STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1255

State of Minnesota,
Respondent,

vs.

Jeremiah John Dahl,
Appellant.

Filed October 9, 2023
Affirmed
Larkin, Judge

Olmsted County District Court
File No. 55-CR-19-1733

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and Florey, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction of second-degree criminal sexual conduct, arguing that the state failed to prove the venue element of the offense. He also challenges his sentence, assigning error to the district court's calculation of jail credit. We affirm.

FACTS

Following a court trial, the Olmsted County District Court found appellant Jeremiah John Dahl guilty of second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(a) (2012), based on evidence that he sexually abused JL in 2014 by touching her vaginal area with his hand. JL was eight or nine years old at the time, and she did not immediately report the abuse. At the time of the abuse, Dahl was on probation for a previous sexual-assault conviction involving a fourteen-year-old victim.

In April 2015, a social worker interviewed ten-year-old JL about sexual behavior she had exhibited. During the interview, JL spontaneously asked why Dahl had been to jail. She asked if Dahl had "sex with a kid." The social worker inquired further about JL's interactions with Dahl:

> Social Worker: So . . . have you ever felt scared of [Dahl]?
> JL: Yes, because like, he'll pick me up and stuff --
> Social Worker: Uh-hum.
> JL: -- and, like, sometimes it feels uncomfortable because he would, like, hold on to my pants and --
> Social Worker: Okay.
> JL: -- stuff. And then sometimes when I sat with him, he would, like, rub down -- down here.
> Social Worker: Okay.

> JL: So I was -- and then he'd be, like, come and sit with me. So I'm like -- and I'd be like, no, and I would go far away, and stuff.

The social worker sought clarification regarding how Dahl had touched JL:

> Social Worker: And then you said sometimes he is rubbing around your waist?
> JL: Yeah.
> Social Worker: Okay. And around the edges of your pants?
> JL: Yeah.
> Social Worker: Yes, like you were showing? Okay. And what does he rub there with? With his hands, with his --
> JL: Finger.

JL said that the touching happened "a few times" and that it occurred at Dahl's house. But JL was unsure where Dahl lived. She said she would sometimes go to his house for a sleepover.

Later in the interview, when asked about Dahl, JL stated: "I think he needs to, like, go back some -- through some classes that he took when he got arrested . . . I think he needs to take those classes again." JL stated, "I don't think he learned his lesson the first time, because I don't like how he touches me and stuff." The social worker asked if Dahl's fingers "ever go down further than around the waist of your [pants]?" JL answered, "No."

The social worker provided JL's statement to the St. Charles Police Department, which forwarded its findings to the Winona County Attorney. The Winona County Attorney declined to file a criminal charge based on JL's interview.

Following JL's interview, on April 17, 2015, Dahl was taken into custody on a suspected probation violation for having contact with minors, including JL. On June 4, 2015, Dahl was released from custody after he produced a safety plan showing he was

allowed to have supervised contact with minors. However, on July 2, 2015, Dahl was taken back into custody after new information indicated that he had possibly falsified the safety plan that he had used to procure his release. Dahl remained in jail until September 9, 2015, when the district court found that he had violated probation, revoked his probation, and executed his stayed prison sentence.

While Dahl was in prison, the state charged him with sexually abusing another minor in 2014 or 2015. Dahl was released from prison on February 27, 2017, and transferred to the Olmsted County Jail pending resolution of the new criminal-sexual-conduct allegations. In January 2017, Dahl pleaded guilty to sexually abusing the other minor by rubbing her vaginal area over her clothes when she was sitting on his lap. Dahl remained in the Olmsted County Jail until April 19, 2017, when he was returned to prison to serve his sentence for sexually abusing the other minor. On July 18, 2018, Dahl was released from prison.

Meanwhile, JL received private counseling, indicated that Dahl had touched her inappropriately, and decided to speak with law enforcement regarding the abuse. In August 2018, an investigator conducted a forensic interview of JL, who was then 13 years old. JL disclosed that Dahl had sexually abused her when she was eight or nine years old by rubbing her vaginal area under her clothes. JL stated that the abuse occurred at Dahl's home in Dover, Olmsted County, while she was sitting on Dahl's lap watching Netflix. JL stated that Dahl had "groom[ed]" her by rubbing her back, arm, and thigh.

