STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0433

State of Minnesota,
Respondent,

vs.

Shannon Lee Christianson, Jr.,
Appellant.

Filed April 7, 2014
Affirmed in part, reversed in part, and remanded
Ross, Judge

Hennepin County District Court
File No. 27-CR-12-2349

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

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

ROSS, Judge

Shannon Christianson had a month-long sexual relationship with K.S. that, according to K.S., turned violent and nonconsensual. The state charged Christianson with

stalking, false imprisonment, and first- and third-degree criminal sexual conduct. A jury found Christianson guilty of third-degree criminal sexual conduct and stalking. The district court sentenced Christianson to 99 months in prison, a term toward the high end of the presumptive sentence range, eschewing the presumptive 90-month sentence in part expressly because Christianson's apparent courtroom supporters had behaved improperly during his trial. We affirm the conviction because the record belies Christianson's argument that the state failed to offer sufficient evidence that he forced or coerced his victim to engage in sex and because we deem unpersuasive his contention that the district court denied him a fair trial by allowing the prosecutor to cross-examine his friend about Christianson's anger therapy. But we reverse the sentence and remand for resentencing because the district court based the sentence in part on courtroom spectator misconduct beyond Christianson's control or influence.

FACTS

Shannon Christianson and K.S. began a consensual sexual relationship in December 2011. The next month K.S. reported to police that Christianson sexually assaulted her. The state charged Christianson with first- and third-degree criminal sexual conduct, stalking, and false imprisonment. A Hennepin County jury found Christianson guilty of third-degree criminal sexual conduct and stalking after it received the following evidence.

K.S. testified that her casual sexual relationship with Christianson became troublesome when Christianson became possessive and controlling. Christianson once insisted that K.S. leave a friend's house with him. She did, but after she returned,

Christianson showed up and forced her to leave so she would not be there without him. He told K.S. that "he was ready to kick [her] down the stairs." On another occasion, Christianson similarly discovered that K.S. was socializing at a friend's home without him and arrived and demanded that she leave. He took her aside and brandished a pole. He told the onlookers that K.S. "knows she needs to learn a lesson." Christianson choked K.S. and punched her in the mouth.

K.S. continued her contact with Christianson for a time after the incident, including sexual contact. Christianson sent K.S. numerous text and voice messages, some threatening. He told her he was "mad as hell" and that he felt like "coming to [her] school and f---ing [her] up." He arrived unannounced at her house and held a kitchen knife to her abdomen.

The culminating incident giving rise to the criminal charges occurred on January 13, 2012, about one month after the relationship began. K.S. testified that she met Christianson at a friend's house, where they watched television with friends until K.S. announced that she wanted to go home. But Christianson said he wanted to have sex. They argued about their relationship. Christianson began hitting her on the neck, and he told her to go with him to the bathroom. She complied. There, Christianson told her to perform oral sex on him. She testified that she "went ahead and did it" because she "didn't want the situation to escalate" and she feared he would hurt her if she refused. Christianson punched K.S. in the mouth at some point, drawing blood, and he pulled her hair. (Christianson recorded the bathroom encounter on his cell phone, and the jury saw the footage.) After the pair rejoined their friends, Christianson told K.S. to take off her

clothes and walk home. K.S. began to comply, but as she was about to leave he told her to return and spend the night. They shared a bed while their friends slept in the same room.

The next morning K.S. called her brother's girlfriend, M.S., and walked to M.S.'s house. M.S. testified that K.S. sounded frightened on the phone and arrived disheveled with an injured lip. K.S. told her that "some guy" had taken her from school, hit her, tried to force himself on her, and made her spend the night. One of M.S.'s relatives called the police. Christianson's attorney attempted to impeach K.S.'s trial account based on what she had told M.S., drawing K.S. to admit on cross-examination that Christianson had not in fact taken her from school. He also tried to impeach her testimony by highlighting inconsistencies as to whether Christianson punched her and pulled her hair before or after the sexual encounter.

Police arrested Christianson ten days after the report and interviewed him the day after. The jury heard the audio recording of the interview. In it, Christianson claimed that his sex with K.S. was consensual and he denied using force or intimidating K.S. He said that K.S. had been upset with him because he was sexually involved with one of her friends. He admitted to having a short temper and to attending anger management classes. Christianson's friend, Demetric Smith, testified that he was present the night of the alleged bathroom assault. He said that Christianson and K.S. went into the bathroom, that he heard what sounded like oral sex, and that they spent the night. He insisted that there had been no apparent problems. The prosecutor mentioned Christianson's "anger

problem" and asked whether he knew that Christianson was attending anger management classes, and he affirmed that he did.

The trial judge commented several times about improper courtroom behavior that appeared to the judge to be an attempt to curry favor with the jury on Christianson's behalf. The record does not demonstrate that Christianson initiated the conduct. On one occasion, someone in the gallery who was apparently associated with Christianson handed Christianson a baby within view of the jury. On another, a small child who was also apparently associated with Christianson held open the courtroom door for exiting jurors while smiling and waving at them.

The jury found Christianson guilty of third-degree criminal sexual conduct using force or coercion and of stalking. It acquitted him of first-degree criminal sexual conduct and false imprisonment. Christianson faced a presumptive sentence for the criminal sexual conduct conviction that ranged from 77 to 108 months in prison, with a specific guidelines presumptive imprisonment sentence of 90 months. The state asked the district court not to issue the presumptive 90-month sentence but to impose a term at the top of the range. The district court considered that request during the sentencing hearing. The judge concluded, "I am going to go up slightly from the presumptive range," reasoning that "there were two instances that support going up." The first of these instances was "that the stalking conduct does make the crim[inal] sex matter worse than the average crim[inal] sex" case. As the second basis, he relied expressly on the suspected courtroom favor-currying theatrics involving children. The judge concluded that this courtroom conduct "would support a [prison term] slightly higher than the presumptive sentence"

even after he acknowledged that he "[did not] know if it was an intentional desire by [Christianson] or those who were supporting [him] to influence the jury." The district court sentenced Christianson to 99 months in prison for criminal sexual conduct and to a concurrent prison term of 39 months for stalking.

This appeal follows.

D E C I S I O N

Christianson's appeal raises three issues. We first address whether the state offered evidence sufficient to prove that Christianson used force or coercion to accomplish the sexual encounter. We next decide whether the district court denied Christianson's right to a fair trial by allowing the prosecutor to cross-examine Smith about Christianson's anger management classes. And finally we decide whether the district court abused its discretion by sentencing Christianson to 99 months' imprisonment rather than the presumptive 90 months based on the reasons given.

I

Christianson argues that the state introduced insufficient evidence to convict him of criminal sexual conduct. We review claims of insufficient evidence in the light most favorable to the conviction and will affirm the conviction if the evidence supports the jury's verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We defer to the jury's assessment of witness credibility, *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004), and we assume that "the jury believed the state's witnesses and disbelieved" all contrary evidence, *State v. Atkins*, 543 N.W.2d 642, 646 (Minn. 1996).

Christianson maintains that because the evidence cannot prove that he used force or coercion to accomplish the bathroom sex act, it does not support his conviction of third-degree criminal sexual conduct. A person commits third-degree criminal sexual conduct by "us[ing] force or coercion to accomplish [sexual] penetration." Minn. Stat. § 609.344, subd. 1(c) (2012). Coercion occurs when the actor "use[s] . . . words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant . . . or the use by the actor of confinement . . . that causes the complainant to submit to sexual penetration." Minn. Stat. § 609.341, subd. 14 (2012). The state need not prove a specific act or threat to prove coercion; creating an atmosphere of fear can also constitute coercion. *State v. Gamez*, 494 N.W.2d 84, 87 (Minn. App. 1992), *review denied* (Minn. Feb. 23, 1993).

Christianson insists that K.S. consented to the sex act. In contrast to coercion, consent occurs when "words or overt actions . . . indicat[e] a freely given present agreement to perform a particular sexual act." Minn. Stat. § 609.341, subd. 4(a). Christianson accurately observes that K.S. testified that she "consented" to the sexual encounter, but he takes K.S.'s testimony out of context. Her more complete testimony indicates that she "consented" only because she "didn't want the situation to escalate" after Christianson isolated her in the bathroom. Coerced consent is not consent. We have addressed a related circumstance and affirmed the finding of coercion. *See State v. Daby*, 359 N.W.2d 730, 733 (Minn. App. 1984) (holding that sufficient evidence of coercion exists when victim initially resisted but ultimately acquiesced to "avoid additional physical harm"). The jury had ample evidence from which to conclude that

Christianson's demanding words along with his generally violent and threatening behavior toward K.S. created an atmosphere of fear and put K.S. on notice that Christianson would harm her if she did not perform oral sex. That night, he punched her, bloodied her lip, and pulled her hair. Although the evidence was disputed as to whether this battering occurred before or after the sex act, other evidence indicated that, before that night, Christianson had sent threatening text messages, menaced K.S. with a pole, and held a knife to her abdomen. This evidence supports the guilty verdict because it supports the underlying implicit finding of coercion.

Christianson urges us to deem K.S.'s account incredible due to inconsistencies in her testimony. He is correct that inconsistencies in K.S.'s testimony exist and that, because of them, the jury had some reason to disbelieve her story. But it also had reason to treat her inconsistencies as insubstantial. It apparently did, and we defer to its credibility assessment. Because we assume that the jury believed the evidence supporting the verdict, we cannot deem the jury's finding of coercion unfounded.

II

Christianson next argues that the district court violated his right to a fair trial by allowing the prosecutor to cross-examine a defense witness about Christianson's participation in anger management classes. We need not dwell on the claimed error because even if Christianson has spotted an error, it is certainly harmless. An evidentiary error that does not implicate a defendant's constitutional rights is harmless unless it substantially influenced the verdict. *State v. Gatson*, 801 N.W.2d 134, 150 (Minn. 2011). We hold that the alleged error did not affect the verdict. By the time the prosecutor asked

Smith about Christianson's participation in anger management therapy, the jury had already learned of Christianson's participation from the audio recording of his police interview. Christianson did not challenge that portion of the recording in the district court and he does not appeal the treatment of the police recording in any fashion. His challenge to the jury's later exposure to the same information, therefore, *at most* constitutes a challenge to a harmless error. This alone requires that we reject the challenge. But we add separately that the jury's awareness of Christianson's participation in anger management classes could not plausibly have prejudiced the outcome because the jury also received abundant unchallenged evidence that Christianson's conduct was suitable for anger management classes. On either ground, we are satisfied that the jury's guilty verdict was not affected by Smith's testimony about Christianson's therapy.

III

Christianson finally contends that the district court abused its discretion when it sentenced him to 99 months in prison (a sentence toward the high end of the presumptive range) instead of the presumed 90-month term in the middle, because of its rationale for the sentence. The argument has merit.

The setting is important to our analysis. The state had just moved the district court for an aggregated criminal-history score and a longer sentence under *State v. Hernandez*, 311 N.W.2d 478 (Minn. 1981), while Christianson moved the district court to depart downward from the guidelines sentence. Assuming no departure, the parties also disputed where, within the presumptive range, the sentence should lie. The state advocated for a 108-month prison term (the top of the presumptive range) while Christianson argued for a

77-month prison sentence (the bottom of the presumptive range). The district court rejected the state's and Christianson's out-of-the-box contentions, and it turned to where, within the presumptive range, to set the sentence.

In that context, the district court expressed its (quite reasonable) annoyance at what appeared to it to have possibly been the use of children to manufacture juror sympathy for Christianson. It expressly relied on that behavior when it addressed the parties' competing sentencing positions and issued the sentence.

