STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0237, A09-253

State of Minnesota,
Appellant (A09-237),
Respondent (A09-253),

vs.

Lawrence Edward Schmidt,
Respondent (A09-237),
Appellant (A09-253).

Filed March 2, 2010
Affirmed in part, reversed in part, and remanded
Minge, Judge

Lake County District Court
File No. 38-CR-07-190, 38-K4-04-0063

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Russell Conrow, Lake County Attorney, Laura M. Auron, Assistant County Attorney, Two Harbors, Minnesota (for State of Minnesota)

Marie L. Wolf, Interim Chief Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for Lawrence Schmidt)

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

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

MINGE, Judge

In one of these consolidated appeals, Lawrence Edward Schmidt argues that the evidence was insufficient to sustain his conviction of first-degree criminal sexual conduct. The other appeal is brought by the state, which argues that the district court erred in awarding Schmidt jail credit for time he was incarcerated in Wisconsin on a drunk-driving conviction. Because there was sufficient evidence, we affirm the conviction. But because the Wisconsin incarceration was not solely in connection with the Minnesota offense, we reverse the award of jail credit for time served in Wisconsin and remand.

FACTS

Schmidt's daughter C.S.C. was born in 1992. Schmidt and C.S.C.'s mother never married. C.S.C. lived with her mother until 2001, when social services removed her because of neglect and allegations of sexual abuse against her mother's boyfriend. Initially, C.S.C. was in foster care. In June 2002, Schmidt was awarded custody of C.S.C., and she went to live with him and his family in Duluth.

At first, C.S.C.'s transition to her new home went smoothly. Then, conflict between C.S.C. and Schmidt's wife developed and intensified to the point that C.S.C. went to stay with Schmidt in an apartment in Beaver Bay in November 2003. Schmidt had rented the apartment because he was working on a construction project in Beaver Bay.

In December 2003, C.S.C. told police that Schmidt was sexually abusing her at his apartment in Beaver Bay. Schmidt denied the allegations. On February 11, 2004, Schmidt was charged with first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(g) (2002).

While Schmidt was out on bail from this Minnesota charge, he was arrested for driving while intoxicated (DWI) in Wisconsin. While in jail in Wisconsin incident to the DWI, the Minnesota and Wisconsin prosecutions proceeded. Ultimately, a Wisconsin court sentenced Schmidt to two years of imprisonment in that state. On December 15, 2004, Schmidt's counsel informed the Minnesota prosecutor that he planned to ask the district court to dismiss the Minnesota complaint because the Wisconsin prison would not guarantee unmonitored attorney interviews or contact as needed to prepare Schmidt's defense. The Minnesota prosecutor voluntarily dismissed the case on December 20, 2004.

Approximately ten months after being released from prison in Wisconsin, Schmidt was recharged in Minnesota with first-degree criminal sexual conduct. After a bench trial in May 2008, the district court found him guilty. In November 2008, the district court sentenced him to the presumptive 144-month term, but gave him 760 days of jail credit for the time he was held and served in Wisconsin on his DWI charge. These appeals follow.

D E C I S I O N

I.

The first issue is whether the evidence was sufficient to sustain Schmidt's conviction of first-degree criminal sexual conduct. When sufficiency of the evidence is appealed, our review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This standard of review applies in bench trials. *State v. Whitley*, 682 N.W.2d 691, 694-95 (Minn. App. 2004). "A defendant bears a heavy burden to overturn a jury verdict." *State v. Vick*, 632 N.W.2d 676, 690 (Minn. 2001). The reviewing court must "assume the jury believed the state's witnesses and disbelieved any contrary evidence." *State v. Bias*, 419 N.W.2d, 480, 484 (Minn. 1988). If the factfinder could reasonably have found the defendant guilty beyond a reasonable doubt, the verdict will not be reversed. *State v. Berry*, 484 N.W.2d 14, 19 (Minn. 1992).

Inconsistencies in the prosecution's case do not require reversal. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). Numerous courts have held the evidence sufficient to sustain convictions for sexual contact with minors—including criminal sexual conduct in the first degree—despite inconsistencies in the minors' testimony. *State v. Reichenberger*, 289 Minn. 75, 77-80, 182 N.W.2d 692, 694-95 (1970) (affirming a conviction of carnal knowledge of a child despite prior inconsistent statements by the victim about whether sex occurred); *State v. Erickson*, 454 N.W.2d 624, 629 (Minn. App. 1990) (affirming a conviction of first-degree criminal sexual conduct despite the victim's

story of the sexual assaults changing over time), *review denied* (Minn. May 23, 1990); *State v. Blair*, 402 N.W.2d 154, 158 (Minn. App. 1987) (affirming convictions of first- and second-degree criminal sexual conduct despite an inconsistency in the victim's statements of how many times she was abused). A victim's testimony of sexual abuse is sufficient evidence to satisfy the elements of first-degree criminal sexual conduct. *See Reichenberger*, 289 Minn. at 79, 182 N.W.2d at 694-95 (holding that "there is ample direct testimony from the [victim] to convict defendant of [carnal knowledge of a child]," despite prior inconsistent statements by the victim about whether sex occurred).

This case turns on credibility. C.S.C. testified that the Schmidt sexually abused her on two occasions in 2003; Schmidt denied this assertion. The district court resolved this conflict by finding that C.S.C. was credible and Schmidt was not. On this basis alone, the evidence was sufficient to convict Schmidt.

Schmidt argues that C.S.C.'s complaints and testimony were not credible because she had a motive to make up these allegations, because the police interview was improperly conducted, and because C.S.C.'s statements were inconsistent and uncorroborated. Although there were inconsistencies among C.S.C.'s first interview, her second interview, and her trial testimony, the factfinder considered the inconsistencies and still credited her testimony about sexual abuse. We note that C.S.C. consistently stated that Schmidt assaulted her on two occasions at about 9:00 or 9:30 in the evening at his apartment in Beaver Bay.

Schmidt argues that the "interests of justice" require that the conviction be reversed because poor interviewing techniques coupled with C.S.C.'s inconsistent

statements "leave grave doubts" about his guilt. "[O]rdinarily when a prosecution has been fairly tried, [appellate courts] will not reverse." *State v. Housley*, 322 N.W.2d 746, 751 (Minn. 1982). Here, we note that C.S.C. testified that prior to trial she did not review police reports, statements she made to police, or video of such statements and that she testified nearly four and one-half years after making such statements to police. This minimized the risk that poor interviews induced false testimony from C.S.C. The assertion that C.S.C.'s testimony is "questionable" and that "grave doubts" about Schmidt's guilt remain ignores the district court's findings regarding consistency and credibility. The district court addressed the contradictions between Schmidt's and C.S.C.'s testimony, the inconsistencies in C.S.C.'s testimony, and the arguments about the motive of C.S.C. to make up the allegations and concluded that they did not establish reasonable doubt. Because the evidence is sufficient to support the district court's conclusions about credibility, the interests of justice do not require reversal.

Schmidt further argues that C.S.C.'s allegations are not corroborated. Minnesota law provides that corroboration is not required in criminal-sexual-conduct cases. Minn. Stat. § 609.347, subd. 1 (2002). And caselaw only requires corroboration if the evidence would otherwise be insufficient. *Blair*, 402 N.W.2d at 158 (citing *State v. Myers*, 359 N.W.2d 604, 608 (Minn. 1984)). In *Blair*, this court held that corroboration was not required because the victim's positive testimony of sexual abuse, which the factfinder "apparently accepted," was sufficient to sustain the convictions. *Id.* Corroboration is unnecessary here because C.S.C.'s testimony of sexual abuse, which the district court believed, is also sufficient to sustain the convictions. Regardless, we note that

corroborating evidence can include testimony by others about the emotional state of the victim when the abuse is reported. *State v. Reinke*, 343 N.W.2d 660, 662 (Minn. 1984). Here, both the first adult that C.S.C. told about the abuse and the officer who interviewed her testified that C.S.C. cried and became visibly upset when recounting the abuse. This reaction of C.S.C. does provide some corroboration. In sum, we affirm Schmidt's conviction.

II.

The state's appeal raises the issue of whether the district court erred in granting Schmidt jail credit for the time he was confined in Wisconsin on the DWI charge. A defendant has the burden to establish entitlement to jail credit. *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). A district court does not have discretion in granting jail credit. *Id.* When a district court sentences a defendant, it "[s]hall assure that the record accurately reflects all time spent in custody in connection with the offense or behavioral incident for which sentence is imposed. Such time shall be automatically deducted from the sentence . . . ." Minn. R. Crim. P. 27.03, subd. 4(B) (2003). "A district court's decision whether to award credit is a mixed question of fact and law; the [district] court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances." *Johnson*, 744 N.W.2d at 379. Accordingly, appellate courts review the district court's factual findings underpinning jail-credit decisions for clear error and its legal conclusions de novo. *Id.*; *see Asfaha v. State*, 665 N.W.2d 523, 525-28 (Minn. 2003) (reviewing fact findings in jail-credit determination

under the clearly erroneous standard). Because the jail-credit issue in this case turns on applying the proper legal test, the standard of review is de novo.

