STATE OF MINNESOTA
IN COURT OF APPEALS
A09-793

State of Minnesota,
Respondent,

vs.

Allen Dale Betz,
Appellant.

Filed March 30, 2010
Affirmed
Collins, Judge[*]

Dakota County District Court
File No. 19AV-CR-08-22364

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

Alina Schwartz, Eagan, Minnesota (for respondent)

Robert J. Bruno, Burnsville, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Shumaker, 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

Challenging his conviction of violating an ordinance in the Burnsville City Code prohibiting the use of unapproved surface materials in a parking area, appellant argues that (1) the conviction was not supported by sufficient evidence, (2) the state had the burden of proving the exceptions to liability do not apply, and (3) the district court abused its discretion in imposing certain sentencing conditions. We affirm.

FACTS

On November 28, 2008, a City of Burnsville inspector saw a pickup truck parked on the yard in front of appellant Allen Betz's house. The truck was not parked on the paved driveway but was on an area of the yard, adjacent to the driveway, surfaced with what appeared to be "Class 5" material. Class 5 is a "crushed rock product that is used for underlayment and such purposes for paving" and is not an approved off-street parking surface in Burnsville. Under the Burnsville City Code, the use of unapproved surface material in parking areas is prohibited. Burnsville, Minn., City Code § 10-7-26 (F)(5) (2008).

The inspector took a photo of the truck parked on the Class 5 surface and issued Betz a citation for the violation of the Burnsville City Code. At the bench trial, the inspector testified that he was unaware of when the Class 5 material was installed, when the adjacent driveway was paved, or how long the truck had been there. When Betz's attorney asked the inspector why he did not simply tell Betz that he could not have a vehicle parked there, the inspector responded "We had done that in the past. . . .We

informed him previously of [the parking regulation for the city.]" Following cross-examination, the district court asked the inspector when he had looked into the city records to determine who owned the property. The inspector responded ". . . probably the first time that I sent notice out to Mr. Betz for a parking violation, which was back in 2002."

Both parties rested after the testimony of the inspector. The district court issued a written order and findings of facts. The court concluded that the state proved beyond a reasonable doubt that Betz violated Burnsville City Code 10-7-26 (F)(5), that the exceptions to liability in the ordinance did not apply, and that the ordinance was not unconstitutionally vague, stating:

> The State has proven beyond a reasonable doubt that [Betz] maintains a parking area that violates the Burnsville Ordinance with regard to allowable surfaces of driveways and parking areas. [Betz] is not charged with parking a vehicle in an area not allowed by the ordinance. Rather, [Betz] is charged with and has violated the ordinance in that he has constructed a parking area with material that is not allowed. The fact that [Betz] has parked a vehicle, or has allowed others to park a vehicle on this service, supports the argument that this is, in fact, a parking area that has been constructed on the front yard of this residential lot.

Betz moved for a judgment of acquittal or, in the alternative, a new trial. The district court denied the motion and adjudicated Betz guilty of the ordinance violation. Imposition of a sentence was stayed and Betz was placed on probation for one year. As a condition of probation Betz was required to remove the prohibited material from the yard and thereafter comply with the ordinance. Betz appealed and moved this court for a stay

of sentence pending the appeal. We denied the motion in a previous order and hereby address the merits of the appeal.

D E C I S I O N

I.

Betz first argues that the conviction was not supported by sufficient evidence. In reviewing the sufficiency of the evidence, this court "must uphold the conviction if, based on the evidence contained in the record, the district court sitting as the finder of fact could reasonably have found [the defendant] guilty." *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009) (quotation omitted). We may not re-weigh the evidence but rather construe the evidence in the light most favorable to the verdict. *Id.* We must consider not only the evidence in the record, but also any legitimate inferences from that evidence. *Id*.

A. Mens Rea

Betz argues that a conviction under the ordinance requires proof of intent or mens rea and argues that this element was not proved beyond a reasonable doubt. What intent, if any, is required for a criminal offense is an issue of statutory interpretation, reviewed de novo by this court. *State v. Loge*, 608 N.W.2d 152, 155 (Minn. 2000). We begin by engaging in a careful examination of the statutory language. *State v. Arkell*, 672 N.W.2d 564, 566 (Minn. 2003). The ordinance in question states:

> (A) Purpose: Regulation of off street parking is to alleviate congestion of the public streets and to promote the safety and general welfare of the public by establishing minimum requirements for off street parking, loading and

> unloading, and from motor vehicles in accordance with the use of various parcels of land and structures.
>
> . . . .
>
> (C) Application Of Off Street Parking Regulations: The regulations and requirements set forth in this section shall apply to off street parking facilities in all zoning districts.
>
> . . . .
>
> 5. Surfacing: The entire parking area including parking stalls, aisles and driveways shall be surfaced with concrete, bituminous pavers, or pervious paving/paver systems provided appropriate soils and site conditions exist for the pervious systems to function. . . . Other materials such as decorative rock, gravel, sand, or bare soil are prohibited.

Burnsville, Minn., City Code § 10-7-26. Nothing in this ordinance addresses intent.

Generally, the clear intent of the legislature to create a strict-liability offense is required because "strict liability statutes are generally disfavored." *In re Welfare of C.R.M.*, 611 N.W.2d 802, 805 (Minn. 2000) (holding the statute that targets person who "possesses, stores or keeps" a weapon on school grounds required a showing of knowledge). The supreme court, however, has held that public-welfare or regulatory offenses are not subject to the presumption that intent is required to establish liability because a "defendant knows that he is dealing with a dangerous device of a character that places him 'in responsible relation to public danger,' [and therefore] he should be alerted to the probability of strict regulation." *Arkell*, 672 N.W.2d at 566 -67 (quoting *Staples v. U.S.*, 511 U.S. 600, 606-07, 114 S. Ct. 1793, 1798 (1994)).

Despite the lack of a presumption in public-welfare and regulatory offenses, the supreme court has interpreted other regulatory ordinances to require mens rea. In *Arkell*, the court determined that a building-code ordinance contained a mens rea requirement despite the ordinance's failure to expressly require mens rea. 672 N.W.2d at 569. In holding that the ordinance required mens rea, the supreme court distinguished the building-code ordinance from the strict-liability open-bottle law. *Id*. at 568. The court determined that interpreting the building-code violations to require mens rea did not raise the same public-policy concerns and burden of proof issues as the strict-liability open-bottle law. *Id.* The supreme court noted its earlier determination that the open-bottle law was a strict-liability offense because of the strong public policy supporting the legislation and the fact that "if knowledge was a necessary element of the open container offense, 'there would be a substantial, if not insurmountable, difficulty of proof.'" *Id.* (quoting *State v. Loge*, 608 N.W.2d 152, 157 (Minn. 2000)).

Here, the ordinance regulates something that is otherwise legal and is not inherently dangerous: off-street parking-area surfacing; and a violation of the ordinance can result only in a misdemeanor sentence. While there are clear public-policy reasons supporting this ordinance, including avoiding "congestion of the public streets" and promoting "the safety and general welfare of the public by establishing minimum requirements for off street parking," we cannot conclude that this ordinance raises the same policy and burden of proof concerns as those in *Loge*, 608 N.W.2d at 157. Because the legislature disfavors strict liability without express legislative intent and because the

ordinance criminalizes something that is generally not criminal, we conclude that an intent requirement is implicated in this ordinance.

B. General Intent

Betz argues that the state presented insufficient evidence to support a finding of intent. When express intent is not made part of a criminal statute, the state need only show general intent. *State v. Hart*, 477 N.W.2d 732, 736 (Minn. App. 1991), *review denied* (Minn. Jan. 16, 1992). General intent means "that the defendant intentionally engaged in prohibited conduct" and does not require that the defendant act "with the intent to produce a specific result." *State v. Vance*, 734 N.W.2d 650, 656 (Minn. 2007). Intent is generally demonstrated through circumstantial evidence from which the fact-finder can draw reasonable inferences. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997).

The district court found "that [Betz] *maintains* a parking area that violates the Burnsville Ordinance with regard to allowable surfaces of driveways and parking areas." (Emphasis added.) In support of this determination the district court noted that the offending area was being used for parking at the time of the citation and that Betz had been informed of the city's regulations in the past. Betz argues that there was no evidence that he had anything to do with the truck that was parked on his property or that he was the person who originally constructed the illegal parking space. But because Betz was found guilty of *maintaining* an impermissible parking area on his property, and not for illegally parking a vehicle, it is irrelevant whether someone else parked the truck or that someone else may have surfaced the parking area.

The district court is permitted to draw reasonable inferences from the evidence presented in order to support a finding of general intent. The district court had before it the location of the parking area, the fact that the area was being used for parking at the time of the citation, and the testimony that Betz had been informed of the city's parking regulations in the past. The district court's finding that Betz "maintains a parking area that violates the Burnsville Ordinance" is supported by the evidence in the record, and satisfies the general intent mens rea requirement.

C. "Parking Area"

Betz argues that there was insufficient evidence to prove that he maintained a "parking area." The ordinance does not define the term "parking area" and Betz contends that, absent a more specific definition, a "parking area" requires the designation by the property owner of a certain area for parking. The supreme court has held that "parking area" has a common meaning involving the area where a vehicle is temporarily parked. *See State v. Larson Transfer & Storage, Inc.*, 310 Minn. 295, 299, 246 N.W.2d 176, 179 (1976) (citing *Mergenthaler v. State*, 293 A.2d 287, 288 (Del. 1972) (stating parking has been defined as "of short duration, [and] has in it the element of an automobile in use, being temporarily in place until it is about to be again used.")).

The district court specifically found that the prohibited-surface area was being used for the parking of a vehicle and that it was maintained as a "parking area." Betz's challenge to the sufficiency of the evidence on the grounds that the term "parking area" is ambiguous and requires that Betz have somehow affirmatively designated the space as one for parking is without merit. The evidence before the district court was sufficient to

show that Betz maintained an area that did not meet the city's parking requirements, and that the area was used for parking.

II.

Betz next argues that, in order to prove him guilty beyond a reasonable doubt, the state must prove that the exceptions to criminal liability do not apply. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the state to prove beyond a reasonable doubt every fact necessary to constitute the crime with which the defendant is charged. *See In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1072 (1970). Generally, exceptions to liability are not considered elements of the offense and are therefore not required to be proved by the state. *State v. Brechon*, 352 N.W.2d 745, 749 (Minn. 1984). "The test for determining what constitutes a basic element of[,] rather than an exception to[,] a statute has been stated as 'whether the exception is so incorporated with the clause defining the offense that it becomes in fact a part of the description.'" *Id*. (citing *Williams v. United States*, 138 F.2d 81, 81-82 (D.C. Cir. 1943)); *see also State v. Timberlake*, 744 N.W.2d 390, 396 (Minn. 2008) (same); *State v. Burg*, 648 N.W.2d 673, 678 (Minn. 2002) (same).

Betz contends that the exception for a preexisting use under Minn. Stat. § 462.357, subd. 1e (2008) is an element of the offense. Although there is clearly an exception for preexisting nonconformities, that exception is found in a different statutory structure than the city code, *see id*., and is not part of the definition of the offenses found in the Burnsville City Code. Because the preexisting-nonconformities exception is not part of

the violation's definition, and because it is found within a different statutory structure, we conclude that this exception is not an element of the offense.

Betz further argues that the state must prove that the preexisting-use exception contained in section 10-7-2 of the ordinance did not apply. This exception states: "Except as otherwise provided in this title, any structure or use lawfully existing upon the effective date of this title may be continued at the size and in a manner of operation existing upon such date." Burnsville, Minn., City Code § 10-7-2(A) (2008). The exception is found in an entirely different section of the city code and is not referenced in the prohibited-conduct's definition. We conclude that this is an exception to liability and is not an element requiring proof by the state.[1]

Betz also argues that the exception found in section 10-7-26(B)(1) must be proved by the state. This exception states: "Structures or uses for which a building permit has been issued prior to August 19, 2008 (the effective date of this section) shall be exempt from the parking requirements in this section if the structure is completed within six (6) months after the effective date of this section." Burnsville, Minn., City Code § 10-7-26(B)(1) (2008). Again this section is not included in the definition of the ordinance violation and, as an exception to liability, is not an element requiring proof by the state.

[1] We note that, even if this section did require the state to prove that Betz's parking area was not "lawfully existing upon the effective date of this title," there is evidence in the record that Betz violated the parking ordinance as early as 2002. The effective date of the ordinance in title 10, chapter 7, section 2 is August 2, 2004. Therefore, on the effective date of title 10, appellant's parking area was not "lawfully existing."

III.

Finally, Betz argues that the district court abused its discretion in ordering that he remove the prohibited material in the area used for parking and ensure that his property complies with the ordinance. A district court may stay the imposition of a sentence and order probation with certain conditions. *See* Minn. Stat. § 609.135, subd. 1(2) (2008). Probation conditions "must be reasonably related to the purposes of sentencing and must not be unduly restrictive of the probationer's liberty or autonomy." *State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000) (citing *State v. Friberg*, 435 N.W.2d 509, 515 (Minn.1989)). But the rights of probationers may be subject to limitations that persons not subject to probation would be free from. *Friberg*, 435 N.W.2d at 515-16. "Conditions of probation may include restrictions upon employment or business activities, places the probationer may frequent and even people with whom the probationer may associate." *Id.*

The supreme court has upheld conditions of probation when the purpose of sentencing "is to prevent future unlawful conduct by defendants and establish reasonable consequences for their unlawful conduct." *Id.* (upholding as a condition of probation a restriction preventing defendants from going within 500 feet of the abortion clinic they had trespassed). Such deterrent conditions are considered reasonable when defendants "have by their criminal conduct demonstrated their inability to refrain from unlawful activity." *Id.*

Here, the district court ordered that Betz remove the prohibited material from the yard "and comply with the ordinance as to the appropriate surfacing." Betz argues that the district court abused its discretion in ordering him to remove the material because

nothing in the city code prevents him from having such material on his lawn so long as it is not used for a parking area. Although this court examines closely those probation conditions that restrict a defendant's rights, we review those conditions under an abuse of discretion standard. *Franklin*, 604 N.W.2d at 82. Because the probation condition at issue appears to be directly related to Betz's offense, the condition serves as a deterrent, the need for which is supported by evidence that Betz has violated this ordinance in the past. Therefore, we are satisfied that the district court did not abuse its discretion in requiring Betz to remove the prohibited material from the yard.

Affirmed.