In March 2019, respondent State of Minnesota charged Dahl with second-degree criminal sexual conduct in Olmsted County, based on the results of JL's 2018 forensic

interview. The complaint alleged that Dahl sexually assaulted JL when she was nine years old by rubbing her vaginal area under her clothes at Dahl's home in Dover, Olmsted County, while the two were in the living room watching Netflix.

In October 2021, the state proposed the following jury instruction regarding venue: "the defendant's act took place on or about November 1, 2013[,] through November 30, 2014, in the Third Judicial District." The state explained that Dahl and JL "come from very mobile families" and that at relevant times, Dahl or JL "lived in Olmsted, Winona, Mower, and Fillmore Counties" and "spent time together in Fillmore, Olmsted, and Winona Counties." The state further explained that it was possible that the offense happened in Fillmore or Winona County, and not in Olmsted County. The state therefore sought to invoke a special venue statute, Minn. Stat. § 627.15 (2022), which provides: "A criminal action arising out of an incident of alleged child abuse may be prosecuted either in the county where the alleged abuse occurred or the county where the child is found."

In response to the state's motion, Dahl moved to dismiss the complaint for lack of probable cause, arguing that the state could not prove venue in Olmsted County. Dahl argued that the Olmsted County complaint should be dismissed and refiled in Mower County, where JL resided. The district court denied Dahl's motion to dismiss. The district court did, however, require the state to file an amended criminal complaint making the state's venue theory "abundantly clear." The state filed an amended complaint in Olmsted County alleging three alternative venue claims: (1) the offense occurred in Olmsted

County, (2) the offense occurred "within 1,500 feet" of Olmsted County,[1] or (3) the offense occurred in the Third Judicial District "whereafter the Victim was found in the County of Mower."

The next day, at a motion hearing, Dahl requested a probable-cause hearing regarding the state's claims that the sexual abuse occurred within 1,500 feet of Olmsted County and moved the district court to preclude the state from presenting that theory at trial. Dahl also moved the district court to "preclude the state from proceeding on the theory that the child was found in Mower County." The district court asked if Dahl was moving for a change of venue to Mower County, and defense counsel responded, "We are objecting to venue as it is plead[ed] but we are not asking to change venue to Mower County at this time."

On February 3, 2022, at a pretrial hearing, Dahl's attorney argued that the case "should have been filed in Mower County." Dahl's counsel informed the court:

> We're not trying to move this case to Mower County. Our intention is to waive jury, do this as a court trial on February 14 before this [c]ourt. We're okay with [the state's] you know [special venue jury] instruction as it's proposed right now. But whatever issues or deficiencies we see with venue or jurisdiction or what have you, we can argue in close. We don't need to reschedule this or move it to a different courthouse. That's not our objective.

Dahl waived his right to a jury, and a court trial was held in March 2022 in Olmsted County. At trial, JL testified that she grew up in Mower County. When she was in second

[1] "The state may constitutionally prosecute a defendant in either county for crimes occurring within 1500 feet of a county line pursuant to Minn. R. Crim. P. 24.02." *State v. Sanderson*, 469 N.W.2d 476, 476 (Minn. App. 1991).

grade, she lived for a time in Chatfield, Minnesota, with her mother and her stepfather. Dahl and her stepfather were best friends. During that time, Dahl spent time with JL and her family, and JL spent time at Dahl's homes. Dahl initially lived with his parents but later bought his own home.

JL testified that there were times when Dahl would touch her on her upper thigh. When asked if there was a time when Dahl touched more than just her thigh, JL described an occasion that occurred in the living room at her stepfather's house when her mother was living with him. JL testified that she was sitting on Dahl's lap, watching a movie. JL testified that Dahl slid his hand under her waistband and touched the skin of her vaginal area with his hand. JL later testified that the abuse either occurred at Dahl's house or her mother's house.

On cross-examination, JL described her stepfather's house in Chatfield where she lived with her mother and sister sometime in 2014 and 2015. JL then described a house in Dover where Dahl lived with a roommate. JL also remembered visiting a trailer home in St. Charles where Dahl lived with his parents.

In response to questions from the district court judge, JL confirmed that she thought Dahl had touched her vaginal area at her stepfather's house in Chatfield. But JL also said that it was possible that the touching happened at Dahl's house in Dover.

Dahl testified in his own defense. He admitted that he had "sexual thoughts" about JL, but he denied touching her vaginal area. Dahl testified that his house is in St. Charles and that his parents' trailer home is in Dover. The district court asked Dahl some questions and deduced that JL's stepfather's Chatfield home was in Fillmore County.

The district court found Dahl guilty as charged. At sentencing, Dahl requested over 1,000 days of jail credit for time served dating back to April 2015, when he was first taken into custody on the suspected probation violation. The district court sentenced Dahl to 102 months' imprisonment and determined that he was entitled to only nine days of jail credit against his prison sentence.

Dahl appeals.

DECISION

I.

Dahl contends that the evidence was insufficient to sustain his conviction, arguing that the state failed to prove the venue element of the offense.

Venue is a trial right rooted in the Minnesota Constitution, which provides that "[i]n all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law." Minn. Const. art. I, § 6. A Minnesota statute similarly provides that "every criminal cause shall be tried in the county where the offense was committed," except as otherwise provided in the Minnesota Rules of Criminal Procedure. Minn. Stat. § 627.01, subd. 1 (2022). That statutory provision codified the constitutional right to be prosecuted in the county or district where the crime was committed and made venue "an essential element of every criminal offense." *State v. Pierce*, 792 N.W.2d 83, 85 (Minn. App. 2010) (citing Minn. Stat. § 627.01, subd. 1 (2008)).

Thus, the term 'venue' encompasses two distinct legal principles. First, venue refers to the location of trial. *See State v. Fitch*, 884 N.W.2d 367, 375 (Minn. 2016) ("Article I, Section 6, is merely an affirmation of the common-law right to a jury from the vicinage where the crime was committed." (footnote omitted)). Second, venue is treated as an "element" of a criminal offense such that "the state must prove beyond a reasonable doubt that the charged offense 'was committed' in the county where the case is being tried." *Pierce*, 792 N.W.2d at 85.

The legislature "has the authority, within the confines of the constitution, to enact special venue statutes" and has done so to address special needs relating to venue. *State v. Krejci*, 458 N.W.2d 407, 411 (Minn. 1990). In *Krejci*, the supreme court noted that in the late 1970s, the legislature perceived a need to expand venue for cases involving maltreatment of minors and therefore enacted Minn. Stat. § 627.15, "[i]n light of the hidden nature of child abuse and the emerging magnitude of the problem." *Id.*

Under Minn. Stat. § 627.15, "[a] criminal action arising out of an incident of alleged child abuse may be prosecuted either in the county where the alleged abuse occurred or the county where the child is found." "[A] child may be 'found' and an action may be prosecuted in the county where the child resides." *State v. Larson*, 520 N.W.2d 456, 458 (Minn. App. 1994), *rev. denied* (Minn. Oct. 14, 1994); *see also State v. Rucker*, 752 N.W.2d 538, 547 (Minn. App. 2008) (holding that "a child can be 'found' in the county where the child resided either when the abuse occurred or when the abuse was discovered"), *rev. denied* (Minn. Sept. 23, 2008).

The supreme court has used a liberal approach when applying section 627.15. *See Krejci*, 458 N.W.2d at 411-12 (stating that application of the statute is not limited to only doubtful cases). In *Krejci*, the supreme court concluded that a child-abuse victim "was 'found' in Hennepin County," reasoning that "authorities discovered the alleged abuse when [the victim] was brought comatose to Children's Hospital in Hennepin County as a result of the injury defendant inflicted on him in Renville County." *Id.* at 410. Under those circumstances, the supreme court held that venue in Hennepin County was proper. *Id.* at 412. The supreme court also held that "[t]o the extent that the statute may on occasion be susceptible to broader application . . . Minn. Stat. § 627.15 comports with article 1, section 6, of the Minnesota Constitution." *Id.*

