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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1433**

State of Minnesota,
Respondent,

vs.

Kemar Anthony Hawkins,
Appellant.

**Filed October 3, 2022
Affirmed
Hooten, Judge***

Ramsey County District Court
File No. 62-CR-20-5214

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Larson, Judge; and
Hooten, Judge.

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

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this direct appeal from the judgment of conviction for second-degree manslaughter, appellant Kemar Anthony Hawkins challenges the sufficiency of the state's evidence that he was the factual and legal cause of the victim's death. Because we conclude that the state presented sufficient evidence to support Hawkins's conviction, we affirm.

FACTS

Following the death of B.A., a 25-year-old male, by gunshot wound, the Ramsey County Attorney's Office charged Hawkins with second-degree intentional murder, Minn. Stat. § 609.19, subd. 1(1) (2018); second-degree felony murder, Minn. Stat. § 609.582, subd. 2(1) (2018); third-degree depraved mind murder, Minn. Stat. § 609.195(a) (2018); second-degree culpable negligence manslaughter, Minn. Stat. § 609.205, subd. 1 (2018); and first-degree assault, Minn. Stat. § 609.221, subd. 1 (2018). Hawkins pleaded not guilty and provided notice of his intended defenses of alternate perpetrator, self-defense, and defense of others. On May 24, 2021, the case proceeded to a jury trial, where the parties presented the following relevant evidence.

The Scene

On July 15, 2020, at about 5:45 p.m., multiple people called 911 to report shots fired near the area of Western Avenue and Concordia Avenue in St. Paul. One of the callers heard but did not see the shooting. In the aftermath, he saw a group of people in the street—one person was lying face-down on the ground, two people were standing nearby, and a third person was holding a gun and limping away towards a black BMW. He observed the

two people who were standing run towards a gray or silver vehicle. The caller also observed that the person lying in the street had gunshot wounds to the back and to the head and that brain matter was visible on the street. The caller began CPR, but it quickly became evident to him that the person, who was later identified as B.A., had no pulse and had died.

The person who left the scene in the black BMW was Quincy Adams. Adams drove himself to Regions Hospital, which was less than one mile away, where he was treated for a bullet wound to his right leg. A .40-caliber handgun was recovered from his vehicle. The gun's magazine, which had a capacity for twelve bullets, was empty.

The people who left the scene in the gray or silver vehicle were Hawkins, Tezman Jones-English, and Rayon Gordon. The vehicle crashed nearby shortly after the shoot-out. An empty 9-millimeter handgun case was recovered from the trunk of the vehicle.

Ten 9-millimeter cartridge cases and five .40-caliber cartridge cases were recovered from the scene of the shoot-out. The .40-caliber casings were generally located closer to Concordia; the 9-millimeter casings were generally located near B.A.'s body. Ballistics testing showed that the 9-millimeter gun fired the bullet recovered from B.A.'s back. Adams's 40 caliber gun fired the bullets recovered from B.A.'s head, ankle, and arm.

Adams's Testimony

Adams testified on behalf of the state. He testified that he and B.A. were cousins who grew up together in St. Paul and were very close. Adams knew of Hawkins and Gordon, and knew Jones-English personally, considering him like a little brother. On July 15, 2020, Adams and B.A. were sitting outside an apartment building on Concordia and saw Hawkins, Jones-English, and Gordon drive by. Later that day, Jones-English

approached Adams and B.A. on foot and began arguing with B.A. until Adams separated them. During this interaction, Jones-English tapped on a gun in his pocket and said he was carrying; in response, B.A. tapped on Adams's pocket and told Jones-English that they also were armed. Jones-English walked away.

A few minutes later, Jones-English yelled B.A.'s name from the street. B.A. ran down the hill and he and Jones-English began to fight. Gordon got out of the car, joined the fight, and punched B.A. in the head. Adams ran towards the fight, but his gun began to come out of his pocket as he ran, so he held onto it by the handle. Hawkins was still in the car.

Adams got involved in the fight until he heard a car door close and saw Hawkins approaching with his gun pointed. Adams turned and began to run away towards the fence along Concordia. Adams testified that Hawkins fired first, hitting him in the leg. He returned fire, aiming at Hawkins, who was behind B.A. and Jones-English, who were still fighting. When Adams was close to the intersection of Concordia and Western, he turned and saw Hawkins fire a shot into B.A.'s back. Adams then fired multiple shots at Hawkins, which he claimed were fired to stop Hawkins from shooting B.A. again. One of the shots that Adams fired at Hawkins hit B.A., who was still located between Adams and Hawkins, in the head.

Adams was subsequently charged with two counts of second-degree murder, third-degree murder, and second-degree manslaughter. Adams resolved his case by pleading guilty to second-degree manslaughter in exchange for testifying against Hawkins.

