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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2114**

In the Matter of the Welfare of:
J. O., Child.

**Filed May 12, 2014
Affirmed
Crippen, Judge***

Crow Wing County District Court
File No. 18-JV-13-3807
Hennepin County District Court
File No. 27-JV-13-3285

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Considered and decided by Smith, Presiding Judge; Peterson, Judge; and Crippen,
Judge.

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

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant J.O., a seventeen-year-old girl, was alleged delinquent and adjudicated guilty of third-degree criminal sexual conduct for having sex with N.B., a thirteen-year-old boy, in violation of Minn. Stat. § 609.344, subd. 1(b) (2012). Appellant pleaded not guilty by reason of mental illness. Appellant challenges her adjudication of guilt, arguing that she presented sufficient evidence to establish her mental-illness defense. Because the record includes sufficient evidence to support the district court's mental-illness finding, we affirm.

FACTS

In early April 2013, appellant was admitted to the child-adolescent mental health unit at Amplatz Children's Hospital at the University of Minnesota Medical Center after a period of increased seizure-like activity. Since early childhood, appellant has exhibited seizure-like episodes (pseudoseizures) which are considered to be responses to psychological factors or stress, rather than genuine epileptic episodes. Appellant also has exhibited disrupted attachment patterns, recurring behavioral outbursts and aggressive behavior, poor interpersonal boundaries, and dissociative tendencies. Appellant has been diagnosed with reactive attachment disorder, post-traumatic stress disorder, mood disorder not otherwise specified, conversion disorder (with pseudoseizures), and psychotic disorder not otherwise specified (symptoms currently resolved).

On April 11, 2013, shortly after 1:00 p.m., hospital staff discovered appellant and N.B. in a bathroom, naked and on the floor, engaging in sexual intercourse. Appellant

and N.B. were interviewed separately by hospital staff. Appellant reported that she and N.B. had both planned the encounter and that it was consensual. N.B. also reported that the encounter was planned and consensual. Both appellant and N.B. reported that they “liked each other” and that they had talked for several days before deciding to meet in the bathroom to have sex. N.B. reported that the bathroom they used usually is locked, but that he had asked hospital staff to open the door for him, and they never re-locked it. Appellant and N.B. arranged a plan in which N.B. would go into the unlocked bathroom and wait for appellant to follow. When appellant arrived at the bathroom door, she would give a “special knock” so N.B. would know it was her, and then the two of them would engage in sexual intercourse.

As planned, N.B. went to the bathroom and found the door unlocked. He waited for a few minutes for appellant to arrive, heard appellant give the “special knock,” and then let her in. They both got undressed, kissed, and touched each other. N.B. reported that he lay on the bathroom floor, appellant got on top of him, and then he and appellant engaged in sexual intercourse. N.B. and appellant had sexual intercourse for a minute or two, until a staff member entered the bathroom. N.B. and appellant jumped up, got dressed quickly, and they were then separated by staff. Hospital staff notified N.B.’s mother of the incident, who contacted the Minneapolis Police Department to press charges the same day.

In May 2013, the state brought a petition for delinquency, alleging that appellant had engaged in third-degree criminal sexual conduct, in violation of Minn. Stat.

§ 609.344, subd. 1(b) (complainant age 13 and actor more than 24 months older). The state also filed a motion for extended juvenile jurisdiction.

In June 2013, upon appellant's request, the court ordered examinations to determine whether appellant was competent to stand trial, pursuant to Minn. R. Juv. Delinq. P. 20.01, and to determine whether she may be held criminally liable, pursuant to Minn. R. Juv. Delinq. P. 20.02. The examiner's report concluded that appellant was competent to proceed, pursuant to Minn. R. Juv. Delinq. P. 20.01, but not criminally liable, pursuant to Minn. R. Juv. Delinq. P. 20.02. The state contested the examiner's opinion with respect to appellant's criminal liability, and the matter proceeded in a bifurcated court trial. Appellant waived her right to a contested EJJ hearing, waived her right to a jury trial, and agreed to proceed with a stipulated facts trial for guilt.

During the mental-illness phase of appellant's trial, the court heard testimony from one witness, the court-appointed examiner, Dr. Bruce Renken. The court also received into evidence Dr. Renken's written report and appellant's hospital records. Dr. Renken testified that, in his opinion, appellant was legally mentally ill at the time of the offense. Dr. Renken testified that appellant has "long-standing serious mental health issues which has place[d] her at risk for poor boundaries, especially poor sexual boundaries," and that, from April 6 until April 13, 2013, "she developed acute psychotic delusions," she "showed very little recognition of the reality of her circumstances," and "her behavior was quite out of control." Dr. Renken testified that "her ability to rationally consider her actions was extremely impaired, so much so that I don't believe it's appropriate to say that she could judge the wrongfulness of her actions" at the time of the offense. But Dr.

