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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0436**

State of Minnesota,
Respondent,

vs.

Natasha Renae Berry,
Appellant.

**Filed January 21, 2020
Affirmed
Smith, Tracy M., Judge**

Goodhue County District Court
File No. 25-CR-18-1420

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Stephen F. O’Keefe, Goodhue County Attorney, Christopher J. Schrader, Assistant County Attorney, Red Wing, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Natasha Renae Berry challenges the requirement that she register as a predatory offender. She argues that the district court erred by concluding that the offense

of which she was convicted—aiding an offender to avoid arrest—arose out of the same set of circumstances as the predatory offenses with which she was charged but not convicted—aiding the commission of kidnapping and false imprisonment. We affirm.

FACTS

According to the complaint, on June 5, 2018, Berry’s husband, M.B., tried to get his job back at a laundry service in Red Wing. As M.B. was leaving the laundry service’s building after having spoken to the manager, he harassed some of the employees who were outside on break. On June 8, M.B. returned to the laundry and again spoke with the manager about getting his job back. The manager told him that, because of his harassment of the employees, the laundry was not going to rehire him.

Later that day, the same manager saw M.B. walk into the building, take a gun out of a backpack, and put a clip in the firearm. M.B. then approached the manager and the laundry’s general manager and ordered them into a breakroom where three other employees were located. M.B. yelled at the group and was upset that managers had believed another employee instead of him. M.B. let two of the three employees leave; he did not let the managers leave. The managers both reported that they felt like hostages, and one thought M.B. was going to kill them.

Berry then came to the breakroom door and told M.B. that it was time to leave. M.B. left the breakroom, put his gun in a backpack that Berry was carrying, and the two left in an SUV. At her guilty-plea hearing, Berry testified that she was driving.

Surveillance footage showed that, moments before M.B. entered the building with a gun, Berry had entered the building carrying a backpack, gone into an office, and left the

building. The footage showed M.B. then entering the building carrying a firearm and a magazine and motioning the manager into the breakroom with one hand. About a minute later, Berry reentered the building and stopped in the hallway outside the breakroom. Berry and M.B. then left the building.

After the incident, police searched a few locations for Berry and M.B. but could not find them. They were unsure whether Berry was a willing participant or a hostage, and they contacted Berry's wireless provider to trace her phone. The provider determined that the phone was well outside of Red Wing and appeared to be heading eastbound, perhaps out of the state. The parties' briefs agree that Berry and M.B. were arrested in Ohio the following day.

The state charged Berry with aiding another in committing the crimes of kidnapping, threats of violence, and false imprisonment, as well as aiding an offender to avoid arrest. Berry pleaded guilty to aiding an offender to avoid arrest, and the state dismissed the other charges. The district court sentenced Berry to a stayed sentence of a year and a day in prison and placed her on probation for three years with a probationary condition that she serve 365 days in jail. Berry would then be discharged from probation upon completion of her time in jail.

The district court also determined that the aiding-an-offender-to-avoid-arrest offense of which Berry was convicted arose out of the same set of circumstances as the dismissed charges of aiding another in kidnapping and false imprisonment. Based on this determination, the district court ordered Berry to register as a predatory offender.

This appeal follows.

DECISION

Minnesota law requires a person to register as a predatory offender if (1) they are charged with committing, aiding, abetting, or engaging in a conspiracy to commit one of a set of enumerated offenses, and (2) they are either convicted for that offense “or another offense arising out of the same set of circumstances.” Minn. Stat. § 243.166, subd. 1b(a) (2016). The state charged Berry with aiding and abetting kidnapping and false imprisonment,¹ both of which are enumerated as offenses requiring registration as a predatory offender.² Those charges were dismissed, but Berry is still subject to registration as a predatory offender if her offense of aiding an offender to avoid arrest arose out of the same set of circumstances as the dismissed charges. She argues that it did not. The parties here do not dispute the underlying facts. Application of a statute to undisputed facts receives de novo review. *Davies v. W. Publ’g Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001), *review denied* (Minn. May 29, 2001).

The same-set-of-circumstances language in the statute “requires registration where the same general group of facts gives rise to both the conviction offense and the charged predatory offense.” *State v. Lopez*, 778 N.W.2d 700, 706 (Minn. 2010). The circumstances

¹ Berry claims that the false-imprisonment charge should not be considered because Minn. Stat. § 609.255, subd. 2 (2016), applies to children. The statute, however, applies to the false imprisonment of “someone else’s child under the age of 18 years without consent of the child’s parent or legal custodian, *or any other person without the person’s consent.*” Minn. Stat. § 609.255, subd. 2 (emphasis added).

² Kidnapping is listed under Minn. Stat. § 243.166, subd. 1b(a)(1)(ii). False imprisonment is listed under Minn. Stat. § 243.166, subd. 1b(a)(2).

underlying both offenses “must overlap with regard to time, location, persons involved, and basic facts.” *Id.*

In *Lopez*—the foremost case on what constitutes the same set of circumstances under Minn. Stat § 243.166—the Minnesota Supreme Court considered the charges against two brothers who had sold drugs to an informant and then allegedly kidnapped the informant and another person almost two weeks later after the informant did not pay for the drugs. *Id.* at 701-02. The supreme court held that the kidnapping charge arose out of different circumstances from the drug sale, as the alleged kidnapping “was based on events that occurred 10 days later, in a different place, involving a slightly different group of people.” *Id.* at 706. The court stated that the drug sale and kidnapping had, at most, a single common circumstance—the payment of a debt from the drug sale—and that this commonality was too “tenuous a link” to conclude that the offenses arose out of the same set of circumstances. *Id.* at 706-07.

Berry argues that her aiding-an-offender-to-avoid-arrest offense arose out of a different set of circumstances than the charged predatory offenses because there was no overlap in time, location, or the basic facts underlying the offenses; specifically, she argues that the charged predatory offenses arose from a kidnapping in a Red Wing breakroom while the conviction offense arose from a day-long drive to Ohio.³

³ Berry also argues that the district court erred by saying it had no discretion in the matter and by applying a but-for test to determine whether the charges arose out of the same set of circumstances. Because we review this matter *de novo*, the district court’s statements regarding its discretion or the appropriate legal standard do not change our analysis.

But the circumstances of Berry's charged predatory offenses did not simply end when Berry and M.B. left the building. The state charged Berry with aiding and abetting M.B. in kidnapping and false imprisonment, in violation of Minn. Stat. §§ 609.05, subd. 1, .25, subd. 1, .255, subd. 2 (2016). Aiding another in the commission of a crime includes helping another escape after committing a crime. *See State v. Patricelli*, 357 N.W.2d 89, 91 (Minn. 1984) (affirming conviction of a getaway driver for aiding in the commission of an aggravated robbery); *State v. Smeriglio*, 409 N.W.2d 567, 567-69 (Minn. App. 1987) (affirming the conviction of defendant for aiding a robbery when the evidence showed the defendant helped case a store and drove the getaway vehicle). Berry's alleged aid to M.B. in the commission of the predatory offenses continued as she tried to help him evade arrest, extending the circumstances underlying the charges of aiding and abetting kidnapping and false imprisonment beyond what happened in the laundry breakroom. The escape from the laundry and flight from Red Wing both involved M.B. and underlie both the conviction offense and the charged predatory offenses, so the people, time, location, and basic facts underlying the two sets of offenses directly overlap. Berry's case is thus distinguishable from *Lopez*, where the charged predatory offense allegedly took place nearly two weeks after the conviction offense, at a different location, and involved a slightly different group of people. *See Lopez*, 778 N.W.2d at 706.

Berry argues that the kidnapping/false-imprisonment circumstances and the aiding-an-offender-to-avoid-arrest circumstances are separate events because the state failed to show that the flight to Ohio began immediately after Berry and M.B. left the laundry. As we discussed, however, while the kidnapping may have ended, Berry's alleged aid to M.B.

in the commission of the kidnapping also included helping M.B. escape. The overlap in circumstances exists whether Berry and M.B. immediately left for Ohio or spent some small amount of time preparing before leaving. The record indicates that Berry and M.B. did not wait long after the laundry incident before leaving Red Wing—the state alleges that they tracked Berry’s phone to Eyota, Minnesota, approximately two hours after surveillance footage showed them leaving the laundry building.

Berry also claims that she did not participate in the kidnapping and that she only “enter[ed] the building to extricate [M.B.]” She argues that this shows that the aiding-an-offender-to-avoid-arrest charge involved different people than the kidnapping charge. Both the conviction offense and the charged predatory offenses, however, involved Berry providing criminal aid to M.B. While the conviction offense did not involve the victims affected by the charged predatory offenses, there is sufficient overlap in the people, time, location, and basic facts of the offenses to conclude that the offenses arose from the same set of circumstances. The district court did not err by requiring Berry to register as a predatory offender.

Affirmed.