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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0125**

State of Minnesota,
Respondent,

vs.

Jesse Lee Bonacci-Koski,
Appellant.

**Filed February 10, 2020
Affirmed in part, reversed in part, and remanded
Connolly, Judge**

St. Louis County District Court
File No. 69VI-CR-17-910

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General,
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Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

In this direct appeal from his judgment of conviction, appellant challenges the sufficiency of the evidence on several elements of two convictions for second-degree manslaughter while committing child neglect and child endangerment. Appellant also argues that the district court erred when it (1) denied his request for a jury instruction on intervening, superseding cause; (2) denied his challenge to strike a juror for cause; and (3) formally convicted him on both charges of second-degree manslaughter. Because sufficient evidence supports appellant's convictions, and because the district court did not abuse its discretion in instructing the jury or in denying appellant's challenge for cause, we affirm in part. But because the district court improperly entered a formal conviction on both second-degree manslaughter offenses, we reverse in part and remand for resentencing.

FACTS

On August 1, 2017, appellant Jesse Bonacci-Koski agreed to watch his 11-month-old nephew, B.K., while B.K.'s parents went on an overnight trip. Early the next morning, a fire started in the home.¹ Responding firefighters found B.K.'s body in his crib in an upstairs bedroom. Appellant and the family's dog were not inside the home. In later statements, appellant admitted that, while returning to the home, he heard sirens, saw the fire, and decided to flee without informing anyone that B.K. was inside. Law enforcement

¹ Investigators never determined the fire's cause.

later encountered appellant walking out of a highway ditch after he had stolen and crashed a motor vehicle. They observed that appellant was high on a controlled substance.

Following an investigation, respondent State of Minnesota charged appellant with these offenses: one count of second-degree manslaughter based on the commission of child neglect or endangerment in violation of Minn. Stat. § 609.205(5) (2016); one count of second-degree manslaughter based on culpable negligence in violation of Minn. Stat. § 609.205(1) (2016); one count of motor vehicle theft in violation of Minn. Stat. § 609.52, subd. 2(a)(1) (2016); and one count of fifth-degree controlled substance possession in violation of Minn. Stat. § 152.025, subd. 2 (2016). Before jury selection, the district court granted the state's motion to amend the complaint over appellant's objection. As a result, the state dismissed the second-degree manslaughter offense for culpable negligence and added a charge of second-degree manslaughter based on child endangerment.

During voir dire, appellant's trial counsel asked jurors whether they would find it difficult to set aside their sympathies because the case involved a young child's death. In response, Juror K.K. stated, "I have doubts in my mind because I think that I would definitely have some emotion and feelings and I don't know that I would be good at setting it aside." Appellant's counsel and Juror K.K. then had this exchange:

APPELLANT'S COUNSEL: Okay. So are you concerned that your emotions might affect your ability to follow the law?

JUROR K.K.: I'm concerned that my emotions might not make me objective to all of the facts and evidence that you guys have. I just really don't.

APPELLANT'S COUNSEL: So it would be hard for you to keep an open mind?

JUROR K.K.: It would.

APPELLANT'S COUNSEL: Do you think if the judge instructed you that you had to set your sympathies aside, do you think that you would do it or do you think it would be too hard?

JUROR K.K.: I have pretty strong feelings and [am] a really emotional person and so I don't know that I would be able to set them aside. If the judge told me I had to, well, he's telling me I have to, I'd have to figure it out, how to, somehow. But it would take a lot inside of me to think and figure out how am I going to, you know, think outside of the box.

APPELLANT'S COUNSEL: If the judge tells you that you have to, and I know that you would try - -

JUROR K.K.: Mm-hmm. Yes.

APPELLANT'S COUNSEL: I mean, that's what you are telling me - -

JUROR K.K.: Yes.

APPELLANT'S COUNSEL: - - is that you would try.

JUROR K.K.: I would.

APPELLANT'S COUNSEL: But do you think you could?

JUROR K.K.: Do I ultimately think I could? Probably not.

Appellant's counsel moved to excuse Juror K.K. for cause.

The prosecutor and Juror K.K. then had this exchange:

PROSECUTOR: [Juror K.K.], you just said to [appellant's counsel's] questions that if the judge told you [that] you had to, you would find a way to do that.

JUROR K.K.: Because he told me I had to and that's what I'm supposed to do.

PROSECUTOR: Right. So you can follow the Court's instructions?

JUROR K.K.: Well, I would have to figure out how to. It might take time. It might - - I know it would be difficult for me to.

PROSECUTOR: Sure. Understandably this is - - you know, there's some tough facts, tough case, lots of emotions on all parts. Certainly I don't think anyone underestimates that. But when given the instruction that you are to listen and evaluate the evidence and the testimony, and the Court says, "This is what you are to do," can you follow that instruction?

JUROR K.K.: I would do my best that I could.

PROSECUTOR: Okay. Do you think you can - - if the Court says, “[Juror K.K.], you have to fairly and impartially examine this evidence,” is that fair to ask of you? Can you do it?

JUROR K.K.: (No response.)

PROSECUTOR: There’s no right or wrong answer.

JUROR K.K.: It will be very difficult.

PROSECUTOR: Okay. But I’m not hearing from you that it’s impossible.

JUROR K.K.: Well, nothing’s impossible.

PROSECUTOR: Sure. You would give it your good college try so to speak, right?

JUROR K.K.: If I had went to college, sure.

PROSECUTOR: Sure. Good high school try. You’d give it a good shot. You would do everything in your power to comply with the Court’s instruction?

JUROR K.K.: Well, yes, because I don’t want to - - that’s what I am supposed to do.

PROSECUTOR: Sure.

JUROR K.K.: So I don’t want to - - you know.

PROSECUTOR: Sure. And I can tell you are taking this role as a juror very seriously, because it is a serious, serious position, right? And it’s a heavy burden that you are asked to carry to sit and listen to all of this, right?

JUROR K.K.: Correct.

PROSECUTOR: Tough spot to be in. You’ve never done it before?

JUROR K.K.: Nope.

PROSECUTOR: So certainly, [Juror K.K.], you can’t predict, once things get rolling, how things are going to go for you?

JUROR K.K.: Correct.

PROSECUTOR: *But you are going to listen and respect the Court’s instruction?*

JUROR K.K.: *Yes, I would.*

(Emphasis added.) The prosecutor objected to the challenge for cause. The district court denied appellant’s challenge.

The parties stipulated that the fire originated in the home’s kitchen and that no evidence suggested that appellant started the fire. At trial, K.S., the child’s mother, testified for the state. K.S. stated that appellant agreed to watch B.K. overnight. When describing

B.K.'s physical capabilities, K.S. explained that, before his death, B.K. could not walk or crawl without adult assistance. K.S. testified that she had no reason to believe that appellant could not care for B.K. overnight. After receiving a call from her mother about their house being on fire, K.S. and her fiancé returned home. Upon arrival, they learned from first responders that B.K. had died.

A neighbor's testimony put the timeline for the fire between 6:40 a.m. and 7:40 a.m. This neighbor reported the fire to 911 dispatch around 7:40 a.m. In this call, the neighbor described seeing smoke coming from an upstairs window. Firefighters responded eight to ten minutes after the neighbor's call. While checking the home for occupants, responding firefighters discovered B.K. in his crib in an upstairs bedroom, but observed that he was not breathing or moving.

Testimony from the assistant medical examiner who performed B.K.'s autopsy revealed that B.K. had soot covering his legs, face, arms, eyes, torso, upper and lower airways, esophagus, and stomach. B.K. also had soot covering the clothing he had been wearing. Based on these observations, the assistant medical examiner opined that B.K. was alive at the time of the fire. The assistant medical examiner ruled that "inhalation of products of combustion" caused B.K.'s death, noting that he had an abnormally high 22% carbon monoxide level in his blood.

Multiple law enforcement officials involved in the investigation also testified at appellant's trial. An investigator testified first about a jail call appellant made to his girlfriend. In this call, appellant admitted to leaving B.K. home alone while he walked to K.S.'s workplace to access Wi-Fi and send her a message asking when she and her fiancé

would return home. Appellant denied that he left the home to obtain drugs. But he admitted to walking back to the home, hearing sirens, seeing the house on fire, and running away, even though he “should have went back up there.”²

The deputy who transported appellant after his arrest to the police station testified next that appellant made an unprovoked statement about fleeing the area after seeing fire trucks at the home. Finally, a police sergeant testified that appellant admitted he was “high,” had been awake for six straight days, was “guilty of neglecting [B.K.],” and had left B.K. alone for two hours while he got high. This sergeant also relayed that appellant appeared under the influence of a controlled substance when the two spoke several hours after the fire.³

Appellant did not testify or call any witnesses. The jury found him guilty on all counts. After the verdict, appellant filed motions for judgment of acquittal and a new trial, which the district court denied at sentencing. This appeal follows.

