STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0200

State of Minnesota,
Respondent,

vs.

Christopher Michael Wendt,
Appellant.

Filed November 30, 2020
Affirmed in part, reversed in part, and remanded
Jesson, Judge

Hennepin County District Court
File No. 27-CR-17-21713

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Adam T. Johnson, David R. Lundgren, Lundgren & Johnson, P.S.C., Minneapolis, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Reilly, Judge.

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

JESSON, Judge

Appellant Christopher Michael Wendt was traveling south on Highway 169 with methamphetamine in his system when he crossed the shoulder of the highway and crashed

into a parked car, killing its occupant. Wendt argues that his conviction for criminal vehicular homicide must be reversed because: (1) the prosecutor committed misconduct; (2) the district court erred by instructing the jury that it could only consider the lesser-included offense if it determined Wendt was not guilty of the greater offense; (3) the district court judge who presided over the jury trial was biased; and (4) if not individually, then the cumulative effect of these errors affected his right to a fair trial. Alternatively, Wendt argues that the district court lacked authority to impose a five-year conditional-release term. Because Wendt's conviction was supported by overwhelming evidence and the district court judge's impartiality could not reasonably be questioned, we affirm. But we reverse the district court's imposition of a five-year conditional-release period and remand for resentencing.

FACTS

On July 12, 2017, appellant Christopher Michael Wendt was driving his Ford pickup truck southbound on Highway 169 in Bloomington when he veered off the highway and smashed into a Camaro parked on the westbound shoulder of the highway, killing its driver, T.K. The accident occurred shortly after 6:00 p.m. The weather was 76 degrees with clear skies.

Wendt told a responding officer that he "looked over his shoulder for a brief second, looked in his mirror for a brief second and ended up hitting the vehicle in front of him." Wendt also indicated that "he may have drifted a little bit." Wendt told another officer that "he looked over his left shoulder, and when he looked forward, he noticed he was on the shoulder."

The officers then observed that after speaking with the medics, Wendt was "passed out in the weeds, sleeping." This behavior caused the officers to suspect that Wendt was under the influence of a controlled substance. The officers also noted that Wendt displayed "[n]o emotions whatsoever" after the accident. A sample of Wendt's blood taken after the accident revealed the presence of methamphetamine and amphetamine in his system. Wendt was then charged with criminal vehicular homicide.[1]

Wendt's trial proceeded for four days in November 2018. Evidence presented at trial showed that just before impact, Wendt's truck was travelling at 62-69 miles per hour while the Camaro was in park with its power off. After impact, the Camaro accelerated to a speed of 41-46 miles per hour. The damage to the truck indicated that it was primarily a frontal collision. The Camaro was crushed forward like an accordion, with its rear wheels driven up into the passenger compartment. The truck left a skid mark on the front-lower-driver's-side portion of the Camaro as it drove over the car.

Two people who witnessed the crash testified at trial. E.R. was approximately 100 feet behind the pickup truck at the time of the collision. E.R. testified that she did not see the pickup truck swerve, hit its brakes, or make any attempt to avoid the collision. N.B., the other witness to the crash, testified that she was traveling parallel to the pickup truck about a half length behind it when, out of the corner of her eye, she saw it drive over the top of the Camaro, go into the air, and flip over.

[1] Minn. Stat. § 609.2112, subd. 1(a)(6) (2016).

N.B. stated that the pickup truck did not attempt to brake, and instead "literally drove over the top of the [Camaro.]" When asked if she originally told a trooper that the Camaro was in the far right lane, she clarified that she "didn't notice the Camaro until I got out of my car," and "[t]hat's because that's where the [Camaro] was when it was smashed because it still was in the far right lane at that moment."

The accident reconstructionist provided the following testimony regarding the precise location of where the crash occurred:

> Q: [Is there] [a]ny evidence from which you can conclude that the end of that Camaro . . . was sticking out into the roadway at the time of the collision?
>
> A: No, sir. Based off my physical scene measurements of the evidence that was available to me at the time of the crash, in correlation with the shape of the vehicle and the measurements that I have from the manufacturer, I don't have any evidence it was sticking into the traffic lane.
>
> Q: Is there any evidence that you have from which you conclude that the F-350 was not on the shoulder of southbound 169?
>
> A: No, sir, that's where the collision took place.

