STATE OF MINNESOTA

IN SUPREME COURT

A18-0893

Court of Appeals — Thissen, J.

State of Minnesota,

Respondent,

vs.

Filed: April 1, 2020
Office of Appellate Courts

Edward Martin,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Patrick R. Lofton, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant State Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

Under Minn. Stat. § 243.166, subd. 1b(b) (2012), a person is required to register as a predatory offender when an out-of-state conviction would be a violation of a Minnesota statute listed in paragraph (a) of that subdivision. Respondent failed to prove that appellant

was required to register as a predatory offender because of his 1992 California conviction for sexual battery.

Reversed.

O P I N I O N

THISSEN, Justice.

This appeal requires us to determine whether appellant Edward Martin is required to register as a predatory offender in Minnesota because of a conviction in a different state. While incarcerated in Minnesota, Martin was informed by prison officials that he was required to register as a predatory offender because of his 1992 California conviction for sexual battery. Although Martin contested the registration requirement, he intermittently registered for several years. Martin did not register in the fall of 2016. Respondent State of Minnesota charged him with failing to register as a predatory offender. The district court found Martin guilty and the court of appeals affirmed his conviction. Because we conclude that Martin's 1992 California conviction does not require him to register as a predatory offender under Minn. Stat. § 234.166, subd. 1b(b) (2012), we reverse.

FACTS

In 1992, Martin was convicted in California for sexual battery under Cal. Penal Code § 243.4(a) (Deering 1991) and sentenced to 4 years in prison. At the time of his conviction, Martin was not required to register as a predatory offender in California. In 1994, California changed its law to require predatory offender registration for individuals convicted of sexual battery who resided in California. *See* Cal. Penal Code § 290(a) (Deering 1995). The registration law applied retroactively to all sexual battery convictions

that occurred after 1944. Cal. Penal Code § 290(a)(2)(A) (Deering 1995). The record does not disclose when Martin left California or whether Martin registered as a predatory offender in California after this law was passed.

Martin moved to Minnesota in 2000. While Martin was incarcerated in a Minnesota prison in 2005, prison officials presented him with a registration form which stated that he was required to register as a predatory offender in Minnesota because of his 1992 California conviction. Martin refused to sign the form. He later asserted that he was not required to register in Minnesota. From 2005 to 2016, Martin received multiple letters from the BCA stating that he was required to register as a predatory offender for life. Martin registered intermittently, and at least once crossed out portions of the form indicating that he "understood" that he was required to register.

After being released from prison in 2007, Martin experienced intermittent homelessness. Because he was homeless in August 2016, Martin was instructed to check in at the local police station on a weekly basis to comply with Minnesota's registration requirements. He did not do so. On September 28, 2016, the BCA identified Martin as

noncompliant with the registration requirements. The State charged him with failing to register as a predatory offender in violation of Minn. Stat. § 243.166, subd. 5(a) (2018).[1]

Martin moved to dismiss the charge for lack of probable cause asserting that he was not required to register in Minnesota. The State did not respond to the motion and the district court denied it.

Martin then waived his right to a jury trial and the parties agreed to a bench trial based on three stipulated exhibits: Martin's California conviction records, his Minnesota Bureau of Criminal Apprehension registration file, and police reports. The district court found Martin guilty, citing Minn. Stat. § 243.166, subd. 6(d)(1) (2018), and imposed a stayed sentence of 12 months and 1 day. The provision cited by the district court did not apply to Martin because it requires lifetime registration for persons who have been convicted of two offenses requiring registration. No record evidence shows that Martin had a prior conviction for an offense requiring registration before his 1992 California criminal sexual battery conviction.

Martin appealed asserting that the State had failed to prove an element of the offense—that he was required to register as a predatory offender. The court of appeals determined that the district court erred by relying on Minn. Stat. § 243.166, subd. 6(d)(1), because Martin did not have two convictions requiring registration. *State v. Martin*, No.

[1] Section 243.166, subdivision 5(a), provides that "[a] person required to register under this section who knowingly violates any of its provisions or intentionally provides false information to a corrections agent, law enforcement authority, or the bureau is guilty of a felony." The provision does not establish any requirement to register and the complaint did not identify a statutory provision requiring Martin to register.

