

SUPREME COURT OF MINNESOTA

State v. Hayes

831 N.W.2d 546 (Minn. 2013) · Decided May 31, 2013

OPINION

ANDERSONBARRY, J.

OPINION ANDERSON, G. Barry, Justice. Appellant Donald W. Hayes was found guilty of first-degree murder while committing domestic abuse with a past pattern of domestic abuse, and second-degree murder while committing a felony, both stemming from the death of his girlfriend's son, 13-month-old Robert Azure, Jr. In this direct appeal, Hayes challenges his first-degree murder conviction on four grounds, claiming: (1) the State presented insufficient evidence to prove that he assaulted Robert and caused his death; (2) the State presented insufficient evidence to prove that he had engaged in a past pattern of domestic abuse; (3) the district court should have instructed the jury that a past *550pattern of domestic abuse requires proof beyond a reasonable doubt of at least two prior acts of abuse; and (4) the district court should have instructed the jury that it needed to agree unanimously on which two specific acts of past abuse were proven beyond a reasonable doubt.

Because we conclude that the State presented sufficient evidence to sustain Hayes's conviction and that the district court did not err in its jury instructions, we affirm. From 2000 until 2006, Hayes was involved in an on-and-off romantic relationship with A.A., with whom he had a child in March 2001. It was a volatile relationship, and Hayes committed domestic abuse against A.A. between 4 (the number Hayes acknowledges the State proved at trial) and 20 (the number alleged by the State) times while they were together.

Around July 2008, Hayes moved in with T.D. and her four children. At the time of the murder, T.D.'s oldest child, D.H., was ten; M.H. was six; C.A. was two; and Robert, her youngest child and the victim here, was 13 months old.

After moving in, Hayes helped T.D. tear out the flea-infested carpeting from the living room, leaving the wood subflooring exposed. Hayes was not employed, so he took care of T.D.'s children most of the time while she worked 25 to 30 hours per week at a local fast food restaurant. At 11:00 a.m. on the morning of September 24, 2008, T.D. woke up, put on her uniform, and walked to work, clocking in at 11:34 a.m.

Her uniform had been hanging on a chair in the living room, where she left it to dry after washing it the night before. She did not have a dryer in the house, so she used a box fan to dry her uniform

overnight. Hayes remained at home to take care of the two younger children, C.A. and Robert. Around noon, Hayes took the children to a local animal shelter to look at puppies.

They were at the shelter for about twenty minutes; Robert appeared healthy and petted the puppies during the visit. At 2:53 p.m., Hayes called an agent at the Drug Enforcement Agency to report drug use on the part of an ex-girlfriend with whom he and T.D. were feuding. Hayes ended the call by saying there was a child crying and he had to go. M.H. arrived home from school around 3:30 p.m.

She testified that Robert was crying, and that Hayes was swearing at him, using “the ‘b’ word and the ‘f word.” Hayes proceeded to put Robert in the master bedroom, where his play pen (which also served as his crib) was located. D.H. then arrived home and, hearing Robert crying, looked into the bedroom. Robert looked fine to D.H., so he went to his own room to start his homework.

M.H. heard Robert cry again. She testified that Hayes displayed a “mad face” as he “went back in [the bedroom] and grabbed [Robert] and then he didn’t see the fan cord and he tripped and fell right on top of him.” D.H. was in his room and did not see the incident, but he heard one “little crash” that sounded like books falling.

After the fall, M.H. helped Hayes put Robert on the couch. Robert “didn’t look very good” to her; he was breathing, but seemed to be struggling to open his eyes. Hayes then ran into D.H.’s room, only to run back out again. D.H. followed him out of the room, saw Robert lying on the couch, and checked his pulse. Hayes, by this point hysterical and crying, called T.D. at work and told her something was wrong with the baby.

T.D. clocked out from work and ran the block and a half to her home. When she arrived, she found Robert on the couch, with Hayes standing near him. She picked Robert up and found that his body *551was limp, his breathing was shallow and rough, and his eyes were closed and fluttering. She called 911; Officer Steven Mortenson arrived within one or two minutes, with the ambulance arriving approximately one minute later.

Officer Morten-son opened Robert’s eyes and shined a light into them, but found that his pupils were “the size of a pinhead” and unresponsive. The ambulance took T.D. and Robert to the hospital, leaving Officer Morten-son and Hayes at the scene.

After the ambulance left, Hayes allowed Officer Mortenson inside the house and showed him where he claimed to have tripped and fallen while carrying Robert. Hayes told the officer that he had tripped over either the fan or the fan’s cord — he wasn’t sure which. Officer Mortenson examined the area where Hayes said Robert had landed, but did not see any blood, hair, or other evidence on the floor.

Officer Mortenson spent only a few minutes at the scene before leaving for the hospital, and did not further question Hayes, who was crying and upset. Mortenson did observe, however, that there was a broken box fan lying flat on the floor in the living room, and that it had a cord, although he could not remember whether the cord was attached to the wall or to the fan itself.

By the time Robert reached the Redwood Area Hospital emergency room, he was registering a 5 or 6 on the Glasgow coma scale, indicating a severe head injury. Dr. Gregory McCallum, who was called from his nearby clinic to assist, found Robert “deeply unconscious,” and began the process of transferring him to Minneapolis Children’s Hospital. A CT scan revealed that Robert had suffered skull fractures and subdural hematomas.

Within the first 24 hours, it was apparent to the doctors at Minneapolis Children’s Hospital that they would not be able to save Robert’s life. The doctors told T.D. that it was very unlikely that Robert would survive, and that even if he did, he would have virtually no brain function. With no hope for improvement, T.D. authorized the withdrawal of life support, and Robert died on October 1, 2008.

On October 2, Dr. Andrew Baker, chief medical examiner for Hennepin County, performed an autopsy on Robert. Dr. Baker found that Robert had suffered a large stellate fracture — which is a star-shaped fracture radiating outward — centered on the back of his skull. He also found three other bruises on Robert’s head, old fractures in both bones in his left arm — one of which had gone untreated— fractures to his ribs, extensive hemorrhaging in his eyes, and a tear in his frenulum.¹ But it was some combination of traumatic and hypoxic injury to his brain that actually caused Robert’s death.² Dr. Baker determined that Robert’s cause of death was “complications of blunt force craniocerebral injuries,” and that the manner of death was homicide.

He testified that many of Robert’s injuries were suspicious, and that a trip and fall of the type described by Hayes could not account for Robert’s injuries. The fact that there were four injuries to his head did not match up with the story of a fall, for example, although Dr. Baker also said that he could not date the other bruises accurately enough to say that they happened on the same day as the fatal injury.

Doctor Baker also found Robert’s untreated arm fracture suspicious, and testified that “barring a very unusual prior accident, intentional injury to Robert’s rib cage *552would be the only explanation” for his rib fractures. He also testified that retinal hemorrhages to the degree and extent found in Robert’s eyes are “more associated with inflicted injuries than accidental injuries.” Finally, Dr. Baker testified that the amount of force necessary to cause the fracture would usually be greater than the force generated by the fall Hayes described.

He compared the amount of force necessary to inflict the observed injuries to a child of Robert’s age to falling out of a second- or third-story window, having an “old style” television fall on one’s

head, or being in a motor vehicle accident without restraint. Both Dr. Tarrago of Minneapolis Children's Hospital and Dr. McCallum concurred with the assessment that Robert's injuries were too severe to be the result of a typical household fall.

Dr. John Plunkett, a forensic pathologist who has previously served as the medical examiner for several Minnesota counties and now consults in the area of infant head injuries, testified for the defense that Robert's cranial injury was consistent with Hayes's story. He also testified that Robert's rib fractures preceded his collapse by at least one week, and that he had seen other skulls injured in the same manner from falls of similar height.

Dr. Plunkett noted that Hayes's account featured him walking at the time he tripped, which would impart additional force to Robert, above and beyond that of a mere gravitational fall. Plunkett testified that he could not say, however, that Robert actually sustained his injuries in the way Hayes had described. Hayes did not request, nor did the district court give, jury instructions specifying that in order to prove a past pattern of domestic abuse, the State must prove at least two prior acts of domestic abuse beyond a reasonable doubt and achieve unanimous agreement about which specific acts of domestic abuse were proven beyond a reasonable doubt.

On April 27, 2011, a jury found Hayes guilty of both second-degree murder and first-degree domestic-abuse murder and second-degree murder under Minn.Stat. §§ 609.185(a)(6), 609.19, subd. 2(1) (2012). Hayes stipulated to the aggravating factor of having a prior conviction for a heinous offense.

The jury also found the aggravating factors of particular vulnerability and a position of trust and authority over Robert. On June 20, 2011, the district court sentenced Hayes to life in prison without the possibility of release. He then filed this direct appeal.

I. Hayes first argues that there was insufficient evidence to sustain his conviction. Specifically, he asserts that based on the circumstances proved, it could reasonably be inferred that Robert's death was accidental, and not the result of an assault, as found by the jury. When reviewing the sufficiency of the evidence leading to a conviction, we "view the evidence in the light most favorable to the verdict and assume that the factfinder disbelieved any testimony conflicting with that verdict." *State v. Holliday*, 745 N.W.2d 556, 562 (Minn.2008) (citation omitted) (internal quotation marks omitted). "The verdict will not be overturned if, giving due regard to the presumption of innocence and the prosecution's burden of proving guilt beyond a reasonable doubt, the jury could reasonably have found the defendant guilty of the charged offense." *State v. Leake*, 699 N.W.2d 312, 319 (Minn.2005).

Because the State's proof of Hayes's intent was based on circumstantial evidence, we conduct a two-step analysis to decide whether that evidence was sufficient to sustain a guilty verdict. First, we must identify the circumstances proved, giving deference "to the jury's acceptance of the

proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” Second, we independently examine “the reasonableness of all inferences that might be drawn from the circumstances proved,” including inferences consistent with a hypothesis other than guilt.

State v. Anderson, 789 N.W.2d 227, 241-42 (Minn.2010) (quoting State v. Andersen, 784 N.W.2d 320, 329 (Minn.2010)) (internal citations omitted). For the first step, we defer to the fact-finder; for the second step, we engage in our own examination of the reasonableness of the inferences. State v. Al-Naseer, 788 N.W.2d 469, 473-74 (Minn.2010).

The second step requires us to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not simply whether the inferences that point to guilt are reasonable. Andersen, 784 N.W.2d at 330; see also Al-Naseer, 788 N.W.2d at 474.

In other words, the evidence must point unerringly to the accused’s guilt. State v. McArthur, 730 N.W.2d 44, 49 (Minn.2007) (citation omitted) (internal quotation marks omitted). But we will not overturn a guilty verdict on conjecture alone. Anderson, 789 N.W.2d at 242.

Here, the relevant circumstances proved were: (1) that Robert was in good health — capable of crying and breathing normally — immediately before Hayes’s actions; (2) Robert was under Hayes’s care and supervision at the time Robert was injured; (3) Hayes caused Robert to suffer an injury to his head that left him nearly comatose and struggling to breathe; (4) Robert’s cranial trauma was more severe than could be explained by a mere accidental household fall; and (5) the injury Hayes inflicted on Robert caused Robert’s death.

The next step is to “determine whether the reasonable inferences that can be drawn from the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than [Hayes]’s guilt.” Andersen, 784 N.W.2d at 331.

In order to sustain Hayes’s conviction of first-degree murder under Minn. Stat. § 609.185(a)(6) (murder while committing domestic abuse with a past pattern of domestic abuse), the State needed to prove that Hayes “intentionally inflict[ed] or attempt[ed] to inflict bodily harm upon another.” Minn.Stat. § 609.224, subd. 1(2) (2012); Minn.Stat. § 609.2242, subd.

1(2) (2012). Hayes concedes that the circumstances proved support a reasonable inference that he caused Robert’s death while committing an intentional assault. Nevertheless, Hayes argues that the circumstances proved also support a reasonable inference that he accidentally caused Robert’s death when he tripped over a box fan (or its electrical cord).

For this claim, Hayes relies on Dr. Plunkett’s testimony that Robert’s skull fracture was consistent with the accidental scenario Hayes described. Hayes’s reliance on Dr. Plunkett’s expert opinion is

misplaced, however, because that opinion is not part of the circumstances proved in this case.

As discussed above, in determining the circumstances proved in this case we must assume the jurors rejected Dr. Plunkett's testimony, and instead believed the testimony of the State's experts that Robert's cranial trauma was more severe than could be explained by a mere accidental household fall.

