STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1146

State of Minnesota,
Respondent,

vs.

Jeremy James Sagvold,
Appellant.

Filed July 13, 2020
Affirmed
Rodenberg, Judge

Clay County District Court
File No. 14-CR-18-840

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

Brian J. Melton, Clay County Attorney, Pamela Foss, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Rodenberg, Judge.

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

RODENBERG, Judge

Appellant Jeremy Sagvold appeals from a conviction for criminal vehicular homicide. Appellant argues that the evidence was insufficient to prove that he acted in a

grossly negligent manner and that the district court abused its discretion when it denied his motion for a downward dispositional departure from the Minnesota Sentencing Guidelines. We affirm.

FACTS[1]

On January 6, 2018, in cold and windy—but not icy—winter conditions in Moorhead, appellant—whose driving privileges were cancelled—drove to an automotive store to purchase a car battery. After doing so, appellant drove toward Walmart, heading eastbound on Highway 10. Appellant entered the left turn lane as he approached the intersection of Highway 10 and 34th Street. The traffic light was red for eastbound traffic on Highway 10 as appellant approached the intersection. There were two vehicles stopped in the left turn lane of Highway 10 ahead of appellant. The front vehicle was driven by C.H. The second vehicle was driven by L.N. In the vehicle with L.N. was A.E. and their two-and-a-half-year-old son, Z.E. Z.E. was in a car seat in the rear seat on the driver's side.

Appellant's vehicle was travelling between 61 and 67 miles per hour when it slammed into L.N.'s stopped vehicle. L.N.'s vehicle then hit C.H.'s vehicle. The vehicles were pushed through the intersection and appellant's vehicle finally came to rest after hitting yet another vehicle on the east side of the intersection.

[1] Because the district court found appellant guilty, we recite the facts in the light most favorable to the verdict. *State v. Munger*, 858 N.W.2d 814, 820 (Minn. App. 2015), *review denied* (Minn. Mar. 25, 2015).

Z.E. and A.E. were transported by ambulance to a hospital. Z.E. was mortally injured and died shortly after he arrived at the hospital.

On March 2, 2018, the state charged appellant with one count of second-degree manslaughter under Minn. Stat. § 609.205, subd. 1 (2016), and one count of criminal vehicular homicide under Minn. Stat. § 609.2112, subd. 1(a)(1) (2016).

Appellant waived his right to a jury trial, and the case was tried to the court from March 4 to March 11, 2019. The witnesses at trial included eyewitnesses to the collision, police officers, doctors, a Minnesota Department of Public Safety (DPS) employee, appellant's family and neighbors, and appellant himself.

Eyewitness Testimony

Multiple eyewitnesses testified that appellant was driving very fast as he approached the intersection of Highway 10 and 34th Street, that the traffic light was red for appellant, and that the two cars in the turn lane were legally stopped and waiting for the signal to change. The eyewitnesses also testified that they did not see appellant's brake lights illuminate and saw no indication that appellant tried to brake.

Police Officer Testimony

Officer Burton testified that January 6, 2018, was a "[f]airly cold and windy" day. When Officer Burton arrived at the scene of the collision, appellant seemed confused. Appellant told him that "he remembered a boom and then another boom."

Officer Pattengale, a drug recognition expert, testified that Officer Burton brought appellant to the police department after field sobriety testing because "there [were] some clues or indicators of possible impairment." Officer Pattengale examined appellant and

obtained a brief medical history. Appellant told Officer Pattengale that he has epilepsy and is prescribed Depakote.

Officer Pattengale took a statement from appellant about the collision, got consent from appellant for a search of his blood, arranged for the draw of a blood sample, and seized appellant's cell phone. Appellant told Officer Pattengale that he remembered driving in the far left lane and getting into the left turn lane. Appellant told the officer that he did not remember the color of the traffic lights as he approached the intersection. Appellant told the officer that he realized that he had been in an accident. Appellant told Officer Pattengale that he did not remember blacking out or losing consciousness before or during the collision. Officer Pattengale testified that appellant did not "speculate[] or volunteer[]" that the collision could have been epilepsy-related.

Officer Brannan testified that he took photographs of the scene of the collision. Officer Brannan testified that he "noticed there were two distinct gouge marks—what I believe were point impacts from that higher speed collision." The officer testified that he did not see any skid marks to the west of the gouges.

Sergeant Eischens did a crash reconstruction. Sergeant Eischens observed "two scratch marks or small gouge marks in the left-turn lane" and testified that gouge marks "generally indicate a significant point of impact." The sergeant also testified that he used a video recording from a nearby gas station "to determine the distance traveled by [appellant's] vehicle as it entered the . . . video frame." Sergeant Eischens explained his use of a "time-distance equation to calculate an estimated speed." Using that equation, Sergeant Eischens determined that appellant's vehicle was travelling between 61 and 67

miles per hour in the moments leading up to the crash. The speed limit there is 45 miles per hour. Sergeant Eischens also testified that the photographs of the damage to the cars involved in the collision were consistent with a collision having occurred with appellant's vehicle travelling at a speed of 61 to 67 miles per hour. Sergeant Eischens explained that L.N.'s vehicle had a "very large and devastating amount of damage done to the rear end and intrusion into the passenger compartment. That's not typically seen in a crash in a municipality or where the speeds are below 55 miles per hour."

Sergeant Krone, another responding police officer, testified that there was no evidence that appellant was using his cellular device at the time of the collision.

Sergeant Krone testified that, after he returned to the law enforcement center, he received a telephone call from appellant. Appellant told Sergeant Krone that he had epilepsy. Sergeant Krone asked appellant "if he thought he had had a seizure or something along those lines of a micro one, and [appellant] responded something to the effect of possibly or maybe something." Appellant told Sergeant Krone that he had last experienced a seizure in September 2017.

Sergeant Krone testified that appellant called him again the next day to clarify that his last seizure was in early October 2017. Sergeant Krone informed appellant that his license was cancelled and appellant "responded that he did not know that his license was cancel[l]ed." Appellant told Sergeant Krone that he had been driving because it had been more than 90 days since his most-recent seizure.

Sergeant Krone testified that on January 8, 2018, he talked to appellant at appellant's home. Appellant showed Sergeant Krone a calendar on which appellant had

marked “loss of time” on October 3, 2017, and “seizure” on October 7, 2017. Appellant also showed the officer his prescription bottle for Depakote, which showed that the prescription was refilled four days before the collision.

Medical Testimony

Appellant’s neurologist, Dr. Diamond, testified that appellant has been her patient since 2010. Dr. Diamond testified that, during a seizure, appellant has “generalized convulsion and is unaware.” Dr. Diamond explained that appellant had not typically noticed any warning before seizure activity. Others had observed that appellant would be “confused or described feeling unwell for a period of time” after a seizure. Dr. Diamond testified that appellant is prescribed Depakote, which can cause memory loss or impairment.

Dr. Diamond testified that she invariably asks her patients whether they have had any seizures or symptoms indicative of seizure activity since their last visit. Dr. Diamond testified that she always gives her patients the same instructions about the Minnesota driving laws. She explained that this usually amounts to “a discussion in which I tell my patients driving laws do exist in regards to your underlying condition or your chronic condition, and that if there are recurrent seizures, driving is prohibited for a period of time. And that it’s individual responsibility to report.” Dr. Diamond testified that she writes “driving laws reviewed” in the medical record of each patient with whom she has this conversation. She also testified that she will sometimes add “avoid activity in which sudden loss of consciousness” can occur and would be dangerous. Dr. Diamond testified

that, if a patient has had a seizure, she would always recommend that the patient not continue driving.

Dr. Diamond explained that she has loss-of-consciousness forms at her office, but that some patients will bring the form to the clinic with them. She explained that the clinic will fax the loss-of-consciousness form to the appropriate entity at the patient's request.

Dr. Diamond testified that appellant attended an appointment with her on November 15, 2017, following a seizure on November 12. Dr. Diamond testified that at that appointment, she reviewed the Minnesota driving laws with appellant, which included telling him not to drive for three months. She also testified that she increased appellant's Depakote prescription by 500 milligrams and prescribed Clonazepam to appellant in a small dosage to help him sleep.

Dr. Hines, a neuropsychologist, testified concerning appellant's memory. Dr. Hines explained that appellant was referred to her in September 2018 by Dr. Diamond because appellant reported having some memory trouble. Dr. Hines explained that memory testing indicated that appellant had "mild" memory weakness and "did not exhibit specific impairments in memory." Dr. Hines testified that it is not uncommon for a person to not know that they have had a seizure and that a person with uncontrolled seizure activity might experience "missing chunks of time."

DPS Testimony

A DPS driving improvement specialist testified concerning the loss-of-consciousness forms that appellant was required to submit. The DPS specialist testified that a driver with a seizure disorder is required to report a loss of consciousness to DPS

within 30 days. The DPS specialist testified that DPS will send a loss-of-consciousness form to the driver, the driver fills out the top half, the driver's doctor fills out the bottom half, and then the driver returns the form to DPS. The letter is sent to the address on file for the driver, which is the address on the person's driver's license. The DPS specialist testified that it is the driver's responsibility to get the form to the doctor. The DPS specialist explained that there is a place on the form for the doctor to recommend a recheck period, with recheck options for six months, one year, two years, three years, or four years. The DPS specialist explained:

> If the drivers had an episode within the last year, the longest time [would] be [a] six month recheck. And, once they've been seizure free for a year, then it's a year recheck until they're seizure free for at least four years. And then the doctor can choose up to four years recheck period.

The DPS specialist testified that appellant had previously been sent, filled out, and returned loss of consciousness forms beginning in 2015. The DPS specialist explained that DPS sent a letter to appellant's address on file on October 20, 2017, informing appellant that he had until December 1, 2017, to get a new loss-of-consciousness form to DPS. On December 18, 2017, a letter was sent to that same address informing appellant that his license was cancelled effective December 22, 2017, for failure to submit a loss-of-consciousness form.

Appellant's Family Testimony

Appellant's son testified that he has seen appellant have seizures and has observed that appellant's body tenses up, he starts twitching, and he bites his tongue. Appellant's son testified that appellant "spaces out sometimes, but I think that might just be him

daydreaming." Appellant's son explained that these episodes last 20 to 25 seconds and happen once or twice a week. He explained that "if you . . . catch [appellant's] attention, he'll snap out of it . . . if you, like, talk to him or motion at him."

Appellant's former partner, R.M., testified that, after appellant has a seizure, he has slurred speech, is wobbly, and is unaware of what is going on. R.M. testified that appellant had a seizure in November 2017. She explained that appellant's behavior after a seizure is like "drunkenness."

Appellant's Testimony

Appellant testified that he was diagnosed with epilepsy in 2009. Appellant testified that he does not know when he has had a seizure except that his muscles feel tense afterwards and he sometimes has a bloody tongue. Appellant testified that he is not aware of what triggers his seizures. Appellant testified that he takes Depakote every morning to help control his seizures. Appellant testified that he had "no doubt" that he took his medication on the morning of the accident.

Appellant testified that he does not remember receiving any letters from the DPS in fall of 2017. Appellant explained that, had he received a letter from DPS, he would not have ignored it. Appellant testified that he believed that his driver's license was valid on January 6. Concerning missing mail, appellant testified that the only mail he personally remembers missing is a rebate form.

Appellant testified that he has no memory of having a seizure in November 2017 or seeing Dr. Diamond after that seizure in November. Appellant testified that he drove because the "November seizure was nonexistent in my mind. Never happened."

Concerning the loss-of-consciousness forms, appellant testified that he uses the forms at Dr. Diamond's office and does not usually bring a form with him. When asked if he knew before the January 6 incident "that the loss of consciousness forms were [his] responsibility to submit," appellant answered, "Oh, no." Appellant testified how he understood that the loss of consciousness forms worked:

> It's always been I show up at the doctor's office. We go through our appointment. She'll fill out her portion. I'll fill out my portion. She hands it to me and then on my way out, I give it to the desk and then—they'll fax it to the DMV or wherever it goes. At the same time when I make my next appointment.

Appellant testified that he knows his license is valid after he has been seizure free for 90 days. Appellant testified that he has no reason to doubt that his medical records accurately reflect that Dr. Diamond reviewed the Minnesota driving laws with him on occasions including his November visit with her.

Appellant testified that his memory has "chunks missing." Appellant explained that he has only been realizing since the January 6 incident that he has gaps in his memory.

Appellant testified that, when he talked to police officers after this collision, he remembered driving, remembered where he was, remembered being on the road, remembered driving up to the intersection, and remembered getting into the turn lane. When asked if he drove on January 6, 2018, "without even slight care for what might happen," appellant answered, "I had no idea that—no."

Appellant's Neighbors' Testimony

Some of appellant's neighbors testified concerning occasional problems they had with receiving mail in 2017. Several neighbors testified that their mail was at times delivered to an incorrect house. The neighbors testified that people in that neighborhood would usually put such mail in the correct person's mailbox or put it back in the mailbox and write "not mine" on the envelope.

Before closing arguments, appellant moved the district court to consider the lesser included offense of careless driving under Minn. Stat § 631.14 (2016). The district court granted appellant's motion.

On March 19, 2019, the district court found appellant guilty of criminal vehicular homicide and the lesser included offense of careless driving. The district court found appellant not guilty of second-degree manslaughter.

On April 12, 2019, appellant moved for a downward dispositional departure from the sentencing guidelines. Appellant cited six bases for the departure: (1) amenability to probation, (2) cooperation with law enforcement, (3) minimal criminal history, (4) remorse, (5) that prison would cause undue hardship on his children, and (6) that "public safety can be secured with a stayed sentence."

The district court heard arguments on the departure motion and heard victim impact statements. It denied appellant's motion for a downward dispositional departure and sentenced appellant to 42 months in prison.

This appeal followed.

D E C I S I O N

I. The evidence is sufficient to support appellant's criminal-vehicular-homicide conviction.

Appellant argues that "[t]he evidence was insufficient to find [he] acted in a grossly negligent manner" because his "knowledge and memory that his license was cancelled and that he was not permitted to drive were affected by his seizure disorder, medication side effects, and mail-delivery problems."

Appellant's conviction was based on circumstantial evidence because the evidence of appellant having suffered a seizure on January 6 is circumstantial. Likewise, the evidence of appellant having received notice of the cancellation of his driving privileges is circumstantial.

"A conviction based on circumstantial evidence . . . warrants heightened scrutiny." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). "When reviewing the sufficiency of the evidence for convictions based on circumstantial evidence, we conduct a two-step analysis." *State v. German*, 929 N.W.2d 466, 472 (Minn. App. 2019). The first step "is to identify the circumstances proved." *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted). "[W]e resolve all questions of fact in favor of the [fact-finder]'s verdict, resulting in a subset of facts that constitute the circumstances proved." *German*, 929 N.W.2d at 472 (quotation omitted). "The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quotation omitted). This step gives "no deference to the [fact-finder]'s choice between reasonable inferences." *German*, 929

N.W.2d at 472. "[P]ossibilities of innocence do not require reversal of a . . . verdict so long as the evidence taken as a whole makes such theories seem unreasonable." *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002) (quotation omitted). "We use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence." *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

The state charged appellant with criminal vehicular homicide under Minn. Stat. § 609.2112, subd. 1(a)(1), which provides, "[A] person is guilty of criminal vehicular homicide . . . if the person 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." In order to prove the criminal-vehicular-homicide charge, the state needed to prove that: (1) Z.E. died, (2) appellant caused the death of Z.E. by operating a motor vehicle in a grossly negligent manner, and (3) that appellant's act took place on January 6, 2018, in Clay County. *See* 10 *Minnesota Practice*, CRIMJIG 11.62 (2016).

Appellant challenges only the sufficiency of the evidence to prove the second element: that he caused Z.E.'s death by operating a motor vehicle in a grossly negligent manner. The state's argument that appellant was grossly negligent is based on the inferences that appellant was aware that his driving privileges were cancelled as of January 6 because of recent seizure activity, that appellant drove despite knowledge of the cancellation, and that appellant had a seizure while driving that day that caused him to drive at an excessive speed and caused the tragic crash that killed Z.E.

"[G]ross negligence [is] defined as a very high degree of negligence." *State v. Brehmer*, 160 N.W.2d 669, 673 (Minn. 1968). "[G]ross negligence requires no conscious

and intentional action which the actor knows, or should know, creates an unreasonable risk of harm to others." *Id.* "A sufficient degree of inattention to the road could constitute a lack of 'slight care,' that is gross negligence." *State v. Hegstrom*, 543 N.W.2d 698, 703 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996). "Grossly negligent behavior lacks even scant care." *State v. Kissner*, 541 N.W.2d 317, 321 (Minn. App. 1995), *review denied* (Minn. Feb. 9, 1996).

