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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1578**

In the Matter of the Welfare of: A. J. B., Child.

**Filed April 20, 2020
Affirmed
Reilly, Judge**

Scott County District Court
File No. 70-JV-16-8474

John Arechigo, Arechigo & Stokka, P.A., St. Paul, Minnesota (for appellant)

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

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Rodenberg, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

The supreme court reversed and remanded appellant's delinquency adjudication for mail harassment, holding that the statute was facially overbroad, but could be saved through severing the constitutionally problematic language. *In re Welfare of A.J.B.*, 929 N.W.2d 840 (Minn. 2019). On remand the district court determined that the evidence at trial was sufficient to sustain appellant's delinquency adjudication for mail harassment under the statute as narrowed by the supreme court. In this appeal, appellant argues that

the narrowed interpretation still violates the constitution and is unconstitutional as applied to him. We affirm.

FACTS

This case arises from an “unrelenting torrent of cruel tweets” appellant A.J.B. dispatched at another teenager, M.B. *Id.* at 845.¹ The state charged A.J.B. with one count of felony stalking in violation of Minn. Stat. § 609.749, subd. 3(a)(1) (2016), one count of gross misdemeanor stalking by use of the mail in violation of Minn. Stat. § 609.749, subd. 2(6) (2016), and one count of misdemeanor harassment by use of the mail in violation of Minn. Stat. § 609.795, subd. 1(3) (2016).² The case was tried and the district court found that the state proved beyond a reasonable doubt that A.J.B. was guilty of all three charges. The district court subsequently adjudicated A.J.B. delinquent of the gross misdemeanor stalking and misdemeanor harassment charges and stayed adjudication of the felony stalking charge.

A.J.B. appealed and the supreme court determined that Minn. Stat. § 609.795, subd. 1(3), “prohibits a substantial amount of constitutionally protected speech.” *A.J.B.*, 929 N.W.2d at 862. However, the supreme court concluded that “the State may still constitutionally prosecute a person for mailing or delivering a letter, telegram, or package with the intent to abuse the recipient” after severing the words “disturb” and “cause

¹ We will not repeat the underlying facts of this case since they are detailed in the supreme court’s decision. *A.J.B.*, 929 N.W.2d at 840.

² “Whoever does any of the following is guilty of a misdemeanor . . . (3) with the intent to abuse, disturb, or cause distress, repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, or packages.”

distress” from subdivision 1(3). *Id.* at 863. The supreme court reversed A.J.B.’s adjudication under Minn. Stat. § 609.795, subd. 1(3), and remanded to the district court to “determine whether the evidence establishes beyond a reasonable doubt that the juvenile committed harassment by mail with an intent to abuse under Minn. Stat. § 609.795, subd. 1(3), as narrowed,” because it could not “discern from the [district] court’s decision whether A.J.B. was adjudicated delinquent for intending to abuse M.B., intending to disturb M.B., or intending to cause M.B. distress.”³ *Id.* at 843, 864. In a footnote, the supreme court stated that it did “not reach the [as-applied] argument with regard to Minn. Stat. § 609.795, subd. 1(3), because [of the] remand to the [district] court.” *Id.* at 864 n.12.

On remand, the district court did not reopen the record. However, the district court allowed the parties to present written and oral arguments. A.J.B. argued, in part, that Minn. Stat. § 609.795, subd. 1(3), is unconstitutional as applied to him and that the supreme court’s narrowing construction still leaves section 609.795, subd. 1(3), unconstitutionally overbroad on its face. The district court did not address A.J.B.’s constitutional challenges, noting that to “the extent [A.J.B.] argues issues outside the limited scope of the remand, those arguments will not be addressed by the Court.” The district court found that the state proved beyond a reasonable doubt that A.J.B. is guilty of repeatedly using mail to harass

³ The supreme court, concluding that Minn. Stat. § 609.749, subd. 2(6), is “unconstitutionally overbroad, and not subject to a narrowing construction” reversed A.J.B.’s delinquency adjudication under that provision. *A.J.B.*, 929 N.W.2d at 864. On remand, the district court dismissed counts one and two pursuant to the supreme court’s decision.

in violation of Minn. Stat. § 609.795, subd. 1(3). The district court adjudicated A.J.B. delinquent and placed him on probation. This appeal follows.

D E C I S I O N

I. Scope of the Remand

“A [district] court’s duty on remand is to execute the mandate of the remanding court strictly according to its terms.” *Duffey v. Duffey*, 432 N.W.2d 473, 476 (Minn. App. 1988); *see also Dobbins v. State*, 845 N.W.2d 148, 156 (Minn. 2013) (“[District] courts generally have broad discretion to determine how to proceed on remand, [but] they cannot act in a way that is inconsistent with the remand instructions provided.” (quotations omitted)). “[Appellate courts] review a district court’s compliance with remand instructions for an abuse of discretion.” *State v. Montermini*, 819 N.W.2d 447, 454 (Minn. App. 2012).

