COURT OF APPEALS
DECISION
DATED AND FILED

December 14, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2009AP3197-CR **Cir. Ct. No. 2008CF798**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JASON R. BURRIDGE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: MARK J. McGINNIS, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Jason Burridge appeals from a judgment of conviction for repeated sexual assault of a child. Burridge's sole claim on appeal concerns the denial of his request for a continuance of the jury trial. We affirm.

¶2 A criminal complaint alleged twenty-eight-year-old Burridge had a sexual relationship with a fifteen-year-old girl. Burridge appeared pro se at the initial appearance and at a subsequent hearing where he moved for bond modification. Burridge retained counsel for the preliminary hearing[1] and the arraignment.

¶3 Three weeks prior to the scheduled trial, Burridge filed a "Motion by Defendant, Stipulation by Attorney, and Order for Withdrawal of Counsel." The motion indicated Burridge intended to represent himself. At the pretrial conference, Burridge indicated he had "relieved" his trial counsel and wished to represent himself. During a colloquy, in which the court asked Burridge why he preferred to go forward representing himself, Burridge responded:

> I feel that no one will safeguard my interests better than myself, and I feel that given the constraints and length that this trial has already proceeded, trying to engage in other counsel and work with them to create a defense would be both counterproductive, time consuming, and costly.

Burridge further indicated, "[A]nd if it comes to a point where I feel I need the assistance of legal advice or counsel, I do know places I can seek it, so."

¶4 Burridge also notified the court at the pretrial conference that he had not yet obtained certain discovery from his former counsel, and had been unable to speak with the prosecutor assigned to the case. Burridge conceded he had only requested the discovery from his former counsel "within the last couple of days." The court responded, "This should have been on your radar chart more than within

[1] Burridge waived the preliminary hearing.

the last couple of days." The court advised Burridge to speak to the prosecutor that day.

¶5 Two days later the parties were back in court, and the prosecutor told the court he had discovered Burridge did not have copies of the police reports, video recordings of three police statements or a letter sent to his former attorney outlining the State's plea offer. The prosecutor provided copies of each to Burridge. The prosecutor also represented that Burridge "has indicated a willingness to enter a plea in this case consistent with our recommendation …." The court indicated it would prefer Burridge review the material provided by the prosecutor, and set a plea hearing the day prior to the scheduled trial. When asked if that was enough time, Burridge responded, "I do believe so." The court stated, "If you come in and you've reviewed the materials and you want your trial, that's fine, we'll have the trial …."

¶6 On the date set for the plea hearing, Burridge informed the court he would not be entering into a plea agreement. Burridge also stated, "I did approach the public defender's office yesterday and request counsel." Burridge moved for a continuance, which the court denied. At that time, he also presented the court with a motion to dismiss, based upon a "Universal Declaration of Human Rights." Burridge asserted this declaration constituted recognition of fundamental rights to have sex with children. Burridge also demanded an evidentiary hearing on his

motion at which time the victim would testify. The court took the motion under advisement.[2] The court then revoked Burridge's bond.[3]

[2] The circuit court denied Burridge's motion to dismiss after hearing the victim's testimony at trial. The court stated it had researched the "Universal Declaration of Human Rights." The court further stated, "I've listened to [the victim] testify … I'm not going to bring her in on an additional hearing and subject her to anything further than that, and your motion is denied."

[3] Burridge argues his "sole claim on appeal concerns the circuit court's denial of his request for a continuance of the jury trial." However, Burridge suggests the revocation of bond was also improper. The court provided several reasons for the bond revocation. The court stated, "You're somebody who the last time you were here admitted to me that you had filed a motion which was a fraud which was an effort to mislead the Court and which was a complete lie in terms of anything to do with this case." The court continued, "And then you come in here the day before trial and you change your mind now for either the third or fourth time." In addition, the court stated:

> [B]ut the third reason, ultimately the reason that we have an officer here in court is because there are people concerned about you and about potentially what you're going to do. It's not routine that we have an officer here; and I think given the nature of what's transpired in the last ten days, the fact that you have made the representations that you've made to me which we know are false and we know you've admitted are false, the nature of how you've handled this case, and the concerns that have been expressed by the victim's family as I understand it – I don't know the details of that – but all of those things concern me regarding you're a dangerous individual if you're released to go outside tonight before the jury trial tomorrow; either that you're going to intimidate or tamper with individuals, and I'm not going to allow that to happen, so that's why it's being revoked. It's only for one day, but it's to assure that everybody is safe tonight when they're sleeping at home and they don't have to worry about you or somebody you associate with doing something to them in preparation for this trial.

Burridge subsequently requested "leave to speak freely," and engaged in a long statement concerning a "Declaration of Human Rights." Burridge concluded, "The attempt of the Court to force this issue through and continue to pressure and push me towards a guilty admission towards a violation of her is [sic] as a person, is both a violation of me as a person and a violation of the rights of all people." The court then stated, "The only thing that I will tell you is that the more I listen to you, the more concerned I am about your mind-set and how dangerous of a person you potentially are."

¶7 At the beginning of the trial, the court was advised that the public defender's office had appointed counsel the prior day to represent Burridge. When the attorney met with Burridge in jail, he advised that if Burridge wanted his help, "the Court would probably adjourn it, and then I think he told me that he felt he would not need the assistance of counsel." Burridge admitted the public defender's statement was "both thorough and correct." The court appointed the attorney as stand-by counsel, and the attorney sat through the trial, consulting with Burridge at times.

