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State of Nebraska, appellee, v. Mark Carlson, appellant.

___ N.W.3d ___

Filed October 9, 2026. No. S-25-464.

1. **Jury Instructions: Appeal and Error.** Whether jury instructions are correct is a question of law, which an appellate court resolves independently of the lower court's decision.
2. **Criminal Law: Jury Instructions.** When there is an applicable jury instruction in the Nebraska Jury Instructions, the court should usually give that instruction to the jury in a criminal case.
3. **Jury Instructions.** If no standard jury instruction is available, the court must draft one appropriate to the existing conditions.
4. **Jury Instructions: Appeal and Error.** To preserve an error related to the failure to give a proposed jury instruction, the party claiming error must object to the court's refusal to give the instruction at the jury instruction conference.
5. **Jury Instructions: Proof: Appeal and Error.** To establish reversible error from a court's refusal to give a requested jury instruction, an appellant has the burden to show that (1) the tendered instruction is a correct statement of the law, (2) the tendered instruction was warranted by the evidence, and (3) the appellant was prejudiced by the court's failure to give the requested instruction.
6. **Jury Instructions: Appeal and Error.** It is not error for a trial court to refuse to give a party's requested jury instruction where the substance of the requested instruction was covered in the instructions given.
7. **Convictions: Homicide: Motor Vehicles: Intent.** Reckless driving requires the necessary mens rea to be the unlawful act to support a conviction for manslaughter.

Appeal from the District Court for Douglas County: Duane C. Dougherty, Judge. Affirmed.

Stuart J. Dornan, of Dornan, Howard, Breitkreutz, Dahlquist & Klein, P.C., L.L.O., and Ryan S. Crnkovich for appellant.

Michael T. Hilgers, Attorney General, and Nathan A. Liss for appellee.

Funke, C.J., Cassel, Stacy, Papik, Bergevin, and Vaughn, JJ.

Vaughn, J.

INTRODUCTION

Mark Carlson was convicted of manslaughter by a jury and sentenced to 10 to 14 years' incarceration. Carlson appeals. On appeal, Carlson assigns a single error of failure to instruct the jury on his theory of defense. For the following reasons, we affirm.

BACKGROUND

In September 2023, Carlson was involved in a motor vehicle collision that resulted in the death of Anna Bosma. As a result, Carlson was charged with manslaughter, and the matter proceeded to a jury trial.

At trial, the State's theory was that, in the moments leading up to the collision, Carlson was engaged in "road rage" and "racing" with a vehicle driven by Cameron Robinson. Carlson's theory was that Carlson, who had previously been diagnosed with vasovagal syncope, suffered a syncopal event that rendered him unconscious in the moments leading up to the collision. Thus, Carlson asserts, it was impossible for him to have had the intent necessary for reckless driving, which was the basis of the manslaughter charge. At trial, both parties called various witnesses to support their respective theories and Carlson requested a specific jury instruction.

Prior to the jury instruction conference, Carlson filed a written brief requesting a specific theory of defense instruction. In his brief, Carlson argued that this instruction was appropriate

because the Nebraska Jury Instructions do not contain an instruction on an "unavoidable medical event or unconsciousness." Carlson also requested that, if the district court found his proposed instruction insufficient, it use another state's "model" jury instruction on unconsciousness, with modifications to fit the circumstances of this case.

At the jury instruction conference, Carlson also objected to jury instruction No. 6 on the basis that even together with jury instruction No. 7, it allowed him to be convicted of manslaughter without specifying a mens rea requirement. He requested an alternative instruction to be used instead of instruction No. 6. As written, and ultimately given, instruction No. 6 read:

INSTRUCTION NO. 6

COUNT I

The material elements which the State must prove by evidence beyond a reasonable doubt in order to convict the Defendant of the crime of Manslaughter are:

1. That on or about September 1, 2023[,] the Defendant, Mark Carlson, killed Anna Bosma;

2. That the Defendant did so in Douglas County, Nebraska;

3. That the Defendant was operating a motor vehicle while upon the streets or highways of the State of Nebraska;

4. That the Defendant did so without malice unintentionally while in the commission of an unlawful act to wit: reckless driving as defined in Instruction No. 7.

EFFECTS OF FINDINGS

If you decide that the State proved each element beyond a reasonable doubt, then you must find the Defendant guilty. Otherwise, you must find the Defendant not guilty.

Instruction No. 7 read as follows:

INSTRUCTION NO. 7

In Instruction No. 6 defining the crime of Manslaughter, the unlawful act is referred to as reckless driving.

> The material elements of Reckless Driving are:
>
> On or about September 1, 2023, in Douglas County, Nebraska, the Defendant drove a vehicle upon the streets or highways of the State of Nebraska in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property.
>
> The State has the burden of proving beyond a reasonable doubt each and every one of the foregoing material elements of an unlawful act set forth above.

The jury was further instructed: "The term 'Reckless' is the disregard for or indifference to the safety of another or for the consequences of one's act. 'Wanton' and 'Reckless' are treated synonymously."

Carlson's proposed instruction on manslaughter differed, in part, in that it included a provision allowing for conviction if the acts were done intentionally without malice upon sudden quarrel. It also required the State to prove beyond a reasonable doubt: "That [Carlson] did not faint or was not unconscious or suffering from automatism by a sudden medical event, a syncopal episode triggering a vasovagal response[.]"

The district court declined to give the requested instruction and explained that, in its view, "the other instructions in this matter, No[s]. 6 and 7, adequately cover [Carlson's] position in this matter."

ASSIGNMENT OF ERROR

Carlson assigns, restated, that the district court erred in failing either to give his requested theory of defense jury instruction relating to unconsciousness or automatism caused by a medical event or to incorporate it into the existing jury instructions.

