STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1657

State of Minnesota,
Respondent,

vs.

Alan James Bear,
Appellant.

Filed July 1, 2024
Affirmed
Reyes, Judge

Polk County District Court
File No. 60-CR-22-20

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Greg Widseth, Polk County Attorney, Tanner Hermanson, Assistant County Attorney, Crookston, Minnesota (for respondent)

Alexander F. Reichert, Reichert Law Office, Grand Forks, North Dakota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Reyes, Judge.

SYLLABUS

Minnesota Statutes section 609.045 (2020) does not bar the state from prosecuting the offense of fleeing a peace officer committed while in Minnesota when the defendant has been convicted of a similar offense committed while in North Dakota arising from the same course of conduct because the elements of both law and fact between the two offenses are not identical.

OPINION

REYES, Judge

In this direct appeal from his conviction of fleeing a peace officer in a motor vehicle in Minnesota, appellant argues that Minn. Stat. § 609.045 precluded the State of Minnesota from prosecuting the offense because he had been convicted of the same offense in North Dakota arising from the same course of conduct. We affirm.

FACTS

The parties do not dispute the facts. On September 11, 2020, the Grand Forks Police Department (GFPD) received a report of a hit-and-run crash in Grand Forks, North Dakota. The vehicle involved in the crash left the scene, and a Grand Forks County Sheriff's deputy who had witnessed the crash followed it. The deputy observed the driver of the vehicle commit numerous traffic violations and attempted to conduct a traffic stop, but the vehicle fled. The deputy pursued the vehicle, and GFPD officers joined in. During the chase, the driver of the vehicle drove into East Grand Forks, Minnesota. East Grand Forks Police Department (EGFPD) officers joined the pursuit, observed the driver of the vehicle commit multiple traffic violations, and became the lead pursuers. The vehicle later crossed back into Grand Forks and GFPD officers resumed leading the pursuit. GFPD officers eventually stopped the vehicle and identified the driver as appellant Alan James Bear.

A few days later, the State of North Dakota charged appellant with several offenses, including fleeing a peace officer in violation of N.D. Cent. Code §§ 39-10-71(1)(a) (2019), 39-10-71(2) (2019), and 12.1-32-01(5) (2019). A North Dakota district court convicted

appellant of that charge, among others, and sentenced him to 360 days at a correctional center.

In January 2022, respondent State of Minnesota charged appellant with fleeing a peace officer in a motor vehicle under Minn. Stat. § 609.487, subd. 3 (2020). Appellant filed a motion to dismiss, arguing that Minn. Stat. § 609.045 barred his prosecution in Minnesota following his conviction in North Dakota based on the same incident. The district court denied appellant's motion.

Appellant waived his right to a jury trial, and the case proceeded to a bench trial on stipulated evidence under Minn. R. Crim. P. 26.01, subd. 4, to preserve the dispositive pretrial ruling. The district court found appellant guilty, stayed imposition of sentence, and placed him on supervised probation for three years.

This appeal follows.

ISSUE

Does Minn. Stat. § 609.045 bar the state's prosecution of appellant for fleeing a peace officer in a motor vehicle while in Minnesota because he was previously convicted of a similar offense committed while in North Dakota based upon a continuing pursuit by police in both jurisdictions?

ANALYSIS

Appellant argues that the district court erred by determining that Minn. Stat. § 609.045 did not bar his prosecution in Minnesota because it relied on venue as the only differentiating element, which he argues nullifies the statute's effectiveness. We are not persuaded.

The scope of this appeal is governed by Minn. R. Crim. P. 26.01, subd. 4, "which allows the preservation and appeal of a district court's pretrial ruling." *State v. Galvan-Contreras*, 980 N.W.2d 578, 586 (Minn. 2022). "Appellate review [of appeals made under subdivision 4 of rule 26.01] is limited to consideration of the dispositive pretrial ruling." *Id.*

Here, the district court based its pretrial ruling upon its interpretation of Minn. Stat. § 609.045 as applied to the facts of the case. Appellate courts review legal issues, including statutory interpretation, de novo, *State v. Anderson*, 941 N.W.2d 724, 727 (Minn. 2020), and a district court's factual findings for clear error, *State v. Garcia*, 927 N.W.2d 338, 342 (Minn. App. 2019). The first step in interpreting a statute is to determine whether it is ambiguous. *Galvan-Contreras*, 980 N.W.2d at 583. If a statute is not ambiguous, appellate courts interpret the statute according to its plain meaning. *Id.*

Minnesota statutes section 609.045 provides:

> If an act or omission *in this state* constitutes a crime under *both the laws of this state and the laws of another jurisdiction*, a conviction or acquittal of the crime in the other jurisdiction shall not bar prosecution for the crime in this state *unless the elements of both law and fact are identical*.

(Emphasis added.)

The district court determined that, while the facts underlying the Minnesota charge and appellant's North Dakota conviction overlapped and stemmed from the same pursuit, they were not identical. The district court reasoned that appellant's conduct in each state was "separate and distinct." We agree with the district court.

A defendant bears the burden of establishing a double-jeopardy claim under Minn. Stat. § 609.045. *See State v. Alvarez*, 820 N.W.2d 601, 612 (Minn. App. 2012) (classifying Minn. Stat. § 609.045 as "Minnesota's double-jeopardy statute"), *aff'd sub nom. State v. Castillo-Alvarez*, 836 N.W.2d 527 (Minn. 2013); *State v. Jeffries*, 806 N.W.2d 56, 64 (Minn. 2011) (acknowledging that double jeopardy is affirmative defense and considering whether appellant waived double-jeopardy claim by entering second guilty plea); *State v. Fredlund*, 273 N.W. 353, 355 (Minn. 1937) ("Before [a] defendant may avail [themself] of the plea of former jeopardy it is of course necessary that [they] show that the present prosecution is for *the identical act* and that the crime *both in law and fact* were settled by the first prosecution.").

Here, appellant has failed to satisfy his burden of demonstrating that the elements of both law and fact are identical between the two offenses. Although existing precedential caselaw interpreting and applying Minn. Stat. § 609.045 does not address facts comparable to this case,[1] our application of the plain language of the statute is dispositive. First, North Dakota's statute does not criminalize fleeing a peace officer *within the state* of Minnesota, nor does Minnesota's statute criminalize fleeing a peace officer within the state of North Dakota. *See* N.D. Cent. Code §§ 29-03 (2019), 39-10-71 (2019); Minn. Stat. §§ 609.025(1) (2020), .487, subd. 3. The criminal conduct must occur within each state to be prosecuted

[1] *See State v. Aune*, 363 N.W.2d 741, 746 (Minn. 1985) (interpreting Minn. Stat. § 609.045 as applied to federal and state charges to conclude that prior federal prosecution bars prosecution in Minnesota only if state prosecution is for same act and if state crime and federal crime are same both in law and in fact); *Castillo-Alvarez*, 836 N.W.2d at 533-34 (applying Minn. Stat. § 609.045 to conclude that appellant's reversed convictions in Iowa did not qualify as "convictions" to preclude subsequent prosecution in Minnesota).

under each state's laws. In addition, Minnesota's fleeing statute explicitly requires the state to prove that a defendant knew or reasonably should have known that they were fleeing from a peace officer, an element which is not enumerated in North Dakota's statute. *Compare* N.D. Cent. Code § 39-10-71, *with* Minn. Stat. § 609.487, subd. 3. The elements of law are therefore not identical. Consequently, appellant cannot satisfy the condition in Minn. Stat. § 609.045 that "the elements of both law and fact [be] identical."

Further, we are not persuaded by appellant's argument that, because the district court's order "relied heavily on the venue aspect of the criminal complaint" and "did not make any other differentiations in its order[,] [i]t stands to reason [that] the [district court] determined the [Minnesota and North Dakota] laws to be identical and based its decision on this factual determination." The district court did not discuss, analyze, or make any other determination of whether the laws are identical, and that determination is not implicit. Moreover, based on our de novo review, we have concluded that the elements of law between the states' fleeing statutes are not identical. We also note that, because Minn. Stat. § 609.045 uses the conjunctive term "and" when referring to proving that the elements of both law and of fact must be identical, the district court did not need to analyze whether the elements of law were identical after it had determined that the elements of fact were not identical.

Second, although appellant argues that the elements of fact underlying his Minnesota and North Dakota convictions are identical, the record does not support this assertion.

The supreme court has concluded that Minn. Stat. § 609.045 contemplates a *Blockburger* test. *Aune*, 363 N.W.2d at 745-46 (citing *Blockburger v. United States*, 284 U.S. 299 (1932)). *Blockburger* provides that "to determine whether there are two offenses or only one, [the test to be applied] is whether each [offense] requires proof of a fact which the other does not."[2] 284 U.S. at 304. "Evidentiary duplications or differences which do not relate to the essential facts are of no significance." *Thompson*, 62 N.W.2d at 517.

Although the Minnesota complaint's statement of probable cause included a description of facts spanning appellant's conduct in both states, the charge itself related only to appellant's conduct while in Minnesota.

> [O]n or about September 11, 2020, *in Polk County, Minnesota*, [appellant] fled or attempted to flee [an EGFPD officer] by means of a motor vehicle while [the officer] was acting in the lawful discharge of an official duty and when he knew or reasonably should have known that [the officer] was a peace officer.

(Emphasis added.) The record does not include a copy of the North Dakota complaint. The only evidence in the record regarding the North Dakota complaint is found in the

[2] To determine whether two offenses are identical, courts consider if (1) "the evidentiary facts essential to establish the requisite elements of the offense charged in the second [prosecution] would have been admissible under the first [prosecution] to establish the elements of the offense charged therein and, [i]f proved, would necessarily have resulted in a conviction under the first [prosecution]," or (2) "the offense charged in the second [prosecution], with respect to all its essential elements, was included in the greater offense charged in the first [prosecution] and there was a conviction upon such greater offense, or if under the first [prosecution] for the greater offense, there might have been a valid conviction of the second or lessor offense." *State v. Thompson*, 62 N.W.2d 512, 517 (Minn. 1954). This test is consistent with the language of Minn. Stat. § 609.045.

state's brief in opposition to appellant's motion to dismiss, which provides that the North Dakota charging language stated:

> ...to-wit: That [appellant] was a driver of a motor vehicle and willfully failed or refused to bring the vehicle to a stop, or otherwise fled or attempted to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop. *This taking place in Grand Forks County, North Dakota*.

(Emphasis added.) This reference indicates that appellant's North Dakota convictions were based only on his conduct in North Dakota, not in Minnesota. The facts of appellant's conduct in Minnesota were therefore not essential to prove his guilt in North Dakota, and neither were the facts of his conduct in North Dakota essential to prove his guilt in Minnesota. *Thompson*, 62 N.W.2d at 517. Instead, appellant's conduct in each state supports independent criminal charges in those states. As a result, the district court's determination that the elements of fact are not identical is not clearly erroneous.

Because the elements of both law and fact underlying the two charges are not identical, Minn. Stat. § 609.045 therefore does not bar the state from prosecuting appellant in Minnesota following his North Dakota conviction.

DECISION

Minnesota statutes section 609.045 does not bar the state from prosecuting the offense of fleeing a peace officer while in Minnesota when the defendant has been convicted of a similar offense committed while in North Dakota arising from the same

course of conduct when the elements of both law and fact between the two offenses are not identical.

Affirmed.