STATE OF MINNESOTA
IN COURT OF APPEALS
A10-767

State of Minnesota,
Respondent,

vs.

Doris Denise Meeks,
Appellant.

Filed May 9, 2011
Affirmed
Johnson, Chief Judge
Concurring specially, Minge, Judge

Hennepin County District Court
File No. 27-CR-09-8500

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

Michael O. Freeman, Hennepin County Attorney, Cheri A. Townsend, Special Assistant County Attorney, Hastings, Minnesota (for respondent)

Bradford Colbert, Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for appellant)

Considered and decided by Minge, Presiding Judge; Johnson, Chief Judge; and Crippen, Judge.[*]

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

U N P U B L I S H E D O P I N I O N

JOHNSON, Chief Judge

A Hennepin County jury found Doris Denise Meeks guilty of second-degree manslaughter following the death of a one-year-old boy at the day-care center she owned and operated. On appeal, Meeks challenges her conviction on three grounds. We conclude that the evidence is sufficient to support the jury's verdict, that the district court did not err when it instructed the jury on the issue of causation, and that the district court did not err by not instructing the jury on lesser-included offenses. Therefore, we affirm.

FACTS

In August 2008, Meeks operated a day-care center at her home in the city of Bloomington with the assistance of two adult daughters. On the morning of August 28, a 22-month-old boy named Demar was found unresponsive while strapped tightly into a car seat, which had been placed inside a playpen. The state thereafter prosecuted Meeks and one of her daughters, Harmony Newman, both of whom were convicted.

Demar routinely took naps in a room in the basement of Meeks's home. The room had four playpens, one of which contained a car seat on the day of Demar's death. Meeks testified that Demar did not routinely take naps in the car seat and that she did not know why the car seat was in the playpen. Meeks and Newman placed Demar in a playpen for naps even though Meeks knew that he had climbed out of playpens on previous occasions. The room was not equipped with audio- or video-monitoring equipment.

On the day at issue, someone took Demar to the basement and strapped him into the car seat. The evidence introduced at trial was inconclusive as to whether Newman or one of the older children at the day-care center did so. One pre-teen boy testified that Meeks asked him to take Demar to the basement and buckle him into the car seat to watch television and go to sleep. The boy testified that he was unable to fasten the buckle, so he left Demar sitting in the car seat, unbuckled, and went back upstairs.

At lunchtime, Newman asked three of the older children to wake Demar and bring him to the kitchen. One or more of the older children found Demar in the car seat, unresponsive, with the straps of the car seat tight across his upper chest and throat. The older children alerted Newman, who told them to go to a house next door to call 911. When police officers arrived, Demar was not breathing and did not have a pulse. He was taken to a hospital, where he died two days later. An autopsy revealed that he died because of a deprivation of oxygen to the brain.

Meeks was not at the day-care center when Demar was found unresponsive. She was driving to a nearby Wal-Mart to purchase a telephone to replace one that had become inoperable that morning. Just as she was arriving at the Wal-Mart, Meeks received a call on her cell phone from Newman, who told Meeks to return. Meeks testified that she ran the errand because she wanted to comply with a regulation that requires a working telephone at a day-care center. Meeks testified that she checked on Demar before running the errand and saw that he was "sleeping in the play pen." She also testified that Demar never had taken naps in a car seat.

The police investigation revealed that 23 children were present at Meeks's day-care center that morning. Meeks's day-care license limited the number of children under her care to 14. Meeks testified at trial that the additional children were present only because they were preparing to take a planned field trip to the amusement park at the Mall of America. Meeks's credibility was undermined by the testimony of a parent who was unaware of the field trip. That parent also testified that Meeks called her after the incident and asked her to give false information to investigators and to induce her child to give false testimony.

A grand jury indicted Meeks on one count of second-degree manslaughter for child neglect, *see* Minn. Stat. §§ 609.205(5), .378, subd. 1(a)(1) (2008); one count of second-degree manslaughter for child endangerment, *see* Minn. Stat. §§ 609.205(5), .378, subd. 1(b)(1) (2008); and one count of second-degree manslaughter for culpable negligence, *see* Minn. Stat. § 609.205(1) (2008). The case against Meeks and Newman was tried over four days in November 2009. The jury found Meeks guilty of the first and second counts but not guilty of the third count. The district court sentenced Meeks to 57 months of imprisonment. Meeks moved for a judgment of acquittal or a new trial, but the district court denied the motion. Meeks appeals.