We are asked to review a sentence within the guidelines range—a task we almost never undertake—so we first address the propriety of our review. Ordinarily, the district court has such broad sentencing discretion that we generally will not review a district court's decision imposing a sentence within the presumptive range defined by the guidelines. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010); *see* Minn. Sent. Guidelines 2.C & cmt. 2.C.02 ("Any sentence length . . . within the range . . . shown in the appropriate cell of the Sentencing Guidelines Grids is not a departure."), 2.D ("The sentence ranges provided in the Sentencing Guidelines Grids are presumed to be appropriate.") (2011); *State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008) ("All three numbers in any given cell constitute an acceptable sentence."). Not long after the guidelines became effective, the supreme court in dictum even anticipated (it turns out, accurately) that a sentence within the presumptive guidelines range would be reversed only in "rare" cases. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

But a sentence within the presumptive range is not unassailable. Reversible circumstances may occasionally present themselves, because the district court's broad sentencing discretion "is not a limitless grant of power." *State v. Warren*, 592 N.W.2d 440, 451 (Minn. 1999). The supreme court has long recognized that an appellate court will exercise its authority to "modify a sentence that is within the presumptive sentence range" when "compelling circumstances" warrant it. *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982). We think those circumstances present themselves here.

The state directs our attention to the question of due process, arguing that the district court's sentence does not "shock[] the conscience or raise[] the possibility of fundamental unfairness." "The United States and Minnesota Constitutions, through their due process clauses, ensure that sentencing proceedings observe the standards of fundamental fairness essential to justice." *State v. Calmes*, 632 N.W.2d 641, 645 (Minn. 2001) (quotation omitted). Indeed, fundamental fairness is "[e]ssential to the guarantee of due process." *State v. Melde*, 725 N.W.2d 99, 102 (Minn. 2006).

We repeat that appellate review is available to challenge any sentence on due process grounds. Even before the guidelines became effective, back when the district court had almost unfettered discretion to assign a sentence that did not exceed the statutory maximum and based on almost any reason, the supreme court repeatedly recognized appellate authority to review and reverse a sentence that either violated the law or that infringed on a defendant's due process or equal protection rights. The supreme court recounted the historic right to appeal from an unconstitutional criminal sentence this way:

> Before the statewide guidelines for felony sentences were adopted and before appellate review of sentences was authorized, we took the position that generally, so long as a sentence was authorized by law and so long as the trial court had given the defendant due process at sentencing and had not discriminated against the defendant in violation of the equal protection clause, the sentence would stand, even in glaring cases where a more culpable codefendant had been sentenced more leniently by a different judge.

State v. Lambert, 392 N.W.2d 242, 243 (Minn. 1986) (citing *State v. Gamelgard*, 287 Minn. 74, 177 N.W.2d 404 (1970)).

Neither the legislation instituting the sentencing guidelines in 1980 nor subsequent caselaw applying the guidelines expressly or implicitly closed any door previously open to convicted defendants for appellate review of a sentence. So when the supreme court gave its postguidelines clarification that district court sentencing discretion is "not . . . limitless" and that appellate review and reversal of a sentence within the guidelines presumptive range would occur only in the "rare case," it certainly contemplated our review of sentences issued within the presumptive range but that rest on unconstitutional grounds, just as discretionary sentences could be challenged before the guidelines era. So whether or not the sentence lands within the guidelines presumptive range, we may review a challenged sentence to ensure that the defendant "has [not] been denied due process or other fundamental constitutional rights." *Cf. State ex rel. Flynn v. Rigg*, 256 Minn. 304, 306–07, 98 N.W.2d 79, 82 (1959) (discussing right to habeas review of a sentence). We hold that, even when the district court sentences a defendant within the presumptive imprisonment range under the sentencing guidelines, it abuses its discretion if it expressly relies on a constitutionally impermissible sentencing consideration to fix

the imprisonment at the upper end of that range. We therefore limit our analysis to whether the district court sentenced Christianson based only on constitutionally permissible factors.

By declaring, "I am going to go up slightly from the presumptive range" and giving two specific reasons, we are informed implicitly by the district court that Christianson likely would have received a shorter sentence were it not for the stated reasons. We believe that one of those reasons is outside the district court's discretion because it implicates Christianson's due process rights.

The district court expressly based its sentencing decision on the suspected favor-currying courtroom conduct. Christianson maintains that the district court "had no evidence that [Christianson] influenced the spectators or encouraged their conduct." The state does not defend the district court's analysis with any argument or evidence suggesting that Christianson is wrong about that. The district judge concluded that this conduct in part "would support a [term of imprisonment] slightly higher than the presumptive sentence" even after he acknowledged that he "[did not] know if it was an intentional desire by [Christianson] or those who were supporting [him] to influence the jury." Given the acknowledgement, we need not decide whether the district court has discretion to base a sentence on *a defendant*'s use of a child to manipulate the jury's sensitivities; here the district court specifically stated that it did not know (meaning *it did not find*) that Christianson had orchestrated the suspected manipulative courtroom moments. We decide only whether the district court acts within its very broad sentencing

discretion when it bases a defendant's sentence on someone else's courtroom misconduct. We hold that it does not.

The state gives no reason explaining how it is fundamentally fair to add nine months to a defendant's sentence for courtroom misconduct that was not undertaken, influenced, or encouraged by the defendant. We can think of none. As a general matter, any increase in a sentence must stem from the defendant's own conduct, not conduct orchestrated by someone beyond the defendant's control. This principle is clear when it concerns sentencing departures. *State v. Leja*, 684 N.W.2d 442, 452–53 (Minn. 2004) (Anderson, J., concurring specially) (noting that courts considering durational departures should examine "each participant's conduct . . . individually"). And the principle cannot reasonably be limited to sentencing departures because it rests at least indirectly on the broader, universally applicable constitutional concept that a person's liberty cannot be infringed without due process of law. We hold that courtroom spectator misconduct that is not attributable to the defendant is a constitutionally impermissible sentencing consideration. The district court cannot punish the defendant for someone else's misconduct not attributable to the defendant.

We are not at all dubious of the district court's suspicion of attempted emotional manipulation of the jury or unsympathetic to its evident frustration at the spectators' disregard for its courtroom-management instructions. But when the court's admonishments went unheeded after it "made clear not to do anything like that again and even addressed the [involved] women who were [t]here," it had the authority and means to remedy the suspected courtroom misbehavior directly, without punishing the

uninvolved defendant. *See State v. Ware*, 498 N.W.2d 454, 458 (Minn. 1993) ("Without a doubt a trial court may, in the appropriate exercise of its discretion, exclude spectators when necessary to preserve order in the courtroom."). The district court merely applied the wrong remedy here.

We emphasize that this opinion stakes no new ground and does not purport to open any new avenues to challenge a sentence that falls within the district court's discretionary range. The district court had no obligation to explain its sentence within the presumptive range, *see State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985), and nothing in our holding or rationale intends to suggest that obligation. The liberty not to explain its sentence simply assumes that only proper considerations are guiding the court's discretion; the liberty does not itself buttress a prison sentence that expressly "went up" a period of months within the presumptive range when the district court specifies its reasons and one of its reasons is, on its face, outside the district court's constitutionally permissible discretion. We conclude that these facts constitute rare, sufficiently compelling circumstances to reverse a sentence imposed within the guidelines presumptive range.

We do not address Christianson's other claim of sentencing indiscretion because that claim raises no reviewable constitutional concern. But we reverse the sentence and remand for the district court to resentence Christianson. The district court may address anew the parties' previously maintained positions as to Christianson's sentencing based on any constitutionally permissible reasons within the district court's broad discretion

and issue a new sentence anywhere within the presumptive range, with or without explanation.

Affirmed in part, reversed in part, and remanded.