A18-0893, 2019 WL 2079795, at *3 (Minn. App. May 13, 2019). But the court of appeals adopted an alternative theory for registration proffered by the State. The court held that Martin was required to register under Minn. Stat. § 243.166, subd. 6(d)(3) (2018), which requires lifetime registration for persons convicted under other states' statutes that are "similar to" any one of several Minnesota criminal sexual conduct statutes. *Martin*, 2019 WL 2079795, at *3. These include Minn. Stat. § 609.345, subd. 1(c) (2018), which defines fourth-degree criminal sexual conduct based on force or coercion. The court of appeals concluded that California's criminal sexual battery statute "is sufficiently similar to Minnesota's fourth-degree criminal sexual conduct statute to trigger lifetime registration." *Martin*, 2019 WL 207975 at *3.

We granted Martin's petition for review.

ANALYSIS

To convict Martin for failing to register as a predatory offender, the State must prove that (1) Martin is a person who is required to register as a sex offender under Minnesota law and (2) Martin knowingly failed to register. *See* Minn. Stat. § 243.166, subd. 5(a). There is no question that Martin knowingly failed to register. The sole issue is whether Minnesota's predatory offender registration statute requires Martin to register because of his 1992 conviction.[2] "When a sufficiency-of-the-evidence claim turns on the meaning of

[2] The State seeks to avoid an analysis of the predatory offender statute on procedural grounds. It asserts that Martin stipulated that he was required to register as a predatory offender. We disagree. During Martin's waiver of his right to a jury trial and other trial rights, he stated that the main issue in the case, and the one he wanted to raise on appeal, was whether he was required to register in Minnesota. The transcript from that hearing

the statute under which a defendant has been convicted, we are presented with a question of statutory interpretation that we review de novo." *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018).

The State's conduct in this case is troubling. In the complaint, the State did not cite any specific statutory provision that required Martin to register. The State also failed to respond to Martin's motion to dismiss and, in the absence of guidance, the district court relied on a factually inapplicable provision.[3] Before the court of appeals, the State agreed that the district court's legal analysis was erroneous, but then posited that Martin was required to register under a different provision. The State now acknowledges that the provision it cited to the court of appeals is also inapplicable to Martin because it only applies to people who commit offenses requiring lifetime registration on or after August 1, 2000. Act of Apr. 3, 2000, ch. 311, art. 2, §§ 7, 16, 2000 Minn. Laws 189, 194–95, 206. Martin was convicted of sexual battery in California in 1992.

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shows that the intent of the parties was to have the district court review the documents submitted to the court and make a finding of Martin's guilt. "A stipulated fact is [an] agreement between opposing parties regarding the actual event or circumstance." *Dereje v. State*, 837 N.W.2d 714, 720 (Minn. 2013) (concluding that the parties did not conduct a court trial based on stipulated facts but instead had a proper court trial based on stipulated exhibits). Martin did not agree that he was required to register, but rather stipulated which documents could be considered by the district court when independently determining his guilt. *See* Minn. R. Crim. P. 26.01, subd. 3 (setting forth the process for trial on stipulated facts, stipulated evidence, or both).

[3] Minnesota's registration statute has evolved and expanded extensively over the last two decades. The complicated language and structure poses difficulty for courts, state officials, and ordinary citizens in understanding the obligations imposed by the statute.

On appeal to us, the State relies on yet another provision of the registration statute to support its position that Martin was required to register because of his 1992 California conviction. The State currently argues that Martin is required to register under Minn. Stat. § 243.166, subd. 6(e) (2018), which states:

> A person described in subdivision 1b, paragraph (b), who is required to register under the laws of a state in which the person has been previously convicted . . . shall register under this section for the time period required by the state of conviction . . . unless a longer time period is required elsewhere in this section.

This provision became effective June 1, 2006, and applies to all offenders living in Minnesota on or after June 2, 2006. *See* Act of June 1, 2006, ch. 260, art. 3, § 10, 2006 Minn. Laws 707, 751. Martin was living in Minnesota at the time he failed to register in 2016.

