Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-318

APRIL TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windham Circuit
Jeffrey Bellville	}	
	}	DOCKET NO. 750-5-05 Wmcr
		Trial Judge: David T. Suntag

In the above-entitled cause, the Clerk will enter:

Defendant appeals from a conviction, based on a jury verdict, of operating a motor vehicle on a public highway in a negligent manner, in violation of 23 V.S.A. § 1091(a). Defendant contends the court committed plain error in failing to instruct the jury on the correct meaning of "negligent manner" under the statute. We affirm.

Defendant's conviction arose out of a motor vehicle accident which occurred on Western Avenue in the City of Brattleboro on May 18, 2005. Testimony at trial established that, while driving at about the speed limit of twenty-five to thirty miles per hour, defendant began intermittently to slow to a crawl then speed up, finally coming to an abrupt halt. The driver immediately behind defendant was able to stop before colliding with defendant, but the next car was not. That vehicle rear-ended the car behind defendant, forcing it to rear-end defendant. Testimony by the two other drivers at trial indicated that defendant acknowledged after the accident that he had intentionally slowed and stopped to teach the driver behind him a lesson about tail-gating. Defendant acknowledged that he had varied his speed to discourage the other driver from tailgating, but claimed that he had stopped only to avoid a squirrel. Defense counsel argued in closing that the accident had not been caused by defendant, but rather by the third driver's inattention, noting that the car immediately behind defendant had been able to stop in time.

The court instructed the jury that to prove defendant had operated his vehicle in a "negligent manner" under 23 V.S.A. § 1091(a), the State must prove "the Defendant did not exercise the care and prudence in the operation of a motor vehicle that a careful and prudent person would have exercised under the same circumstances." The court explained that "[t]his is a standard for the jury to decide." The jury returned a verdict of guilty. Defendant subsequently moved for judgment of acquittal or a new trial, arguing that the evidence was insufficient to prove negligent operation, and that defendant was not driving "in a manner negligently to cause an accident." The court denied the motion. This appeal followed.

Defendant's sole claim on appeal is that, in instructing the jury, the court failed to correctly define "negligent manner" under the statute. Defendant argues that the court was required to instruct that, as a matter of law, stopping on a highway is not negligence unless the stopping was the

proximate cause of an accident. Defendant did not object to the court's instruction on this ground. Thus, his claim is reviewable only for plain error, which requires a showing that the alleged error was so egregious as to undermine confidence in the verdict. State v. Carpenter, 170 Vt. 371, 374-75 (2000).

We find no error. It is well settled that the standard of care applicable to ordinary civil negligence is sufficient to sustain a conviction under 23 V.S.A. § 1091(a). See 23 V.S.A. 1091(a)(2) ("The standard for a conviction for negligent operation in violation of this subsection shall be ordinary negligence, examining whether the person breached a duty to exercise ordinary care"); State v. Beayon, 158 Vt. 133, 135 (1992). The trial court here correctly instructed the jury as to the standard of care for ordinary negligence, defining it as the care that a careful and prudent person would have exercised under the circumstances.

In support of his claim, defendant relies on three civil cases in which the plaintiffs sought to recover for injuries sustained in automobile accidents resulting in various circumstances from the defendants' allegedly negligent stopping on a public highway. In each case, we held that while a motor vehicle statute might forbid stopping a vehicle in such a manner as to interfere with the movement of traffic, the plaintiffs' recovery in tort also required a showing that the defendants' conduct was the proximate cause of the plaintiffs' injuries. See Campbell v. Beede, 124 Vt. 434, 439 (1965); Smith v. Blow & Cote Co., 124 Vt. 64, 67 (1963); Young v. Lamson, 121 Vt. 474, 478 (1960). These cases do not establish that, in a criminal case, the State must establish all of the elements required in a tort case, including proximate cause. Rather, it is sufficient, as the court here instructed, for the State to prove that defendant's conduct violated the standard of care applicable to ordinary negligence.

Defendant also cites State v. Stevens, 150 Vt. 251 (1988) for the proposition that, even if defendant's stopping was not the proximate cause of the accident, the State must prove—and the court must instruct—that it created a reasonable likelihood of injury to persons or property. Defendant's reliance is misplaced. Stevens was decided under a former version of § 1091(a) which prohibited the careless or negligent operation of a motor vehicle "in any manner to endanger or jeopardize the safety, life or property of a person." We held in Stevens that excessive speed alone may establish a violation of the statute where the speed is so great (103 miles per hour) that "there is a reasonable likelihood of injury to persons or property." Id. at 253-54 The current version of § 1091(a), applicable here, does not contain the element of endangering others. Accordingly, we find no error in the court's instruction.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice