STATE OF MINNESOTA

IN SUPREME COURT

A19-1089

Court of Appeals | Gildea, C.J.

State of Minnesota,

Respondent,

vs. | Filed: September 15, 2021
Office of Appellate Courts

Mohamed Mohamed Noor,

Appellant.

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Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant Hennepin County Attorney, Minneapolis, Minnesota, for respondent.

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William Ward, Minnesota State Public Defender, Cathryn Middlebrook, Chief Appellate Public Defender, Saint Paul, Minnesota, for amicus curiae Minnesota Board of Public Defense.

Robert Small, Minnesota County Attorneys Association Executive Director, Saint Paul, Minnesota; and

Travis J. Smith, Murray County Attorney, Slayton, Minnesota, for amicus curiae Minnesota County Attorneys Association.

S Y L L A B U S

1. The mental state necessary for depraved-mind murder, Minn. Stat. § 609.195(a) (2020), is a generalized indifference to human life, which cannot exist when the defendant's conduct is directed with particularity at the person who is killed.

2. The only reasonable inference that can be drawn from the circumstances proved is that appellant's conduct was directed with particularity at the person who was killed, and the evidence is therefore insufficient to sustain his conviction under Minn. Stat. § 609.195(a), for depraved-mind murder.

Reversed and remanded.

O P I N I O N

GILDEA, Chief Justice.

This case comes to us following the tragic death of Justine Ruszczyk on July 15, 2017. Ruszczyk had called police that night out of concern for a woman she heard screaming behind her home. When Ruszczyk approached the police vehicle that came in response to her call, appellant Mohamed Mohamed Noor fired his service weapon at her from the passenger seat. Noor's bullet struck Ruszczyk in the abdomen and sadly, she died at the scene.

A jury acquitted Noor of second-degree intentional murder, Minn. Stat. § 609.19, subd. 1(1) (2020) but found him guilty of third-degree depraved-mind murder, Minn. Stat.

§ 609.195(a) (2020), and second-degree manslaughter, Minn. Stat. § 609.205(1) (2020). He appealed, arguing that his conviction of depraved-mind murder could not stand because his actions were directed at Ruszczyk. A divided panel of the court of appeals affirmed his conviction. *State v. Noor*, 955 N.W.2d 644, 664 (Minn. App. 2021).

The issue before us on appeal is not whether Noor is criminally responsible for Ruszczyk's death; he is, and his conviction of second-degree manslaughter stands. The issue before us is whether in addition to second-degree manslaughter, Noor can also be convicted of depraved-mind murder. Because conduct that is directed with particularity at the person who is killed cannot evince "a depraved mind, without regard for human life," Minn. Stat. § 609.195(a), and because the only reasonable inference that can be drawn from the circumstances proved is that Noor directed his single shot with particularity at Ruszczyk, we conclude that he cannot. Accordingly, we reverse Noor's conviction of depraved-mind murder and remand the case to the district court for Noor to be sentenced on the second-degree manslaughter conviction.

FACTS

After the fatal shooting of Ruszczyk, the State charged Noor with depraved-mind murder, Minn. Stat. § 609.195(a), and second-degree manslaughter, Minn. Stat. § 609.205(1). Later, the State amended the complaint to include second-degree intentional murder, Minn. Stat. § 609.19, subd. 1(1). At trial, the jury heard testimony from dozens of witnesses, including Noor and his partner Matthew Harrity.

From this testimony, the jury learned that Harrity and Noor responded to Ruszczyk's 911 call about a woman screaming in the alley behind Ruszczyk's home. Harrity drove,

and Noor was in the passenger seat. They drove slowly down the alley with their windows down, listening for the person in distress. When they reached the end of the alley, Harrity told Noor to enter a "Code 4," meaning that the scene was clear and that no help was needed. Harrity stopped the car at this point because he saw a bicyclist traveling nearby.

The bicyclist had not yet passed the car when Harrity had "some weird feeling to [his] left side." As Harrity began turning left, he heard something hit the car and "some sort of a murmur." He exclaimed, "[O]h, shit or oh, Jesus," and he immediately pulled his gun out of its holster. At this point, he could see that there was a "figure" outside his window, but he could not distinguish any details. Based on the unknown identity of the figure and the noise, Harrity thought "this could be a possible ambush or something."

Harrity was still turning to his left when he heard a "pop" and "saw a flash." His first instinct was to see if he had been shot because he did not know from where the shot came. Harrity did a "quick side eye" to his right and saw Noor with his gun drawn.

Noor testified that as soon as he entered the Code 4, he heard a "loud bang" on the driver's side. At the same time, someone appeared outside the driver's-side window. Harrity looked at the figure and screamed, "Oh, Jesus," and immediately reached for his gun. Noor claimed that Harrity looked at him "with fear in his eyes" and that his gun appeared caught in its holster. Noor observed a blonde woman wearing a pink shirt. Noor testified that she began raising her right arm toward Harrity, so Noor rose from his seat, put his left arm across Harrity's chest, fired one shot at the woman, and "[t]he threat was

gone." When they got out of the car, Noor realized that he shot an innocent person. Still, he testified that—in the moment—he shot out of concern for Harrity's life.[1]

In its closing argument, the State repeatedly asserted that Noor fired specifically at Ruszczyk and maintained this position when arguing about depraved-mind murder, explaining that Noor was "trying to fire at Ms. Ruszczyk" and that "[w]e know from the evidence, in fact, that the defendant's act was specifically directed at Ms. Ruszczyk. The person shot was the person that he meant to kill." But the State also contended that Noor satisfied the elements of depraved-mind murder because firing the single shot also endangered Harrity and the bicyclist. In response, defense counsel argued that depraved-mind murder does not occur when one is "focusing on a known individual." According to the defense, depraved-mind murder "is like shooting into a crowd" or "like driving a car, speeding down the road with a blindfold on."

The jury acquitted Noor of second-degree intentional murder but found him guilty of depraved-mind murder and second-degree manslaughter. The court convicted Noor of

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[1] The State noted inconsistencies in Harrity's and Noor's testimony. For instance, earlier statements suggested that Noor and Harrity had their guns out for the entirety of the alley drive. Moreover, they did not immediately report to other officers that they had heard a noise before the shot was fired. Forensic scientists testified that, despite dusting the entire car for fingerprints, Ruszczyk's prints were not found. During closing argument, the State pointed out that the noise—the "slap, the bang, the murmur, the thump, the bang, the pow, however it's been described"—was never described the same way by any two witnesses. The State argued that there was, in fact, no noise and that it had been invented after the fact. Consistent with our standard of review, which requires that we reject evidence that is not consistent with the jury's verdict, *see State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017), we assume that there was no noise.

depraved-mind murder and second-degree manslaughter but sentenced Noor only on the depraved-mind murder conviction.

Noor appealed, arguing in relevant part that the evidence was insufficient to sustain his conviction of depraved-mind murder.[2] Noor essentially asserted that our case law creates a "particular-person exclusion," which prohibits a conviction of depraved-mind murder when the defendant's conduct is directed at the person who is killed. A divided panel of the court of appeals affirmed. *Noor*, 955 N.W.2d at 664. The majority contended that three cases were apposite. *Id.* at 652–53. It cited *State v. Lowe*, 68 N.W. 1094, 1095 (Minn. 1896), for the proposition that "third-degree [depraved-mind] murder may occur even if the death-causing act endangered only one person." 955 N.W.2d at 653. Quoting *State v. Mytych*, 194 N.W.2d 276, 277 (Minn. 1972), it explained that "[e]ach [depraved-mind murder] case must be determined on its own facts and issues." 955 N.W.2d at 653 (emphasis omitted). In particular, the court of appeals noted that "*Mytych* upheld a conviction of third-degree murder even though the victims were known to and targeted by the defendant." *Id.* at 655. Finally, the court reasoned that the particular-person exclusion was analogous to the "without intent to effect the death of any person" language discussed in *State v. Hall*, 931 N.W.2d 737, 743 (Minn. 2019) (holding that the "without intent to effect the death of any person" language in the depraved-mind murder statute did not create an element that must be affirmatively proven). *Noor*, 955 N.W.2d at 655–56.

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[2] On appeal, Noor concedes that the evidence is sufficient to support his conviction of second-degree manslaughter.

Having concluded that depraved-mind murder includes death-causing actions directed with particularity at the victim, the majority considered the sufficiency of the evidence used to establish Noor's mental state. *Id.* at 657–59. Citing its decision in *State v. Coleman*, 944 N.W.2d 469, 479 (Minn. App. 2020), *aff'd on other grounds*, 957 N.W.2d 72 (Minn. 2021), the court concluded that the evidence was sufficient to establish that Noor "was aware that his conduct created a substantial and unjustifiable risk of death to another person and consciously disregarded that risk." 955 N.W.2d at 658.[3] The majority therefore affirmed Noor's depraved-mind murder conviction. *Id.* at 664. The dissent, however, agreed with Noor that the evidence was insufficient to sustain his conviction for depraved-mind murder. *Id.* at 664–70 (Johnson, J., concurring in part and dissenting in part).

We granted Noor's petition for review.

ANALYSIS

Noor challenges his conviction for depraved-mind murder under section 609.195(a). Under that statute, third-degree murder occurs when a person, without the intent to kill, "causes the death of another by perpetrating an act eminently dangerous to others" that "evinc[es] a *depraved mind*, *without regard for human life*." Minn. Stat. § 609.195(a) (emphasis added). This case involves the statutory phrase requiring the State to prove that the defendant acted with "a depraved mind, without regard for human life." This phrase

[3] While we ultimately affirmed the court of appeals in *Coleman*, we explicitly rejected its formulation of the necessary mental state as a conscious disregard of "a substantial and unjustifiable risk of causing the death of another." 957 N.W.2d at 76, 80–81. Noor correctly points out that the court of appeals applied to his case the standard that we rejected in *Coleman*.

describes the mental state element of depraved-mind murder. *See Coleman*, 957 N.W.2d at 77.[4]

According to Noor, our precedent establishes that a depraved mind cannot be evinced when a defendant's conduct is directed with particularity toward the person who is killed. For ease of reference, we refer to Noor's argument as the "particular-person exclusion."[5] Because the evidence establishes that his conduct was aimed specifically at the victim, Noor argues that the evidence is not sufficient to sustain his conviction of third-degree murder. The State responds that the evidence is sufficient under a line of cases that purportedly refutes the existence of the particular-person exclusion or, at the very least, conflicts with the line of cases cited by Noor. The State also argues that many of Noor's cases are distinguishable based on their procedural posture and therefore, the particular-person exclusion is not as well-established as Noor contends. And finally, if we reject the State's first two arguments, the State urges us to overrule our precedent and begin our depraved-mind murder jurisprudence anew.

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[4] This phrase has been present in Minnesota's homicide statutes since even before statehood, albeit in a slightly different form: "a depraved mind, *regardless of* human life." Minn. Rev. Stat. (Terr.) ch. 100, § 2 (1851) (emphasis added).

[5] Noor presents two alternative arguments. He contends that affirming his conviction would be an ex post facto judicial decision and would therefore violate his due process rights. *See Bouie v. City of Columbia*, 378 U.S. 347, 350, 353 (1964). Additionally, Noor argues that, regardless of the particular-person exclusion in our precedent, he simply did not act with a depraved mind because his conduct reflected a split-second decision to protect his partner's life. Because we agree with Noor's primary argument, we do not reach his alternative arguments.

I.

We turn first to the arguments regarding the statutory phrase "depraved mind, without regard for human life." The interpretation of statutes and case law is a legal question that we review de novo. *State v. Friese*, 959 N.W.2d 205, 209 (Minn. 2021); *State v. Robideau*, 796 N.W.2d 147, 150 (Minn. 2011).