Based on the data retrieved from the pickup truck's airbag sensor, there was no evidence that Wendt ever applied his brakes in the five seconds preceding the crash. The sensor further indicated that at the time of the crash, Wendt was steering slightly to the left, and there was no indication of either "an avoidance or panic reaction-type situation."[2]

[2] The evidence presented at trial included testimony from other witnesses not included in our summary of Wendt's trial.

At the close of evidence, the district court granted Wendt's request to instruct the jury on the lesser-included offense of fourth-degree driving while impaired (DWI). Minn. Stat. § 169A.20, subd. 1(7) (2016). The jury found Wendt guilty of criminal vehicular homicide but did not return a verdict on the lesser-included offense. The district court sentenced Wendt to 48 months in prison, with a five-year conditional-release period.

Wendt filed a direct appeal and we granted his request to stay the appeal so he could pursue postconviction proceedings in district court. After holding an evidentiary hearing on Wendt's allegation of judicial misconduct, the district court denied his postconviction petition in its entirety, and we dissolved the stay and reinstated his direct appeal.

D E C I S I O N

With the exception of Wendt's claim that the district court imposed an incorrect conditional-release period, he raised all of the errors asserted on direct appeal in his postconviction petition. "When a defendant initially files a direct appeal and then moves for a stay to pursue postconviction relief, we review the postconviction court's decisions using the same standard that we apply on direct appeal." *State v. Beecroft*, 813 N.W.2d 814, 836 (Minn. 2012). With this in mind, we first address Wendt's claim that he is entitled to a new trial on the basis of prosecutorial misconduct. We then address in turn Wendt's claims that the district court erroneously instructed the jury, the district court judge was biased, the cumulative nature of the errors entitle him to a new trial, and the district court imposed an incorrect period of conditional release.

I. The prosecutor did not commit reversible misconduct.

Wendt identifies one instance of objected-to prosecutorial misconduct and six instances of unobjected-to prosecutorial misconduct which he asserts entitle him to a new trial. We begin by addressing the alleged instance of misconduct objected to during trial, and then proceed to address Wendt's unobjected-to claims.

Objected-to Testimony Regarding Wendt's Behavior

Wendt asserts the prosecutor committed misconduct by eliciting clearly inadmissible testimony. Wendt objected to the testimony on relevance grounds. Objected-to prosecutorial misconduct is reviewed for harmless error. *State v. Hunt*, 615 N.W.2d 294, 302 (Minn. 2000). Prosecutorial misconduct "results from violations of clear or established standards of conduct, e.g., rules, laws, orders by a district court, or clear commands in this state's case law." *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007).

Wendt's trial focused on whether Wendt's negligent driving caused him to collide with the parked Camaro, killing T.K. To assess the merits of Wendt's claims, it is useful to keep the three elements of criminal vehicular homicide front and center. As the district court instructed the jury, to convict Wendt, the state must prove that: (1) T.K. was killed; (2) Wendt caused T.K.'s death by *negligently operating* his truck *while any amount of methamphetamine was present in his system*; and (3) Wendt's act took place in Hennepin County on or about July 12, 2017. Minn. Stat. § 609.2112, subd. 1(a)(6).

Wendt points to the following exchange (which he complains is irrelevant) during the testimony of an investigator, regarding Wendt's behavior when he arrived at the hospital following the crash:

> Q: When you and the other troopers and the defendant went into the hospital, what was [the] hospital staff's reaction? What did they try to do?
>
> A: So they—he got admitted. . . . [W]e're getting him checked out for any injuries. The hospital staff . . . wanted to put him in a C-collar to protect his spine. He was becoming argumentative with staff and irritable and trying to control the situation.
>
> Q: What do you mean "trying to control the situation"?
>
> A: He was just being very demanding. He threatened to walk out of the hospital. We were trying to calm him down. He just didn't seem to really care what was going on. I had to remind him that he killed someone, and just his attitude, he just really didn't care.
>
> Q: After you reminded him, did he ask about the deceased's family or anything?
>
> [Wendt's attorney]: Objection; relevance, Your Honor.
>
> [District Court]: Overruled.
>
> A: No, he really didn't mention anything. He wanted me to call his family, his wife, and I ended up calling his mom for him to let them know he was at the hospital.

This testimony regarding Wendt's behavior following the accident was relevant to the responding officers' suspicion that Wendt was under the influence of a controlled substance. As a result, eliciting the testimony does not amount to prosecutorial misconduct.

Nor did the testimony of multiple witnesses about Wendt's nonresponsive behavior immediately following the accident amount to prosecutorial misconduct.

Trooper Solberg testified that Wendt displayed "no emotions whatsoever," leading him to suspect that Wendt was under the influence, particularly after he fell asleep in the grass after his initial contact with the first responders. And Trooper Wayne testified that "extreme sleepiness," which Wendt exhibited shortly after the accident, is a symptom that the effects of methamphetamine are beginning to wear off. Finally, the forensic scientist testified that methamphetamine can cause a person to become "confused, irritable, paranoid, and increasingly fatigued."

In light of this testimony, Wendt's lack of emotion immediately after the accident (as well as his behavior at the hospital) was relevant to whether he was under the influence of methamphetamine at the time of the accident. Therefore, the prosecutor did not commit misconduct by eliciting the testimony.

Plain Error

Wendt identifies six instances of asserted prosecutorial misconduct that were not objected to during trial. When a defendant fails to object during trial, prosecutorial misconduct is reviewed under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Wendt bears the burden of establishing error that is plain, but upon doing so the burden shifts to the state to prove that there is no reasonable likelihood that the absence of the misconduct would have had a significant effect on the jury's verdict. *Id.*

Wendt identifies the following unobjected-to instances of alleged prosecutorial misconduct:

> (1) the prosecutor characterized Wendt as being on a methamphetamine "binge";
>
> (2) the prosecutor aligned himself with the jury by using the pronoun "we" once during his closing argument;
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> (3) the prosecutor noted that evidence of Wendt's methamphetamine use was uncontradicted;
>
> (4) the prosecutor disparaged the defense during his closing argument;
>
> (5) the prosecutor appealed to the passions of the jury by stating "[Wendt] used his turn signal. Congratulations. We'll share that with [T.K.'s widow].[3] I'm sure that brings her a lot of solace that the guy had his turn signal on when he ran over and killed another human being."; and
>
> (6) the prosecutor misstated the law regarding the lesser-included-offense instruction.

While the state does not contest that the examples of conduct during the state's closing argument were plain error, the state nevertheless asserts that there was no reasonable likelihood that the verdict was attributable to the errors. For the reasons set forth below, we determine that the state has met its burden of proving that there is no reasonable likelihood that any of the alleged instances of misconduct had a significant

[3] It is inappropriate for a prosecutor to intentionally misstate evidence during closing argument. *State v. Salitros*, 499 N.W.2d 815, 817 (Minn. 1993). It is inappropriate for the prosecutor to use the pronoun "we" as a means of describing the defendant as being from a different world than the prosecutor and jury. *State v. Mayhorn*, 720 N.W.2d 776, 790 (Minn. 2006). "A prosecutor must not appeal to the passions of the jury." *Id.* at 786–87.

effect on the jury's verdict. Therefore, we do not address whether each instance of alleged misconduct constituted plain error.

As previously explained, the only element of criminal vehicular homicide at issue during trial was whether Wendt's negligent driving caused T.K.'s death while methamphetamine was in his system. Wendt asserts that the state has not met its burden because the evidence presented at trial did not clearly establish his negligence, and thus it is possible that the jury convicted him of criminal vehicular homicide based on the instances of prosecutorial misconduct.

We disagree. Wendt neglects to point to any evidence upon which the jury could have found that he was not negligent. In his brief, Wendt contends that "[d]ivergent eyewitness accounts and reconstruction evidence placed the issue of [Wendt's] negligence and his causal contribution to the accident squarely within the realm of contested controversy." Yet, Wendt does not identify specific testimony or evidence to support these assertions.

We turn first to the two witnesses referred to by Wendt, N.B. and E.R. While N.B. acknowledged initially telling an officer that T.K.'s Camaro was "in the far right lane," (as opposed to the shoulder) she clarified that she was not able to see the Camaro while she was driving. N.B. added that she did not know what Wendt had run over until she pulled over and saw that it was the Camaro, and only observed that it was in the far right lane because "that's where the [Camaro] was when it was smashed because it still was in the far right lane at that moment." In short, N.B. did not testify that the Camaro was in the lane of travel when Wendt crashed into it.

Similarly, E.R. testified in response to the question: "do you know which lane of travel the collision took place in?" with the answer: "I assume it was the far right lane, but I'm not sure." By her own acknowledgment, she did not observe where the accident occurred.

The uncertainty of this general testimony stands in stark contrast with that of the accident reconstructionist. This witness unequivocally testified that the collision occurred on the shoulder of the road, and that there was no evidence that the Camaro was sticking out into the lane of travel. It is therefore unclear what "reconstruction evidence" Wendt refers to when claiming that "reconstruction evidence placed the issue of [Wendt's] negligence and his causal contribution to the accident squarely within the realm of contested controversy."[4]

Finally, in analyzing whether prosecutorial misconduct significantly impacted the jury's verdict, we turn to Wendt's own words. In his statements to the responding officers Wendt admitted that "he may have drifted a little bit." Wendt also admitted that he took his eyes off the road, and "when he looked forward, *he noticed he was on the shoulder*."

[4] It is possible Wendt is relying on the testimony of Trooper Velazquez, who was questioned on cross-examination regarding a diagram he made of the accident in his crash report. But Trooper Velazquez did not present reconstruction evidence. Rather, he testified in his capacity as the first officer responding to the accident. Trooper Velazquez acknowledged that based upon his drawing, T.K.'s Camaro was "slightly in the lane of travel," and that "the part of [T.K.'s Camaro] that's slightly in the lane of travel, that's where Mr. Wendt's vehicle came into contact with it." However, Trooper Velazquez repeatedly stated that the drawing was not to scale, and testified that it was "very much a rough sketch." Trooper Velazquez further testified that he did not take any measurements at the scene, and did not make "any efforts to find the point of impact between those two vehicles." Thus, Trooper Velazquez's rough sketch contained in his initial accident report did not constitute "reconstruction evidence" of what occurred at the point of impact.

Thus, by his own admissions, Wendt negligently operated his truck by crossing the lane of travel onto the shoulder, where he collided with the parked Camaro, killing T.K.

In sum, the evidence presented at trial indicated that Wendt was traveling 62-69 miles per hour just before the collision, never applied his brakes, and never attempted either "an avoidance or panic reaction-type situation." The witnesses to the accident similarly testified that Wendt never braked or swerved, but instead "literally drove over the top of the [Camaro,]" causing his truck to fly into the air and roll over.

While this is not a challenge to the sufficiency of the evidence, there is no basis in the record upon which one could say that the jury's guilty verdict was attributable to anything other than the evidence presented at trial. And the sole disputed issue at trial was whether Wendt's negligent operation of his truck caused T.K.'s death. Overwhelming evidence, including Wendt's own admissions, established that Wendt was negligently driving on the shoulder of the highway when he crashed into T.K., killing him. Therefore, even if Wendt can establish plain error—as the state essentially concedes on three points—the state has met its burden of establishing that the verdict was not attributable to any instance of prosecutorial misconduct.

II. The district court's jury instruction did not prejudice Wendt.

Wendt asserts that the district court erroneously instructed the jury on the order and manner in which to consider the two offenses. Wendt did not object to the instructions he asserts were given in error. When there is no objection to jury instructions at trial, we have discretion to consider a claim of error on appeal if there was "plain error affecting substantial rights or an error of fundamental law in the jury instructions."

State v. Crowsbreast, 629 N.W.2d 433, 437 (Minn. 2001) (quotation omitted); s*ee State v. Milton*, 821 N.W.2d 789, 808–09 (Minn. 2012). Under a plain-error standard, the defendant generally bears the burden of showing that the error affected their substantial rights. *State v. Reed*, 737 N.W.2d 572, 583–84 (Minn. 2007).

With this standard in mind, we turn to the instructions regarding the jury's consideration of the charged offense of criminal vehicular homicide and the lesser-included offense of fourth-degree DWI. The district court instructed the jury as follows:

> If you find beyond a reasonable doubt that the defendant has committed each element of the lesser crime, but you have a reasonable doubt about any different element of the greater crime, the defendant is guilty of the lesser crime. *If you find the defendant guilty of the greater crime, you don't even consider the lesser crime*.