² In this jail call, appellant stated:

I sent a message to [K.S.] and said, “When are you guys coming home?” And then there were f---ing sirens all over the f---ing place, and I walked halfway back up the trail and seen the f---ing house was on fire, and I turned around and took off because I knew that it was f---ed. I should have went back up there.

³ The sergeant testified that during their conversation, appellant had trouble standing still, was completely fidgety, talked very fast, and was “bug eyed.”

DECISION

I. Sufficiency Of The Evidence For Child Neglect And Endangerment Offenses

Appellant first argues that the state failed to prove each element of the crimes of child neglect and child endangerment—the offenses underlying his second-degree manslaughter convictions—beyond a reasonable doubt. Appellant specifically claims that the trial evidence does not show that he deprived B.K. of age appropriate supervision or that he placed B.K. in a situation likely to create substantial harm. To resolve this issue, we must first look to the child neglect or endangerment statute and then consider whether sufficient evidence supports the jury’s verdict. *See State v. Robinson*, 921 N.W.2d 755, 758 (Minn. 2019) (interpreting Domestic Abuse Act before determining whether sufficient evidence supported felony domestic assault conviction).

A. Interpretation of Minn. Stat. § 609.378 (2016)

The parties dispute the state’s burden of proof in sustaining a child-neglect conviction. Appellant contends that the state must prove that his conduct produced a situation “likely to substantially harm” B.K. The state counters that it need not prove this element when it presents evidence showing that a caretaker’s deprivation harms the child. A challenge to the sufficiency of the evidence based on the meaning of a statute presents a statutory interpretation question that we review de novo. *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018).

Minnesota Statutes section 609.378 defines the crimes of child neglect and child endangerment. For the crime of child neglect, the statute states:

A . . . caretaker who willfully deprives a child of necessary . . . supervision appropriate to the child’s age, when the . . . caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child’s physical, mental, or emotional health is guilty of neglect of a child

Minn. Stat. § 609.378, subd. 1(a)(1). Neither party argues that the child-neglect statute is ambiguous. As a result, we rely on the plain meaning of the statute’s language. *See State v. Overweg*, 922 N.W.2d 179, 183 (Minn. 2019) (explaining that courts apply an unambiguous statute’s plain meaning).

The plain meaning of the statute’s language presents two scenarios where criminal liability can attach. First, caretakers commit child neglect if (1) they willfully deprive the child of age-appropriate supervision; (2) they were reasonably able to provide this supervision; and (3) this deprivation harms the child’s physical, mental, or emotional health. *See* Minn. Stat. § 609.378, subd. 1(a)(1).⁴ Second, caretakers commit child neglect if (1) they willfully deprive the child of age-appropriate supervision; (2) they were reasonably able to provide this supervision; and (3) this deprivation is likely to substantially harm the child’s physical, mental, or emotional health. *See id.*

Here, the state proved B.K.’s death, which shows that B.K. suffered “harm” under the child-neglect statute. Thus, the statute’s plain language did not require proof that appellant’s conduct was more likely than not to substantially harm B.K. If the state had

⁴ A “caretaker” is someone “who has responsibility for the care of a child as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a child.” Minn. Stat. § 609.376, subd. 3 (2016). Appellant does not dispute that he was B.K.’s caretaker.

not proved that B.K. suffered harm, then it would need to prove this element. The statute's use of the word "or" in defining the crime of child neglect supports our conclusion. Absent ambiguity, the legislature's use of the word "or" means that a statute should be read in the disjunctive, and the statute is satisfied if one potential factual scenario exists. *State v. Struzyk*, 869 N.W.2d 280, 287 (Minn. 2015). Only the harm element applies here because the state proved B.K.'s death.

The jury also found appellant guilty of second-degree manslaughter based on the commission of child endangerment. A caretaker commits child endangerment by "intentionally or recklessly causing or permitting a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health or cause the child's death." Minn. Stat. § 609.378, subd. 1(b)(1). This language differs from the child-neglect provision. *Compare id.*, subd. 1(a)(1), *with id.*, subd. 1(b)(1). To sustain a conviction for child endangerment, the prosecution must show that the caretaker's intentional or reckless conduct placed the child in a situation likely to harm the child's health.

