

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0482**

State of Minnesota,
Respondent,

vs.

Emily Maye Namyst,
Appellant.

**Filed March 22, 2021
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-19-8300

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota; and

Adrian S. Lafavor-Montez, Colich & Associates, Minneapolis, Minnesota (for respondent)

Conor E. Tobin, Grannis & Hauge, P.A. Eagan, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and Jesson,
Judge.

NONPRECEDENTIAL OPINION

WORKE , Judge

Appellant challenges her conviction for failing to yield to a pedestrian, arguing that the district court erred in instructing the jury, and that the evidence was insufficient to sustain her conviction. We affirm.

FACTS

On February 1, 2019, around 7:00 p.m., A.P. was driving her husband (J.P.) and their children home. A.P. was driving in St. Louis Park, heading east on Excelsior Boulevard to turn onto Yosemite Avenue. The Excelsior-Yosemite intersection has two eastbound lanes and one turn lane onto Yosemite. A.P. was in the right-hand lane. When A.P. was roughly 300 feet from the turn, she saw a pedestrian, K.C., in the crosswalk on or by a median separating east and westbound traffic on Excelsior. K.C. was facing south to cross eastbound traffic. A.P. slowed and came to a complete stop within two to three seconds. A semi-truck similarly stopped behind A.P.'s vehicle.

K.C. was wearing dark-colored clothing and she had her hood up. K.C. did not move until A.P.'s vehicle stopped. She then looked to her right before crossing Excelsior in the crosswalk. K.C. walked at a slow-to-normal pace. As K.C. crossed, she was hit by the vehicle in the lane next to A.P.'s vehicle. K.C. "fl[ew]" approximately six feet into the air over the driver's side of the vehicle and landed in the middle of the intersection several feet from the crosswalk. J.P. ran to K.C.'s assistance and called 911.

A responding officer immediately spoke with the driver of the vehicle, appellant Emily Maye Namyst, who was "very distraught, devastated, [and] shaking." She told the officer that

[s]he was on her way to a friend's house. She was talking to an individual on her cell phone which was in the center console in a cupholder. . . . [S]he tried to wash the windshield off, turn on the wipers, there was no fluid or at least it was not coming out at the time, and as she's driving in the left lane, she noticed that the car to her right had either slowed down or stopped, and then she hit the pedestrian.

The state charged Namyst with careless driving and failing to yield to a pedestrian in a crosswalk or at an intersection in violation of Minn. Stat. §§ 169.13, subd. 2, .21, subd. 2(a) (2018).

At Namyst's jury trial, A.P. and J.P. testified and recounted the accident similarly. K.C. testified that she had been on a bus going home from work and pulled the string for the bus to stop. Her next memory is being in the hospital and hearing that she had been unconscious for ten days because she was injured as a result of a collision with a vehicle. K.C. suffered extensive injuries, including, "[b]roken bones in [her] leg. A broken hand, nerve damage on the right side of [her] body, and a traumatic brain injury." Officers testified regarding the "significant damage" to the front driver's side of Namyst's vehicle.

Namyst testified that she lived near the intersection and was aware of the crosswalk and how it is marked with a sign and white paint on the roadway. Namyst testified that she noticed the vehicles to her right slowing down. Namyst took her foot off of the accelerator and scanned the area for something that caused the vehicles to stop, but she did not brake. She admitted that the vehicles could have stopped for a pedestrian. Namyst testified that she did not see K.C., but was aware something happened when "[she] made an impact."

The district court's instruction to the jury on the failure-to-yield charge provided,

[Namyst] approached a pedestrian who was crossing the roadway within a marked crosswalk where traffic signal controls were not in place. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. The state must prove beyond a reasonable doubt that it was not impossible for [Namyst] to yield.

During deliberations, the jury submitted questions, including: (1) “Can the time a pedestrian is walking in front of a stopped car in the left turn lane be interpreted as a place of safety?” and (2) “Can a single location be defined simultaneously as both a crosswalk and a place?” The district court provided the jury with the definition of a “place of safety” as stated in *Brazington v. Plankerton*, 82 N.W.2d 620 (Minn. 1957). Over Namyst’s objection, the district court instructed the jury that “other place of safety” means “safety zones or safety islands when they have been provided for pedestrians on heavily traveled streets or highways in the interests of safety.”

The jury found Namyst not guilty of careless driving, but guilty of failing to yield to a pedestrian in a crosswalk. The district court sentenced Namyst to 90 days in the workhouse, with 85 days stayed for one year and five days of sentence to service, and imposed a fine. This appeal followed.

DECISION

Jury instruction

Namyst first argues that the district court erroneously instructed the jury on the definition of “other place of safety.” The district court’s jury instructions are reviewed as a whole to determine whether they fairly and adequately explain the law, without misstating the law. *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). District courts are afforded “broad discretion and considerable latitude in choosing the language of jury instructions.” *State v. Smith*, 674 N.W.2d 398, 400 (Minn. 2004). Absent an abuse of that discretion, this court will not reverse a district court’s decision on jury instructions. *State v. Mahkuk*, 736 N.W.2d 675, 682 (Minn. 2007).

“The extent to which a district court must explain the law of the case, define the crime charged, and explain the elements of the offense” depends on the facts and law of each particular case. *State v. Moore*, 863 N.W.2d 111, 120 (Minn. App. 2015), *review denied* (Minn. July 21, 2015). “[D]etailed definitions of an element of an offense may be necessary if, without the additional detail, the instructions could mislead the jury or cause the jury to speculate about what the state must prove to obtain a guilty verdict.” *Id.*

Namyst was charged with failing to yield to a pedestrian in a crosswalk in violation of Minn. Stat. § 169.21, subd. 2(a). Under the statute:

Where traffic-control signals are not in place or in operation, the driver of a vehicle shall stop to yield the right-of-way to a pedestrian crossing the roadway within a marked crosswalk or at an intersection with no marked crosswalk. The driver must remain stopped until the pedestrian has passed the lane in which the vehicle is stopped. No pedestrian shall suddenly leave a curb *or other place of safety* and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

Minn. Stat. § 169.21, subd. 2(a) (emphasis added).

After the jury returned with questions, the district court instructed that “other place of safety” means “safety zones or safety islands when they have been provided for pedestrians on heavily traveled streets or highways in the interests of safety.” *See Brazington*, 82 N.W.2d at 623. Namyst claims that the definition of “other place of safety” from *Brazington* misled the jury.

In *Brazington*, a pedestrian saw the defendant’s car approaching from one block away, stepped off the curb, and started crossing a street. *Id.* at 621. While crossing, the pedestrian saw the defendant’s car getting closer but was unable to estimate its distance

from her; she hesitated slightly, took more steps, and then was struck by the defendant's car. *Id.* at 621-22. The defendant argued that he should have been granted a directed verdict because the pedestrian was negligent for continuing after she hesitated and saw him approaching, and her negligence proximately caused the accident. *Id.* at 622.

The supreme court determined that the pedestrian was not negligent as a matter of law because she was struck after she had taken several steps from the center of the intersection, indicating that, had the defendant complied with Minn. Stat. § 169.21, subd. 2,¹ and yielded the right-of-way, there would have been no accident. *Id.* The supreme court also stated that the district court was not required to instruct the jury that the pedestrian was guilty of “suddenly leaving a ‘curb or other place of safety’ into the path of a closely approaching vehicle,” in part, because the reference “to ‘other place of safety’ obviously was intended to relate to [s]afety zones or [s]afety islands when they have been provided for pedestrians on heavily traveled streets or highways in the interests of safety.” *Id.* at 623. The supreme court concluded that any other construction of the term “would in effect nullify totally statutes relating to pedestrian right-of-way at such intersections and crosswalks.” *Id.*

Here, the jury asked, “Can the time a pedestrian is walking in front of a stopped car in the left turn lane be interpreted as a place of safety?” and “Can a single location be defined simultaneously as both a crosswalk and a place?” The district court instructed the jury that an “other place of safety” means “safety zones or safety islands when they have

¹ It is not clear what version of the statute the case is citing, but the case quotes the statute, and the substantive law is identical to our current statute.

been provided for pedestrians on heavily traveled streets or highways.” By explaining that a “place of safety” includes “safety zones,” the jury had to determine whether K.C. suddenly left a safety zone—the portion of the crosswalk covering the left turn lane—and walked in front of Namyst’s vehicle without giving Namyst enough time to yield. The district court’s definition was appropriately within its broad discretion.

Namyst argues that *Brazington* is inapplicable for several reasons. First, she points out factual distinctions. For example, she claims that the pedestrian in *Brazington* saw the vehicle approaching but “[K.C.] never observed . . . Namyst’s vehicle.” But we do not know this because K.C. lost her memory as a result of being hit by Namyst’s vehicle. There is no evidence as to what K.C. saw.

