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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1487**

State of Minnesota,
Respondent,

vs.

Joel Richard Helgeson,
Appellant.

**Filed August 27, 2018
Affirmed
Johnson, Judge**

Goodhue County District Court
File No. 25-VB-17-2542

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

Stephen Betcher, Goodhue County Attorney, Red Wing, Minnesota; and

Roger N. Knutson, Cannon Falls City Attorney, Alina Schwartz, Assistant City Attorney,
Campbell Knutson P.A., Eagan, Minnesota (for respondent)

Joel Richard Helgeson, Minneapolis, Minnesota (pro se appellant)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Johnson,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

The district court found Joel Richard Helgeson guilty of speeding based on evidence that he was driving 72 miles per hour in a 55-mile-per-hour zone. Helgeson argues that the district court erred because he was justified in speeding to pass another vehicle and because he proved the affirmative defense of necessity. We affirm.

FACTS

On June 6, 2017, Helgeson was driving south on U.S. Highway 52 toward Rochester. Near Cannon Falls, he drove through a construction zone, which reduced the two southbound lanes to a single lane. The posted speed limit in the construction zone was 55 miles per hour. Helgeson saw a pickup truck with a trailer on the on-ramp, preparing to merge into the single southbound lane of traffic. Helgeson increased his speed to get in front of the pickup truck.

Goodhue County Deputy Sheriff Sundby was parked nearby. His laser device indicated that Helgeson's vehicle was moving at a speed of 72 miles per hour. Deputy Sundby followed Helgeson briefly and pulled him over. Helgeson told Deputy Sundby that he sped up to pass the pickup truck with a trailer. Deputy Sundby cited Helgeson for speeding, in violation of Minn. Stat. § 169.14, subd. 2(a)(3) (2016).

The district court conducted a court trial on one day in August 2017. Helgeson represented himself at trial. The state called one witness, Deputy Sundby, who testified to the facts stated above. Helgeson testified in his own defense. He testified that he increased his speed to get in front of the pickup truck and trailer so as to give the pickup truck and

trailer adequate room to merge onto the highway. The district court found Helgeson guilty and imposed a fine of \$60. Helgeson appeals.

D E C I S I O N

Helgeson argues that the district court erred by finding him guilty on the grounds that he was permitted by statute to speed up to pass the pickup truck and trailer and that he established the affirmative defense of necessity. He explains in his *pro se* brief that, as the pickup truck and trailer were traveling beside his vehicle, he “sped up to get ahead of the truck because slowing down wasn’t a viable option . . . due to the added length of the trailer and traffic behind me.”

A.

Helgeson first argues that his conduct is justified by a statute that allows a vehicle to drive faster than the posted speed limit to pass another vehicle. The statute on which he relies provides that a vehicle may travel 10 miles per hour faster than the posted speed limit if, among other things, the vehicle is “on a two-lane highway having one lane for each direction of travel,” “on a highway with a posted speed limit that is equal to or higher than 55 miles per hour,” and “is overtaking and passing another vehicle proceeding in the same direction of travel.” Minn. Stat. § 169.14, subd. 2a(1)-(3) (2016). Helgeson was cited for driving 17 miles per hour faster than the posted speed limit. Because he drove faster than permitted by the statute on which he relies, his conduct is not justified by the statute.

B.

Helgeson also argues that he is not guilty on the ground that he established the affirmative defense of necessity.

Necessity may be an affirmative defense to a criminal charge. *State v. Johnson*, 289 Minn. 196, 199, 183 N.W.2d 541, 543 (1971); *State v. Hanson*, 468 N.W.2d 77, 78 (Minn. App. 1991), *review denied* (Minn. June 3, 1991). “[T]he defense applies only in emergency situations where the peril is instant, overwhelming, and leaves no alternative but the conduct in question.” *Johnson*, 289 Minn. at 199, 183 N.W.2d at 543. The defense does not apply if the defendant could have avoided the emergency by taking advance precautions. *Id.* at 199-200, 183 N.W.2d at 543. A defendant who seeks to establish the defense of necessity must prove that “(1) there is no legal alternative to breaking the law, (2) the harm to be prevented is imminent, and (3) there is a direct, causal connection between breaking the law and preventing the harm.” *State v. Rein*, 477 N.W.2d 716, 717 (Minn. App. 1991), *review denied* (Minn. Jan. 30, 1992); *see also State v. Hage*, 595 N.W.2d 200, 207 (Minn. 1999) (holding that defendant bears burden of proof on necessity defense if defendant’s theory does not contradict any element of charged offense).

The district court rejected Helgeson’s asserted defense by finding that he “had two choices”—to speed up or slow down—and that he “made the decision to accelerate rather than slow down.” The district court’s finding is inconsistent with the necessity defense, which requires that there be “no alternative” but to engage in criminal conduct. *See Johnson*, 289 Minn. at 199, 183 N.W.2d at 543; *Rein*, 477 N.W.2d at 717. As the district court noted, Helgeson could have slowed down to allow the pickup truck and trailer to merge ahead of him, but he chose instead to speed up to get in front of the pickup truck and trailer.

In sum, the district court did not err by finding Helgeson guilty of speeding because his speeding is not justified by an exception to the speeding statute and because he did not prove the affirmative defense of necessity.

Affirmed.