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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1199**

State of Minnesota,
Respondent,

vs.

Matthew Keely Hartley,
Appellant.

**Filed April 23, 2018
Affirmed
Ross, Judge**

Scott County District Court
File No. 70-CR-16-17560

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Evan H. Weiner, Timothy D. Webb, Neve Webb, PLLC, Minneapolis, Minnesota (for
appellant)

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

UNPUBLISHED OPINION

ROSS, Judge

Matthew Hartley drove his motorcycle into a woman, killing her, and then he rode
away without investigating. Hartley appeals from his convictions of criminal vehicular

homicide, arguing that the evidence was insufficient, that his attorney's mistrial illness required a mistrial, and that erroneous evidentiary rulings require reversal. Because the evidence supports the convictions and Hartley's other arguments are unpersuasive, we affirm.

FACTS

Matthew Hartley and a friend left an Elko New Market bar at its 2:00 a.m. closing time on a September 2016 morning. They revved their motorcycles loudly and sped from the parking lot and onto a gravel road. It was rainy and the road was unlit.

Eastward down that gravel road Molly Mahowald stood talking with her friend, Brady Frahm, beside Mahowald's pickup truck, which was parked to the side. Witnesses walking on the road estimated that Hartley passed them moving in Mahowald's direction at about 50 or 60 miles per hour. The unposted speed limit was 30 miles per hour. Hartley was driving on the left side of the road, which is the same side where Mahowald's truck was parked.

Hartley's motorcycle swept near Frahm, almost hitting the truck, and it struck Mahowald. Frahm heard the thud and saw Mahowald hit the ground. He heard grinding as the motorcycle went into a slide. Frahm began performing CPR on Mahowald.

Mahowald's boyfriend, Aaron Deer, was standing on a driveway nearby. He did not see the collision with Mahowald, but he did see Hartley's motorcycle sliding on the ground. He ran to help Hartley off the ground. Hartley did not investigate, hopped on his motorcycle, and rode away in less than a minute after the collision. Deer then saw that

Mahowald was down, and he joined Frahm in attempting CPR. Mahowald's injuries were severe, and she died.

Hartley hid his motorcycle behind some bushes in a cornfield. He called for a friend to pick him up, and he returned to retrieve the motorcycle after sunrise. Hartley took the motorcycle to his home and hid it haphazardly beneath a canoe in his yard rather than park it in his garage. He hid the bike's saddlebags underneath a car. Police found the motorcycle and saddlebags, and investigators found Mahowald's hair lodged in the motorcycle's left-front fairing, near a crack in the fairing's fiberglass.

The state charged Hartley with criminal vehicular homicide based on gross negligence, vehicular homicide based on drunk driving, and vehicular homicide based on leaving the scene after a collision. Eyewitnesses testified to the facts just described. The state's accident reconstruction expert testified that the motorcycle's slide on its right side had to have been caused by its colliding with an object on its left side. He estimated that Hartley's motorcycle was moving up to 43 miles per hour after it collided with Mahowald and went into its slide. The prosecutor introduced a photograph of Mahowald wearing military fatigues and elicited testimony from Mahowald's younger sister about Mahowald's military service. The state also introduced a video recording of Hartley outside the bar and evidence of two of Hartley's 17 previous criminal convictions.

Hartley took the stand in his own defense. He said he saw Mahowald and braked and leaned to the right to avoid hitting her. He claimed not to have seen the collision and said that he had no memory from the moment he leaned away from Mahowald and the moment he was getting up from the ground. He maintained that he left the scene not

knowing that he had struck Mahowald. He testified that he hid his motorcycle in his yard because he feared being ticketed for driving without a license.

Near the end of Hartley's direct examination, his defense attorney, Robert Miller, became ill, telling the district court, "There's something wrong with me. I feel, like, super lightheaded." Miller finished the direct examination but was later taken by ambulance to a hospital where he was diagnosed as having an ulcer. The district court continued the trial and resumed after Miller had recovered following a 13-day delay. During the delay, the state located a witness who would testify that he saw Hartley drinking alcohol before the collision. Hartley had denied drinking. Hartley moved unsuccessfully for a mistrial.

The jury acquitted Hartley of criminal vehicular homicide based on drunk driving but found him guilty of the charge based both on gross negligence and leaving the scene.

Hartley appeals.

D E C I S I O N

Hartley argues that the evidence does not support his convictions. We review a challenge based on the alleged insufficiency of the evidence by examining the record to see whether a jury could reasonably conclude that the defendant was guilty, giving due regard for the burden of proof. *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010). We more strictly construe the evidence in a conviction that resulted from circumstantial evidence. *See State v. Anderson*, 784 N.W.2d 320, 329 (Minn. 2010). We first identify the circumstances proved by disregarding evidence inconsistent with the verdict. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). We then consider the reasonable inferences that can be drawn from those circumstances. *Id.* We will reverse if the circumstances

proved support a reasonable hypothesis inconsistent with guilt. *See State v. Johnson*, 173 Minn. 543, 545–46, 217 N.W. 683, 684 (1928). We apply this standard first to Hartley’s leaving-the-scene conviction and then his grossly-negligent-operation conviction.

To convict Hartley of criminal vehicular homicide for leaving the scene, the state had to meet all the elements in the statute:

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.

Minn. Stat. § 169.09, subd. 1 (2016). Hartley argues that there was insufficient evidence to convict him under this statute because the evidence did not show beyond a reasonable doubt that, before he left the scene, he knew that he had collided with a person or vehicle because he really believed that he had collided only with the ground. Hartley misconstrues the *mens rea* requirement.

What the state was required to prove regarding Hartley’s knowledge is a question of statutory interpretation, and we analyze the question *de novo*. *State v. Al-Naseer*, 734 N.W.2d 679, 683 (Minn. 2007). We apply the statute’s plain meaning if the language is clear and unambiguous. *Id.* at 684. Although the wording is not precise, the statute is arranged clearly enough to reveal its meaning, particularly when it is considered in the context of *Al-Naseer*, the case Hartley especially relies on.

In *Al-Naseer*, the supreme court interpreted an earlier version of the statute. That version required the state to prove that a defendant actually knew that he was involved in an accident causing immediately demonstrable harm to a person. *See id.* at 686–89. The statutory language the *Al-Naseer* court was interpreting differs materially from the language in the current statute. Under the older version,

The driver of any vehicle involved in an accident resulting in immediately demonstrable bodily injury to or death of any person shall immediately stop the vehicle at the scene of the accident, or as close to the scene as possible, but shall then return to and in every event, shall remain at, the scene of the accident until the driver has fulfilled the requirements of this chapter as to the giving of information. The stop shall be made without unnecessarily obstructing traffic.

Minn. Stat. § 169.09, subd. 1 (2006). When this court considered that statute in *Al-Naseer*’s appeal, we read into it a *mens rea* element requiring the state to prove that the driver knew that he was in a collision and that he also “knew or had reason to know that the accident resulted in bodily injury to or death of a person.” *State v. Al-Naseer*, 721 N.W.2d 623, 626 (Minn. App. 2006), *rev’d Al-Naseer*, 734 N.W.2d at 688–89. The supreme court disagreed and imposed a more difficult standard of proof, requiring the state to prove that the defendant who caused the collision actually knew that he was involved in a collision resulting in immediately demonstrable injury. *Al-Naseer*, 734 N.W.2d at 688–89.

Soon after the supreme court’s decision, the legislature amended the statute, settling on a *mens rea* requirement that essentially tracks this court’s interpretation of the earlier statute rather than the supreme court’s interpretation. The key language is now divided into two sentences. The first sentence states that a “driver of any motor vehicle involved in a

collision shall immediately stop the vehicle at the scene of the collision.” Minn. Stat. § 169.09, subd. 1. This language resembles the 2006 statute discussed in *Al-Naseer* in that it does not expressly identify any particular *mens rea* standard. So we apply *Al-Naseer*’s holding to that element, requiring the state to prove that the defendant actually knew he was involved in a collision. See *Al-Naseer*, 734 N.W.2d at 683–84. By contrast, the second sentence now expressly tracks this court’s construction of the previous statute, specifying a *mens rea* element that “[i]f 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.” Minn. Stat. § 169.09, subd. 1.