Because the circumstances proved in this case include a finding that Robert's cranial trauma was more severe than could be explained by a *554mere accidental household fall, the circumstances proved do not support a reasonable inference that Hayes accidentally caused Robert's death when he tripped over a box fan (or its electrical cord). Hayes also relies on M.H.'s testimony that she saw him trip- while carrying Robert, and Officer Mortenson's testimony that he saw a broken fan lying on the floor in the living room on the day of the incident.³ Again, Hayes's reliance on this testimony is misplaced because we must assume the jurors rejected the testimony of M.H. and Officer Mortenson.

Moreover, even if we could assume that the jury believed the testimony of M.H. and Officer Mortenson, the circumstances proved still do not support a rational hypothesis that Hayes accidentally caused Robert's death because, as mentioned above, the circumstances proved include the fact that Robert's cranial trauma was more severe than could be explained by a mere accidental household fall.

Because the circumstances proved support a rational inference of intentional assault and are inconsistent with any rational hypothesis except that of an intentional assault, we conclude that the State presented sufficient evidence to prove that Hayes caused Robert's death while committing an intentional assault. II. Hayes next argues that, even if the State presented sufficient evidence to prove that he caused Robert's death while committing an intentional assault, his conviction must still be reversed because the State failed to prove beyond a reasonable doubt that he had engaged in a past pattern of domestic abuse.

An individual is guilty of first-degree domestic-abuse murder if he "causes the death of a human being while committing domestic abuse, when. the perpetrator has engaged in a past pattern of domestic abuse upon the victim or upon another family or household member and the death occurs under circumstances manifesting an extreme indifference to human life." Minn.Stat. § 609.185(a)(6).

The statute defines domestic abuse as conduct constituting first-, second-, third-, or fifth-degree assault; domestic assault; first-, second-, third-, or fourth-degree criminal sexual conduct; or terroristic threats. MinnStat. § 609.185(c)(1) (2012). A "family or household member" under section 609.185, paragraph a(6) includes, in relevant part, "persons who are presently residing together," and "persons who have a child in common." Minn.Stat. § 518B.01, subd.

2(b)(4)-(5) (2012). The term “past pattern” is not defined in the statute. We have interpreted the provision to require more than one incident of past domestic abuse. *State v. Johnson*, 773 N.W.2d 81, 86 (Minn.2009) (“However, a lone prior act ‘does not and cannot constitute a pattern’.”) (quoting *State v. Grube*, 531 N.W.2d 484, 491 (Minn.1995)) Though necessary, the presence of at least two prior acts of domestic abuse may not be sufficient.

The State also must prove that the past abuse constituted “ ‘a regular way of acting’ ” for the defendant. *Id.* (quoting *State v. Robinson*, 539 N.W.2d 231, 237 (Minn.1995)). Prior acts *555that are not sufficiently proximate in time do not constitute a pattern. *Id.* [W]hether a past pattern of domestic abuse exists is a fact-intensive inquiry that often is not answered in purely mathematical terms.

We do not focus only on the number of incidents of past abuse in order to determine whether a reasonable jury could have found a past pattern of domestic abuse. *State v. Her*, 750 N.W.2d 258, 278 (Minn.2008), rev’d on other grounds, 555 U.S. 1092, 129 S.Ct. 929, 173 L.Ed.2d 101 (2009). Hayes admits that the State proved four incidents of domestic abuse against A.A., with whom he has a child in common.

Moreover, A.A. testified that Hayes was physically abusive to her around 20 times during their relationship. Hayes argues, however, that such instances of abuse were limited to his adult romantic partner, and therefore did not constitute a regular way of acting with regard to children. He provides no support for such a distinction, either in the statute or in case law.

Indeed, the use of broad terms such as “family or household member” suggests that different types of victims were actually contemplated by the legislature in drafting the statute. We therefore reject Hayes’s attempt to add classes of victims to the past pattern statute that are not listed in the statute, and conclude that there was sufficient evidence of a past pattern of domestic abuse to sustain his conviction of first-degree murder under Minn.Stat. § 609.185(a)(6).

III. Hayes next argues that the district court committed plain error when it failed to instruct the jury that the State must prove at least two prior acts of domestic abuse beyond a reasonable doubt. Unobjected-to jury instructions are reviewed for plain error. *State v. Laine*, 715 N.W.2d 425, 432 (Minn.2006).

