

*This opinion is nonprecedential except as provided by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
A20-0728**

State of Minnesota,
Respondent,

vs.

Shy Ann Hentges,
Appellant.

**Filed April 19, 2021
Affirmed
Segal, Chief Judge**

Isanti County District Court
File No. 30-CR-18-25

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

Jeffrey R. Edblad, Isanti County Attorney; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this direct appeal from the judgment of conviction, appellant argues that the district court erred by convicting her of second-degree unintentional murder, rather than the allegedly more-specific offense of first-degree manslaughter. We affirm.

FACTS

On April 5, 2017, at approximately 10:50 a.m., a police officer was dispatched to an apartment building in response to a report of an infant not breathing. The 911 call was made by a resident of the building who heard screaming coming from the apartment below and believed there was a child who was not breathing. The officer entered the apartment and made contact with appellant Shy Ann Hentges and Hentges's mother. He then discovered Hentges's two-month-old son dead in the crib. An autopsy performed on the child revealed that he had suffered both acute and chronic blunt-force head injuries, including an 11-centimeter skull fracture, and had two posterior healing rib fractures. The medical examiner ruled the child's death a homicide attributed to blunt-force head injuries.

Law enforcement questioned Hentges on several occasions. On the day of the child's death, Hentges reported that she woke up at approximately 5:00 a.m., and when she checked on the child his breathing was fine. She went back to bed and woke up again at approximately 10:45 a.m., at which point she discovered that the child was not breathing. She was interviewed again the following day, and stated that she did not know how the child had suffered the head injuries, but reported that he had fallen off a chair two days prior to his death. At a later interview, Hentges admitted that on the morning of the child's

death she accidentally hit the child's head on the corner of a door frame and may have put him down a "little rougher" than usual, hitting him against the wall with "a little bit of force" when putting him in his crib. She was asked to demonstrate using a doll and, during the demonstration, tossed the doll into the crib, striking the side of the doll's head on the wall behind the crib.

Respondent State of Minnesota charged Hentges with second-degree unintentional murder while committing third-degree assault under Minn. Stat. § 609.19, subd. 2(1) (2016), and first-degree manslaughter while committing malicious punishment of a child under Minn. Stat. § 609.20(5) (2016).

Hentges agreed to a court trial based on stipulated evidence pursuant to Minn. R. Crim. P. 26.01, subd. 3. The district court found Hentges guilty of the second-degree unintentional murder count. The district court further concluded that because Hentges's actions constituted second-degree murder, she was not guilty of first-degree manslaughter (malicious punishment of a child).¹ In convicting Hentges of second-degree unintentional murder, the district court rejected Hentges's argument that, if the court found she caused the death of the child while committing an assault, Hentges should only be convicted of first-degree manslaughter with the predicate offense of fifth-degree assault, Minn. Stat.

¹ Under the subsection of the manslaughter charge filed against Hentges, Minn. Stat. § 609.20(5), an individual is guilty of first-degree manslaughter if he or she "causes the death of another in committing or attempting to commit a violation of section 609.377 (malicious punishment of a child), and murder in the first, second, or third degree is not committed thereby." The statute therefore excludes conduct that also constitutes second-degree murder.

§ 609.20(2) (2016), on the grounds that it is a more-specific offense. The district court sentenced Hentges to 150 months in prison. Hentges now appeals.

DECISION

The sole issue presented in this appeal is whether the offense of first-degree manslaughter while committing a fifth-degree assault constitutes a more-specific offense than second-degree unintentional murder while committing a third-degree assault. Hentges argues that it is and that she is thereby entitled to a reduction of her conviction from second-degree unintentional murder to first-degree manslaughter. This issue presents a question of law that we review de novo. *State v. Craven*, 628 N.W.2d 632, 634-35 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001).

Before addressing whether the doctrine is applicable in this case, we will first explain the more-specific-offense doctrine and then identify the required elements of proof for the two offenses.

The More-Specific-Offense Doctrine

In general, a prosecutor has the discretion to charge a defendant “under any statute that the defendant’s acts violate without regard to the penalty,” and may charge a defendant with multiple offenses for the same conduct. *State v. Chryst*, 320 N.W.2d 721, 722 (Minn. 1982). “But when two criminal statutes, one general and one specific, conflict because they have the same elements but differing penalties, the more specific statute governs over the more general statute.” *Craven*, 628 N.W.2d at 635.

This doctrine has its origin in Minn. Stat. § 645.26, subd. 1 (2020), which provides in relevant part:

When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision

See State v. Kalvig, 209 N.W.2d 678, 680 (Minn. 1973). Two statutes are in irreconcilable conflict when conduct that violates the more-specific statute also would violate the more-general statute. *Craven*, 628 N.W.2d at 634. The doctrine limits the prosecutor’s charging discretion and, when two offenses are in irreconcilable conflict, a defendant may only be charged with and convicted of the more-specific criminal statute. *Kalvig*, 209 N.W.2d at 681. Thus, if the doctrine is applicable, Hentges would be entitled to have her conviction reduced from second-degree murder to first-degree manslaughter, even though she was not charged with first-degree manslaughter while committing a fifth-degree assault (Minn. Stat. § 609.20(2)).

Elements of Proof

To determine whether there is an irreconcilable conflict between the two offenses, we must assess the elements required to prove each offense. A person is guilty under the applicable subsection of the second-degree-murder statute if, in relevant part, he or she “causes the death of a human being, without intent to effect the death of any person, while committing or attempting to commit a felony offense other than criminal sexual conduct in the first or second degree with force or violence or a drive-by shooting.” Minn. Stat.

