STATE OF MINNESOTA
IN COURT OF APPEALS
A11-981

State of Minnesota,
Respondent,

vs.

Jeffrey Collins Hasbrouck,
Appellant.

Filed April 30, 2012
Affirmed
Bjorkman, Judge

St. Louis County District Court
File No. 69HI-CR-09-1113

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Brian D. Simonson, Assistant County Attorney, Hibbing, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges his conviction of fifth-degree criminal sexual conduct based on the district court's denial of his motion to sever this charge from a second criminal-sexual-conduct charge involving the same victim. We affirm.

FACTS

The two charges relate to conduct involving appellant Jeffrey Hasbrouck and his daughter-in-law J.H. that occurred during a two to seven day period ending on July 23, 2009. On both occasions, Hasbrouck was performing work in J.H.'s house. During the first incident, Hasbrouck sat down next to J.H., put his arms around her, and touched her breast. J.H. pushed his hand away. She was surprised and confused and later told her mother about the incident.

On July 23, J.H. returned home to find Hasbrouck again working on her house. Because the earlier incident made her feel uncomfortable around Hasbrouck, she immediately changed into pants and a sweatshirt. After finishing his work in the basement, Hasbrouck joined J.H. and her two-year-old son in the living room. After her son feel asleep, J.H. went into the kitchen. Hasbrouck followed her and placed his arms around her, pinning her against a counter. He then placed his hand on her buttocks and began kissing her neck. J.H. protested and eventually broke free. She returned to the living room, and sat next to her son. Hasbrouck followed J.H., grabbed her arms, lifted her off the chair, and brought her to the couch where he placed her on his lap. Hasbrouck kissed her neck again and put one hand on her breast. J.H. told Hasbrouck that he could

not do that to her and she returned to the chair. Hasbrouck followed, knelt in front of her, and started rubbing her inner thighs, telling her that no one needed to know. He then asked J.H. to let him "suck [her] nipple" and started moving his head toward her chest. J.H. again told him to stop, and Hasbrouck left the house. J.H. immediately went to a neighbor's house and reported the incident to the authorities.

Hasbrouck was charged in a single complaint with two counts of criminal sexual conduct in the fifth degree. Prior to trial, Hasbrouck moved the district court to sever the charges because the two incidents occurred on different dates. The district court denied the motion, reasoning that because the two offenses involved the same parties, same victim, same circumstances, and same location, they constituted the same behavioral incident.

The jury found Hasbrouck guilty on the count related to the July 23 incident but acquitted him of the other charged offense. This appeal follows.

D E C I S I O N

A district court must, upon motion, sever charges if they are not related. Minn. R. Crim. P. 17.03, subd. 3(1)(a). Charges are related if they form part of a "single behavioral incident or course of conduct." *State v. Profit*, 591 N.W.2d 451, 458 (Minn. 1999). The specific facts and circumstances of each case determine whether offenses are related. *State v. Jackson*, 615 N.W.2d 391, 394 (Minn. App. 2000), *review denied* (Minn. Oct. 17, 2000). To make this determination, courts consider (1) the time of the offenses, (2) the geographic location and proximity of the offenses, and (3) whether the conduct was motivated by a single criminal objective. *Profit*, 591 N.W.2d at 458. These factors

are analyzed together and are not meant to be a "mechanical test but one which involves an examination of all the facts and circumstances of the case." *State v. Banks*, 331 N.W.2d 491, 493 (Minn. 1983). We "review a district court's denial of a motion to sever for abuse of discretion." *State v. Jackson*, 770 N.W.2d 470, 485 (Minn. 2009).

Hasbrouck concedes that the two offenses occurred in J.H.'s residence and therefore share a unity of geographic location. But Hasbrouck argues that the offenses did not share a unity of time or a single criminal objective. We disagree.

First, the record demonstrates that the time span separating the two offenses was no more than one week. J.H. testified that she could not remember the exact date of the first incident but that it may have occurred as little as two days prior to the second offense. Second, the record shows that on both occasions, Hasbrouck initiated sexual contact by sitting next to J.H., placing his arms around J.H. to hug her, and moving on to sexual touching. When viewed together, the two incidents reflect a grooming process and escalation of conduct that indicates Hasbrouck was motivated by a single objective—to initiate a sexual relationship with J.H. Because the two offenses were related in geographic proximity, occurred no more than one week apart, and were motivated by a single criminal objective, we conclude that the district court did not abuse its discretion by denying Hasbrouck's motion to sever the charges for trial.

Affirmed.