To prevail on its argument, the State must first prove that Martin is a "person described in subdivision 1b, paragraph (b)" as required under Minn. Stat. § 243.166, subd. 6(e). The relevant portion of subdivision 1b(b) requires a person to register as a predatory offender when, among other things, "the person was convicted . . . in another state for an offense that *would be a violation of a law described in paragraph (a) if committed in this state*." Minn. Stat. § 243.166, subd. 1b(b)(1) (2012) (emphasis added).[4]

[4] In 2014, Minn. Stat. § 243.166, subd. 1b(b), was amended, expanding the category of people required to register because of an out-of-state conviction. The statute now provides that a person must register when, among other things, "the person was charged with or petitioned for an offense in another state that would be a violation of a law described in paragraph (a) if committed in this state and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances." Minn. Stat. § 243.166, subd. 1b(b) (2018). But this amendment does not apply to Martin because it

The offenses listed in paragraph (a) include criminal sexual conduct under Minn. Stat. § 609.345 (2018) (fourth-degree criminal sexual conduct using force or coercion). *See* Minn. Stat. § 243.166, subd. 1b(a)(1)(iii) (2018).[5] The State contends that Martin's 1992 California conviction for criminal sexual battery would be fourth-degree criminal sexual conduct using force or coercion if committed in Minnesota. It is to that question that we now turn.

We have not previously addressed how to determine whether an out-of-state conviction qualifies as a violation of Minnesota law under Minn. Stat. § 243.166, subd. 1b(b)(1) (2012). We have addressed similar language in other contexts. For instance, in *Anderson v. State, Department of Public Safety & Department of Transportation*, we considered whether the Commissioner of Public Safety had properly revoked a driver's license after "receiving a record of the driver's conviction of 'an offense in another state which, if committed in this state, would be grounds for the revocation of the driver's license.' " 305 N.W.2d 786, 787 (Minn. 1981) (quoting Minn. Stat. § 171.17(7) (1980)).

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was effective August 1, 2014 and applies to crimes committed on or after that date. Act of May 16, 2014, ch. 259, § 1, 2014 Minn. Laws 928, 929. Accordingly, we apply the pre-2014 statute.

[5] The Legislature excluded first-time fifth-degree criminal sexual conduct from the list of offenses in Minnesota requiring registration. *See* Minn. Stat. § 243.166, subd. 1b(a)(1)(iii) (2018) (referring only to Minn. Stat. § 609.3451, subd. 3, which criminalizes felony fifth-degree criminal sexual conduct). Fifth-degree criminal sexual misconduct includes, among other things, "nonconsensual sexual contact." Minn. Stat. § 609.3451, subd. 1(1) (2018). Further, the State does not claim that Martin's 1992 conviction would be a violation of any Minnesota law set forth in Minn. Stat. § 243.166, subd. 1b(a) (2018), other than fourth-degree criminal sexual conduct.

The Commissioner revoked the driver's license because he had been convicted of " 'driving while ability impaired' " in Colorado. *Id.* at 787.

We looked at the elements of the Colorado offense and compared them with the elements of Minnesota's driving-under-the-influence offense, which would be grounds for revocation of a driver's license. *Id.* We held that the Commissioner had properly revoked the driver's license because "the elements of the Colorado offense of driving while ability impaired are the same elements which, if proven in Minnesota, would justify a conviction for the offense of driving while under the influence." *Id.*

That same analysis should apply when determining whether an out-of-state conviction would be a violation of a Minnesota law under section 243.166, subdivision 1b(b)(1). We will compare the elements of the out-of-state offense to the elements of the Minnesota offense. An out-of-state conviction would be a violation of a Minnesota offense requiring registration if proving the elements of the out-of-state offense would necessarily prove a violation of that Minnesota law. But if the elements of the out-of-state offense could be proven without proving a violation of Minnesota law, then the out-of-state conviction would not be a violation of a Minnesota offense requiring registration.[6] To

[6] The court of appeals undertook a comparison of California's criminal sexual battery statute and Minnesota's fourth-degree criminal sexual conduct by force or coercion statute and concluded that the statutes were "sufficiently similar." *Martin*, 2019 WL 2079795, at *2–3. Notably, the registration provision that the court of appeals applied requires that the statute from another state be "similar to" the Minnesota offenses. Minn. Stat. § 243.166, subd. 6(d)(3). Determining whether one statute is "similar to" another statute is a different inquiry than the "would be a violation" standard required by Minn. Stat. § 243.166, subd, 1b(b)(1), the provision that we interpret here.

decide this case, we compare the elements of Minn. Stat. § 609.345, subd. 1(c), with the elements of Cal. Penal Code § 243.4(a) (Deering 1991).

In Minnesota, a person is guilty of fourth-degree criminal sexual conduct when "the actor uses force or coercion to accomplish the sexual contact." Minn. Stat. § 609.345, subd. 1(c). Sexual contact includes "the intentional touching by the actor of the complainant's intimate parts" when it is committed "without the complainant's consent" and "with sexual or aggressive intent." Minn. Stat. § 609.341, subd. 11(a) (2018).

Minnesota's criminal sexual conduct statute defines "force" as

> the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

Id., subd. 3 (2018). Bodily harm means "physical pain or injury, illness, or any impairment of physical condition." Minn. Stat. § 609.02, subd. 6 (2018). Accordingly, to prove a fourth-degree criminal sexual conduct case based on force, the State must show either that the defendant inflicted, attempted to inflict, or threatened to inflict physical pain, physical injury, illness, or impairment of physical condition to accomplish the sexual contact, or that the defendant committed or threatened to commit another crime to accomplish the sexual contact. *See, e.g.*, *In re Welfare of D.L.K.*, 381 N.W.2d 435, 438 (Minn. 1986) (holding that conduct of grabbing and pinching the victim's breast and causing pain was sufficient to prove fourth-degree criminal sexual contact by force); *State v. Mattson*, 376 N.W.2d 413, 414–15 (Minn. 1985) (determining that there was sufficient evidence of force

to support a conviction for fourth-degree criminal sexual conduct where the defendant suddenly reached through a car window and grabbed the victim's breast over her clothing, causing pain and bruising).

Minnesota's criminal sexual conduct statute defines "coercion" as

> the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual . . . contact.

Minn. Stat. § 609.341, subd. 14 (2018).

To summarize, a defendant may be convicted of fourth-degree criminal sexual conduct by force or coercion in Minnesota when the defendant accomplishes sexual contact by (1) using words or circumstances that causes the victim reasonably to fear that the defendant would inflict physical pain, physical injury, illness, or impairment of physical condition upon the victim or another; (2) using confinement of the victim that causes the victim to submit to sexual contact; (3) using superior size or strength against the victim to cause the victim to submit to sexual contact; (4) inflicting, attempting to inflict, or threatening to inflict physical pain, physical injury, illness, or impairment of physical condition; or (5) committing or threatening to commit another crime against the victim or another person.

A person is guilty of criminal sexual battery in California when the defendant (1) touches an intimate part of another person; (2) while that person is unlawfully restrained by the accused or an accomplice; (3) the touching is against the will of the person touched; and (4) the touching is for the purposes of sexual arousal, sexual gratification, or sexual

abuse. Cal. Penal Code § 243.4(a) (Deering 1991). The California statute does not define "unlawfully restrained." California courts have held that unlawful restraint occurs when a person's "liberty is being controlled by words, acts or authority of the perpetrator aimed at depriving the person's liberty, and such restriction is against the person's will." *People v. Arnold*, 7 Cal. Rptr. 2d 833, 838 (Cal. Ct. App. 1992); *see also People v. Enloe*, No. C071987, 2015 WL 3398702, at *7 (Cal. Ct. App. May 27, 2015). Further, "the unlawful restraint required . . . is something more than the exertion of physical effort required to commit the prohibited sexual act." *Arnold*, 7 Cal. Rptr. 2d at 838 (quoting *People v. Pahl*, 277 Cal. Rptr. 656, 663 (Cal. Ct. App. 1991)).

Minnesota's fourth-degree criminal sexual conduct by force or coercion statute and the California criminal sexual battery statute share the following three elements in common: (1) the prohibited touching of similarly defined "intimate parts," (2) the nonconsensual nature of the touching, and (3) the sexual purpose of the touching. Proving these three elements of California criminal sexual battery also proves the corresponding three elements of Minnesota's fourth-degree criminal sexual conduct. Accordingly, we narrow our focus to the question of whether proving that the victim was unlawfully restrained under California law would necessarily prove that the defendant used force or coercion to accomplish the sexual contact under Minnesota law.

California courts do not require that the perpetrator inflicted, attempted to inflict, or threatened to inflict bodily harm in the form of physical pain or injury, illness, or impairment of physical condition. Nor do they require that the perpetrator committed or

threatened to commit some crime other than criminal sexual conduct to prove unlawful restraint and criminal sexual battery.

