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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1414**

State of Minnesota,
Respondent,

vs.

Morris Silas Dodd, Jr.,
Appellant.

**Filed November 28, 2022
Affirmed
Reilly, Judge**

Becker County District Court
File No. 03-CR-18-2471

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

Brian W. McDonald, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges his second-degree manslaughter conviction, arguing that the evidence was insufficient to sustain his conviction beyond a reasonable doubt because respondent failed to prove gross negligence and recklessness. We affirm.

FACTS

On a snowy day in November 2018, J.N., the victim, spent the day deer hunting near a cabin owned by his friend in rural Becker County. When J.N. left the cabin to return home, he drove on a minimum maintenance trail with rutted pathways from vehicle use. A bullet struck and killed J.N.; the bullet broke through the rear passenger window, traveled through J.N.'s shoulder and chest, killing him. Hours later, J.N.'s friend discovered J.N. unresponsive inside his pickup truck that was stopped off the trail's path, covered in accumulated snow, and still running. Respondent State of Minnesota charged appellant Morris Silas Dodd Jr. with second-degree manslaughter in violation of Minn. Stat. § 609.205(1) (2018), alleging that appellant was also deer hunting in the same area as J.N. that day and fired the shot that killed J.N.¹ The district court conducted a jury trial and the jury found appellant guilty of second-degree manslaughter. This appeal follows.

DECISION

The jury convicted appellant of second-degree manslaughter under Minn. Stat. § 609.205(1). Under this section, a person is guilty of second-degree manslaughter if they cause 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 “more than ordinary negligence,” consisting of “gross negligence coupled with the element of recklessness.”

¹ Appellant was also charged with and pleaded guilty to two counts of possession of a firearm or ammunition as an ineligible person in violation of Minn. Stat. § 609.165, subd. 1(b) (2018). He did not appeal these convictions. Appellant proceeded to trial only on the second-degree manslaughter charge.

State v. Frost, 342 N.W.2d 317, 320 (Minn. 1983) (quotation omitted). The respondent must establish beyond a reasonable doubt that appellant acted with (1) objective gross negligence; and (2) subjective “recklessness in the form of an actual conscious disregard of the risk created by the conduct.” *Id.* Appellant challenges both elements.

I. The direct evidence was sufficient to prove beyond a reasonable doubt that appellant was grossly negligent.

a. Standard of Review

Appellant argues that the evidence is insufficient to support his second-degree manslaughter conviction. To evaluate the sufficiency of the evidence, we “carefully examine 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.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). We view the evidence “in the light most favorable to the verdict” and assume the jury “disbelieved any evidence that conflicted with the verdict.” *Id.* Appellate courts do not disturb the verdict if the jury “upon application of the presumption of innocence and the State’s burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted).

The parties agree that the nature of the evidence presented to prove objective gross negligence is direct evidence. Direct evidence is evidence “based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). For the reasons listed

below, we determine that direct evidence supports the jury's verdict that appellant was grossly negligent.

b. Direct Evidence of Gross Negligence

Objective gross negligence is established by showing that the act was “a gross deviation from the standard of care” that a reasonable person under the actor's circumstances would observe. *Frost*, 342 N.W.2d at 319; *State v. McCormick*, 835 N.W.2d 498, 507 (Minn. App. 2013), *rev. denied* (Minn. Oct. 15, 2013). To determine whether a defendant breached the standard of care, a jury must examine the defendant's conduct. *See State v. Al-Naseer*, 690 N.W.2d 744, 752 (Minn. 2005) (“To determine whether a defendant engaged in gross negligence . . . the defendant's conduct must be examined.”). The jury then evaluates whether the conduct breached the standard of care such that “an ordinary and reasonably prudent [person] would recognize [it] as involving a strong probability of injury to others.” *Frost*, 324 N.W.2d at 320.