A.

We have interpreted the phrase in question many times, and we have consistently held that the crime of depraved-mind murder is a general malice crime. Our "judicial construction of a statute, so long as it is unreversed, is as much a part thereof as if it had been written into it originally." *State v. Schmid*, 859 N.W.2d 816, 822 (Minn. 2015) (quoting *Roos v. City of Mankato*, 271 N.W. 582, 584 (Minn. 1937)).[6]

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[6] We acknowledge that commentators have suggested that the meaning of the phrase "depraved mind" is unclear. *See* 9A Henry W. McCarr & Jack S. Nordby, *Minnesota Practice—Criminal Law and Procedure* § 49:8 (4th ed. 2012) ("The notion of a 'depraved mind' is an old one, and its meaning is neither obvious nor well-defined." (footnote omitted)). The Jury Instructions Guide also notes that "[t]he phrase 'depraved mind' has not been included in the elements" because it "is not susceptible of definition, except in terms of an 'eminently dangerous' act and the lack of regard for human life." 10 Minn. Dist. Judges Ass'n, *Minnesota Practice—Jury Instruction Guides, Criminal*, CRIMJIG 11.38 n.2 (6th ed. 2020). We have previously recognized the need to remove archaic language from the law. *See* Minn. Sup. Ct. Advisory Comm. on Rules of Crim. Proc., No. CX-84-2137, *Report and Proposed Amendments to the Minnesota Rules of Criminal Procedure for a Complete Stylistic Revision of the Rules* 1 (filed Apr. 22, 2009) (explaining that one of the key objectives of the project was to eliminate archaic language). The Legislature has also recognized this need, with other statutory provisions. *See* Act of Apr. 18, 2000, ch. 418, art. 1, § 1, 2000 Minn. Laws 796, 796 (recodifying chapter 297A to remove archaic language). Yet for the past century and a half, the Legislature has left the phrase "depraved mind" untouched. Whether Minn. Stat. § 609.195(a) should be updated to provide greater guidance to prosecutors and juries, however, is not a decision for the judiciary. Our task is only to interpret the words as written. *See In re Est. of Karger*,

We first interpreted the phrase "depraved mind, regardless of human life" in *Bonfanti v. State*, 2 Minn. 123, 128 (1858). In that case, we held that the defendant's intentional stabbing could not evince a depraved mind and that "there [was] an intention and design to effect the death of a particular individual," which meant that he could not be guilty of depraved-mind murder. *Id.* at 130. In other words, we said that a "depraved mind, regardless of human life" is distinct from the mental state required for intentional murder. *Id.*

The holding in *Bonfanti* implicitly recognized the distinction between the mental state of *general* malice, *see State v. Weltz*, 193 N.W. 42, 43 (Minn. 1923) ("[A] depraved mind, regardless of human life" is "exactly descriptive of general malice."); *Coleman*, 957 N.W.2d at 78–79 (discussing *Weltz*, 193 N.W. at 42–43), and the mental state of *particular* malice, where the defendant's actions are directed at a specific person. *See* 1 Edward Hyde East, *A Treatise of the Pleas of the Crown* 223–32 (1806) (drawing a distinction between the two); Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County of Surry* 261 (3d ed. 1809) (same); *Darry v. People*, 10 N.Y. 120, 156 (1854) (Denio, J.) (same). In roughly 20 cases spanning the 163 years since *Bonfanti* was decided, we have repeatedly reaffirmed that depraved-mind murder is a general malice crime and is therefore distinct from the particular malice crime of intentional murder.

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93 N.W.2d 137, 142 (Minn. 1958) ("What the law ought to be is for the legislature; what the law is, rests with the courts.").

An example comes from *State v. Lowe*, 68 N.W. 1094 (Minn. 1896). There, the defendant persuaded a pregnant woman to stay in a hotel room when she went into labor. *Id.* at 1094. The defendant promised that he would provide a physician to care for her during childbirth. *Id.* The victim became sick after giving birth and was unable to get help. *Id.* Lowe did not seek out medical attention for the victim and did not provide competent care, as he had promised. *Id.* at 1094–95. The victim died several days later. *Id.* at 1095. We reasoned that the depraved-mind murder statute did not include acts that were committed with "special regard to their effect on any particular person." *Id.* We wrote that, although we did "not deem it necessary that more than one person was or might have been put in jeopardy by such act," it was, "however, *necessary* that the act was committed without special design upon the particular person or persons with whose murder the accused is charged." *Id.* (emphasis added). Applying the particular-person exclusion to the indictment, we reversed Lowe's conviction of depraved-mind murder because the facts alleged that he "had special reference" to the person who died. *Id.* at 1095–96.[7]

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[7] In support, we relied on a New York case, *Darry*, which held that a depraved mind is evinced only by acts that: (1) put "the lives of many" in danger, and (2) are not "aimed at any one in particular." 10 N.Y. at 146, 148 (Selden, J.). We will refer to these aspects of *Darry* as the "more-than-one-person requirement" and the "particular-person exclusion." The court in *Darry* interpreted the phrase "depraved mind, regardless of human life" as excluding "all cases of *particular*" malice and including only "cases of *general*" malice. *Id.* at 145. The court explained:

> The act *must evince a depraved mind, regardless of human life*. These words are exactly descriptive of general malice and cannot be fairly applied to any affection of the mind having for its object a *particular individual*. They define general recklessness and *are not pertinent to describe cruelty to an individual*. The act by which the death is effected must evince a disregard to human life. Now, a brutal assault upon an individual may evince animosity

In *State v. Nelson*, we discussed the particular-person exclusion before holding that the defendant could not be guilty of depraved-mind murder. 181 N.W. 850, 852–53 (Minn. 1921). In that case, the defendant fatally shot the victim during a confrontation with people who appeared to be trespassing on his father-in-law's farm. *Id.* at 851. After citing *Lowe*, we concluded that "[t]he evidence does not suggest" a finding of depraved-mind murder. *Id.* at 853. Similarly, in *State v. Kopetka*, the defendant was convicted of depraved-mind murder after he stabbed his wife to death. 121 N.W.2d 783, 784 (Minn. 1963). After discussing the particular-person exclusion and our holding in *Nelson*, we explained that the indictment did "not accurately charge the offense" of depraved-mind murder. *Id.* at 786.

We have continued to rely on the particular-person exclusion in recent years. Beginning in 1970 with *State v. Hanson*, 176 N.W.2d 607 (Minn. 1970), and most recently in 2017 with *State v. Zumberge*, 888 N.W.2d 688 (Minn. 2017), we have cited the particular-person exclusion in at least 13 cases when rejecting defendants' arguments that they were entitled to jury instructions on depraved-mind murder. For ease of reference, we will refer to these 13 cases as the "jury-instruction cases."

> and hate towards that person, and a cruel and revengeful disposition, *but it could not properly be said to be evidence of a recklessness and disregard of human life generally*.

Id. at 156 (Denio, J.) (original emphasis omitted; new emphases added). We agreed with *Darry* in *Lowe* and explicitly adopted its particular-person exclusion. 68 N.W. at 1095. We did not, however, adopt *Darry*'s more-than-one-person requirement. *Id.*

In affirming Noor's conviction, the court of appeals erroneously focused only on our rejection of the more-than-one-person requirement and ignored our adoption of the particular-person exclusion. *See Noor*, 955 N.W.2d at 652–55. The State makes the same mistake in its briefing to our court.

Hanson is representative of the jury-instruction cases. 176 N.W.2d 607. Hanson was convicted of second-degree intentional murder after shooting his wife in the back of the head from 75 feet away. *Id.* at 609, 612. After discussing the particular-person exclusion, we concluded that Hanson was not entitled "to an instruction that the jury could find him guilty of murder in the third degree as a lesser and included offense." *Id.* at 614-15.[8]

In sum, our precedent confirms that Noor is correct in arguing that a person does not commit depraved-mind murder when the person's actions are directed at a particular victim. The particular-person exclusion is simply another way of saying that the mental state for depraved-mind murder is one of general malice.[9] *See Coleman*, 957 N.W.2d at

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[8] The other 12 jury-instruction cases are similar. *See State v. Reilly*, 269 N.W.2d 343, 349 (Minn. 1978) (citing the particular-person exclusion to reject an argument for instructions on depraved-mind murder); *State v. Stewart*, 276 N.W.2d 51, 54 (Minn. 1979) (same); *State v. Wahlberg*, 296 N.W.2d 408, 417–18 (Minn. 1980) (same); *State v. Phelps*, 328 N.W.2d 136, 140 (Minn. 1982) (same); *State v. Carlson*, 328 N.W.2d 690, 694 (Minn. 1982) (same); *State v. Fox*, 340 N.W.2d 332, 335 (Minn. 1983) (same); *State v. Fratzke*, 354 N.W.2d 402, 410 (Minn. 1984) (same); *State v. Jackman*, 396 N.W.2d 24, 30 (Minn. 1986) (same), *abrogated on other grounds*, *State v. Palmer*, 803 N.W.2d 727, 734 (Minn. 2011); *State v. Lee*, 491 N.W.2d 895, 901 (Minn. 1992) (same); *Stiles v. State*, 664 N.W.2d 315, 321–22 (Minn. 2003) (same); *State v. Harris*, 713 N.W.2d 844, 850 (Minn. 2006) (same); *Zumberge*, 888 N.W.2d at 698 (same).

In *Zumberge*, 888 N.W.2d at 698, we relied on the recitation of the particular-person exclusion from *State v. Barnes*, 713 N.W.2d 325, 331 (Minn. 2006). In *Barnes*, we held that first-degree domestic-abuse murder does not unconstitutionally overlap with depraved-mind murder, in part because the former *only* occurs when the defendant's indifference is "directed at the specific person" and the latter *cannot* occur in that case. 713 N.W.2d at 331 (citing *Wahlberg*, 296 N.W.2d at 417).

[9] Minnesota law recognizes that, absent a valid defense, when a person's malice is directed at a particular individual, the person commits a more serious offense, which, depending on the circumstances, may include second-degree intentional murder or first-degree premeditated murder. *See State v. Duke*, 335 N.W.2d 511, 513 (Minn. 1983)

78–79 (citing *Weltz*, 193 N.W. at 42–43); *Lowe*, 68 N.W. at 1095; *Darry*, 10 N.Y. at 156 (Denio, J.). Under our precedent, general malice refers to conduct evincing indifference to human life *in general* and, as we recently said in *Coleman*, does not refer to indifference "directed at the person slain." 957 N.W.2d at 78–79.[10]

We reaffirm our precedent today and confirm that the mental state required for depraved-mind murder cannot exist when the defendant's actions are directed with particularity at the person who is killed.

B.

Despite our precedent discussed above, the State urges us to adopt the court of appeals' conclusion that a depraved-mind murder conviction "may be based on conduct directed at a single person, and even a targeted person." *Noor*, 955 N.W.2d at 656. The State presents three arguments, which we address in turn.[11]

(affirming conviction of second-degree intentional murder when the defendant "pointed the gun at [the victim's] head and fired from close range"); *State v. Goodloe*, 718 N.W.2d 413, 423 (Minn. 2006) (affirming conviction of first-degree premeditated murder when the defendant "took a loaded gun from under the seat of his vehicle, . . . chambered a round in the gun, pursued [the victim] to the back office, forced open the office door, and fired seven shots, three of which struck [the victim] in the head").