D E C I S I O N

I. Sufficiency of the Evidence

Meeks argues that the evidence is insufficient to support the guilty verdicts. When considering a claim of insufficient evidence, this court conducts "a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to

the conviction," is sufficient to allow the jurors to reach the verdict that they did. *State v. Caine*, 746 N.W.2d 339, 356 (Minn. 2008) (quotation omitted). We must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). "We will not disturb the verdict '[i]f the jury, acting with due regard for the presumption of innocence'" and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the crime charged. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quoting *State v. McCullum*, 289 N.W.2d 89, 91 (Minn. 1979)).

A person commits manslaughter in the second degree if he or she "causes the death of another," Minn. Stat. § 609.205, "by committing or attempting to commit a violation of section 609.378 (neglect or endangerment of a child)," *id.* § 609.205(5). A person commits the offense of neglect of a child if the person is a "parent, legal guardian, or caretaker" of a child and the person

> willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child's physical, mental, or emotional health.

Minn. Stat. § 609.378, subd. 1(a)(1). A person commits the offense of endangerment of a child if the person is a "parent, legal guardian, or caretaker" of a child and the person "intentionally or recklessly caus[es] or permit[s] a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health or cause the child's death." *Id.*, subd. 1(b)(1).

In this case, Meeks was Demar's "caretaker." *See id.*, subd. 1(a)(1). The evidence shows that Meeks committed child neglect because she breached her duty to not willfully deprive Demar of necessary supervision appropriate to his age, because she was reasonably able to make the necessary provisions for Demar's supervision, and because the deprivation of necessary supervision harmed Demar's physical health. *See id.* The evidence shows that Meeks committed child endangerment because she intentionally or recklessly caused or permitted Demar to be placed in a situation that was likely to cause him substantial harm or death. *See id.*, 1(b)(1).

Meeks does not challenge the evidence on these grounds. Meeks also does not challenge the sufficiency of the evidence that she "cause[d] the death of another." *See* Minn. Stat. § 609.205. Rather, Meeks contends that the evidence is insufficient because "the State did not prove that Meeks's alleged conduct was the legal, or proximate, cause of" Demar's death.

"'To sustain a conviction of manslaughter in the second degree, the state must prove beyond a reasonable doubt that defendant's acts were a proximate cause of the victim's death.'" *State v. Smith*, 264 Minn. 307, 318, 119 N.W.2d 838, 846 (1962) (quoting *State v. Schaub*, 231 Minn. 512, 512, 44 N.W.2d 61, 61 (1950)). When analyzing proximate cause in another case of second-degree manslaughter, the supreme court relied on civil cases that explain the concept of proximate cause. *See Schaub*, 231 Minn. at 519, 44 N.W.2d at 65; *cf. State v. Back*, 775 N.W.2d 866, 869-70 (Minn. 2009) (citing civil caselaw regarding duty in reviewing conviction of culpable negligence manslaughter). Neither the supreme court nor this court has considered the issue of

proximate cause in a second-degree manslaughter case arising from child neglect or child endangerment.

In the tort context, the supreme court has noted that "there is no simple formula for defining proximate cause." *Dellwo v. Pearson*, 259 Minn. 452, 454, 107 N.W.2d 859, 860 (1961). The supreme court's authoritative definition appears to be that,

> for a party's negligence to be the proximate cause of an injury, the act must be one which the party ought, in the exercise of ordinary care, to have anticipated was likely to result in injury to others, though he could not have anticipated the particular injury which did happen. There must also be a showing that the defendant's conduct was a substantial factor in bringing about the injury. Generally, proximate cause is a question of fact for the jury; however, where reasonable minds can arrive at only one conclusion, proximate cause is a question of law.

Lubbers v. Anderson, 539 N.W.2d 398, 401-02 (Minn. 1995) (quotations, citations, and alterations omitted), *cited by Back*, 775 N.W.2d at 869. Furthermore, the consequences of a negligent act are "natural and proximate" if they "follow in unbroken sequence, without an intervening efficient cause, from the original negligent act." *Dellwo*, 259 Minn. at 455, 107 N.W.2d at 861 (quotation omitted). Moreover, "[a]lthough a rigorous definition of proximate cause continues to elude us, nevertheless it is clear, in this state at least, that it is not a matter of foreseeability." *Id.* at 454-55, 107 N.W.2d at 861.

In light of this caselaw, two pertinent questions arise. The first question, which is based on the second part of the *Lubbers* test, is whether Meeks's conduct was a substantial factor in bringing about Demar's death. The second question, which is based on the first part of the *Lubbers* test, is whether Meeks should have anticipated that

depriving the children at her day-care center of necessary supervision was likely to result in injury to one of them, even if she could not have anticipated the particular situation that caused Demar's death.

We answer the first question, which is the easier of the two, in the affirmative. The evidence shows that Demar's death was caused by being strapped too tightly into the car seat. Demar was placed in that situation by Meeks, Newman, or another child under their supervision. Because Meeks was Demar's caretaker, she is responsible for the situation that caused Demar's death. Thus, Meeks's breach of her duty to Demar was a substantial causal factor in Demar's death.

We also answer the second question in the affirmative. As Demar's caretaker, Meeks had a duty to ensure that he received necessary supervision. The evidence shows that she breached that duty by accepting far more children than were permitted by her day-care license, by not being present at a time when Demar was deprived of necessary supervision, and by not ensuring that other persons in her employ, such as Newman, engaged in necessary supervision and followed appropriate procedures. A day-care operator should reasonably anticipate that depriving a group of children of necessary supervision is likely to result in injury to one of the children at some point in time, in one way or another. The government regulates day-care operators for exactly this purpose, and one way in which the state regulates day-care operators is to impose a maximum number of children who may be supervised by a given number of adult employees. *See* Minn. R. 9502.0367 (2007) (setting child-to-adult ratios and age restrictions for children

in childcare). The jury could reasonably conclude that Meeks should have anticipated that harm to one of the children was likely to result from her conduct.

Thus, the evidence is sufficient to establish that Meeks's neglect and endangerment of the children at her day-care center was the proximate cause of Demar's death. Therefore, the evidence is sufficient to support the jury's verdicts.

II. Jury Instruction on Causation

Meeks also argues that the district court erred by improperly instructing the jury on the issue of causation. We apply an abuse-of-discretion standard of review to a district court's choice of language in a jury instruction. *State v. Moore*, 699 N.W.2d 733, 736 (Minn. 2005).

At trial, the state requested a jury instruction stating, "Cause means a substantial causal factor in bringing about the harm." Newman's counsel objected to the state's request. The district court overruled Newman's objection, reasoning that the state's requested instruction was appropriate and was likely to avoid jury questions on the issue. The district court included the state's proposed language in its instruction for each charged offense.

On appeal, Meeks contends that the district court's instruction on causation was incomplete. Meeks does not contend that the district court erred by adopting the language proposed by the state; rather, Meeks contends that the district court erred by not including additional language that would have more fully described the concept of proximate cause. Specifically, Meeks contends that the district court should have

instructed the jury that Demar's "injury was the natural and probable consequence of the negligence or wrongful act" and that his injury was foreseeable.

A. Preservation and Standard of Review

The state contends that Meeks failed to preserve her argument concerning the instruction on causation because she did not object at trial. The state is correct that Meeks did not object to the state's proposed instruction. But Meeks seeks to rely on Newman's objection to the state's proposed instruction. In Minnesota, it is an open question whether one defendant's objection to a proposed jury instruction preserves the issue for an appeal by another defendant. The federal circuit courts are split on the issue. *Compare United States v. Hernandez*, 896 F.2d 513, 523 (11th Cir. 1990) (holding that co-defendant's objection did not preserve issue for plenary appellate review and reviewing only for plain error), *with United States v. Lefkowitz*, 284 F.2d 310, 313 n.1 (2d Cir. 1960) (holding that co-defendant's objection preserved issue for appellant's appeal).

We need not decide that unsettled procedural issue, however, because Meeks does not make the same argument on appeal that Newman made at trial. At the instructions conference, Newman tried to persuade the district court not to give the instruction requested by the state. Newman argued to the district court that the jury should be allowed to apply the ordinary meaning of the term "cause," that the proposed instruction would inappropriately incorporate the civil concept of causation, that the proposed instruction would dilute the state's burden of proof, and that the proposed instruction is not included in Minnesota's model jury instructions. Neither Newman nor Meeks requested a more expansive definition of proximate cause. On appeal, however, Meeks

contends that the district court erred by not expanding on the state's proposed instruction by including additional language about foreseeability. Meeks does not argue on appeal that the district court erred by adopting the "substantial causal factor" language requested by the state. To properly preserve an argument that a jury instruction was erroneous, a party's objection "must state specific grounds." Minn. R. Crim. P. 26.03, subd. 19(4)(b); *see also State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). Newman's counsel stated grounds with specificity, and those grounds are different from the grounds Meeks is now urging on appeal. Thus, Newman's objection did not preserve Meeks's appellate argument.

Nonetheless, Meeks may have adequately preserved her appellate argument by making a post-trial motion for a new trial. "Objections to instructions claiming error in fundamental law or controlling principle may be included in a motion for a new trial even if not raised before deliberations." Minn. R. Crim. P. 26.03, subd. 19(4)(f). And, as a corollary, "if a defendant challenges an instruction in a new trial motion and the motion is denied, the issue is preserved for appeal and a harmless error standard of review applies." *State v. Vance*, 734 N.W.2d 650, 655 n.3 (Minn. 2007) (citing predecessor rule, rule 26.03, subd. 18(3)); *see also State v. Glowacki*, 630 N.W.2d 392, 398, 402-03 (Minn. 2001). Meeks did not make such a motion for a new trial in writing but, rather, joined in Newman's motion for a new trial by way of her trial counsel's oral statement at the hearing on the motion. Regardless whether Meeks's trial counsel followed the proper procedure, the district court accepted the oral joinder and proceeded to deny the motion with respect to both defendants.

So, Meeks may obtain plenary appellate review of the district court's jury instruction on causation if it is a matter of "fundamental law or controlling principle." Minn. R. Crim. P. 26.03, subd. 19(4)(f). We are unable to find any caselaw in the criminal context that answers the question whether the district court's causation instruction in this case is a matter of "fundamental law or controlling principle." *Cf. Lindstrom v. Yellow Taxi Co. of Minneapolis*, 298 Minn. 224, 229, 214 N.W.2d 672, 676 (1974) (holding in civil case that objection to instruction on duty of care may be preserved by motion for new trial). For purposes of this case, we will assume that it is so and, thus, conclude that Meeks adequately preserved a challenge to the district court's causation instruction.

B. Propriety of Instruction

To reiterate, Meeks contends that the district court erred by instructing the jury on the issue of causation by stating, "Cause means a substantial causal factor in bringing about the harm," without also stating that a victim's injury must be the natural and probable consequence of the defendant's negligence or wrongful act and that the victim's injury must be foreseeable. At the instructions conference, the district court overruled Meeks's objection, stating that "causation is a legal concept and . . . a jury instruction would be appropriate to help the jury and avoid having the jury come in with a question on that." In denying Meeks's motion for a new trial, the district court reasoned that the instruction was an accurate statement of law. The district court further reasoned that the concept of foreseeability was already incorporated into the instructions.

Meeks has not cited any caselaw for the proposition that, in a criminal case, a district court must or should, when instructing the jury on causation, include the concept of foreseeability or the concept that the defendant's conduct was the proximate cause of the particular harm that occurred in that case. Our review of Minnesota caselaw has not revealed any such case. As described above, the caselaw requires the state to prove proximate cause beyond a reasonable doubt, but that requirement is stated in cases in which the appellant challenged the sufficiency of the evidence of causation. *See Smith*, 264 Minn. at 318, 119 N.W.2d at 846; *Schaub*, 231 Minn. at 513, 44 N.W.2d at 62.