Namyst also claims that K.C. “only waited one second and then walked quickly” across the turn lane before she was struck. But A.P. testified that she came to a complete stop approximately two to three seconds after she began slowing down and that K.C. was in the crosswalk for approximately two seconds before she was struck. She testified that K.C. walked at a “normal pace.” J.P. testified that K.C. did not move until their vehicle came to a complete stop, and she walked fairly slowly. Based on this evidence, K.C. waited two to three seconds for A.P. to stop completely before beginning to walk across Excelsior. She then walked for two seconds before she was struck, and she was not walking quickly.

Namyst also claims that the pedestrian in *Brazington* continued crossing the street, but K.C. came to a complete stop before walking. However, there is no evidence that K.C. stopped walking. The record shows that K.C. was stationary in the crosswalk at or near

the median when A.P.'s vehicle approached, but once she began walking, she did not stop before Namyst hit her. Thus, Namyst has not raised reliable factual distinctions.

Next, Namyst argues that *Brazington* is inapplicable because it is a civil case and an older case. But these arguments are disingenuous because Namyst's proposed jury instructions included the civil jury instruction for negligence—common law duties of drivers and pedestrians, 4A *Minnesota Practice*, CIVJIG 65.10 (2014), and she cited civil cases from 1950 and 1938. *See Becklund v. Daniels*, 42 N.W.2d 8 (Minn. 1950); *Reier v. Hart*, 277 N.W. 405 (Minn. 1938). *Brazington* is more recent than these cases, and even though it is a civil case, it interpreted the statute at issue here. *See* 82 N.W.2d at 621.

Finally, Namyst argues that *Brazington* is inapplicable because an Oregon case rejected the definition. First, an Oregon case is not precedential. *See Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (noting that decisions from foreign jurisdictions are not binding as authority). Additionally, in that case the Oregon Supreme Court stated that in determining the definition of "other place of safety," it would look to the "legislative history of our statute" rather than looking to a definition from another jurisdiction. *See Plasker v. Fazio*, 485 P.2d 1075, 1079 (Or. 1971).

As the state argues, *Brazington* defines the exact phrase "other place of safety," as used in Minn. Stat. § 169.21, subd. 2. And as the court stated in *Brazington*, for a safety zone (crosswalk) not to be a place of safety "would in effect nullify totally statutes relating to pedestrian right-of-way at . . . intersections and crosswalks." *See* 82 N.W.2d at 623. Therefore, the district court did not abuse its discretion in selecting jury instructions.

Sufficiency of the evidence

Namyst also argues that the evidence was insufficient to support her conviction. When evaluating a claim of insufficient evidence, this court “carefully examine[s] the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Boldman*, 813 N.W.2d 102, 106 (Minn. 2012). We view the evidence in the light most favorable to the verdict and will not overturn the verdict if the jury could reasonably have found the defendant guilty of the charged offense, consistent with the presumption of innocence and the state’s burden of proof beyond a reasonable doubt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Namyst claims that the evidence is insufficient to support her conviction because it showed that K.C. suddenly left a place of safety. But the district court appropriately instructed the jury that a safety zone is a place of safety. And the evidence shows that K.C. only left the safety zone—the crosswalk—when Namyst hit her and K.C. flew into the air and landed several feet from the crosswalk.

Namyst also claims that A.P. and J.P. told the police that K.C. “walked into the side of [Namyst’s] car.” But that is a complete mischaracterization of the record, which Namyst concedes in her reply brief. In fact, J.P. testified that K.C. did not walk into the side of the vehicle. And an officer testified that Namyst stated that “she hit the pedestrian.”

Additionally, Namyst testified that she saw A.P.’s vehicle and the semi-truck slow down, but she did not slow down. She also admitted that the vehicles could have stopped

for a pedestrian. Moreover, A.P. testified that, although it did not appear that the driver of the vehicle was speeding, the driver did not slow down or stop for K.C. And J.P. testified that the vehicle did not appear to attempt to stop. Therefore, the evidence sufficiently supports Namyst's conviction because it shows that she failed to "yield the right-of-way to a pedestrian crossing the roadway within a marked crosswalk," and it did not show that K.C. suddenly left a "place of safety" and walked into the path of Namyst's vehicle making it impossible for Namyst to yield. *See* Minn. Stat. § 169.21, subd. 2(a).

Affirmed.