During respondent's investigation of J.N.'s death, officers and affiliated trackers located footprints on an elevated ridge that overlooked the trail where J.N. was found. The officers discovered a compressed area of snow on the ridge that suggested an individual was there for some period of time. In that area, they found a Newport cigarette butt and a spent .30-06 caliber shell casing. The officers also found footprints leading to the compressed area and away from it. The footprints leading away had a longer stride interval than the prints leading to the compressed area, suggesting that while the individual walked toward the compressed area, the individual later ran away from it. Respondent linked appellant to a blue Ford Explorer that was seen in the area on the day of J.N.'s death. After

learning appellant's address from his vehicle's registration, officers proceeded to appellant's home and observed a blue Ford Explorer parked on the property. Officers interviewed appellant and obtained a search warrant for his home and vehicle. From appellant's home, officers collected a Remington .30-06 rifle, ammunition, and a pair of boots. Inside appellant's Ford Explorer, officers discovered a pack of Newport cigarettes and a 2018 edition of Minnesota Hunting and Trapping Regulations. Appellant provided a DNA sample. At trial, respondent called an expert who opined that the bullet recovered from J.N.'s body and the spent shell casing matched appellant's rifle.

As part of their investigation, officers spoke with appellant twice. At trial, the jury heard recordings of two interviews given by appellant with conflicting accounts about what he did on the day of J.N.'s death. Appellant's statements to the officers are direct evidence of his conduct. *See McCormick*, 835 N.W.2d at 507 ("Appellant's statements . . . were direct evidence of what appellant did."). During the first interview, appellant denied being in the area at the time of J.N.'s death, but later stated he was there to track coyote prints. In the second interview, appellant again changed his story about his actions, stating he arrived on the hunting grounds at 9:00 a.m. to hunt with his son and a friend. He later fired a shot from the top of a ridge, where the officers discovered the compressed area, "down toward" a fawn that was 45 to 50 yards away from him in a valley. But later appellant estimated that the fawn was actually 100 yards away from him and noted that he had previously told his children not to shoot anything that far away. Appellant stated he did not see J.N.'s truck when he fired, however he had hunted in the area before and knew of

the trail's existence. The defense's witness estimated that the distance between the ridge and J.N.'s truck was around 180 yards.

Appellant also gave differing accounts of the shot's trajectory and his target. First, he stated he did not try to hit the fawn and aimed "right down kinda into the ground" in hopes of flushing out a nearby doe or buck. When the interviewing officer remarked that the forensic evidence did not show the bullet was fired downward in a lower trajectory, appellant said that the shot "should have been at level." Later he explained that he tried to "hit a tree [to] make the smack . . . [and] maybe make the deer go toward me."

At trial, respondent argued that appellant took a shot with a high-powered rifle that he knew he should not have taken and that a reasonable person would recognize as an unsafe shot. Appellant counters that respondent's theory that he took an unsafe shot cannot amount to gross negligence because it failed to prove he violated any hunting rules or deviated from a reasonable person's standard of care. We disagree with appellant. The jury heard testimony from a certified hunting safety instructor on the topic of hunter and gun safety rules. The instructor testified that hunters must be aware of what is beyond their target and ensure that there is a safe backstop for bullets from high powered rifles. The earth is the safest backstop; trees are not safe to shoot at because bullets can easily pass through them. The instructor noted the hunting safety handbook does not discuss shooting toward trails, though it is unlawful to shoot over an improved road or highway. The instructor also testified that a hunter should be careful when a road is part of the backstop or beyond a shot.

Reviewing the evidence in the light most favorable to conviction, the evidence was sufficient to permit the jurors to find appellant was grossly negligent. From appellant's various accounts of the shot's trajectory and target, and the physical evidence from the ridge and the location of J.N.'s truck, jurors could reasonably conclude that appellant either (1) shot at a tree near the fawn and used an unsafe backstop in violation of hunting safety principles; or (2) shot at a "level" angle near the fawn, not using the ground as a safe backstop and not exercising the care required when a road or trail is part of the backstop and beyond the target. Thus, the direct evidence was sufficient for the jury to reasonably conclude appellant's act was a gross deviation from the standard of care that a reasonably prudent person would have observed.

II. The circumstantial evidence was sufficient beyond a reasonable doubt to prove appellant acted with a reckless state of mind.

a. Standard of Review

As for the mental state of recklessness—the subjective component of culpable negligence—the parties disagree about the nature of the evidence presented. Appellant argues that the state's case rests solely on circumstantial evidence, while respondent characterizes appellant's own statements as direct evidence of his subjective state of mind. Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Harris*, 895 N.W.2d at 599 (quotation omitted). A defendant's state of mind is generally proven by circumstantial evidence and can be inferred from their words or actions. *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000).

When there is direct evidence of a defendant's mental state, such as unambiguous evidence of premeditation from the statement "I want [the victim] dead," we analyze whether a disputed element is sufficiently proven by direct evidence alone before turning to the circumstantial-evidence standard. *State v. Horst*, 880 N.W.2d 24, 40-41 (Minn. 2016); *see also Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (finding no direct evidence of defendant's state of mind through his statements and applying the circumstantial-evidence standard). Because appellant did not say, for example, "I was reckless," or "I disregarded the risk to others," there is no direct evidence that appellant had a reckless state of mind. Thus, we conclude the heightened circumstantial-evidence standard applies.

b. Circumstantial Evidence of Recklessness

To be guilty of second-degree manslaughter, respondent must prove the subjective element of recklessness "in the form of an actual conscious disregard of the risk [of death or great bodily harm] created by the conduct." *McCormick*, 835 N.W.2d at 507; *see* Minn. Stat. § 609.205(1). Appellant contends respondent must prove he should have realized the "gravity of danger to the deceased" and assumed the risk anyway such that "the [respondent] proves a reckless state of mind only where the defendant knows the victim is present." We disagree for two reasons.

First, the plain language of section 609.205(1) states, in relevant part, "[a] person who causes the death of *another* . . . is guilty of manslaughter in the second degree . . . by the person's culpable negligence whereby the person . . . consciously takes chances of causing death or great bodily harm to *another*." Minn. Stat. § 609.205(1) (emphasis

added). The plain language of the statute controls when the meaning of the phrase is unambiguous and not subject to more than one reasonable interpretation. *State v. Boecker*, 893 N.W.2d 348, 351 (Minn. 2017). When the legislature has not defined a relevant term, the court may consider dictionary definitions to determine the word's common usage. *Laymon v. Minn. Premiere Props., LLC*, 913 N.W.2d 449, 453 (Minn. 2018). Given that the legislature has not defined "another," the common usage dictates that when used as a pronoun it denotes "one of an undetermined number or group." *The American Heritage Dictionary of the English Language* 74 (5th ed. 2018). Respondent argues that, in interpreting the statute, "the deceased" refers to a definite person and cannot be reconciled with the meaning of "another." We agree. It is unreasonable to read "another" to require the defendant's mens rea to attach to a specific victim and know of their presence when the plain meaning refers to a larger class of persons that is owed a duty of care.

Second, appellant's assertion that respondent must prove he realized the "gravity of danger to the deceased" relies on language discussed by a Massachusetts court and quoted in *State v. Bielke*, a Minnesota case. 127 N.W.2d 516, 520 (Minn. 1964) (quoting *Commonwealth v. Bouvier*, 55 N.E.2d 913, 916 (Mass. 1944)). Both *Bielke* and *Bouvier* involved the unintentional firing of a gun and considered whether the defendant knew the gun was loaded while handling it. *Bielke*, 127 N.W.2d at 528-33; *Bouvier*, 55 N.E.2d at 916-17. Notably, in those two cases, there was no dispute about whether the defendant knew the victim was present. *Id.* As a result, the language appellant cites in *Bielke* is dicta as a "comment made in passing in a judicial opinion that is unnecessary to the decision" and not binding precedent. *State v. Chauvin*, 955 N.W.2d 684, 692 (Minn. App. 2021),

rev. denied (Minn. Mar. 10, 2021). As a result, respondent's burden under section 609.205(1) does not require it to prove appellant knew that the victim was present.

i. Circumstances Proved

We apply a two-step test to evaluate the sufficiency of circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved and assume the jury resolved factual disputes in a manner "consistent with the verdict." *Id.* at 599. We assume that the jury believed the state's witnesses and disbelieved defense witnesses. *Id.*

