STATE OF MINNESOTA

IN SUPREME COURT

A18-2086

Court of Appeals Hudson, J.

State of Minnesota,

Respondent,

vs.

Kristin Ann Altepeter,

Appellant.

Filed: July 29, 2020
Office of Appellate Courts

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

Gregory A. Widseth, Polk County Attorney, Scott A. Buhler, Assistant Polk County Attorney, Crookston, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

Minnesota Statutes § 609.377 (2018), does not require the State to prove that a defendant's use of unreasonable force occurred in the course of punishment.

Affirmed.

O P I N I O N

HUDSON, Justice.

The question presented in this case is whether the "malicious punishment of a child" statute, Minn. Stat. § 609.377 (2018), requires the State to prove not only that a defendant used unreasonable force but that the defendant did so in the course of punishment. The court of appeals held that it does not. We affirm.

FACTS

Appellant Kristin Altepeter ran an in-home day care business in Crookston. On June 15, 2018, Altepeter had several children at her home for day care, including 4-year old J.V.R. Altepeter's property included a fenced-in yard with a set of monkey bars and a wooden picnic table. Normally, Altepeter allowed the children to play on the monkey bars in her yard, but that afternoon the picnic table sat on top of the monkey bars. The picnic table had been moved to the top of the monkey bars so that Altepeter could mow the grass, but no one was around to help her move the picnic table when she finished.

When Altepeter went outside with the children that afternoon, J.V.R. went over to the monkey bars and tried to push the table off so that he could use the equipment. Altepeter told J.V.R. to stop, and he climbed back down and ran across the yard, sticking his tongue out at Altepeter in a way that she described as "sassing" or "mocking." When Altepeter saw J.V.R. a few minutes later, he was, again, on the monkey bars, trying to push the table out of the way to play on the equipment. She again told him to get off the bars. J.V.R complied, and then tried for a third time to run back to the monkey bars. J.V.R. was talking back and telling Altepeter he could go on the monkey bars.

Altepeter kneeled down in the grass, held onto J.V.R.'s arms with her hands, and told him that he could not use the monkey bars. J.V.R. was in front of Altepeter at the time, was not on the monkey bars, and was not in any immediate danger. When Altepeter let go of J.V.R., she saw that her grip had left marks on both his arms. She then sent him to a time-out.

J.V.R.'s aunt picked him up at the end of the day. Altepeter told her about the bruises on J.V.R.'s arms. When Altepeter explained to the aunt what happened, she said that "she told [J.V.R.] not to go on the monkey bars because she had a picnic table up there and he stuck his tongue out at her a couple of times, so she was trying to make him look at her." Later in the evening, J.V.R.'s mother took him to the emergency room to make sure he was okay.

Personnel in the emergency room called the Crookston Police consistent with their responsibilities as mandatory child-abuse reporters under Minnesota law. *See* Minn. Stat. § 626.556 (2018).[1] An officer responded to the hospital, where she took photos of the bruises on J.V.R.'s arms and spoke with both J.V.R. and his family. Two days later, the officer went to Altepeter's home and interviewed her about the incident.

Respondent the State of Minnesota charged Altepeter with one count of malicious punishment of a child—less than substantial bodily harm, Minn. Stat. § 609.377, subd. 2, which is a gross misdemeanor. The case proceeded to trial and the jury returned a verdict

[1] Section 626.556 was repealed in 2020; the mandatory reporting obligation is now codified at Minn. Stat. § 260E.06 (2020).

of guilty. The district court imposed a misdemeanor sentence of 90 days in jail, stayed, and placed Altepeter on probation.

Altepeter filed a timely notice of appeal. She argued that the court of appeals should overturn her conviction because Minn. Stat. § 609.377 requires the State to prove that she used unreasonable force in the course of punishment and the State did not present sufficient evidence that she was punishing J.V.R. when she grabbed his arms. *State v. Altepeter*, No. A18-2086, 2019 WL 5543923, at *2–3 (Minn. App. Oct. 28, 2019). The court held that the plain language of the statute did not require the State to prove that Altepeter acted in the course of punishment and affirmed the conviction. *Id.* at *3–4. We granted Altepeter's petition for review on the issue of whether Minn. Stat. § 609.377 requires the State to prove both that a defendant used unreasonable force and that it was in the course of punishment.

ANALYSIS

The question before us is whether Minn. Stat. § 609.377 requires the State to prove that a defendant's use of unreasonable force was in the course of punishment. Altepeter claims that the statute clearly requires the State to show that injury to a child occurred in the course of punishment. The State disagrees, arguing that Altepeter's interpretation is not consistent with the plain language of the statute.

