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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2106**

State of Minnesota,
Respondent,

vs.

George Anthony Ciesinski,
Appellant.

**Filed December 21, 2010
Affirmed
Halbrooks, Judge**

Rice County District Court
File No. 66-CR-09-2080

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

G. Paul Beaumaster, Rice County Attorney, Benjamin Bejar, Assistant County Attorney,
Faribault, Minnesota (for respondent)

David L. Ludescher, Grundhoefer & Ludescher, P.A., Northfield, Minnesota (for
appellant)

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's refusal to dismiss a charge of violating a
domestic-abuse no-contact order (DANCO). Because we conclude that (1) the district

court properly imposed the DANCO under Minn. Stat. § 629.72 (2008), (2) it is constitutional to impose criminal sanctions for the violation of a condition of release, and (3) appellant's additional arguments on appeal are waived, we affirm.

FACTS

On June 15, 2009, appellant George Anthony Ciesinski made his first district court appearance on a domestic-assault charge involving his wife. Respondent State of Minnesota requested that appellant "be released on his own recognizance with the following conditions of no alcohol use or controlled substance with random screens, and that he have no contact with the victim. So we're asking specifically for a DANCO no-contact order." The state then added, "we'd ask that he have no contact with [his wife's] residence." The district court then released appellant on his own recognizance with the DANCO as a condition of his release.

Later that day, appellant was arrested and charged with violating the DANCO. Appellant had called the police asking if he could stay at his house because his wife was not there. Appellant told the police about the DANCO, and the police advised appellant over the phone that only the district court could change his conditions of release. Because appellant seemed to be upset by this information, the police went to the house. When they arrived, the police found that appellant was present and the house was emptied of furniture. Appellant showed the police a note from his wife stating that she was not going to stay at the house. The police arrested appellant "for violating his conditions of release by calling/speaking with his wife, going to the house without a police escort and consuming alcoholic beverages." Appellant was initially charged with

violating the conditions of his release, but his charge was later amended to violation of the DANCO.

Appellant moved for dismissal of the DANCO-violation charge on the ground that a domestic-assault charge could not form the basis for a DANCO. Alternatively, appellant argued that even if a domestic-assault charge could form the basis for a DANCO, the DANCO was improperly issued as a condition of release because it was unrelated to public safety or to assure his reappearance. Appellant asserted that charging him with a violation of the DANCO implicated issues of collateral estoppel, res judicata, double jeopardy, serial prosecution, separation of powers, the presumption of innocence, and his right to have “each and every fact of the underlying charge . . . determined by a jury, and not by a judge.” At the conclusion of the motion hearing, the district court stated that it would “vacate the no contact order between the defendant and [the alleged victim] effective immediately.” The district court issued a written order after the hearing denying appellant’s motion to dismiss the DANCO-violation charge, and the case went to trial. A jury found appellant guilty of violating the DANCO. This appeal follows.

D E C I S I O N

Appellant contends that a district court does not have the authority to issue a DANCO as a pretrial release condition. Generally, issues involving bail are reviewed under an abuse-of-discretion standard. *State v. Houx*, 709 N.W.2d 280, 281 (Minn. App. 2006). But when, as here, the underlying issue is one of statutory construction, we conduct a de novo review. *Id.*

A district court has the authority to impose pretrial conditions of release in domestic-abuse cases. Minn. Stat. § 629.72. These conditions may include no contact with the alleged victim or a requirement to stay away from the victim's residence. *Id.*, subd. 2(b). Appellant argues that domestic assault is not the same as domestic abuse, and therefore the DANCO imposed in his domestic-assault case was not authorized under this statute. We disagree. Domestic assault fits within the statutory definition of domestic abuse. See Minn. Stat. § 518B.01, subd. 2(a) (2008) (including assault committed against a family member in the definition of domestic abuse). The district court therefore had the authority to impose the DANCO as a condition of appellant's release.