(Emphasis added.) After explaining the verdict forms to the jurors, the district court instructed them that "[i]f you find Mr. Wendt not guilty of criminal vehicular homicide, then you will consider the lesser crime."[5]

The if-then structure of this sentence erroneously provided the jury with a specific order in which to consider the offenses. *See State v. Prtine*, 784 N.W.2d 303, 317 (Minn. 2010) (stating that the district court's response to a jury question that they should proceed "down the line" until a guilty verdict is reached and then not consider any remaining charges constituted plain error, but did not affect Prtine's substantial rights); s*ee also State v. Woodard*, 942 N.W.2d 137, 144 (Minn. 2020) (stating that a district court

[5] Earlier, the district court did however instruct the jury that "[t]he order in which the instruction is given is of no significance. You are free to consider the issues in any order that you wish."

committed plain error when it instructed the jury to "only consider murder in the second degree if there's a not guilty finding on murder in the first degree"). Because the district court instructed the jury to consider the offenses in a specific order, and to reach the lesser-included offense only if they found Wendt not guilty of criminal vehicular homicide, the district court plainly erred in its instruction to the jury.

But our inquiry does not end with identifying an error. Rather, we turn to determine whether Wendt met his burden of establishing that the error affected his substantial rights. The erroneous instruction affected Wendt's substantial rights if "there is a reasonable likelihood that giving the instruction in question had a *significant* effect on the jury verdict." *Woodard*, 942 N.W.2d at 144 (quotations omitted). "A jury instruction that erroneously directs the jury to consider the more serious charge first does not have a significant effect on the verdict if *no rational jury* would have acquitted the defendant on the more serious charge based on the evidence at trial." *Id.* at 144–45 (emphasis added).

During oral argument, the state and Wendt agreed that this "no rational jury" analysis replicates the prejudice standard used in our plain-error review of the unobjected-to instances of prosecutorial misconduct. And, as discussed above, Wendt does not identify evidence presented at trial that would have allowed the jury to determine that T.K.'s death was caused by anything other than Wendt's negligent driving. The closing arguments made by the state and Wendt focused entirely on whether T.K.'s death was caused by Wendt's negligent driving, or whether T.K. himself was negligent in allegedly

parking his Camaro within the lane of travel.[6] Therefore, the only determination left for the jury's consideration was whether while driving with a controlled substance—methamphetamine—in his body, Wendt negligently caused the death of T.K. As discussed in detail above, there is no basis in the evidence presented at trial for a rational jury to have concluded otherwise. Therefore, the erroneous instructions did not affect Wendt's substantial rights.

To attempt to persuade us otherwise, Wendt argues that the mere decision by the district court to give the lesser-included-offense instruction means that a rational basis to acquit is implicated by definition. *See State v. Dahlin*, 695 N.W.2d 588, 596 (Minn. 2005) ("In determining whether a lesser-included offense instruction should be given, trial courts must consider only whether a rational basis exists in the evidence to acquit of the greater charge and convict of the lesser-without considering the strength of the evidence or the credibility of the witnesses."). While Wendt is correct from a purely logical perspective—that the mere decision to give a lesser-included-offense instruction means by implication a rational basis existed to acquit on the charged offense—to adopt his position would be to invalidate the analytic framework set forth in *Woodard* and preceding caselaw. That framework is especially important here, where the lesser-included-offense was not

[6] As pointed out by the postconviction court, Wendt's counsel appeared to concede the elements of fourth-degree DWI. As provided to the jury, the elements of fourth-degree DWI were: (1) Wendt drove; (2) with a controlled substance in his body. Consideration of the lesser-included offense had no bearing on the charged offense, as both charges required the jury to find that Wendt drove with a controlled substance in his body, which Wendt's counsel conceded.

disputed at trial, and the only issue to be determined by the jury was whether Wendt's negligence caused T.K.'s death.

III. The district court's conduct did not violate Wendt's right to due process.

Wendt next argues that the district court judge's facial expressions during trial conveyed a sense of partiality and thus violated his constitutional right to due process. A district court judge must not preside over a trial if they are disqualified under the Code of Judicial Conduct. Minn. R. Crim. P. 26.03, subd. 14(3). A district court judge "shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." Minn. Code Jud. Conduct Rule 2.11(A).

