STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0929

State of Minnesota,
Respondent,

vs.

Christopher Allen Trautman,
Appellant.

Filed May 28, 2013
Affirmed
Kirk, Judge

Olmsted County District Court
File No. 55-CR-10-8694

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, Eric M. Woodford, Assistant County Attorney, Rochester, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Kirk, Judge.

U N P U B L I S H E D O P I N I O N

KIRK, Judge

Appellant Christopher Allen Trautman challenges his conviction of one count of third-degree murder and multiple counts of criminal vehicular homicide and criminal vehicular operation, arguing that: (1) the district court violated the constitutional right to a public trial by keeping the courtroom locked during a portion of the proceedings; (2) the evidence is insufficient to sustain his conviction of third-degree murder; (3) the district court abused its discretion by denying his requested jury instruction; and (4) the district court abused its discretion by excluding certain evidence. We affirm.

FACTS

The Friday after Thanksgiving 2010, the bars in downtown Rochester were crowded with people. Among these people were C.G. and several of his friends. At one point, two of C.G.'s friends, A.M. and D.R., left the group with plans to reconnect later. Shortly before midnight, A.M. or D.R. contacted C.G. on his cell phone and informed him of drink specials at another bar. C.G. and his companions began to walk to the bar. At the intersection of Broadway and Fourth Street, they entered the crosswalk on a green light with a walk signal. Shortly after crossing the median, C.G. encountered A.M. and D.R. walking in the opposite direction. The three men acknowledged one another and A.M. and D.R. turned around and began to cross the street with C.G. and his companions.

When C.G. and A.M., who were bringing up the rear, were approximately one foot from the sidewalk, appellant drove through the intersection and struck them with his vehicle.[1]

After the collision, appellant's passenger—who had seen and warned of the pedestrians prior to the collision—screamed that appellant "just hit those people." Appellant replied, "It's okay. I got to keep going." Appellant increased his speed and, in another nearby crosswalk, struck two more pedestrians, R.D. and T.C., who had been crossing the street with a walk signal. After the second collision, appellant's vehicle stopped and appellant left the scene on foot. Law enforcement apprehended appellant in the vicinity and, within two hours of the collisions, appellant's alcohol concentration was 0.21 and he had multiple narcotics in his system.

It is undisputed that, as a result of the first collision, A.M. died and C.G. suffered substantial bodily harm. It is also undisputed that, as a result of the second collision, both R.D. and T.C. suffered substantial bodily harm. The state charged appellant with 1 count of third-degree murder, 5 counts of criminal vehicular homicide, 15 counts of criminal vehicular operation, and 2 counts of failing to stop after a traffic accident with an individual. Appellant pleaded not guilty to the charges.

A jury trial followed. On the fifth day of trial, before the district court opened the courtroom, appellant's counsel moved for a hearing on juror tampering. The motion stemmed from information that A.M.'s mother had parked her vehicle, with two bumper stickers opposing drunk driving, in the same lot as the jury. The district court determined

[1] During trial, a witness testified that appellant entered the intersection "at a high rate of speed," after the light turned green but while there were still pedestrians in the crosswalk.

that rather than juror tampering or jury misconduct, the real question was "whether or not prejudicial information [had] been presented to the jury through direct or indirect means." The district court determined that it would individually question the jurors "as to what, if anything, they saw." The district court asked, "Any objection to me keeping the courtroom locked during this procedure?" Appellant's counsel replied, "No, Your Honor." The district court asked each juror whether he or she had read or listened to any reports about the trial, or seen any bumper stickers that address the subject matter of the case, and determined that the jury was not exposed to the relevant bumper stickers. After hearing a few more logistical matters, the district court opened the courtroom by 9:30 a.m.

The jury found appellant guilty of third-degree murder, 5 counts of criminal vehicular homicide, and 15 counts of criminal vehicular operation. The district court adjudicated appellant guilty and sentenced him to four terms of imprisonment, one term for each victim, including a 180-month sentence for the conviction of third-degree murder.[2] This appeal followed.

D E C I S I O N

I. Courtroom closure.

Appellant argues that the district court violated the constitutional right to a public trial by keeping the courtroom locked while individually questioning jurors regarding

[2] Regarding the three victims of criminal vehicular operation, the district court imposed concurrent sentences of 15 months' imprisonment and 17 months' imprisonment, and a consecutive sentence of 12 months and one day.

their exposure to potentially prejudicial material during trial.[3] Whether the right to a public trial has been violated is a constitutional question subject to de novo review. *State v. Brown*, 815 N.W.2d 609, 616 (Minn. 2012).

The United States and Minnesota constitutions guarantee a criminal defendant the right to a public trial. U.S. Const. amend. VI; Minn. Const. I, § 6. Denials of this right constitute structural error not subject to harmless error review. *Brown*, 815 N.W.2d at 616. But the right to a public trial is not absolute and "may give way in certain cases to other rights or interests." *Waller v. Georgia*, 467 U.S. 39, 45, 104 S. Ct. 2210, 2215 (1984).[4] A courtroom closure can be "so trivial" that it does not implicate a defendant's right to a public trial. *Brown*, 815 N.W.2d at 617-18. To determine the triviality of a closure, we consider such factors as whether the courtroom was cleared of all spectators and the length of the closure. *See id.*

Here, the district court questioned jurors in accordance with Minn. R. Crim. P. 26.03, which provides:

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[3] We note that appellant's counsel expressly consented to the challenged closure. This court has found a similar agreement by defense counsel to constitute waiver of an improper closure. *State v. Bashire*, 606 N.W.2d 449, 451-52 (Minn. App. 2000), *review denied* (Minn. Mar. 28, 2000). But the Minnesota Supreme Court has stated that "[s]tructural errors always invalidate a conviction whether or not a timely objection to the error was made." *State v. Brown*, 732 N.W.2d 625, 630 (Minn. 2007). And Minnesota recognizes "an exception to the invited error doctrine that allows [a reviewing] court to correct an error that satisfies the doctrine of plain error." *State v. Evans*, 756 N.W.2d 854, 867 (Minn. 2008).

[4] To determine whether a closure is justified, "the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the [district] court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." *Waller*, 467 U.S. at 48, 104 S. Ct. at 2216. Here, it is undisputed that the district court did not conduct this analysis.

> **Questioning Jurors About Exposure to Potentially Prejudicial Material in the Course of a Trial.** If the court determines that material disseminated outside the trial proceedings raises questions of possible prejudice, the court may on its initiative, and must on motion of either party, question each juror, out of the presence of the others, about the juror's exposure to that material. The examination must take place in the presence of counsel, and a record of the examination must be made.

Minn. R. Crim. P. 26.03, subd. 10. Such questioning routinely occurs in the district court's chambers, away from the public. *See Holt v. State*, 772 N.W.2d 470, 476, 478-80 (Minn. 2009); *see also Marshall v. U.S.*, 360 U.S. 310, 310-12, 79 S. Ct. 1171, 1172-73 (1959).

Because (1) the type of juror questioning at issue may take place in chambers rather than in the courtroom; (2) the district court did not clear the courtroom of spectators—it merely postponed opening the courtroom for the day; and (3) the juror questioning comprised a small portion of the trial proceedings, the closure at issue was so trivial that it does not implicate appellant's right to a public trial. *See Brown*, 815 N.W.2d at 617-18; *Holt*, 772 N.W.2d at 476, 478-80. Appellant is not entitled to relief on this ground.

II. Sufficiency of the evidence.

Appellant argues that because the record does not establish that he acted with a depraved mind and without regard for human life, the evidence is insufficient to sustain his conviction of third-degree murder. When reviewing a challenge to the sufficiency of the evidence, we conduct a thorough analysis of the record to determine whether the jury reasonably could find the defendant guilty of the offense based on the facts in the record

and the legitimate inferences that can be drawn from those facts. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, we view the evidence in the light most favorable to the verdict and assume that the jury believed the evidence supporting the guilty verdict and disbelieved any evidence to the contrary. *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, reasonably could conclude that the defendant is guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).[5]

Under Minnesota law, a person is guilty of third-degree murder if the person, "without intent to effect the death of any person, causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life." Minn. Stat. § 609.195(a).

> [T]he nature of an act and the circumstances attending it may be prima facie evidence that the doer of the act was in fact a man of depraved mind. . . . If the act inevitably endangers human life, as every sane man must know, [it is] in and of itself convincing proof that the doer had a depraved inclination to mischief; that he had no regard for social duty; that he was generally reckless of life, possessed, in short, of a depraved mind within the meaning of the statute[.]

[5] Appellant implies that his conviction of third-degree murder is based on circumstantial evidence, thus warranting heightened scrutiny on review. *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). But because intent is not an element of the crime at issue, and the elements of appellant's conviction are supported by direct evidence, the circumstantial-evidence standard does not apply. *See* Minn. Stat. § 609.195(a) (2010) (requiring an act that evinces a depraved mind, but no intent to cause another's death); *Al-Naseer*, 788 N.W.2d at 474.

State v. Weltz, 155 Minn. 143, 146, 193 N.W. 42, 43 (1923). And "[a] mind which may become inflamed by liquor and passion to such a degree that it ceases to care for human life and safety is a depraved mind." *Id.* at 149, 193 N.W. at 44.

Appellant stipulated that within two hours of the collisions, his alcohol concentration was 0.21 and he had multiple narcotics in his system. His passenger testified that she told appellant "[h]e shouldn't be driving" and they should call a cab. According to the passenger's testimony, appellant insisted on driving and, rather than drive directly to their destination, drove "all over like here and there," making stops at one house and two convenience stores. Appellant then proceeded towards downtown, instructing her to grab the wheel if he swerved. Shortly thereafter, appellant swerved and she grabbed the wheel. After this incident, appellant acted "belligerent." The passenger also testified that before appellant struck A.M. and C.G., she "saw people walking across the road, and it seemed as if [appellant] accelerated. . . . [She] screamed that he was going to hit those people. And [she] screamed at the top of [her] lungs that he was going to hit them, and he just didn't stop. . . . He just kept going," increasing his speed. She further testified that the pedestrians were "[p]retty visible" to her, and it seemed to her "that it was more than enough time to be able to react." And after appellant struck A.M. and C.G., she said, "Oh my God, you just hit those people," and appellant responded, "It's okay. I got to keep going." He then drove "extremely fast," until striking R.D. and T.C. After the second collision, appellant left the scene on foot.

Viewing the evidence in the light most favorable to the verdict, the jury could reasonably conclude that appellant acted with a depraved mind, without regard for human

life. Thus, the evidence is sufficient to sustain the conviction of third-degree murder, and appellant is not entitled to relief on this ground.

III. Jury instruction.

Appellant argues that the district court committed reversible error by declining to instruct the jury on intervening, superseding cause. We review a district court's denial of a defendant's requested jury instruction for an abuse of discretion. *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996). To warrant reversal, an appellant must demonstrate both that the district court's decision was erroneous and the error was prejudicial. *See State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001) (explaining analytical framework). A district court has considerable latitude in selecting the particular language for jury instructions. *State v. Kycia*, 665 N.W.2d 539, 542 (Minn. App. 2003). But the instructions must define the offense without materially misstating the law. *Kuhnau*, 622 N.W.2d at 556. And a defendant is entitled to an instruction on the defendant's theory of the case if there is evidence to support it. *State v. Persitz*, 518 N.W.2d 843, 848 (Minn. 1994).

Here, appellant requested a jury instruction on intervening, superseding cause. Under Minnesota law,

> [f]or an intervening cause to be considered a superseding cause, the intervening cause must satisfy four elements: 1) its harmful effects must have occurred after the original negligence; 2) it must not have been brought about by the original negligence; 3) it must have actively worked to bring about a result which would not otherwise have followed from the original negligence; and 4) it must not have been reasonably foreseeable by the original wrongdoer.

State v. Hofer, 614 N.W.2d 734, 737 (Minn. App. 2000) (quoting *Canada by Landy v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997)), *review denied* (Minn. Aug. 15, 2000).

Appellant contends that A.M. "acted negligently by stopping in the middle of a busy intersection to speak with [C.G.], on a dark night, shortly after midnight." Although appellant asserts that this act satisfies the four elements of an intervening, superseding cause, on appeal appellant concedes that A.M.'s allegedly negligent act occurred *prior* to his own "negligent driving conduct." Because an intervening cause is only a superseding cause if its harmful effects occur *after* the original negligence, appellant's argument is without merit and the district court did not err by declining to instruct the jury on intervening, superseding cause. *See id.*

IV. Exclusion of evidence.

Appellant argues that the district court committed reversible error by excluding evidence of A.M.'s alcohol concentration. We review a district court's decision to exclude evidence under an abuse-of-discretion standard. *State v. Richardson*, 670 N.W.2d 267, 277 (Minn. 2003). "Under this standard, [r]eversal is warranted only when the error substantially influences the jury's decision. In other words, we will reverse when there is a reasonable possibility that, had the erroneously excluded evidence been admitted, the verdict might have been more favorable to the defendant." *Id.* (quotation omitted and alteration in original).

A person accused of an offense must be "afforded a meaningful opportunity to present a complete defense." *State v. Quick*, 659 N.W.2d 701, 712 (Minn. 2003)

(quotation omitted). But a defendant is not entitled to present irrelevant evidence. *State v. Crims*, 540 N.W.2d 860, 866 (Minn. App. 1995), *review denied* (Minn. Jan. 25, 1996).

Generally, a victim's contributory negligence is not a defense to a crime. *State v. Crace*, 289 N.W.2d 54, 59 (Minn. 1979). But an intervening, superseding act breaks the chain of causation set in operation by a defendant's negligence and limits the defendant's liability for his culpable conduct. *Hofer*, 614 N.W.2d at 737. Thus, a victim's negligent conduct is relevant to the extent that it affected proximate cause. *State v. Nelson*, 806 N.W.2d 558, 563 (Minn. App. 2011), *review denied* (Minn. Feb. 14, 2012).

The parties dispute whether A.M. acted negligently. *See* Minn. Stat. § 169.06, subd. 6 (2010) (establishing the meanings of pedestrian control signals and the effect of abiding by these signals). But, as discussed in Section III, *supra*, even if A.M.'s conduct was negligent, it does not constitute an intervening, superseding cause of harm. Thus, regardless of its allegedly negligent nature, A.M.'s conduct is not a defense to the third-degree-murder charge against appellant. *See Crace*, 289 N.W.2d at 60. Accordingly, the district court did not abuse its discretion by excluding evidence of A.M.'s alcohol concentration. Moreover, the jury heard undisputed testimony that A.M. consumed "one or two beers" and "about five" alcoholic Jell-O shots before the collision. Because the jury heard such testimony, there is not a reasonable possibility that, had evidence of A.M.'s alcohol concentration been admitted into evidence, the verdict may have been more favorable to appellant. Appellant is not entitled to relief on this ground.

Affirmed.