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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0199

State of Minnesota,
Respondent,

vs.

Wayne Anthony Lindsey,
Appellant.

Filed November 18, 2013
Reversed and remanded
Cleary, Chief Judge

Ramsey County District Court
File No. 62-CR-12-5572

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Kalitowski, Judge; and Kirk, Judge.

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

CLEARY, Chief Judge

In this sentencing appeal, appellant argues that, under Minnesota Statutes section 609.035 (2010), the district court erred in imposing sentences for both false imprisonment and second-degree assault because the offenses were committed during the same behavioral incident. We reverse and remand.

FACTS

Appellant Wayne Anthony Lindsey and the victim were previously involved in a romantic relationship. The victim subsequently informed appellant that she no longer wished to be involved with him. After their relationship ended, the following incident occurred.

On the morning of July 7, 2012, the victim drove to a Subway restaurant located in Saint Paul. She left her car unlocked and the windows rolled down while she was in the restaurant ordering food. While the victim was inside the restaurant, appellant got into her car. The victim left the restaurant, got back in her car, and discovered appellant holding a knife. Appellant then proceeded to hold the knife to her neck and, according to the victim, threatened to kill her if she did not drive. Although the victim sat behind the wheel, the car drove off with appellant pressing the gas pedal and steering while holding the knife to her stomach. After driving a few blocks, the victim stopped the car in an alley and tried to get out of the car. Appellant got out of the car, punched her, and attempted to shove her into the passenger side of the vehicle. After appellant stopped punching the victim, she closed the door and drove off.

Appellant was arrested on July 7, 2012. He was subsequently charged with a number of crimes. He pleaded guilty to second-degree assault (Minn. Stat. § 609.222, subd. 1 (2010)) and false imprisonment (Minn. Stat. § 609.255, subd. 2 (2010)). All other charges were dismissed. The district court issued concurrent sentences of 27 months in prison for second-degree assault and 15 months in prison for false imprisonment. Appellant now appeals.

D E C I S I O N

Appellant argues that the district court erred in ordering sentences for second-degree assault and false imprisonment since both offenses were committed during a single behavioral incident. Generally, if an individual's conduct constitutes more than one criminal offense, that person may only be punished for one of the offenses. *See* Minn. Stat. § 609.035, subd. 1 (2010). Minnesota Statutes section 609.035 "prohibits multiple sentences, even concurrent sentences, for two or more offenses that were committed as part of a single behavioral incident." *State v. Norregaard*, 384 N.W.2d 449, 449 (Minn. 1986). This court reviews whether multiple offenses are part of a single behavioral incident as a question of law subject to de novo review. *See State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001) (stating that review of whether multiple offenses are part of a single behavioral incident is de novo where the facts are established). "The state has the burden to establish by a preponderance of the evidence that the conduct underlying the offenses did not occur as part of a single behavioral incident." *State v. Williams*, 608 N.W.2d 837, 841 (Minn. 2000). The protection against

multiple sentences arising from the same behavioral incident cannot be waived. *State v. Johnson*, 653 N.W.2d 646, 650-51 (Minn. App. 2002).

In reviewing whether multiple offenses arise from a single behavioral incident, courts determine "whether they (1) share a unity of time and place and (2) were motivated by an effort to obtain a single criminal objective." *State v. Bauer*, 776 N.W.2d 462, 479 (Minn. App. 2009), *aff'd*, 792 N.W.2d 825 (Minn. 2011). This inquiry "depends heavily on the facts and circumstances of the particular case." 792 N.W.2d at 828.

Both parties agree that the assault and false-imprisonment offenses share a unity of time, but disagree as to whether the offenses share a unity of place. Respondent asserts that, by driving several blocks from where appellant first assaulted the victim in her car, appellant's assault and false-imprisonment offenses took place in different places. For this proposition, respondent cites *State v. Bookwalter*, 541 N.W.2d 290 (Minn. 1995).

In *State v. Bookwalter*, the defendant kidnapped his victim after hiding in her van and had her drive around until they reached a secluded location where he sexually assaulted her in her van. 541 N.W.2d at 291-92. After sexually assaulting the victim, the defendant drove to a separate secluded location a few miles away, forced the victim out of the van and into the woods, and attempted to kill her. *Id.* at 292. The court considered the extended events that took place between the sexual assault and attempted murder, along with the fact that the attempted murder took place in the woods away from the victim's van, and held that the defendant's offenses took place at two distinct times and places. *Id.* at 295.

Here, the circumstances of appellant's second-degree assault and false-imprisonment offenses are distinguishable from *Bookwalter*. Although similar to *Bookwalter* in that appellant and the victim drove from one location to another, all of the events supporting appellant's assault and false-imprisonment offenses took place inside of the car. Appellant did not commit an offense in one location only to drive to a separate location to commit a separate offense outside of the vehicle, as was the case in *Bookwalter*. The unity of time and place of appellant's assault and false-imprisonment offenses supports holding that the offenses arose from a single behavioral incident.

For multiple offenses to arise from a single behavioral incident, the offenses must also be motivated by an effort to obtain a single criminal objective. Respondent asserts that, by assaulting the victim with a knife, appellant's objective was to frighten and punish her for leaving him, but that he later altered his objective to that of abducting the victim. Appellant asserts that his criminal objective is more appropriately stated as the intent to control the behavior of the victim and scare her. Respondent has the burden of establishing that appellant did not have the same criminal objective for both offenses by a preponderance of the evidence.

Respondent has not established that appellant had different criminal objectives in perpetrating his assault and false-imprisonment offenses. In *Bookwalter*, the defendant testified that he entered the victim's van with the intent to steal and later decided to sexually assault her after she entered the van. *Id.* at 296. The defendant also testified that he did not decide to murder the victim until he forced her out of the van and after the

sexual assault. *Id.* The *Bookwalter* court determined that the defendant did not have the same criminal objective in sexually assaulting and attempting to murder his victim. *Id.*

Here, appellant used his knife to confine the victim to her car and force her to drive several blocks away. Appellant's assault was therefore done in furtherance of falsely imprisoning the victim. *See Bauer*, 792 N.W.2d at 830 (stating that "crimes are divisible in the sense that one crime was not committed in furtherance of the other"). There is no evidence in the record that appellant changed his motivations at any point during his criminal conduct. Respondent has not presented sufficient evidence that appellant's assault of the victim involved a different criminal objective than his false-imprisonment offense. Considering that respondent has failed to meet its burden of proving that the assault and false imprisonment were part of separate behavioral incidents, the trial court erred in imposing sentences for both offenses.

Minnesota Statutes section 609.035 "contemplates that a defendant will be punished for the most serious of the offenses arising out of a single behavioral incident." *State v. Kebaso*, 713 N.W.2d 317, 322 (Minn. 2006) (quotation omitted). Appellate courts vacating sentences under this section "should look to the length of the sentences actually imposed . . . to ascertain which offense is the most serious, leaving the longest sentence in place." *Id.* The district court sentenced appellant to 27 months in prison for second-degree assault and 15 months in prison for false imprisonment. We therefore reverse and remand for vacation of appellant's sentence with respect to false

imprisonment, since the second-degree assault offense is the most serious offense carrying the longest sentence.[1]

Reversed and remanded.

[1] Respondent also argues that the Minnesota Sentencing Guidelines permit multiple sentences for offenses that are part of a single behavioral incident even when prohibited under section 609.035. For this proposition, respondent cites comment 2.F.204 (Supp. 2011). However, section 609.035 and caselaw interpreting this section are explicit in holding that multiple sentences for offenses arising out of the same behavioral incident are prohibited unless an exception applies. Respondent has not asserted that an exception applies in the present case.