One sufficiency-of-the-evidence case actually supports the instruction that was given in this case. In *State v. Sutherlin*, 396 N.W.2d 238 (Minn. 1986), the appellant was convicted of first-degree murder and argued on appeal that, among other things, the state had not proved causation. *Id.* at 239-40. The supreme court affirmed the conviction. *Id.* at 243. In the course of its discussion on causation, the supreme court stated, "All that is required is that the defendant's premeditated shooting of [the victim] was a substantial causal factor in the deaths." *Id.* at 240 (quotation omitted).

To the extent that the caselaw focuses on jury instructions on causation, the caselaw further supports the district court's instruction in this case. In *State v. Olson*, 435 N.W.2d 530 (Minn. 1989), the defendant was charged with second-degree murder and first-degree manslaughter of an infant child. *Id.* at 531. The supreme court stated that "causation can be adequately handled if the jury is instructed that the state must prove . . . that defendant's acts had a substantial part in bringing about the child's death." *Id.* at 534 n.4. The supreme court in *Olson* did not refer to the issue of foreseeability or the issue

whether the defendant's conduct was the proximate cause of the particular harm that occurred in that case. *See id.* It is true that neither *Sutherlin* nor *Olson* was a case of second-degree manslaughter by child neglect or child endangerment. Yet those two cases are the authorities most closely on point.

In sum, the relevant caselaw encourages a district court to instruct the jury on the second part of the *Lubbers* test, that a person's conduct must be a substantial causal factor, but does not encourage, let alone require, a district court to instruct the jury on the first part of the *Lubbers* test, that the defendant reasonably could have anticipated that his conduct was likely to result in harm and, therefore, was the proximate cause of the particular harm that occurred. In light of the applicable caselaw, the district court did not abuse its discretion by not expanding on the concept of proximate cause in its instructions on causation.

III. Instruction on Lesser-Included Offenses

Meeks last argues that the district court erred by not instructing the jury on the lesser-included offenses of child neglect and child endangerment. Meeks did not request such an instruction at trial, nor did Newman.

"[A]bsent plain error affecting a defendant's substantial rights, a trial court does not err when it does not give a warranted lesser-included instruction if the defendant has impliedly or expressly waived that instruction." *State v. Dahlin*, 695 N.W.2d 588, 598 (Minn. 2005). If a defendant does not request a lesser-included-offense instruction, the defendant has impliedly waived such an instruction, thereby forfeiting any argument that the district court erred by not giving the instruction. *State v. Goodloe*, 718 N.W.2d 413,

422 n.6 (Minn. 2006). If a lesser-included-offense instruction has been impliedly waived and thereby forfeited, a district court may withhold the instruction, and an appellant "may not argue that the court erred in not *sua sponte* giving the instruction." *State v. Penkaty*, 708 N.W.2d 185, 208 (Minn. 2006).

In light of this body of caselaw, Meeks has forfeited the argument that the district court erred by not instructing the jury *sua sponte* on lesser-included offenses.

Affirmed.

MINGE, Judge (concurring specially)

I join in parts I and III of the opinion (sufficiency of the evidence and lesser-included instruction). I concur in the result of part II of the opinion (jury instruction on causation) and write separately regarding the standard for determining criminally culpable "cause."

To convict a person accused of homicide in the death of someone entrusted to his or her care, the jury must not only determine that but for the actions of the accused, the victim died, but also that the accused's "breach of duty [was] the proximate cause of the victim's death." *State v. Back*, 775 N.W.2d 866, 869 n.5 (Minn. 2009) (citing *State v. Schaub*, 231 Minn. 512, 519, 44 N.W.2d 61, 65 (1950)); *see also* 1 Wayne R. LaFave, *Substantive Criminal Law* § 6.4, at 464 (2d ed. 2003) ("[E]ven when cause in fact is established, it must be determined that any variation between the result . . . hazarded (with reckless or negligent crimes) and the result actually achieved is not so extraordinary that it would be unfair to hold the defendant responsible for the actual result.").

In this case, the district court's instruction only provided a limited definition of causation. The jury was told that to convict, the accused's conduct only had to be "a substantial causal factor in bringing about the harm." This is error because the phrase "substantial causal factor" is too nebulous. The phrase does not include the concept of proximity. In not instructing on proximate cause, the district court abused its discretion.

Because of the nature and extent of the record and phraseology of the instruction given, I conclude the error did not affect the result, and I would affirm the conviction.