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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-238**

Delbert Keith Sybrandt, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 19, 2011
Affirmed
Minge, Judge**

Chisago County District Court
File No. 13-CR-06-2330

David W. Merchant, Chief Appellate Public Defender, G. Tony Atwal, Assistant Public Defender, Kara Bovee, Certified Student Attorney, St. Paul, Minnesota (for appellant)

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

Janet Reiter, Chisago County Attorney, Beth A. Beaman, Assistant County Attorney, Michael D. Purdham, Certified Student Attorney, Center City, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Johnson, Chief Judge; and Minge, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges the district court's denial of his petition for postconviction relief, arguing that his conviction of illegal possession of a firearm did not arise out of the

same set of circumstances as his dismissed charge of aiding and abetting kidnapping and therefore does not require him to register as a predatory offender pursuant to Minn. Stat. § 243.166, subd. 1b(a)(1)(ii) (2010). Because appellant's convicted offense and charged offense shared a common time, place, and basic underlying facts, we conclude that they arose out of the same set of circumstances and affirm.

FACTS

On October 3, 2006, appellant Delbert Sybrandt was implicated in the shooting of A.I. at the home of Jeffrey Erickson in Stanchfield, Minnesota. Erickson had gone to a nearby town to confront A.I. about a gun that Erickson believed A.I. had stolen. A.I. admitted to taking the gun and told Erickson that the gun was in a third town. Erickson and a companion forced A.I. into their car and took him to Erickson's house, where they confined him while two other acquaintances left to locate the gun. Subsequently, appellant Sybrandt arrived at Erickson's house, A.I. was shot in the leg, and witnesses observed Sybrandt eject a shell casing from a gun he was holding.

The state charged Sybrandt with aiding and abetting the kidnapping of A.I., first-degree assault, aiding and abetting first-degree assault, second-degree assault, aiding and abetting terroristic threats, fifth-degree possession of a controlled substance, possession of a firearm by a felon, and possession of a firearm by an ineligible person. In a pretrial hearing, the state dismissed all of the charges except for the possession-of-a-firearm-by-an-ineligible-person charge, to which Sybrandt pleaded not guilty. Sybrandt stipulated to the fact that his previous felony convictions for fifth-degree possession of

methamphetamine and fleeing a police officer in a motor vehicle rendered him an “ineligible person” to possess a firearm under Minn. Stat § 624.713, subd. 1(b) (2006).

After a jury trial, Sybrandt was found guilty of possession of a firearm by an ineligible person. The district court sentenced Sybrandt to 60 months in prison. Following his release from prison, the state ordered Sybrandt to register as a predatory offender under Minn. Stat. § 243.166, subd. 1b(a)(1)(ii). Sybrandt then filed a petition for postconviction relief, arguing that he should not have to register as a predatory offender. The postconviction court ruled that the aiding-and-abetting-kidnapping charge and the possession-of-a-firearm-by-an-ineligible-person offense arose from the same set of circumstances and that, by law, Sybrandt must register as a predatory offender. This appeal follows.

D E C I S I O N

The issue in this appeal is whether the postconviction court erred in requiring Sybrandt to register as a predatory offender pursuant to Minn. Stat. § 243.166, subd. 1b(a)(1). We review issues of statutory interpretation and the application of statutes to undisputed facts de novo. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996); *O’Malley v. Ulland*, 549 N.W.2d 889, 892 (Minn. 1996).

Minnesota law provides that a person must register as a predatory offender if:

the person was charged with . . . felony . . . aiding [or]
abetting [kidnapping] and convicted of . . . another offense
arising out of the same set of circumstances.

Minn. Stat. § 243.166, subd. 1b(a)(1). The supreme court has indicated that courts should look to whether the offenses “overlap with regard to time, location, persons involved, and

basic facts” in determining whether two offenses arose out of the same set of circumstances. *State v. Lopez*, 778 N.W.2d 700, 706 (Minn. 2010).

In *Lopez*, two defendants were charged with kidnapping and convicted of a controlled-substance crime. *Id.* at 701. The defendants had sold drugs to a confidential informant who did not pay. Then, two weeks later, the defendants held the informant and his friend hostage for 40 minutes until they obtained funds and paid for the drugs. *Id.* at 701–02. In determining that the charges did not require predatory-offender registration, the supreme court reasoned that the drug transaction was completed two weeks before the kidnapping, that the two crimes took place at different locations, and that they involved a slightly different group of people. *Id.* at 706. The court interpreted “same set of circumstances” to require that “the circumstances underlying both [offenses] must overlap with regard to time, location, persons involved, and basic facts.” *Id.* The court also observed that there was essentially only one shared circumstance between the two charges: that the kidnapping took place because the informant failed to pay his debt from the drug sale, a link the court considered “tenuous.” *Id.* at 706–07.

Sybrandt contends that the circumstances surrounding his conviction for unlawful possession of a firearm do not arise from the same set of circumstances as the dismissed charge of aiding and abetting kidnapping, and therefore do not require that he register as a predatory offender. Because there is no factual dispute presented by the parties’ briefs, this is a legal issue which we review de novo.

Here, Sybrandt unlawfully had possession of a firearm during the ongoing kidnapping of A.I. and allegedly shot him in the leg. The men who witnessed Sybrandt

in possession of the firearm were the two who initiated the kidnapping. In addition, Sybrandt's unlawful possession of a firearm and alleged involvement in A.I.'s kidnapping both occurred at Erickson's residence. There was no separation of time, place, or people involved between the commission of A.I.'s kidnapping and Sybrandt's unlawful possession of a firearm.

Sybrandt admits that the facts underlying his charged offense of aiding and abetting kidnapping and his conviction for unlawfully possessing a firearm overlap in time and place. Sybrandt argues that, based on *Lopez*, his unlawful possession of a firearm did not arise out of the same circumstances as his alleged involvement in A.I.'s kidnapping.

While the facts described in *Lopez* provided only a "tenuous" link between the charges in dispute, the facts here demonstrate a much closer connection. Unlike in *Lopez*, where the crimes were committed nearly two weeks apart, Sybrandt's crimes took place simultaneously: Sybrandt unlawfully possessed a firearm and reportedly shot A.I. while A.I. was being held against his will. While the people involved in *Lopez* were slightly different and the locations entirely so, the people and locations involved here were identical. We recognize that Sybrandt's unlawful possession of a firearm can be described without reference to his role in the kidnapping; however, this is not determinative. The facts and circumstances surrounding Sybrandt's involvement in both offenses share significant similarities and are overlapping.

Sybrandt also argues that we should focus on those facts that constitute elements of the crimes to determine whether the underlying facts and circumstances overlap. A

defendant is guilty of unlawful possession of a firearm if he qualifies as an ineligible person under Minn. Stat. § 624.713, subd. 1. To be an ineligible person one must have been previously convicted of a crime of violence. Minn. Stat. § 624.713, subd. 1(b). A defendant is guilty of aiding and abetting kidnapping if he intentionally aids, advises, or conspires with another to confine or remove from one place to another any person without their consent in order to commit great bodily harm or to terrorize another person. Minn. Stat. §§ 609.25, subd. 1(3), .05, subd. 1 (2006). Sybrandt contends that his earlier crime of violence that disqualified him from having a firearm occurred years earlier and had nothing to do with A.I.'s kidnapping. Sybrandt argues that these are entirely different circumstances.

However, neither the supreme court's decision in *Lopez* nor Minn. Stat. § 243.166, subd. 1b(a)(1)(ii) requires the elements of the charges of both crimes to have a commonality. In *Lopez*, the supreme court was concerned that the only link between the kidnapping and controlled-substance offenses was that the defendants kidnapped the victim solely because he had not completed payment for the drug transaction. *Lopez*, 778 N.W.2d at 706. The supreme court concluded that the drug-payment link was insufficient because of the differences in time and location. *Id.* at 707. The relationship between the offenses is not limited to events that satisfy the elements of the charged offenses; instead, it includes all the surrounding events that led to the charged offenses. Here, the two charges—participating in confining A.I. against his will and possessing a firearm—arose out of common underlying facts. The interrelationship of these events demonstrates that

Sybrandt's conduct was united in time, place, and people involved and ultimately led to his criminal charges.

Therefore, we conclude that the postconviction court did not err in determining that, under Minn. Stat. § 243.166, subd. 1b(a)(1)(ii), Sybrandt is now required to register as a predatory offender.

Affirmed.

Dated: