B. saw a vehicle in a pond. Appellant Justen Paul Linskie climbed out of the pond and stated as he fled, "You guys never saw me." Linskie appeared to be carrying "almost every personal belonging he had in the car." Seconds later, S.O. noticed a camera bag floating kitty-corner 10-15 feet from the passenger side of the vehicle. He immediately saw a body in the water near the camera bag; he pulled the body out of the water and began CPR. K.J. called 911 and reported an unconscious woman with a head injury. During CPR the woman started breathing and moaning. An ambulance transported the woman, S.M., to the hospital where she died.

Around 6:11 p.m., Linskie called his mother and stated that he "f-cked up" and had an accident in his girlfriend's mother's car. Linskie told his mother to pick him up. Linskie's mother picked him up, drove him to get dry clothes, and dropped him off at treatment where he was supposed to be. Linskie also called his girlfriend and told her to report her mother's car stolen.

Among items retrieved from the pond, officers found paperwork with Linskie's name on it indicating that he lived at a work-release program. Officers met with Linskie. Because his license is invalid, Linskie initially told officers that he had not been driving. Linskie eventually admitted that he drove the car and claimed that there was something wrong with it. Linskie stated that the sun was in his eyes, the car bounced after hitting "a

rock or something,” and then rolled. An officer told Linskie that he hit somebody. The conversation continued:

Officer: [W]hen you hit this person, this person was walking, they were up there just taking some photos of leaves, you hit them and they ended up in the [pond] with you. You didn't see them --

Linskie: No.

Officer: -- in the water by you or anything like that when you left?

Linskie: I would have never ran.

Officer: Well, you did.

Linskie: Well, no, if I would have known that somebody was hurt, I wouldn't have ran from it; you know what I mean?

Officer: Well, somebody was hurt and they were hurt really bad, okay? You didn't see this person floating in the water as you were crawling out of the car, grabbing stuff out of the car?

Linskie: No.

Officer: People standing there, okay. Because what ended up happening is you ended up hitting and killing somebody, okay? There was a pedestrian – a woman that was walking along the road there and you ran into her and killed her. . . .

Linskie: (Inaudible) (crying).

Linskie stated that he ran because he was not where he was supposed to be and did not want to get into trouble. Linskie was charged with criminal vehicular homicide, in violation of Minn. Stat. §§ 609.2112, subd. 1(7); 169.09, subd. 1 (2014).

During Linskie's jury trial, the medical examiner (M.E.) testified that he performed the autopsy on S.M. The M.E. testified that S.M.'s cause of death was “complications of cardiopulmonary arrest (resuscitated) due to multiple blunt-force injuries and cold water immersion.” The M.E. testified that the preliminary information he received indicated that

S.M. was found floating face down in the pond next to a vehicle and could have been a pedestrian hit by the vehicle. He was also aware that S.M. was resuscitated at the scene.

The M.E. testified that S.M. suffered multiple blunt-force injuries to her body,¹ including contusions of the left lung and heart, multiple rib fractures, collapsed lungs, bruised leg and knee, and dislocated right knee. He testified that “[i]t appeared to be kind of a broad impact to the right side of [her] body,” meaning multiple sites of impact over a larger area.

The M.E. testified that S.M. suffered multiple blunt-force injuries to her head, including lacerations on her forehead, bruising on the right side of her mouth, bleeding between the membrane attached to the skull and the membrane overlapping the brain, and bleeding inside the brain. The M.E. testified that the bleeding in the brain is a “significant blunt-force injur[y],” from “some sort of rotational motion or sudden acceleration or sudden deceleration to the head.” The M.E. testified that S.M. did not have any skull fractures and that her injuries indicated that her brain was rotating inside her head due to some rapid acceleration or deceleration.

The M.E. testified that he had performed between 15-20 autopsies when the deceased was hit by a car and stated that S.M.’s “injuries would be consistent with being hit by a car.” The M.E. explained that the right-side, broad-impact constellation of injuries— head, rib, and leg injuries—are seen when “a person is hit by a car.”

¹ S.M. also had typical injuries due to CPR.

On cross-examination, the M.E. testified that “the injury mechanism that caused the injuries to [S.M.] was a motor vehicle collision,” but that there were other possibilities because of S.M.’s nonspecific injuries. He testified that it was possible that S.M.’s injuries could have come from falling out of a tree. He testified that a fall off the roadway onto a concrete ledge “could cause some of [S.M.’s] injuries.” The M.E. testified that context is important with nonspecific injuries because it allows him to form an opinion as to “the most likely” cause of the injuries. Based on the rotational injuries to S.M.’s head; the multiple areas of right-side, blunt-force injuries; and the circumstances surrounding how S.M. was found, including the fact that S.M. was resuscitated at the scene, indicating that it was a short time between when she went into the pond and was pulled out and she was not in the pond well before the vehicle, the M.E. testified that, “most likely,” S.M. was a pedestrian struck by a vehicle.