Here, Schmidt's Wisconsin DWI arrest occurred on May 14, 2004, and he was held in a Wisconsin jail until October 19, when he was sentenced to two year's imprisonment. His sentence was immediately executed, and in May 2006, Schmidt was released from incarceration in Wisconsin. In March 2007, he was recharged in Minnesota.

The district court granted Schmidt 760 days jail credit for the time he was confined in Wisconsin on the DWI charge. The district court found that the prosecution voluntarily dismissed the complaint without Schmidt's prior knowledge. Because of this, the district court found that Schmidt was precluded from demanding that he be tried promptly on the Minnesota charge and, if convicted, from demanding that he be sentenced. The district court determined that fairness required that Schmidt be given jail credit for time spent in Wisconsin.

Schmidt argues in the alternative that he should receive jail credit because (1) the district court properly granted jail credit based on fairness and equity; (2) the district court properly granted jail credit based on equal protection; and (3) his attorneys provided ineffective assistance of counsel by failing to advise him of his right to seek a speedy resolution under the Interstate Agreement on Detainers, Minn. Stat. § 629.294 (2002). Each argument is considered in turn.

A. Fairness and equity

In Minnesota the basic rule is that jail credit is limited to "time spent in custody *in connection with the offense* . . . for which sentence is imposed." Minn. R. Crim. P. 27.03, subd. 4(B) (emphasis added). For a defendant to receive jail credit for time spent incarcerated in another state, the incarceration must be "solely in connection with" the Minnesota offense in which credit is sought. *State v. Willis*, 376 N.W.2d 427-28 (Minn. 1985); *State v. Akbar*, 419 N.W.2d 648, 650 (Minn. App. 1988). In *Willis*, the state requested that the defendant be extradited to face Minnesota charges while he was in Illinois custody pending the resolution of Illinois charges. 376 N.W.2d at 428. The supreme court only granted Willis jail credit for the time in Illinois custody after he had been acquitted of the Illinois charges—not for the time in Illinois custody when both a Minnesota hold and Illinois charges were pending—because only the post-Illinois-acquittal portion of incarceration was *solely* in connection with the Minnesota charges. *Id.* at 428-29.

This *interjurisdictional* rule differs from the caselaw governing jail credit for time spent incarcerated in Minnesota. *State v. Hadgu*, 681 N.W.2d 30, 32-33 (Minn. App. 2004), *review denied* (Minn. Sept. 21, 2004). In *intrajurisdictional* cases (i.e., when both cases are in Minnesota courts), the "in connection with" test in rule 27.03, subd. 4(B) has been relaxed by the supreme court to consider principles of fairness and equity. *Id.* In these and similar cases, concerns have been expressed about possible prosecutorial manipulation in limiting jail credit. *State v. Goar*, 453 N.W.2d 28, 29 (Minn. 1990); *State v. Folley*, 438 N.W.2d 372, 374 (Minn. 1989); *State v. Hott*, 426 N.W.2d 423, 424-

25 (Minn. 1988); *State v. Arden*, 424 N.W.2d 293, 294 (Minn. 1988); *State v. Dulski*, 363 N.W.2d 307, 310 (Minn. 1985). But for cases involving jail credit for time spent in another state, the supreme court has indicated that the interjurisdictional rule governs. *State ex rel. Linehan v. Wood*, 397 N.W.2d 341 (Minn. 1986) (reversing a court of appeal's decision on jail credit in an interjurisdictional case because the court erroneously relied on intrajurisdictional—not interjurisdictional—caselaw).

Thus, this case is governed by the interjurisdictional rule for jail credit. The test is whether Schmidt's time in the Wisconsin prison on the DWI charge is solely in connection with the Minnesota charge of criminal sexual conduct. Plainly, it is not. Schmidt never claimed, and the district court did not find, that the time he was confined in Wisconsin was solely in connection with the Minnesota offense. Rather, Schmidt argued, and the district court concluded, that jail credit should be granted, focusing on fairness and equity. Fairness and equity considerations govern intrajurisdictional—not interjurisdictional—cases.

The district court erred by not using the proper rule for determining interstate jail credit. Under the proper rule, we conclude Schmidt is not entitled to jail credit for time served in Wisconsin on the DWI charge and reverse and remand for resentencing.

B. Equal Protection

Schmidt argues that awarding him jail credit was proper because granting jail credit to persons incarcerated in Minnesota while denying jail credit to persons incarcerated in other states would violate his right to equal protection. Under the equal-protection guarantees in U.S. Const. amend. XIV and Minn. Const. art. 1, § 2, the

government must treat similarly situated people alike unless a rational basis exists for discriminating among them. *Bernthal v. City of St. Paul*, 376 N.W.2d 422, 424 (Minn. 1985.) "Review of an equal protection challenge under the federal rational basis test requires (1) a legitimate purpose for the challenged legislation, and (2) that it was reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose." *State v. Russell*, 477 N.W.2d 886, 887-88 (Minn. 1991) (citing *W. & S. Life Ins. Co. v. State Bd. of Equalization*, 451 U.S. 648, 668, 101 S. Ct. 2070, 2083 (1981)). Minnesota further requires "a reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals." *Id*. at 889. "An essential element of an equal protection claim is that the persons claiming disparate treatment must be similarly situated to those to whom they compare themselves." *St. Cloud Police Relief Ass'n v. City of St. Cloud*, 555 N.W.2d 318, 320 (Minn. App. 1996), *review denied* (Minn. Jan. 7, 1997).

To succeed on his equal-protection claim, Schmidt must show that the following groups are similarly situated: (a) people seeking jail credit against a Minnesota sentence for time confined in Minnesota for a different Minnesota conviction; and (b) people seeking to get jail credit against a Minnesota offense for time spent in a Wisconsin prison sentenced under Wisconsin law. Groups (a) and (b) are not defined merely by the superficial fact that they are serving time in prison in different states, but also by the laws under which they are convicted and sentenced. Schmidt ignores this crucial distinction and never addresses the differences between incarceration under one jurisdiction's laws and another's. The prosecution is correct in pointing out that:

> Appellant does not argue that the time served in Wisconsin had any connection to the Minnesota charge. He does not allege that any Minnesota law, case or guideline had any effect on his Wisconsin conviction and sentence. He does not claim that Wisconsin and Minnesota inmates are similarly situated under the same set of statutes and sentencing guidelines.

Thus, groups (a) and (b) are not similarly situated. One group is sentenced and serving time under an entirely different scheme of laws from the other. Until shown to be equivalent, that difference defeats Schmidt's equal-protection claim.

But even assuming these groups are similarly situated, the analysis proceeds to the rational-basis test. Here, Schmidt claims that his disparate treatment in receiving jail credit arises only from being incarcerated outside of Minnesota, compared with treatment of inmates similarly situated within Minnesota. Minnesota's distinction between jail time served in Minnesota and out-of-state furthers a legitimate purpose in maintaining Minnesota's law enforcement and correctional standards. These standards may differ among states. By distinguishing between defendants who serve jail time in Minnesota and those who serve jail time in other states, the Minnesota rule reasonably promotes uniformity of sentencing, based either upon Minnesota standards governing intrajurisdictional jail-time credit or the interjurisdictional test requiring that the out-of-state incarceration be "in connection with" the Minnesota charge. We decline to accept Schmidt's equal-protection argument.

C. Ineffective Assistance of Counsel

A claim of ineffective assistance of counsel involves mixed questions of fact and law and is reviewed de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004). To make out a claim for ineffective assistance of counsel

> defendant must affirmatively prove that his counsel's representation 'fell below an objective standard of reasonableness' and 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. . . . A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Gates v. State, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2068 (1984)). There is a strong presumption that counsel's performance fell within a wide range of reasonable assistance. *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998).

Schmidt argues that if this court concludes that the district court erred in granting him all 760 days of jail credit, he should still receive 580 days of jail credit due to ineffective assistance of counsel. Schmidt asserts that the district court found that his counsel failed to advise him of his right to seek a speedy resolution of his case under Article III of the Interstate Agreement on Detainers (IAD), Minn. Stat. § 629.294 (2002). But the district court did not find this. Rather, the district court found that the prosecution's voluntary dismissal of the complaint deprived Schmidt of the ability to use the procedures of the IAD. The "error" that Schmidt asserts is not that of his counsel.

Here, we note that Schmidt's attorney informed the prosecutor that because of logistical difficulties in communicating with his client imposed by the Wisconsin prison

system, he would move to have the complaint dismissed. Trying to get a serious criminal complaint dismissed, even temporarily, is not an unprofessional error. "Particular deference is given to the decisions of counsel regarding trial strategy." *Lahue*, 585 N.W.2d at 789. Ability to meet in private with a client to prepare a defense is an important consideration for defense counsel. Furthermore, dismissal would give Schmidt the benefit of the possibility that the lack of victim cooperation or some other consideration might result in charges not being refiled. Acquiescing in a dismissal was not a misguided strategy. We conclude that Schmidt has not established a meritorious ineffective-assistance-of-counsel claim.

III.

In sum, because there is sufficient evidence to sustain Schmidt's conviction, we affirm his conviction. But we reverse the district court's decision to grant Schmidt jail credit for the time he served in Wisconsin on the Wisconsin DWI charge because that incarceration was not in connection with the Minnesota offense of first-degree criminal sexual conduct. We remand for resentencing in accordance with this opinion.

Affirmed in part, reversed in part, and remanded.

Dated: