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

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1702

State of Minnesota,
Respondent,

vs.

Pierre Jerel Anderson,
Appellant.

Filed November 21, 2022
Affirmed
Florey, Judge[*]

Anoka County District Court
File No. 02-CR-20-344

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

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

NONPRECEDENTIAL OPINION

FLOREY, Judge

Appellant Pierre Jerel Anderson challenges his conviction of third-degree murder under Minn. Stat. § 609.195(a) (2018), arguing that his act was directed at a single person, and the state failed to prove the mental-state element of depraved mind with sufficient evidence. Appellant further claims that the district court's erroneous jury instruction and exclusion of his expert witness testimony at trial were prejudicial. Finally, appellant contends that the district court erred by entering convictions on three charges for a single act against one victim. We affirm.

FACTS

Ken and Korey are brothers and co-owners of a transmission shop in St. Paul. On January 14 or 15, 2020, there was a break-in at the shop and some tools were stolen. In an effort to find those stolen tools, Ken's adult son Max set up an alert through Facebook Marketplace so that he would receive a notification when someone was selling tools similar to those stolen. That evening when Max was at his parents' home with his father Ken and their family friend Joshua, he found a recent post that someone in Woodbury was advertising to sell tools that matched those stolen from the shop. Max showed the post to Ken and Joshua. The pictures showed that the tools were covered in transmission grease, which would have resulted from being used in a transmission shop. The condition and wear also matched the tools stolen from the shop. The three men were certain that these were the stolen tools. Ken called the St. Paul Police Department and the Woodbury Police Department, but neither took any action.

When law enforcement declined to assist, Ken and his family decided to recover their tools themselves. Joshua volunteered to message the seller during which he posed as an interested buyer and asked to see the tools. The seller was later identified as appellant. They arranged to meet that evening at 9 p.m. in the parking lot of a Target in Blaine. Joshua told appellant that he would pay $3000 for the tools, but he had no intention of paying and brought no money to Target.

Ken, Ken's two adult sons Max and Wyatt, Ken's brother Korey, and their friend Joshua all went to meet the appellant. Wyatt brought a crowbar, and Max had a knife in his car. The five men took two vehicles. Max and Joshua left first in Max's Volkswagen. They arrived at 9:11 p.m. and parked at the far edge of the Target parking lot with the rear end backing up to a snowbank. Ken, Wyatt, and Korey later drove to Target in Ken's pickup truck. They initially parked somewhere in the middle of the parking lot but then moved to a different location near the loading dock with a line of sight to Max's car. Wyatt told law enforcement that they were purposefully hiding from the appellant.

The surveillance cameras at the Target parking lot captured the entire incident but in grainy detail. At around 9:33:23 p.m., appellant arrived in a light-colored GMC Yukon Denali. Appellant backed into the parking spot immediately left of Max's Volkswagen and parked just about a car door's length away. Joshua exited the Volkswagen and walked to the passenger side of the Denali. He was in between the two cars. Appellant leaned over and opened the front passenger door. Joshua fully opened the door and examined the tools inside. He confirmed they were the tools stolen from the shop. During the interaction, there was phone communication between Max's and Ken's vehicles.

About 40 seconds after Joshua walked to the Denali, Ken drove his pickup truck from its hiding spot to the vehicle. He parked perpendicular to the Denali and about two to three feet in front of it to box the appellant in. Joshua testified that appellant "kind of started to freak out" and said either "What is this?" or "What the f--k?"

The three men exited Ken's pickup. Wyatt exited the rear seat on the driver's side, walked around the back of the pickup, and approached the Denali's front driver's door with a crowbar. Korey came out from the front passenger side—the side facing the Denali—and approached the front passenger side of the Denali where Joshua stood. Ken, exiting the pickup truck's driver's seat, had the longest path toward the Denali since he had to come from the side facing away from the Denali and walk all the way around the rear of the pickup truck bed.

Appellant's Denali was boxed in by the snowbank behind him, Ken's pickup in front of him, and Max's Volkswagen on his right. Appellant's only escape route was to the left of the rear of Ken's pickup truck. Within seconds of Ken blocking appellant in, and as Ken was walking toward the Denali, appellant put the Denali into reverse, turned the wheel and backed up as much as he could without hitting Max's Volkswagen next to it. He then immediately put the Denali into drive, turned the wheel to the left, narrowly missing the end of the pickup's bed.

About six seconds elapsed from the time appellant reversed the Denali to the time he drove past the pedestrians surrounding him. Within those six seconds, Ken had walked around the rear of the truck bed toward the Denali. Wyatt saw that appellant was about to hit Ken. Wyatt swung the crowbar and hit the Denali's driver's window but did not break

it. The front bumper on the driver's side of the Denali hit Ken. Ken fell beneath the front bumper and went underneath the front tires. Appellant did not stop the Denali, and the car bounced up as its front tires ran over Ken. Ken rolled or was dragged under the Denali for about 50 feet before the rear tires also drove over him. Appellant then "sped off to the south side of Target and jumped a curb and sped off."

Joshua called 911. Ken died from his injuries. The medical examiner declared the cause of death blunt force injuries and the manner of death homicide. The area of the Target parking lot impacted contained debris from the Denali. At 9:38 p.m., appellant sent Joshua a message in their Facebook Marketplace thread that read "LOL dummies."

Before meeting with the Joshua, appellant had set up a backup meeting at an O'Reilly's Auto to sell the tools to another buyer ("buyer 2") in Ham Lake. Because it was late at night, buyer 2 messaged appellant that he wanted to meet at a Speedway gas station in Ham Lake that was still open instead. Appellant did not confirm.

After leaving Target, appellant drove to the Speedway gas station in Ham Lake about five miles north of the Target in Blaine. Cameras at the Speedway captured appellant walking into the gas station at around 9:54 p.m., after he had parked at a gas pump. Deputies located appellant's Denali as appellant watched them from inside the gas station. Appellant ran through an emergency exit in the back and fled on foot. Deputies called in a K-9 unit and tracked him to an unlocked parked car about three-quarters of a mile from the gas station. The vehicle was parked across the street from the originally planned meeting place of O'Reilly's Auto. Appellant was arrested without incident.

The police found that the front bumper of the Denali on the driver's side was missing a piece, and there was a crack in the windshield. Appellant had two cell phones inside the Denali. One of them was broadcasting the dispatch radio traffic for the Anoka County Sheriff.

On January 17, 2020, the state charged appellant with one count of second-degree murder while committing a felony. Minn. Stat. § 609.19, subd. 2(1) (2018). The state filed an amended complaint on March 15, 2021, to add one count of third-degree depraved-mind murder, Minn. Stat. § 609.195(a), and one count of criminal vehicular homicide - driver who caused collision and left the scene, Minn. Stat. § 609.2112, subd. 1(a)(7) (2018). Before trial, the state added a count of traffic collision - driver failed to stop and caused injury or death in violation of Minn. Stat. § 169.09, subd. 1 (2018).

The jury found appellant not guilty of second-degree murder but guilty of the remaining three counts. At sentencing, the district court entered judgments of conviction on count 2, third-degree murder for perpetrating eminently dangerous act and evincing depraved mind; count 3, criminal vehicular homicide - driver who caused collision and left scene; and count 4, traffic collision - driver failed to stop and caused injury or death. The district court entered a guidelines sentence on count 2 of 260 months in prison.

DECISION

I. Sufficient evidence in the record supports the jury's guilty verdict on third-degree murder.

Third-degree murder occurs when a person, without the intent to kill, "causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life." Minn. Stat. § 609.195(a). Appellant argues that the state failed to prove with sufficient evidence the mental-state element, that is, appellant acted with "a depraved mind, without regard for human life." *State v. Noor*, 964 N.W.2d 424, 429-30 (Minn. 2021). Appellant reasons that because he endangered only Ken when trying to escape the five-men group, his act fits into the particular-person exclusion for third-degree murder. We disagree.