Given the language on its face, and especially considering the statute as developed through caselaw, we can readily discern its two *mens rea* requirements. As to the first requirement, the state had to prove that Hartley actually knew that he was involved in a collision with something. Whether the collision was actually with a person, a vehicle, a log, the ground—*anything*—the statute gives the driver the duty immediately to “reasonably investigate what was struck” after “a collision.” The state had a lesser burden as to the next *mens rea* requirement, having to prove only that Hartley failed to remain at the scene after he knew or had reason to know that the collision resulted in injury or death.

We now consider whether the circumstances proved support any reasonable hypothesis other than that Hartley knew he was involved in a collision, and then we consider whether they prove he had reason to know his collision resulted in injury or death.

The circumstances proved based on the evidence and the jury’s verdict were these:

1. Hartley was speeding on the left side of the gravel road.

2. His motorcycle illuminated the road ahead with a very bright LED headlight.
3. He saw Mahowald immediately before the collision.
4. He knew that a collision with Mahowald was imminent on his extant course.
5. His motorcycle collided with Mahowald.
6. The collision was so forceful it made an audible “thud.”
7. Hartley was still holding the handlebars when the motorcycle began to slide.
8. The collision was the cause of the motorcycle’s slide.
9. Hartley suffered no injury that prevented him from immediately remounting his motorcycle and leaving the collision scene within 60 seconds.
10. Hartley did not investigate whether he collided with the person whom he saw directly in front of his motorcycle immediately before the collision.
11. Mahowald’s hair was lodged in the left-front fairing of Hartley’s motorcycle.
12. The fiberglass on the left-front fairing was cracked.
13. Mahowald died as a result of blunt force trauma she sustained from the impact of Hartley’s motorcycle.
14. Hartley hid his motorcycle in a field before going home.
15. Hartley retrieved and re-hid his motorcycle in his yard.
16. Hartley lacked a driver’s license.

These circumstances support the finding that Hartley knew he had been involved in a collision and that he knew or had reason to know his collision resulted in injury or death. Hartley admits he knew he collided at least with the ground. This meets the first requirement. Even if the state had to prove more, the circumstances cannot reasonably support Hartley’s proffered hypothesis that he did not know he collided with Mahowald.

His hypothesis depends on a factual account that the jury rejected. The verdict informs us that the jury did not find, as Hartley had asserted, that his slide resulted from his braking and swerving to avoid hitting Mahowald, but from the collision. In other words, the jury concluded that Hartley was aware the instant before he struck Mahowald that a collision with a human being was imminent, and it implicitly found that the force of the collision was so substantial that it resulted in an audible thud, forced the motorcycle into a slide, and caused severe blunt-force, fatal injuries to Mahowald. The notion that Hartley did not know he was in a collision or that he had no reason to know that the collision caused an injury is unreasonable.

Hartley argues that his conduct after the crash is consistent with a reasonable hypothesis other than that he actually knew that he collided with Mahowald. The argument fails. The evidence establishes that, after the collision, Hartley wanted to leave the scene quickly and to conceal the fact that he was involved in the collision. This evidence is, as Hartley maintains, consistent with his claim that he was trying to avoid being held responsible for driving without a license. But it is also consistent with the state's assertion—and with the circumstances proved—that he was trying to avoid being held responsible for running over a woman. So while the post-collision circumstances considered in isolation might be ambiguous, they are not at all ambiguous considered in the totality of all the undisputed evidence and the proved circumstances. The evidence supports the guilty verdict for criminal vehicular homicide for leaving the scene without investigating.

Applying the same circumstantial-evidence test and the same circumstances proved to Hartley’s conviction of criminal vehicular homicide for grossly negligent driving, we affirm that conviction as well. Hartley maintains that the evidence was insufficient to prove that his driving conduct rose to the level of gross negligence. To convict him for this offense, the state had to prove that he caused the death of a human being as a result of operating a motor vehicle “in a grossly negligent manner.” Minn. Stat. § 609.2112, subd. 1(a)(1) (2016). Gross negligence “amounts to indifference to present legal duty, and to utter forgetfulness of legal obligations so far as other persons may be affected.” *State v. Al-Naseer*, 690 N.W.2d 744, 752 (Minn. 2005) (quotation omitted). But it does not require proof of “willful and wanton disregard, or reckless conduct.” *State v. Hegstrom*, 543 N.W.2d 698, 703 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996). “A sufficient degree of inattention to the road could constitute a lack of ‘slight care,’ that is gross negligence.” *Id.* We have said that a conviction requires “some egregious driving conduct coupled with other evidence of negligence.” *State v. Miller*, 471 N.W.2d 380, 384 (Minn. App. 1991). We are satisfied that the circumstances proved meet the standard and support the conviction.

In addition to the circumstances discussed above, the circumstances proved also include these:

1. Hartley was drinking at the bar and stayed there until closing time.
2. Shortly before leaving the bar, Hartley’s speech was “kind of slurred.”
3. He was speeding on a gravel road in the rain and in the dark.
4. Despite passing other pedestrians on the gravel road, he continued speeding.

5. Motorcycles handle poorly on gravel roads.
6. Hartley was driving on the wrong side of the road.
7. Hartley nearly struck Mahowald's parked truck.

The evidence sufficiently shows some egregious driving conduct coupled with other indicia of negligence. Operating a motorcycle in the dark, after consuming alcohol, at a high rate of speed, on a gravel road, in the rain, aware that people are on the road, on the wrong side of the road meets the gross-negligence standard. This conduct is more negligent than the conduct we considered in *State v. Pelawa*, where we held that gross negligence was established when the defendant crossed the center line into the lane of opposing traffic and collided with an oncoming car. 590 N.W.2d 142, 143 (Minn. App. 1999), *review denied* (Minn. Apr. 28, 1999), *rev'd on other grounds Al-Naseer*, 690 N.W.2d at 752 n.4 (overruling *Pelawa* only insofar as it required the death of the victim as an element of gross negligence). Our conclusion is also consistent with our holding in *State v. Kissner*, when gross negligence was premised in part on exceeding the speed limit in adverse weather conditions. 541 N.W.2d 317, 321 (Minn. App. 1995), *review denied* (Minn. Feb. 9, 1996).

Our decision does not depend on the testimony of eyewitnesses who estimated Hartley's speed at 50 or 60 miles per hour, which Hartley asks us to disregard for lack of foundation. Hartley never objected to this testimony, and the district court would have acted within its discretion by overruling the objection. All of the witnesses about whose testimony Hartley now complains rode motorcycles—and one did so professionally. Hartley cross-examined these witnesses on their speed estimates. Most important to us,

even without this evidence, the state's expert also testified to Hartley's excessive speed. The evidence and circumstances proved support the jury's finding that Hartley operated his motorcycle in a grossly negligent manner.

Hartley argues that we must reverse both of his criminal vehicular homicide convictions because there was insufficient evidence that his driving proximately caused Mahowald's death. The argument is unconvincing. A defendant can avoid being criminally liable for criminal vehicular homicide if there is a superseding, intervening cause of the victim's death occurring after the defendant's negligent act. *State v. Nelson*, 806 N.W.2d 558, 562–563 (Minn. App. 2011), *review denied* (Minn. Feb. 14, 2012). Hartley contends his un rebutted testimony that Mahowald walked in front of him constituted uncontroverted evidence that he did not proximately cause her death. But on appellate review, we assume that the fact-finder disbelieved any evidence that conflicted with the verdict. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). And the jury, which was instructed on proximate causation, was free to reject Hartley's testimony as not credible. *See State v. Colbert*, 716 N.W.2d 647, 653 (Minn. 2006). Based on its verdict, it obviously did.

Hartley next argues that the district court wrongly denied his motion for a mistrial after his attorney was hospitalized during the trial, causing a 13-day interruption. We review the denial of a motion for mistrial for an abuse of discretion. *Griffin*, 887 N.W.2d at 262. The district court is in the best position to discern whether trial anomalies are so prejudicial as to require a mistrial. *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006). Hartley offers no convincing reason to suppose that the delay influenced the outcome in any way, for or against the verdict. He speculates that jurors might have been exposed to

outside information about the case during the delay and that the delay might have impacted the jurors' memories about the details. But the district court told the jurors to avoid all outside information and also to "keep all of the evidence in mind," and we presume that jurors follow instructions. *See State v. James*, 520 N.W.2d 399, 405 (Minn. 1994). Hartley also argues that the delay gave the prosecution a strategic advantage in preparing to cross-examine him. But a mistrial followed by a later trial would have given the prosecutor even more time to strategize in anticipation of Hartley's likely testimony. In any case, he offers only possibilities and no evidence to support his argument. Hartley cites *Pilchak v. Camper*, 935 F.2d 145 (8th Cir. 1991), to advance his contention that he is entitled to a new trial. In that case, it was discovered that Pilchak's defense attorney had been suffering from Alzheimer's disease during Pilchak's trial, which the Eighth Circuit concluded was grounds to reverse Pilchak's conviction. *Pilchak*, 935 F.2d at 147–49. The practical and relevant differences between one lawyer's ulcer and another's mentally debilitating disease are self-evident. We see no reasonable likelihood that the trial would have come out differently had there been no delay.

Hartley also contends that evidentiary decisions require a new trial. He argues that the district court abused its discretion by admitting a photograph of Mahowald in military fatigues, admitting two of Hartley's prior criminal convictions, admitting an audio portion of a video depicting Hartley outside the bar shortly before the collision, and excluding "higher quality" photographs of the roadway tendered by Hartley. None of these arguments is compelling.

Hartley objected to the district court’s admission of a photograph of Mahowald in her military uniform as “spark-of-life” evidence. We review a district court’s decision to admit photographic evidence for an abuse of discretion. *State v. Morrow*, 834 N.W.2d 715, 726 (Minn. 2013). The state may present the victim as a living human being using so-called spark-of-life evidence, but it cannot do so in a manner that invokes undue sympathy or inflames the jury’s passions. *Id.* at 726–27. We are not persuaded by Hartley’s contention that the photograph of Mahowald in military attire was unfairly prejudicial. Minnesota courts have permitted a photograph of a murder victim wearing his police uniform, *State v. Evans*, 756 N.W.2d 854, 878–79 (Minn. 2008), testimony that the victim was honorably discharged from the military, *State v. Lee*, 322 N.W.2d 197, 199 (Minn. 1982), and testimony that the victim was a police officer’s son, *State v. Plan*, 316 N.W.2d 727, 727 (Minn. 1982). The prosecutor did not dwell on Mahowald’s military service and the district court cautioned the jury that Hartley was entitled to a fair trial despite this service. The district court did not abuse its discretion by admitting the evidence.

Hartley next argues that the district court abused its discretion by admitting his prior convictions of burglary and terroristic threats, two of his 17 prior criminal convictions. We “must sustain” a district court’s admission of a defendant’s prior convictions “unless a clear abuse of discretion is shown.” *State v. Brouillette*, 286 N.W.2d 702, 707 (Minn. 1979). Instructing the jury to consider a defendant’s prior convictions only as they relate to his credibility “adequately protects [a] defendant against the possibility that the jury would convict him on the basis of his character rather than his guilt.” *Id.* at 708. Hartley does not

establish any abuse of discretion in admitting the two convictions, and the district court properly instructed the jury.

And Hartley maintains that the district court abused its discretion by admitting video footage recorded outside the bar at closing time because it included an alleged hearsay statement. A bystander can be heard saying, “[D]on’t f-cking die.” Hearsay is generally inadmissible. Minn. R. Evid. 802 (2017). But the statement is not hearsay. Hearsay is a statement offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c) (2017). Hartley does not say what factual assertion he believes is included by the challenged statement. He argues instead that jurors might have inferred that the statement meant that Hartley was intoxicated or reckless. We conclude that the statement asserts no fact that can be considered either true or false. It is not hearsay.

We also reject Hartley’s next contention, which is that the district court violated his right to present a complete defense by excluding certain photographs of the roadway. Refusing to admit these photographs did not constitute an abuse of discretion. Hartley did not move to introduce the photographs until after all the witnesses had testified. The district court excluded the photographs both because no witness testimony explained their relevance and they were nearly identical to photographs already received into evidence. Hartley has never explained why the excluded photographs would have aided his defense, and no explanation is apparent to us. We see no abuse of discretion.

Affirmed.