[10] For instance, the mental state required for depraved-mind murder has been shown by defendants driving vehicles at high speeds through crowds, intersections, or on populated frozen lakes. *See Weltz*, 193 N.W. at 44; *Hall*, 931 N.W.2d at 738; *Coleman*, 957 N.W.2d at 74. Other examples could include defendants who: obstruct train tracks and thereby cause an accident, *Bonfanti*, 2 Minn. at 129, go on a "sudden random shooting spree," *Carlson*, 328 N.W.2d at 694, or ride "an unruly horse . . . among a crowd of persons," East, *supra*, at 231.

[11] In addition to these arguments, the State contends that the particular-person exclusion cannot be a part of the depraved-mind murder statute because it is not expressly found in its text. The State's argument ignores the principle of statutory interpretation that

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First, the State attempts to manufacture a split in our precedent by pointing to seven cases that it contends support its challenge to the particular-person exclusion. *See State v. Stokely*, 16 Minn. 282 (1871); *State v. Brown*, 43 N.W. 69 (Minn. 1889); *State v. Johnson*, 156 N.W.2d 218 (Minn. 1968); *State v. Mytych*, 194 N.W.2d 276 (Minn. 1972); *State v. Gilbert*, 448 N.W.2d 875 (Minn. 1989); *Hall*, 931 N.W.2d 737; *Coleman*, 957 N.W.2d 72. We are not persuaded.[12]

To begin with, *Stokely* was decided before *Lowe*. Even if it stood for the proposition cited by the State, it would have been abrogated by our decision in *Lowe*. But notably, *Stokely* does *not* actually stand for the proposition cited by the State.

The defendant in *Stokely* made two arguments regarding depraved-mind murder. 16 Minn. at 293–95. First, he challenged the *manner* in which the district court gave the depraved-mind murder instructions—not their *substance*, as the State suggests—because he claimed that the judge suggested his guilt to the jury. *Id.* at 293. We disagreed with the defendant's characterization of the instructions. *Id.* Second, the defendant pointed to the statutory language "without any design to effect death," *see* Minn. Gen. Stat. ch. 94,

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our interpretation becomes a part of the statute as though it were written in the statute. *See Schmid*, 859 N.W.2d at 822; *Roos*, 271 N.W. at 584.

[12] *Johnson* and *Gilbert* are so clearly distinguishable that we address them only briefly. *Johnson* dealt with the constitutionality of a plea agreement for depraved-mind murder. 156 N.W.2d at 220–24. Similarly, *Gilbert* was a sentencing case in which we reduced a defendant's sentence "as if [he] had been convicted of the lesser offense of attempted third-degree depraved mind murder" instead of second-degree intentional murder. 448 N.W.2d at 876. Neither of these cases required us to determine whether the State established a "depraved mind, without regard for human life."

§ 2 (1866), and argued that, *in addition to* an "eminently dangerous" act and a "depraved mind," the State needed to affirmatively *disprove* an intent to kill. 16 Minn. at 293–94. We held that the State had no such obligation. *Id.* at 294. That was enough to resolve the issue. Stokely made no argument regarding the statutory phrase "depraved mind, regardless of human life." *Id.* Our subsequent discussion of that element was therefore dicta.[13]

Moreover, in *Hall* we said that *Stokely* is consistent with the particular-person exclusion. 931 N.W.2d at 743 & n.9. In footnote 9 of our decision in *Hall*, we explicitly distinguished between the particular-person exclusion and the statutory phrase "without intent to effect the death of any person," found in the first sentence of the depraved-mind murder statute. *Id.* In reaffirming *Stokely*'s conclusion that the State need not *disprove* an intent to kill, we explained that our conclusion was consistent with *Hanson*, 176 N.W.2d at 614–15 (relying on the particular-person exclusion), and *State v. Wahlberg*, 296 N.W.2d 408, 417–18 (Minn. 1980) (same), because the particular-person exclusion is part of the depraved-mind element, not part of the "without" clause. *Hall*, 931 N.W.2d at 743 n.9. *Hall*, therefore, does not support the State.[14]

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[13] The State suggests that the mere mention of *Stokely* by a 1955 legislative advisory committee changed the meaning of depraved-mind murder. The State's argument is unpersuasive because both the pre- and post-1955 depraved-mind murder statutes retained the same language to describe the requisite mental state: "a depraved mind, regardless of human life." *Compare* Minn. Stat. § 619.10 (1953), *with* Minn. Stat. § 619.10 (1957).

[14] The State rests its argument almost entirely on *Stokely* and *Hall*. But although those cases correctly held that the State does *not* need to *disprove* an intent to kill, our precedent is clear that the State *must prove* general malice, a mental state that is incompatible with particular malice. *See Lowe*, 68 N.W. at 1095; *Weltz*, 193 N.W. at 43; *see also Bonfanti*,

Brown similarly does not support the State's position. In *Brown*, we reviewed a sufficiency-of-the-evidence challenge to a conviction of first-degree murder, not depraved-mind murder. 43 N.W. at 69. In dicta, we noted that, even placing "the most favorable construction upon the defendant's evidence," it was sufficient to sustain a conviction for depraved-mind murder. *Id.* In placing the "most favorable construction" on the facts, we necessarily assumed that the defendant did *not* shoot with particularity at the person who was killed. *Id.* Thus, the discussion in *Brown* cited by the State, while dicta, is consistent with the particular-person exclusion.

Next, the State simply misreads *Coleman*, 957 N.W.2d 72. In that case, we said:

> [A] defendant is guilty of third-degree [depraved-mind] murder, when based on the attending circumstances: (1) he causes the death of another without intent; (2) by committing an act eminently dangerous to others, that is, an act that it [sic] is highly likely to cause death; and (3) the nature of the act supports an inference that the defendant was indifferent to the loss of life that this eminently dangerous activity *could* cause.

Id. at 80. The State seizes upon this description and argues that it abrogated the particular-person exclusion.