In reviewing whether a conviction is supported by sufficient evidence, appellate courts undertake a "painstaking review of the record" and, viewing the evidence in the light most favorable to the verdict, determine whether the evidence and reasonable inferences drawn therefrom could allow a jury to reach its verdict. *State v. Pendleton*, 706 N.W.2d 500, 511 (Minn. 2005).

Criminal intent involves a state of mind and is generally established by circumstantial evidence. *State v. Pederson*, 840 N.W.2d 433, 436 (Minn. App. 2013). Sufficiency-of-evidence challenges based on circumstantial evidence receive "heightened scrutiny" on appeal, which involves two steps. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). First, we examine the circumstances proved, deferring to the fact-finder's acceptance of proof of those circumstances and rejection of conflicting evidence; we then

independently examine the reasonableness of the inferences to be drawn from those circumstances. *Id.* at 473-74. In this examination, we consider inferences of both innocence and guilt; all the circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis negating guilt. *State v. Andersen,* 784 N.W.2d, 320, 329-30 (Minn. 2010). The state does not have the burden to remove all doubt at trial, but only reasonable doubt. *State v. Hughes*, 749 N.W.2d 307, 313 (Minn. 2008). We will not overturn a conviction based on mere conjuncture. *Andersen*, 784 N.W.2d at 330.

Third-degree depraved mind murder is defined by statute as:

> Whoever, without intent to effect the death of any person, causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life, is guilty of murder in the third degree and may be sentenced to imprisonment for not more than 25 years.

Minn. Stat. § 609.195(a). To support a conviction of third-degree murder, the state must establish that the defendant committed an act that "(1) caused the death of another, (2) was eminently dangerous to others, and (3) evinced a depraved mind without regard for human life." *State v. Coleman*, 957 N.W.2d 72, 77 (Minn. 2021) (quoting *State v. Hall*, 931 N.W.2d 737, 741 (Minn. 2019)). The state need not affirmatively prove that defendant acted "without the intent to effect the death of any person" because it is not an element of the offense; instead, "if the intent referenced in this phrase exists, the offense at issue is elevated to a different, more serious, criminal offense than third-degree murder, for example, second-degree intentional murder." *Id.* (quoting *Hall*, 931 N.W.2d at 741-43).

Here, appellant does not dispute that his action (1) caused the death of Ken, and (2) was eminently dangerous to others. The issue on appeal is whether the state has sufficiently proved the mental-state element that appellant's action "evinced a depraved mind without regard for human life." *Id.* at 77. The requisite mental state is general malice, which cannot exist when defendant's actions are directed with special particularity at the person who is killed. *Noor*, 964 N.W.2d at 433.

The evidence supports a strong inference that appellant acted with a depraved mind without regard for human life. When appellant abruptly drove the Denali in reverse, turned left, and accelerated in a dark parking lot at night, he knew there were pedestrians standing next to his vehicle. Joshua and Korey were standing between Max's Volkswagen and the passenger side of the appellant's Denali. Wyatt had walked to the driver's side of the Denali. Appellant was aware that his driving could be fatal to any one of those surrounding the Denali. In fact, Korey feared that he might get pinched in between the two vehicles and had to leap to his left to avoid the Denali.

Furthermore, appellant had a chance but chose not to stop his car after first hitting Ken. He continued to run over Ken with the front tires and dragged Ken under the Denali for about 50 feet before the rear tires also drove over Ken. Appellant then "sped off to the south side of Target and jumped a curb and sped off." Never did appellant stop or check on Ken's condition. Appellant's sarcastic message to Joshua within minutes after the incident is also consistent with a mental state of clear disregard for human life.

The particular-person exclusion for third-degree murder does not apply because appellant did not drive in Ken's direction with any special reference to Ken. *See State v.*

Lowe, 68 N.W. 1094, 1095-96 (Minn. 1896). Appellant was trying to escape, and Ken happened to be standing in front of his only way out. Like the defendant in *Coleman*, appellant did not act with any intent to cause the victim's death, and therefore his action cannot be specifically directed at the victim. *State v. Coleman*, 957 N.W.2d at 75.

No rational hypothesis of innocence exists based on the circumstances proved at trial. While appellant claims that he directed his action toward Ken, we find this argument unpersuasive based on the circumstances of the case. Neither would appellant's argument tend to negate guilt. As our supreme court has stated, had appellant acted with the specific intent to effect the death of Ken, the offense would be "elevated to a different, more serious, criminal offense than third-degree murder, for example, second-degree intentional murder." *Id.* at 77 (quoting *Hall* at 741-43).

We conclude that sufficient evidence in the record supports the jury's guilty verdict on third-degree murder.

II. The erroneous jury instruction was not prejudicial.

The parties agree that the instruction given to the jury at trial was erroneous. Third-degree murder occurs when a person, without the intent to kill, "causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life." Minn. Stat. § 609.195(a). When instructing the jury, however, the district court stated that the act must be "committed in a reckless or wanton manner with the knowledge that someone may be killed and with a heedless disregard of that happening." The same instruction was given to the jury in *Coleman*, where our supreme court held that the language materially misstated the law because it incorrectly

attached the recklessness component to the actus reus and allowed for conviction based on an impermissibly low risk of death. *Id*. at 81.

Appellant did not object to the jury instruction at trial but raised it for the first time on a post-trial motion for a new trial. "Generally, a party waives the right to appeal a jury instruction by failing to object at trial." *State v. Glowacki*, 630 N.W.2d 392, 398 (Minn. 2001). But if the party objected to the error in a motion for a new trial, as opposed to raising it for the first time on appeal, the issue may be adequately preserved "if the instruction contains an error of fundamental law or a controlling principle." *Id.* (citing *State v. McKenzie*, 532 N.W.2d 210, 222 n. 12 (Minn. 1995); Minn. R. Crim. P. 26.03, subd. 19(4)(f).

Here, the error in the jury instruction is one of fundamental law or a controlling principle because it pertains to both actus reus and mens rea of the offense. *See Strobel v. Chicago, Rock Island & Pac. R.R.*, 96 N.W.2d 195 (Minn. 1959) (holding that error in the district court's instruction defining proximate cause is one of fundamental law or controlling principle and could be raised for first time in motion for new trial). We conclude that appellant sufficiently preserved the issue for harmless error review. *Glowacki*, 630 N.W.2d.

Under harmless error review, appellate courts "examine all relevant factors to determine whether, beyond a reasonable doubt, the error did not have a significant impact on the verdict." *State v. Shoop*, 441 N.W.2d 475, 481 (Minn. 1989).

As discussed in part I of the opinion, appellant accelerated his Denali in the dark parking lot with at least four people standing in close proximity. He knocked Ken under

the Denali, drove over him with the front tires, and then, without stopping, dragged Ken on the ground for about 50 feet before driving over him again with the rear tires. Given the overwhelming evidence presented at trial that appellant was indifferent to the loss of human lives his eminently dangerous conduct could cause, we conclude beyond a reasonable doubt that the error in the jury instruction did not have a significant impact on the verdict.

III. The district court did not abuse its discretion in excluding appellant's expert witness testimony.

"A district court's evidentiary ruling on the admissibility of an expert opinion rests within the sound discretion of the [district] court and will not be reversed unless it is based on an erroneous view of the law or it is an abuse of discretion." *Gross v. Victoria Station Farms, Inc.*, 578 N.W.2d 757, 760-61 (Minn. 1998). "Even if evidence has probative value, it is still within the district court's discretion to exclude the testimony." *Id.*

When considering whether to admit expert testimony, a district court must determine whether the testimony will help the jury resolve relevant factual questions presented at trial. Minn. R. Evid. 702; *State v. Grecinger*, 569 N.W.2d 189, 195 (Minn. 1997). A court determines helpfulness by considering whether the testimony "will assist the trier of fact to understand the evidence or to determine a fact in issue" and whether the subject "is within the knowledge and experience of a lay jury." Minn. R. Evid. 702; *State v. Helterbridle*, 301 N.W.2d 545, 547 (Minn. 1980). A district court must also balance the relevance and probative value of the testimony against the danger of creating unfair

prejudice, the potential for confusing or misleading the jury, and other concerns. Minn. R. Evid. 401, 403.

Here, the district court did not abuse its discretion in excluding appellant's expert testimony about his mental state of fear at the time of the incident. The district court judge stated on the record that it did not believe that the expert witness would help the jury because (1) fear is a within jury's common knowledge and experience, and (2) there was insufficient evidence of appellant's fear that required explanation. Even if the expert testimony were helpful to the jury under Minn. R. Evid. 702, the district court still had broad discretion to exclude such evidence because it could unduly influence and confuse the jury. Minn. R. Evid. 401, 403. Appellant's expert witness would offer testimony in part based on appellant's self-reported history of being shot in the past. Without the appellant taking the stand and subjecting himself to cross-examination, the district court correctly excluded the expert testimony because it would have otherwise allowed the defendant a backdoor in opinion testimony "to show diminished capacity or diminished responsibility," which a long line of precedent bars. *State v. Provost*, 490 N.W.2d 93, 100 (Minn. 1992).

IV. The district court did not err by convicting appellants of three offenses.

Appellant was convicted of third-degree murder in violation of Minn. Stat. § 609.195(a); criminal vehicular homicide in violation of Minn. Stat. § 609.2112, subd. 1(a)(7); and traffic collision - driver failed to stop and caused injury or death in violation of Minn. Stat. § 169.09, subd. 1. However, the district court only sentenced appellant for his conviction on third-degree murder. Thus, the issue here is not about multiple sentences,

but whether, under Minn. Stat. § 609.04 (2018), appellant could be convicted of all three offenses when they arose out of a single act against a single victim. Whether the convictions violate Minn. Stat. § 609.04 is a legal issue which we review de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both. Minn. Stat. § 609.04, subd. 1. An included offense may be any of the following:

> (1) a lesser degree of the same crime; or
> (2) an attempt to commit the crime charged; or
> (3) an attempt to commit a lesser degree of the same crime; or
> (4) a crime necessarily proved if the crime charged were proved; or
> (5) a petty misdemeanor necessarily proved if the misdemeanor charge were proved.

Id. Here, appellant's three convictions do not fall within any one of the five categories; nor are they part of the same statutory scheme. *See State v. Hackler*, 532 N.W.2d 559, 559 (Minn. 1995). We therefore conclude that the district court correctly entered convictions on appellant's three charges.

V. Pro Se Arguments

Appellant filed a separate pro se brief on appeal. Three of the four issues overlapped with the attorney's brief and have already been addressed in this opinion. The only remaining issue that appellant raised is lack of effective counsel.

The Sixth Amendment of the United States Constitution guarantees criminal defendants the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984). We apply the two-prong test set forth in *Strickland* to determine

whether a defendant received ineffective assistance of counsel. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020). The *Strickland* test requires appellant to prove that: (1) his "counsel's representation fell below an objective standard of reasonableness" and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Zumberge v. State*, 937 N.W.2d 406, 413 (Minn. 2019) (quotations omitted). The claim must satisfy both of the *Strickland* prongs, so if one prong is not met, the claim fails, and we need not apply the other prong. *See Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016). Because it is dispositive, we start by addressing the second *Strickland* prong.

Here, appellant does not argue *how* counsel's alleged deficiencies affected the state's case, which supported the jury's guilty verdicts. Appellant has not shown "a reasonable probability that, but for counsel's [alleged] unprofessional errors, the result of the proceeding would have been different." *See Zumberge*, 937 N.W.2d at 413 (quotation omitted).

Because appellant failed to satisfy the second prong of the *Strickland* test, we need not address the first prong. *See Swaney*, 882 N.W.2d at 217.

Affirmed.