STATE OF MINNESOTA

IN SUPREME COURT

A19-1801

Court of Appeals | Moore, III, J.

State of Minnesota,

Respondent,

vs.

Filed: July 14, 2021
Office of Appellate Courts

Seth Mars Reimer,

Appellant.

Keith M. Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, Saint Paul, Minnesota; and

Mark S. Rubin, Saint Louis County Attorney, Duluth, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Appellate Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

Although the district court violated the appellant's right to have a jury determine the dates of his offenses under *Blakely v. Washington*, 542 U.S. 296 (2004), the violation was harmless beyond a reasonable doubt.

Affirmed.

O P I N I O N

MOORE, III, Justice.

This case asks us to decide whether a *Blakely* violation committed by the district court at a sentencing hearing was harmless beyond a reasonable doubt. A jury found the appellant, Seth Mars Reimer, guilty of two counts of criminal sexual conduct. At sentencing, the district court determined that Reimer's offenses were committed after August 1, 2006, even though the complaint alleged that the offenses were committed sometime between 2004 and 2018. The court of appeals found that the district court's determination of Reimer's offense dates was a *Blakely* violation, but concluded that, even though the presumptive sentence under the applicable sentencing guidelines increased on August 1, 2006, the violation was harmless beyond a reasonable doubt. The court therefore affirmed Reimer's sentence. Because we agree with the court of appeals that the district court's *Blakely* violation was harmless beyond a reasonable doubt, we affirm.

FACTS

The State charged Reimer with three counts of criminal sexual conduct based on allegations that he sexually abused his girlfriend's three minor daughters: M.M., E.R., and D.R. The first count alleged that Reimer committed first-degree criminal sexual conduct against M.M. between January 1, 2004, and March 31, 2018. The second count alleged that Reimer committed second-degree criminal sexual conduct against E.R. between January 1, 2006, and June 16, 2018. The third count alleged that Reimer committed first-degree criminal sexual conduct against D.R. between January 1, 2012, and June 16, 2018.

The case proceeded to a jury trial. At trial, M.M. testified that Reimer sexually assaulted her numerous times over the course of his relationship with her mom, beginning in 2012 when she was in fourth or fifth grade. E.R. testified that Reimer started sexually assaulting her in 2009 and continued to sexually assault her over several years. The jury found Reimer guilty of the two counts of criminal sexual conduct against M.M. and E.R.[1] The jury was not asked to determine the dates or range of dates that Reimer assaulted either of the victims.

The recommendation in the presentence investigation report was to sentence Reimer in accordance with the sentencing guidelines that were in effect before August 1, 2006, based on the date range set forth in the complaint (2004 to 2018). Based on the pre-August 1, 2006 sentencing guidelines, the presumptive sentences for the two convictions would be 161 months in prison and 57 months in prison, respectively. At sentencing, the State argued that Reimer should be sentenced in accordance with the sentencing guidelines in effect after August 1, 2006, because the evidence presented during the jury trial suggested that the earliest offense occurred in 2009. Based on the post-August 1, 2006 sentencing guidelines, the presumptive sentences for the two convictions would be 360 months in prison and 140 months in prison, respectively.

The district court found that "there was absolutely no evidence that any of these offenses happened in 2006," "probably not in 2007 [or] 2008" and "the earliest that these offenses . . . occurred was maybe 2010." The district court observed "that there was a

[1] Reimer was acquitted of the count submitted to the jury charging an offense against D.R.

mistake made in . . . not amending the Complaint to change the date of the offenses" and suggested that "ideally, there should have been a special interrogatory or something like that to the jury asking them for each victim when did these offenses occur." Ultimately, the district court sentenced Reimer in accordance with the sentencing guidelines that existed after August 1, 2006, and imposed the presumptive sentences of 360 months in prison and 140 months in prison, to run concurrently.

On appeal, Reimer argued that the district court violated *Blakely v. Washington*, 542 U.S. 296 (2004), and its progeny by finding that the earliest offense occurred after August 1, 2006. In a nonprecedential opinion, the court of appeals agreed with Reimer that the district court's finding that the offenses occurred after August 1, 2006 violated *Blakely*. The court concluded, however, that the district court's error was harmless due to "the unique circumstances in this case" where the record "simply contains no evidence to support a jury finding that any of the offenses occurred before August 1, 2006, and Reimer makes no claim to the contrary." *State v. Reimer*, No. A19-1801, 2020 WL 7019403, at *5 (Minn. App. Nov. 30, 2020). We granted Reimer's petition for review on the *Blakely* issue.

