STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0925

State of Minnesota,
Respondent,

vs.

John Michael Thompson,
Appellant.

Filed May 12, 2009
Affirmed
Minge, Judge

Clay County District Court
File No. 14-K5-06-001353

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Brian J. Melton, Clay County Attorney, Heidi Davies, Chief Assistant County Attorney, Clay County Courthouse, 807 11th Street North, P.O. Box 280, Moorhead, MN 56561-0280 (for respondent)

Mark D. Nyvold, 332 Minnesota Street, Suite W-1610, St. Paul, MN 55101 (for appellant)

Considered and decided by Stauber, Presiding Judge; Minge, Judge; and Larkin, Judge.

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

MINGE, Judge

Appellant John Michael Thompson challenges his gross-misdemeanor conviction of hiring an adult for prostitution, arguing that (1) a penalty increase from misdemeanor to gross misdemeanor under Minn. Stat. § 609.3242 (2004) requires proof that he knew he was, or that he intended to be, in a "park zone" and not merely proof that the offense occurred in a park zone; (2) the right to a jury recognized in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004) applies to proof of this enhancement factor; and (3) the district court abused its discretion by limiting the scope of closing argument to prohibit assertions that appellant did not know he was in a park zone when the hiring occurred. We affirm.

D E C I S I O N

I.

The first issue is whether Minn. Stat. § 609.3242 requires the state to prove that appellant knew he was, or intended to be, in a park zone when hiring an adult for prostitution. Whether a statute has been properly construed is a question of law subject to de novo review. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996).

Intentionally hiring an adult to engage in prostitution is a misdemeanor offense. Minn. Stat. § 609.324, subd. 3(1) (2004). However, any person who violates section 609.324, subdivision 3(1) "while in a . . . park zone" is guilty of a gross misdemeanor. Minn. Stat. § 609.3242, subd. 2(3) (2004). Nothing in section 609.3242 explicitly

requires that a person realize that he or she is in a park zone to increase the penalty to a gross misdemeanor.

Where the plain language of a statute that increases the punishment for a crime includes no requirement of knowledge or intent, Minnesota courts will impose such a mens rea requirement only when the underlying activity is not generally illegal. *Compare State v. Benniefield*, 678 N.W.2d 42, 49 (Minn. 2004) (holding no implied mens rea as to location in Minn. Stat. § 152.023, subd. 2(4) (2002), which increases penalty for possession of illegal drugs when possessor is within a school zone, because possession of illegal drugs is generally a crime everywhere in the state) *with State v. Al-Naseer*, 734 N.W.2d 679, 686 (Minn. 2007) (applying distinctions established in *Benniefield* and *C.R.M.* to read into the statute a mens rea requirement that a driver knew he caused an accident before he could be convicted of failing to stop at the scene, since failing to stop at an accident site is not generally illegal) *and In re Welfare of C.R.M.*, 611 N.W.2d 802, 810 (Minn. 2000) (construing implied mens rea in statute criminalizing possession of knife on school grounds because possession of knife is not generally illegal); *see also State v. Skapyak*, 702 N.W.2d 331, 334 (Minn. App. 2005) (applying *Benniefield* to uphold punishment enhancement for illegal drug sale to minor where statute's plain language did not require knowledge of purchaser's age and such sale is illegal regardless of the purchaser's age), *review denied* (Minn. Oct. 18, 2005).

Because prostitution-related conduct is prohibited generally, because the plain language of section 609.3242 enhances the penalty for prostitution-related offenses in school and park zones without reference to whether the accused intends to be or knows

he is in such a zone, and because the caselaw establishes that proof of knowledge or intent is not required when conduct is generally prohibited, we conclude that the district court did not erroneously construe the statute.

II.

The second issue is whether increasing appellant's penalty based on his presence in a park zone, without requiring proof that he knew or intended to be so located, violates his constitutional rights under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004).[1]

Blakely held that the right to a jury trial contained in the Sixth Amendment accords defendant the right to have a jury determine all the factors which increase the penalty for his crime. 542 U.S. at 303-05, 124 S. Ct. at 2537-38. Where a defendant has invoked his right to a jury trial, it is unconstitutional for a judge to find aggravating factors which increase the defendant's penalty. *Id.*

In this case, the district court interpreted section 609.3242 as requiring proof that the illegal conduct of hiring for sex occurred in a park zone. It was an element of the crime, and the jury was so instructed. Because the jury was properly instructed and found that appellant was in a park zone, *Blakely* was satisfied.

Appellant appears to argue that *Blakely* mandates that a mens rea element be read into section 609.3242. This is incorrect. *Blakely* has nothing to say about the

[1] Appellant made no argument pursuant to *Blakely* to the district court. We generally will not decide issues not raised before the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). The Minnesota Supreme Court has held, however, that a defendant's failure to object on *Blakely* grounds at the district court does not prohibit appellate review of an alleged *Blakely* error. *State v. Dettman*, 719 N.W.2d 644, 648 (Minn. 2006).

constitutionality of strict-liability penalty enhancements. *Blakely* establishes only that a defendant has a constitutional right to have a jury find whether the factual requirements that are a basis for a sentence enhancement have been met. As previously concluded, intent or knowledge is not a factor in a section 609.3242 enhancement.

III.

The final issue is whether the district court erred by prohibiting appellant's counsel from arguing in closing that appellant did not know he was in or intended to be in a park zone when the crime occurred. "We review a district court's rulings regarding the scope of [closing] arguments for abuse of discretion." *State v. Romine*, 757 N.W.2d 884, 892 (Minn. App. 2008) (citing *State v. Davidson*, 351 N.W.2d 8, 13 (Minn. 1984)), *review denied* (Minn. Feb. 17, 2009). In putting limits on the scope of final argument, a district court should recognize that counsel has "the right to present to the jury all legitimate arguments on the evidence, to analyze and explain the evidence, and to present all proper inferences to be drawn therefrom." *State v. Wahlberg*, 296 N.W.2d 408, 419 (Minn. 1980). Closing arguments may draw "all reasonable inferences from the evidence in the record, but cannot intentionally misstate the evidence or mislead the jury as to the inferences it may draw." *Davidson*, 351 N.W.2d at 12.

In this case, appellant's knowledge or ignorance of his presence in a park zone was irrelevant to the elements of the charged offenses. Because the argument that appellant did not know he was in a park zone might have misled the jury into believing that this fact was somehow relevant or exculpatory, the decision to limit closing argument

only prevented counsel from misleading the jury as to the inferences it may draw. Consequently, the district court did not abuse its discretion by limiting defense counsel's closing argument.

Affirmed.

Dated: