STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0607

State of Minnesota,
Respondent,

vs.

Mark William Yeo,
Appellant.

Filed March 31, 2014
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge

Otter Tail County District Court
File No. 56-CR-12-937

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

David Hauser, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, 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

BJORKMAN, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct, arguing that (1) the district court erred by denying his suppression motion that challenged

the search warrant, (2) the evidence was insufficient because he was not in a position of authority over the complainant, (3) the district court abused its discretion by excluding evidence of the complainant's theft offenses, and (4) the district court erroneously imposed a no-contact order and mandated sex-offender treatment. We affirm Yeo's conviction and the district court's evidentiary rulings, but we reverse and remand for resentencing because the district court was not authorized to impose a no-contact order or require treatment.

FACTS

Complainant V.T. met appellant Mark William Yeo in 2011, when she was 13 years old. Yeo, a friend of V.T.'s father, is more than 48 months older than V.T. From the time they met through April 2012, V.T. saw Yeo on a weekly basis, and usually she was alone with him. Yeo took her shopping and bought her clothing, bedsheets, food, and a small refrigerator. Yeo took V.T. to various places, including restaurants, a water park, a mall in Fargo, North Dakota, his house, and a hotel. They talked about V.T.'s struggles at home and at school and often exchanged text messages and called each other. V.T. considered Yeo "a fatherly figure or something like that."

V.T. described three incidents of sexual abuse. The first occurred in January 2012. Yeo took V.T. to a hotel where they spent the night and slept in the same bed. During this incident, Yeo touched V.T.'s breasts over her clothing. He also took photos of V.T. when he thought she was sleeping and when she was in the hotel pool.

The second incident took place in March 2012, after Yeo took V.T. and her father to brunch in Detroit Lakes. Yeo drove V.T.'s father home and then returned to Detroit

Lakes with V.T. They were alone approximately six hours. While they were in Yeo's pick-up truck, Yeo put his fingers inside V.T.'s vagina. Yeo asked if she liked what he was doing; she said yes because she was worried that if she said anything else, he would stop buying her things. V.T. testified that this was not the only time Yeo touched the inside of her vagina.

Finally, later in March, Yeo drove V.T. to a pawn shop in Perham that had a guitar V.T. wanted. As they sat in his truck, Yeo stroked V.T.'s breasts with his fingertips, telling her that "if [she] wanted the guitar . . . [she] would have to let him touch [her] like that." Yeo purchased the guitar. During the return trip, Yeo again touched V.T., but she did not specify where he touched her.

On March 31, officers at the U.S.-Canada border found suspicious items in Yeo's possession, including information about V.T. The border-patrol officers contacted the local authorities in Otter Tail County, where V.T. and Yeo reside. Sergeant Keith Van Dyke and Detective Reed Reinbold conducted an investigation. On April 3, officers searched Yeo's house and vehicles and Detective Reinbold interviewed V.T. Yeo was charged with one count of first-degree criminal sexual conduct, two counts of second-degree criminal sexual conduct, and one count of third-degree criminal sexual conduct. The district court dismissed one of the second-degree criminal-sexual-conduct counts. The jury found Yeo guilty of all remaining charges. The district court sentenced Yeo to 144 months' imprisonment, followed by ten years of conditional release on the first-degree offense, directed Yeo to complete sex-offender treatment, and ordered him to have no contact with children, the complainant, or her family. This appeal follows.

D E C I S I O N

I. The district court did not err by denying Yeo's motion to suppress evidence because the search warrant was supported by probable cause.

Yeo sought to exclude numerous items that police found in his house and van, including books about parenting, photos of V.T., hotel and pawn-shop receipts, and a mannequin dressed like a preteen girl, on the ground that they were obtained during an illegal search. Both the United States and Minnesota Constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A search warrant must be supported by probable cause. *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). When determining whether a search warrant is valid, our review is limited to ensuring "that the issuing judge had a 'substantial basis' for concluding that probable cause existed." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). In reviewing the sufficiency of a search-warrant affidavit, we consider the totality of the circumstances and do not "review each component of the affidavit in isolation." *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985).

Probable cause exists when "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (quotation omitted). Relevant circumstances include "information linking the crime to the place to be searched and the freshness of the information." *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). Minnesota courts have found probable cause to search a defendant's residence where "the affidavit contain[s] facts justifying the

conclusion that [the] defendant had participated in the [crime]" and the defendant's residence is "the normal place that [the] defendant would be expected to keep" the articles sought. *Rosillo v. State*, 278 N.W.2d 747, 749 (Minn. 1979); *State v. Brennan*, 674 N.W.2d 200, 206 (Minn. App. 2004) (holding that it is reasonable to infer that suspect would keep evidence of child pornography "in a place considered safe and secret, like the home"), *review denied* (Minn. Apr. 20, 2004).

Following Yeo's arrest, police obtained a warrant to search a 1996 Ford pickup truck and a 1993 Ford van that were registered to Yeo, and areas in G.Y.'s house that were accessible to Yeo. The warrant application and accompanying affidavit stated the following facts. Yeo was stopped at the U.S.-Canada border on March 31, 2012. Border-patrol officers found a camera that contained photos of a young teenage girl with blond hair. Yeo had a dental-appointment receipt with the patient name V.T., and his cell phone showed multiple text messages and calls to and from an individual named V. Yeo also had print copies of webpages that describe how to make Gamma Hydroxybutyrate (a date-rape drug), juvenile prostitution, and commercial sexual exploitation. Upon receiving the border-patrol officers' report, Detective Reinbold searched local databases and identified V.T. as the girl in the photos. V.T.'s father stated that he knew Yeo and V.T. told Detective Reinbold that Yeo had touched "her chest and vaginal areas in a sexual manner" including "[o]ne incident of digital penetration [that] happened in [his] pickup truck," that Yeo once gave her a pill that he kept in the visor of his pickup truck that made her feel "nauseated and dizzy," and that he took photos of her in a bikini. The affiant stated that there was good reason to believe the officers would find electronic data

involving V.T., evidence of illegal drug possession, and child pornography, among other things, in Yeo's home and vehicles.

Yeo asserts that the application and affidavit do not establish probable cause that evidence of alleged abuse would be found in the home or the van. We are not persuaded. First, police were investigating Yeo for criminal sexual conduct. Relevant evidence, including illegal drugs, other photos of V.T., and the camera Yeo used to take the photos, are items likely to be kept in a home or vehicle. *See Brennan*, 674 N.W.2d at 205-06 (holding that there was probable cause to search defendant's home for child pornography because those who view child pornography tend to do so in the privacy of their home). Second, the information contained in the warrant application was fresh. The incident at the Canadian border occurred on March 31, 2012; three days later, officers interviewed V.T. who described incidents that occurred during the preceding three months; and the warrant application was submitted on April 3. Third, because Yeo's van was parked in the garage at the house, it was within the curtilage of the house and within the scope of the warrant for the house. *See State v. Crea*, 305 Minn. 342, 345, 233 N.W.2d 736, 739 (1975) (holding that curtilage of the house includes the garage). And the supporting affidavit establishes probable cause to search the van regardless of where it was parked. It was registered to Yeo, V.T. alleged that sexual contact occurred in Yeo's other vehicle, and, like a house, a van is a safe and private place for someone to keep evidence of criminal sexual conduct.[1]

[1] Yeo also argues that the warrant was invalid because the supporting affidavit did not state that he lived at the house to be searched. Because Yeo did not raise this argument in

In sum, the circumstances establish probable cause to search the house and vehicles. The district court did not err by denying Yeo's motion to suppress the evidence.

II. Sufficient evidence supports the jury's finding that Yeo was in a "position of authority" over V.T.

When the sufficiency of the evidence is challenged, we carefully analyze the record to determine whether the jury could reasonably find the defendant guilty of the offense charged based on the facts in the record and the legitimate inferences that can be drawn from them. *State v. Buckingham*, 772 N.W.2d 64, 71 (Minn. 2009). We view the evidence in the light most favorable to the conviction, assuming the jury believed the state's witnesses and disbelieved any contrary evidence. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). Construction of a criminal statute is a question of law subject to de novo review. *State v. Rucker*, 752 N.W.2d 538, 545 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008). We construe the words and phrases in a statute in accordance with their plain meaning. *Johnson v. State*, 820 N.W.2d 24, 26 (Minn. App. 2012).

