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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0295**

In the Matter of the Welfare of:
J. J. M. A.

**Filed September 23, 2013
Reversed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-JV-12-2907

Michael Kemp, MET Law Group, PLLC, St. Paul, Minnesota (for appellant)

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's adjudication that he is delinquent of possession of drug paraphernalia in violation of Minn. Stat. § 152.092 (2012), arguing that enforcement of section 152.092 violates his rights to freedom of conscience and free exercise of religion under the Minnesota Constitution. Because we conclude that appellant established that section 152.092 burdens a sincerely held religious belief and

because the state failed to meet its burden of showing that the statute as applied is the least-restrictive means to accomplish a compelling state interest, we reverse.

FACTS

In September 2012, then 15-year-old appellant J.J.M.A. was visiting his grandfather's house when he got into an argument with his mother and his grandfather. When the argument became physical, J.J.M.A.'s grandfather called the police. When the police arrived, J.J.M.A.'s mother asked them to arrest her son. In the course of the arrest, the police searched J.J.M.A. and discovered a glass pipe and tobacco in his pocket. J.J.M.A. was charged with three petty misdemeanor offenses: (1) disorderly conduct, (2) possession of drug paraphernalia, and (3) minor in possession of tobacco.

J.J.M.A. asserted the affirmative defenses of freedom of conscience and free exercise of religion to the possession charge. He testified at the bench trial that he grew up in a household where both of his parents were practicing Rastafarians, that he had a conversion experience at an early age, and that he identifies as a practicing Rastafarian. J.J.M.A. stated that the pipe is integral to his religious belief, both to use to smoke and as a personal reminder of his faith.

The district court concluded that Rastafari is a true religion and that J.J.M.A. has a sincerely held belief in the general tenets of the religion. But the district court held that J.J.M.A. failed to satisfy his burden of establishing a sincerely held belief that the Rastafari religion requires that he carry his pipe with him at all times. As a result, the district court did not reach the issue of whether the state met its burden of showing a

compelling government interest in prohibiting the possession of drug paraphernalia. The district court adjudicated J.J.M.A. delinquent on all three charges. This appeal follows.¹

DECISION

J.J.M.A. argues that Minn. Stat. § 152.092 is unconstitutional as applied to him because it violates his rights under the freedom-of-conscience clause of the Minnesota Constitution. Minn. Stat. § 152.092 provides that it is a petty misdemeanor to “knowingly or intentionally . . . use or . . . possess drug paraphernalia.” The legislature defines drug paraphernalia as “all equipment, products, and materials of any kind . . . which are knowingly or intentionally used primarily in . . . injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.” Minn. Stat. § 152.01, subd. 18 (2012). J.J.M.A. does not dispute that his pipe is the type of item typically prohibited by section 152.092 or that he knowingly possessed the pipe at the time of his arrest.

Whether application of a statute is unconstitutional as applied to an individual presents a question of law, which we review de novo. *State v. Pedersen*, 679 N.W.2d 368, 372 (Minn. App. 2004), *review denied* (Minn. Aug. 17, 2004). Article 1, section 16 of the Minnesota Constitution states:

The right of every man to worship God according to the dictates of his own conscience shall never be infringed . . . nor shall any control of or interference with the rights of conscience be permitted . . . ; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of

¹ J.J.M.A. does not appeal the adjudications of disorderly conduct or possession of tobacco by a minor.

licentiousness or justify practices inconsistent with the peace or safety of the state.

“This language is of a distinctively stronger character than the federal counterpart” because it “precludes even an *infringement* on or an *interference* with religious freedom.” *State v. Hershberger*, 462 N.W.2d 393, 397 (Minn. 1990) (*Hershberger II*).

To prevail in an as-applied challenge to the constitutionality of a statute, the claimant must first demonstrate “a sincere religious belief intended to be protected by section 16.” *Id.* at 398. The burden then shifts to the state “to demonstrate that public safety cannot be achieved by proposed alternative means.” *Id.* On appeal, we analyze the four prongs of the compelling state interest balancing test, including whether (1) the individual holds a sincerely held belief, (2) the regulation burdens the exercise of religious beliefs, (3) the state’s interest is overriding or compelling, and (4) the regulation uses the least restrictive means to accomplish the state’s interest. *Hill-Murray Fed’n of Teachers v. Hill-Murray High*, 487 N.W.2d 857, 865 (Minn. 1992).

I.

The district court determined that although J.J.M.A. has a “sincerely held belief in the general tenets of Rastafari. . . . [J.J.M.A.] has failed to meet his burden of establishing a sincerely held belief that the Rastafari religion requires him to carry his cannabis pipe with him at all times.” The district court found that the pipe “is simply an instrument that is used at certain times for ceremonial purposes” and that J.J.M.A. “was unable to state how the pipe was required to be with him on a public street or everywhere he went.”

