

*This opinion is nonprecedential except as provided by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
A24-1418**

State of Minnesota,
Respondent,

vs.

Michael James Harlan,
Appellant.

**Filed August 4, 2025
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-21-16535

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

Mary F. Moriarty, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Michael James Harlan sold pills to a man who died of an overdose. After a stipulated-evidence court trial, the district court found Harlan guilty of third-degree murder and second-degree manslaughter. Harlan argues that, because he believed that the pills

contained oxycodone and did not know that the pills contained fentanyl, the evidence is insufficient to prove that he proximately caused the victim's death. We conclude that the evidence is sufficient to support the conviction of third-degree controlled-substance murder. Therefore, we affirm.

FACTS

On March 14, 2021, police officers found C.L. in his apartment in the city of Rogers, deceased, with three pills on a table beside him. The pills had markings consistent with oxycodone, but testing revealed that the pills contained fentanyl. An autopsy determined that C.L.'s cause of death was "mixed ethanol and fentanyl toxicity."

Further investigation revealed that, on the day before C.L.'s death, he had sent a text message asking "Eric" whether he had any "blues," which, the evidence shows, is a common slang term for oxycodone. C.L. and Eric exchanged additional text messages to arrange a meeting in St. Paul later that day. Cell-site-location information showed that C.L. and Eric were in the same location in St. Paul for a short period of time that afternoon.

Investigating officers later learned that the cell-phone number for "Eric" belonged to Harlan. When Harlan was arrested in September 2021, he had in his possession a cell phone with the telephone number that C.L. had messaged on March 13, 2021. After waiving his *Miranda* rights, Harlan admitted that the cell phone belonged to him, that he exchanged text messages with C.L. on March 13, 2021, that he met C.L. in St. Paul later that day, and that he sold oxycodone pills to C.L.

The state charged Harlan with third-degree murder proximately caused by the delivery of a controlled substance, in violation of Minn. Stat. § 609.195(b) (2020), and

second-degree manslaughter by means of culpable negligence, in violation of Minn. Stat. § 609.205(1) (2020). In December 2022, the parties agreed to a stipulated-evidence court trial, which occurred in January 2024. *See* Minn. R. Crim. P. 26.01, subd. 3. The evidence consisted of nine exhibits, including police reports, Harlan’s statements to officers, cell-phone records, medical records, Bureau of Criminal Apprehension reports, and photographs.

In March 2024, the district court filed an order in which it found Harlan guilty of both charges. In May 2024, the district court imposed a sentence of 120 months of imprisonment on the third-degree murder conviction. The district court did not impose a sentence on the second-degree manslaughter conviction. Harlan appeals.

DECISION

I. Third-Degree Murder

Harlan first argues that the evidence is insufficient to support his conviction of third-degree murder under section 609.195(b).

In general, to determine whether evidence is sufficient to support a conviction, this court undertakes “a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient.” *State v. Jones*, 977 N.W.2d 177, 187 (Minn. 2022) (quotation omitted). This court “carefully examine[s] the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder 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) (quotation omitted). “We assume that the jury believed the state’s

witnesses and disbelieved any evidence to the contrary.” *State v. Friese*, 959 N.W.2d 205, 214 (Minn. 2021) (quotation omitted). If an appellant’s argument implicates the meaning of a criminal statute, we apply a *de novo* standard of review. *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017); *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013).

If a conviction rests on circumstantial evidence, this court applies a heightened standard of review with a two-step analysis. *State v. Petersen*, 910 N.W.2d 1, 6-7 (Minn. 2018); *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016); *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). At the first step, we “identify the ‘circumstances proved.’” *State v. Isaac*, 9 N.W.3d 812, 815 (Minn. 2024) (quoting *State v. McInnis*, 962 N.W.2d 874, 890 (Minn. 2021)). “In identifying the circumstances proved, we assume that the jury resolved any factual disputes in a manner that is consistent with the jury’s verdict.” *Moore*, 846 N.W.2d at 88. Accordingly, we “disregard evidence that is inconsistent with the jury’s verdict.” *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). At the second step of the analysis, “we examine independently the reasonableness of the inferences that might be drawn from the circumstances proved,” determine whether “the circumstances proved are consistent with guilt,” and determine whether the circumstances proved are “inconsistent with any rational hypothesis except that of guilt.” *Moore*, 846 N.W.2d at 88 (quotations omitted). At the second step, we do not give deference to the jury’s verdict. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

A.

The applicable statute provides, “Whoever, without intent to cause death, proximately causes the death of a human being by, directly or indirectly, unlawfully selling,

giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance classified in Schedule I or II, is guilty of murder in the third degree” Minn. Stat. § 609.195(b).

Harlan focuses his argument on the issue of proximate cause. He argues that, to prove proximate cause in a prosecution under section 609.195(b), the state is required to prove that the defendant was “able to have anticipated that injury would likely result from the sale of the controlled substance.” He argues further that, “[f]or a person to be able to anticipate that the sale of a controlled substance was likely to result in an injury, they must know the exact nature of the controlled substance they’re selling.” He continues by arguing that, because he did not know that the pills he sold to C.L. contained fentanyl, he could not have anticipated C.L.’s death.¹

¹We reiterate that Harlan’s argument is directed at the element of proximate cause, not the element of intent. We assume without deciding that the offense of third-degree controlled-substance murder is a general-intent crime. See *State v. Cogger*, 802 N.W.2d 407, 410-11 (Minn. App. 2011), *rev. denied* (Minn. Mar. 28, 2012); *State v. Hart*, 477 N.W.2d 732, 736 (Minn. App. 1991), *rev. denied* (Minn. Jan. 16, 1992). Proof of a general-intent crime requires only evidence that “the defendant engaged intentionally in specific, prohibited conduct,” *In re Welfare of C.R.M.*, 611 N.W.2d 802, 808 n.10 (Minn. 2000) (quotation omitted), or, stated differently, evidence of “an ‘intention to make the bodily movement which constitutes the act which the crime requires,’” *State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012) (quoting 1 Wayne R. LaFare, *Substantive Criminal Law* § 5.2(e) (2d ed. 2003)). Harlan does not challenge the sufficiency of the evidence that he intentionally engaged in an act that is prohibited by the applicable statute. Such an argument would be inconsistent with *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009), *rev. denied* (Minn. Feb. 16, 2010), in which the appellant challenged his drug-possession conviction by arguing that the evidence was insufficient to prove that he knew specifically that he possessed cathinone. *Id.* at 917-18. We rejected the argument and affirmed, reasoning that “proof that the defendant was aware that he possessed a controlled substance satisfies the statute’s actual-knowledge requirement.” *Id.* at 919.

In challenging the state's evidence of proximate cause, Harlan cites two supreme court opinions discussing proximate cause in civil negligence cases. In the first, *Lubbers v. Anderson*, 539 N.W.2d 398 (Minn. 1995), the supreme court stated:

[I]n order for a party's negligence to be the proximate cause of an injury the act must be one which the party ought, in the exercise of ordinary care, to have anticipated was likely to result in injury to others, . . . though he could not have anticipated the particular injury which did happen. There must also be a showing that the defendant's conduct was a substantial factor in bringing about the injury.

Id. at 401 (quotations omitted). In the second, *Dellwo v. Pearson*, 107 N.W.2d 859 (Minn. 1961), the supreme court stated that "it is clear . . . that [proximate cause] is not a matter of foreseeability." *Id.* at 861. The *Lubbers* and *Dellwo* opinions appear to be in tension with each other inasmuch as the "ought . . . to have anticipated" concept that was approved in *Lubbers* is quite similar to the foreseeability concept that was disavowed in *Dellwo*. See *Staub v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 620-21 (Minn. 2021) (citing *Lubbers* and stating that party's negligence is not proximate cause of injury unless injury was "a foreseeable result of the negligent act"); *McDougall v. CRC Indus., Inc.*, 523 F. Supp. 3d 1061, 1072 (D. Minn. 2021) (citing *Lubbers* and stating that whether defendant "should have anticipated the likely injury . . . is ultimately a question of foreseeability").

In any event, the civil caselaw does not directly apply to a criminal prosecution for third-degree controlled-substance murder under section 609.195(b), even though the civil caselaw has informed the criminal caselaw. The *Dellwo* opinion has been cited by the supreme court in only one criminal case, which was not a prosecution for third-degree controlled-substance murder under section 609.195(b). See *State v. Smith*, 119 N.W.2d

838, 849 n.2 (Minn. 1962) (affirming conviction of third-degree depraved-mind murder under section 619.10 (1958)). The *Lubbers* opinion has been cited by the supreme court in only two criminal cases, neither of which was a prosecution for third-degree controlled-substance murder under section 609.195(b). See *State v. Smith*, 835 N.W.2d 1, 7-8 (Minn. 2013) (citing *Lubbers* for proposition that superseding cause is question of fact and affirming conviction of criminal vehicular homicide); *State v. Back*, 775 N.W.2d 866, 869-72 & n.5 (Minn. 2009) (citing *Lubbers* in discussing elements of duty and proximate cause and reversing conviction of second-degree culpable-negligence manslaughter). Neither the supreme court nor this court has cited either *Lubbers* or *Dellwo* in a precedential opinion concerning a prosecution for third-degree controlled-substance murder under section 609.195(b).²

To find the applicable law concerning proximate cause in a prosecution for third-degree controlled-substance murder, we look to the 2013 *Smith* opinion, in which the supreme court stated, “to prove proximate cause, the State must show that the defendant’s acts were a substantial factor in causing the death.” 835 N.W.2d at 4 (citing *State v. Olson*, 435 N.W.2d 530, 534 (Minn. 1989)). This court applied a similar definition in a case of third-degree controlled-substance murder, stating that proximate cause may be understood as “something that had a substantial part in bringing about the individual’s death either

²We have cited *Lubbers* in one *nonprecedential* opinion while discussing third-degree controlled-substance murder under section 609.195(b). See *Walker v. State*, No. A19-0161, 2019 WL 4409412, *2 (Minn. App. Sept. 16, 2019), *pet. dismissed* (Minn. Nov. 8, 2019). But this court’s nonprecedential opinions are “not binding authority.” Minn. R. Civ. App. P. 136.01, subd. 1(c).

directly and immediately or through happenings that follow one after another.” *State v. Schnagl*, 907 N.W.2d 188, 196 (Minn. App. 2017) (quoting 10 *Minnesota Practice*, CRIMJIG 11.40 (2015)), *rev. denied* (Minn. Feb. 28, 2018). These formulations of proximate cause reflect the second concept in *Lubbers*, that “the defendant’s conduct was a substantial factor in bringing about the injury,” but do not incorporate the first concept in *Lubbers*, that the defendant “ought . . . to have anticipated [the act] was likely to result in injury to others.” *See* 539 N.W.2d at 401. Thus, in a prosecution for third-degree controlled-substance murder, the inquiry is limited to the question whether a defendant’s “acts were a substantial factor in causing the death.” *See Smith*, 835 N.W.2d at 4.

B.

In its March 2024 order, the district court found that C.L. died, that Harlan directly sold pills to C.L., that Harlan acted intentionally, that Harlan knew that the pills he sold to C.L. contained a controlled substance, and that Harlan’s sale of the pills to C.L. was unlawful.

With respect to the issue of proximate cause, the district court made the following findings: C.L.’s cause of death was “mixed ethanol and fentanyl toxicity.” Three blue pills with oxycodone markings were found next to C.L.’s dead body along with his cell phone. C.L.’s cell phone revealed that Harlan offered to sell C.L. oxycodone in February 2021 and that C.L. responded with interest on March 13, 2021. Harlan regularly met customers in parking lots and other public places to sell controlled substances and, when he was arrested, he had a large amount of cash on his person. There was no evidence that C.L. might have purchased oxycodone or blue pills from any other supplier. The stipulated

evidence supports these findings. Based on its predicate findings, the district court made an ultimate finding that Harlan proximately caused C.L.'s death by selling him pills containing fentanyl.

To resolve Harlan's argument, we need not describe the stipulated evidence supporting each of the district court's predicate findings because he makes a very narrow argument: that the evidence is insufficient to prove proximate cause on the ground that the stipulated evidence shows that he believed that the pills he sold to C.L. contained oxycodone and did *not* believe that the pills contained fentanyl. Based on the law of proximate cause discussed above, Harlan's knowledge or understanding of the ingredients of the pills that he sold to C.L. is immaterial. Rather, the relevant question is whether Harlan's act of selling pills to C.L. was a substantial factor in causing his death. *See id.*

The 2013 *Smith* case is instructive. Smith drove a car at high speeds through a residential neighborhood while impaired by alcohol. *Id.* at 3. He crashed into another vehicle at an intersection and injured a 93-year-old woman, who suffered, among other injuries, a traumatic brain injury and complex fractures of her cervical spine. *Id.* During a long hospitalization, she developed lung problems, including aspiration and pneumonia, leading to respiratory failure, which caused her death. *Id.* at 3-4. Smith was charged and convicted of criminal vehicular homicide. *Id.* at 3. On appeal, he challenged the sufficiency of the evidence of proximate cause. *Id.* at 4. The supreme court's proximate-cause analysis focused on "Smith's conduct" and his "actions." *Id.* at 5-7. The supreme court did *not* inquire into Smith's knowledge or beliefs about, for example, the likelihood

of a collision with another vehicle or the age and physical condition of the occupants of other vehicles. *See id.*

As in *Smith*, we focus on the appellant's conduct. Harlan engaged in the prohibited act of selling a controlled substance to C.L. As a result of Harlan's conduct, C.L. consumed the controlled substance, which caused his death. For these reasons, Harlan's conduct was "a substantial factor in causing the death." *See id.* at 4.

Thus, the evidence is sufficient to prove that Harlan proximately caused C.L.'s death and, therefore, is sufficient to support his conviction of third-degree controlled-substance murder.

II. Second-Degree Manslaughter

Harlan also argues that, for the same reasons, the evidence is insufficient to support his conviction of second-degree manslaughter by means of culpable negligence. A person commits that offense if he or she "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).

The district court found Harlan guilty of second-degree culpable-negligence manslaughter but did not impose a sentence for that offense. The criminal appellate rules provide that a defendant "may appeal as of right from any adverse final judgment" and that a "final judgment within the meaning of these rules occurs when the district court enters a judgment of conviction *and imposes or stays a sentence.*" Minn. R. Crim. P. 28.02, subd. 2(1) (emphasis added). Because the district court did not impose a sentence on the conviction of second-degree manslaughter, there is not a final judgment with respect to that

offense from which Harlan may appeal as of right. *See State v. Ashland*, 287 N.W.2d 649, 650 (Minn. 1979) (declining to address sufficiency-of-evidence argument for charges on which defendant was found guilty but not sentenced). Thus, we need not decide whether the evidence is sufficient to support Harlan's conviction of second-degree culpable-negligence manslaughter. *See id.*

Affirmed.