ANALYSIS

Under *Blakely*, a criminal defendant has a right under the Sixth Amendment to the United States Constitution to be sentenced based solely upon factual findings made by a jury. 542 U.S. at 303–05. A violation of that right—what we have described as a *Blakely* violation, *see State v. Houston*, 702 N.W.2d 268, 273–74 (Minn. 2005)—occurs when a court determines "any disputed fact essential to increase the ceiling of a potential sentence," including factual findings related to offense dates, without the defendant

waiving the right to a jury's determination of that issue. *State v. DeRosier*, 719 N.W.2d 900, 903 (Minn. 2006) (quoting *Shepard v. United States*, 544 U.S. 13, 25 (2005)) (emphasis omitted). "If the determination of which presumptive sentence applies depends on a fact issue . . . such an issue is for the jury to decide." *Id.*

In this case, the court of appeals found, and the parties agree, that a *Blakely* violation occurred when the district court determined that Reimer's offenses against M.M. and E.R. occurred after August 1, 2006. The jury was never asked to determine the date of the offenses. Therefore, the district court determined a "presumptive sentence" based "on a fact issue," resulting in a *Blakely* violation. *Id.*; *State v. Robinson*, 480 N.W.2d 644, 646 (Minn. 1992) (explaining that defendants have the "right to let the jury authoritatively decide the" date on which an offense occurred).

Thus, the sole issue presented in this case is whether the *Blakely* violation was harmless beyond a reasonable doubt. The State contends that the *Blakely* error was harmless because there was no evidence presented that Reimer's offense occurred before August 1, 2006. Reimer, citing to our decisions in *State v. DeRosier*, 719 N.W.2d 900 (Minn. 2006) and *State v. Osborne*, 715 N.W.2d 436 (Minn. 2006), counters that any factual determination made by a court that results in a higher sentence for a criminal defendant is per se prejudicial.

Our harmless error doctrine reflects the fact that "most constitutional errors can be harmless." *State v. Finnegan*, 784 N.W.2d 243, 259–60 (Minn. 2010) (quoting *Neder v. United States*, 527 U.S. 1, 8 (1999)). We apply the harmless error doctrine to a constitutional error when that error does not qualify as a "structural" error, which deprives

a defendant "of 'basic protections' without which . . . 'no criminal punishment may be regarded as fundamentally fair.' " *Neder*, 527 U.S. at 8–9 (quoting *Rose v. Clark*, 478 U.S. 570, 577–78 (1986)). *Blakely* violations do not rise to the level of a structural error and are therefore subject to our harmless error standard. *See Washington v. Recuenco*, 548 U.S. 212, 222 (2006); *State v. Chauvin*, 723 N.W.2d 20, 30 (Minn. 2006); *see also Neder*, 527 U.S. at 15, 19–20 (applying a harmless error analysis to the district court's determination of an element of a crime when the defendant "did not contest" that element at trial nor did he "suggest that he would introduce any evidence" related to that element if he was re-tried).

Under our harmless error standard, "[a]n error is not harmless if there is any reasonable doubt the result would have been different if the error had not occurred." *DeRosier,* 719 N.W.2d at 904. If a district court's error is not harmless beyond a reasonable doubt, the case must be remanded for resentencing. *Chauvin,* 723 N.W.2d at 30–31; *see also Recuenco*, 548 U.S. at 222.

In this case, the complaint alleged that Reimer committed criminal sexual conduct against M.M. between January 1, 2004, and March 31, 2018, and against E.R. between January 1, 2006, and June 16, 2018. At trial, the State presented no evidence that Reimer committed acts of criminal sexual conduct against either victim before 2009. And Reimer has not argued "that he would introduce any evidence" related to the timing of his offense if he was re-tried. *Neder*, 527 U.S. at 15. Accordingly, there is no "reasonable doubt the result would have been different if the error had not occurred" and the error is therefore harmless. *DeRosier,* 719 N.W.2d at 904.

We disagree with Reimer's argument that our *DeRosier* decision stands for the proposition that a *Blakely* violation is not harmless if a defendant's sentence is increased by the violation, which would in effect transform *Blakely* violations into structural errors mandating automatic reversal. In *DeRosier*, the defendant committed multiple acts of criminal sexual conduct against a teenage girl during 2000. *Id.* at 901. At trial, the State presented evidence that the conduct "began in June 2000" and there was at least one act that occurred in August 2000. *Id.* at 901–02. On August 1, 2000, the sentencing guidelines were amended and DeRosier's crime carried a presumptive sentence that was 58 months longer than it did before the amendment. *Id.* at 901. The jury found DeRosier guilty, but never determined the date of the offense. *Id.* at 902. The district court sentenced DeRosier under the guidelines that took effect after August 1, 2000. *Id.*

The court of appeals found a *Blakely* violation in *DeRosier* and remanded for resentencing. *Id.* We affirmed under a harmless error analysis because there was reasonable doubt as to the exact timing of DeRosier's acts of criminal sexual conduct. *Id.* at 904. We did not reverse because of the 58-month difference in the presumptive sentence between the initial and amended sentencing guidelines, as Reimer suggests. *Id.* The reasonable doubt arose out of the State's evidence that DeRosier's sexual assaults against the victim happened both before and after the August 1, 2000 amendments to the sentencing guidelines. *Id.* As a result, we rejected the State's argument in *DeRosier* that the district court's factual finding was harmless beyond a reasonable doubt. *Id.* And nowhere did we suggest that the *Blakely* violation in that case was structural error, which is the logical premise of Reimer's argument. *See Recuenco*, 548 U.S. at 221 (rejecting the

argument that *Blakely* violations are structural errors); *Osborne*, 715 N.W.2d at 447 (applying the harmless error analysis to the *Blakely* violation in that case).

In addition, Reimer's representation of our *Osborne* precedent is inaccurate. In *Osborne*, the defendant was found guilty of a drug offense. 715 N.W.2d at 439. At sentencing, the district court granted an upward departure based on four aggravating factors that rested on factual findings not made by the jury. *Id.* at 440–41. The sentence was reversed on appeal because the jury never found the existence of the aggravating factors, nor did Osborne admit to the aggravating factors. *Id.* at 446–47. We did not, however, reverse Osborne's sentence simply because the district court's error resulted in a higher sentence. *See id.*; *see also State v. Essex*, 838 N.W.2d 805, 813 (Minn. App. 2013), *rev. denied* (Minn. Jan. 21, 2014) (concluding a district court committed a *Blakely* violation by finding the existence of an aggravating factor, but affirming the sentencing decision because the error was harmless).

Here, there was no evidence presented at trial that Reimer committed any act of criminal sexual conduct before August 1, 2006. Indeed, as the district court summarized, no evidence presented at trial showed that Reimer committed an act of criminal sexual conduct against any of the three victims alleged in the complaint before 2010. Although the district court erred in determining the date of Reimer's offense without receiving a *Blakely* waiver from Reimer, the error was harmless beyond a reasonable doubt.[2] *See State*

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[2] Because we find the *Blakely* violation in this case was harmless beyond a reasonable doubt, we do not address the State's argument that a sentencing jury should be empaneled if this case is remanded to the district court.

v. Waukazo, 269 N.W.2d 373, 375 (Minn. 1978) ("[A]n indictment or complaint should be as specific as possible with respect to time. However, it is not always possible to know with certainty when an offense or offenses occurred," which is "especially true in cases like this where there is a minor victim who does not complain to the authorities immediately.").[3]

CONCLUSION

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

Affirmed.

[3] We emphasize the unique nature of this case. Here, there is absolutely no evidence that any of the acts of criminal sexual conduct occurred before August 1, 2006. And, critically, the defendant does not contest the timeline of events in this case. Nonetheless, we stress to district courts that juries must make all factual findings that could potentially raise a defendant's presumptive sentence to comport with *Blakely*, absent an appropriate waiver by the defendant. *See Blakely*, 542 U.S. at 313 ("[E]very defendant has the *right* to insist that the prosecutor prove to a jury all facts legally essential to the punishment."); *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) ("[A]ny fact that increases the penalty for a crime beyond the prescribed statutory maximum *must* be submitted to a jury and proved beyond a reasonable doubt." (emphasis added)); *Houston*, 702 N.W.2d at 273 (finding "the right to jury trial implicated by *Blakely* is fundamental to our system of criminal procedure").