

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

BROCK AMELIA HILL, *Appellant*.

No. 1 CA-CR 21-0334

FILED 10-25-2022

Appeal from the Superior Court in Mohave County

No. S8015CR202000854

The Honorable Billy K. Sipe, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Tucson

By Karen Moody

Counsel for Appellee

Jill L. Evans Attorney at Law, Flagstaff

Counsel for Appellant

STATE v. HILL
Decision of the Court

MEMORANDUM DECISION

Judge Michael J. Brown delivered the decision of the Court, in which Presiding Judge Jennifer M. Perkins and Judge James B. Morse Jr. joined.

B R O W N, Judge:

¶1 Brock Amelia Hill appeals his convictions and sentences for various crimes arising from a collision he caused while driving under the influence of alcohol. For the following reasons, we affirm.

BACKGROUND

¶2 We view the facts in the light most favorable to sustaining the verdicts. *State v. Payne*, 233 Ariz. 484, 509, ¶ 93 (2013). One summer evening, F.S. drove to a store along a straight rural two-lane road through “open [cattle] range” to purchase some snacks. On the way, she observed what appeared to be a cow ahead of her in her lane. F.S. soon realized, however, that the “cow” was in fact a four-wheel all-terrain vehicle (“ATV”) carrying three teen-aged girls. F.S. slowed down, passed the ATV, and proceeded to the store.

¶3 Around 8:00 p.m., F.S. was at the store when she noticed the girls on the ATV that she had passed were standing next to her. The girls eventually left on the ATV followed moments later by F.S. Soon after F.S. pulled out of the store’s parking lot, she noticed a white pickup truck “a few seconds” ahead of her in her lane. F.S. then saw the truck stop on the side of the road less than a mile from the store, just past a road sign warning drivers to be on the lookout for cattle. As F.S. approached, she noticed “debris and stuff in the road . . . and instantly knew there was an accident.” F.S. stopped and immediately called 911. Hill, the driver of the truck, left the scene on foot.

¶4 First responders were dispatched at 8:32 p.m. and arrived at the scene seven minutes later. They found that two of the ATV riders had died; the third survived but suffered serious injuries. The victims were not wearing helmets, and there were no reflectors on the back of the ATV.

¶5 Sheriff’s deputies later found Hill approximately 1.5 miles away at his “surrogate” uncle’s house. Hill seemed impaired, and his uncle said that Hill consumed “four or five beers” after the collision. A sample of

STATE v. HILL
Decision of the Court

Hill's blood was subsequently drawn and tested. Taking into account the alcohol Hill claimed he consumed after the collision, the State's expert estimated Hill's blood-alcohol concentration at .12 to .16 when the collision occurred.

¶6 The ensuing investigation revealed that Hill was driving 76 miles-per-hour ("MPH") and did not apply the truck's brakes at the time of the collision. The ATV was travelling, at most, 35-40 MPH. The posted speed limit for the area was 55 MPH for daytime and 50 MPH for nighttime.

¶7 The State charged Hill with one count of failure to stop at the scene of an accident involving death or serious physical injury, and two counts each of manslaughter, all class two felonies, and two counts of aggravated assault, both class three felonies. One of the aggravated assault counts, relating to the surviving victim, alleged Hill caused serious physical injury (Count 4). The other count alleged he used a deadly weapon or dangerous instrument—his truck—to physically injure the same victim (Count 5). The State also charged Hill with two counts of misdemeanor driving under the influence ("DUI").

¶8 At trial, Hill denied causing the collision, arguing "this was simply an unavoidable accident" due to the victims' unsafe operation of the ATV on the road after dark. Consistent with this argument, Hill requested a superseding cause jury instruction. The trial court denied Hill's request.

¶9 The jury found Hill guilty on two counts of negligent homicide, class four felonies, as lesser-included offenses of the manslaughter counts. *See State v. Fisher*, 141 Ariz. 227, 247 (1984) ("The general rule is that negligent homicide is a lesser included offense of manslaughter."). Regarding the extreme DUI charge, the jury found Hill guilty of a lesser DUI offense. Otherwise, the jury found Hill guilty as charged.

¶10 The jury also found various aggravating circumstances for sentencing purposes. With respect to the negligent homicide and aggravated assault counts, the jury determined that the homicide victims' immediate families and the assault victim suffered emotional harm. For Count 4, the jury found that Hill inflicted serious physical injury, and for Count 5, it found that Hill committed the offense with a dangerous instrument.

¶11 At sentencing, the trial court found Hill had a 2017 felony conviction and imposed an enhanced presumptive prison term for leaving the scene of an injury accident. The court imposed maximum enhanced

STATE v. HILL
Decision of the Court

sentences for the homicide and aggravated assault convictions as dangerous offenses. Considered together, the combination of concurrent and consecutive sentences resulted in an aggregate prison term of 40.25 years. Hill timely appealed, and we have jurisdiction under A.R.S. 12-120.21(A)(1).

DISCUSSION

A. Proximate Cause/Superseding Cause

¶12 Hill argues insufficient evidence established that he proximately caused the collision with the ATV. Indeed, according to Hill, the evidence established that the victims' conduct in operating an ATV without taillights or reflectors in the middle of a "dark highway" below the speed limit and without protective gear was unforeseeable and therefore a superseding cause of the collision. Thus, Hill alternatively challenges the trial court's denial of his requested instruction on superseding cause.

¶13 Our review of the sufficiency of evidence is limited to whether substantial evidence exists to support the verdict. *State v. Scott*, 177 Ariz. 131, 138 (1993); *see also* Ariz. R. Crim. P. 20(a) (directing courts to enter judgment of acquittal "if there is no substantial evidence to support a conviction."). Substantial evidence is direct or circumstantial proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67 (1990) (quoting *State v. Jones*, 125 Ariz. 417, 419 (1980)); *State v. Borquez*, 232 Ariz. 484, 487, ¶¶ 9, 11 (App. 2013). We do not reweigh the evidence on appeal. *Borquez*, 232 Ariz. at 487, ¶ 9.

¶14 "[B]oth 'but for' causation and proximate cause must be established in a criminal case." *State v. Marty*, 166 Ariz. 233, 236 (App. 1990) (citation omitted). Hill does not argue the State failed to prove that "but for" his conduct, the victims' deaths and injuries would not have occurred. *See id.*; *see also* A.R.S. § 13-203(A)(1) (conduct is the cause of a result when the "result in question" would not have occurred "[b]ut for the conduct" at issue).

¶15 "'Proximate cause' exists if the alleged criminal act produced an injury or death 'in a natural and continuous sequence, unbroken by any efficient intervening cause.'" *State v. Aragon*, 252 Ariz. 525, 529, ¶ 9 (2022) (citations omitted). "[A]n intervening event is 'one that actively operates in producing harm after the original actor's . . . act or omission has been committed.'" *Id.* at 530, ¶ 17 (citation omitted). When a defendant's "conduct actively continues up to the time the injury is sustained, then any

STATE v. HILL
Decision of the Court

outside force [that] is also a substantial factor in bringing about the injury is a concurrent cause of the injury and never an intervening force.” *Id.* at 529, ¶ 11 (citation omitted).

¶16 In this case, the evidence established that Hill’s speeding while impaired by alcohol, and his failure to perceive the associated substantial risk of causing an accident and killing another motorist, “actively continue[d] up to the time” he rear-ended the ATV, killing two of the ATV riders and seriously injuring the third. *See Fisher*, 141 Ariz. at 248 (“Negligent homicide is established where a person fails to perceive the substantial and unjustifiable risk that his or her conduct will cause the death of another.”). Thus, the victims’ conduct was, at most, a concurrent cause of the victims’ injuries, not an intervening event that absolved Hill. *See Aragon*, 252 Ariz. at 530, ¶¶ 14–16 (concluding that accident victim’s alleged driving under the influence and failure to wear seatbelt or yield were not an intervening cause “because they occurred simultaneously with [the defendant’s] alleged excessive speeding”). Thus, substantial evidence established that Hill proximately caused the collision and supported his negligent homicide and aggravated assault convictions.

¶17 Because the victims’ conduct, regardless of its foreseeability, was not an intervening event, Hill was not entitled to a superseding cause instruction. *See Aragon*, 252 Ariz. at 530, ¶ 17 (“To determine whether a defendant is entitled to a superseding cause jury instruction, a court should *first* determine whether the event is an intervening event.”); *see also State v. Bass*, 198 Ariz. 571, 575–76, ¶¶ 11–13 (2000) (an intervening cause is a superseding event only when unforeseeable, abnormal, or extraordinary). The trial court did not abuse its discretion by denying Hill’s request for the instruction. *See Aragon*, 252 Ariz. at 528, at ¶ 6.

B. Preclusion of Evidence

¶18 Hill argues the trial court improperly limited his defense by precluding the following evidence: (1) the medical examiner’s opinion whether helmets would have helped prevent the victims’ injuries; (2) the contents of the ATV’s operation manual; (3) opinions or experiences of witnesses addressing the safe operation of ATVs; and (4) his uncle’s observations of the victims previously riding the ATV in an unsafe manner.

¶19 The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides a criminal defendant the right to “be afforded a meaningful opportunity to present a complete defense.” *California v. Trombetta*, 467 U.S. 479, 485 (1984). This right is not unlimited;

STATE v. HILL
Decision of the Court

it is subject to evidentiary rules. As a result, the “right to present evidence in one’s defense is limited to evidence [that] is relevant and not unduly prejudicial.” *State v. Abdi*, 226 Ariz. 361, 368, ¶ 32 (App. 2011) (citation omitted).

¶20 The trial court properly precluded Hill’s proffered evidence because it was not relevant to determining his guilt. As noted, the victims’ apparent unsafe manner in operating the ATV at the time of the collision was not an intervening event that could have potentially obviated Hill’s culpability. And neither the opinions of third parties as to the victims’ driving conduct nor the safe driving standards presumably contained in the ATV’s owner manual were relevant to evaluating Hill’s alleged criminal conduct. *See* Ariz. R. Evid. 401 (“Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”).

¶21 As to evidence of the victims’ failure to wear helmets, the medical examiner testified that he “didn’t believe the [deceased victims] were wearing helmets . . . [b]ecause of the injuries sustained.” Indeed, referencing one of the deceased victims, the medical examiner agreed on cross-examination that “her injuries would have been lessened had she been wearing a helmet or protective gear.” Thus, the common-sense notion that helmets or protective gear may have ameliorated the victims’ injuries was presented to the jury in the form of an expert opinion. If any error occurred by precluding further evidence on this topic, it was harmless. *See State v. Romero*, 240 Ariz. 503, 508, ¶ 8 (App. 2016) (noting that error in excluding evidence may be rendered harmless by cumulative similar evidence).

C. Sentencing

¶22 Hill raises two issues challenging the maximum enhanced sentences imposed for the homicide and aggravated assault convictions. First, he argues the trial court erred by rejecting three mitigating factors: (1) his use of alcohol allegedly impaired his capacity to appreciate the wrongfulness of his conduct, (2) his troubled childhood, and (3) the victims’ contributory negligence. Second, Hill argues the aggravating circumstances found only in connection with the two aggravated assault sentences, serious physical injury and use of a dangerous instrument, were elements of the offenses and therefore improperly used to impose the maximum sentences.

STATE v. HILL
Decision of the Court

1. Mitigating Factors

¶23 A trial court is not required to find that mitigating circumstances exist merely because the defendant presents mitigating evidence; the court is only required to give the evidence due consideration. *State v. Cazares*, 205 Ariz. 425, 427, ¶ 8 (App. 2003). The weight to be given any factor asserted in mitigation rests within the court's sound discretion. *Id.* Thus, we will not disturb a trial court's broad sentencing discretion unless it "acted arbitrarily or capriciously or failed to adequately investigate the facts relevant to sentencing." *Id.* at ¶ 6. If the trial court has fully considered the relevant factors when imposing a sentence, "we will generally find no abuse of discretion." *Id.*

¶24 The trial court did not abuse its discretion by rejecting three of Hill's proffered mitigating factors. As the court correctly noted, the record does not reflect that Hill's intoxication at the time of the offenses was anything other than voluntary, and "[t]he alcohol impairment is really partially what caused the devastation in this case[.]" Regarding Hill's upbringing by parents who were drug addicted, the court similarly reasoned "this is not a drug offense[,] [t]his is alcohol impairment. . . . [A] lot of people that have had troubled childhoods . . . turned out to be very solid . . . law-abiding citizens, and there's really nothing about what the defendant went through that . . . should mitigate or reduce the sentence[.]" Finally, the court rejected the victims' purported contributory negligence as a mitigating factor because "[t]his is not a civil case where if you sue somebody but the person's at fault as well, perhaps the recovery should be less because of their negligence. This is a criminal case." The court therefore sufficiently considered Hill's intoxication, his troubled childhood, and the victims' contributory fault as possible mitigating factors before rejecting them.

2. Aggravating Factors

¶25 The trial court imposed enhanced sentences for Counts 4 and 5 because they were dangerous offenses based on Hill's use of a dangerous instrument and infliction of serious physical injury. See A.R.S. §§ 13-105(13), -704(a). Hill does not challenge the enhancement of his sentences; instead, he argues that use of a dangerous instrument and infliction of serious physical injury were improper *aggravating* circumstances for Counts 4 and 5 respectively. See *State v. Alvarez*, 205 Ariz. 110, 112, ¶ 4 n.1 (App. 2003) (noting that enhancement of a sentence, which increases the entire range of possible punishment for each class of an offense, differs from aggravation and mitigation, which raise or lower a particular sentence

STATE v. HILL
Decision of the Court

within the permissible range). Whether a particular aggravating factor is an element of the offense, and whether the trial court may properly use such a factor in aggravation are questions of law, which we review de novo. *State v. Tschilar*, 200 Ariz. 427, 435, ¶ 32 (App. 2001).

¶26 As a matter of law, use of a dangerous instrument and infliction of serious physical injury could not be used to both enhance and aggravate the sentences for Counts 4 and 5. See A.R.S. § 13-701(D)(1), (2) (prohibiting infliction of serious physical injury and use of a dangerous instrument as aggravating factors if they are used to enhance a sentence). We presume the trial court knew of this prohibition. See *State v. Trostle*, 191 Ariz. 4, 22 (1997). Consistent with that presumption, the court did not refer to use of a dangerous instrument or infliction of serious physical injury as aggravating factors when it imposed the maximum sentences for Counts 4 and 5. Hill does not contest the other two aggravating factors—emotional harm and prior felony conviction—that the court relied on in imposing aggravated sentences.

¶27 “Under Arizona’s sentencing scheme, once a jury implicitly or explicitly finds one aggravating factor, a defendant is exposed to a sentencing range that extends to the maximum punishment available under [Arizona law].” *State v. Emedi*, 251 Ariz. 78, 84, ¶ 26 (App. 2021) (citation omitted); see *State v. Marquez*, 127 Ariz. 3, 7 (App. 1980) (recognizing that a court is not required to make its sentencing decision “based upon the mere numbers of aggravating or mitigating circumstances”). Because the trial court relied on at least one proper aggravating factor to impose the maximum sentences for the aggravated assault convictions as provided by statute, Hill has failed to show that the court erroneously relied on use of a dangerous instrument and infliction of serious physical injury to aggravate the sentences. See A.R.S. § 13-704(A) (maximum sentence for a class three dangerous offense is 15 years).

CONCLUSION

¶28 We affirm Hill’s convictions and sentences.



AMY M. WOOD • Clerk of the Court
FILED: AA