For instance, in *Arnold*, the court found that the perpetrator's act of grabbing the victim by the buttocks to pull her toward him was sufficient to show restraint without any mention that the grab inflicted bodily harm. 7 Cal. Rptr. 2d at 839.[7] Similarly, in *In re J.S.*, the court affirmed a criminal sexual battery conviction where the evidence showed that, while walking with the victim along some railroad tracks about 15 feet from his friend, the perpetrator restrained the victim by grabbing her around the waist and by the wrist with no suggestion of any bodily harm. No. A123928, 2009 WL 2883483, at *8 (Cal. Ct. App. Sept. 10, 2009). And in *People v. Grant*, the court affirmed a criminal sexual battery conviction where the court did not find there was physical restraint used. 10 Cal. Rptr. 2d 828 (Cal. Ct. App. 1992). In other words, California law does not require proof of "force" as defined in Minnesota law.

Similarly, California cases do not suggest that the use of confinement or superior size or strength against the victim is required to prove unlawful restraint. *See, e.g.*, *Arnold*, 7 Cal. Rptr. 2d at 838–39 (finding restraint in one instance of conduct that occurred in the bleachers without analysis or mention of confinement or superior size and strength). Unlawful restraint can be proved in the absence of evidence of words or circumstances that caused the victim reasonably to fear that the actor would inflict bodily harm on the victim

[7] The California court concluded that the restraint was not "unlawful" because the victim had not indicated before the grab that the restraint was unwanted. 7 Cal. Rptr. 2d at 839–40. But that conclusion does not undermine the fact that restraint can occur without bodily injury.

or another person. *See id.* (finding restraint without analysis or mention of reasonable fear of bodily harm).

In sum, a person may be convicted of California criminal sexual battery without any evidence that sexual contact was accomplished by use of confinement, use of superior size or strength, the commission of or threat to commit another crime, the existence of words or circumstances that caused the victim reasonably to fear bodily harm, or the infliction, attempted infliction, or threated infliction of bodily harm. *See In re J.S.*, 2009 WL 2883483, at *8; *Arnold*, 7 Cal. Rptr. 2d at 838–39. Because California's criminal sexual battery could be proven without proving a violation of Minnesota's fourth-degree criminal sexual conduct by force or coercion, we conclude that Martin's 1992 California criminal sexual battery conviction is not an offense requiring registration in Minnesota.[8]

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[8] The meaning of section 609.345, subdivision 1(c), was altered in 2005 when the Legislature redefined the term "coercion." Act of June 3, 2005, ch. 136, art. 2, § 10, 2005 Minn. Laws 901, 925 (codified as amended at Minn. Stat. § 609.341, subd. 14 (2018)). The new definition applies to crimes committed on or after August 1, 2005. *Id.* In our comparison with California law, we use the version of the Minnesota statute in effect when Martin was charged and convicted. We do so because Minn. Stat. § 243.166, subd. 1b(b), directs us to assess whether the crime for which "the person *was* convicted . . . *would be* a violation . . . if committed in this state." Minn. Stat. § 243.166, subd. 1b(b) (emphasis added). If the Legislature intended us to compare the out-of-state crime with Minnesota law at the time of the original conviction (here, 1992), it would have used the phrase, "*would have been* a violation." But we also note that the differences between the pre-2005 amendment language and the post-2005 amendment language do not alter the outcome of this case.

Before the 2005 amendment, Minn. Stat. § 609.341, subd. 14, defined coercion more narrowly as "words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon, or hold in confinement, the complainant or another, or force the complainant to submit to sexual penetration or contact, but proof of coercion does not require proof of a specific act or threat." Minn. Stat. § 609.341, subd. 14 (2004). Under the old definition, a person could have been convicted of fourth-degree criminal sexual

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

Reversed.

conduct by coercion in Minnesota if he accomplished sexual contact by words or circumstances that cause the victim reasonably to fear that the actor will (1) inflict bodily harm on the victim or another, (2) hold the victim or another in confinement, or (3) force the victim to submit to sexual contact. There are two significant differences between the pre- and post-2005 versions of the statute. First, under the old statute, the actor's conduct had to cause reasonable fear in the victim for all circumstances. The later version of the statute requires that the *use* of confinement, not the fear of confinement, causes submission. Second, the new version of the statute added to the definition of coercion the use of "superior size or strength" against the complainant that causes the complainant to submit to sexual contact. Neither of these differences would change our conclusion that California criminal sexual battery could be proven without proving a violation of Minnesota fourth-degree criminal sexual conduct by force or coercion.