STATE OF MINNESOTA

IN SUPREME COURT

A19-1671

Court of Appeals

McKeig, J.
Took no part, Chutich, J.

State of Minnesota,

Appellant/Cross-Respondent,

vs.

Filed: May 5, 2021
Office of Appellate Courts

Michael James Boss,

Respondent/Cross-Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota;

Charles W. Hanson, Brown County Attorney, New Ulm, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, William C. Lundy, Certified Student Attorney, Slayton, Minnesota, for appellant/cross-respondent.

Jacob M. Birkholz, Michelle K. Olsen, Birkholz Law, LLC, Mankato, Minnesota, for respondent/cross-appellant.

William Ward, Minnesota State Public Defender, Cathryn Middelbrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant State Public Defender, Saint Paul, Minnesota, for amicus curiae Minnesota Board of Public Defense.

S Y L L A B U S

Minnesota Statutes § 260C.425, subd. 1 (2020), does not require the State to prove that a child is actually in need of protection or services for a defendant to be found guilty of encouraging the need for protection or services.

Reversed.

O P I N I O N

MCKEIG, Justice.

Under Minnesota Statutes § 260C.425, subd. 1 (2020), it is a gross misdemeanor for "[a]ny person who by act, word, or omission encourages, causes, or contributes to the need for protection or services." This case asks us to determine whether the State must prove that a child is actually in need of protection or services for a defendant to be found guilty of violating this statute. We hold that Minn. Stat. § 260C.425, subd. 1, does not require the State to prove that the child is actually in need of protection or services. We, therefore, reverse the decision of the court of appeals.

FACTS

The daughter of appellant Michael Boss, L.B., had a ten-year-old friend, A.G. The two met at school, and A.G. would frequently go to the Boss house to spend time with L.B. A.G., who lived with her aunt, would have sleepovers at the Boss residence and go to church and on other outings with the Boss family.

On December 4, 2017, Boss, who was 48 years old, sent A.G. a Christmas stocking, through his daughter L.B. The stocking contained a note and candy from Boss. Boss had folded the note several times and wrote warnings on the note that it was "For [A.G.] only!

(Make sure you are alone before opening)." As the note unfolded, Boss had written additional warnings: "If you are not [A.G.], turn back now!" and "Anyone but [A.G.] crossing this point is in Big Trouble!" The inside of the note said:

> [A.G.]—I [heart] u! (and miss you)
> When the Lord tells you,
> take a walk down central street by yourself
> (probably sometime around midnight or after midnight)
> (don't cross railroad tracks)
> I just want to talk. Look 4 me by the train tracks
> Obey the Lord above all other things!
> (throw this out after you are done reading it)
> Do not be afraid, God is with you
> Mike.

In the bottom right hand corner, Boss drew a map and indicated an abandoned property where he wanted A.G. to meet him.

When A.G. got home that day, she showed the note to her aunt, M.C., who is her legal guardian. A.G. told her aunt that Boss had told her he wanted to marry her, that he loved her, and he had tried to give her a ring made out of string. She reported that on at least one occasion when A.G. slept over at the Boss residence, Boss woke her up early in the morning by tickling her and rubbing her on her side. He did not touch her on any other part of her body. A.G. was scared when she received the note from Boss. She was afraid if she followed the instructions on the note, that Boss would do something to her.

A.G. did not follow the instructions on the note. Instead, M.C. and A.G. went to the police department that evening to file a report. They brought with them the note from Boss as well as a cell phone that Boss had previously given A.G. M.C., on behalf of A.G., filed for a harassment restraining order (HRO) against Boss, which was granted the next day.

On the evening of December 4, the officer who took the report conducted surveillance on the Boss residence to see if Boss would leave his house to meet A.G. There was a snowstorm that evening, and the officer did not witness Boss leave his residence. The officer used A.G.'s cell phone to send messages to Boss as A.G. Someone responded to the text messages, but the officer did not know if it was Boss.

After the district court granted the HRO, Boss sent multiple emails to an employee with Brown County Human Services who worked in A.G.'s school. The first message detailed Boss's plan to adopt A.G. despite her aunt's opposition. He explained "as a last ditch effort to try and clear things up, I wrote [A.G.] a note to try and meet with her one last time" before his family moved, referring to the note in the stocking. He admitted he "said some loving things to her over the past year (that God told me to say)." In a second email message, Boss provided more details about his understanding of God's plan for A.G., which meant putting A.G. in his "care for the rest of [his] life," with eventual marriage as "an option." He did not want to jeopardize A.G.'s future by breaking any laws. In yet another email, Boss acknowledged that he "believed God had a plan for [them] to be married many years down the road if she wanted that."

The Brown County employee forwarded the email messages to the police. The State charged Boss with one count of contributing to the need for protection or services, under Minn. Stat. § 260C.425, subd. 1(a). Boss pleaded not guilty and waived his right to a jury trial.

A.G. and M.C. testified at Boss's bench trial, as did the officer who took the initial report. The officer testified that the note in the stocking concerned him because it appeared

Boss "was trying to have a ten-year-old leave their house in the middle of the night to go and meet up with him." He further testified that the language of Boss's emails to the Brown County employee were consistent with Boss engaging in grooming behavior towards A.G. Boss did not testify.

At the close of the State's case, Boss moved for a judgment of acquittal. Boss asserted that "there was no inappropriate contact, that there was not a dangerous or injurious condition that ever existed" with regards to A.G., and "[n]othing inappropriate actually occurred." He argued that A.G. was never in danger, and that he was not charged under Minn. Stat. § 609.17 (2020), with attempt to make A.G. a child in need of protection or services or charged under Minn. Stat. § 609.175, subd. 2 (2020), with a conspiracy to do so.

Recognizing that the State did not charge an attempt offense, the district court found that Boss had encouraged A.G. to leave her house without her legal guardian's permission; had encouraged A.G. to meet with an adult who had a delusional fantasy about marrying her, which would have placed A.G. in a dangerous or injurious environment; and that even though A.G. did not meet Boss, it was sufficient that he encouraged her to do so. The district court concluded that requiring the child to actually be in need of protection or services would make the word 'encouraged' in section 260C.425 superfluous. Thus, the court found Boss guilty of violating Minn. Stat. § 260C.425, subd. 1(a). He was sentenced to 365 days in jail, with 275 days of that time stayed for two years.

Boss appealed. The court of appeals reversed, concluding that the evidence was insufficient to prove that A.G. was "actually in need of protection or services." *State v.*

Boss, A19-1671, 2020 WL 4045685, at *7 (Minn. App. July 20, 2020). The court said that "[e]ven when an offender encourages a child's need for protection or services, a criminal conviction requires that the child must actually be in need of protection or services." *Id*. at *3. Then, concluding that the evidence was sufficient to find Boss guilty of attempt, the court of appeals reduced Boss's conviction to attempt, pursuant to Minn. R. Crim. P. 28.02, subd. 12(c), and remanded the case to the district court for sentencing on the lesser-included offense. *Id*. at * 7.[1]

The State sought review of that portion of the court of appeals' decision requiring proof that a child is actually in need of protection or services to sustain a conviction under Minn. Stat. § 260C.425. Boss sought review of the court's decision to vacate his conviction but remand for resentencing based on an attempt crime that was never charged by the State. We granted both petitions for review.[2]

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[1] Judge Johnson concurred with the court's finding that the evidence was insufficient to sustain Boss's conviction. *Id*. However, he dissented from the majority's decision to find the evidence sufficient to convict Boss of an attempt offense. He reasoned that because the State did not charge Boss with attempt, nor did the district court make findings of fact or conclusions of law regarding an attempt charge, the correct disposition would be to enter a judgment of acquittal. *Id*.

[2] Boss sought review on whether the court of appeals has authority to reduce a defendant's conviction to a lesser-included offense sua sponte, even under Minn. R. Crim. P. 28.02, subd. 12(c), despite the State not charging that offense. Although we granted review on this issue, our decision to reverse the court of appeals on the issue presented by the State's petition for review makes it unnecessary to reach the issue in Boss's petition for review. We express no opinion on the correctness of the Court of Appeals' decision on that issue.

ANALYSIS

The meaning of a criminal statute that is intertwined with the issue of whether the State proved a defendant's guilt beyond a reasonable doubt presents an issue of statutory interpretation that we review de novo. *State v. Townsend*, 941 N.W.2d 108, 110 (Minn. 2020). Our first step is to determine whether, on its face, the statute's language is unambiguous. *State v. Jama*, 923 N.W.2d 632, 636 (Minn. 2019). "[W]hen 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 consider the canons of interpretation provided in Minn. Stat. § 645.08 (2020), to determine whether the language of a statute is subject to more than one reasonable interpretation. *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015).

Minnesota Statutes § 260C.425, subd. 1(a), provides as follows:

> Any person who by act, word, or omission *encourages*, causes, or contributes to the need for protection or services is guilty of a gross misdemeanor.

(Emphasis added). Boss asserts that in order to sustain his conviction under this statute, the State must prove that the child actually needed protection or services. In other words, Boss argues that merely encouraging a child to engage in activities or conduct that could be dangerous, and thus could present a need for protection or services, is insufficient to sustain a conviction under section 260C.425 if there is no direct evidence that the child actually was in danger.

The State disagrees. The State argues that the Legislature intended to prevent children from actually becoming in need of services by prohibiting acts that would

encourage the need for services. The State argues that the particular outcome that would result from the defendant's encouragement—a need for protection or services—does not have to actually occur, because the Legislature criminalized acts that encourage, cause, or contribute to a need for protection or services.

Thus, we start, as did the court of appeals, with the word "encourages" in section 260C.425. The operative acts—"encourages, causes, or contributes," are not defined in Minn. Stat. § 260C.425 or in chapter 260C. "In the absence of statutory definitions, we may consider dictionary definitions to determine the meaning of a statutory term." *State v. Alarcon*, 932 N.W.2d 641, 646 (Minn. 2019).

The court of appeals looked to the definition of "encourage," in Black's Law Dictionary: "[t]o instigate; to incite to action; to embolden; to help." *Black's Law Dictionary* (11th ed. 2019). Based on this definition, the court concluded that section 260C.425 "criminalizes an individual's acts, words, or omissions that incite a child to act in a manner that would result in his/her need for protection or services," even though the child may decide "on his/her own volition not to act in accordance with the offender's encouragement." 2020 WL 4045685, at *3; *see also id.* (stating that the child's decision not to act "does not mean that the encouragement did not happen"). We agree.

The essence of the word "encourage" is an effort to persuade the listener, to overcome. *See Webster's Third New International Dictionary* 747 (3d ed. 2002) ("to spur on"); *The American Heritage Dictionary* 606 (3d ed. 1992) ("[t]o stimulate; spur"); *see also State v. Melchert-Dinkel*, 844 N.W.2d 13, 23 (Minn. 2014) (reasoning that the word "encourages," in a different statute, "broadly include[s] speech that provides support or

rallies courage"). Whether the recipient of the encouragement acts on that effort does not change the fact that the encouragement occurred.

With this definition in mind, the court of appeals next considered whether the State was required to prove that there was an actual need for protection or services. *Boss*, 2020 WL 4045685, at *4. The court of appeals concluded that the child must actually be in need of services. *Id*. It noted that, by definition, a child is in need of protection or services only if one or more of the statutory factors for that status is shown. *Id*. at *4 (citing to the factors enumerated in Minn. Stat. § 260C.007, subd. 6 (2020)). Interpreting the statute to not require the State to prove that the child was actually in need, the court reasoned, would "fail[] to harmonize and give effect to the definition of 'child in need of protection or services' found" in Minn. Stat. § 260C.007, subd. 6. *See* 2020 WL 4045685, at *4.

The State argues that this conclusion renders the word "encourage" superfluous because the statute also criminalizes actions that *cause* a child to need protection or services, or *contribute* to a need for those services; thus, actions that *encourage* a need for services must mean something other than an actual need for protection or services. Boss contends that the court of appeals correctly interpreted the statutory language to require the State to prove an actual need for protection or services. To conclude otherwise, he argues, would require assuming the Legislature intended to criminalize mere encouragement "without any detrimental state of being."

We read statutes as a whole and give effect to all of its provisions. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). We conclude that the State has the better argument here, based on the plain language of the statute. The phrase "the need for

protection or services" is not defined in Minn. Stat. § 260C.425. We agree with the court of appeals that the factors that define a child "in need of protection or services" may be relevant when assessing whether a defendant's conduct encouraged, caused, or contributed to a need for services. *See* Minn. Stat. § 260C.007, subd. 6 (defining "a child who is in need of protection or services" as a child who has a quality or attribute that can be addressed by services, as for example, when a child is abandoned, abused, without necessary care and support, or is a runaway). But this definition cannot alter the plain meaning of the language in section 260C.245, nor render superfluous the plain words of that statute. *See Allan v. R.D. Offutt Co.*, 869 N.W.2d 31, 35 (Minn. 2015) (adopting an interpretation that provided effect to separate references in a statute to employment status). Requiring the State to prove that the child actually needed services as a result of the defendant's encouragement converts "encourages" into the equivalent of "causes." *See Cause, Black's Law Dictionary* ("Something that produces an effect or result."). This cannot be the correct result. *See Roberts v. State*, 945 N.W.2d 850, 853 (Minn. 2020) (explaining the court construes statutory language to preserve all words and phrases and avoid rendering any language superfluous).

Additionally, Minn. Stat. § 260C.425, subd. 2 (2020), states that "[a] prior or pending petition alleging that the child is . . . in need of protection or services is not a prerequisite to a complaint or a conviction under this section." Presumably, if the State must prove that a child actually needs services as a result of a defendant's encouragement, a petition alleging that need would also be required, contrary to the express language of this subdivision. *See* Minn. Stat. § 260C.141 (2020) (describing the procedures for

asserting a child is in need of protection or services, including the petition supporting that assertion).

By concluding that the encouragement has to result in actual services, the court of appeals effectively inserted "actual" as a qualifier into the need-for-services phrase in the statute, thus, creating an independent element, as follows:

> Any person who by act, word, or omission *encourages*, causes, or contributes to the need for protection or services ***and actual services are needed*** is guilty of a gross misdemeanor.

This interpretation cannot be correct. *See State v. Carufel*, 783 N.W.2d 539, 545 (Minn. 2010) (rejecting an interpretation of statutory language that would require adding words). Concluding that an actual need for services is not an element of an "encouraging" offense does not, as Boss argues, ignore "half of the elements of the criminal statute and focus solely on the parts they can prove." Rather, it reads the result of the encouragement—"the need for protection or services"—together with just one of the prohibited acts—encouragement, i.e., inciting a child to do something. Thus, although we agree with the court of appeals that "encourage" encompasses acts even when the child does not follow the encouragement, we disagree with the court of appeals' conclusion that the State must prove that actual services were needed. The court of appeals therefore erred in reversing Boss's conviction.

"When evaluating the sufficiency of the evidence, appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Boldman*, 813 N.W.2d

102, 106 (Minn. 2012). The evidence is viewed in the light most favorable to the verdict and we assume that the fact-finder disbelieved any evidence that conflicted with the verdict. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). "The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense." *Id.* There is sufficient evidence to sustain Boss's guilty verdict. Thus, there is no need to remand to the court of appeals to address Boss's challenge to the sufficiency of the evidence under the proper interpretation of the statute.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and affirm Boss's conviction.

Reversed.

CHUTICH, J., took no part in the consideration or decision of this case.