Under a plain error analysis, Hayes must show that (1) there was error; (2) the error was plain;; and (3) his substantial rights were affected. *State v. Griller*, 583 N.W.2d 736, 740 (Minn.1998). An error is plain if it “contravenes case law, a rule, or a standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn.2006). “If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings.” *Griller*, 583 N.W.2d at 740.

The defendant has the burden of proof on the third element of the test, and it is considered a “ ‘heavy burden.’ ” Ramey, 721 N.W.2d at 302 (quoting Griller, 583 N.W.2d at 741). Additionally, district courts have latitude in choosing jury instructions. State v. Baird, 654 N.W.2d 105, 113 (Minn. 2002). “The district court has broad discretion in determining jury instructions, and we will not reverse where jury instructions ‘overall fairly and correctly state the applicable law.’ ” Stewart v. Koenig, 783 N.W.2d 164, 166 (Minn.2010) (quoting Hilligoss v. Cargill, Inc., 649 N.W.2d 142, 147 (Minn.2002)).

We recently addressed Hayes’s argument in State v. Hokanson, 821 N.W.2d 340 (Minn.2012).⁴ There, we said: Appellant argues that the instruction given was plainly erroneous because it *556did not clearly state that at least two separate incidents of child abuse that make up the past pattern of child abuse must be proven by the State beyond a reasonable doubt....

When viewed as a whole, we conclude that the district court’s jury instructions fairly and correctly state the applicable law. Nothing in the instructions suggest that a lesser standard of proof is applied to the requirement that the State prove more than one prior act of abuse for there to be a past pattern of child abuse. Instead, the court’s instructions repeatedly and consistently informed the jury that the State’s burden of proof was “beyond a reasonable doubt.” Id. at 356-57.

Given that the facts here are far less favorable to Hayes than those present in Hokanson — it is undisputed that the State here has proven at least four incidents of abuse beyond a reasonable doubt — we apply the same reasoning to conclude that the district court did not err in its jury instruction. IV.

Finally, Hayes argues that his right to a unanimous verdict was violated when the district court failed to instruct the jury that it must achieve unanimous agreement about which specific acts of domestic abuse were proven beyond a reasonable doubt.

We addressed this issue in State v. Crowsbreast, 629 N.W.2d 433 (Minn.2001): The grouping of past acts of domestic abuse as a preliminary factual element of domestic abuse homicide, which underlies the verdict, is in no way an irrational or unfair definition of domestic abuse homicide, nor are those acts so inherently separate as to present a due process issue as to jury unanimity....

We conclude that jurors are not required to unanimously agree on which acts comprised the past pattern of domestic abuse. “[D]ifferent jurors may be persuaded by different pieces of evidence, even when they agree upon the bottom line.” Id. at 439 (quoting Schad v. Arizona, 501 U.S. 624, 631-32, 111 S.Ct. 2491, 115 L.Ed.2d 555 (1991)) (second omission in original).

Hayes has put forward no argument to support overturning Crowsbreast, and we decline to do so. We therefore conclude that his argument on this issue lacks merit. Because the State presented sufficient evidence to support Hayes’s conviction and the district court did not err in its jury instructions, we affirm the judgment of conviction. Affirmed. WRIGHT, J., not having been a

member of this court at the time of submission, took no part in the consideration or decision of this case..

The frenulum in question is a fold of membrane connecting the lip to the gum.. A hypoxic injury is caused when an area of the body does not receive sufficient oxygen.. Relying on M.H.'s testimony, Hayes asserts an additional argument. Specifically, Hayes argues the State failed to present sufficient evidence to support his conviction.because the State's theory of the case (intentional injury) was supported by solely circumstantial evidence, while his theory of the case (accidental injury) was supported by direct evidence — M.H.'s testimony that she saw him trip while carrying Robert.

This argument is unpersuasive. When considering a sufficiency of the evidence claim, we must assume that the jury rejected M.H.'s testimony, in which case there are no facts — found to be true by the jury — to support Hayes's theory of the case..

The fact that Hokanson dealt with child abuse rather than domestic abuse is immaterial here. See Johnson, 773 N.W.2d at 86 ("The statutory definitions of first-degree child abuse murder and first-degree domestic abuse murder are nearly identical....

Because of the similarity in wording between the child abuse and domestic abuse provisions, we interpret the provisions similarly.”).