This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0181

State of Minnesota,
Respondent,

vs.

James Henry Maxwell,
Appellant.

Filed January 21, 2025
Affirmed in part, reversed in part, and remanded
Slieter, Judge

Aitkin County District Court
File No. 01-CR-22-192

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

James P. Ratz, Aitkin County Attorney, Sebastian Mesa White, Assistant County Attorney, Aitkin, Minnesota (for respondent)

Andrew C. Wilson, Wilson & Clas, Minneapolis, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Larson, Judge; and Bentley, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal from the final judgments of conviction of fourth- and fifth-degree criminal sexual conduct, appellant argues that his conviction must be reversed for insufficient evidence. Because sufficient evidence supports the verdicts, we affirm

appellant's conviction of fourth-degree criminal sexual conduct. But, because fifth-degree criminal sexual conduct is a lesser-included offense of fourth-degree criminal sexual conduct, we reverse and remand for the district court to vacate the fifth-degree criminal-sexual-conduct conviction.

FACTS

Respondent State of Minnesota charged appellant James Henry Maxwell with fourth-degree criminal sexual conduct in violation of Minn. Stat. § 609.345, subd. 1(c) (2020), and fifth-degree criminal sexual conduct in violation of Minn. Stat. § 609.3451, subd. 1(1) (2020). The following facts derive from Maxwell's court trial.

B.T. testified that Maxwell is her adoptive father. She described a history of sexual abuse beginning when she was 13 years old. B.T. testified that in July 2021 Maxwell pinned her to a couch and touched her breasts while he masturbated. On cross-examination, she conceded that it was possible that the incident occurred in May, June, or August of that year.

B.T.'s statement to law enforcement was accepted into evidence. The officer that took B.T.'s statement also testified.

The district court found Maxwell guilty of fourth- and fifth-degree criminal sexual conduct and entered convictions on both counts. On the fourth-degree criminal-sexual-conduct conviction, the district court sentenced Maxwell to 24 months' imprisonment, execution of which was stayed for ten years of probation. The district court did not impose a sentence for the fifth-degree criminal-sexual-conduct conviction.

Maxwell appeals.

DECISION

When evaluating the sufficiency of the evidence, we review the record to determine "whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach their verdict." *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004). "We will not disturb the verdict if the jury, while acting with proper regard for the presumption of innocence and regard for the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Id.* at 25-26.

A finding of guilt can be based on direct or circumstantial evidence. Circumstantial evidence is "evidence from which the [fact-finder] can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). "In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Id.* (quotation omitted).

When considering a sufficiency challenge to a guilty verdict based on direct evidence, we carefully analyze the record to determine whether the evidence, viewed in the light most favorable to the verdict, was sufficient to permit the fact-finder to reach its decision. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that the fact-finder believed the state's witnesses and disbelieved any contrary evidence. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). We, as an appellate court, defer to the fact-finder's credibility determinations and will not reweigh the evidence on appeal. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009); *State v. Watkins*, 650 N.W.2d 738, 741 (Minn.

App. 2002). Appellate courts will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and requirement of proof beyond a reasonable doubt, could have reasonably concluded that the state proved the defendant's guilt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Maxwell's sufficiency-of-the-evidence challenge is limited to a single issue—the date of the offense. Maxwell argues that the evidence is insufficient to prove that he committed the offense in July 2021, which was identified in the amended complaint as the date of the alleged offense.

B.T. testified that, in July 2021, Maxwell "pinned [her] to the couch in [the] living room and touched [her] breasts. And . . . he continued to pleasure himself while touching [her] breasts and asking [her] to open [her] mouth."

On cross-examination, defense counsel questioned B.T. about when the alleged offense occurred.

> Q: One of the things that I would like to talk a little bit about, [B.T.], is you told us earlier you went to the Sheriff's Office in September, turns out that event actually happened in August of 2021. When I read the reports in the criminal complaint in this case, you're alleging to this Court that the event that you're talking about today happened in July of 2021; is that correct?
> A: To the best of my memory.
>
> Q: But you're not certain that these alleged events even happened in July of 2021; is that correct?
> A: I believe they did.
>
> Q: That wasn't my question. My question is, are you certain these events happened allegedly in July of 2021?
> A: I'm not certain.

On redirect, the state sought clarity.

> Q: [B.T.], you were asked a lot about whether this incident could have possibly happened. I want to ask you, when do you remember this incident where you were on the couch and Mr. Maxwell fondled your breasts and masturbated near your face, when do you remember that happening?
> A: I was certain it was July when I made the report.

The officer testified that B.T. reported being sexually assaulted by Maxwell in July 2021. The state also introduced a redacted audio recording of B.T.'s August 2021 statement to law enforcement in which B.T. said that, in July, Maxwell held her down on the couch and, "stuck his privates in [her] face while rubbing [her] breasts."

B.T. testified that the charged offense occurred in July 2021, and we assume that the fact-finder believed her testimony. *Brocks*, 587 N.W.2d at 42. Her statement to law enforcement corroborates her trial testimony that the offense occurred in July 2021. The officer's testimony regarding when B.T. reported the incidents occurred and the contents of her report provide further corroboration. This evidence is sufficient for a fact-finder to reasonably conclude that Maxwell committed the charged offenses in July 2021. *Bernhardt*, 684 N.W.2d at 476-77.

Still, Maxwell argues that the evidence is insufficient, noting that on cross-examination B.T. conceded that it was possible that the offense occurred in May, June, or August, though she thought the events occurred in July. As the district court observed, it is not necessary that B.T. remember the exact date of the alleged offense. *See, e.g.*, *State v. Mosby*, 450 N.W.2d 629, 634 (Minn. App. 1990) ("inconsistencies are a sign of human fallibility and do not prove testimony is false, especially when the testimony is about a traumatic event"), *rev. denied* (Minn. Mar. 16, 1990). Observing the

inconsistencies in B.T.'s testimony demonstrates that the district court considered all the evidence presented, and we will not reweigh the evidence on appeal. *Franks*, 765 N.W.2d at 73. Moreover, the district court found that "B.T. testified credibly about these events," and we defer to the district court's credibility determinations. *Id.*

Maxwell's challenge to the date of the offense is, in effect, a challenge to the district court's consideration of the evidence and its assessment of witness credibility, but we neither reweigh evidence nor question the fact-finder's credibility determinations on appeal. *Id.* at 73. Viewing the evidence in a light most favorable to the conviction, the district court reasonably concluded that Maxwell committed fourth- and fifth-degree criminal sexual conduct. *Olhausen*, 681 N.W.2d at 25-26. We, therefore, conclude that the evidence is sufficient to support the verdicts.

Finally, and although the issue was not raised by either party, we review Maxwell's convictions because "it is the responsibility of appellate courts to decide cases in accordance with the law." *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990).

"Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2020). This law applies when multiple convictions are "for the same offense against the same victim on the basis of the same act." *State v. Goodridge*, 352 N.W.2d 384, 389 (Minn. 1984).

Maxwell was convicted of fourth-degree criminal sexual conduct, using force, and fifth-degree criminal sexual conduct. These convictions are against the same victim and arose from acts committed during a single behavioral incident. Thus, we reverse and remand to the district court to vacate the conviction for fifth-degree criminal sexual

conduct. Upon vacation of the conviction, the fifth-degree criminal-sexual-conduct verdict shall remain as an unadjudicated finding of guilt. *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984).

Affirmed in part, reversed in part, and remanded.