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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0387**

State of Minnesota,
Respondent,

vs.

Russel Allen Doucette,
Appellant.

**Filed March 8, 2021
Affirmed
Frisch, Judge**

Renville County District Court
File No. 65-CR-17-334

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General,
St. Paul, Minnesota; and

David Torgelson, Renville County Attorney, Olivia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Florey, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges the sufficiency of the evidence supporting his conviction of
second-degree culpable-negligence manslaughter. We affirm.

FACTS

The state charged appellant Russel Allen Doucette with second-degree culpable-negligence manslaughter in violation of Minn. Stat. § 609.205(1) (2016) and criminal vehicular homicide in violation of Minn. Stat. § 609.2112, subd. 1(a)(7) (2016), alleging generally that on July 27, 2017, Doucette struck and killed R.L.O. (the victim) with a truck in a driveway while the victim was attempting to prevent Doucette from leaving a farm property. The case proceeded to a jury trial, where the jury heard the following evidence.

On the evening of July 28, 2017, Doucette called 911 to report the apparent death of the victim, informing the operator:

When I was leaving last night . . . I was trying to leave and you know, he tried to run out in front of me, I tried to dodge him and apparently he wound up catching tire, or something, I don't know.

Police officers responded, entered the farm property from the east, and followed a gravel driveway west. The driveway extended toward an area of the property encircled by a home, animal enclosures, and several other structures. Officers discovered the victim's body lying in the grass directly to the south of the driveway, a short distance north of an animal enclosure and east of a mobile building mounted on concrete blocks. Officers identified a tire track in the grass intersecting with the location of the victim's body.

An investigating officer conducted a recorded interview of Doucette, who informed the officer that he and the victim had been working and living at the farm. Doucette claimed that he had returned to the farm the evening before to discover that the victim was drunk and angry with Doucette for not finishing some work. Doucette decided to leave

when the victim started yelling because Doucette did not “want to deal with drunk [victim because] he [could] be a little harsh.” Doucette described the events of the previous evening as follows:

And so I got in the truck and I was going to pull out and then I noticed him running out the door like he’s trying to f--king get behind me so then I go north between the garage and the house and then I go west around the goat pen and then I’m coming back down the driveway this way. Then he tries running out in front of me so I try making, faking like I was going on the south side of the trailer, just to throw him that way and then cranked it hard right, or left to, you know, try and just get around him. And I wound up having a traction issue on the grass, I just could not get the truck f--king going. It just wouldn’t go fast enough. I was just trying to run away because I didn’t want to deal with the conflict.

. . . .

And, you know, I wound up slowing up for a moment, you know, let off the accelerator cause I wanted to make sure that he was all right and I look in the mirror, I see him like right there running up next to the truck. He winds up grabbing the handle on the passenger door, pops the door open and I try to take off, you know. And he’s like running with the truck. And I didn’t see him after that. I assumed that he was still there, like, like, not like that but (sigh).

The officer asked Doucette whether he felt like he “hit any bumps or hit anything.”

Doucette responded:

I was panicked. I was trying to just get away. . . . [A]s an afterthought, now that I think about it though, there was a distinctive point at which there seemed to be no traction, I think that was when I hit him. I think.

Doucette told the officer that he then went to stay at a neighbor's home, explaining, "I was infuriated when I got to [the neighbor's home] because I was just so angry that [the victim] would try and put himself in harm's way just to try and stop me."

Officers located a Dodge pickup truck parked at the farmhouse, noticed markings along the passenger-side door, and photographed the markings. An investigating officer testified that the markings "looked like . . . a handprint or like a finger drag."

On August 10, 2017, officers interviewed Doucette a second time. Doucette told the officers, in relevant part:

[The victim] was kinda like . . . right in the center of the driveway initially. But, then . . . I tried to make it look like I was gonna cut . . . off this way, around that trailer to try and get him to run that way, so that way I could scoot in between and then . . . in between the house and the trailer so that way, you know, I could use the trailer as a means to separate him from me.

. . . .

But, when I got back up into this area, I wound up hittin[g] some grass and the tires were just spinnin[g] and I, I could not get the speed up, I could not go . . . fast enough. So, I'm sitting there flooring it pretty much all through there, and, [victim] wound up startin[g] to run low on the side of the truck. And . . . right about the corner of the . . . trailer, that's where he managed to actually get a grip on the door handle on the passenger door and it popped open and then that's the last three words I heard him say, "it's not your truck." And, you know . . . my foot was down, like I was floorin[g] it. [Be]cause once that door popped, I was [in] panic mode, you know, I just wanted to get the hell outta there, I don't wanna fight, I don't wanna argue

. . . .

[T]here's a moment where . . . the truck had fishtailed a little bit and I thought I went off the side of the driveway. I'm

pretty sure that's actually the moment that I hit him with the back tire. I didn't know at the time, because, you know, with the fact that he was slippin[g] up, up here, I just assumed that I hit another wet patch of grass. I'm pretty sure . . . that was the moment that I actually had hit him, I think.

An event coordinator testified that she visited the farm property near the end of July 2017 and met Doucette for the first time. She testified that Doucette told her about striking the victim as follows:

[Doucette] told me [that the victim] and him had been drinking and they had gotten in an argument and [Doucette] took the truck and started going down the driveway and [the victim] was running after the truck and pounding on the truck And [Doucette] heard a big thunk and he kept going and didn't stop. . . . [T]hen [Doucette] told me the next day when he came back to the far[m] that he found [the victim] dead in the driveway.

The Chief Medical Examiner from the Midwest Medical Examiner's Office testified that she performed an autopsy of the victim's body in July 2017. She identified multiple fractures to the victim's skull and facial bones; various scrapes, tears, and abrasions of the victim's skin; internal pooling of blood that indicated that the victim's body had been left in one position after death; and a fracture of the victim's right femur. The examiner opined that blunt-force head injuries caused the victim's instantaneous death and that his injuries were consistent with his "head being run over by a vehicle." The examiner also noted that the various abrasions on the victim's body were more consistent with injuries caused by gravel rather than grass. The victim's alcohol concentration was 0.16.

The jury found Doucette guilty of second-degree manslaughter and not guilty of criminal vehicular homicide. The district court adjudicated the second-degree manslaughter conviction and sentenced Doucette to 41 months' imprisonment.

This appeal follows.

DECISION

Doucette argues that we must reverse his conviction for second-degree manslaughter because there is insufficient evidence of gross negligence and recklessness.

An individual is guilty of second-degree culpable-negligence manslaughter if he causes the death of another “by the person’s culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another.” Minn. Stat. § 609.205(1). Culpable negligence is “gross negligence coupled with the element of recklessness. It is intentional conduct which the actor may not intend to be harmful but which an ordinary and reasonably prudent man would recognize as involving a strong probability of injury to others.” *State v. Beilke*, 127 N.W.2d 516, 521 (Minn. 1964); *see also State v. Back*, 775 N.W.2d 866, 869 (Minn. 2009); *State v. Zupetz*, 322 N.W.2d 730, 733 (Minn. 1982). “[T]he statute requires proof of an objective element and a subjective element, the objective element being gross negligence and the subjective element being recklessness in the form of an actual conscious disregard of the risk created by the conduct.” *State v. Frost*, 342 N.W.2d 317, 320 (Minn. 1983). We address the parties’ arguments regarding the gross-negligence and recklessness elements in turn.

I. Sufficient direct evidence supports the jury’s finding of gross negligence.

To establish the objective element of gross negligence, the state was required to prove beyond a reasonable doubt that Doucette’s conduct involved “a gross deviation from the standard of conduct that a law-abiding person would observe in [Doucette’s] situation.” *Id.* at 319; *see also Back*, 775 N.W.2d at 869 n.5. The parties dispute the sufficiency of the state’s evidence, but as a threshold issue, they dispute the applicable standard of review.

A. The direct-evidence standard of review applies.

The state urges us to apply traditional scrutiny because it proved the element by direct evidence, while Doucette contends that heightened scrutiny is appropriate because the state relied on circumstantial evidence. “The relevant standard of review depends on whether the factfinder . . . reached its conclusion of law based on direct or circumstantial evidence.” *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018). Direct evidence proves a fact without any inference or presumption while circumstantial evidence requires an inferential step to prove a fact. *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017). If the state proves a disputed element using direct evidence, “we conduct a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotations omitted). But when the state relies on circumstantial evidence to prove an element, we first identify the circumstances proved by the state and second consider whether those circumstances preclude any rational hypothesis other than guilt. *Id.*

The state contends that “when the jury is tasked with making a qualitative judgment about whether a defendant satisfied or deviated from a particular standard of conduct, the traditional standard of review applies, so long as there is direct evidence of what appellant did.” Doucette concedes that his statements were direct evidence of what he did, but he insists that the jury was required to draw an inference from that evidence to reach its ultimate determination of gross negligence. We reject Doucette’s contention.

In deciding whether a defendant was grossly negligent, a jury is tasked with deciding whether and to what extent a defendant breached his duty of care. *See Back*, 775 N.W.2d at 869 n.5. In so doing, a jury must first determine, as a matter of fact, what the defendant did. *See State v. Al-Naseer*, 690 N.W.2d 744, 752 (Minn. 2005) (“To determine whether a defendant engaged in gross negligence or ordinary negligence, the defendant’s conduct must be examined.”). The jury must next consider whether the defendant’s conduct was such that “an ordinary and reasonably prudent [person] would recognize as involving a strong probability of injury to others.” *Zupetz*, 322 N.W.2d at 733. The second inquiry does not require the jury to infer the existence of any separate “fact”; instead, the jury must “assess[]” the defendant’s conduct and determine whether the facts of that conduct amount to the level of gross negligence. *Al-Naseer*, 690 N.W.2d at 753.¹

¹ The parties dispute the applicability of *State v. McCormick*, in which we stated that there was sufficient direct evidence to support a jury’s finding of objective gross negligence because statements and a reenactment video “would permit the jury to evaluate whether [the conduct] would constitute a gross deviation from an objective standard of care.” 835 N.W.2d 498, 507 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013). Doucette argues that (1) *McCormick* is not binding because its direct-evidence analysis concerned an undisputed issue and (2) *McCormick* “was correct except for its use of the word

Doucette’s statements were direct evidence of his conduct. Because the jury was not required to infer the existence of another fact to assess whether Doucette’s conduct was grossly negligent, we apply the direct-evidence standard of review.

B. Sufficient direct evidence supports the jury’s finding.

In considering the sufficiency of the direct evidence, we carefully examine the record to determine whether the facts and the legitimate inferences drawn from those facts “would permit the [fact-finder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019). We view the evidence in the light favorable to the verdict and assume the jury rejected evidence conflicting with the verdict. *Id.* We must not reverse if the jury, mindful of both the presumption of the defendant’s innocence and the state’s burden of proof, could find the defendant guilty. *Id.*

Here, the jury heard evidence that: (1) the victim was attempting to stop Doucette from leaving; (2) the victim positioned himself behind the truck initially; (3) the victim then positioned himself in the driveway in front of Doucette and the vehicle; (4) Doucette knew the truck was losing traction; (5) Doucette attempted to misdirect the victim by driving the truck in one direction and “crank[ing]” the steering wheel the other direction; (5) the victim “wound up startin[g] to run low on the side of the truck”; (6) the victim “g[ot]

‘evaluate’ instead of ‘infer.’” We need not rely on *McCormick* to decide which standard of review applies here, and we decline Doucette’s invitation to overrule *McCormick*.

a grip on the handle on the passenger door and it popped open”; and (7) Doucette then “floor[ed] it.”²

Doucette contends that this evidence fails to demonstrate gross negligence because “there was not a known danger to [the victim] if [Doucette] drove the truck away from [the victim].” While it is true that Doucette claimed he was trying to “get away” from the victim, his statements clarified that he was, more literally, driving *parallel* to the victim while he tried to “get away.” Doucette recognizes that fact, characterizing his conduct as “driving forward when [the victim] was at the side of the truck.” We understand Doucette’s point that the danger of driving *toward* a pedestrian is undoubtedly greater than driving *beside* a pedestrian. But we reject the proposition that driving *beside* a pedestrian poses no greater danger than driving *away* from a pedestrian, especially when the pedestrian is attempting to stop the vehicle and gain entry into it.

Thus, the jury considered evidence that Doucette “floored” the accelerator despite poor traction while the victim was traveling on foot directly beside the truck. Based on the direct evidence of Doucette’s conduct, the jury could have reasonably concluded that Doucette’s actions constituted a gross deviation from the standard of care that a law-

² The state likens this case to others in which we concluded the evidence was sufficient to sustain findings of gross negligence in traffic conduct. See, e.g., *State v. Pelawa*, 590 N.W.2d 142, 144-46 (Minn. App. 1999) (concluding that evidence of driver crossing centerline into opposing traffic was sufficient), *overruled on other grounds by Al-Naseer*, 690 N.W.2d at 752 n.4; *State v. Iten*, 401 N.W.2d 127, 128 (Minn. App. 1987) (concluding that evidence of driver failing to inspect brakes or stop was sufficient). Doucette’s conduct is distinguishable from the conduct at issue in *Pelawa* and *Iten*, so those cases have little bearing on our analysis.

abiding citizen would have observed in the same situation. *Frost*, 342 N.W.2d at 319. The direct evidence is sufficient to support the jury’s finding of gross negligence.

II. The circumstantial evidence of Doucette’s recklessness precludes any rational hypothesis inconsistent with guilt.

To establish the subjective element of recklessness, the state was required to prove beyond a reasonable doubt “an actual conscious disregard of the risk created by the conduct.” *Id.* at 320. In this context, the risk is one of death or great bodily harm. Minn. Stat. § 609.205(1). An individual is reckless if he “is *aware* of the risk and disregards it.” *Frost*, 342 N.W.2d at 320. Doucette argues that the circumstantial evidence of subjective recklessness is insufficient to sustain his conviction. The state contends that the circumstantial evidence proved Doucette’s recklessness to the exclusion of any other rational hypothesis.

“The subjective aspect requires a finding of the actor’s state of mind.” *McCormick*, 835 N.W.2d at 507. A defendant’s state of mind is typically proven by circumstantial evidence, and it may be inferred from a defendant’s words or actions. *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000). We apply a two-step analysis in considering the sufficiency of circumstantial evidence, first determining the circumstances proved and second considering whether those circumstances preclude any rational hypothesis other than guilt. *Loving*, 891 N.W.2d at 643.

In identifying the circumstances proved, we “giv[e] deference to the jury’s acceptance of the proof of the[] circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the [s]tate.” *State v. Anderson*, 789 N.W.2d

227, 241-42 (Minn. 2010) (quotation omitted). “We assume that the factfinder disbelieved any testimony conflicting with th[e] verdict.” *Petersen*, 910 N.W.2d at 7 (quotation omitted).

The state proved the following circumstances. Doucette “was going to pull out and then . . . noticed [the victim] running out the door like [he was] trying to . . . get behind [Doucette].” So Doucette drove forward and circled around to “com[e] back down the driveway.” At that point, the victim “trie[d] running out in front of [Doucette]” and was “in the center of the driveway.” Doucette tried to evade the victim by “faking like [he] was going on the south side of the trailer” and “crank[ing]” the steering wheel. The truck then had “a traction issue on the grass” and Doucette “could not get the truck . . . going.” Doucette “wound up hittin[g] some grass and the tires were just spinnin[g].” Doucette “started losing a lot of traction on the grass and the truck got slow and [the victim] managed to catch up enough to grab the door handle on the truck and open up the passenger door.” That was when Doucette decided to “hit the gas again to try and . . . make sure that [he] could get away” because “once that door popped, [he] was in panic mode.” The truck “fishtailed a little bit” and Doucette “assumed that [he] hit another wet patch of grass.” Later on, Doucette was “angry that [the victim] would try and put himself in harm’s way just to stop [Doucette].”³

³ The state points to additional circumstances that we consider largely irrelevant to the issue of subjective recklessness: victim’s intoxication, Doucette’s use of alcohol and marijuana, a mechanical issue with the truck’s drivetrain, a lack of violent history, and some of Doucette’s behaviors following the collision.

In applying the second step of the circumstantial-evidence test, we consider whether the circumstances proved are consistent with Doucette's guilt and preclude any rational hypothesis inconsistent with his guilt. *See Loving*, 891 N.W.2d at 643. At this stage, we owe the jury no deference and examine the reasonableness of inferences independently. *Petersen*, 910 N.W.2d at 7. "We review the circumstantial evidence not as isolated facts, but as a whole." *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). If we conclude that a reasonable inference inconsistent with guilt exists, we must reverse the conviction. *Loving*, 891 N.W.2d at 643. "But if circumstantial evidence forms a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt, then we will uphold the conviction." *Petersen*, 910 N.W.2d at 7 (quotation omitted).

Doucette offers the following theory inconsistent with guilt: "[Doucette] did not know that driving the truck forward and away from [the victim] created a risk of great bodily harm or death to [the victim] because it was not known to [Doucette] that [the victim] was in danger of being run over by the truck after [Doucette] had driven past [the victim]." But as before, the circumstances proved were that Doucette was driving *beside* the victim rather than *away* from the victim. Specifically, Doucette told officers that his tires began slipping, that he slowed due to poor traction, that the victim caught up and opened the passenger-side door, and that he (Doucette) hit the accelerator. Further,

Doucette's statement that he was angry because the victim put himself in harm's way evidences Doucette's knowledge and appreciation of the risk the truck posed to the victim.⁴

Doucette correctly emphasizes that his case is distinguishable from others in which the supreme court has affirmed second-degree manslaughter convictions. *See, e.g., State v. Swanson*, 240 N.W.2d 822, 825 (Minn. 1976) (affirming conviction where defendant consciously shot victim without intent to kill); *State v. Spann*, 182 N.W.2d 873, 875 (Minn. 1970) (affirming conviction where defendant consciously used knife against decedent). Those cases involved clearer questions of recklessness. But the jury was not precluded from finding Doucette guilty where the circumstances proved established that Doucette: (1) knew the truck posed a general danger of death or great bodily harm to pedestrians, (2) knew that the truck had poor traction, (3) knew that the victim was directly beside the truck, and (4) decided to "floor it" despite his knowledge of those circumstances. These circumstances are consistent with the hypothesis that Doucette acted with conscious disregard of the risk of death or great bodily harm to the victim and preclude any rational hypothesis inconsistent with guilt.

Affirmed.

⁴ Doucette fairly emphasizes that the statement indicates "that [Doucette] believed [the victim] put *himself* in harm's way." But to the extent Doucette suggests contributory negligence on the victim's part, "It is well settled that the contributory negligence of the victim is never a defense to a criminal prosecution It is equally well settled, however, that the victim's negligence is relevant on the questions of whether the defendant was negligent, and, if so, whether that negligence was the proximate cause of the victim's injury." *State v. Crace*, 289 N.W.2d 54, 59-60 (Minn. 1979). By determining that Doucette engaged in grossly negligent conduct causing the victim's death, the jury necessarily rejected the theory that the victim's negligence caused his own death—a circumstance inconsistent with guilt.