¶8 The State called two witnesses at trial, the victim and a police officer. The victim described penis to vaginal intercourse on eighteen to twenty occasions, and oral sex on two to three occasions. The victim also testified Burridge was aware of her age at the time. Burridge called one witness, the victim's brother, who had introduced Burridge to his sister.

¶9 The jury found Burridge guilty of repeated sexual assault of a child, and the court sentenced him to six years' initial confinement and fourteen years' extended supervision. Burridge now appeals.

¶10 Burridge argues the denial of his request for continuance violated his due process rights. Burridge further contends the court denied his request without considering the six factors necessary for a proper exercise of discretion. *See* ***State v. Leighton***, 2000 WI App 156, ¶28, 237 Wis. 2d 709, 616 N.W.2d 126. Burridge insists the court responded to his request for a continuance by revoking his bond, so that he would spend the night before trial in jail. According to Burridge, these actions require a reversal of his conviction and a new trial.

¶11 A circuit court's ruling on a request for continuance will not be set aside unless the reviewing court finds an erroneous exercise of discretion. ***State v.***

Echols, 175 Wis. 2d 653, 680, 499 N.W.2d 631 (1993). Whether discretion was properly exercised is a question of law. ***Seep v. State Pers. Comm'n***, 140 Wis. 2d 32, 38, 409 N.W.2d 142 (Ct. App. 1987).

¶12 We need not reach the issue of whether the circuit court properly exercised its discretion by denying the requested continuance, because we conclude any error in failing to provide Burridge more time to prepare for trial was harmless.[4] This case required the State to prove three uncomplicated elements: (1) Burridge had sexual contact or intercourse with, (2) a person under the age of sixteen, and (3) at least three times. WIS. STAT. § 948.02(2).[5] There was no factual dispute that Burridge had sexual intercourse with the victim eighteen to twenty times. Indeed, Burridge admitted the intercourse and oral sex to police. He also told police he thought the victim was twelve or thirteen years old when he first met her, but during his third contact with the victim he asked her age and she told him she was fifteen years old.[6]

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[4] We are unpersuaded by Burridge's argument that traditional harmless error analysis "is a poor fit for this case." Burridge concedes even constitutional errors are subject to harmless error analysis. *See* ***State v. Lindell***, 2001 WI 108, ¶¶69, 128, 245 Wis. 2d 689, 629 N.W.2d 223. Burridge cites ***Arizona v. Fulminante***, 499 U.S. 279, 309-10 (1991), for the proposition that two constitutional errors are not subject to the harmless error rule: denial of the right to counsel and denial of the right to self-representation. Burridge does not contend he was denied either of these rights, but asserts these rights were "implicated" because "when Mr. Burridge sought a continuance he had only recently been permitted to represent himself, and, yet, he was already contemplating whether it would be wiser to be represented by counsel." Burridge provides no citation to the record in support of his factual contention that he was contemplating representation by counsel and we will therefore not address the issue further. *See* ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463. We note, however, that Burridge declined representation the day prior to trial, stating he "would not need the assistance of counsel," notwithstanding counsel's representation that the court "would probably adjourn it."

[5] References to Wisconsin Statutes are to the 2007-08 version unless noted.

[6] Burridge told police he first had sexual intercourse with the victim during his fifth contact with her.

¶13 Burridge's legal defense before and during trial was based upon a "Universal Declaration of Human Rights." His pretrial motion requested dismissal of the charges on the grounds that prosecuting him for having sexual intercourse with a consenting child violated his rights to privacy and equality under this declaration. Burridge reiterated this position in his opening statement at trial, where he told the jury that laws should not be enforced against him when he had a loving relationship with the child. In his closing argument, Burridge also asserted his belief that it was permissible for adults to have sexual relationships with children, and the laws should not be used to punish him as a criminal when there was no harm, abuse or manipulation. Burridge essentially urged nullification of Wisconsin law, which unequivocally holds the constitutional right to privacy does not protect an interest in having sex with a child. *See* ***State v. Jadowski***, 2004 WI 68, ¶¶37-39, 272 Wis. 2d 418, 680 N.W.2d 810.

¶14 Nevertheless, Burridge insists he was "punished for wanting a trial." He argues the court's tandem decisions to deny a continuance and revoke bond "appear to have been fueled by its disappointment that Mr. Burridge was declining the plea offer and exercising his right to a jury trial." There is no record support for Burridge's bald assertions.

¶15 Burridge insists "the record shows Mr. Burridge's thinking on whether to represent himself or be represented by counsel was very much in flux when the court denied the continuance and put Mr. Burridge in jail." Burridge further asserts that, although he declined representation the night before trial, he "felt unprepared and unsure about how to proceed."

¶16 Burridge misstates the record. He provides no record citations supporting his contention he was "in flux" regarding representation, or that he felt

"unprepared or unsure about how to proceed." We will therefore not address these contentions further. *See* ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463.

¶17 Finally, Burridge speculates at length concerning what may have occurred had the court granted a continuance. At minimum, he contends that with more time he may have been better prepared to exercise his right of self-representation and realized the law does not allow a defendant to argue for jury nullification. He further speculates that had he been represented by counsel, his attorney may have been able to negotiate a more favorable resolution.

¶18 We decline the invitation to speculate. Given the overwhelming undisputed evidence in this case, nothing Burridge could have done with additional time to prepare for trial would have made his defense any more valid or persuasive. *See* ***McAfee v. Thurmer***, 589 F.3d 353, 357 (7th Cir. 2009).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.