Medical Examiner's Testimony

Dr. Butch Huston testified on behalf of the state regarding B.A.'s multiple gunshot wounds. Dr. Huston reported that B.A. sustained a gunshot wound to the head and that the bullet fractured his skull, went through the left parietal lobe, through the central structure of the brain, the base of the skull, the maxillary sinus, and came to rest in the tissue underneath the right cheek. He also reported that B.A. sustained a gunshot wound to the back, wherein the bullet was recovered within the spinal canal, in the first thoracic vertebra, located between the shoulder blades and just below the neck.

Dr. Huston testified that the gunshot wound to B.A.'s head likely would have been immediately fatal. As Dr. Huston explained, "since the wound track went through central structures of the brain, death could be almost immediate." He also testified that the back wound would have required immediate medical attention and, without surgery, likely would have become a fatal wound. When asked how quickly a person might die from the gunshot wound to the back if it were not treated, Dr. Huston explained:

Well, it's—without any medical attention at all, not even first aid, basically—it's hard to say for sure. The gunshot wound to the head would definitely be more of an immediate death. The gunshot wound to the back, a person could survive a short period of time without medical attention or surgery. However, this particular wound is pretty severe. And so even with surgical intervention, there's a good possibility that he would not have survived.

Dr. Huston testified that without medical attention, a person would survive the back wound for minutes or maybe a few hours. He admitted, however, that if B.A. had been provided

immediate medical attention and surgery occurred, there was “a possibility [B.A.] could have survived” but likely would have been paralyzed from the chest down.

Dr. Huston stated that B.A.’s cause of death was multiple gunshot wounds because he could not determine the order in which the gunshots happened. He did, however, believe that the gunshots occurred within a very short time frame. When asked whether the gunshot wound to the head was a superseding cause that killed B.A., Dr. Huston responded, “Not necessarily. It’s hard to say.”

Hawkins’s Testimony

Hawkins testified in his own defense at trial. He testified that on July 15, 2020, he saw Adams and B.A. when he, Jones-English, and Gordon were driving down Concordia. Jones-English got out of the car and came back a few minutes later, reporting that B.A. had taken a swing at him, and Adams had a gun. B.A. took off his shirt and came down to the street. Jones-English followed suit and the two engaged in a fist fight in the street. Hawkins and Gordon remained in the car.

Adams then approached the street, holding the handle of a gun that was in the pocket of his shorts. Gordon joined the fight and punched B.A. in the head. Adams and Gordon begin to physically engage, and Hawkins saw Adams back up and pull out his gun and shoot it. Believing that his friends were in danger, Hawkins retrieved his gun from its case in the trunk of the car. As Hawkins approached the group, he heard a shot and felt pain, so he fired his gun at Adams in response. Hawkins fired all ten bullets in his gun. He saw Adams get hit once and then fired three more times at Jones-English.

Hawkins testified that he was aiming at Adams in order to protect his friends. He did not intend to hurt B.A. and believed that B.A. was merely caught in the crossfire.

Jury Instructions and Verdict

The jury was given the pattern jury instruction on causation:

“To cause” means to be a substantial causal factor in causing the death or result. The defendant is criminally liable for all the consequences of his actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes if such intervening causes were the natural result of the defendant’s acts. The fact that other causes contribute to the death or result does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a superseding cause caused a death or result. A superseding cause is a cause that comes after the defendant’s act, alters the natural sequence of events, and produces a result that would not have otherwise occurred.

The state’s theory was that Hawkins was criminally responsible for B.A.’s death because Adams’s head shot was a natural progression in the course of events beginning with Adams seeing Hawkins shoot B.A. in the back. The defense argued, among other things, that Hawkins did not cause B.A.’s death because Adams’s immediately lethal head shot was a superseding cause of death.

The jury acquitted Hawkins of all counts except second-degree culpable negligence manslaughter. The district court sentenced Hawkins to 48 months in prison. Hawkins appeals.

DECISION

Hawkins argues that his conviction must be reversed because the state's evidence failed to prove beyond a reasonable doubt that B.A.'s death was factually or legally caused by his negligent conduct.

The due process clauses of the United States and Minnesota Constitutions require the state to prove "each element of the crime charged beyond a reasonable doubt." *State v. Merrill*, 428 N.W.2d 361, 366 (Minn. 1988) (citing *In re Winship*, 397 U.S. 358, 364 (1970)); U.S. Const. amends. V, XIV; Minn. Const. art. I, § 7. When reviewing a defendant's challenge to a conviction on the ground that there is insufficient evidence to support it, this court must view the evidence in the light most favorable to the state and "assume that the jury disbelieved any testimony in conflict with the result it reached." *State v. Daniels*, 361 N.W.2d 819, 826 (Minn. 1985). Generally, a reviewing court will not disturb a guilty verdict if, based on that evidence, the jury, acting with due regard for the presumption of innocence and the state's burden of proving guilt by proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *State v. Combs*, 195 N.W.2d 176, 178 (Minn. 1972).

In a case such as this, the sufficiency of the state's evidence of causation is reviewed under the circumstantial evidence standard. *State v. McCormick*, 835 N.W.2d 498, 508 (Minn. App. 2013) (applying circumstantial evidence standard to review whether sufficient evidence supported element of causation in culpable negligence manslaughter conviction). Under that standard of review, a reviewing court first identifies the circumstances proved, deferring to the fact-finder's resolution of factual disputes and construing conflicting

evidence in the light most favorable to the verdict. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Next, the court determines whether those circumstances are consistent with the hypothesis that the defendant is guilty and inconsistent with any rational hypothesis other than guilt. *Id.* “[I]f any one or more circumstances found proved are inconsistent with guilt, or consistent with innocence, then a reasonable doubt as to guilt arises” and the evidence is insufficient to convict. *Id.* (quotation and citation omitted).

A person is guilty of second-degree culpable negligence manslaughter if the person “causes the death of another . . . by the person’s culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another.” Minn. Stat. § 609.205, subd. (1). Minnesota courts have consistently applied the rule in *State v. Schaub*, 44 N.W.2d 61 (Minn. 1950), to questions of causation in second-degree manslaughter cases. The *Schaub* rule states that “to sustain a conviction for [second-degree] manslaughter, the act of the defendant must have been the proximate cause of the death of [the victim] without the intervention of an efficient independent force in which defendant did not participate or which he could not reasonably have foreseen.”¹ 44 N.W.2d at 64. To establish proximate cause in a homicide case, the

¹ Hawkins argues that the second-degree manslaughter statute requires a finding of “cause-in-fact” in addition to proximate cause. “Cause-in-fact is usually established by demonstrating that the accused’s conduct was an antecedent ‘but for’ which the result in question would not have occurred.” 1 Wharton’s Criminal Law § 6:1 (16th ed. 2021). In this case, Adams testified that he fired the bullet that struck B.A. in the head—the one that ultimately killed him—because he saw Hawkins shoot B.A. in the back and wanted to stop Hawkins from shooting B.A. again. Assuming without deciding that the second-degree manslaughter statute requires a finding of cause-in-fact, we conclude that the state presented sufficient evidence that “but for” Hawkins’s conduct, B.A.’s death would not have occurred.

state must show that: (1) the allegedly negligent party committed an act that, in the exercise of ordinary care, the negligent party should have anticipated would likely injure others, even if the party could not anticipate the precise injury that resulted, *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995), and (2) the act was a “substantial factor in causing the death,” *State v. Smith*, 835 N.W.2d 1, 4 (Minn. 2013); *see also Lubbers*, 539 N.W.2d at 401.

On appeal, Hawkins does not dispute that the state established the first requirement of proximate cause. Accordingly, he argues that the state did not meet its burden to eliminate any rational inference from the circumstances proved that: (1) Hawkins’s act of shooting B.A. in the back was not a substantial factor in B.A.’s death, and (2) Adams’s head shot was an intervening, superseding cause of B.A.’s death, for which Hawkins was not criminally responsible. We address Hawkins’s arguments in turn.

A. Substantial Factor in Death

Hawkins first contends that the state did not meet its burden to show that the only reasonable inference from the circumstances proved is that his act of shooting B.A. in the back was a substantial factor in causing B.A.’s death.

To prove that a defendant’s conduct was a “substantial factor” in causing the death of another “[i]t must be shown that the defendant’s acts injured the victim which then led to the victim’s death.” *State v. Gatson*, 801 N.W.2d 134, 146 (Minn. 2011) (quotation omitted). A defendant’s liability extends to “all the consequences that may ensue in the ordinary and natural course of events” that are initiated by his original act. *State v. Smith*, 119 N.W.2d 838, 846 (Minn. 1962). In this regard, a defendant is still guilty of homicide

if his act was “the cause of the cause” of death. *Smith*, 835 N.W.2d at 6 (quoting *Smith*, 119 N.W.2d at 848).

Hawkins contends that “in light of the nature of the immediately-lethal head injury caused by Adams, there is a reasonable inference that Hawkins’s act was not a substantial factor in causing B.A.’s death.” Hawkins admits that proximate cause may have been established if, after he shot B.A. in the back, Adams tried to grab Hawkins’s gun in an attempt to stop him from further harming B.A. and, in the struggle for the gun, Adams accidentally shot B.A. in the head. But Hawkins contends that the circumstances proved demonstrate that Adams “panicked” and independently engaged in his own criminal conduct, which breaks the chain of causation. In response, the state contends that when considering the facts in the light most favorable to the verdict, Adams fired his gun in defense of his cousin, which does not constitute independent criminal conduct.