But the State plucks the above-quoted sentence out of *Coleman* without any reference to the language immediately preceding or following it. Just one page earlier, we repeated *Weltz*'s statement that "a depraved mind, regardless of human life" is "exactly descriptive of general malice." *Id.* at 79 (quoting *Weltz*, 193 N.W. at 43). *Coleman* also acknowledged that our precedent reflects an understanding that the phrase "general malice"

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2 Minn. at 128. The State's reliance on *Stokely* and *Hall*, cases that interpreted only the "without intent" clause and not the "depraved mind" clause, is therefore misplaced.

refers to an "indifference to human life *that was not directed at the person slain*." *Id.* at 78–79 (original emphasis omitted; new emphasis added). We therefore reject the State's attempt to expand *Coleman* beyond its holding.

For reasons explained above, *Stokely*, *Brown*, *Johnson*, *Gilbert*, *Hall*, and *Coleman* do not support the State's position. That leaves only *Mytych*, 194 N.W.2d 276. Unlike the cases discussed above, the defendant in *Mytych* made the same argument that Noor does in this case. After being convicted of depraved-mind murder for the shooting of her ex-fiancé and his wife, the defendant argued that her conviction must be vacated because she shot her victims with particularity. *Id.* at 278–79, 281. Because we rejected that argument, the State urges us to reject Noor's argument. After careful consideration, however, we conclude that there is compelling reason to overrule *Mytych*.

We are "extremely reluctant to overrule" our cases "and require a compelling reason" to do so. *Daniel v. City of Minneapolis*, 923 N.W.2d 637, 645 (Minn. 2019) (quoting *Cargill, Inc. v. Ace Am. Ins. Co.*, 784 N.W.2d 341, 352 (Minn. 2010)). But we will not adhere to our former decisions if they "are clearly and manifestly erroneous." *State v. Manford*, 106 N.W. 907, 908 (Minn. 1906).

Mytych was clearly and manifestly wrong when it was decided, and it remains clearly wrong today. The defendant in that case bought a revolver, called in sick at work, and then flew hundreds of miles under an assumed name before killing the victims. *Mytych*, 194 N.W.2d at 278. The intended target was the defendant's former fiancé, who secretly married another woman and later lied about the nature of his relationship with his new wife in order to engage in further sexual relations with the defendant. *Id.* Although

this fact pattern closely resembles that of a first-degree murder case, the district court, perhaps motivated by a desire to avoid an overly harsh result for a sympathetic defendant, acquitted the defendant of the first-degree charge and convicted her of only depraved-mind murder. *Id.* at 281, 283.

Mytych's analysis in affirming the conviction of depraved-mind murder is poorly reasoned. The analysis is composed almost entirely of direct quotations from the district court, and the district court's reasoning, in turn, was heavily dependent on the testimony of a medical expert at trial. *Id.* at 281–83. The expert testified "that the word 'depraved' could mean automatically out of touch with ordinary standards of decency and reality." *Id.* at 283. What little analysis exists in *Mytych* represents a near-absolute deference to that *medical* expert's opinion on the *legal* definition of a "depraved mind." *Id.*

And the standard we invented in *Mytych*, based on the district court's reasoning and the medical expert, represented a complete departure from established precedent. We cursorily stated that *Lowe*, *Nelson*, and *Kopetka* were distinguishable but did not explain why that was so. *Id.* at 281. Upon review, we see nothing about the facts of *Mytych* that meaningfully distinguishes it from *Nelson*, 181 N.W. 850, or *Kopetka*, 121 N.W.2d 783. Similar to Mytych, Nelson carried a loaded gun to a confrontation and killed someone. 181 N.W. at 851. Emotions certainly ran high because he engaged in a "struggle" and was struck in the face. *Id.* Similarly, the defendant in *Kopetka* had become estranged from his wife and therefore likely harbored similar "emotions, disappointments, and hurt" as the defendant in *Mytych*, 194 N.W.2d at 283. *See Kopetka*, 121 N.W.2d at 784. We can discern no principled basis for *Mytych*'s unexplained distinction of these two cases.

Mytych is also inconsistent with cases decided after it. Just one year after we announced our decision in *Mytych*, we stated that it was "not a typical application" of depraved-mind murder. *State v. Leinweber*, 228 N.W.2d 120, 123 n.3 (Minn. 1975) (also identifying *Lowe*, *Nelson*, and *Kopetka* as typical applications of the offense). We repeated that admonition in *Wahlberg*, where we explicitly declined to rely on *Mytych*. 296 N.W.2d at 417. Additionally, all 13 of our jury-instruction cases stand in complete opposition to *Mytych* because they held that the particular-person exclusion operated as a matter of law to preclude a finding of depraved-mind murder. *See, e.g.*, *Zumberge*, 888 N.W.2d at 698.[15]

Although efforts to reach a just result in *Mytych* might have been well-intended, they led us to adopt a "clearly and manifestly erroneous" analysis. *See Manford*, 106 N.W. at 908. And, as illustrated by the analysis of the court of appeals here, *Mytych* has created confusion. The State asks us to breathe new life into this erroneous decision to affirm Noor's conviction. But "the mere fact that an error has been committed is no reason or even apology for repeating it, much less[] for perpetuating it." *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 406 (Minn. 2000) (emphases omitted) (quoting *Hart v. Burnett*, 15 Cal. 530, 600–01 (1860)). Given our dearth of reliance on *Mytych*, its unexplained departure from *Lowe*, *Nelson*, and *Kopetka*, and the confusion it has caused, we conclude that *Mytych* must be, and therefore is, overruled to the extent that it is inconsistent with this opinion.

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[15] Although not cited by the State for this proposition, we note that *Hall* cited to *Mytych* to support its conclusion that the State need not *disprove* an intent to kill. *See Hall*, 931 N.W.2d at 740–41. But *Hall* did not rely on *Mytych* to reject the particular-person exclusion; rather, *Mytych* was used only as inferential support for *Hall*'s interpretation of the "without intent" clause. *See id.*

2.