A sergeant who worked on reconstructing the accident scene testified that one shoe was found on the concrete ledge just below where the car would have gone off the ledge and the other shoe was found farther down under the bridge, pushed by the current into a second pond. The sergeant testified that shoe evidence is important in pedestrian crashes because a pedestrian could be knocked out of her shoes when struck; he explained:

[I]f somebody is hit and flung, that force, that centrifugal force is going to fling those feet up, they are going to fling the shoes which are heavier, and how tight they are on . . . those shoes will often come off.

Sometimes using the shoes is actually a good place to identify a good point of impact, because it’s kind of like pulling the tablecloth out from the dishes, where if somebody is walking and they get hit, if their shoes are gripping on to the

roadway, they can get flung out and directly taken out of their shoes.

An investigator testified that there was no trace evidence on the vehicle, which was not surprising because the majority of the damage to the vehicle was underwater and fluids from the vehicle—oil and gasoline—would have contaminated DNA or blood evidence. Photos of the vehicle showed front-end damage, including “crush” damage to the hood and windshield, which occurs after the vehicle “hit something hard,” like a concrete pad or bridge. There was also a small spot in the center of the windshield that spider-webbed out. The investigator testified that it looked like “something hit it directly in the center to cause that damage as it expanded out from that impact point.” That “something” did not cause an impact hard enough to completely push the windshield in as crush damage would do. The investigator could not say what caused the spider webbing, but stated that as the “car was making its way to its final rest position, something would have hit the windshield.”

The jury found Linskie guilty of criminal vehicular homicide. The district court sentenced Linskie to 88 months in prison. This appeal followed.

D E C I S I O N

Sufficiency of the evidence

Linskie challenges the sufficiency of the evidence supporting his conviction. “Whe[n] there is a challenge to the sufficiency of the evidence, this court reviews the evidence in the light most favorable to the verdict to determine if the evidence was sufficient to permit the jury to reach the verdict it did.” *State v. Ford*, 539 N.W.2d 214, 225 (Minn. 1995). This court assumes that the jury believed the state’s witnesses and

disbelieved contrary evidence. *State v. Huss*, 506 N.W.2d 290, 292 (Minn. 1993). The state does not have the burden of removing all doubt, but of removing all reasonable doubt. *State v. Hughes*, 749 N.W.2d 307, 313 (Minn. 2008).

There was no direct evidence that Linskie hit S.M. While a conviction based on circumstantial evidence merits stricter scrutiny, “circumstantial evidence is entitled to the same weight as direct evidence.” *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial-evidence standard requires a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, this court must “identify the circumstances proved,” “defer[ring] to the jury’s acceptance of the proof of these circumstances” and rejecting evidence conflicting with the circumstances proved by the state. *Id.* at 598-99 (quotations omitted). Next, this court must “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* at 599 (quotations omitted).

A person is guilty of criminal vehicular homicide if the person “causes the death of a human being . . . as a result of operating a motor vehicle,” when the driver causes a collision and “leaves the scene of the collision in violation of section 169.09, subdivision 1.” Minn. Stat. § 609.2112, subd. 1(7). Linskie claims that the state failed to prove that he caused a collision with S.M. that caused her death.

First, we identify the circumstances proved. The circumstances proved by the state relevant to Linskie’s conduct include: (1) Linskie drove a vehicle that hit something and rolled into a pond; (2) Linskie crawled out of the pond and ran, telling witnesses that they never saw him; (3) Linskie told his mother that he “f-ucked up” and was in an accident;

(4) Linskie had his mother pick him up and get dry clothes; (5) Linskie told his girlfriend to report the vehicle stolen; (6) Linskie lied to police officers about driving the vehicle; and (7) Linskie admitted to driving the vehicle and “hit[ting] a rock or something.”

The circumstances proved relevant to S.M. include: (1) immediately after Linskie fled, witnesses found S.M. floating in the water 10-15 feet kitty-corner from the passenger side of the vehicle; (2) S.M. was unconscious with a head injury; (3) S.M. was resuscitated at the scene; (4) S.M. died at the hospital; (5) S.M.’s cause of death was “complications of cardiopulmonary arrest (resuscitated) due to multiple blunt-force injuries and cold water immersion”; (6) S.M. suffered multiple “nonspecific” blunt-force injuries, predominantly on the right side of her body; (7) S.M. suffered multiple blunt-force injuries to her head; (8) S.M. had bleeding in her brain, indicating that her brain was rotating due to rapid acceleration or deceleration; (9) S.M.’s injuries were “consistent with being hit by a car”; (10) “some” of S.M.’s injuries could have been caused by falling onto a concrete ledge; (11) S.M.’s injuries could possibly have come from falling out of a tree; and (12) in context, “the most likely injury mechanism” was a motor-vehicle collision.

