STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0521

State of Minnesota,
Respondent,

vs.

Jeremy Alan Giefer,
Appellant.

Filed March 24, 2025
Affirmed
Bond, Judge

Nicollet County District Court
File No. 52-CR-21-357

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Zehnder Fischer, Nicollet County Attorney, St. Peter, Minnesota (for respondent)

Mark D. Kelly, Law Offices of Mark D, Kelly, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bond, Judge; and Smith, John, Judge.*

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

NONPRECEDENTIAL OPINION

BOND, Judge

In this direct appeal from the judgment of conviction for second-degree criminal sexual conduct, appellant argues that the evidence is insufficient to prove beyond a reasonable doubt that he acted with sexual or aggressive intent. We affirm.

FACTS

Respondent State of Minnesota charged appellant Jeremy Alan Giefer with one count of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(b) (2020); two counts of fourth-degree criminal sexual conduct in violation of Minn. Stat. § 609.345, subd. 1(b), (c) (2020); and one count of fifth-degree criminal sexual conduct in violation of Minn. Stat. § 609.3451, subd. 1(1) (2020). The charges stemmed from allegations that Giefer engaged in sexual contact with 13-year-old G.Z. in August 2021. The case proceeded to a bench trial, where the district court received the following evidence.

G.Z. is the longtime best friend of Giefer's daughter, J.K.-G. In the summer of 2021, G.Z. often spent time with J.K.-G. and her family, including Giefer. In early August of that summer, G.Z. accompanied J.K.-G., Giefer, and Giefer's girlfriend on a trip to Wisconsin Dells. During that trip, Giefer repeatedly walked into the bathroom while G.Z. and J.K.-G. were showering or changing clothes. As a result, G.Z. and J.K.-G. began changing in the closet and taking turns standing outside the door while one of them was in the bathroom.

Around the time of the Wisconsin trip, Giefer and his girlfriend purchased a new house. On August 30, 2021, J.K.-G. planned to stay overnight at Giefer's house. Knowing that J.K.-G. would be spending the night, Giefer texted G.Z. and invited her to come over to see the new house. Giefer offered to pick her up, but G.Z. instead arranged for a ride from a family member.

At some point during the night, G.Z. and J.K.-G. were in J.K.-G.'s bedroom. J.K.-G. went downstairs to get snacks, leaving G.Z. alone in the bedroom. Giefer went into the bedroom and shut the door. G.Z. was sitting upright on the bed. G.Z. testified that Giefer used his hand to push her down onto the bed. In pushing her down, Giefer grabbed G.Z.'s breast over her clothes. Giefer then rolled the lower part of G.Z.'s body over and touched her buttocks over her clothes with his hand. Giefer rolled G.Z. back over to a supine position and sat on her, with his knees straddling her on the bed.

G.Z. attempted to push Giefer off of her and cried out to J.K.-G. for help. When J.K.-G. entered the bedroom, she saw Giefer sitting on top of G.Z. Giefer left the bedroom when J.K.-G. yelled at him. G.Z. began to cry and described the incident to J.K.-G. G.Z. and J.K.-G. locked the door and barricaded it with furniture.

In the early morning hours of August 31, Giefer sent several text messages to G.Z. In the first series of messages, Giefer stated, "Go to bed . . . I can still here [sic] u lol." At J.K.-G.'s direction, G.Z. responded, "[J.K.-G.] says to close your eyes." Giefer sent other texts, including messages stating, "Come make me," "Visit," and "Bathroom," which G.Z. took to mean that Giefer wanted her to come to his room or the bathroom. Giefer also sent G.Z. text messages stating, "Come out," "Door locked," and "I need help with my back."

During the text exchange, J.K.-G. heard footsteps coming from Giefer's bedroom to her bedroom and J.K.-G. and G.Z. both witnessed the doorknob move as if Giefer was trying to open the door.

J.K.-G. sent screenshots of the text messages to her mother. J.K.-G.'s mother saw the messages in the morning and called the police to do a welfare check. When a police officer came to Giefer's residence on the morning of August 31, G.Z. and J.K.-G. told the officer they were safe. They testified they told the officer they were safe only because Giefer was present during the conversation. Later that day, G.Z. and J.K.-G. told their mothers what had happened. They subsequently gave statements to the police and participated in forensic interviews.

In his statement to police, Giefer emphatically denied going into J.K.-G.'s room or touching G.Z. Giefer told police that he deleted his text messages with G.Z. and G.Z.'s contact information from his phone because he thought keeping them would be "inappropriate."

The district court acquitted Giefer of count three, fourth-degree criminal sexual conduct using force or coercion, but found him guilty of the remaining three counts. The district court adjudicated Giefer guilty of count one, second-degree criminal sexual conduct, and sentenced him to 36 months in prison, stayed for 15 years of probation, and 150 days in county jail.

This appeal follows.

DECISION

Giefer argues that his conviction should be reversed because the state's evidence fails to prove beyond a reasonable doubt that he acted with sexual or aggressive intent.[1] We disagree.

Due process requires the state to prove every element of a charged crime beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970); *State v. Merrill*, 428 N.W.2d 361, 366 (Minn. 1988); *see* U.S. Const. amend. XIV; Minn. Const. art. I, § 7. Giefer was convicted under Minn. Stat. § 609.343, subd. 1(b), which provides that a person is guilty of second-degree criminal sexual conduct if the person engages in "sexual contact" with a complainant who is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a current or recent position of authority over the complainant.[2] For purposes of second-degree criminal sexual conduct, "sexual contact" is defined as "the intentional touching by the actor of the complainant's intimate parts" including "the touching of the clothing covering the immediate area of the intimate parts" when "committed with sexual or aggressive intent." Minn. Stat. § 609.341, subd. 11(a)(i),

[1] In his brief, Giefer appears to also argue that the evidence failed to prove beyond a reasonable doubt that the touching was intentional. At oral argument, Giefer confirmed that he is only challenging the district court's finding that he touched G.Z. with sexual or aggressive intent; he is not disputing that he intentionally touched G.Z.

[2] This subdivision was eliminated as part of the 2021 amendments to the criminal-sexual-conduct statutes. 2021 Minn. Laws ch. 11, art. 4, § 17, at 2041-44. The amendments to this subdivision became effective on September 15, 2021, which was after the offense date here. *Id.*; 2021 Minn. Laws ch. 11, art. 4, § 16, at 2038-41.

(iv) (2020).[3] The term "intimate parts" encompasses the breasts and buttocks. *Id.*, subd. 5 (2020).

The statute does not define "sexual or aggressive intent." *See* Minn. Stat. §§ 609.341, subd. 11(a), .343, subd. 1(b) (2020). Applying the common and approved usage of the term "sexual intent," we have determined that "an act is committed with sexual intent when the actor perceives himself to be acting based on sexual desire or in pursuit of sexual gratification." *State v. Austin*, 788 N.W.2d 788, 792 (Minn. App. 2010), *rev. denied* (Minn. Dec. 14, 2010) (citing Minn. Stat. § 645.08(1) (2008)). Because "sexual" and "aggressive" are stated as alternatives, proof of either one is sufficient. *Id.*

In determining whether the evidence is sufficient to support a conviction, we "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). We view the evidence in the light most favorable to the verdict and assume the fact-finder believed the state's witnesses and disbelieved contrary evidence. *Id*. We apply the same standard of review in bench trials and in jury trials when evaluating the sufficiency of the evidence. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009).

[3] This subdivision was also amended in 2021. The amendment, which became effective on September 15, 2021, did not affect the substance of the definition of "sexual contact." 2021 Minn. Laws ch. 11, art. 4, § 8, at 2034.

Giefer challenges the sufficiency of the evidence proving that he acted with sexual or aggressive intent. "Because intent involves a state of mind, it is generally established circumstantially." *State v. Pederson*, 840 N.W.2d 433, 436 (Minn. App. 2013); *see also Austin*, 788 N.W.2d at 792 (stating "subjective sexual intent typically must be inferred from the nature of the conduct itself"). Giefer does not clearly argue for application of the circumstantial-evidence standard of review. But Giefer is only challenging the sufficiency of the evidence that he acted with the mental state required by the statutory definition of "sexual contact." Minn. Stat. § 609.341, subd. 11 (2020). Because there is no direct evidence of Giefer's state of mind at the time he touched G.Z., we will apply the circumstantial-evidence standard of review.[4]

Under the circumstantial-evidence standard of review, our first step is to identify the circumstances proved. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). In doing so, "we defer to the [factfinder's] acceptance of the proof of [the] circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State." *Id.* at 598-99 (quotation omitted). This means that "we consider only those circumstances that are consistent with the verdict." *Id.* When uncontroverted accounts from the state's witnesses "are not necessarily contradictory to the verdict, they constitute circumstances proved." *State v. German*, 929 N.W.2d 466, 473 (Minn. App. 2019).