The State's second argument is that the jury-instruction cases are distinguishable, and therefore our reliance on the particular-person exclusion is not as well-established as Noor contends. The defendants in the jury-instruction cases were convicted of either first- or second-degree murder and argued on appeal that they were entitled to depraved-mind murder instructions. Relying on *Lowe* or its progeny, we concluded that each of these defendants was not entitled to lesser-included offense instructions on depraved-mind murder because their actions were directed with particularity at the person who was killed. *See, e.g.*, *Zumberge*, 888 N.W.2d at 698. Here, the court of appeals essentially held, and the State argues, that the jury-instruction cases are distinguishable because there was no rational basis for *acquitting* the defendants in these cases of the greater degrees of murder, and therefore there was no basis for a depraved-mind murder instruction. *See id.* at 697 (explaining that a lesser-included-offense instruction is not necessary if the evidence does not provide "a rational basis for *acquitting* the defendant of the offense charged" (emphasis added)).

Noor responds that the State's argument creates a distinction without a difference. Specifically, Noor argues that the jury-instruction cases are indistinguishable here because they also involved analysis of whether depraved-mind murder was rationally appropriate under their facts. *See id.* (explaining that an instruction is also unnecessary if the evidence does not provide "a rational basis for *convicting* the defendant of the lesser-included offense" (emphasis added)). We agree with Noor.

The jury-instruction cases were predominately resolved in the manner that Noor describes. For example, in *Zumberge*, we stated that "[t]hird-degree [depraved-mind] murder 'cannot occur where the defendant's actions were focused on a specific person.' " 888 N.W.2d at 698 (quoting *State v. Barnes*, 713 N.W.2d 325, 331 (Minn. 2006)). In *Hanson*, we said "that the evidence in this case would not have justified a finding of guilty of [depraved-mind] murder in the third degree." 176 N.W.2d at 614. Similarly, we stated in *State v. Phelps* that the evidence did not reasonably support a conviction of depraved-mind murder. 328 N.W.2d 136, 140 (Minn. 1982). In *Wahlberg*, "all the blows were directed toward the victim" and therefore the defendant could not rationally have been *convicted* of depraved-mind murder, *and* "there was ample evidence to support a finding of an intentional killing, whereas third-degree murder is an unintentional killing." 296 N.W.2d at 417–18. In *Stiles v. State*, "no rational jury could have acquitted Stiles on intentional murder charges and convicted on third-degree murder" because his gunshots were fired only at the victim. 664 N.W.2d 315, 321–22 (Minn. 2003).

In short, reading the jury-instruction cases in the manner urged by the State and adopted by the court of appeals assigns to these cases an untenably narrow reading. Accordingly, we reject the State's argument that the jury-instruction cases are meaningfully distinguishable.

3.

Finally, the State asks us to abandon our precedent and reinterpret the depraved-mind murder statute from a clean slate. It essentially contends that there is a compelling reason to overturn our cases that rely on the particular-person exclusion. And that reason,

the State argues, is that the particular-person exclusion creates a "significant hole" in Minnesota's graduated statutory homicide scheme.[16]

If there were, in fact, a "hole" in the statute, as the State argues, it would be the job of the Legislature to fill it. But as this case itself proves, there is no hole in Minnesota's statutory regime. The parties agree that the evidence is sufficient to sustain Noor's conviction for manslaughter. His death-causing action still results in criminal liability, and therefore there is no "hole" in the statutes in the truest sense of the word. To the extent that particularized, unintentional killings must be classified as murder—as the State contends—we have already said that second-degree felony murder, Minn. Stat. § 609.19, subd. 2 (2020), fills any meaningful gap created by the particular-person exclusion. *See Nelson*, 181 N.W. at 853 (holding that the defendant could not be guilty of depraved-mind murder but could be guilty of felony murder); *Kopetka*, 121 N.W.2d at 786 (same). The State chose not to charge Noor with that offense. The additional murder charge that the State *did* choose to bring—second-degree intentional murder—was rejected by the jury.

In sum, the mental state necessary for depraved-mind murder, Minn. Stat. § 609.195(a), is a generalized indifference to human life and—based on our precedent—

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[16] At oral argument, the State additionally claimed that if we do not overturn our precedent, no police officer could ever be convicted of depraved-mind murder. The State is wrong. Absent a legal defense, any person, including a police officer, who kills someone while evincing indifference to human life *in general* could be convicted of depraved-mind murder. *See supra* note 7. Moreover, depending on the facts of any given case, a fatal police shooting could result in first-degree premeditated murder, second-degree intentional murder, or second-degree felony murder. Minn. Stat. §§ 609.185–.19 (2020).

cannot exist when the defendant's conduct is directed with particularity at the person who is killed.[17]

II.

Having explained our precedent interpreting the statutory phrase "depraved mind, without regard for human life," we now apply the law to the facts of Noor's case to determine whether the evidence is sufficient to sustain his conviction of depraved-mind murder.

When a challenge is made to the sufficiency of circumstantial evidence, we apply a two-step analysis. *State v. Davenport*, 947 N.W.2d 251, 266 (Minn. 2020); *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017).[18] First, we identify the circumstances proved. *Harris*, 895 N.W.2d at 598. When identifying the circumstances proved, we "winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury's verdict, resulting in a subset of facts that constitute 'the circumstances proved.' " *Id.* at 600. Second, we independently examine the reasonableness of all inferences that might be drawn from the circumstances proved. *Id.* at 598. In identifying the reasonable inferences drawn from the circumstances proved, "[w]e give no deference to the jury's choice between

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[17] The State asks us to apply cases from other states, namely Wisconsin. But cases from other states are difficult to evaluate because of substantial differences in state statutory homicide regimes. Many states do not even recognize depraved-mind murder. *See* 2 Wayne R. LaFave, *Substantive Criminal Law* § 14.4(a) n.18 (3d ed. 2018) (collecting 12 state statutes). We therefore decline the State's invitation to rely on precedent from other jurisdictions.

[18] The court of appeals assumed without deciding that the circumstantial-evidence standard applied. 955 N.W.2d at 657. Neither party challenges this part of the court's decision. We therefore apply this standard as well.

reasonable inferences." *Id.* at 601. But if the circumstances proved support conflicting reasonable inferences, one that is consistent with guilt and one that is inconsistent with guilt, the evidence is not sufficient to support the conviction. *State v. Andersen*, 784 N.W.2d 320, 329–30 (Minn. 2010).

Noor argues that the only reasonable inference that can be drawn from the circumstances proved is that his shot was directed particularly at Ruszczyk. Thus, he contends, the particular-person exclusion precludes a finding that he acted with a "depraved mind, without regard for human life." The State responds that the circumstances proved are "inconsistent with any rational hypothesis except that of guilt."[19]

The circumstances proved established that Ruszczyk lived in a low-crime area of Minneapolis and that she called 911 to report a woman yelling in an alley behind Ruszczyk's home. Harrity and Noor responded to that call. Noor was in the passenger seat of the squad car, as Harrity drove down the alley behind Ruszczyk's house. They made no effort to contact Ruszczyk and spent less than two minutes in the alley before alerting dispatch that the scene was clear.

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[19] The State also contends that we must assume the jury followed the trial court's instructions. *See State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009). The court instructed the jurors that to find Noor guilty of depraved-mind murder, Noor's actions "*may* not be specifically intended to cause death and *may* not be specifically directed at the particular person whose death occurred." (Emphases added.) *See* Minn. Dist. Judges Ass'n, *supra*, CRIMJIG 11:38. According to the State, the jury's guilty verdict on the charge of depraved-mind murder necessarily reflects an inference that Noor's actions were not directed with particularity at Ruszczyk. As we explain, such an inference is not reasonable on this record. But even if it were, it would not mean that the State prevails, because there is also a reasonable inference that Noor's actions were directed with particularity at the victim. *See Andersen*, 784 N.W.2d at 329–30.

Ruszczyk approached the squad car. As Harrity waited for a bicyclist to pass in front of the squad car, he turned and saw the "silhouette" of a person standing outside the driver's-side door of the squad car. Harrity was startled and said something like, "Oh, Jesus." He had his gun out of its holster but did not point, display, or fire it because he had not determined that Ruszczyk was an apparent and immediate threat.

Before Harrity had time to register what he was seeing, Noor fired his gun in front of Harrity's body and out the driver's-side window of the squad car. The shot was so close that Harrity's first instinct was to check to see if he had been shot. Noor knew that deadly force against a citizen was authorized only if it was apparent that the citizen presented a danger of death or great bodily harm to the officer or another. Noor's bullet struck Ruszczyk in her abdomen, and she died moments later from the gunshot wound.

The State concedes in its brief that one reasonable inference from these circumstances is that Noor was startled by Ruszczyk's sudden appearance outside the driver's-side window. It is also reasonable to infer that Noor fired his gun with particularity at the person who startled him. Nevertheless, the State contends that, when viewed as a whole, the circumstances proved also support a reasonable inference that Noor acted with a depraved mind, without regard for human life, because his shot endangered Harrity and the bicyclist. That argument fails. Our precedent establishes that, when the defendant's conduct is directed with particularity toward the person killed, as it was here, the mere proximity of others does not establish indifference to human life in general.[20]

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[20] In *Hanson*, the victim was eight feet away from another person when she was shot. 176 N.W.2d at 612. In *Carlson*, there were five bystanders when the defendant shot his

Moreover, the State fails to identify any circumstance proved that is consistent with the jury's verdict that would support a reasonable inference that Noor's conduct was indiscriminate or otherwise non-particularized. We likewise are unable to do so. Thus, when viewed as a whole, the circumstances proved do not support a *reasonable* inference that Noor's single bullet was shot "indiscriminately, fall it where it may." *See* Foster, *supra*, at 261. Instead, the only reasonable inference that can be drawn from the circumstances proved, as a whole, is that Noor's death-causing action was directed with particularity at Ruszczyk.

At bottom, the State emphasizes the unreasonableness of Noor's actions and contends this unreasonableness evinces a depraved mind. We may very well agree that Noor's decision to shoot a deadly weapon simply because he was startled was disproportionate and unreasonable. Noor's conduct is especially troubling given the trust that citizens should be able to place in our peace officers. But the tragic circumstances of this case do not change the fact that Noor's conduct was directed with particularity toward Ruszczyk.

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son and wife. 328 N.W.2d at 694. In *Jackman*, bar patrons were so close to the victim that they were "spattered with blood" when the defendant shot him. 396 N.W.2d at 30. In *Stiles*, the defendant shot the victim in the presence of four other people. 664 N.W.2d at 317. In *Harris*, the defendant shot two people in a crowded apartment room (containing a total of seven people), fatally wounding one of them. 713 N.W.2d at 847. And in *Zumberge*, the defendant used a shotgun to kill the victim and wound the victim's girlfriend, who was standing immediately nearby. 888 N.W.2d at 693. Despite endangering multiple people, we held that none of these defendants could rationally be guilty of depraved-mind murder because their conduct was directed with particularity toward their victims.

Applying the particular-person exclusion to the facts of Noor's case, as we must, we hold that the State presented insufficient evidence to prove that Noor acted with a "depraved mind, without regard for human life." For that reason, we reverse Noor's conviction for depraved-mind murder, Minn. Stat. § 609.195(a). But because Noor was additionally convicted of, but not sentenced on, second-degree manslaughter, we remand to the district court to sentence him on that charge.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court to vacate Noor's conviction for depraved-mind murder and sentence him on his conviction of second-degree manslaughter.

Reversed and remanded.