The supreme court has also stated, in dictum, that "the fact that [a] victim had no idea in which county the sexual abuse occurred was not a valid reason for not charging defendant with criminal sexual conduct." *State v. Norton*, 328 N.W.2d 142, 144 n.1 (Minn. 1982). The supreme court noted that under section 627.15, "[a] criminal action arising out of an incident of alleged child abuse may be prosecuted either in the county where the alleged abuse occurred or the county where the child is found." *Id.* The supreme court also noted that "Minn. R. Crim. P. 24.02, subd. 3 specifically provides, in part, 'If it is doubtful in which one of two or more counties the act was committed or injury or death occurred, the offense may be prosecuted and tried in any one of such counties.'" *Id.*

Dahl's Challenge to the District Court's Venue Finding

As to the issue of venue, the district court found that the abuse "took place in the summer of 2014 in Minnesota, in either Olmsted, Winona, or Fillmore County," and that

"[w]hen the touching was reported in 2015 and thereafter the child was residing and found in Mower County." The district court also found that the touching occurred at "one of three residences within a dozen or so miles of each other, all within the Third Judicial District." Specifically, the district court found that the touching occurred either in St. Charles in Winona County, in Dover in Olmsted County, or in Chatfield in Fillmore County. The district court also found that Dahl, by agreeing that the trial would take place in Olmsted County, waived any right to demand a trial in Mower County.

Dahl does not dispute that JL was "found" in Mower County, that is, he does not dispute that JL was living in Mower County when the abuse was discovered or that venue would have been proper in that county. Instead, he argues that because the case was tried in Olmsted County, the special venue statute, section 627.15, applies only if JL was "found" in Olmsted County. Essentially, Dahl argues that the case should have been tried in Mower County, the county where JL was "found." Dahl concedes that he agreed to a trial in Olmsted County, but he points out that his agreement regarded only the *location* of the trial. He emphasizes that he did not waive the state's burden to prove venue as an *element* of the crime. The record supports the characterization of the position Dahl took in district court.

In sum, Dahl argues that because the underlying offense was charged in Olmsted County, the state had to prove beyond a reasonable doubt that he committed the offense in Olmsted County and that the state failed to do so. Dahl's argument raises issues of law that we review de novo. *See Schroeder v. Simon*, 985 N.W.2d 529, 536 (Minn. 2023) ("Issues of constitutional interpretation are questions of law, which we review de novo.");

Schatz v. Interfaith Care Ctr., 811 N.W.2d 643, 649 (Minn. 2012) ("The interpretation and construction of a statute is a question of law that we review de novo.").

The State's Response

The state's primary response is that "'[v]enue' is a separate question from guilt or innocence and should be ascertained by law, prior to trial, by a preponderance of the evidence." The state relies on "[a] plain reading" of article I, section 6, which states that the "county or district wherein the crime shall have been committed . . . *shall have been previously ascertained by law*." (Emphasis added.) The state argues that the temporal language in article I, section 6, indicates that "venue should be established by the district court as a matter of law *before* the defendant is compelled to [stand] trial . . . and *before* the [s]tate commits the public's limited resources to try a case in a venue that a *jury* later determines to be improper as a matter of fact." Similarly, the state notes that "[a] careful reading of [section 627.01] does not reveal any explicit or implicit legislative intent to add an additional element of proof that the [s]tate must *prove* venue beyond a reasonable doubt to the jury."

The state cites *Smith v. United States*, a case in which the Supreme Court recently held that the Constitution permits the retrial of a defendant following a trial in an improper venue before a jury drawn from the wrong district. 143 S. Ct. 1594, 1600 (2023). In so holding, the Supreme Court stated, "The reversal of a conviction based on a violation of the Venue or Vicinage Clauses . . . plainly does not resolve the bottom-line question of criminal culpability." *Id.* at 1609 (quotation omitted). The allowance of a retrial after a reversal based on a venue violation indicates that the venue "element" is not the equivalent

of a typical element that determines guilt or innocence, because if it were, retrial would be barred. *See Tibbs v. Florida*, 457 U.S. 31, 40-41 (1982) ("[T]the Double Jeopardy Clause precludes retrial once the reviewing court has found the evidence legally insufficient to support conviction." (quotation omitted)).

The state also cites *State v. Ali*, in which the Minnesota Supreme Court considered the standard applicable to the state's burden to prove the age of a defendant "when the defendant's age is determinative of the court's jurisdiction." 806 N.W.2d 45, 46 (Minn. 2011). The defendant in *Ali* was a juvenile and his age at the time of the offense determined whether he was automatically subject to prosecution under the laws governing proceedings in adult criminal court, instead of in juvenile court. *Id.* Ali asserted that his age was an element of the charged offense that the state had to prove beyond a reasonable doubt. Ali argued that "jurisdiction is 'no less indispensable to a conviction than is a fact establishing venue'" and that "because the court of appeals has required that venue be proven by the prosecution beyond a reasonable doubt," the beyond-a-reasonable-doubt standard should apply to jurisdictional determinations as well. *Id.* at 52.

The *Ali* court rejected that argument and held that the state must prove the defendant's age by only a preponderance of the evidence. *Id.* at 46. The supreme court reasoned:

> A defendant's age is not an element of either first-degree premeditated murder or first-degree felony murder, the two charges for which Ali was indicted. *See* Minn. Stat. §§ 609.185(a)(1), (a)(3). Rather, the question of age determines only whether the juvenile or district court has jurisdiction over the proceedings. *See* Minn. Stat. § 260B.101, subd. 2. This is a separate issue from that of guilt or innocence,

> and *nothing in Minnesota Statutes or our case law requires that either the question of age or the issue of jurisdiction of the [district] court be proven beyond a reasonable doubt.*

Id. at 52-53 (emphasis added); *cf. State v. Smith*, 421 N.W.2d 315, 321 n.3 (Minn. 1988) (noting that the issue of whether territorial jurisdiction is an element of the offense and what the state's burden of proof would be on that issue is unresolved under Minnesota law). The *Ali* court's reasoning indicates that venue is not an element of every criminal offense that must be proved beyond a reasonable doubt.[2]

The *Ali* court's rationale applies here. Dahl was convicted under Minn. Stat. § 609.343, subd. 1(a) (2012), which provides that "[a] person who engages in sexual contact with another person is guilty of criminal sexual conduct in the second degree if . . . the complainant is under 13 years of age and the actor is more than 36 months older than the complainant." Location is not a statutory element of that offense. As the state notes, location typically is not an essential element of an offense unless the alleged act is required to have occurred in a particular place. *See State v. Becker*, 351 N.W.2d 923, 927 (Minn. 1984) (stating that the precise date is an essential element of the crime only "where

[2] We recently raised this issue in a nonprecedential case. *State v. Paulson*, No. A22-0632, 2023 WL 2637714, at *6 (Minn. App. Mar. 27, 2023) ("We question whether it is appropriate to treat venue as an element of a charged offense now that the Minnesota district courts have statewide jurisdiction. Indeed, a more recent, post-merger, case from the Minnesota Supreme Court, *State v. Ali*, suggests reason to question the pre-merger approach of treating venue as an offense element."), *rev. granted* (Minn. June 20, 2023). The supreme court has said that venue is a "very different" issue than jurisdiction and "if a state has jurisdiction over the crime, then a determination of the precise county [venue] for trial is less significant." *Smith*, 421 N.W.2d at 320. Following *Ali*, we continue to question whether the "less significant" issue of venue must be proved beyond a reasonable doubt as an "element" of a charged offense.

the act done is unlawful during certain seasons, on certain days or at certain hours of the day"); *see also* Minn. Stat. § 152.01, subd. 24(9) (2022) (listing as an aggravated controlled-substance-crime element that "the defendant or an accomplice manufactured, possessed, or sold a controlled substance in a school zone, park zone, correctional facility, or drug treatment facility").

The state urges us to abandon the "court-created venue-as-an-element rule announced in *Pierce* . . . without delay." Although there is merit to the state's argument that venue should not be treated as an "element" of any crime that must be proved beyond a reasonable doubt at trial, we leave that issue for another day because we are persuaded by the state's alternative argument that "Dahl's decision to elect a court trial rendered moot the issue of venue." We therefore turn to that issue, without addressing the state's remaining venue arguments.

Venue as an Element at a Court Trial

Our research does not reveal an explanation for Minnesota's treatment of venue as an "element" of every criminal offense that must be proved beyond a reasonable doubt. However, one secondary authority explains that

> [a]lthough the courts are not agreed on the question of the degree of proof of venue required in criminal cases, there appears to be general agreement, at least by implication, that the venue of a criminal offense must be proved to some degree of satisfaction. Additionally, the courts . . . have recognized that *this requirement of proof of venue is a constitutional right of the accused*.

67 A.L.R.3d 988, § 4 (1975) (emphasis added) (footnote omitted); *see Dean v. United States*, 246 F.2d 335, 338 (8th Cir. 1957) ("While [venue] is not an integral part of a

criminal offense and may not require proof beyond a reasonable doubt it must nevertheless be proved because the accused, under the Sixth Amendment to the Constitution, is guaranteed the right to a public trial by an impartial jury of the state and district wherein the crime shall have been committed.").

If the purpose of requiring proof of venue is to ensure vindication of the venue right under article I, section 6—as codified and established as an "element" of every crime in section 627.01—then that venue element is limited to the constitutional right that it encompasses.[3] We therefore examine the extent of that right.

The supreme court has said that the venue right in article I, section 6, is "not absolute." *Fitch*, 884 N.W.2d at 375. For example, "Article I, Section 6, does not expressly, or in effect, guaranty to the accused in all cases a trial in the county in which the offense was committed." *Id.* at 374 (quotation omitted). Instead, "the provision defines and limits the locality from which a jury shall be taken for the trial of the defendant in a criminal prosecution." *Id.* (quotation omitted). Consequently, article I, section 6, does not guarantee "a judge or prosecuting authority from a particular county." *Id.* A defendant has "a constitutional right only to a trial by an impartial jury from a particular county." *Id.* Thus, a defendant's rights under article I, section 6, are not violated unless "a jury from a county other than the one in which the alleged offense occurred was impaneled to adjudicate the case against him." *Id.*

[3] We focus our analysis on the venue right in the Minnesota Constitution, consistent with Dahl's approach.

Additionally, the venue right under article I, section 6, is "subject to at least two exceptions." *Id.* at 375. "First, the defendant's right can be overcome in situations in which it would be difficult to identify the county or district in which the offense occurred or when other special concerns related to venue are present." *Id.* "Second, the defendant's right is subject to the district court's power to change venue when an impartial jury cannot be drawn from the county or district in which the alleged crime occurred."[4] *Id.* at 376.

Fitch makes clear that strict compliance with the venue requirement in article I, section 6, as codified in section 627.01, is not always required. As the *Fitch* court stated: "[T]he defendant's right can be overcome in situations in which it would be difficult to identify the county or district in which the offense occurred or when other special concerns related to venue are present." *Id.* at 375. In this case, both circumstances are present. The district court's findings indicate that it could not identify, beyond a reasonable doubt, the county in which the offense occurred. And the special concerns related to venue in a child-abuse case are also present. Arguably, Dahl's venue right under article I, section 6 was overcome.

More importantly, and dispositively, "[the venue] right guarantees the defendant only a *jury* from a particular county or district," and "*not a judge* or prosecuting authority

[4] The *Fitch* court noted that "a motion to change venue could be deemed a waiver of the right to be tried by a jury of the county or district in which the offense was committed." 884 N.W.2d at 377 n.7. The court also noted that "[a]rguably once a district court finds grounds to change venue . . . a venue transfer to *any* county within the geographical borders of the State of Minnesota is a transfer that complies with Article I, Section 6." *Id.* at 378 n.9 (emphasis added). These observations suggest that the venue requirement is more flexible than our current elemental approach suggests.

from that county or district." *Id.* (emphasis added). Thus, Dahl's waiver of his right to a jury trial—which is not challenged on appeal—rendered moot the issue of venue under article I, section 6, as codified in Minn. Stat. § 627.01, subd. 1. It therefore was not necessary for the state to prove venue as an element of the charged offense at Dahl's court trial, and its failure to do so does not require reversal of Dahl's conviction of second-degree criminal sexual conduct.