A person may be convicted of first-degree criminal sexual conduct if that person "engages in sexual penetration with another person" and "the complainant is at least 13 years of age but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant." Minn. Stat.

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the district court, we decline to consider it on appeal. *See State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996) (stating that failure to raise constitutional challenges to evidence at omnibus hearing waives those challenges).

§ 609.342, subd. 1(b) (2010). A person in a "position of authority" includes, but is not limited to

> any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

Minn. Stat. § 609.341, subd. 10 (2010).

The statute "does not contain an exclusive list of persons in a position of authority." *State v. Larson*, 520 N.W.2d 456, 461 (Minn. App. 1994), *review denied* (Minn. Oct. 14, 1994). And a variety of relationships may support a determination that a person is in a "position of authority." *See, e.g., State v. Hall*, 406 N.W.2d 503 (Minn. 1987) (baby-sitter); *State v. Bird*, 292 N.W.2d 3 (Minn. 1980) (uncle who occasionally watched complainant); *State v. Mogler*, 719 N.W.2d 201 (Minn. App. 2006) (on-duty police officer).

Yeo argues that he was not in a position of authority because neither V.T.'s father nor anyone else expressly charged him with any duties or responsibilities toward V.T. We are not persuaded. The broad statutory definition includes those who are charged with a duty or responsibility for the "health, welfare, or supervision of a child" either "independently or through another." Minn. Stat. § 609.341, subd. 10. V.T.'s father encouraged Yeo to spend time with V.T., hoping they would have an uncle-niece type of relationship. In March 2012, V.T.'s father expressly agreed to let V.T. travel to Detroit Lakes with Yeo. During this trip, Yeo was immediately responsible for V.T.'s health,

welfare, and supervision, and he also controlled her ability to return home. And during this trip, Yeo sexually penetrated V.T.

Moreover, apparently to groom her for abuse, Yeo independently assumed responsibility in part for V.T.'s health, welfare, and supervision. He involved himself in V.T.'s life for the span of a year, during which he regularly provided her with food, clothing, and gifts. V.T. thought of Yeo as a father figure and regularly confided in him. Once, Yeo expressly conditioned a gift to V.T. on her sexual compliance. He provided transportation in his car and lodging at hotels when they traveled together on out-of-town and overnight trips, and took on parental duties like taking V.T. to a dental appointment. On this record, we conclude there is sufficient evidence that Yeo was a person in a position of authority over V.T. to support Yeo's conviction.[2]

III. The district court did not abuse its discretion by excluding evidence of V.T.'s petty theft offenses.

Evidentiary rulings are reviewed for abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Under Minn. R. Evid. 608(b), specific instances of a witness's conduct may, in the district court's discretion, be inquired about on cross-examination if they concern the witness's character for truthfulness or untruthfulness. Courts have permitted evidence of theft crimes when they involve false statements or dishonesty. *See State v. Clark*, 296 N.W.2d 359, 367-68 (Minn. 1980). But not all theft crimes are probative of a witness's character for truthfulness. *See State v. Darveaux*, 318

[2] Yeo also argues that he was not in a position of authority over V.T. under the expanded definition we applied in *Mogler*. Because we hold that Yeo assumed duties with respect to V.T.'s welfare and supervision, we need not address this argument.

N.W.2d 44, 48 (Minn. 1982) (stating that shoplifting is not a conviction involving dishonesty or false statement under Minn. R. Evid. 609(a)(2)).