STANDARD OF REVIEW

[1] Whether jury instructions are correct is a question of law, which an appellate court resolves independently of the lower court's decision. *State v. Haynie*, 317 Neb. 371, 9 N.W.3d 915 (2024).

ANALYSIS

Analyzing Carlson's assigned error requires this court to consider the availability of a standard jury instruction on unconsciousness, as well as Carlson's entitlement to the specific instruction he requested.

UNAVAILABILITY OF STANDARD INSTRUCTION ON UNCONSCIOUSNESS

[2,3] When there is an applicable instruction in the Nebraska Jury Instructions, the court should usually give that instruction to the jury in a criminal case. *Haynie, supra*. If no such standard instruction is available, the court must draft one appropriate to the existing conditions. *State v. Samuels*, 205 Neb. 585, 289 N.W.2d 183 (1980). It is undisputed that Nebraska, unlike some other states, does not have a model jury instruction addressing unconsciousness or automatism. See, Cal. Jury Instr. Crim. § 3425 (2026); N.C. Jury Instr. Crim. § 302.10 (2009). Thus, we must consider whether the district court erred by not giving Carlson's proposed jury instruction, which was received at the jury instruction conference as exhibit 270.

[4] At the jury instruction conference, Carlson did not object to the district court's failure to give any of the other jury instructions contained in his brief. Thus, we will not consider Carlson's arguments that the district court failed to give any jury instruction other than the instruction contained in exhibit 270. See *Olson v. Sherrerd*, 266 Neb. 207, 213, 663 N.W.2d 617, 622 (2003) ("[t]o preserve an error related to the failure to give a proposed jury instruction, the party claiming error must object to the court's refusal to give the instruction at the jury instruction conference").

ENTITLEMENT TO REQUESTED INSTRUCTION

[5,6] In *Haynie*, this court stated:

> To establish reversible error from a court's refusal to give a requested jury instruction, an appellant has the burden to show that (1) the tendered instruction is a

> correct statement of the law, (2) the tendered instruction was warranted by the evidence, and (3) the appellant was prejudiced by the court's failure to give the requested instruction.

317 Neb. at 386, 9 N.W.3d at 926. It is not error for a trial court to refuse to give a party's requested jury instruction where the substance of the requested instruction was covered in the instructions given. *Id.*

Carlson asserts that the district court was required to give his requested jury instruction because it correctly stated the law, was supported by the evidence, and was timely requested. The State disagrees.

"A person commits manslaughter if he or she kills another without malice upon a sudden quarrel or causes the death of another unintentionally while in the commission of an unlawful act." Neb. Rev. Stat. § 28-305(1) (Reissue 2016). "Any person who drives any motor vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property shall be guilty of reckless driving." Neb. Rev. Stat. § 60-6,213 (Reissue 2021).

As set forth above, the jury was instructed that a manslaughter conviction required the State to prove certain elements beyond a reasonable doubt. One of those elements was that Carlson killed Bosma "without malice unintentionally while in the commission of an unlawful act to wit: reckless driving as defined in Instruction No. 7." Instruction No. 7 provided the elements of reckless driving, which included the requirement that the State prove beyond a reasonable doubt that Carlson drove his vehicle "in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property." The jury was further instructed: "The term 'Reckless' is the disregard for or indifference to the safety of another or for the consequences of one's act. 'Wanton' and 'Reckless' are treated synonymously."

[7] Reckless driving requires "the necessary mens rea to be the unlawful act to support a conviction for manslaughter."

State v. Cerros, 312 Neb. 230, 241, 978 N.W.2d 162, 171 (2022). In *Cerros*, the court's jury instruction set forth the elements of manslaughter, including that the jury was required to find that the defendant caused the death of the victim while in the commission of the unlawful act of reckless driving. A separate instruction set forth the elements of reckless driving as being that the defendant in *Cerros* drove a vehicle "'in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property.'" 312 Neb. at 242, 978 N.W.2d at 171. This court explained that the instruction tracked the statute defining reckless driving and included the mens rea this court had previously found sufficient. See *id*. Like in *Cerros*, the instructions given to Carlson's jury included the mens rea requirement. Pursuant to these instructions, the burden of proving, beyond a reasonable doubt, that Carlson possessed the necessary mens rea correctly remained with the State.

The district court's failure to give Carlson's proposed jury instruction did not prejudice Carlson because the existing instructions adequately covered the mens rea requirement. The mens rea requirement precluded the State from obtaining a conviction if the jury determined Carlson had been operating his motor vehicle in accordance with Nebraska law, during which time he had suffered an unforeseen and unavoidable medical episode causing him to lose consciousness and, thus, control of his vehicle. Considering the jury instructions as a whole, we find that Carlson was not prejudiced by the district court's failure to give his proposed jury instruction because the substance of the requested instruction was covered in the instructions given.

We reach this conclusion notwithstanding Carlson's argument that comments made by the State during closing argument demonstrated the need for his requested instruction. In closing, the State informed the jury that "[u]nconsciousness does not equal not guilty." The State went on to explain that if Carlson was consciously driving and then "in the heat of the moment

during a dangerous situation that he created, what if things got too intense and at the last second maybe he had a physical reaction to an unsafe situation he put himself in. That does not absolve him." We do not understand this statement to have misstated the law or demonstrated that Carlson would have been prejudiced by the failure to give his requested instruction. The prosecutor did not suggest that Carlson could be guilty of manslaughter even if the State failed to prove the required mens rea.

Because we conclude that Carlson was not prejudiced by the district court's decision not to give his requested instruction, it is not necessary for this court to determine whether Carlson's proposed instruction was an accurate statement of law or warranted by the evidence.

CONCLUSION

For each of the foregoing reasons, the judgment of the district court is affirmed.

AFFIRMED.

FREUDENBERG, J., not participating.