B. Sufficiency of the evidence

Having interpreted the child neglect and endangerment statute, our second task requires us to consider the evidence presented at trial. The appropriate standard of review on a challenge to the sufficiency of the evidence turns on whether the jury reached its legal conclusions based on direct or circumstantial evidence. *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018). The state supplied direct evidence⁵ on each element of the child-neglect

⁵ Direct evidence is evidence that is based on firsthand knowledge or observation and does not require the factfinder to make an inferential step. *Bernhardt v. State*, 684 N.W.2d 465,

and child-endangerment charges. As a result, our traditional sufficiency standard of review governs this appeal.

Under this standard of review, when an appellant challenges the sufficiency of the evidence, a reviewing court thoroughly examines the record to resolve whether sufficient evidence supports a conviction. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). In doing so, we assume that the jury believed the state’s witnesses and rejected any contrary evidence. *State v. Heiges*, 806 N.W.2d 1, 17 (Minn. 2011). An appellate court will not disturb a verdict “if the jury, 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 a defendant was proven guilty of the offense charged.” *State v. Back*, 775 N.W.2d 866, 869 (Minn. 2009) (quotation omitted).

With these principles in mind, we review the evidence underlying appellant’s convictions for child neglect and child endangerment.

1. Child Neglect

Appellant first argues that insufficient evidence underlies his child-neglect conviction because he did not deprive B.K. of age-appropriate supervision. “The child-neglect statute criminalizes negligence.” *State v. Cyrette*, 636 N.W.2d 343, 348 (Minn. App. 2001), *review denied* (Minn. Feb. 19, 2002). This court has interpreted the term “willfully” within Minn. Stat. § 609.378 as meaning “intentionally.” *Id.* The term “likely”

477 n.11 (Minn. 2004). A witness’s testimony based on personal knowledge is direct evidence when it permits the factfinder to find a defendant guilty without drawing any inferences. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016).

in the statute means “more likely than not.” *State v. Tice*, 686 N.W.2d 351, 355 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004).

Appellant challenges the evidence presented on the age-appropriate supervision element of his child-neglect offense. Sufficient evidence supports the jury’s finding that appellant committed child neglect. For instance, the jury heard testimony that appellant agreed to care for B.K., but then willfully left him alone for two hours to use a controlled substance. In appellant’s absence, a fire started, leading to B.K.’s death by smoke inhalation. A reasonable jury certainly could have found beyond a reasonable doubt that appellant’s conduct does not represent age-appropriate supervision.

Appellant contends that leaving a sleeping 11-month-old baby alone for two hours does not deprive the child of age-appropriate supervision. Unfortunately, appellant did not simply leave B.K. home alone for two hours. Instead, he left to get high on drugs, impairing his ability to care for B.K. and for himself. When a caretaker leaves a helpless child alone for two hours and uses impairing chemicals, a jury certainly could find that the caretaker has committed child neglect when the child suffers harm during the caretaker’s absence.

Appellant urges a different result based on *Tice*. The caretakers in *Tice* left three children alone in a locked, running vehicle on a cold day for about 40 minutes. *Id.* at 352. But the children there suffered no harm. *Id.* In contrast, B.K. suffered harm during appellant’s deprivation of age-appropriate supervision. And appellant left B.K. alone for at least two hours to get high. Thus, *Tice* does not control, and sufficient evidence supports the jury’s finding that appellant deprived B.K. of age-appropriate supervision.

2. *Child Endangerment*

Appellant raises similar arguments about the sufficiency of the trial evidence on his child-endangerment conviction. The state satisfies its burden of proving child endangerment when the evidence reveals that the child could have suffered substantial harm. *State v. Hatfield*, 627 N.W.2d 715, 720 (Minn. App. 2001), *aff'd*, 639 N.W.2d 372 (Minn. 2002).

For the jury's finding on child endangerment, appellant asserts that no evidence proves that his deprivation placed B.K. in a situation likely to cause B.K. substantial harm. The state relies on this court's decision in *Cyrette*, where we affirmed a mother's child-neglect conviction. 636 N.W.2d at 349. There, the mother left two children, ages eight and two, home alone at night while she went out drinking. *Id.* at 345. We held that sufficient evidence supported the jury's guilty verdict for child neglect. *Id.* at 349.