At trial, J.N.'s friend testified that J.N. left the hunting cabin driving his truck around noon. Around 5:00 p.m., J.N.'s friend discovered the truck, which was off the trail, still running, and covered in snow, with J.N. unresponsive inside. Respondent called an expert who opined the bullet recovered from J.N.'s body and the shell casing found on the ridge matched appellant's rifle. Additionally, respondent's witnesses testified that appellant's boots matched the footprints discovered on the ridge and a major DNA profile matching appellant's DNA, not expected to occur more than once in the world's population, was present on the cigarette butt recovered in the same location. Respondent also presented video footage recorded by law enforcement from the ridge that showed the visibility of another officer's vehicle traveling down the trail and the density of the brush in the valley. In his statements to police, appellant remarked he had hunted in the area before the incident, where he observed vehicles and other hunters in the vicinity and spoke to an individual "from the cabin up the path." On the morning of November 10, he saw tracks going toward the cabin. After taking the shot, appellant left the ridge running because he heard his son

yelling and believed something may have happened to him. He felt “always scared to death somebody is going to get hurt hunting.” Finally, appellant is a licensed, experienced hunter who completed hunting safety training.

Construing “conflicting evidence in the light most favorable to the verdict,” respondent proved the following circumstances. *State v. Tschau*, 758 N.W.2d 849, 858 (Minn. 2008). Appellant (1) had hunted in the area previously; (2) was aware of vehicles, the trail, other hunters, and the cabin where J.N. stayed on the day J.N. was shot and killed; (3) arrived in the area to hunt on the morning of November 10 with his son and friend; (4) saw tracks going toward the cabin; (5) fired his rifle from an elevated ridge in the direction of a fawn in the valley containing dense brush; (6) advised his sons not to shoot at a target that was 100 yards away; (7) is always afraid someone will get hurt hunting; (8) targeted a tree or shot “at level”; (9) owned boots that matched footprints on the ridge and was linked to the cigarette butt by DNA evidence; (10) owned a rifle that matched the bullet casing found on the ridge and the bullet that killed J.N.; and (11) caused the victim’s death when the bullet traveled 180 yards, penetrated the window of the victim’s truck on the trail, and struck him.

ii. No Reasonable Hypothesis Other Than Guilt

The second step requires us to determine whether the circumstances proved are “consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Silvernail*, 831 N.W.2d at 599. We independently examine, with no deference to the jury, “the reasonableness of all inferences that might be drawn from the circumstances proved.”

Loving, 891 N.W.2d at 643. We view the evidence as a whole rather than “as isolated facts.” *Silvernail*, 831 N.W.2d at 599.

Appellant asserts that there is a reasonable inference inconsistent with guilt because video footage from the ridge illustrates the density of the brush and foliage from where the shot was taken and underscores appellant’s assertions that he did not see the victim’s truck. Thus, showing that he “did not know there was any other person at risk from his shot.” We are unpersuaded because this theory, in part, turns on the erroneous notion that the statute requires the actor to know the victim is present. The inference that he did not know anybody could be in danger is unreasonable considering the circumstances proved.

From the circumstances, the jury can reasonably infer that appellant was familiar with the land, cabin, and the location of the trail, as well as the expectation that vehicles or pedestrians would traverse the trail. He was on notice the morning of November 10, based on tracks going toward the cabin, that other hunters, in addition to his son and friend, could be in the area. He was an experienced hunter who appreciated the general risk of great bodily harm or death to other hunters inherent to the sport and believed certain shots were unsafe, including shooting at a distance of 100 yards. Despite his knowledge of the risk to others created by taking the shot, appellant fired. We conclude that the totality of the circumstances and resulting reasonable inferences show that the circumstances proved are consistent with guilt and preclude any rational hypothesis inconsistent with guilt. The evidence is sufficient for the jury to conclude appellant “conscious[ly] disregard[ed] the

risk” created by his conduct and sustains his conviction beyond a reasonable doubt. *Frost*, 342 N.W.2d at 320.

Affirmed.