STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1877

State of Minnesota,
Respondent,

vs.

Jason Rudolf Vadner,
Appellant.

Filed October 21, 2019
Affirmed
Smith, Tracy M., Judge

Otter Tail County District Court
File No. 56-CR-17-2144

Keith Ellison, Attorney General, Peter D. Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Eldien, Otter Tail County Attorney, Fergus Falls, 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; Smith, Tracy M., Judge; and Peterson, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

SMITH, TRACY M., Judge

In this direct appeal, appellant Jason Vadner argues that (1) his conviction for criminal vehicular homicide must be reversed and a new trial granted because the state failed to prove the element of gross negligence beyond a reasonable doubt and (2) in the alternative, the case must be remanded for reconsideration of his request for a downward dispositional sentencing departure because the district court made a legal error in evaluating his particular amenability to probation. We affirm.

FACTS

Vadner was driving a semitruck on Highway 210 through foggy conditions in the early morning of April 13, 2017. Just before 6:00 a.m., his semitruck collided head-on with a car driven by J.Q. J.Q. died from his injuries. The state charged Vadner with criminal vehicular homicide, in violation of Minn. Stat. § 609.2112, subd. 1(a)(1) (2016).

The evidence at his jury trial showed the following facts. Vadner spoke with a state trooper at the scene of the collision and reported that he had been driving, looked up, saw headlights, and realized he was in the oncoming lane of traffic. He then grabbed the steering wheel, and the impact occurred. He was not impaired by drugs or alcohol and was not using a cell phone. In a follow-up interview with the trooper the next day, Vadner admitted that, because of the heavy fog, he could not see the lane lines at times. He said that he considered pulling over to the shoulder of the road but decided to continue until he reached the next city because he thought that stopping might be more dangerous.

A driver in a vehicle traveling closely behind Vadner's semitruck testified that, just before the collision, she saw the semitruck go completely over the centerline into the oncoming lane of traffic. She did not see any brake lights activate on the semitruck until after she heard and then saw the collision.

Troopers testified that, on their way to the scene, they had to slow down because of the heavy fog conditions. They estimated that visibility varied from three to six car lengths.

Two experts testified for the state. An expert in accident reconstruction pulled data from the semitruck's "black box" and found that the truck was traveling at speeds between about 56 and 64 miles per hour—in a 60-mile-per-hour zone—leading up to the collision. At the time of impact, the truck was traveling at about 59 miles per hour. The accident reconstructionist also determined that Vadner did not apply the truck's brakes until after the impact had occurred, which conformed with the eyewitness's testimony. Another expert witness, an investigator with the Minnesota State Patrol, testified that, based on his forensic mapping of the scene, the collision had two causes: Vadner's truck crossing over the center line, and Vadner failing to reduce his speed to account for the heavy fog. Both experts determined that the semitruck was entirely in the opposing lane at the time of the collision, again matching the eyewitness's account.

After the trial, the jury found Vadner guilty of criminal vehicular homicide based on gross negligence. At sentencing, Vadner moved for a downward dispositional departure, requesting a probationary sentence. The district court denied Vadner's motion and sentenced him to 50 months' imprisonment, which was at the bottom of the presumptive guidelines sentencing range.

This appeal follows.

D E C I S I O N

I. The evidence was sufficient to support appellant's conviction for criminal vehicular homicide.

A person commits criminal vehicular homicide if he "causes the death of a human being not constituting murder or manslaughter as a result of operating a motor vehicle . . . in a grossly negligent manner." Minn. Stat. § 609.2112, subd. 1(a)(1). Vadner argues that the evidence is insufficient to support a finding of gross negligence.

In considering a claim of insufficient evidence, appellate courts review the record to determine whether the evidence, viewed in the light most favorable to the conviction, is sufficient to support the jury's verdict. *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004). The sufficiency of circumstantial evidence is subject to a stricter standard of review than is the sufficiency of direct evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). Both parties contend that, in this case, the determination of gross negligence relies on circumstantial evidence and that the stricter standard of review applies. We need not decide whether the direct-evidence or the circumstantial-evidence standard is appropriate if the evidence is sufficient to support the jury's verdict under the heightened standard. *Id.* (declining to decide whether direct-evidence or circumstantial-evidence standard applies when evidence is sufficient under standard more favorable to appellant).

To apply the heightened standard, appellate courts use a two-step process. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). First, the appellate court identifies the circumstances that the state proved. *Id.* To do so, it "winnow[s] down" the evidence by

"resolving all questions of fact in favor of the jury's verdict" and disregarding any evidence inconsistent with the verdict. *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). Second, the court determines "whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *State v. Bahtuoh*, 840 N.W.2d 804, 810 (Minn. 2013). There are two questions within this second inquiry: first, "whether the inferences that point to guilt are reasonable," and, second, whether the circumstances exclude any reasonable inference other than guilt. *Silvernail*, 831 N.W.2d at 599 (quotation omitted).

Vadner argues that, while the circumstances proved may reasonably lead to an inference of negligence, they are inconsistent with an inference of gross negligence. We begin the analysis with the circumstances proved.

A. Circumstances Proved

Assuming that the jury credited the testimony of the state's witnesses and construing the evidence in the light most favorable to the verdict, *see State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011), we identify the following circumstances proved. Vadner's semitruck was completely over the center line and in the oncoming lane of traffic when it stuck J.Q.'s car, causing J.Q.'s death. Heavy fog affected visibility that morning, and Vadner admittedly could not see the lines at times. At the moment of impact, Vadner's semitruck was traveling at about 59 miles per hour in a 60-mile-per-hour zone. Vadner did not apply the semi's brakes until after the impact had occurred. He was not impaired by alcohol or drugs at the time of the collision and was not using his cell phone.

Vadner argues there were additional circumstances proved: that he "realized he had crossed the centerline and tried to correct course in a safe manner" and that he "considered pulling over but decided it was not safe." The first assertion, that Vadner "tried to correct course in a safe manner," is inconsistent with the verdict. It is also inconsistent with the accident reconstruction evidence, eyewitness testimony, and seemingly Vadner's own statement to the trooper on the day of the accident that he grabbed the steering wheel and the impact occurred. Thus, it is not part of the circumstances proved. *See State v. Stein*, 776 N.W.2d 709, 715 (Minn. 2010) ("Where the jury has rejected conflicting facts and circumstances, we do not draw competing inferences from those facts on appeal."). The second assertion, that Vadner "considered pulling over but decided it was not safe," also conflicts with the verdict if construed as Vadner wishes, which is to show that he exercised some degree of care by weighing whether to pull over.[1] We thus also disregard this evidence insofar as it is inconsistent with the verdict. *Harris*, 895 N.W.2d at 600.

B. Inferences from the Circumstances Proved

We next evaluate whether it is reasonable to infer from the circumstances proved that Vadner is guilty of criminal vehicular homicide based on gross negligence and whether no reasonable inference may be drawn that is inconsistent with Vadner's guilt. *See id.*

[1]This evidence could also be construed in favor of the verdict, as it tends to show that Vadner, while aware that even *stopping* posed a substantial risk, continued forward at speeds around 60 miles per hour. We construe any conflicting evidence "in the light most favorable to the verdict," so, even if this assertion is part of the circumstances proved, it does not advance Vadner's argument. *See Hawes*, 801 N.W.2d at 668 (quotation omitted).

1. Consistent with Guilt

Vadner argues that the circumstances proved are inconsistent with a finding of gross negligence. While admitting that his driving conduct was negligent, Vadner contends that it did not "represent the complete lack of care that characterizes the substantially higher standard of gross negligence."

"Gross negligence" requires "very great negligence, or the absence of slight diligence, or the want of even scant care." *State v. Bolsinger*, 21 N.W.2d 480, 485 (Minn. 1946) (quotations omitted); *see State v. Al-Naseer*, 690 N.W.2d 744, 752 (Minn. 2005) ("Although *Bolsinger* was decided in 1946, the principles set out there are still valid today."). "It amounts to indifference to present legal duty, and to utter forgetfulness of legal obligations so far as other persons may be affected. . . . Gross negligence is a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence." *Bolsinger*, 21 N.W.2d at 485. The difference between gross negligence and ordinary negligence is one of degree. *Id.* It does not require recklessness or "willful and wanton disregard." *State v. Hegstrom*, 543 N.W.2d 698, 703 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996).

In the driving context, gross negligence generally includes "some egregious driving conduct coupled with other evidence of negligence." *State v. Miller*, 471 N.W.2d 380, 384 (Minn. App. 1991). A "sufficient degree of inattention to the road" can constitute the "lack of slight care" necessary for gross negligence. *Hegstrom*, 543 N.W.2d at 703 (quotation omitted) (citing *State v. Tinklenberg*, 194 N.W.2d 590, 591 (Minn. 1972)).

