STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0503

State of Minnesota,
Respondent,

vs.

Donald Jerome Harris,
Appellant.

Filed March 18, 2024
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CR-21-2956

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Andrew C. Wilson, Wilson & Clas, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his convictions of third-degree murder and criminal vehicular homicide, arguing that the verdicts are legally inconsistent. Appellant also filed a pro se

supplemental brief challenging the sufficiency of the evidence supporting his third-degree-murder conviction. We affirm.

FACTS

On May 25, 2021, appellant Donald Harris drove to Minneapolis, purchased heroin, "ingested a fingernail's amount intranasally," and proceeded to drive home. While driving through New Brighton, Harris' vehicle struck Mary Preciado, who was standing in the parking lane in front of her house cleaning up grass clippings. Harris's vehicle struck Preciado with such force that "her shoes were left behind where she had stood, and the shovel she was using shattered into pieces." The impact forced Preciado up and over Harris's vehicle, causing her head to hit the windshield. She ultimately landed approximately 100 feet away, and the "injuries she sustained were catastrophic and immediately fatal." After the impact, Harris did not stop or slow down, instead he continued driving until he crashed into a grassy median and hit a sign, disabling his vehicle.

Respondent State of Minnesota charged Harris with third-degree murder (count I), criminal vehicular homicide—any amount of schedule one or two controlled substance (count II), criminal vehicular homicide—leaving the scene of an accident (count III), and fifth-degree possession of a controlled substance (count IV). Following a bench trial, the district court found Harris guilty as charged. The district court subsequently denied Harris's motion for a downward dispositional departure and sentenced Harris to 150 months in prison for the third-degree-murder offense. Although Harris was convicted of counts I, III, and IV, guilt was not adjudicated on count II. This appeal follows.

DECISION

I.

Harris argues that the district court's guilty verdicts for third-degree murder and criminal vehicular homicide are legally inconsistent. "Whether verdicts are legally inconsistent is a question of law reviewed de novo." *State v. Laine*, 715 N.W.2d 425, 434-35 (Minn. 2006).

Under Minnesota law, an individual is guilty of third-degree murder if he or she, "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." Minn. Stat. § 609.195(a) (2020). And

> 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:
>
> . . . .
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> (6) in a negligent manner while any amount of a controlled substance listed in Schedule I or II . . . is present in the person's body; [or]
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> (7) where the driver who causes the collision leaves the scene of the collision in violation of section 169.09, subdivision 1 or 6.

Minn. Stat. § 609.2112, subd. 1(a)(6), (7) (2020).

Harris argues that the district court's guilty verdicts for criminal vehicular homicide are "legally inconsistent with its guilty verdict [for third-degree murder] because proving the necessary elements of either criminal vehicular homicide offense requires negating an

element of third-degree murder." Specifically, Harris argues that, in order to find him guilty of criminal vehicular homicide, the district court was required to find that he caused the death of another in a manner "not constituting murder." *See* Minn. Stat. § 609.2112, subd. 1(a) (2020). Harris contends that, because the district court found him guilty of third-degree murder, he cannot also be guilty of criminal vehicular homicide for the same act because a third-degree murder conviction has been deemed to constitute murder. As such, Harris argues that his convictions of third-degree murder and criminal vehicular homicide are legally inconsistent.

We acknowledge that, although Harris's argument may demonstrate a logical inconsistency, only a legal inconsistency will invalidate guilty verdicts. *State v. Moore*, 458 N.W.2d 90, 93-95 (Minn. 1990); *State v. Juelfs*, 270 N.W.2d 873, 873-74 (Minn. 1978); *State v. Christensen*, 901 N.W.2d 648, 651 (Minn. App. 2017). To evaluate whether two verdicts are legally inconsistent, courts consider the elements of the challenged offenses. *See Steward v. State*, 950 N.W.2d 750, 755-56 (Minn. 2020). "Legal inconsistency occurs only when proof of the elements of one offense negates a necessary element of another offense." *Christensen*, 901 N.W.2d at 651 (quotation omitted). "A legally inconsistent verdict requires that two guilty verdicts be mutually exclusive." *Id.*; *see Moore*, 458 N.W.2d at 94 ("We are unable to reconcile the jury's finding that [the] defendant caused the death of his wife with premeditation and intent and at the same time caused that death through negligence or reckless conduct.").