II.

Dahl contends that the district court erred in determining the amount of jail credit to which he was entitled. A criminal defendant is entitled to jail credit for time spent in custody "in connection with the offense or behavioral incident being sentenced." Minn. R. Crim. P. 27.03, subd. 4(B); *State v. Roy*, 928 N.W.2d 341, 345 (Minn. 2019). The defendant must establish that he is entitled to jail credit for any specific period of time. *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). "The decision whether to award credit is a mixed question of fact and law; the court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances." *State v. Clarkin*, 817 N.W.2d 678, 687 (Minn. 2012) (quotation omitted). "We review the factual findings underlying jail-credit determinations for clear error, but we review questions of law de novo." *Id.*

Dahl requested over 1,000 days of jail credit for time served dating back to April 2015, when he was taken into custody on a suspected probation violation for having unsupervised contact with minors, including JL. Dahl argues that "[b]ecause the [ensuing]

time he spent in jail and prison was in connection with the present behavioral incident, he is entitled to credit for this time." *See* Minn. R. Crim. P. 27.03, subd. 4(B).

In rejecting that argument, the district court reasoned that Dahl was not taken into custody in 2015 on suspicion that he sexually abused JL. Instead, he was arrested for a probation violation that alleged unsupervised contact with minors—including JL. After his release on that alleged violation, Dahl was taken back into custody for allegedly falsifying his safety plan. Later, the district court revoked Dahl's probation—which was based on his sexual abuse of a minor other than JL—and sent him to prison. Dahl remained in custody after he served that prison sentence because while he was in prison, the state charged him with sexually abusing another minor. Dahl received another prison sentence for that criminal sexual conduct.

None of the above-described custody time was based on an allegation that Dahl had sexually abused JL. In fact, JL's 2018 allegation of sexual abuse—which led to the underlying charge, conviction, and sentence in this case—did not occur until *after* Dahl had been released from his prison sentence for abusing a separate minor. Thus, the time for which Dahl seeks credit was not served in connection with the offense or behavioral incident being sentenced, that is, Dahl's sexual abuse of JL. In sum, the district court correctly determined that Dahl was not entitled to credit under Minn. R. Crim. P. 27.03, subd. 4(B).

Dahl also argues that he is entitled to additional jail credit under *Clarkin*, which requires the district court to award jail credit if (1) the state has completed its investigation of the present charge in a manner that does not suggest the state manipulated the charging

process and (2) the state acquired "probable cause and sufficient evidence to prosecute its case against the defendant with a reasonable likelihood of actually convicting the defendant" of the present charge. 817 N.W.2d at 689. Dahl asserts that the state had sufficient evidence to charge him with second-degree criminal sexual conduct when JL made her initial disclosure in 2015 and that the state had a reasonable likelihood of convicting him at that time.

In rejecting that argument, the district court reasoned that JL's 2015 disclosure was not sufficient to meet the two-part *Clarkin* test because JL's statements were "equivocal," and she clearly stated that Dahl's hands did not go below her waistband. Additionally, there was no physical evidence, there were no witnesses, Dahl denied the conduct, and Dahl's roommate corroborated his version of events, stating that Dahl was never alone with JL. On this record, the district court correctly determined that there was insufficient evidence to prosecute Dahl "with a reasonable likelihood of actually convicting [him]" and that Dahl therefore was not entitled to jail credit under *Clarkin*. *See id.*

Conclusion

Because Dahl waived his right to a jury trial, his constitutional venue right was not implicated, and the district court did not err by finding him guilty despite the state's failure to prove venue beyond a reasonable doubt. We therefore affirm Dahl's conviction. And because we discern no reversible error in the district court's calculation of jail credit, we also affirm Dahl's sentence.

Affirmed.