The circumstances proved relevant to the accident scene include: (1) one shoe found on the concrete ledge just below where the car would have gone off the ledge and the other shoe found farther down under the bridge; (2) no trace evidence due to the vehicle being underwater or contaminated by vehicle fluids; (3) “crush” damage to the vehicle’s hood and windshield; (4) a small spot in the center of the windshield that spider webbed; and (5) something hit the windshield directly in the center as the car made its way into the pond, but did not cause an impact hard enough to completely push it in.

These circumstances proved regarding Linskie's conduct; Linskie's admission to involvement in a collision; the timing and location of the discovery of S.M.'s body; S.M.'s injuries and cause of death; the M.E.'s opinion that S.M. was a pedestrian struck by a vehicle; S.M.'s shoes; and the damage to the vehicle, particularly the windshield, are consistent with guilt—that Linskie collided with S.M. and caused her death.

Linskie argues that there are reasonable inferences other than guilt because the M.E. testified that S.M. could have sustained the injuries by falling on the concrete ledge. But the M.E. testified that “the injury mechanism . . . was a motor vehicle collision.” The M.E. explained that there were other possibilities because S.M.'s injuries were “nonspecific blunt-force injuries.” Because the injuries were “nonspecific,” context was important in forming an opinion as to how the injuries came about. Given the context, the M.E. did not concede that it was a rational hypothesis that S.M. fell off the roadway—he stated that “[j]ust looking at [her] injuries,” it was a “possibility.” He also testified that it was “possible” that S.M. was injured falling out of a tree. But he stated that “most likely,” S.M. was a pedestrian struck by a vehicle.

The jury heard the evidence. This court recognizes that the jury is in the best position to determine credibility and weigh the evidence. *State v. Moore*, 481 N.W.2d 355, 360 (Minn. 1992). And this court “will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.” *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). Because the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt, the evidence is sufficient to support Linskie's conviction.

Jury instruction

The district court denied Linskie’s requested jury instruction regarding a mens rea element of the charged offense. Jury instructions are entrusted to the district court’s discretion, and a district court’s refusal to give a requested instruction will not be reversed absent an abuse of discretion. *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996). The focus of this court’s analysis is on whether the refusal resulted in error. *State v. Kuhnau*, 622 N.W.2d 552, 555 (Minn. 2001).

The district court instructed the jury on the elements of criminal vehicular homicide, including: Linskie caused a collision, “failed to stop as close as possible to the scene to reasonably investigate what was struck in the collision,” and “failed to give notice of the accident by the quickest means of communication to law enforcement.” Linskie argues that this instruction failed to include a mens rea element—that he knew or had reason to know that the accident involved the death of a human being.

Under section 609.2112, subdivision 1(7), a person is guilty of criminal vehicular homicide if the person “causes the death of a human being . . . as a result of operating a motor vehicle,” when the driver causes a collision and “leaves the scene of the collision in violation of section 169.09, subdivision 1.” Under section 169.09, subdivision 1, a driver “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 . . . shall remain at the scene of the collision until the driver has fulfilled the requirements . . . as to the giving of information.” Minn. Stat. § 169.09, subd. 1.

Linskie concedes that because he was involved in a collision, he was obligated to investigate what was struck. Linskie argues, however, that the second part of the statute addressing injury or death requires a mens rea element. He argues that “[b]oth sentences are needed to criminalize a person who leaves the scene of a collision after causing injury or death.”

Under the first sentence, the mens rea element is knowledge of involvement in a collision and then a duty to stop and investigate. *See id.* (stating that a driver involved in a collision must immediately stop and reasonably investigate what was struck). Linskie knew that he was involved in a collision; thus, he was required to investigate what was struck. But Linskie failed to investigate what was struck; therefore, the second sentence of the statute was not triggered. Under the second sentence, the mens rea element is knowledge that the collision resulted in injury or death and then a duty to remain at the scene until requirements of giving information are fulfilled. *See id.* (“If the driver knows or has reason to know the collision resulted in injury to or death of another, the driver” must remain at the scene to fulfill giving-of-information requirements). The second sentence will not always be an element of the crime because the sentence starts with the word “if.” In its entirety, the subdivision states that a driver involved in a collision must immediately stop and reasonably investigate what was struck, and that *if* the driver knows or has reason to know that the collision resulted in injury to or death of another, he has an additional obligation to remain at the scene and provide information. *See id.*

It is a hierarchical scheme of what a driver must do when involved in a collision: immediately stop and reasonably investigate what was struck. If the investigation results

in the driver knowing or having reason to know that the collision resulted in injury to or death of another, the driver must remain at the scene to fulfill giving-of-information requirements. The district court appropriately instructed the jury and did not abuse its discretion by denying Linskie's requested jury instruction.

Affirmed.