STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1762

State of Minnesota,
Respondent,

vs.

Pam Lee Marquardt,
Appellant.

Filed August 26, 2008
Affirmed
Worke, Judge

Brown County District Court
File No. VB-07-881

Hugh T. Nierengarten, New Ulm City Attorney, P.O. Box 214, New Ulm, MN 56073 (for respondent)

Philip J. Elbert, P.O. Box 26, St. Peter, MN 56082 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Chief Judge; and Worke, Judge.

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

WORKE, Judge

On appeal from her conviction of and sentence for underage consumption of alcohol, appellant argues that the district court erred in (1) admitting a birth certificate into evidence because it violated the Confrontation Clause, and (2) giving her a probationary sentence when the customary sentence was a fine. We affirm.

D E C I S I O N

Admission of Birth Certificate

Appellant Pam Lee Marquardt argues that the district court erred in admitting a birth certificate into evidence because it violated the Confrontation Clause. Generally, absent a clear abuse of discretion, this court will not reverse a district court's evidentiary ruling. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006). However, this court reviews de novo whether the admission of evidence violates a criminal defendant's rights under the Sixth Amendment's Confrontation Clause. *Id.*

Appellant contends that the Confrontation Clause protection applies to a birth certificate offered into evidence when it is testimonial and offered to prove an element of the offense—here, the offense is underage consumption and the birth certificate would show appellant's age. The right to confront one's accuser is guaranteed under the United States and Minnesota Constitutions. U.S. Const. amend VI; Minn. Const. art. 1, § 6. The Confrontation Clause bars admission of out-of-court testimonial statements unless the declarant is unavailable to testify and the defendant had a prior opportunity for cross-examination. *Crawford v. Washington*, 541 U.S. 36, 68, 124 S. Ct. 1354, 1374 (2004).

The admissibility of a birth record is controlled by the rules of evidence. Under the rules, "[r]ecords or data compilations, in any form, of *births*, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law[,]" "are not excluded by the hearsay rule, even though the declarant is available as a witness[.]" Minn. R. Evid. 803(9) (emphasis added). Thus, the rule created a hearsay

exception for birth records, which are generated pursuant to law. Additionally, extrinsic evidence of authenticity is not required for

> [a] copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Legislative Act or rule prescribed by the Supreme Court pursuant to statutory authority.

Minn. R. Evid. 902(4). Therefore, the properly certified official public record—the birth certificate—is self-authenticating and does not require additional testimonial foundation. Further, in holding that a warrant of deportation is nontestimonial, the Ninth Circuit compared it to a birth certificate and stated:

> the warrant of deportation is no different than a birth certificate or any other public record which constitutes the routine cataloguing of an unambiguous factual matter. Surely *Crawford* did not mean to require the doctor or nurse who actually filled out a birth certificate to testify as to its veracity.

United States v. Bahena-Cardenas, 411 F.3d 1067, 1075 (9th Cir. 2005); *see also United States v. Torres-Villalobos*, 487 F.3d 607, 613 (8th Cir. 2007) (agreeing that warrants of deportation are not "testimonial" evidence that implicate the Confrontation Clause).

Here, in May 2007, an officer responded to a report of a loud-music disturbance. The officer believed that appellant was under the influence of alcohol and cited her for underage consumption. At trial, a copy of a certified birth certificate was admitted into evidence showing that Pam Lee Marquardt was born on January 25, 1988, in the city of New Ulm. The district court concluded that the chance that two persons named Pam Lee

Marquardt, born on the same date in New Ulm, is "virtually nil." The court found that the birth certificate established beyond a reasonable doubt that appellant was 19 years of age on the date of the offense. This certified birth certificate was not hearsay, even though appellant or her parents could have been brought forth to testify as to what date she was born. And the birth certificate, prepared as a public record without any anticipation that it would be used in litigation was not a "testimonial" statement, therefore, not subject to the *Crawford* exclusion. The availability of the declarant is not relevant to the admissibility of this type of record. The district court did not err in admitting the birth certificate into evidence.

Sentence

Appellant also argues that the district court erred in giving her a probationary sentence when the customary sentence would have been a fine. Appellant contends that every other defendant in her position would have only had to pay a fine upon a plea of guilty, but she received a harsher sentence for having a trial. This court reviews a sentence imposed or stayed by a district court under an abuse-of-discretion standard, *State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000), to determine "whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court." Minn. Stat. § 244.11, subd. 2(b) (2006).

There is nothing in the record showing that other individuals in appellant's position only paid a fine upon a plea of guilty. Even if appellant could show disparities in the imposition of sentences, a defendant is not entitled to receive the same sentence as

another convicted of the same offense. *State v. Burgess*, 319 N.W.2d 418, 421 (Minn. 1982). And the determination of the terms of a probationary sentence is discretionary with the district court. *State v. Sutherlin*, 341 N.W.2d 303, 305 (Minn. App. 1983). The district court inquired into whether the parties sought a presentence investigation, which was not ordered. The district court then reviewed appellant's criminal history, which included another underage consumption, possession, careless driving, and speeding. The state also requested that the district court consider that appellant was a resident of the house where the party occurred and where minors were consuming alcohol and that appellant failed to appear at the initial sentencing hearing. The district court did not abuse its discretion in imposing a probationary sentence.

Affirmed.