Renken also testified that “it was difficult” to come to that determination and that it was “a close call” because “[appellant] and the alleged victim both stated that they had planned the incident. And it appears that they did plan the incident and that they knew that they needed to deceive staff in order to carry this out. So on the face of it that would suggest responsibility.”

On cross examination, Dr. Renken testified that although appellant was experiencing acute psychotic delusions during her stay at the child-adolescent mental health unit, “there were some times when she was able to communicate and to show rational thought while she was staying at the hospital,” that “sometimes she was more lucid than others,” and that “the level of impairment, of her ability to interact and to engage in activities, varied.” Dr. Renken also acknowledged that appellant “tried to escape from staff, after the incident was discovered,” that appellant had told staff “they had planned the encounter,” “that it was consensual,” and “that it was their decision.”

The district court adjudicated appellant guilty of third-degree criminal sexual conduct, in violation of Minn. Stat. § 609.344, subd. 1(b). The district court also found that appellant had failed to establish her mental-illness defense. The district court found that appellant suffered from delusions and impaired reasoning, but that she had not proven by a preponderance of the evidence that she did not know her act was wrong at the time of the offense. After adjudicating that appellant committed third-degree criminal sexual conduct, the district court imposed a stayed sentence of 36 months. This appeal follows.

DECISION

Appellant argues that the district court clearly erred by ruling that she had failed to establish her mental-illness defense. Specifically, appellant argues that the evidence presented during the second stage of trial established by a preponderance of evidence that her mental illness prevented her from knowing her sexual conduct with N.B. was wrong.

In Minnesota, a defendant seeking to establish a mental-illness defense must meet the *M'Naghten* standard codified at Minn. Stat. § 611.026 (2012). *Bruestle v. State*, 719 N.W.2d 698, 704 (Minn. 2006). That standard requires proof of mental illness and that “the person was laboring under such a defect of reason” because of the mental illness “as not to know the nature of the act, or that it was wrong.” Minn. Stat. § 611.026. A defendant must prove by a preponderance of the evidence that she met this standard at the time of committing the crime. *State v. Odell*, 676 N.W.2d 646, 648 (Minn. 2004).

When reviewing whether a defendant met her burden to prove mental illness, this court conducts “a rigorous review of the record to determine whether the evidence, direct and circumstantial, viewed most favorably to support a finding of guilt, was sufficient to permit the [district] court to reach its conclusion.” *Id.* (quotation omitted). “[T]he issue of legal mental illness is a question for the finder of fact to resolve.” *State v. Brom*, 463 N.W.2d 758, 764 (Minn. 1990). Accordingly, this court defers to the fact-finder’s determination as to the appropriate weight to give to various testimony. *State v. Peterson*, 764 N.W.2d 816, 822-23 (Minn. 2009); *see also DeMars v. State*, 352 N.W.2d 13, 16 (Minn. 1984) (holding that the fact-finder is not bound by expert testimony that

defendant was legally mentally ill because evidence of defendant's conduct supported a determination that he knew the nature of his act and that it was wrong).

In this case, the district court carefully considered Dr. Renken's testimony and report, in addition to appellant's hospital records, and determined the appropriate weight to be given to each piece of evidence. In concluding that appellant knew her act was wrong at the time of the offense, the district court rejected Dr. Renken's ultimate conclusion and instead relied on the evidence that appellant "planned in secret, sought to keep staff members from finding out about it, and was distraught when caught," and "showed signs of lucid thought and planning while participating in group activities and speaking with the victim just hours before the incident."

The only question on appeal is whether there is sufficient evidence in the record to support the district court's finding. *See, e.g., Odell*, 676 N.W.2d at 648-49; *Brom*, 463 N.W.2d at 764-65; *DeMars*, 352 N.W.2d at 16. Here, the police reports, appellant's hospital records, and Dr. Renken's testimony indicate that appellant and N.B. planned the event in secret, that she tried to keep staff members from finding out about it, and that she "tried to escape" when caught. In addition, appellant's hospital records and Dr. Renken's testimony indicate that, throughout her stay at the hospital, there were periods of time when appellant was lucid, able to communicate and to show rational thought, and able to interact and engage in activities. Viewing the evidence in the light most favorable to support the district court's weighing of the evidence, there is sufficient evidence to support the court's determination that appellant knew the nature of her act and that it was

wrong. Accordingly, the district court did not err in concluding that appellant is not relieved of criminal liability by her mental illness.

Affirmed.