STATE OF MINNESOTA

IN SUPREME COURT

A18-0335

Court of Appeals — Gildea, C.J.

State of Minnesota,

Respondent,

vs.

Filed: November 13, 2019
Office of Appellate Courts

David Michael Stay,

Appellant.

Ian S. Birrell, Marc E. Betinsky, Gaskins Bennett & Birrell, LLP, Minneapolis, Minnesota, for appellant.

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, Saint Paul, Minnesota; and

Joseph Jerome Walsh, Mille Lacs County Attorney, Milaca, Minnesota, for respondent.

S Y L L A B U S

The first-degree manslaughter statute, Minn. Stat. § 609.20(2) (2018), does not require the State to prove that death or great bodily harm was a reasonably foreseeable result of the defendant's conduct when the underlying crime is fifth-degree assault.

Affirmed.

O P I N I O N

GILDEA, Chief Justice.

This appeal requires us to determine whether a defendant charged with first-degree manslaughter under Minn. Stat. § 609.20(2) (2018), must have reasonably foreseen that death or great bodily harm could result from the commission of a fifth-degree assault. Appellant David Stay was charged with first-degree manslaughter, and he asked the district court to instruct the jury that a conviction for first-degree manslaughter required proof that he committed fifth-degree assault with such force or violence that death or great bodily harm was reasonably foreseeable. The district court declined to give that instruction and Stay was convicted of first-degree manslaughter. On appeal, the court of appeals held that the district court did not err in declining to give the instruction and affirmed. Because we conclude that section 609.20(2) does not require the State to prove that death or great bodily harm was a reasonably foreseeable result when the underlying crime is fifth-degree assault, we affirm.

FACTS

This case arises from a May 13, 2016 altercation between Stay and the victim, David Taute, at a bar in Isle. Stay had been drinking beer at the bar and, at approximately 1 a.m., he went outside. Around the same time, Taute, who had also been drinking at the bar, came outside. Taute's blood alcohol concentration at the time was estimated to be 0.26 and Stay admitted to feeling buzzed. Stay and Taute started to fight, and Stay punched Taute once in the jaw. Taute fell straight backwards, hit his head on cement, never moved or regained consciousness, and died within a few hours.

The medical examiner determined that Stay's blow to Taute's jaw and Taute's head injury as a result of his fall to the cement caused Taute's death. The examiner explained that Taute's blood alcohol concentration also played a role in his death because it prevented Taute from breathing normally and maintaining a normal heart-rate rhythm.

Following Taute's death, the State charged Stay with first-degree manslaughter, Minn. Stat. § 609.20(2), and first-degree assault, Minn. Stat. § 609.221 (2018). At trial, the jury heard from witnesses who were at the bar on the night of the event, medical personnel and experts, and police officers.

At Stay's request, the district court instructed the jury on the lesser-included charge of fifth-degree assault, Minn. Stat. § 609.224 (2018). Stay also requested that the court instruct the jury that, in order to find him guilty of first-degree manslaughter, the jury must find that he committed a fifth-degree assault "with such force and violence that death of or great bodily harm to any person was reasonably foreseeable." Minn. Stat. § 609.20(2). The State opposed the instruction, and the court declined to give the requested jury instruction.

The jury found Stay guilty of fifth-degree assault and first-degree manslaughter but found him not guilty of first-degree assault. The district court convicted Stay of first-degree manslaughter and sentenced him to 51 months in prison.

Stay appealed his conviction, claiming, in part, that the district court abused its discretion by denying his requested jury instruction. *State v. Stay*, 923 N.W.2d 355, 360 (Minn. App. 2019). The court of appeals affirmed. *Id.* at 366. The court held that Minn. Stat. § 609.20(2) is unambiguous and does not require the State to prove that death or great

bodily harm is reasonably foreseeable when the predicate offense of first-degree manslaughter is fifth-degree assault. *Id.* at 360–62.

We granted Stay's petition for review.

ANALYSIS

Stay argues that the plain language of the first-degree manslaughter statute, Minn. Stat. § 609.20(2), requires the State to prove that death or great bodily harm was reasonably foreseeable when the criminal offense underlying the first-degree manslaughter charge is fifth-degree assault. Stay asserts that because reasonable foreseeability is an element of the manslaughter offense, the district court erred by not instructing the jury on this element. He contends that he is entitled to a new trial because the district court's failure to give his requested jury instruction was prejudicial. The State argues that the instruction was not required.