We review de novo a judicial officer's authority to conduct a trial. *State v. Irby*, 848 N.W.2d 515, 517–18 (Minn. 2014). "A judge is disqualified for a lack of impartiality under Rule 2.11(A) if *a reasonable examiner*, from the perspective of an objective layperson with full knowledge of the facts and circumstances, *would question the judge's impartiality*." *Troxel v. State*, 875 N.W.2d 302, 314 (Minn. 2016) (emphasis added) (quotations omitted). To review this question of whether a reasonable examiner would question the judge's impartiality, we turn first to the testimony at the postconviction hearing, and then consider the transcript of the trial as a whole. We make our assessment presuming that the judge discharged its duties properly. *State v. Munt*, 831 N.W.2d 569, 580 (Minn. 2013).

At the postconviction hearing, Wendt's wife, mother, mother-in-law, and trial attorneys all testified to their observations of the district court judge's nonverbal behavior during trial. As the postconviction court noted, these witnesses testified that the judge

made facial expressions in reaction to testimony and arguments, which they interpreted as negative toward Wendt. For example, Wendt's wife testified that she observed the district court judge "shake her head no . . . letting out sighs, glaring . . . throughout several witnesses." And Wendt's mother testified that the district court judge would roll her eyes in reaction to certain testimony.

The witnesses further explained that these observations were brought to defense counsel, who requested a bench conference, during which counsel raised the concerns with the district court judge. The judge provided a curative instruction to the jury telling them to disregard her facial expressions. All of the witnesses (with the exception of Wendt's wife) testified to a significant reduction in the judge's visible reactions following the bench conference for the remainder of the trial.

Based upon this testimony, we conclude that while a reasonable examiner might question the judge's impartiality for snippets of time, considering the trial as a whole, that an examiner would not do so. Here, the district court judge (according to all but one of the defense witnesses) changed her expressions upon notice from counsel. And she provided a curative instruction to the jury at that time. Further, a review of the district court judge's rulings throughout the trial reflects that she gave the defense the lesser-included DWI instruction it sought. She permitted the defense to recall a state's witness after he had been released. And, in her final instruction to the jury, the district court judge stated: "I have not, by these instructions nor by any rule or expression during the trial, intended to indicate my opinion regarding the facts or the outcome of this case. If I have said or done anything

that would seem to indicate such an opinion, you are to disregard it." We presume that the jury followed these instructions. *State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005).

In sum, given the district court's conduct based upon the trial as a whole, with these jury instructions in mind, we conclude that a reasonable examiner would not question her impartiality.[7]

IV. Cumulative errors do not require reversal.

Wendt argues that even if none of his alleged individual errors are sufficient to entitle him to a new trial, he should receive a new trial based on their cumulative effect. *See State v. Davis*, 820 N.W.2d 525, 539 (Minn. 2012) ("In a close case, we may be inclined to grant a defendant a new trial based on the cumulative effect of errors that do not individually require a new trial . . . .").

We look to "the egregiousness of the errors and the strength of the [s]tate's case" when weighing a claim of cumulative error. *State v. Williams*, 908 N.W.2d 362, 366 (Minn. 2018). "Where the evidence of guilt is strong, and the case is not close factual[ly], [appellate courts] are less inclined to order a new trial for cumulative error." *Id.* (quotation omitted). Here, as fully discussed above, the evidence of Wendt's guilt was strong, and the case was not factually close. Therefore, Wendt is not entitled to a new trial on the basis of cumulative error.

[7] Because in our de novo review we have determined that the district court judge's impartiality might not reasonably be questioned, we do not reach the issue, raised by Wendt, of whether structural-error analysis applies.

V. The district court lacked authority to impose a five-year conditional-release period.

Finally, Wendt argues that the district court erred by imposing a five-year conditional-release period. The state concedes, and we agree, that the district court imposed a conditional-release period not supported by law. *See* Minn. Stat. § 609.095(a) (2016) (stating that the legislature "has the exclusive authority to define crimes and offenses and the range of the sentences or punishments for their violation"). The statute allowing the possibility of a conditional-release period applies to felony DWI. Minn. Stat. §169A.276(d) (2016). However, there is no statute that authorizes a conditional-release period for criminal vehicular homicide. Therefore, we reverse Wendt's sentence and remand the matter for resentencing.

Affirmed in part, reversed in part, and remanded.