STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1114

State of Minnesota,
Respondent,

vs.

Barrie Allen Skweres,
Appellant.

Filed June 1, 2010
Affirmed
Halbrooks, Judge

Martin County District Court
File No. 46-CR-08-1326

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

Terry W. Viesselman, Martin County Attorney, Fairmont, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Lansing, Judge; and Halbrooks, Judge.

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

HALBROOKS, Judge

Appellant was convicted of third- and fourth-degree criminal sexual conduct. Appellant argues that the evidence is insufficient to support his convictions, specifically contending that the state failed to prove the element of intent with respect to both convictions. Because we conclude that the evidence is sufficient to support the jury's finding of sexual intent, we affirm.

FACTS

Appellant Barrie Allen Skweres's convictions arise from a report by his 16-year-old daughter, S.S., that appellant digitally penetrated her vagina in August 2008. Appellant was charged with third- and fourth-degree criminal sexual conduct, and a jury trial was held.

S.S. testified at trial that the night before the incident, she had been out drinking with a few friends and had returned home at approximately 4:00 a.m. S.S. fell asleep on a futon couch in the basement, wearing a tank top and underwear.[1] She woke up around 7:00 a.m. when appellant asked her to watch her younger brother. S.S. told appellant that she wanted to continue sleeping. Appellant then came over to where S.S. was sleeping and began giving her a back massage that turned into an "all over body massage." S.S. testified that at some point, she felt appellant's fingers inside of her vagina. S.S. thought

[1] S.S.'s parents were divorced when she was four years old. When S.S. stayed at appellant's home, she slept on a futon sofa in the basement.

it was more than one finger and that it lasted a few seconds. S.S. asked appellant to stop, and he left.

After the incident, S.S. talked to her shift manager about what had happened with appellant, and her shift manager told S.S. to contact the authorities. S.S. was afraid to contact the police, but she did tell what had happened to appellant's girlfriend, whom she referred to as her stepmother. Appellant and another individual were present during this conversation, and appellant accused S.S. of putting appellant's fingers inside of her vagina. S.S. denied this accusation, and appellant later admitted that this accusation was false. Eventually, S.S. told a youth leader, who informed her that he was required by law to tell the authorities. On September 2, 2008, the youth leader contacted Officer Jaime Bleess and reported S.S.'s sexual-assault allegation.

Officer Jaime Bleess testified for the state. Officer Bleess testified that he has a permanent office in S.S.'s high school. After receiving the sexual-assault report, Officer Bleess conducted an investigation, and as part of this investigation, he interviewed appellant. Officer Bleess testified to the substance of his interview with appellant, including the fact that appellant admitted that his "fingers went slightly inside of [S.S.'s] vaginal area" and that "his hands went inside of her vaginal lip area, and that he could feel with his, the tips of his pinkies that . . . her vagina was moist." At this point in the testimony, the state introduced a videotape of the interview as an exhibit and played the video for the jury.

The video included the following exchanges:

OFFICER: And the higher you got towards her, um, vaginal area, did you start to wonder how far she'd let you go?

APPELLANT: Yes, yes.

. . . .

OFFICER: But there was a penetration right? A slight push inside or a slight, ah, your, your fingers pressed inside her a little bit to see if she would wake up, right? To see if she would move or say don't or whatever?

APPELLANT: Yes.

. . . .

APPELLANT: I, basically I just had rubbed her legs down, rubbed the inside of her legs.

OFFICER: Yeah.

APPELLANT: It was just like that. [Indicating.]

OFFICER: Okay.

APPELLANT: Exactly like that. [Indicating.]

OFFICER: You were kind of spreading her cheeks a little?

APPELLANT: Just, yeah.

OFFICER: Okay. So then your, was it these four fingers here or?

APPELLANT: I don't know, if anything because she was laying down I would have thought possibly it would have been the pinky. But like I said I never went under her panties.

. . . .

OFFICER: So you basically were trying to figure out how promiscuous she was?

APPELLANT: To a certain degree.

. . . .

OFFICER: But your fingers went into the lip area just a little bit?

APPELLANT: Yes.

OFFICER: Okay, and ho-, how far in do you think they went?