Here, Harris's legal-inconsistency argument is dependent upon "not constituting murder" being an element of criminal vehicular homicide. But as the state points out, if

"not constituting murder" was an element of criminal vehicular homicide, the state would have been required to prove that the defendant is not guilty of first, second, or third-degree murder in order to obtain a conviction for criminal vehicular homicide. Such a requirement defies common sense and is inconsistent with caselaw addressing a similar clause in the third-degree-murder statute.[1]

In *State v. Hall*, the supreme court considered whether the third-degree-murder statute requires the State to prove beyond a reasonable doubt that the defendant acted without an "'intent to effect the death of any person.'" 931 N.W.2d 737, 740 (Minn. 2019) (quoting Minn. Stat. § 609.195(a)). In considering this issue, the supreme court analyzed two different lines of precedent: the *Stokely*[2] line, which "held that the 'without' clause of the statute that was the precursor to the current third-degree murder statute was not an element of the offense," and the *Brechon*[3] line of precedent, which "viewed the 'without' clause [in a criminal-trespass] statute as either an element or an affirmative defense." *Id.*

The supreme court first discussed *Stokely*, stating that, in that case, it "rejected the defendant's argument that the State was required to demonstrate that the killing 'was without a design to effect death' in the statute that was the precursor to the current third-degree murder statute." *Id.* (quoting *Stokely*, 16 Minn. at 293-94). The supreme court

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[1] As both parties acknowledge, the pattern jury instruction on criminal vehicular homicide does not list "not constituting murder" as an element. *See* 10A *Minnesota Practice*, CRIMJIG 26.01 (2023). But as the parties also acknowledge, the jury instructions are not binding. *State v. Burrell*, 506 N.W.2d 34, 37 (Minn. App. 1993) (stating that the language of the jury instruction guides does not control over the language of the statutes), *rev. denied* (Minn. Oct. 19, 1993).

[2] *State v. Stokely*, 16 Minn. 282 (Minn. 1871).

[3] *State v. Brechon*, 352 N.W.2d 745 (Minn. 1984).

stated that it had called the defendant's contention "'a mistake,'" and "explained that 'the defendant's theory would require the prosecution to negat[e], by affirmative proof, the very fact which it has to prove affirmatively, to support the first-degree murder charge in the indictment.'" *Id.* (quoting *Stokely*, 16 Minn. at 94).

After discussing *Stokely*, the supreme court in *Hall* acknowledged that it applied the principle from *Stokely* to *Staples*, in which it held that the language "'without a design to effect death' in the second-degree manslaughter statute . . . was meant to 'dispense with' the requirement that such design be proven." *Id.* at 741 (quoting *State v. Staples*, 148 N.W. 283, 284 (Minn. 1914)). The supreme court stated that, in reaching that decision, it reasoned:

> *It cannot be supposed that the Legislature meant thereby to require affirmative allegation or proof by the state that the killing was absolutely without design to effect death*; for if the state must allege and prove this, it would follow that the defendant might base a defense on the ground that the defendant in fact entertained a design to affect death. *No such absurdity was ever intended.*

Id. (quoting *Staples*, 148 N.W. at 284). The supreme court in *Hall* further noted that, in *Walker*, it "held that the purpose of the clause 'without intent to inflict great bodily harm' in an earlier version of a provision of the aggravated-assault statute . . . 'is to relieve the prosecution of the burden of proving such an intent, not to require affirmative proof that there was no intent to inflict the serious injury.'" *Id.* (quoting *State v. Walker*, 157 N.W.2d 508, 509-10 (Minn. 1968)).

After analyzing the cases in the *Stokely* line of precedent, the supreme court determined that "when the existence of the fact referenced in the 'without' clause of the

statute constitutes a more serious offense, the *Stokely* line of precedent applies, and the State need not prove what follows the word 'without.'" *Id.* at 742. In contrast, after discussing the *Brechon* line of cases, the supreme court stated that, "when the existence of the fact referenced in the 'without' clause of the statute makes the conduct not criminal, as opposed to making the conduct a more serious criminal offense, the *Brechon* line of precedent applies." *Id.* at 743. The supreme court concluded that the *Stokely* line of precedent applied in *Hall* because the "existence of the fact referenced in the 'without' clause of the third-degree murder statute ([that] the defendant intended to effect the death of a person) makes the defendant's conduct a more serious offense, namely second-degree intentional murder." *Id.*

In his reply brief, Harris refers to language in *Hall* noting that the "arguments of the parties focus on two different lines of precedent rather than the plain language of the statute." *Id.* at 740. He argues that *Hall* is not applicable because, unlike the parties in *Hall*, he *is* focusing on the plain language of the statute, and under the plain language of the criminal-vehicular-homicide statute, he cannot be found guilty of both criminal vehicular homicide and third-degree murder.

We are not persuaded. Recently, the supreme court considered whether "unlawfully" was an element of the first-degree arson statute. *State v. Beganovic*, 991 N.W.2d 638, 647 (Minn. 2023). In considering this question, the supreme court stated that a determination of the elements of an offense is a question of statutory interpretation that requires de novo review. *Id.* Therefore, *Beganovic* indicates that a determination of the elements of an offense is a legal question for the courts to decide. *See id.* And in

considering this legal question, the supreme court looked to the plain language of the first-degree-arson statute, as well as caselaw analyzing statutes with similar language. *Id.* at 647-53 (acknowledging that its decision that the legislature intended "unlawfully" to be an element of first-degree arson "is consistent with the court's precedents analyzing the distinction between an element of a crime and an exception to criminal liability in other statutes"). Accordingly, under *Beganovic*, it is appropriate for us to consider the supreme court's reasoning in *Hall* because *Hall* construed a "without" clause similar to the clause contained in the criminal-vehicular-homicide statute.