Under the first step of the circumstantial-evidence test, we must "identify the circumstances proved, giving deference to the [fact-finder]'s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State." *State v. Robertson*, 884 N.W.2d 864, 871 (Minn. 2016) (quotation omitted). "[I]n determining the circumstances proved, we consider only those circumstances that are consistent with the verdict." *State v. Hawes*, 801 N.W.2d 659, 670 (Minn. 2011). The circumstances proved are that on January 6, 2018, appellant was driving his white pickup truck. The weather was cold and windy, but the roads were clear of any obvious snow. At the intersection of Highway 10 and 34th Street, two cars waited in the left turn lane at a red light. The first car waiting at the red light in the left turn lane was driven by C.H. Behind C.H.'s vehicle was a Ford Escape driven by L.N. In the front passenger seat of L.N.'s vehicle was A.E. and, in the back seat on the passenger side was their two-and-a-half-year-old son, Z.E. Appellant drove into the left turn lane at a speed of between 61 and 67 miles per hour. The speed limit was 45 miles per hour. Appellant did not react with any indication of his having noticed that the light was red. Appellant's vehicle hit L.N.'s vehicle, which hit C.H.'s vehicle. The force of the collision sent the

vehicles into the intersection and appellant's vehicle stopped when it hit another vehicle which was stopped on the opposite side of the intersection. The force of the impact caused the undercarriage of L.N.'s vehicle to leave gouge marks in the road. There were no skid marks or other indications that appellant tried to brake. After the collision, Z.E. was transported by ambulance to a hospital where he was pronounced dead as a result of the injuries he suffered in the crash.

Appellant was diagnosed with epilepsy in 2009. Appellant was prescribed the anti-epileptic drug Depakote. Appellant has suffered multiple seizures since his diagnosis. Before the collision on January 6, 2018, appellant's most recent seizure was on November 12, 2017. Appellant saw his doctor, Dr. Diamond, on November 15, 2017. At that appointment, Dr. Diamond discussed with appellant the Minnesota driving laws, which included that appellant could not drive for three months because of his seizure. Therefore, appellant was ineligible to legally drive until at least February 12, 2018. Dr. Diamond also told appellant to avoid activity in which sudden loss of consciousness could occur and would be dangerous, which included driving. Appellant had received this warning five times previously, including three times in 2017.

Because of his epilepsy, appellant was required to complete a loss-of-consciousness form and return it to the DPS. A reminder that appellant was required to complete that form was mailed to appellant on October 30, 2017. The reminder letter was sent to appellant's address on file with DPS, where appellant has lived for over a decade. Appellant did not fill out the form. On December 18, 2017, the DPS mailed a letter to appellant informing him that his driving privileges were cancelled effective December 22,

2017, because of his failure to return the loss-of-consciousness form. That letter was also sent to appellant's address on file with DPS. Because appellant did not complete the required form, his license was cancelled at the time of the collision. And, regardless of the various mailings and forms from DPS, appellant had been advised by his doctor that he could not drive for three months after having a seizure and knew that he should not have been driving on January 6. The district court rejected as not credible appellant's testimony that he was unaware of the cancellation of his driving privileges.

Under the second step of the circumstantial-evidence test, we must "independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt." *Robertson*, 884 N.W.2d at 871.

The circumstances proved are consistent with appellant's guilt. In a lengthy and well-reasoned written decision, the district court reasonably inferred from the extensive trial record that appellant knew that he could not legally drive on January 6. Appellant had a seizure on November 12, 2017, saw his doctor on November 15, 2017, and discussed with his doctor that Minnesota's driving laws prohibited him from driving for three months. Appellant also failed to complete and return a loss of consciousness form that was sent to his home of many years despite having completed the form in the past, which resulted in DPS canceling his license. The district court rejected appellant's testimony to the contrary as not credible.

The district court also reasonably inferred that appellant had a seizure that caused the collision on January 6, which collision fatally injured Z.E. The district court rejected

as not credible appellant's testimony that he did not remember having a seizure or visiting Dr. Diamond in November 2017. Appellant testified at length about his seizure history and his claim that he does not know when he has had a seizure. The district court rejected this testimony as not credible. It concluded that appellant was grossly negligent for failing to use even scant care on January 6 and that such negligence caused a child's death.

The circumstantial evidence is consistent with appellant having knowingly driven while his license was cancelled for recent seizure activity. But because the proof of appellant having received the DPS mailings and of his having had another seizure on January 6 that caused the collision and the child's death is circumstantial, Minnesota law requires that we also determine whether there exist any rational inferences from the circumstances proved that are inconsistent with appellant's guilt. *See Al-Naseer*, 788 N.W.2d at 474.