§ 609.19, subd. 2(1). In this case, the felony offense Hentges was charged with and found guilty of was third-degree assault. Third-degree assault requires proof that a defendant (1) assaulted another and (2) inflicted substantial bodily harm. Minn. Stat. § 609.223, subd. 1 (2016). The phrase “substantial bodily harm” is defined in the criminal code as “bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.” Minn. Stat. § 609.02, subd. 7a (2016).

By comparison, a person may be convicted under the applicable subsection of first-degree manslaughter if he or she

violates section 609.224 and causes the death of another or causes the death of another in committing or attempting to commit a misdemeanor or gross misdemeanor offense with such force and violence that death of or great bodily harm to any person was reasonably foreseeable, and murder in the first or second degree was not committed thereby.

Minn. Stat. § 609.20(2). Minn. Stat. § 609.224 (2016) sets forth the crime of fifth-degree assault. The offense, in relevant part, requires proof that the defendant (1) intentionally inflicted or attempted to inflict (2) bodily harm upon another. Minn. Stat. § 609.224, subd. 1(2). The term “bodily harm” is defined in the criminal code as “physical pain or injury, illness, or any impairment of physical condition.” Minn. Stat. § 609.02, subd. 7 (2016). Fifth-degree assault is a misdemeanor, but section 609.224 provides that the offense can be enhanced to a gross misdemeanor or felony based on various prior

convictions occurring within specified time frames. Minn. Stat. § 609.224, subds. 2, 4. The enhancement provisions are not applicable here.

Applicability of the Doctrine to this Case

Hentges argues that the offenses of second-degree unintentional murder while committing third-degree assault, and first-degree manslaughter while committing fifth-degree assault, are in irreconcilable conflict because they require proof of the same elements—(1) an assault (2) that causes the death of another. This argument, however, overlooks the fact that second-degree unintentional murder requires proof that the death was caused during the commission or attempted commission of a felony. In this case, the second-degree unintentional-murder charge was predicated on a felony-level assault, which requires evidence that the assault caused not just “bodily harm,” but “substantial bodily harm,” a level of harm that at least temporarily causes substantial disfigurement, loss, or impairment of a bodily member or organ, or a fracture. Minn. Stat. §§ 609.02, subd. 7a, .223, subd. 1. First-degree manslaughter, on the other hand, requires proof of a misdemeanor-level assault, an assault causing only “bodily harm.” Minn. Stat. §§ 609.02, subd. 7, .224, subd. 1(2). The second-degree unintentional-murder charge therefore contains an additional element of proof not required to establish first-degree manslaughter. Because there are differing elements of proof, the offenses are not in irreconcilable conflict.

The fact that second-degree unintentional murder with the predicate offense of third-degree assault contains an additional element distinguishes this case from the cases cited by Hentges, such as the case of *State v. Craven*. In *Craven*, a police officer attempted to initiate a traffic stop of the vehicle Craven was driving, but Craven fled the police officer.

628 N.W.2d at 634. While fleeing, Craven lost control of the vehicle and struck and killed two women. *Id.* The district court convicted Craven of two counts of second-degree felony murder based on the predicate offense of fleeing a peace officer in a motor vehicle. *Id.* Craven appealed and argued that he could only be convicted of the more-specific offense of fleeing causing death under Minn. Stat. § 609.487, subd. 4 (1998). *Id.* at 634-35. This court agreed, noting that “the crime of felony-murder with fleeing as the predicate felony has the same elements as fleeing causing death. Both crimes require proof that a defendant (1) fled from a police officer (2) in a motor vehicle (3) causing a death.” *Id.* at 635. This court concluded that “[b]ecause the count charging Craven with felony-murder relies on fleeing a peace officer in a motor vehicle as the predicate felony, it does not require proof of any element not already required to prove fleeing a peace officer in a motor vehicle causing death.”² *Id.* at 636.

The same is not true here. As discussed above, the offense of second-degree murder with the predicate offense of third-degree assault requires proof of an *additional* element—an assault that inflicts substantial bodily harm. Because there is an added element of proof to establish third-degree assault, the offenses of second-degree murder and first-degree manslaughter, with assault as the predicate offense, are not in irreconcilable conflict. *See id.* at 635 (stating that statutes are in conflict if they “have the same elements”). The district

² The case of *State v. Meyer*, 646 N.W.2d 900 (Minn. App. 2002), also cited by Hentges, is similarly distinguishable. In *Meyer*, this court affirmed the dismissal of a second-degree murder charge because it contained identical elements of proof as the more-specific offense of third-degree controlled-substance murder. 646 N.W.2d at 904. This court noted that the only difference was the level of penalty. *Id.*

court therefore did not err by refusing to enter a judgment of conviction for first-degree manslaughter and convicting Hentges of second-degree unintentional murder.³

Affirmed.

³ The state also argues, as an independent ground for affirming the conviction of second-degree unintentional murder, that subsection 2 of the first-degree-manslaughter statute contains a similar exclusion as that relied on by the district court in acquitting Hentges of first-degree manslaughter (malicious punishment of a child)—that “murder in the first or second degree was not committed thereby.” Minn. Stat. § 609.20(2). The state thus contends that, because Hentges committed second-degree murder, she cannot by definition be convicted of first-degree manslaughter, and it therefore cannot constitute the more-specific offense. Hentges opposes this argument relying on the last-antecedent rule of statutory interpretation. Because we affirm the conviction on other grounds, we need not address this issue.