Harris also argues that, even if *Hall* is considered, it "does not require a finding in [the state's] favor because the phrase at issue here ('not constituting murder') does not fit squarely along the narrower 'without' clauses addressed in the *Stokely* line of precedent." Indeed, the "without" clause contained in section 609.195(a), and discussed in *Hall*, is not identical to the "not constituting murder" clause contained in the criminal-vehicular-homicide statute. *Compare* Minn. Stat. § 609.195(a) *with* Minn. Stat. § 609.2112, subd. 1(a). But the two clauses are nearly identical and functionally equivalent. For example, "without" could be substituted for "not" in section 609.2112, subdivision 1(a), without changing the meaning of the statute. In this scenario, the statute would read that a person is guilty of criminal vehicular homicide "if the person causes the death of a human being [without] constituting murder or manslaughter as a result of operating a motor vehicle." Minn. Stat. § 609.2112, subd. 1(a). Thus, in light of the similarity between the "without" clause discussed in *Hall*, and the "not constituting murder" clause contained in section 609.2112, subdivision 1(a), the reasoning set forth in *Hall* is applicable to this case.

Applying the reasoning set forth in *Hall*, the *Brechon* line of precedent is clearly not applicable here because the "not constituting murder" clause contained in the criminal-vehicular-homicide statute does not make the conduct of causing the death of a human being not criminal. *See Hall*, 931 N.W.2d at 742 (stating that "the *Brechon* line of precedent applies when the existence of the fact referenced in the 'without' clause of the statute makes the conduct not criminal"). Instead, the *Stokely* line of precedent is applicable because the existence of the fact referenced in the "not constituting murder" clause, which would be murder in the first, second, or third degree, makes the offense more serious. *See id.* (stating that "when the existence of the fact referenced in the 'without' clause of the statute constitutes a more serious offense, the *Stokely* line of precedent applies"). Under *Hall*, an application of the *Stokely* line of precedent to this case demonstrates that "not constituting murder" is not an element of criminal vehicular homicide. *See* 931 N.W.2d at 743 ("Applying the *Stokely* line of precedent to this case, we conclude that the 'without intent to effect the death of any person' clause of the third-degree murder statute, Minn. Stat. § 609.195(a), does not require the State to prove beyond a reasonable doubt that the defendant lacked an 'intent to effect the death of any person.'"); *see also Steward*, 950 N.W.2d at 755 (stating that "a 'without' clause in which existence of the fact referenced in the clause would constitute a more serious offense does not set out an element of the offense—it merely causes one offense to be a lesser-included offense to the other"). Therefore, we conclude that, because "not constituting murder" is not an element of criminal vehicular homicide under Minn. Stat. § 609.2112, subd. 1(a), the

district court's guilty verdicts for criminal vehicular homicide and third-degree murder are not legally inconsistent.

II.

Harris filed a pro se supplemental brief challenging only the sufficiency of the evidence supporting his conviction of third-degree murder. In considering a claim of insufficient evidence, this court conducts a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the verdict, is sufficient to allow the factfinder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that "the [factfinder] believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Ordinarily, we will not disturb the verdict if the finder of fact, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

To prove that Harris is guilty of third-degree murder, the state was required to prove that Harris 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. *Hall*, 931 N.W.2d at 740-41 (listing the elements of third-degree murder). Harris appears to argue that the state failed to prove that he is guilty of third-degree murder because "the evidence shows his diminished physical capacity and proves [that] he did not have the actual ability to be able to commit this crime." (Emphasis omitted.) We disagree.

Whether Harris had diminished capacity is not a defense recognized in Minnesota. *See Leake v. State*, 737 N.W.2d 531, 542 (Minn. 2007). But "[d]iminished mental capacity is different from diminished physical capacity." *State v. Willey*, 480 N.W.2d 127, 130 (Minn. App. 1992), *rev. denied* (Minn. Mar. 19, 1992). This court in *Willey* recognized that diminished physical capacity is a defense in Minnesota. *Id.*

To the extent that Harris is arguing that he did not have the physical capacity to commit third-degree murder, this argument fails. The record reflects, and Harris does not dispute, that he drove the vehicle that struck and killed Preciado. As such, Harris had the physical capacity to commit the offense. Moreover, the record reflects that Harris struck and killed Preciado after driving to Minneapolis, snorting a fingernail's worth of heroin, and then driving erratically through well-populated, residential neighborhoods in an intoxicated state. And the record reflects that Harris admitted that he knew that his conduct was wrong and dangerous. This evidence satisfies the elements needed to prove third-degree murder. Accordingly, the evidence is sufficient to support the district court's finding that Harris is guilty of third-degree murder.[4]

Affirmed.

[4] We note that there is no argument by either party that the district court violated section 609.04, subdivision 1, by entering convictions for both third-degree murder and criminal vehicular homicide—leaving the scene of an accident. *See* Minn. Stat. § 609.04, subd. 1 (2022) (stating that "[u]pon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both").