Yeo sought to cross-examine V.T. about two petty theft offenses. In August, 2011, V.T. stole a purse and filled it with perfume and other items, cutting her hand in the process. When loss prevention confronted her, she was not truthful as to how she cut her hand. In October 2011, V.T. was caught stealing merchandise from a Wal-Mart. Yeo asserts that the district court abused its discretion in excluding this evidence because it is relevant to V.T.'s credibility and, if admitted, the jury would have disbelieved V.T. and acquitted Yeo. We disagree. The second shoplifting incident did not involve dishonesty or false statements, so it is not admissible under rule 608. And even though the first incident involved a false statement, the nature of the statement lacks significant probative value. The incident did not involve Yeo and has little bearing on V.T.'s honesty while testifying in this case. Because there is no connection between the sexual abuse at issue in this case and V.T.'s statement to loss-prevention officers, we discern no abuse of discretion by exclusion of this evidence.

IV. The district court erred by requiring appellant to complete sex-offender treatment and issuing a no-contact order.

We review a sentence imposed by a district court "to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court." Minn. Stat. § 244.11, subd. 2(b) (2010). The legislature has exclusive authority to define crimes and the corresponding range of sentences or punishments.

Minn. Stat. § 609.095(a) (2010); *State v. Olson*, 325 N.W.2d 13, 17-18 (Minn. 1982). A district court must act within the limits of the applicable statutes when imposing a sentence. *State v. Pugh*, 753 N.W.2d 308, 311 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008).

Yeo argues that the district court erred by requiring him to complete sex-offender treatment and prohibiting him from having contact with children, the complainant, or her family. We agree. None of the applicable statutes authorize the court to require treatment in this case. When a person is convicted of a sex offense, and an independent assessment indicates that the offender is "in need of and amenable to sex offender treatment, the court shall include in the sentence a requirement that the offender undergo treatment, unless the court sentences the offender to prison." Minn. Stat. § 609.3457, subd. 3 (2010). Likewise, the sentencing statute for Yeo's conviction offense—first-degree criminal sexual conduct—does not authorize a district court to require sex-offender treatment unless the offender is given a probationary sentence. *Cf.* Minn. Stat. § 609.342, subds. 2, 3 (2010). And the general sentencing statute for felony offenses does not authorize the district court to require sex-offender treatment. Minn. Stat. § 609.10, subd. 1 (2010). Because the district court imposed a prison sentence, it lacked authority to require Yeo to participate in sex-offender treatment.

The state acknowledges and we agree that the district court also acted outside of its authority by issuing a no-contact order. A district court may not issue such an order "as part of an executed sentence unless the order is expressly authorized by statute." *Pugh*, 753 N.W.2d at 311. None of the relevant statutes permit the district court to issue

a no-contact order. *See* Minn. Stat. §§ 609.10, subd. 1 (felony sentencing), .342, subd. 2 (first-degree criminal sexual conduct).

In sum, we affirm Yeo's sentence of 144 months' imprisonment and the 10-year conditional-release term. But because the district court was not authorized to impose the no-contact order or to require sex-offender treatment, we reverse and remand for resentencing consistent with this opinion.

V. Yeo's pro se arguments lack merit.

Yeo argues that his conviction should be reversed because Detective Reinbold, social services worker Heather Rosenthal, and V.T. were not credible witnesses. He asserts that the interviewers did not follow the proper CornerHouse methods when they questioned V.T. and that V.T. lacked credibility because she could not remember details of the sexual abuse, and was coached during a trial recess. We disagree. The credibility of a witness is for the jury to determine. *See State v. Pendleton*, 706 N.W.2d 500, 512 (Minn. 2005). We assume that the jury believed witnesses whose testimony supports the verdict and disbelieved evidence to the contrary. *Id.* And we note that Yeo's trial counsel cross-examined these witnesses and challenged their credibility during closing argument.

Yeo asserts his trial counsel prejudicially affected his case by mistakenly asking the jury to find him "guilty" during closing arguments. We are not persuaded. Yeo's counsel immediately corrected her misstatement.

Finally, because Yeo cites no law or facts to support his additional sufficiency-of-the-evidence arguments, we do not consider them. *See State v. Meldrum*, 724 N.W.2d

15, 22 (Minn. App. 2006) (arguments in pro se brief not supported by citation to legal authority or the record are waived), *review denied* (Minn. Jan. 24, 2007).

Affirmed in part, reversed in part, and remanded.