To determine whether the circumstances proved reasonably support an inference of gross negligence, appellate courts must evaluate them as a whole. *See Silvernail*, 831 N.W.2d at 599 ("We review the circumstantial evidence not as isolated facts, but as a whole."). Here, the circumstances proved show Vadner was unaware that he was driving in the opposing lane of traffic until immediately before the impact. Despite his admitted inability to see the lane lines, he failed to reduce his speed in response to the heavy fog. Evidence that a reduced speed would have been appropriate due to weather conditions can support a finding of gross negligence, as can evidence that the driver crossed the center line. *State v. Pelawa*, 590 N.W.2d 142, 145 (Minn. App. 1999) (holding that "crossing the center line and the lane of opposing traffic . . . show[s] a degree of 'inattention to the road' sufficient to meet the gross negligence standard"), *review denied* (Minn. Apr. 28, 1999); *State v. Kissner*, 541 N.W.2d 317, 321 (Minn. App. 1995), *review denied* (Minn. Feb. 9, 1996). A "sufficient degree of inattention to the road" can reasonably be inferred from the evidence that Vadner was traveling through heavy fog at speeds around 60 miles per hour in an appreciably large commercial vehicle. That he failed to brake or make any evasive maneuver prior to the collision supports the inference that he failed to exercise even "slight care." This evidence of negligence, coupled with the egregious driving conduct of maneuvering a semitruck entirely over the center line into oncoming traffic, reasonably supports an inference that Vadner operated his vehicle in a grossly negligent manner.

2. Inconsistent with Guilt

Vadner argues that the circumstances proved support a rational hypothesis inconsistent with gross negligence—specifically, that he was merely negligent. He does

not assert a particular factual scenario (for example, that he fell asleep or had a medical emergency) that is "inconsistent with guilt" but rather argues that gross negligence is a high bar and his conduct did not rise to that level. He argues that several circumstances show at least "slight" care on his part. These include that he had thought about pulling over but determined it was safest to continue to the next town, that he did not realize he was in the wrong lane until he felt the rumble strips on the opposing shoulder, and that he "realized the need to correct course and did so in the safest way he knew—cautiously so as to avoid jackknifing his truck." He also points out that he was not under the influence of drugs or alcohol, was not using his cell phone, and was not driving over the speed limit at the time of the collision.

The first group of circumstances, regarding Vadner's thought processes, cannot be considered at step two because they are not "circumstances proved." As explained above, evidence inconsistent with the verdict is disregarded. *See Harris*, 895 N.W.2d at 600.

The remaining circumstances, regarding the absence of distractions or other traffic violations, are not necessarily indicative of care given the weather conditions the morning of the collision. The question is whether the circumstances that the state proved, viewed *as a whole*, are consistent with a rational hypothesis other than guilt. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). It remains the case that Vadner was driving a large vehicle through heavy fog at around 60 mph when he admittedly could not see the lane lines. That he was not using his cell phone, significantly exceeding the speed limit, or driving under

the influence of drugs or alcohol[2] does not support a competing inference inconsistent with guilt here. *See Hegstrom*, 543 N.W.2d at 703 (explaining that a sufficient degree of inattention to the road can constitute gross negligence; reckless conduct is not required).

C. Conclusion

Given the circumstances proved, it is reasonable to infer that Vadner operated the semitruck in a grossly negligent manner and there are no reasonable inferences inconsistent with guilt. The evidence is thus sufficient to sustain the conviction.

II. The district court did not abuse its discretion by denying appellant's motion for a downward dispositional departure and imposing a guidelines sentence.

Vadner next argues that the district court erred by denying his motion for a downward dispositional departure because it misapplied the law regarding particular amenability to probation. The district court's analysis, he argues, treated the availability of a specific recidivism-reducing program as a strict condition precedent to granting a downward dispositional departure.

District courts have a great deal of discretion in sentencing. *State v. Soto*, 855 N.W.2d 303, 305 (Minn. 2014). On appeal, this court reviews a district court's sentencing decision for an abuse of that discretion. *Id.* at 307-08. The district court's discretion is limited, however, by the Minnesota Sentencing Guidelines, which prescribe a sentence that

[2] The absence of drug or alcohol use is particularly unpersuasive because criminal vehicular homicide resulting from impaired driving is a separate crime covered by a different subsection of the statute. *Compare* Minn. Stat. § 609.2112, subd. 1(a)(1) (causing the death of another while driving in a *grossly* negligent manner), *with* Minn. Stat. § 609.2112, subd. 1(a)(2) (2016) (causing the death of another while driving in a *negligent* manner while under the influence of alcohol or drugs).

is "presumed to be appropriate." Minn. Sent. Guidelines 2.D.1 (2016); *see Soto*, 855 N.W.2d at 308. A district court may exercise its discretion to depart from the guidelines only if there are "identifiable, substantial, and compelling circumstances that distinguish a case and overcome the presumption in favor of the guidelines sentences." *Soto*, 855 N.W.2d at 308 (quotation omitted). "In fact, a sentencing court has no discretion to depart from the sentencing guidelines unless aggravating or mitigating factors are present." *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999). A district court also abuses its discretion if its rationale is legally impermissible. *See State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016).

The guidelines provide a nonexclusive list of mitigating factors that can justify a downward dispositional departure, including that "[t]he offender is particularly amenable to probation." Minn. Sent. Guidelines 2.D.3.a.(7) (2016). The qualifier "particularly" severely curbs the number of departures in a way that is consistent with promoting the guidelines' purpose of sentencing uniformity. *See Soto*, 855 N.W.2d at 308-09. In determining particular amenability to probation, courts consider factors such as "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). A district court is not required to depart "from a presumptively executed prison sentence, even if there is evidence in the record that the defendant would be amenable to probation." *State v. Olson*, 765 N.W.2d 662, 663 (Minn. App. 2009).

Vadner argues that the district court misapplied the law for determining particular amenability to probation by treating the availability of a specific recidivism-reducing program as a necessary prerequisite for departure. He argues that Minnesota law contains

no such requirement and imposing one conflicts with the principle that dispositional departures should be based on the characteristics of the individual defendant.

The district court analyzed particular amenability to probation on the record as follows:

> When I'm asked to make a determination of whether a person is particularly amenable to probation, depending on the case, there are a variety of factors that I look to. Included within those factors is a consideration of what services or treatment or supervision could be provided to address needs of the defendant that have been identified. . . .
>
> I have given this decision task a lot of thought. I have reviewed the authorities and the Sentencing Guideline comments and information that's made available to the Court. And in these circumstances, I am not finding that there is a particular amenability to probation that would support granting a term of probation. And that is because I can't find, in my mind, the particular service or treatment or degree of supervision that would address a need of Mr. Vadner so as to promote this concept of the criminal activity being repeated in the future.
>
> I have no doubt that Mr. Vadner would be accountable to probation. I believe he would meet with his probation officer. I believe that he would follow the rules of probation that are established. But it's that concept of what could be done so the activity, the criminal activity, is not repeated that my analysis follows on the decision of not finding amenability to probation.

The district court accordingly denied Vadner's motion for a downward dispositional departure. The presumptive guidelines sentence was 58 months' imprisonment, with a range of 50 to 69 months, and the court sentenced him to 50 months' imprisonment.

Vadner argues that the district court's reasoning conflicts with Minn. Sent. Guidelines 2.D.3.a.(7). That provision states that particular amenability to probation "may,

but need not, be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting." *Cf. Soto*, 855 N.W.2d at 311 (finding an amenability-to-probation analysis flawed insofar as it treated the defendant's remorse as a "strict prerequisite," rather than one of several factors that *may* be considered). Vadner asserts that the district court erroneously required a showing of particular amenability to an anti-recidivism treatment program before it would consider dispositional departure.

The district court's reasoning, however, is not as rigid as Vadner's argument portrays it. Notably, the court explained: "I can't find, in my mind, the particular service or treatment or degree of supervision *that would address a need of Mr. Vadner* so as to promote the concept of the criminal activity being repeated in the future." (Emphasis added.) This explanation does not necessarily imply that the district court viewed a specific program of individualized treatment as a strict prerequisite to finding Vadner particularly amenable to probation. Rather, in context, it seems to show that the court did consider Vadner as an individual and did not find a specific need of his that probation could address. The district court's analysis does not end at "treatment" but also looks for any "service" or "degree of supervision" that could prevent similar criminal activity from occurring. And the district court stated at the outset that, when it determines whether a person is particularly amenable to probation, it looks to "a variety of factors." The district court said it "[gave] this decision a lot of thought" and reviewed the authorities, guidelines, and information available to the court. This all shows that the district court did not premise its sentencing decision on the availability of specific programming.

It also shows that the district court did not abuse its discretion by imposing a guidelines sentence. Again, a district court looks at factors such as "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family." *Trog*, 323 N.W.2d at 31. The record here shows that, at the time of the offense, Vadner was 34 years old. His criminal history included one felony conviction and several misdemeanor, traffic, and juvenile offenses. He had succeeded on a stay of imposition in the past and argued that should weigh in his favor. The presentence investigation report (PSI) suggested that he was very remorseful but that he believed he had taken proper precautions on the day of the accident. The district court appears to have analyzed, at least implicitly, "cooperation" and "attitude in court," as it found that Vadner would "no doubt" be accountable to probation and follow the rules. As to family support, the PSI reflected that Vadner had a wife and several children as well as a "good relationship" with his mother and stepfather. In sum, some factors favored Vadner, and others did not, and no single factor is dispositive in determining particular amenability to probation. *See Trog*, 323 N.W.2d at 31 (holding that numerous factors are relevant). Moreover, a district court is not required to depart from the guidelines even if a defendant is particularly amenable to probation. *See State v. Olson*, 765 N.W.2d 662, 663 (Minn. App. 2009).

We may not interfere with a sentencing court's exercise of discretion in imposing a presumptive sentence "as long as the record shows the sentencing court carefully evaluated all the testimony and information presented." *State v. Van Ruler*, 378 N.W.2d 77, 81 (Minn. App. 1985). The record demonstrates that the district court did so here. The record also

demonstrates that the district court made no error of law. The district court therefore acted within its discretion when it denied a dispositional sentencing departure.

Affirmed.