STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0249

State of Minnesota,
Appellant,

vs.

Billy Lee Croon,
Respondent.

Filed September 2, 2008
Reversed
Toussaint, Chief Judge

Ramsey County District Court
File No. K0-07-4492

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Susan Gaertner, Ramsey County Attorney, Steven R. Pfaffe, Assistant County Attorney, 50 Kellogg Boulevard West, Suite 315, St. Paul, MN 55102 (for appellant)

Mary M. McMahon, Special Assistant State Public Defender, McMahon & Associates Criminal Defense, Ltd., 670 Commerce Drive, Suite 110, Woodbury, MN 55125-9210 (for respondent)

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

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

TOUSSAINT, Chief Judge

Appellant State of Minnesota challenges the district court's dismissal of the felony domestic-assault charge brought against respondent Billy Lee Croon. Because a conviction of a qualified domestic violence-related offense as defined by Minn. Stat. § 609.02, subd. 16 (2006), need not have a domestic-violence nexus to be used to enhance a misdemeanor domestic assault to a felony under Minn. Stat. § 609.2242, subd. 4 (2006), we reverse.

D E C I S I O N

On December 28, 2007, respondent assaulted his live-in girlfriend in Ramsey County. Minn. Stat. § 609.2242, subd. 4, enhances a misdemeanor domestic assault to a felony if it is committed within ten years of the first of "two or more previous qualified domestic violence-related offense convictions." Respondent was charged with felony domestic assault rather than misdemeanor domestic assault because he had prior convictions of misdemeanor battery in 2000, when the victim was his former girlfriend, and of felony terroristic threats in 2001, when the victims were an elderly couple with whom he had no relationship. The district court granted respondent's motion to dismiss the charge because the terroristic-threat conviction lacked a domestic-violence nexus. The state challenges that dismissal.

"When the state appeals from a pretrial order dismissing a criminal charge, this court will reverse only if the state clearly and unequivocally demonstrates that the district court erred and that the error, unless reversed, will have a critical impact on the outcome

of the prosecution." *State v. Lopez,* 631 N.W.2d 810, 813 (Minn. App. 2001), *review denied* (Minn. Sept. 25, 2001). It is undisputed that the district court's dismissal of the complaint had "a critical impact on the outcome of the prosecution."

Respondent argues that his 2001 terroristic-threat conviction is not a qualified domestic violence-related offense because it lacked a domestic-violence nexus. But Minn. Stat. § 609.02, subd. 16, defines "qualified domestic violence-related offense" to include offenses that have no domestic-violence nexus. One such offense is violations of "[Minn. Stat. §] 609.713 [2006] (terroristic threats)." Others are violations of Minn. Stat. §§ 609.221, 609.222, 609.223, 609.2231, 609.224 (2006) (respectively, first-, second-, third-, fourth-, and fifth-degree assault); Minn. Stat. §§ 609.342, 609.343, 609.344, 609.345 (2006) (respectively, first-, second-, third-, and fourth-degree criminal sexual conduct); Minn. Stat. § 609.377 (2006) (malicious punishment of child); Minn. Stat. § 609.748, subd. 6 (2006) (violation of harassment restraining order); Minn. Stat. § 609.749 (2006) (harassment/stalking); and Minn. Stat. § 609.78, subd. 2 (2006) (interference with emergency call). *See also State v. Moen*, 752 N.W.2d 532, 535 (Minn. App. 2008) (concluding that any offense enumerated in section 609.02, subdivision 16, is a qualified domestic-violence related offense). Respondent's argument is without merit.

Reversed.