A.J.B. argues that Minn. Stat. § 609.795, subd. 1(3), is unconstitutional as applied to A.J.B.’s tweets and contends that the supreme court reserved judgment on his as-applied challenge to section 609.795, subd. 1(3). We reject A.J.B.’s contention.

In this case, the supreme court remanded to the “[district] court for consideration of A.J.B.’s adjudication under Minn. Stat. § 609.795, subd. 1(3), as narrowed.” *A.J.B.*, 929 N.W.2d at 864. More specifically, the supreme court explained that it was remanding to the district court for consideration under the statute as narrowed because:

The [district] court concluded that “the State has proven beyond a reasonable doubt that [A.J.B.] intended to abuse, disturb or cause M.B. distress” with his Twitter posts. (Emphasis added). We cannot discern from the [district] court’s decision whether A.J.B. was adjudicated delinquent for

intending to abuse M.B., intending to disturb M.B., or intending to cause M.B. distress. Because A.J.B.’s delinquency adjudication under Minn. Stat. § 609.795, subd. 1(3), may rest on portions of the statute that we severed, the [district] court must now determine, based on the record before it, whether A.J.B.’s adjudication of delinquency for mail harassment can stand under the statute as narrowed.

Id. While the supreme court acknowledged in footnote 12 that A.J.B. argued that the statute is an unconstitutional violation of the First Amendment as applied to him, it declined to reach the argument with regard to Minn. Stat. § 609.795, subd. 1(3), because of the remand to the district court. *Id.* And even though it acknowledged the as-applied challenge, the supreme court did not indicate in its instructions that the district court was to consider it on remand. Accordingly, we understand the supreme court’s remand to the district court as limited to considering only whether the state proved that A.J.B. had the *intent to abuse* M.B.⁴

On remand, the district court declined to address issues raised by appellant that were “outside the limited scope of the remand,” and therefore did not address appellant’s as-applied challenge. Based on our reading of the supreme court’s opinion, we discern no abuse of discretion in the district court’s conclusion that appellant’s as-applied challenge was outside the limited scope of the remand.

⁴ Our reading of the dissenting opinion supports our understanding of the majority opinion. The dissent concluded that the case need not be remanded to the district court because the district court’s “factual findings, when applied to the requirements of the newly narrowed statute, demonstrate beyond a reasonable doubt that A.J.B. specifically intended to *abuse* M.B.” *In re Welfare of A.J.B.*, 929 N.W.2d 840, 864 (Minn. 2019) (Chutich, J., concurring in part, dissenting in part). The dissent would have “affirm[ed] A.J.B.’s adjudication under section 609.795, subdivision 1(3), as narrowly construed.” *Id.* at 865.

II. Sufficiency of the Evidence

A.J.B. does not challenge the sufficiency of the evidence with regard to the district court's finding that A.J.B. intended to abuse M.B. Rather, A.J.B. challenges the sufficiency of the evidence by arguing that a public tweet or a tweet that mentions another Twitter user is not a "letter, telegram, or package" because "[a]n individual must have mailed or delivered a physical piece of mail—a letter, telegram or package—to run afoul of the limited statute."

We decline to consider A.J.B.'s challenge to the sufficiency of the evidence on the grounds that public tweets do not qualify as letters, telegrams, or packages because it is outside the scope of the supreme court's remand. As discussed previously, the supreme court remanded specifically to allow the district court to consider whether the state proved beyond a reasonable doubt that A.J.B. had the *intent to abuse* M.B. under the narrowed construction of the statute. The supreme court did not remand and instruct the district court to consider whether A.J.B.'s tweets constitute "letters, telegrams or packages." Indeed, in a footnote the supreme court explained that because A.J.B. did not challenge the state's "implicit characterization of a tweet as a letter, telegram, or package," it would not "reach the issue of whether a tweet is a 'letter, telegram, or package' under Minn. Stat. § 609.795, subd. 1(3)." *Id.* at 857-58 n.7.

A.J.B. argues that the supreme court's conclusion that he failed to make such a challenge is wrong; however, we do not reexamine issues that have already been decided by the supreme court. *See State v. Bailey*, 732 N.W.2d 612, 623 (Minn. 2007) ("The doctrine of law of the case ordinarily applies where an appellate court has ruled on a legal

issue and has remanded the case to the lower court for further proceedings . . . [and] [i]ssues determined in a first appeal will not be relitigated in the trial court nor re-examined in a second appeal.”).

Affirmed.