APPELLANT: Not, maybe like that. [Indicating.]

OFFICER: Just enough to know if she was wet or not basically?

APPELLANT: And she was moist . . . .

. . . .

OFFICER: Why did you take it that far?

APPELLANT: I didn't even mean for it, I didn't mean for my fingers to go where they went. And I told her that.
OFFICER: But you let them go there?
APPELLANT: I wasn't trying.

Appellant testified on his own behalf. He stated that he had given S.S. numerous backrubs in the past, and this one was no different. Appellant testified that he "massag[ed] all the muscle area on the inner thighs and started off around her knees" because S.S. had problems with her knee due to a soccer injury. According to appellant, when he brushed S.S.'s vaginal area "it felt so uncomfortable, I jerked back." Appellant claimed that he did not intend to make the contact and did not think he penetrated S.S. According to appellant, his statement to Officer Bleess regarding "how far [S.S.] would go" was in reference to S.S.'s accusations against him. Appellant also testified, contrary to his earlier interview, that it was untrue that his small finger penetrated S.S.'s vagina.

The jury returned a verdict of guilty of third-degree and fourth-degree criminal sexual conduct. The district court sentenced appellant to the Commissioner of Corrections for a term of 80 months plus a ten-year conditional-release period. This appeal follows.

D E C I S I O N

In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume "the jury believed the state's witnesses and disbelieved any evidence

to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

A person is guilty of third-degree criminal sexual conduct if that person intentionally sexually penetrates the complainant and "the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual penetration." Minn. Stat. § 609.344, subd. 1(f) (2008); *see also* 10 *Minnesota Practice*, CRIMJIG 12.29 (2006). Sexual penetration includes "any intrusion however slight into the genital or anal openings of the complainant's body by any part of the actor's body." Minn. Stat. § 609.341, subd. 12(2)(i) (2008).

A person is guilty of fourth-degree criminal sexual conduct if that person engages in sexual contact and "the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual contact." Minn. Stat. § 609.345, subd. 1(f) (2008). Sexual contact includes "the intentional touching by the actor of the complainant's intimate parts" with sexual or aggressive intent. Minn. Stat. § 609.341, subd. 11(a)(i) (2008).

Appellant challenges the element of intent in both statutes, arguing that the evidence was insufficient to demonstrate that he acted with sexual intent. Intent is "an inference drawn by the jury from the totality of the circumstances," *State v. Fardan*, 773 N.W.2d 303, 321 (Minn. 2009) (quotation omitted), and may be proved by circumstantial

evidence, *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). And "[w]hile it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence." *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). But a jury is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *Webb*, 440 N.W.2d at 430.

This court must assume that the jury believed the state's witnesses and disbelieved any contrary evidence, which would include appellant's denial. *See Moore*, 438 N.W.2d at 108. In *State v. Vick*, the supreme court examined a sufficiency-of-the-evidence challenge on the element of sexual intent. 632 N.W.2d 676, 691 (Minn. 2001). The appellant argued that "mere evidence of rubbing [the victim]'s buttocks, without more, does not demonstrate sexual intent." *Id.* The evidence introduced at trial consisted of evidence that the appellant had touched the victim's buttocks at least twice (once over the clothes and once under the clothes), the appellant had touched the victim's vaginal area between two and four times, and the victim suffered an abrupt change in behavior. *Id.* The supreme court held that this evidence "negates the possibility of an innocent explanation such as accidental touching or touching in the course of caregiving," and that the evidence permitted the jury to infer that the appellant had touched the victim with sexual intent. *Id.*

In appellant's interview with Officer Bleess, appellant admitted that while he was giving S.S. the backrub, he wondered "how far she'd let [him] go" and was attempting to determine S.S.'s degree of promiscuity. Appellant also admitted that he rubbed S.S. in a manner that involved "spreading her cheeks" in such a fashion that his fingers briefly

entered her vaginal area and that he could tell that S.S. was "moist." S.S. testified that she thought appellant penetrated her with more than one finger.

We conclude that the evidence submitted to the jury is sufficient to prove that appellant had sexual intent when he penetrated S.S. We therefore affirm appellant's convictions of third- and fourth-degree criminal sexual conduct.

Affirmed.