We review the interpretation of Minn. Stat. § 609.377 de novo. *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010). We begin by analyzing the statute to determine if it is unambiguous. *Id.* If the language of the statute is subject to more than one reasonable interpretation, the statute is ambiguous. *See State v. Pakhnyuk*, 926 N.W.2d 914, 920

(Minn. 2019). "On the other hand, when the language of a statute is susceptible to only one reasonable interpretation, it is unambiguous and we must apply its plain meaning." *State v. Culver*, 941 N.W.2d 134, 139 (Minn. 2020).

We therefore begin with the language of the statute. The controlling statute in this case is Minn. Stat. § 609.377, which is entitled "malicious punishment of child." Subdivision 1 of the statute, captioned "Malicious punishment," reads as follows: "A parent, legal guardian, or caretaker who, by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances is guilty of malicious punishment of a child . . . ." Minn. Stat. § 609.377, subd. 1.

The rest of the statute addresses when the offense is a gross misdemeanor or is enhanced to a felony, and provides the applicable maximum sentence and fine. *See id.*, subds. 2–6. If "punishment results in less than substantial bodily harm," subdivision 2 makes the offense a gross misdemeanor. *Id.*, subd. 2. If a person "violates the provisions of subdivision 2" and has certain prior convictions or adjudications of delinquency, the offense is a felony. *Id.*, subd. 3. The offense is also a felony if "the punishment" was to a child under the age of four and caused bodily harm to certain parts of the body or multiple bruises, *id.*, subd. 4, or if "the punishment result[ed] in substantial bodily harm," *id.*, subd. 5, or if "the punishment resulted in great bodily harm," *id.*, subd. 6.

Altepeter argues that the plain language of the statute unambiguously requires the acts described in subdivision 1 to occur "in the course of punishment." Altepeter points to the statute's repeated use of the phrase "the punishment" in subdivisions 2 and 4–6. She

contends that the " 'punishment' at issue in subdivisions 2 and 4–6 is the conduct criminalized by subdivision 1," and "[t]herefore, the conduct criminalized by subdivision 1 must be 'punishment.' " She claims that the phrase is meaningless if the actions criminalized by subdivision 1 are not punishment.

The State argues that the statute requires proof that a caregiver used unreasonable force, but does not require proof that it was in the course of punishment. The State claims that the language of the statute is unambiguous because the word "punishment" is not used as part of the operative language of the statute and cannot be construed as an element of the offense.

The State's reading of the statute is consistent with the plain language of the statute. Subdivision 1 focuses on the defendant's prohibited conduct and defines two types of "malicious punishment": (1) "an intentional act or a series of intentional acts with respect to a child" that "evidences unreasonable force . . . that is excessive under the circumstances" or (2) "an intentional act or a series of intentional acts with respect to a child" that "evidences . . . cruel discipline that is excessive under the circumstances." Minn. Stat. § 609.377, subd. 1. This lengthy, detailed definition of "malicious punishment" does not state that the defendant's acts must be done in the course of punishment.

Moreover, subdivisions 2 and 4–6 address the applicable sentence based on the resulting harm caused to the victim, not on the defendant's acts. When subdivisions 2 and 4–6 mention "the punishment," they are referring back to, not adding to, the definition of malicious punishment provided by subdivision 1. The term therefore has meaning without reading subdivision 1 in the manner urged by Altepeter. There is no need to read in an

additional element that the intentional acts occur "in the course of punishment" to properly interpret the statute.

Altepeter also makes an argument based on *State v. Struzyk*, 869 N.W.2d 280 (Minn. 2015). She claims that Minn. Stat. § 609.377 is similar to the statute involved in *Struzyk* and that our reasoning in *Struzyk* can provide guidance here. The statute in *Struzyk* provided the following:

> Whoever physically assaults a peace officer . . . when that officer is effecting a lawful arrest or executing any other duty imposed by law is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both. If the assault inflicts demonstrable bodily harm or the person intentionally throws or otherwise transfers bodily fluids or feces at or onto the officer, the person is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $6,000, or both.

Id. at 285 (quoting Minn. Stat. § 609.2231, subd. 1 (2014)).

We began by explaining that the term "physically assaults" in the first sentence is synonymous with the definition of fifth-degree assault provided in a separate statute, and held that the subsequent reference in the second sentence to "the assault" refers back to the term "physically assaults." *Id*. at 285–86. We then turned to the second sentence of the subdivision to "determine whether the phrase located in the second sentence—'or the person intentionally throws or otherwise transfers bodily fluids or feces at or onto the officer'—defines an independent felony offense or whether it defines an aggravated form of the gross-misdemeanor physical assault referenced in the first sentence." *Id.* at 285. We held that the phrase did not create a separate offense and that the State had to prove both a physical assault and the transfer of bodily fluids for the assault to be elevated to a felony.

Id. at 286–87 ("The presence of 'if' links the second sentence to the first—when either of two conditions about the misdemeanor assault described in the first sentence occurs, the crime is elevated to a felony.").

Altepeter argues that we should interpret Minn. Stat. § 609.377 in a similar way because the statute, like the statute in *Struzyk*, uses definite articles ("the punishment" and "the assault"), and both statutes use the conjunctive "if" in the sentencing subdivisions. There are similarities between the statutes, but Altepeter's argument fails because Minn. Stat. § 609.377 has a definition provision in subdivision 1, which was not present in the statute in *Struzyk*.

In *Struzyk*, we analyzed how the first and second sentences of a subdivision related to one another to determine what constituted a crime under the statute. *Struzyk*, 869 N.W.2d at 282 (identifying the issue before the court as "whether the intentional act of throwing or transferring bodily fluids at or onto the officer, in itself, is the crime of felony fourth-degree assault of a peace officer"). Here, Minn. Stat. § 609.377 provides the definition of "malicious punishment" in subdivision 1 and the subsequent subdivisions address when the offense is a gross misdemeanor or is elevated to a felony. The statute's use of the term "the punishment" in the later subdivisions does not mean that a defendant's use of unreasonable force must occur only during the course of punishment. Similar to how the term "the assault" in the statute in *Struzyk* refers back to the term "physically assaults" that appears earlier in the text, the phrase "the punishment" refers back to the conduct satisfying the definition of malicious punishment set forth in subdivision 1.

Altepeter's third argument is that the pattern jury instructions for Minn. Stat. § 609.377 demonstrate that the statute unambiguously requires the State to prove that the defendant acted "in the course of punishment." The pattern jury instruction states, "Unreasonable force is such force used in the course of punishment as would appear to a reasonable person to be excessive under the circumstances." 10 Minn. Dist. Judges Ass'n, *Minnesota Practice—Jury Instruction Guides, Criminal*, CRIMJIG 13.85 (6th ed. 2019). But, as Altepeter acknowledges, the jury instructions do not bind our court. *See State v. Peterson*, 673 N.W.2d 482, 484 n.1 (Minn. 2004) ("The content of [the jury instruction guides] does not control over statutory or case law."). Furthermore, following the jury instructions as a guide in this instance would lead us to insert the phrase "in the course of punishment" into the plain language of the statute, which is contrary to basic principles of statutory interpretation. *See KSTP-TV v. Ramsey Cty.*, 806 N.W.2d 785, 790 n.9 (Minn. 2011) (declining to "abandon the plain language" of a statute in favor of an interpretation that "inserts" a limitation not otherwise present); *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn. 2001) ("The rules of construction forbid adding words or meaning to a statute that were intentionally or inadvertently left out.").

Altepeter's fourth argument concerns the statutory context of the term "unreasonable force." She argues that the plain language of the statute requires that a defendant must have used unreasonable force "in the course of punishment" based on the use of the term "cruel discipline" in the same subdivision. According to Altepeter, because "discipline" implies "punishment," it would be illogical for the Legislature to require proof of punishment for one act but not for the other.

Even if Altepeter is correct that "cruel discipline" implies punishment and that it is illogical for the Legislature to impose this requirement for one act (cruel discipline) but not another (unreasonable force), a policy choice on which we do not opine, this is a separate issue from whether the plain language of the statute unambiguously requires the State to show that a defendant used unreasonable force in the course of punishment. The question of which reading of a statute is more logical or reasonable only arises once we have determined that the provision is ambiguous. *See Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 651 (Minn. 2012) (explaining that the "rule of construction" that "the Legislature did not intend a result that is absurd or unreasonable" only "applies when the words of the statute are ambiguous" and should not be used to "override the plain language of a clear and unambiguous statute, except in an exceedingly rare case"). In this case, the statute is unambiguous, and thus Altepeter's argument is unavailing.

Altepeter's final point in support of her argument that the statute unambiguously requires proof of punishment is that such a requirement is necessary for the statute to survive constitutional scrutiny. Again her argument is misplaced. The possible constitutional implications of an interpretation are not a reason why the plain language of a statute is unambiguous. The question of whether a particular interpretation avoids a constitutional conflict only arises after we determine that a statute is ambiguous. *See Schumann v. Comm'r of Taxation*, 253 N.W.2d 130, 132 (Minn. 1977) ("Where a statute is ambiguous, the construction that will avoid constitutional conflict is to be preferred, even though it is less natural.").

Based on the above, we hold that the malicious punishment of a child statute is subject to only one reasonable interpretation: the plain language of Minn. Stat. § 609.377 requires the State to prove that a defendant used unreasonable force, but does not require that the force occur in the course of punishment. Because Altepeter's insufficiency-of-the-evidence claim is premised on the erroneous legal conclusion that the State needs to prove that she used unreasonable force in the course of punishment, she has failed to show that the State presented insufficient evidence.

CONCLUSION

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

Affirmed.