Determining what constitutes a sincerely held belief “is a delicate and difficult task.” *Pedersen*, 679 N.W.2d at 374. A claimant must show that the conduct at issue was “somehow tied to her religion and the established practices and beliefs within that religion.” *Id.* at 376. “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others.” *Id.* at 374 (quotation omitted). But a court may “inquire as to whether a belief is held in good faith.” *Hill-Murray Fed’n of Teachers*, 487 N.W.2d at 865.

Minnesota courts have not interpreted the sincerely held belief prong to impose a heavy burden on the party seeking an exemption under section 16. Reasoning that “it is not the province of the court to examine the reasons for a religious belief,” the supreme court recognized the presence of a sincerely held religious belief in *Odenthal v. Minn. Conference of Seventh-Day Adventists* even though “it is not at all clear exactly what religious belief [appellants] contend is at issue.” 649 N.W.2d 426, 442 (Minn. 2002). In *Hill-Murray Fed’n of Teachers*, the supreme court noted that “the Catholic Church has a long history of support for labor unions and the right of workers to organize.” 487 N.W.2d at 865. The supreme court concluded that it would nonetheless recognize the presence of a sincerely held religious belief opposed to applying the Minnesota Labor Relations Act to a Catholic school system “[b]ecause we believe judicial intervention into the determination and interpretation of religious beliefs warrants caution.” *Id.*

State v. Hershberger provides another example of Minnesota courts’ reluctance to examine the reasons for a particular religious belief. 444 N.W.2d 282 (Minn. 1989) (*Hershberger I*), vacated and remanded, *Minnesota v. Hershberger*, 495 U.S. 901, 110

S. Ct. 1918 (1990). In *Hershberger I*, the appellants were charged by traffic citations with violation of a statute requiring display of a slow-moving vehicle emblem. *Id.* at 284. Although some members of the community were willing to display the statutorily mandated fluorescent orange-red triangular sign emblem while operating on public roads, the appellants were “unwilling to compromise their belief that the ‘loud’ colors required and the ‘worldly symbols’ the triangular shape represents to them conflict with the admonitions found in Apostle Paul’s Epistles.” *Id.* The supreme court concluded that appellants’ beliefs were sincerely held even though those beliefs were not held by the community as a whole. *Id.* at 287; *see also Hershberger II*, 462 N.W.2d at 395-96, 399 (affirming *Hershberger I* on state constitutional grounds).

J.J.M.A. argues that the evidence submitted at trial satisfies his burden to establish a firmly held belief worthy of protection under section 16. We agree. J.J.M.A. testified that he carries his pipe with him as a reminder of his faith and so that he can “perform what needs to be performed, which is smoking.” He stated that the colors that appear on his pipe—red, yellow, and green—have religious significance: “[r]ed for the blood [of] the martyrs; yellow for the sun that grows the greens, the sacred herb; the purity of nature.” And he testified that even when he is not actively practicing his religion, “I do remind myself of it all the time.”

J.J.M.A.’s testimony was supported by K.H., a Rastafarian with a background in religious studies. K.H. testified that Rastafarians use the pipe—which he also called a “chalice”—to smoke during “reasoning circles” and that “it’s part of the actual sacramental process itself to be using a pipe [as] opposed to using any other device.” He

testified that the cannabis plant is “something that we should use throughout our entire day. . . . [T]here is a large variety of uses, but definitely the use of it in a pipe in a sacramental setting is an essential component of that usage.” According to K.H., there are no set times for reasoning circles or other gatherings, but the “religious tradition, this chalice or this pipe is something that can be self-administered,” and that “everyone is deemed to be able to instigate a gathering.”

In cases where we have concluded that the appellant failed to meet his burden to establish a sincerely held religious belief, the appellant was unable to connect his conduct to a religious practice or principle. In *Pedersen*, we concluded that the appellant “failed to provide any evidence that establishes a connection between the practice of her religion and the medicinal use of marijuana.” 679 N.W.2d at 376. And in *State v. Schwartz*, we concluded that the appellant did not carry his burden where he presented no evidence that his belief in telling the truth was based on religious principles. 598 N.W.2d 7, 10 (Minn. App. 1999), *review denied* (Minn. Sept. 28, 1999). Here, there is no evidence that J.J.M.A.’s conduct—possession of a cannabis pipe—was based on anything other than his sincere belief in the tenets of his religion.

The district court emphasized the fact that J.J.M.A. did not testify that he was required to possess his pipe at all times and that he could not give a specific “religious justification for having a cannabis pipe on the street in front of his grandfather’s house.” We have found no legal support for the conclusion that religious practices involving individual discretion as to time and place cannot constitute “a sincere religious belief intended to be protected by section 16.” *See Hershberger II*, 462 N.W.2d at 398.

J.J.M.A. testified to his belief that the pipe was meaningful to his religious tradition, that he was required to have the pipe at some times to practice his religion, and that he carried the pipe as a reminder of his faith. In the absence of evidence or argument that J.J.M.A.'s belief was not held in good faith, we will not enquire further into the justification, logic, or comprehensibility of this belief. *See Hill-Murray Fed'n of Teachers*, 487 N.W.2d at 865; *Pedersen*, 679 N.W.2d at 376.

II.

The state argues that J.J.M.A. failed to meet his burden to show that his belief was burdened by enforcement of Minn. Stat. § 152.092. An individual challenging the as-applied constitutionality of a statute under the freedom-of-conscience clause must demonstrate that “the state regulation burdens the exercise of religious beliefs.” *Hill-Murray Fed'n of Teachers*, 487 N.W.2d at 865.

The state contends that Minn. Stat. § 152.092 does not burden J.J.M.A.'s exercise of religious beliefs because his “inability to lawfully possess a pipe for smoking marijuana is not more restrictive of or burdensome on his religious beliefs than his inability to lawfully possess marijuana.” The state's argument conflates two distinct activities: possession of a controlled substance and possession of drug paraphernalia. Section 152.092 makes it a petty misdemeanor to “use or . . . possess drug paraphernalia.” This language plainly contemplates that section 152.092 prohibits conduct separate from the laws prohibiting use or possession of controlled substances. J.J.M.A.'s argument that he has a sincere belief in possessing drug paraphernalia therefore does not rely on the existence of a right to possess a controlled substance.

The state also asserts that “[w]hile there was testimony that the practice of the Rastafari faith includes reminders of cannabis, this could be done without a pipe by, for example, wearing hemp.” The state’s conclusion that a statute only burdens a sincerely held belief if the individual does not have alternative means of expressing that belief is without legal support and inconsistent with the broad language of section 16. The fact that J.J.M.A. was subject to adjudication for exercising a sincerely held belief is sufficient to establish that this belief was burdened. *See Shagalow v. State Dep’t of Human Servs.*, 725 N.W.2d 380, 391 (Minn. App. 2006) (reasoning that a belief is burdened where the state’s action forces an individual to choose between criminal sanctions and her free exercise of religion), *review denied* (Minn. Feb. 28, 2007).

III.

The state argues that, because J.J.M.A. is only required to possess the pipe for a purpose that is illegal, his argument that enforcement of Minn. Stat. § 152.092 is not the least-restrictive means to accomplish a compelling government interest fails. Once an individual has demonstrated a sincerely held religious belief intended to be protected by section 16, the burden shifts to the state “to demonstrate that public safety cannot be achieved by proposed alternative means.” *Hershberger II*, 462 N.W.2d at 398. In order to carry this burden, the state must establish that the interest is overriding or compelling, and that the regulation uses the least-restrictive means to accomplish the state’s interest. *Hill-Murray Fed’n of Teachers*, 487 N.W.2d at 865. The state must do more to meet its burden under section 16 than merely “articulating [public safety] as a competing

interest.” *Hershberger II*, 462 N.W.2d at 399. Only a practice that is “*inconsistent* with public safety” should be denied an exemption under section 16. *Id.* at 398.

The state has made little effort to meet this burden. Instead, the state improperly shifts the burden to J.J.M.A. and argues that, because the pipe may be used for an illegal purpose and because J.J.M.A. has not challenged the constitutionality of the controlled substance laws, he cannot succeed. But the state’s argument that J.J.M.A. only possessed the pipe for an illegal purpose—a conclusion not supported by the record—merely articulates enforcement of controlled-substance laws as a competing interest. It does not explain how enforcement of section 152.092, a petty misdemeanor, is inconsistent with public safety in this instance.

Further, the state’s argument relies on the assumption that the Minnesota Constitution does not protect a sincerely held religious belief in the use of marijuana. But the state relies on cases decided under the federal constitution, not the “distinctively stronger” language of section 16. *See id.* at 397. Minnesota courts have not addressed the question of whether the state’s interest in enforcement of controlled-substance laws is sufficient to defeat a claim under section 16. *See Pedersen*, 679 N.W.2d at 376-77 (declining to address the issue because appellant failed to meet her burden to establish a sincerely held belief).

We noted in *Pedersen* that the state could not rely solely “on the legislature’s enactment of statutes prohibiting the possession of marijuana to defeat a claim under article I, section 16.” *Id.* at 377. Even if we assume a compelling interest in enforcing controlled-substance laws, the state must provide “evidence that its compelling interest in

public safety could not be achieved by less restrictive means.” *Id.* In this case, the state has not demonstrated that applying the drug-paraphernalia law to an individual with a genuinely held belief in possessing a cannabis pipe is the least-restrictive means of enforcing controlled-substance laws.

Reversed.