STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1296

State of Minnesota,
Respondent,

vs.

John Louis Corrigan,
Appellant.

Filed May 13, 2013
Affirmed
Schellhas, Judge

Washington County District Court
File No. 82-VB-11-6326

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

Michael A. Welch, Forest Lake City Prosecutor, Forest Lake, Minnesota (for respondent)

John Louis Corrigan, Forest Lake, Minnesota (pro se appellant)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Appellant challenges his conviction of driving left of the roadway center in violation of Minn. Stat. § 169.18, subd. 5(b)(3) (2010). We affirm.

FACTS

In April 2011, the City of Forest Lake charged appellant John Corrigan with driving over the centerline. Before Corrigan's first court trial, the district court granted respondent State of Minnesota's motion to amend the charge to driving left of roadway center in violation of Minn. Stat. § 169.18, subd. 5 (2010),[1] and improper lane usage in violation of Minn. Stat. § 169.18, subd. 7 (2010). The district court found that the state proved both charges beyond a reasonable doubt but found Corrigan guilty of only one charge—violating Minn. Stat. § 169.18, subd. 7—because "[o]therwise it would be unfair double jeopardy." The court dismissed the subdivision 5 charge and sentenced Corrigan for failing to drive entirely within one lane of traffic in violation of subdivision 7. Corrigan appealed his conviction, arguing, among other things, that he was deprived of his right to testify and that insufficient evidence supported his conviction under section 169.18, subdivision 7. *State v. Corrigan*, No. A11-1060, 2012 WL 612313, at *1, *review denied* (Minn. Sept. 25, 2012). This court reversed and remanded, concluding that the evidence was sufficient to support Corrigan's conviction but that he was "denied his constitutional right to testify on his own behalf." *Id*. at *4.

Upon retrial before a different district court judge, the state clarified that it was prosecuting Corrigan for violations of Minn. Stat. § 169.18, subd. 5(b)(3), which generally prohibits a vehicle from being "driven to the left half of the roadway" when "official signs are in place prohibiting passing, or a distinctive centerline is marked,

[1] The state did not specify any clause under subdivision 5.

which distinctive line also so prohibits passing," and Minn. Stat. § 169.18, subd. 7(a), which requires that a vehicle "shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." Corrigan moved the district court to "strike" the charge under section 169.18, subdivision 5(b)(3), arguing that the judge presiding over his first trial already had issued a "judgment on the merits" on that charge when the judge dismissed the charge at sentencing. The district court denied Corrigan's motion, received the same evidence received during Corrigan's first trial,[2] found Corrigan guilty beyond a reasonable doubt of both charges, determined that the two charges arose from a single behavioral incident, and sentenced Corrigan for his violation of section 169.18, subdivision 5(b)(3).

This appeal follows.

D E C I S I O N

In his pro se brief, Corrigan argues that (1) the district court clearly erred in its determination that the two charges arose from a single behavioral incident; (2) "the first trial [brought] the prosecution for M.S.A. § 169.18 (5)(b)(3) to a conclusion," which we construe as a double-jeopardy argument; (3) the evidence was insufficient to support the district court's finding of guilt on the charge under Minn. Stat. § 169.18, subd. 5(b)(3); and (4) the state prosecuted the wrong charge, under the circumstances.

[2] Corrigan exercised his right not to testify.

Single Behavioral Incident

The district court determined that Corrigan's conduct underlying both charges arose from a single behavioral incident and therefore only sentenced Corrigan for his violation of Minn. Stat. § 169.18, subd. 5(b)(3). Corrigan argues that the district court's determination was clearly erroneous and therefore that both "convictions should be vacated, otherwise this prosecution would go on until the desired outcome is achieved."[3] Corrigan's argument is unpersuasive.

Generally, "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." Minn. Stat. § 609.035, subd. 1 (2010). A district court therefore may impose only one sentence when multiple offenses are part of a single behavioral incident. *State v. Schmidt*, 612 N.W.2d 871, 876 (Minn. 2000).

> We may review whether the record supports a district court's determination that conduct underlying two offenses did not consist of a single behavioral incident. But the district court's determination of whether multiple offenses constitute a single behavioral incident is a factual determination that we will not disturb unless clearly erroneous.

State v. O'Meara, 755 N.W.2d 29, 36−37 (Minn. App. 2008) (citation omitted). A factual determination is clearly erroneous when it is unsupported by the record. *Id*. at 37. "The determination of whether multiple offenses are part of a single behavioral act under section 609.035 . . . involves an examination of all the facts and circumstances." *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997). "Whether multiple offenses are part of a single

[3] Corrigan argues that "[b]oth convictions" should be vacated, but the district court only convicted him under section 169.18, subdivision 5(b)(3).

behavioral incident depends on factors such as the time and place of the offenses, and whether they were motivated by a single criminal objective." *O'Meara*, 755 N.W.2d at 37 (citing *Schmidt*, 612 N.W.2d at 876).

For purposes of traffic violations, "violations of two or more traffic statutes result from a single behavioral incident where they occur at substantially the same time and place and arise out of a continuous and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment." *State v. Johnson*, 273 Minn. 394, 405, 141 N.W.2d 517, 525 (1966). In *Johnson*, the supreme court concluded that the defendant's offenses of driving while impaired and driving over a centerline arose from the same behavioral incident because they "occurred during a continuous and uninterrupted operation of his automobile, which took place within a period of a few minutes and a distance of two blocks." *Id*. at 396, 405, 141 N.W.2d at 520, 525.

Here, Corrigan does not even argue that the two offenses did not occur during a continuous and uninterrupted operation of his automobile or that the offenses did not occur simultaneously. The district court found Corrigan guilty of violating section 169.18, subdivision 5(b)(3), because, while driving southbound through the intersection, Corrigan veered left and entered into the northbound turning lane. The district court found Corrigan guilty of violating section 169.18, subdivision 7(a), because, after entering the northbound turning lane, Corrigan drove back to the correct southbound lane. We conclude that the district court's determination that Corrigan's offenses occurred during a single behavioral incident was not clearly erroneous.

Double Jeopardy

Corrigan argues that his conviction under section 169.18, subdivision 5(b)(3), violates the protection against double jeopardy. He argues that, because the district court at the close of his first trial convicted him under section 169.18, subdivision 7, and dismissed the charge under section 169.18, subdivision 5, he cannot now be convicted under section 169.18, subdivision 5(b)(3). Corrigan's argument lacks merit.

The Double Jeopardy Clauses of the United States and Minnesota Constitutions guarantee that a person may not be twice put in jeopardy for punishment for the same crime. U.S. Const. amend. V; Minn. Const. art. 1, § 7. "The application of the constitutional protection against double jeopardy is reviewed de novo." *State v. Gouleed*, 720 N.W.2d 794, 800 (Minn. 2006). Under Minn. Stat. § 609.035, subd. 1, generally, "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them." Here, Corrigan was not acquitted of any of the charges in question; in his first trial, the district court convicted him of violating Minn. Stat. § 169.18, subd. 7(a). This court overturned that conviction on appeal and remanded for a new trial. *Corrigan*, 2012 WL 612313, at *4.

After a defendant's conviction is overturned, the state may reinstate dismissed charges. *Schmidt*, 612 N.W.2d at 877 (citing *State v. Spaulding*, 296 N.W.2d 870, 875 (Minn. 1980)). A retrial of the reinstated charges is not serialized prosecution in violation of section 609.035 and does not violate the defendant's due-process rights. *Id.* We

therefore conclude that no final conviction barred Corrigan's retrial on both charges, and retrial did not subject Corrigan to double jeopardy.

Sufficiency of the Evidence

Corrigan argues that the evidence is insufficient to support his conviction for violating section 169.18, subdivision 5(b)(3), because "[a]bout 75% of the paint that would constitute a double yellow line" is "absent on the video recording." This argument fails.

An appellate court "review[s] criminal bench trials the same as jury trials when determining whether the evidence is sufficient to sustain convictions." *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999) (quotation omitted). In considering a claim of insufficient evidence, an appellate court "conduct[s] 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. Hurd*, 763 N.W.2d 17, 26 (Minn. 2009) (quotation omitted).

The district court found Corrigan guilty under section 169.18, subdivision 5(b)(3), which provides that a vehicle generally may not "be driven to the left half of the roadway" when, among other things, "a distinctive centerline is marked, which . . . prohibits passing, as declared in the Manual on Uniform Traffic Control Devices adopted by the commissioner." Sergeant Richert testified that the lines differentiating the left half of the roadway from the right half of the roadway were "[t]wo solid yellow lines" and affirmed that the lines were similar to "solid yellow lines" he had seen on other roadways in his 14 years of experience as a police officer. Sergeant Richert also affirmed that the

yellow lines were "clearly discernible." The video from Sergeant Richert's squad car supports his testimony.

Viewing the evidence in a light most favorable to the conviction, we conclude that the evidence contained within the record is sufficient to support Corrigan's conviction under Minn. Stat. § 169.18, subd. 5(b)(3).

Other Arguments

Corrigan argues that the state wrongly prosecuted him for violating section 169.18, subdivision 7(a). He claims that, because he was "not in a proper lane," it was "not practicable for him to remain in it" and therefore that the state should not have prosecuted him for crossing back into the correct lane. He asks that this court vacate his conviction under section 169.18, subdivision 7(a), and that, because the state and district court "have deemed these charges to have arisen from the same behavioral incident," both convictions should be vacated. Corrigan's argument lacks merit. Although the district court found Corrigan guilty of violating section 169.18, subdivision 7(a), the court did not convict or sentence him for the offense.

In his reply brief, Corrigan argues that he was deprived of his right to appellate review because "in court the prosecutor/judge doubled the charges [Corrigan] had to defend against, and then by dismissing one count, cut in half the chances to get a reversal based on insufficiency of evidence." We conclude that Corrigan has not been deprived of any right of appellate review of his conviction of violating section 169.18, subdivision 5(b)(3), or the district court's finding of guilt as to section 169.18, subdivision 7(a).

Affirmed.