Appellant's alternative argument is that even if the DANCO was appropriately imposed as a pretrial condition of release, Minn. Stat. § 518B.01, subd. 22 (2008), which authorizes criminal penalties for a DANCO violation, is unconstitutional "because it imposes conditions beyond just establishing 'sufficient sureties' for reappearance." He bases his argument on article I, section 7 of the Minnesota Constitution, which states that "[a]ll persons before conviction shall be bailable by sufficient sureties." Although appellant challenged the constitutionality of the DANCO-violation charge to the district court, he did so on a separation-of-powers basis and not based on the "sufficient sureties" language. The state argues that appellant therefore waived his opportunity to raise this argument on appeal. But because appellant generally raised the issue of whether criminal sanctions for violating a condition of release are constitutional, we disagree with the state's assertion and conclude that appellant has not waived this argument. We review a

challenge to the constitutionality of a statute de novo. *State v. Wolf*, 605 N.W.2d 381, 386 (Minn. 2000).

The supreme court recently addressed the constitutionality of imposing pretrial conditions of release as permitted by the Minnesota Rules of Criminal Procedure. *State v. Martin*, 743 N.W.2d 261 (Minn. 2008). In *Martin*, the supreme court addressed whether Minn. R. Crim. P. 6.02, subd. 1, was unconstitutional because it allows a district court to impose conditions of release “for purposes other than to assure the defendant’s appearance at future court proceedings.” *Id.* at 265. The supreme court held that the rule as a whole did not violate the constitution because of the clause in the rule that states that “[i]n any event, the court shall also fix the amount of money bail without other conditions upon which the defendant may obtain release either by posting cash or by sufficient sureties.” *Id.* (quoting Minn. R. Crim. P. 6.02, subd. 1¹). The supreme court stated, “Thus, the rule assures that defendants will be given the alternate choice of the right to bail by sufficient sureties if release on nonmonetary conditions is ordered. . . . [C]onditioned release under the rule may be offered only as an alternative to money bail without conditions.” *Id.* The supreme court’s analysis of rule 6.02 in *Martin* applies with equal force to statutes that allow pretrial release conditions unrelated to sufficient

¹ The current version of the rule is substantively the same, stating that “[t]he court must set money bail without other conditions on which the defendant may be released by posting cash or sureties.” Minn. R. Crim. P. 6.02, subd. 1.

sureties. We therefore conclude that appellant's argument that it is unconstitutional to impose release conditions unrelated to sufficient sureties has no merit.²

We see no basis under *Martin* or the "sufficient sureties" clause of the Minnesota Constitution for the contention that the legislature cannot create criminal penalties for violation of specific conditions of release. Defendants have a money-only bail alternative under rule 6.02; this ensures that all persons are bailable by sufficient sureties. Once a defendant agrees instead to conditional release, this clause does not prevent criminal sanctions for violating those conditions. And although appellant refers to article I, section 5 of the Minnesota Constitution, prohibiting "excessive" bail, he failed to make any argument as to how the conditions imposed in his case caused his bail to be excessive. Generally, issues not briefed on appeal are waived and we therefore decline to reach this argument. See *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), review denied (Minn. Aug. 5, 1997).

Appellant goes on to argue that, regardless of the facial validity of the statutes, the district court nevertheless ran afoul of the Minnesota Constitution because appellant was not offered a money-only bail alternative in this case. But appellant agreed to the conditions of release imposed by the district court and never requested a money-only bail alternative. Because appellant failed to raise this argument to the district court, he has

² We also note that under Minn. Stat. § 629.72 subd. 2(d), a district court may, if it imposes a DANCO as a condition of release, issue an ex parte temporary order for protection under Minn. Stat. § 518B.01, subd. 7 (2008), that is not a condition of release. In this manner, a district court is able to ensure the protection of an alleged victim of domestic abuse while the domestic-abuse charges are pending, regardless of a defendant's request for a money-only bail alternative.

waived his opportunity to make this argument on appeal. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that arguments not raised to the district court are waived on appeal).

Appellant makes additional arguments that he failed to raise to the district court. Specifically, appellant argues that the district court failed to comply with the provisions of Minn. Stat. § 629.72, subd. 2, when it made the DANCO a condition of his release and that the DANCO charge was rendered moot when the district court later vacated it. Because appellant did not make these arguments to the district court, he is precluded from raising them to this court. *See id.*

Affirmed.