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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0844**

State of Minnesota,
Respondent,

vs.

Jeffrey Arthur Martin,
Appellant.

**Filed April 8, 2013
Affirmed
Kirk, Judge**

Dakota County District Court
File No. 19HA-CR-09-5333

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County
Attorney, Hastings, Minnesota (for respondent)

Paul D. Baertschi, Tallen & Baertschi, Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Kirk, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

KIRK, Judge

On appeal from his conviction of criminal vehicular homicide and other charges related to a car accident, appellant argues that the district court abused its discretion by failing to give the jury an instruction on causation that included the doctrine of intervening, superseding causes. We affirm.

FACTS

At approximately 5:00 p.m. on December 24, 2009, a car driven by appellant Jeffrey Arthur Martin collided with a car driven by S.S. at the intersection of Dodd Boulevard and Gerdine Path in Lakeville. As a result of the collision, S.S. suffered broken ribs, a concussion, and a cut on her forehead that left a scar. S.S.'s husband, E.L., who was riding in the front passenger seat of the car, suffered extensive chest injuries and internal bleeding, which resulted in his death. The state charged appellant with criminal vehicular homicide, among other things.

During the jury trial, several witnesses testified about the events leading up to the collision. S.S. testified that when the collision occurred she was driving her Cadillac east on Dodd Boulevard on her way to her daughter's home, and her husband, E.L., was riding in the front passenger seat. S.S. testified that she had traveled the same route many times, did not plan to turn at the intersection of Dodd Boulevard and Gerdine Path, did not activate her turn signal as she approached the intersection, and is accustomed to driving in the left lane on Dodd Boulevard, which is a four lane road with two lanes in each direction, because the right lane ends shortly after the intersection with Gerdine

Path. As they approached the intersection, S.S. heard E.L. yell that a car was not going to stop and then she saw a big, black truck collide with their car.

A witness to the collision, C.U., testified that he stopped his car at a stop sign at the intersection of Gerdine Path and Dodd Boulevard, to the right of a black SUV that was also stopped at the stop sign. C.U. testified that he intended to continue straight through the intersection but he waited to cross because he observed two sets of headlights coming from the southwestern side on Dodd Boulevard. C.U. saw one car pass by on Dodd Boulevard, and he continued to wait for the second car to pass. He was unable to see the car itself, but he saw the car's headlights approaching. C.U. observed the black SUV enter the intersection and strike the second car, which he later observed was a Cadillac.

In contrast to the other witnesses, J.S. testified that at approximately 5:00 p.m., he and his wife, C.S., were driving east on Dodd Boulevard and stopped in the left lane at a stoplight at the intersection of Dodd Boulevard and Cedar Avenue. He observed that a Cadillac or a Buick was stopped next to them in the right lane. After the light turned green, both cars proceeded through the intersection and, shortly after crossing Cedar Avenue, the Cadillac entered his lane. J.S. moved over and honked his horn, and the Cadillac drove ahead of him down the center of the two eastbound lanes. When both cars approached the intersection of Dodd Boulevard and Gerdine Path, J.S. observed the Cadillac turn its turn signal on and partially move into the right turn lane. J.S. testified that he sped up, passed the Cadillac, and continued through the intersection with Gerdine Path. After he passed through the intersection, J.S. looked in his rearview mirror, saw the

Cadillac start to move back into the left lane, and then observed the collision. C.S. also testified that she observed the driver of the Cadillac put on her turn signal, move into the turn lane, and slow down.

Lakeville Police Officer Shawn McMahon testified that he was dispatched to a car accident at 5:01 p.m. and, when he arrived at the scene of the accident, he observed that it appeared to be a “T-bone situation.” He testified that the traffic conditions were bad, the roads were covered in snow, slush, and ice, and there was low light. Officer McMahon approached the Cadillac and spoke to the driver, who complained of pain. He observed that the driver had a large laceration on her forehead and had lost a large amount of blood. He also spoke to the passenger, who was conscious and did not have obvious injuries but complained about pain on his right side.

Officer McMahon spoke to appellant at the scene approximately ten minutes after he arrived. As he was talking to appellant, Officer McMahon “notice[d] clear signs of intoxication such as the slurred speech, the bloodshot watery eyes and a strong smell of an alcoholic beverage.” When questioned, appellant initially denied that he had consumed alcohol, but later stated that he had consumed two alcoholic beverages prior to driving his car, with the last one consumed at 3:00 p.m. Officer McMahon placed appellant under arrest and transported him to the police station. At 6:30 p.m., Officer McMahon collected a urine sample from appellant and mailed it to the Minnesota Bureau of Criminal Apprehension (BCA). A BCA forensic scientist analyzed appellant’s urine and determined that the alcohol level was 0.17.

Sergeant Lance Langford, an accident reconstructionist with the Minnesota State Patrol, testified that he accessed S.S.'s Cadillac's crash data retrieval system to obtain information from the air bag control modules. He was not able to access any information from appellant's car. Sergeant Langford reviewed the percentage of throttle that S.S. applied in the five seconds prior to impact, the Cadillac's speed in the five seconds prior to impact, the application of the brakes during the eight seconds prior to impact, and the Cadillac's turn-signal bulb. Sergeant Langford testified that, based on the road conditions and the Cadillac's speed in the five seconds prior to impact, the Cadillac's speed was not consistent with the driver slowing down to make a right turn or with the driver slowing down to make a right turn and then rapidly accelerating.

Lakeville Police Detective Brad Paulson interviewed appellant on December 28. Appellant stated that on the evening of the collision he left his home, drove north on Gerdine Path, and stopped at a stop sign at the intersection of Gerdine Path and Dodd Boulevard. He stated that he saw two cars coming from the west, one in the right lane and one in the left lane, and he observed the car in the right lane enter the turn lane with its turn signal on. Appellant stated that after he turned to his right to look for cars coming from the east, he pulled away from the stop sign and collided with the Cadillac. He stated that he last saw the Cadillac when it entered the turn lane. Appellant admitted that the day of the accident he drank three cans of Cherry Coke that contained vodka. He estimated that he drank at least three shots of vodka between 10:30 a.m. and 3:00 p.m.

David Daubert, a forensic traffic engineer, testified as an expert for appellant. He testified that, based on J.S.'s testimony, the Cadillac was in the right turn lane prior to the

collision, which he called a “safe position” because the driver who is waiting to cross traffic believes that the car is not going to cross the intersection. Daubert testified that appellant’s vehicle was traveling at less than eight miles per hour before the collision and the Cadillac was traveling at approximately 34 miles per hour. Based on the speed both cars were traveling and the average night-perception response time, he testified that an average person would not have been able to avoid the collision.

The jury found appellant guilty of all counts alleged in the complaint. Appellant moved the district court to grant a judgment of acquittal or a new trial; the district court denied both motions. This appeal follows.

D E C I S I O N

The district court’s refusal to give a requested jury instruction is within the district court’s broad discretion, and this court will only reverse if the district court abused its discretion. *State v. Landa*, 642 N.W.2d 720, 727 (Minn. 2002). “Jury instructions, reviewed in their entirety, must fairly and adequately explain the law of the case. A jury instruction is erroneous if it materially misstates the applicable law.” *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011) (citation omitted). “A defendant is entitled to a specific instruction if the trial evidence supports the instruction and the substance of the proposed instruction is not already contained in instructions chosen by the district court.” *State v. Nelson*, 806 N.W.2d 558, 564 (Minn. App. 2011), *review denied* (Minn. Feb. 14, 2012).

In instructing the jury about the elements of criminal vehicular homicide, the district court stated: “First, the death of [E.L.] must be proven. Second, [appellant] caused the death of [E.L.] by operating a motor vehicle while having an alcohol

concentration of 0.08 or more, or 0.08 or more as measured within two hours at the time of driving,” and “[t]hird, [appellant’s] act took place on or about December 24, 2009 in Dakota County.” The district court defined “[c]auses or caused” as “[appellant’s] conduct was a substantial causal factor in bringing about the harm.”

Appellant argues that the district court abused its discretion by failing to instruct the jury about the doctrine of intervening, superseding causes. An intervening, superseding cause of harm limits a defendant’s liability. *State v. Hofer*, 614 N.W.2d 734, 737 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000). “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.” *Id.* (quotation omitted). In criminal vehicular homicide cases, courts apply a four-part test to determine whether an intervening cause is a superseding cause:

- 1) its harmful effects must have occurred after the original negligence; 2) it must not have been brought about by the original negligence; 3) it must have actively worked to bring about a result which would not otherwise have followed from the original negligence; and 4) it must not have been reasonably foreseeable by the original wrongdoer.

Id. (quotation omitted). An intervening, superseding cause of harm is usually the result of a third party’s act that occurs after the defendant’s act and functions as an independent force to produce the injury. *Id.* “A force caused or set in motion by an originally negligent person is not considered intervening because it proceeds directly from that person’s conduct.” *Id.* at 738.

In support of his argument that the district court should have instructed the jury regarding intervening, superseding causes, appellant argues that this case is very similar to a recent case decided by this court. *See Nelson*, 806 N.W.2d at 558. In that case, a pickup truck driven by Nelson collided with an ATV, which resulted in the ATV driver's death. *Id.* at 560. The evidence established that Nelson's pickup entered a ditch after driving through a large curve in a road and drove in the ditch for 355 feet before striking the ATV from behind. *Id.* The evidence also established that the driver of the ATV had been driving on the road in the same direction as the pickup and entered the ditch approximately 50 feet before impact. *Id.* Nelson's alcohol concentration was at .056 and .058 approximately six hours after the collision. *Id.* The victim's alcohol concentration was .15. *Id.* at 561. As a result of the accident, Nelson was charged with three counts of criminal vehicular homicide. *Id.* At trial, the district court instructed the jury that an element of each charge of criminal vehicular homicide was that Nelson "caused the death of" the victim. *Id.* at 564 (quotation omitted). The district court declined to include an additional instruction that "[a] direct cause is a cause that has a substantial part in bringing about the accident." *Id.* (quotation omitted). The jury found Nelson guilty of all three counts. *Id.* at 562.

On appeal, this court stated that "[o]n these facts, the jury needed to be instructed on the parties' fault as it related to whose conduct played a substantial factor in causing the accident." *Id.* at 564. This court determined that "[b]ecause the caselaw defines causation in criminal vehicular homicide or operation cases as 'something that played a substantial part in bringing about the death or injury,' . . . [Nelson] was entitled to have

this definition included in the jury instructions.” *Id.* (citation omitted). This court also noted that, based on the facts, “the victim’s negligence could have been an intervening, superseding cause that necessitated a jury instruction on that aspect of causation.” *Id.*

Here, the district court’s instruction regarding causation was proper. *See Nelson*, 806 N.W.2d at 564; *State v. Jaworsky*, 505 N.W.2d 638, 643 (Minn. App. 1993), *review denied* (Minn. Sept. 30, 1993). Unlike the district court in *Nelson*, the district court in this case specifically instructed the jury that it had to find that “[appellant’s] conduct was a substantial causal factor in bringing about the harm.” While this court stated in *Nelson* that an instruction about an intervening, superseding cause *could* have been given, it held that *Nelson* was “entitled to have” the following definition of causation included in the jury instructions: “something that played a substantial part in bringing about the death or injury.” 806 N.W.2d at 564 (quoting *Jaworsky*, 505 N.W.2d at 643) (quotation marks omitted). That instruction is identical to the instruction that the district court gave in this matter.

Moreover, appellant was not entitled to an instruction on an intervening, superseding cause because the evidence does not support that instruction. *See Nelson*, 806 N.W.2d at 564. Appellant does not dispute that he had a stop sign, S.S. had the right of way, and that his vehicle collided with S.S.’s vehicle. Appellant does not contend, and the record does not establish, that an independent act by a third party occurred after his negligent act and caused E.L.’s death. *See Hofer*, 614 N.W.2d at 737. The record establishes that appellant’s act led to a natural sequence that resulted in E.L.’s death and that E.L.’s death was a reasonably foreseeable result of appellant’s failure to yield to

traffic. The record does not establish that S.S.'s conduct was an intervening, superseding cause and, therefore, appellant was not entitled to a jury instruction regarding intervening, superseding causes. Accordingly, the district court did not abuse its discretion in its instructions to the jury regarding causation.

Affirmed.