STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2234

State of Minnesota,
Respondent,

vs.

Scott Allan Meredith,
Appellant

Filed April 8, 2008
Affirmed
Collins, Judge[*]

Scott County District Court
File No. 70-CR-05-22859

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Patrick Ciliberto, Scott County Attorney, Todd Zettler, Special Assistant County Attorney, Government Center JC340, 200 Fourth Avenue West, Shakopee, MN 55379 (for respondent)

Kristine A. Anderson, Loftness & Anderson, P.A., 327 Marschall Road, Suite 370, Shakopee, MN 55379 (for appellant)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Collins, Judge.

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

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appellant challenges the district court's imposition of sex-offender-based sentencing provisions that required him to register as a predatory sex offender and undergo a psychosexual evaluation. He contends that the imposition of these conditions was improper because (1) his conviction of child endangerment did not arise out of the same set of circumstances as a statutorily enumerated offense, and (2) the predatory-offender-registration and assessment statutes are unconstitutional as applied to him. Appellant also challenges the sufficiency of the evidence supporting his conviction of child endangerment. We affirm.

FACTS

On August 7, 2006, appellant Scott Meredith was charged by amended complaint with three counts of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(b), (g), (h)(iii) (2004); fifth-degree criminal sexual conduct in violation of Minn. Stat. § 609.3451, subd. 1(2) (2004); and child endangerment in violation of Minn. Stat. § 609.378, subd. 1(b)(1) (2004). The charges stemmed from appellant's alleged sexual abuse of his teenage daughter, K.M. Appellant pleaded not guilty, and a jury trial was held.

K.M. testified that appellant began abusing her in April 2005, when she was 12 years old. According to K.M., over the course of several months, appellant engaged in various inappropriate sexual conduct toward her that included (1) rubbing, squeezing, or cupping her breasts both on top of and under her clothing; (2) pulling her tank top down to reveal her breasts; (3) placing his hand partially down the front of her pants; (4) unsnapping her bra

while giving her a hug; and (5) exposing his penis to her. K.M. also testified that appellant regularly entered her basement bathroom while she was showering and would either open the shower door and peer at her or throw water over the top of the door.

The described conduct often arose out of horseplay between K.M. and appellant. K.M. acknowledged that appellant had always been a "physically affectionate" father who often engaged in boisterous jokes with her. But she testified that as she reached adolescence, appellant's behavior made her feel uncomfortable and she asked him to stop. Appellant would apologize and refrain from this conduct for a short period, but it eventually reoccurred. K.M. testified that the abuse only ceased after she reported it to her mother.

K.M.'s mother testified and recounted that she once witnessed K.M. crying and screaming as she ran away from appellant after he had entered the bathroom while she was showering. The mother confronted appellant about the incident and he denied touching K.M., but admitted that he had been pouring water over the shower door while K.M. was bathing for "a while." Appellant said he believed "it was just a joke between [him and K.M]."

At the close of trial, appellant was convicted of child endangerment, but acquitted of all other charges. The district court ordered a presentence investigation to aid in determining an appropriate sentence. Among other penalties and conditions, the ensuing report recommended that appellant submit to a psychosexual evaluation and register as a predatory offender.

At the sentencing hearing, appellant challenged the court's authority to impose these conditions. He argued that the predatory-registration requirements do not apply to

him because it is impossible to extrapolate whether his conviction for child endangerment arose out of one of the enumerated offenses identified in Minn. Stat. § 243.166, subd. 1b (Supp. 2005). He also contended that he could not be required to undergo a psychosexual evaluation because he was not convicted of a sex offense. The district court rejected these arguments; and, as conditions of a stayed sentence and probation, the district court ordered appellant to undergo a psychosexual evaluation, provide a DNA sample, and register as a predatory offender. This appeal followed.

D E C I S I O N

I.

Appellant contends that his child-endangerment conviction does not require him to register as a predatory offender under Minn. Stat. § 243.166, subd. 1b (Supp. 2005). The interpretation of the predatory-sex-offender registration statute, like interpretation of all statutes, is a question of law reviewed de novo. *Boutin v. LaFleur*, 591 N.W.2d 711, 714 (Minn. 1999), *cert. denied*, 528 U.S. 973 (1999).

Minn. Stat. § 243.166, subd. 1b, provides in pertinent part:

> (a) A person shall register under this section if:
>
> (1) the person was charged with . . . a felony violation of . . . any of the following, and convicted of . . . that offense *or another offense arising out of the same set of circumstances*:
>
> . . . .
>
> (iii) criminal sexual conduct under section . . . 609.343 . . . .

(Emphasis added.) Appellant was not convicted of an enumerated offense. Thus, he could be compelled to register only if his child endangerment conviction arose out of the same set of circumstances as the enumerated charges of second-degree criminal sexual conduct. *See id.*

Appellant argues that the circumstances of his conviction are disparate from other cases where a defendant has been required to register based on a nexus between a charged enumerated offense and the offense of conviction because his conviction resulted from a jury verdict, not a guilty plea. *See, e.g.*, *Boutin*, 591 N.W.2d at 715-16 (requiring registration after the defendant pleaded guilty to an offense that arose out of the same circumstances as an enumerated charge). He claims that this distinction is important because the factual allegations underlying the multiple charges against him "spanned a significant period of time and fell into three separate categories" of conduct. Absent his admission or a formal finding by a fact-finder, appellant argues that it is dubious whether the conduct that resulted in his conviction was sufficiently related in time and place to the conduct that formed the basis for the enumerated counts. He also urges us to infer that his conviction did not arise out of the same set of circumstances because he was acquitted of all offenses requiring sexual intent.

We disagree. In our view, appellant's interpretations are inconsistent with the plain language of the statute. While it is true that only certain allegations contained in the complaint would support a conviction of second-degree criminal sexual conduct, the "same set of circumstances" is not limited to individual events that tend to prove the elements of one or more of the enumerated charges. Instead, we must look to the entire

course of events described in the complaint to determine whether the factual basis for the offense of which appellant is convicted occurred during the course of events described in the complaint, and whether the charged enumerated offenses and the offense of conviction are united in time and place.

We acknowledge that, at some point, the connection between different types of conduct identified in the same complaint becomes so temporally attenuated that the conviction may not be said to arise out of the same set of circumstances as an enumerated offense. But that is not the present case. Here, the complaint details the facts of an ongoing, interconnected pattern of conduct having sexual overtones engaged in by appellant, involving K.M.; all alleged to have occurred during April through September, 2005.

Moreover, the fact that appellant was acquitted of the criminal-sexual-conduct charges does not operate to extinguish the connection between the alleged conduct that provided probable cause for the enumerated charges and the conduct supporting appellant's conviction. This argument confuses the appropriate scope of our analysis. Our focus is not on the outcome of each charged offense, but whether the complaint as a whole identifies conduct that is sufficiently united in time and place. Here, we are satisfied that the conduct alleged arose out of the same set of circumstances because it all involved the same victim and occurred within the same time period, and it was behavior generally characterized as sexual in nature. Therefore, the district court properly ruled that appellant was subject to predatory-offender registration.

II.

Appellant contends that the district court lacked the authority to require him to undergo a psychosexual evaluation. The district court "has great discretion in the imposition of a sentence and the reviewing court cannot substitute its judgment for that of the district court." *State v. Murphy*, 545 N.W.2d 909, 916 (Minn. 1996) (citing *Steeves v. State*, 287 Minn. 476, 480, 178 N.W.2d 723, 725 (1970)). Appellant's argument is premised on Minn. Stat. § 609.3457, subd. 1 (2004), which provides that "[w]hen a person is convicted of a sex offense the court shall order an independent professional assessment of the offender's need for sex offender treatment."

Appellant's emphasis on the statute is misplaced. It is apparent from our review of the record that the district court ordered the psychosexual evaluation as a condition of probation rather than pursuant to Minn. Stat. § 609.3457. Courts are permitted to stay imposition of a sentence and "place the defendant on probation with or without supervision and on the terms the court prescribes, including intermediate sanctions when practicable." Minn. Stat. § 609.135, subd. 1(a)(2) (2004). Intermediate sanctions "include [] but [are] not limited to . . . mental health treatment or counseling . . . ." Minn. Stat. § 609.135, subd. 1(b) (2004). "Generally, conditions of probation must be reasonably related to the purposes of sentencing and must not be unduly restrictive of the probationer's liberty or autonomy." *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989).

Here, the district court stayed imposition of appellant's sentence but placed appellant on probation and ordered him to undergo a psychosexual evaluation because the

court was concerned about public safety after being informed that appellant admitted to sexual contact with K.M. during the presentence investigation. Therefore, the psychosexual evaluation was ordered as an intermediate sanction as a proper exercise of the district court's discretion.

III.

Appellant asserts for the first time on appeal that the predatory-offender registration statute is unconstitutional as applied to him.[1] Constitutional challenges to a statute generally may not be raised for the first time on appeal. *State v. Frazier*, 649 N.W.2d 828, 839 (Minn. 2002). But in the interests of justice we will address them here. *See* Minn. R. Civ. App. P. 103.04

The constitutionality of a statute presents an issue of law reviewed de novo. *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). Minnesota statutes are presumed constitutional. *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000). A party challenging the constitutionality of a statute bears the burden of proving a violation of a constitutional protection beyond a reasonable doubt. *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989).

[1] Appellant also challenges the constitutionality of the sex-offender assessment statute, Minn. Stat. § 609.3457, subd. 1, on various grounds. But because we have already concluded that the psychosexual evaluation was not ordered pursuant to the statute, we decline to address those arguments.

A. Sixth Amendment

Citing *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000), appellant argues that Minn. Stat. § 243.166, subd. 1b, violates his Sixth Amendment right to a jury trial because he is required to register as a predatory offender without a factual finding that his conviction "arose out of" the acquitted charges.

Under *Apprendi*, "any fact that increases the *penalty* for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490, 120 S. Ct. at 2362-63 (emphasis added). Similarly, the Supreme Court held in *Blakely* that the statutory maximum sentence a judge may impose is the maximum sentence permitted without the necessity of additional factual findings. 542 U.S. at 303-04, 124 S. Ct. at 2537 (2004).

Here, the principles articulated in *Apprendi* and *Blakely* do not apply to invalidate the statute at issue or its application to appellant. The supreme court has ruled that section 243.166 is not punitive, but rather a civil, regulatory law enacted for the purpose of "creat[ing] an offender registry to assist law enforcement with investigations." *Boutin*, 591 N.W.2d at 717. Accordingly, the statute is not violative of *Apprendi* or *Blakely* because the registration requirement does not implicate punishment.

B. Substantive and Procedural Due Process

Appellant argues that Minn. Stat. § 243.166, subd. 1b, violates substantive due process by infringing on his fundamental right to a presumption of innocence because the

statute presumes he is guilty of an enumerated predatory offense even though he was not convicted of such an offense.

This argument is unpersuasive. The supreme court examined whether Minn. Stat. § 243.166 violates a defendant's fundamental right to the presumption of innocence in *Boutin*. *Id.* at 716-18. The court held that the presumption of innocence does not attach because the statute is a civil, regulatory law. *Id.* at 717. Therefore, the statute need only satisfy the rational-basis test. *Id.* The court concluded that the statute passes constitutional muster because it is "rationally related to the legitimate state interest of solving crimes." *Id.* at 718. Thus, section 243.166 comports with the requirements of substantive due process.

Appellant also claims that his procedural-due-process rights were violated when he was required to register as a predatory offender. In order to successfully challenge state action as violative of procedural due process, an appellant must first demonstrate that a protectable liberty interest is at stake. *See In re Conservatorship of Foster*, 547 N.W.2d 81, 85 (Minn. 1996). A liberty interest is implicated when a loss of reputation is coupled with the loss of some other tangible interest. *Id*.

Appellant argues that his liberty interests have been violated because he has suffered a loss of reputation as a result of being compelled to register as a predatory offender. But this argument was also rejected in *Boutin*. 591 N.W.2d at 718-19. Although the *Boutin* court acknowledged that being labeled a predatory offender is injurious to one's reputation, it ruled that requiring registration does not violate procedural due process because a challenge based on harm to reputation alone did not

implicate a sufficient liberty interest under the stigma-plus test. *Id.* at 718. Thus, appellant's due-process argument is likewise unavailing.

IV.

Appellant argues that the evidence presented at trial was insufficient to support his conviction of child endangerment. In considering a claim of insufficient evidence, this court's review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction," is sufficient to allow the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that the jury believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *State v. Alton*, 432 N.W. 2d 754, 756 (Minn. 1988).

In order to convict appellant of child endangerment, the state had the burden of proving, beyond a reasonable doubt, that appellant "intentionally or recklessly caus[ed] or permit[ted] [K.M.] to be placed in a situation likely to substantially harm [K.M.'s] physical, mental, or emotional health . . . ." Minn. Stat. § 609.378, subd. 1(b)(1) (Supp. 2005). "Likely" means "more likely than not." *State v. Tice*, 686 N.W.2d 351, 355 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004).

Appellant argues that there is no evidence that he acted in a manner that physically, mentally, or emotionally harmed K.M. In support of his argument, appellant contends that

(1) his presence in the bathroom while K.M. was showering involved playful interaction that was welcomed by K.M.; (2) the exposure of his penis to K.M. did not involve a lewd display but was instead predicated on a joke; and (3) any physical touching between appellant and K.M. occurred while they "engaged in joking or affectionate behavior that was misinterpreted by investigators."

While there is evidence that some of the described interaction between appellant and K.M. was jocular and for a time acceptable to K.M., there is nonetheless ample evidence in the record to support the conviction. K.M. testified that appellant invaded her privacy by entering the bathroom and opening the door of the shower stall to peer at her. Appellant would enter her bedroom and rub, squeeze, or cup her breasts both on top of and under her clothing and, on one occasion, placed his hand partially down the front of her pants. K.M. also testified that appellant pulled her tank top down to reveal her breasts, unsnapped her bra while giving her a hug, and exposed his penis to her. Appellant's behavior made K.M. feel uncomfortable, and she asked him to stop. Appellant would apologize and refrain from such conduct for a short period, but it would eventually resume.

Assuming the jury believed K.M.'s testimony, appellant's behavior supports the verdict. The physical contact and invasion of privacy that occurred, whether acquiesced to by K.M. or not, is of a nature that is doubtless detrimental to the relationship between a parent and child and could foreseeably lead to long-term psychological and emotional consequences for a vulnerable adolescent such as K.M. Reviewing the evidence in a light

most favorable to the verdict, we conclude that the state presented sufficient evidence for a jury to find appellant guilty of child endangerment.

Affirmed.