The state argues that, because the children in *Cyrette* did not suffer actual harm, our affirmance compels the conclusion that the facts there amounted to sufficient evidence to support a finding that the mother's conduct was likely to substantially harm her children. See Minn. Stat. § 609.378, subd. 1(b)(1). Likewise, the state analogizes appellant's conduct of leaving 11-month-old B.K. home alone to the conduct at issue in *Cyrette*.

We can distinguish this case from *Cyrette* because B.K. did not have a physical condition requiring 24-hour supervision. That said, the record here reveals that sufficient evidence supports the jury's child-endangerment verdict. An 11-month-old child certainly requires attentive adult supervision. Appellant did not provide such supervision. Instead, he left B.K. alone for two hours in an unlocked home while he went to use drugs. This

supports the jury's verdict that appellant's conduct made it more likely than not that B.K. could suffer substantial harm.

II. Sufficiency Of The Evidence For Second-Degree Manslaughter Offenses

The second sufficiency argument appellant raises centers on the causation element of second-degree manslaughter. Appellant's causation argument presents two bases for reversal. First, appellant contends that the state failed to prove beyond a reasonable doubt that his conduct was the "but-for" cause of B.K.'s death. Alternatively, appellant asserts that insufficient evidence exists to prove that his conduct played a substantial factor in causing B.K.'s death. We again look to the statute at issue before considering the trial evidence. *Robinson*, 921 N.W.2d at 758.

A. Interpretation of Minn. Stat. § 609.205 (2016)

To address appellant's causation argument, we first determine precisely what the state must prove to sustain a conviction for second-degree manslaughter. Again, our review is de novo because appellant premises his sufficiency argument on a statute's meaning. *Henderson*, 907 N.W.2d at 625. The second-degree manslaughter statutes make it a crime for a person to "cause[] the death of another by . . . committing or attempting to commit a violation of section 609.378 (neglect or endangerment of a child), and murder in the first, second, or third degree is not committed thereby." Minn. Stat. § 609.205(5).

Minnesota caselaw reveals that the word "causes" in the second-degree manslaughter statute requires proof of proximate causation. For instance, in *State v. Schaub*, the supreme court cited civil negligence caselaw to hold that a conviction for second-degree manslaughter requires the state to prove that a defendant's act proximately

caused a victim's death. 44 N.W.2d 61, 64 (Minn. 1950). In negligence cases, the supreme court has rejected applying but-for causation. *Harpster v. Hetherington*, 512 N.W.2d 585, 586 (Minn. 1994).

No case has overruled *Schaub*. Indeed, in *Back*, the supreme court cited *Schaub* and noted that criminal liability for second-degree manslaughter attaches if the defendant's breach of the duty of care is "the proximate cause of the victim's death." 775 N.W.2d at 869 n.5. This represents a consistent interpretation of Minnesota's various homicide statutes as requiring proof of proximate, rather than but-for, causation. See, e.g., *State v. Smith*, 835 N.W.2d 1, 4 (Minn. 2013) (criminal vehicular homicide); *State v. Gatson*, 801 N.W.2d 134, 146 (Minn. 2011) (first-degree murder); *State v. McCormick*, 835 N.W.2d 498, 507-08 (Minn. App. 2013) (second-degree manslaughter), *review denied* (Minn. Oct. 15, 2013).

Even still, appellant maintains that the word "causes" within Minn. Stat. § 609.205 requires proof of but-for causation. To support his argument, appellant cites *Burrage v. United States*. 571 U.S. 204, 134 S. Ct. 881 (2014). There, the United States Supreme Court interpreted the phrase "results from" within the Controlled Substances Act. *Id.* at 209, 134 S. Ct. at 887 (citing 21 U.S.C. § 841(b)(1) (2012)). *Burrage* involved the Controlled Substances Act's mandatory minimum provision, which requires a specific sentence when a victim's death "results from" the use of a distributed controlled substance. *Id.* The *Burrage* court held that this phrase imposed a requirement of actual causality, or proof "that the harm would not have occurred in the absence of—that is, but for—the defendant's conduct." *Id.* at 211, 134 S. Ct. at 887-88 (quotation omitted).

Essentially, appellant stresses that *Burrage* controls the interpretation of the word “causes” within Minnesota’s second-degree manslaughter statute because the statute punishes a defendant’s killing of another person when the defendant commits specific acts. By analogy, appellant likens the language “[a] person who causes the death of another by any of the following means” within Minn. Stat. § 609.205 to the language at issue in *Burrage*.

Three reasons make that comparison unavailing. First, *Burrage* interpreted a federal narcotics statute, not a Minnesota homicide statute. Second, the Supreme Court in *Burrage* analyzed the phrase “results from,” which does not appear in Minnesota’s second-degree manslaughter statute. Third, we are unconvinced that *Burrage* abrogated longstanding precedent on the causation requirement in Minnesota’s homicide statutes.

Under Minnesota’s proximate-cause standard, appellant’s act “must have been the proximate cause of the death . . . without the intervention of an efficient independent force in which [appellant] did not participate or which he could not reasonably have foreseen.” *Schaub*, 44 N.W.2d at 64. This requires proof that the acts caused a death and that this conduct proximately caused the victim’s injury. *McCormick*, 835 N.W.2d at 507-08. To that end, we affirm that the word “causes” in the second-degree manslaughter statute requires proof of proximate causation.⁶

⁶ Appellant also argues that the legislature’s failure to specifically use the phrase “proximate cause” in the second-degree manslaughter statutes supports his interpretation. We observe that the legislature has used this phrase in subparts of the third-degree murder and first-degree manslaughter statutes. See Minn. Stat. §§ 609.195(b), .20(4) (2018). And we acknowledge that courts generally ascribe different meanings to words when the legislature uses different words in the same context. *State ex rel. Duncan v. Roy*, 887

B. Sufficiency of the evidence

Next, we consider whether the state produced sufficient evidence for the jury to find that appellant proximately caused B.K.’s death. Our traditional direct-evidence standard of review also governs this analysis. *See Heiges*, 806 N.W.2d at 17.

Two requirements are necessary to show proximate cause. First, a person’s conduct is the proximate cause of another’s injury when the negligent party commits an act that, in the exercise of ordinary care, it should have anticipated would likely injure others, even if the party could not anticipate the precise injury that resulted. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). Second, “[i]n order to prove proximate cause, the [s]tate must show that the defendant’s acts were a substantial factor in causing the death.” *Smith*, 835 N.W.2d at 4; *see also Lubbers*, 539 N.W.2d at 401.

These principles clarify that appellant need not have foreseen B.K.’s death by smoke inhalation. So the foreseeability of how B.K. died does not control our analysis. *See Dellwo v. Pearson*, 107 N.W.2d 859, 861 (Minn. 1961) (“Although a rigorous definition of proximate cause continues to elude us, nevertheless it is clear . . . that it is not a matter of foreseeability.”). Instead, we glean two requirements from this body of law. First, appellant must have committed an act that, in the exercise of ordinary care, he should have reasonably anticipated would likely injure B.K. *See Lubbers*, 539 N.W.2d at 401. And

N.W.2d 271, 277 (Minn. 2016). Yet we decline to extend or alter existing law, a task better suited for the supreme court or legislature. *State v. Thomas*, 890 N.W.2d 413, 420 (Minn. App. 2017), *review denied* (Minn. Mar. 28, 2017). Instead, we follow our supreme court’s precedent. *See State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018) (“The court of appeals is bound by supreme court precedent . . .”).

second, appellant's conduct must have played a substantial factor in causing B.K.'s death. *See id.*; *Smith*, 835 N.W.2d at 4.

Here, the trial evidence satisfied both proximate-cause requirements. To be sure, no evidence connected appellant to the house fire. Nevertheless, we need not enumerate the injuries that a child could suffer while left unattended for two hours. Nor must we explain how a caretaker's use of drugs could harm a child. Simply put, appellant left B.K. in a location where he could not monitor the child. Given our deferential standard of review to the verdict, we conclude that the jury could reasonably find that, in the exercise of ordinary care, appellant should have anticipated that leaving an 11-month-old alone in an unlocked house while going to use drugs would likely result in injury to the child.

Similarly, the state proved beyond a reasonable doubt that appellant's conduct played a substantial factor in causing B.K.'s death. The evidence reveals that B.K. died from smoke inhalation after being left alone in a crib while a house fire started. Appellant placed B.K. in that situation. As B.K.'s caretaker, appellant retained responsibility for the situation that caused B.K.'s death.

The jury could also reasonably conclude that appellant's continued absence from the home delayed the intervention necessary to prevent B.K.'s death. The assistant medical examiner's testimony about B.K. dying after the fire started supports this conclusion. In summary, sufficient evidence supports the jury's determination that appellant's conduct proximately caused B.K.'s death.