Appellant argues that a reasonable alternative hypothesis from the circumstances proved is that he "suffered memory problems that affected his ability to remember that his license was cancelled or that he was told by his doctor not to drive." Appellant further argues that "a rational inference that was inconsistent with guilt remained here concerning . . . appellant's knowledge of critical facts" because "[t]he evidence did not exclude the rational inference that appellant either did not know or did not remember his license was cancelled and did not remember that he was told not to drive." But the district court considered appellant's testimony concerning these claimed gaps in his awareness, and it rejected that testimony as not credible. In finding appellant guilty of criminal vehicular operation, the district court was convinced beyond all reasonable doubt that

appellant was untruthful when he testified concerning these things. The district court's guilty verdict, supported by robust findings of fact concerning which evidence it accepted and which evidence it rejected, amounts to a finding beyond reasonable doubt that appellant's trial testimony concerning what he knew or recalled is untrue. *See Hawes*, 801 N.W.2d at 670 (declining to consider testimony that conflicts with evidence supporting the verdict).

Only one reasonable inference can be drawn from the evidence—that appellant had a seizure while driving at a point in time when he was ineligible to drive precisely because of recent seizure activity and had been so advised by his doctor. The circumstances proved lead unerringly to the single rational conclusion that appellant had experienced recent seizure activity, had been told not to drive because of that, knew his driving privileges were cancelled, but drove on January 6 in spite of all of this.

The circumstantial evidence admits of no rational inference inconsistent with appellant's guilt. Therefore, and despite several facts having been proved only by circumstantial evidence, the evidence is sufficient to support appellant's conviction for criminal vehicular homicide.[2]

II. The district court did not abuse its discretion by sentencing appellant consistent with the sentencing guidelines.

Appellant argues that the district court abused its discretion by denying his motion for a downward dispositional departure relying solely on offense-related factors and "failed

[2] Appellant does not challenge the sufficiency of the evidence supporting the careless driving conviction and, as noted above, the district court determined in a well-reasoned order that appellant was not guilty of the manslaughter charge.

to exercise its discretion when it did not consider all of the mitigating factors" present in the case. Appellant contends that he "demonstrated [that] substantial and compelling factors existed" to depart, including his "remorse and [his] amenability to probation."

"[A] sentencing court can exercise its discretion to depart from the guidelines *only if* aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence." *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotations omitted). We review a district court's sentencing for abuse of discretion. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). "Only in a rare case will a reviewing court reverse the imposition of a presumptive sentence." *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011).

Appellant moved for a downward dispositional departure on six bases: (1) amenability to probation, (2) cooperation with law enforcement, (3) minimal criminal history, (4) remorse, (5) prison would cause undue hardship on his children, and (6) "public safety can be secured with a stayed sentence." Appellant argued that each of the factors identified in *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982), supported a departure. At the sentencing hearing, appellant further argued that he had complied with pretrial release conditions for one year and had gotten rid of his vehicle and planned never to drive again.

At sentencing, the state argued for a guidelines sentence. The state disputed appellant's claims of remorse, and argued that the hardship of a prison sentence to appellant and his family did not compare to the hardship resulting from Z.E.'s death. The state urged the district court to apply the sentencing guidelines to hold appellant accountable for the impact of his crime on the community.

The district court denied appellant's motion for a downward dispositional departure. It explained that it "listened to everybody's statements" and "reviewed it and [went] back and forth," but ultimately did "not feel that probation [was] commensurate with [appellant's] actions on January 6, 2018." The district court stated that appellant's remorse and family support did not go unnoticed, but it expressly noted that appellant chose to ignore or disobey his doctor's orders and the law when he decided to drive, the confluence of which decisions resulted in the death of young Z.E.

It is true that we will reverse a departure made on improper grounds, *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017), but we will not similarly inspect a district court's exercise of its discretion in declining to depart for perfection. *See State v. Abrahamson*, 758 N.W.2d 332, 337 (Minn. App. 2008). The district court made some comments suggesting that it was concerned about offense-related factors in this case, but nothing in its sentencing comments suggests any misapplication of the law. This was a very serious offense, with tragic consequences. The district court having expressed those truths is no evidence of sentencing error. Departing from the guidelines is never required. *Id.* Departure is only *allowed* when proper substantial and compelling circumstances for departure are present. *Id.* The district court did not find substantial and compelling circumstances for departure and therefore declined to depart. And even if it had found substantial and compelling circumstances for departure, it would still not have been *required* to depart. *Id.*

The district court was best positioned to determine appellant's sentence, and its sentence is consistent with the sentencing guidelines. The district court acted within its sentencing discretion.

Affirmed.