In this case, the circumstances proved by the state include the fact that Adams saw Hawkins shoot B.A. in the back and that Adams shot in B.A.’s direction in an attempt to prevent Hawkins from shooting B.A. again. While it is likely that Hawkins’s shot to B.A.’s back did not biologically cause B.A.’s immediate death and the evidence supports a reasonable inference that B.A.’s body stopped performing life-sustaining biological processes because of Adams’s shot to B.A.’s head, it was Hawkins who fired the first shot, escalating the fight into a shoot-out between the two groups. It is well settled that a defendant’s liability extends to “all the consequences that may ensue in the ordinary and natural course of events” that are initiated by his original act, not just the original act, so simply not being the biological cause of death is insufficient for a defendant to escape

criminal liability for second-degree manslaughter. *See Smith*, 119 N.W.2d at 846. It is not an “untenable” consideration that in the “ordinary and natural course of events,” which begin with a gunshot fired at a particular person in a group of adverse parties, that crossfire may occur, and that a person may get caught in that crossfire and sustain a fatal wound, especially when the parties know that a person on each side of the conflict is carrying a gun. *See id.* Nor is a person accidentally sustaining a fatal wound derived from a struggle over the gun that fired the initial shot a more “ordinary and natural course of events” than a family member attempting to come to a person’s aid using a different gun. *See id.*

Thus, under the circumstances of this case, where the ordinary and natural course of events would be that crossfire would ensue between two adverse armed groups after a shot is fired by one of the persons against persons in the other group and that persons in either group could be shot and killed in the crossfire, the state met its burden that Hawkins’s action in escalating the fight by shooting B.A. was a substantial factor in causing B.A.’s death.

B. Independent Force

Hawkins also contends that the state did not meet its burden to eliminate any rational inference from the circumstances proved that Adams’s head shot was an intervening, superseding cause of B.A.’s death for which Hawkins was not criminally responsible.

An intervening, superseding cause of injury or death will limit a defendant’s liability for his culpable conduct. *State v. Hofer*, 614 N.W.2d 734, 737 (Minn. App. 2000), *rev. denied* (Minn. Aug. 15, 2000); *see also State v. Jaworsky*, 505 N.W.2d 638, 643 (Minn. App. 1993). “An intervening, superseding act breaks the chain of causation set in operation

by a defendant's negligence, thereby insulating his negligence as a direct cause of the injury." *Hofer*, 614 N.W.2d at 737 (quotation omitted). An intervening, superseding cause sufficient to relieve a person from the consequences of negligent behavior must (1) come between the negligence and the occurrence at issue; (2) not have been brought about by the original negligence; (3) turn aside the natural sequence of events producing a result which otherwise would not have followed the original negligence; and (4) not have been foreseeable from the original negligence. *Id.* "To be a superseding cause, the intervening conduct must be the sole cause of the end result." *Smith*, 835 N.W.2d at 7 (quotation omitted).

Hawkins contends that the circumstances proved by the state support a rational inference that Adams's shot was a superseding cause in B.A.'s death. In particular, Hawkins contends that Adams's independent criminal act of shooting his cousin was not a foreseeable part of the natural sequence of events and that, given the medical evidence, there is a rational inference that Adams's act was the sole cause of B.A.'s death. The state contends that Adams's head shot was "brought about" by Hawkins shooting B.A. first.

Again, the circumstances proved by the state are that Adams fired the shot that struck B.A. in the head after he saw Hawkins shoot B.A. in the back. Accordingly, the purported intervening event occurred between Hawkins's negligent act and B.A.'s death. But Adams fired his gun because he was trying to prevent Hawkins from shooting B.A. again, so the circumstances proved also demonstrate that Adams's shot was "brought about" by Hawkins's shot. *See Hofer*, 614 N.W.2d at 737. Furthermore, Adams's shot was a foreseeable result of Hawkins's shot, not outside a "natural sequence of events," and

did not produce “a result which otherwise would not have followed” Hawkins’s shot. *See id.* It is “foreseeable” and “natural” that a family member would retaliate or defend with equivalent force a person who he or she witnessed get shot in the back moments prior. In addition, the result of Adams’s shot—a fatal wound to B.A.’s head—otherwise might have followed Hawkins’s shot, perhaps as Hawkins suggests, as the result of a struggle for Hawkins’s gun.

Thus, the state met its burden to eliminate any rational inference from the circumstances proved that Adams’s shot that struck B.A. in the head was an intervening, superseding cause for which Hawkins was not criminally responsible.

In sum, the state presented sufficient evidence to support the jury’s verdict and Hawkins’s conviction for second-degree manslaughter.

Affirmed.