III. The District Court's Jury Instructions

Appellant next claims that the district court erred twice when fashioning jury instructions. First, appellant challenges the district court's jury instruction on the causation element of second-degree manslaughter. Second, appellant faults the district court's denial of his proposed jury instruction on intervening, superseding cause. We address these issues in turn.

A. Jury instruction on causation

The first issue is whether the district court erred in instructing the jury on the causation element of second-degree manslaughter. "In the context of jury instructions, a district court has broad discretion. But a district court abuses that discretion if its jury instructions confuse, mislead, or materially misstate the law." *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014) (citation omitted). To assess the accuracy of jury instructions, we view them in their entirety, while consulting the criminal statute at issue and related caselaw. *State v. Onyelobi*, 879 N.W.2d 334, 353 (Minn. 2016).

The district court gave this instruction to the jury on causation: "A defendant causes the death of another when his acts were a substantial factor in causing the death of another." Our above analysis of the word "causes" within the second-degree manslaughter statute resolves this issue and confirms the accuracy of this instruction. What is more, the district court's causation instruction followed existing caselaw. See *State v. Olson*, 435 N.W.2d 530, 534 n.4 (Minn. 1989) (noting that jury instruction in a homicide case which explains "that the state must prove beyond a reasonable doubt that defendant's acts had a substantial part in bringing about the child's death" adequately addresses causation). Likewise, this

instruction mirrored the relevant pattern jury instruction: “‘To cause’ means to be a substantial causal factor in causing the death.” 10 *Minnesota Practice*, CRIMJIG 11.56 (2015). In sum, the district court’s jury instruction on causation does not equal an abuse of discretion.

B. Appellant’s proposed intervening, superseding cause instruction

Next, we assess whether the district court erred in not instructing the jury on intervening, superseding cause. We review the failure to give a requested jury instruction for an abuse of discretion. *State v. Lilienthal*, 889 N.W.2d 780, 787 (Minn. 2017). A defendant “is entitled to an instruction on his theory of the case if there is evidence to support it.” *State v. Ruud*, 259 N.W.2d 567, 578 (Minn. 1977). But a district court retains discretion not to instruct the jury on the defendant’s theory if there is no evidence to support it. *State v. Schnagl*, 907 N.W.2d 188, 200 (Minn. App. 2017), *review denied* (Minn. Feb. 28, 2018).

Appellant sought to have the jury instructed on intervening, superseding cause, stressing that the fire superseded his alleged negligence. In denying appellant’s requested instruction, the district court focused on the continuing nature of appellant’s negligent behavior. But appellant disputes the district court’s characterization and contends that the jury could have found that the fire started after his original act of negligence—leaving the home. From there, appellant posits that his failure to notify first responders upon returning to the house is irrelevant because no trial evidence suggested that B.K. was alive then.

An intervening, superseding cause can limit a defendant’s criminal liability. *State v. Hofer*, 614 N.W.2d 734, 737 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000).

Our supreme court has stated that intervening conduct is a superseding cause only when it is the sole cause of the result. *Gatson*, 801 N.W.2d at 146. In *Hofer*, we adopted the supreme court's four-part test from civil negligence caselaw to determine whether an intervening cause has become superseding. 614 N.W.2d at 737. These four requirements are (1) the intervening cause's harmful effects must occur after the original negligence; (2) the original negligence must not bring about the intervening cause; (3) the intervening cause must have worked actively to bring about a result that would not have followed from the original negligence; and (4) the original wrongdoer must not have reasonably foreseen the intervening cause. *Id.* (citing *Canada by Landy v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997)).

This four-part test is not satisfied here. The state's evidence established that the fire occurred during appellant's absence from the home. Appellant's original act of negligence—leaving B.K. unattended—continued uninterrupted when the fire's harmful effects began. The fire then does not meet the first superseding-cause element because it occurred contemporaneous with appellant's negligence. *See Maanum v. Aust*, 364 N.W.2d 827, 831 (Minn. App. 1985) (holding that first superseding-cause element was not satisfied when one driver's original negligence of driving without proper vehicle lighting and at a speed too fast for conditions was continuing when second driver's negligent act occurred), *review denied* (Minn. June 14, 1985).

IV. Seating An Allegedly Biased Juror

Appellant asserts that the district court erroneously seated Juror K.K. because she exhibited actual bias and was not properly rehabilitated, amounting to structural error that

warrants a new trial. The state contends that the juror did not show actual bias, and that even if she did, she was properly rehabilitated.

The federal and state constitutions guarantee a criminal defendant the right to an impartial jury. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *see State v. Curtis*, 905 N.W.2d 609, 614 (Minn. 2018). The seating of a biased juror constitutes structural error requiring a new trial because that error “undermines the basic structural integrity of the criminal tribunal itself.” *Holt v. State*, 772 N.W.2d 470, 477 (Minn. 2009) (quotation omitted). Appellate courts use an abuse-of-discretion standard to review a district court’s denial of a challenge for cause. *State v. Munt*, 831 N.W.2d 569, 576 (Minn. 2013). Our deference to a district court’s determination of juror impartiality is “at its pinnacle” because unlike “appellate review of a cold transcript,” the district court has direct observation of a juror’s testimony, demeanor, and ability to be impartial. *Id.* (quotations omitted).

A party may challenge a prospective juror for cause if “[t]he juror’s state of mind—in reference to the case or to either party—satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party.” Minn. R. Crim. P. 26.02, subd. 5(1). To determine whether a district court erred in denying a challenge for cause premised on actual bias, we use a two-step analysis. *State v. Fraga*, 864 N.W.2d 615, 623 (Minn. 2015). First, we examine whether the juror expressed actual bias, which requires us to consider the context of the juror’s voir dire answer. *Id.* If we conclude that the juror expressed actual bias, the second step of our analysis is to determine whether the record reflects proper rehabilitation of the juror. *Id.*

We need not determine whether Juror K.K. expressed actual bias because even if she did, the record reveals that the prosecutor properly rehabilitated her. Proper rehabilitation occurs when a juror declares that she will follow a district court's instructions, shed preconceived notions, and fairly consider the evidence presented. *Curtis*, 905 N.W.2d at 615. Juror K.K. at first equivocated on her ability to listen to the district court and serve as a juror. But the prosecutor then asked Juror K.K. whether she would “listen [to] and respect the Court’s instruction.” Juror K.K.’s response, “[y]es, I would,” represents an unequivocal expression of her willingness to follow the district court’s instructions.

This exchange differs from the types of situations described in *Ries v. State*, 889 N.W.2d 308, 314-15 (Minn. App. 2016), *aff’d*, 920 N.W.2d 620 (Minn. 2018). In *Ries*, we observed that the supreme court had found rehabilitation lacking when jurors state they will “‘try,’ ‘do their best,’ ‘think they could,’ ‘think it would be hard,’ or ‘guess’ they could set aside their bias.” 889 N.W.2d at 314. Here, Juror K.K.’s answer of “[y]es, I would” represents sufficient rehabilitation to overcome any alleged actual bias when she expressed some hesitancy about following the district court’s instructions. We therefore hold that the district court did not abuse its discretion in denying appellant’s challenge for cause.⁷

⁷ Later in voir dire, Juror K.K. disclosed that a close friend’s five pets died in a house fire. Again, Juror K.K. explained that she was an emotional person, that she sometimes lets her emotions get the best of her, and that this case would be difficult for her. Appellant’s trial counsel did not renew his challenge for cause, and our review of the record satisfies us that Juror K.K.’s statements did not reflect actual bias against appellant during this later exchange.

V. Appellant's Sentence

Lastly, appellant argues that the district court improperly entered convictions on both second-degree manslaughter offenses. The state concedes this point and notes that the district court on remand should vacate one of the convictions without disturbing the jury's underlying finding of guilt. Whether a district court properly convicted a defendant of a specific offense presents a legal question that we review de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

“Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1 (2018). A district court cannot enter formal convictions for alternative counts of the same crime committed against the same victim. *State v. Pippitt*, 645 N.W.2d 87, 96 (Minn. 2002).

The jury found appellant guilty of two second-degree manslaughter offenses, one involving child neglect, and the other involving child endangerment. These represent alternative counts of the same crime—second-degree manslaughter—committed against the same victim. The district court's pronounced sentence and the corresponding warrant of commitment reflect that the district court entered formal convictions on both second-degree manslaughter offenses. We thus reverse in part and remand to the district court with instructions to vacate one of these convictions while leaving the underlying guilty verdict intact. *See State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984) (establishing the proper procedure for the district court to follow when a defendant is convicted on more than one charge for the same act).

Affirmed in part, reversed in part, and remanded.