We review a district court's jury instructions for an abuse of discretion. *State v. Mahkuk*, 736 N.W.2d 675, 682 (Minn. 2007). A district court abuses its discretion "if it fails to properly instruct the jury on all elements of the offense charged." *State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016) ("[J]ury instructions must fairly and adequately explain the law of the case and not materially misstate the law."). To determine whether the district court instructed the jury on all the elements of first-degree manslaughter, we must interpret the first-degree manslaughter statute, Minn. Stat. § 609.20(2). Statutory interpretation is a question of law that we review de novo. *City of Oronoco v. Fitzpatrick Real Estate, LLC*, 883 N.W.2d 592, 595 (Minn. 2016). And "[o]ur objective in statutory interpretation is to effectuate the intent of the legislature." *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015)

(citing *State v. Jones*, 848 N.W.2d 528, 535 (Minn. 2014)) (internal quotation marks omitted).

The first step in statutory interpretation is to determine whether the statute's language is ambiguous. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). When determining whether a statute is ambiguous, "words and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2018). If "the legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and [we] apply the statute's plain meaning." *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

Stay was convicted of first-degree manslaughter under Minn. Stat. § 609.20(2). A person commits first-degree manslaughter when the person:

> violates section 609.224[1] and causes the death of another or causes the death of another in committing or attempting to commit a misdemeanor or gross misdemeanor offense with such force and violence that death of or great bodily harm to any person was reasonably foreseeable, and murder in the first or second degree was not committed thereby[.]

Minn. Stat. § 609.20(2).

In other words, section 609.20(2) sets out two ways in which a person may be convicted of first-degree manslaughter. A person commits first-degree manslaughter under paragraph 2 when the conduct "violates section 609.224 and causes the death of another" ("fifth-degree assault clause"). *Id.* Alternatively, a person commits first-degree

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1 Section 609.244 is the fifth-degree assault statute. *See* Minn. Stat. § 609.224.

manslaughter if the person "causes the death of another in committing or attempting to commit a misdemeanor or gross misdemeanor offense" ("misdemeanor-offense clause"). *Id.* Directly following the misdemeanor-offense clause is the reasonably-foreseeable modifier: "with such force and violence that death of or great bodily harm to any person was reasonably foreseeable." *Id.*

The question in this case is whether the reasonably-foreseeable modifier applies to the fifth-degree assault clause. Stay argues that it does and contends that the reasonably-foreseeable modifier applies to both the fifth-degree assault clause and the misdemeanor-offense clause. The State argues that the modifier applies only to the latter clause. We agree with the State.

The text of the statute makes clear that the reasonably-foreseeable modifier applies only to the misdemeanor-offense clause. As explained earlier, a person can commit first-degree manslaughter in two different ways: committing fifth-degree assault, Minn. Stat. § 609.224, or "committing or attempting to commit a misdemeanor or gross misdemeanor offense." Minn. Stat. § 609.20(2). With each predicate offense, the Legislature includes a requirement that the underlying crime, either fifth-degree assault or some other misdemeanor or gross misdemeanor, cause the death of another. By repeating the harm language ("causes the death of another"), the Legislature articulated two separate forms of first-degree manslaughter. *Id.* And the reasonably-foreseeable modifier comes only after the second form of manslaughter. *Id.* If the reasonably-foreseeable modifier applied to both forms of first-degree manslaughter, there would be no reason for the Legislature to include the "causes the death of another" language twice. *See id.* In other words, if Stay's

interpretation were correct, the statute would read: a person commits first-degree manslaughter when the person causes the death of another with such force and violence that death or great bodily harm is reasonably foreseeable and the person commits fifth-degree assault, a misdemeanor, or a gross misdemeanor. But, the statute does not say that.[2]

Stay argues, however, that we should adopt his interpretation based on the series-qualifier rule of grammar. *See* Minn. Stat. § 645.08(1) (explaining that courts should use rules of grammar and common usage when interpreting statutes). Under the series-qualifier rule, "[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal*

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[2] Stay notes that his interpretation is consistent with what he contends to be the common law and with the view articulated in *Minnesota Practice Series*, 9A Henry W. McCarr & Jack S. Nordby, *Minnesota Practice—Criminal Law & Procedure* § 49:9 (4th ed. 2012). Neither argument provides support for us to ignore the plain language of the statute. *See Thonesavanh*, 904 N.W.2d at 439 n.4 (noting that "the imputed-common-law-meaning canon . . . applies only if the text is ambiguous" (citation omitted) (internal quotation marks omitted)); *Klapmeier v. Cirrus Indus., Inc.*, 900 N.W.2d 386, 399 n.3 (Minn. 2017) (Hudson, J., dissenting) (noting that "*Minnesota Practice* is not binding on us").

Stay also notes that paragraphs of section 609.20 other than paragraph 2 provide for only one form of committing first-degree manslaughter. *See* Minn. Stat. § 609.20(1), (3)–(5) (2018). And he argues that his interpretation of paragraph 2 should be accepted as reasonable because such an interpretation would make paragraph 2 consistent with the other paragraphs of the statute. We apply "the fundamental rule of statutory construction that a statute is to be read and construed as a whole" and "various provisions of the same statute must be interpreted in the light of each other." *Van Asperen v. Darling Olds, Inc.*, 93 N.W.2d 690, 698 (Minn. 1958). We may also consider the structure of the statute in determining its meaning. *State v. S.A.M.*, 891 N.W.2d 602, 604 (Minn. 2017). But we cannot rewrite paragraph 2 simply because such a rewrite would make it more consistent with the other paragraphs. The text of paragraph 2 makes it clear that the Legislature intended in this paragraph to provide for two forms of first-degree manslaughter, and we are bound by that intent.

Texts 147 (2012). Stay argues that this rule applies because the omission of a comma before the "or" separating the fifth-degree assault clause from the misdemeanor-offense clause suggests that the reasonably-foreseeable modifier applies to both clauses. We are not persuaded.

The series-qualifier rule is inapplicable because the fifth-degree assault clause and misdemeanor-offense clause are not parallel. The fifth-degree assault clause lists the statutory violation first, followed by the specification of harm, but the misdemeanor-offense clause lists these items in the opposite order. Minn. Stat. § 609.20(2). In addition, the fifth-degree assault clause contains two verb clauses. *Id.* The misdemeanor-offense clause, however, contains one verb clause followed by a long prepositional phrase. *Id.* This language results in a nonparallel series. Moreover, the words in the statute do not form an easy, digestible list. *See* Scalia & Garner, *supra*, at 147–49 (listing examples of series-qualifiers that are generally 4–9 words including the modifier). Finally, because section 609.20(2) does not contain semicolons or line breaks, the structure does not support application of the series-qualifier rule. *See City of Oronoco*, 883 N.W.2d at 595 (explaining that a semicolon or a line break might signify that the series-qualifier rule applies).

If any grammar rule is helpful here, rather than the series-qualifier rule of grammar, the last-antecedent rule of grammar is the better fit for section 609.20(2). The last-antecedent rule "instructs that a limiting phrase . . . ordinarily modifies only the noun or phrase that it immediately follows." *Larson v. State*, 790 N.W.2d 700, 705 (Minn. 2010). This rule "reflects the basic intuition that when a modifier appears at the end of a list, it is

easier to apply that modifier only to the item directly before it."[3] *Lockhart v. United States*, ___ U.S. ___, ___, 136 S. Ct. 958, 963 (2016). Under this rule, the reasonably-foreseeable modifier applies only to the misdemeanor-offense clause.

Based on the text of Minn. Stat. § 609.20(2) and informed by the rules of grammar, we conclude that the statute is subject to only one reasonable interpretation: the reasonably-foreseeable modifier applies only to the misdemeanor-offense clause.[4] The plain language of the first-degree manslaughter statute, Minn. Stat. § 609.20(2), does not require the State to prove that death or great bodily harm was a reasonably foreseeable result of the defendant's conduct when the underlying crime is fifth-degree assault. As a result, we hold that the district court did not abuse its discretion when it rejected Stay's request to instruct

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[3] At times, we have declined to apply the last-antecedent rule because of textual evidence that the rule should not apply. *See State v. Pakhnyuk*, 926 N.W.2d 914, 920–23 (Minn. 2019) (concluding that the last-antecedent rule was "not helpful in ascertaining the meaning" of a criminal statute because of the divided structure of the statutory elements, which were three numbered elements separated by semicolons and line breaks); *In re Estate of Butler*, 803 N.W.2d 393, 397–98 (Minn. 2011) (concluding that a comma separating the qualifying phrase from antecedent phrases was an indication that the qualifying phrase was intended to modify all antecedents instead of solely that which immediately precedes it, and rejecting application of the last-antecedent rule because it would render the statutory language superfluous). No such textual evidence exists here.

[4] As an alternative to his argument that the plain language of Minn. Stat. § 609.20(2) supports his position, Stay also argues that the statute is ambiguous, and he urges us to employ the rule of lenity and apply the reasonably-foreseeable modifier to the fifth-degree assault clause in order to avoid harsh and absurd results. Because we conclude that the language of the statute is unambiguous, we do not reach these arguments. *See Thonesavanh*, 904 N.W.2d at 440 (stating that "the rule of lenity applies only after the other canons of construction have been exhausted and what remains is a grievously ambiguous statute"); *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 651 (Minn. 2012) (stating that when construing an ambiguous statute, "we presume that the Legislature did not intend a result that is absurd or unreasonable").

the jury that the State had to prove that death or great bodily harm was reasonably foreseeable in order to convict Stay.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.