Under the second step, we determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt. *Id.*

[4] The state agrees that the circumstantial-evidence standard of review is appropriate.

at 472 (quotation omitted). We independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, giving "no deference to the fact finder's choice between reasonable inferences." *Silvernail*, 831 N.W.2d at 599. "Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010) (quotation omitted).

We first identify the circumstances proved. Viewing the evidence in the light most favorable to the verdict, the relevant circumstances proved are that while G.Z. was at Giefer's house for a sleepover with J.K.-G., Giefer entered J.K.-G.'s bedroom when G.Z. was alone and shut the door. Giefer used his hand to push G.Z. down onto the bed, grabbing G.Z.'s breast over her clothes as he did so. Giefer rolled the lower part of G.Z.'s body over and touched her buttocks over her clothes with his hand. Giefer rolled G.Z. back over to a supine position and sat on top of her, straddling her so that his knees were on the bed. G.Z. attempted to push Giefer off her and cried out to J.K.-G. for help. Giefer left the bedroom when J.K.-G. came in and yelled at him. G.Z. was upset and crying, and G.Z. and J.K.-G. locked the door and barricaded it with furniture to prevent Giefer from returning. Later that night, Giefer sent G.Z. several text messages, including messages indicating that he wanted G.Z. to open the door and come to his room or the bathroom. Giefer later deleted the text messages and G.Z.'s contact information from his phone.

Next, we examine whether the reasonable inferences drawn from the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than

guilt. The purpose of requiring the state to prove sexual intent is "to avoid criminalizing contact that is accidental or that serves an innocuous, non-sexual purpose." *Austin*, 788 N.W.2d at 792. Sexual intent may be inferred from the nature of the conduct, particularly where the "nature of the touching . . . negates the possibility of an innocent explanation." *State v. Vick*, 632 N.W.2d 676, 691 (Minn. 2001). The victim's reaction to and perception of the defendant's conduct may also be relevant to sexual intent. *See id.* (concluding that the nature of the touching and the victim's reaction to it was sufficient to prove sexual or aggressive intent).

We conclude that the circumstances proved support a reasonable inference that Giefer acted with sexual or aggressive intent. Giefer entered J.K.-G.'s bedroom when G.Z. was alone and closed the door. He touched G.Z. twice, first on her breast and then, after flipping her over, on her buttocks. He straddled G.Z. while she was lying supine on the bed, which the district court concluded was aggressive conduct because it pinned G.Z. down on the bed and she was unable to get up. Despite G.Z.'s cries, Giefer only got up when J.K.-G. entered the room. Later that night, he sent numerous suggestive and flirtatious texts to G.Z., inviting additional interaction that evening.[5] G.Z. was upset and crying when she told J.K.-G. what happened, and barricaded the door to prevent Giefer

[5] Giefer contends that the text messages have little evidentiary value because J.K.-G. was sending them while pretending to be G.Z., and Giefer may have suspected as much. But the record indicates that the majority of the texts Giefer sent were after he had received the text from G.Z.'s phone stating that J.K.-G. was asleep. And, contrary to Giefer's assertion, the district court did not find that Giefer thought he was texting J.K.-G. rather than G.Z. Viewed in the light most favorable to the verdict, it is not a circumstance proved that Giefer believed he was texting with J.K.-G.

from re-entering the bedroom. While we agree with the district court that the touching itself was not prolonged, these circumstances as a whole support a reasonable inference that Giefer acted with sexual or aggressive intent. *See State v. Ness*, 707 N.W.2d 676, 687 (Minn. 2006) (concluding that "sexual or aggressive intent can be readily inferred from the contacts themselves; here there could be no other reason for [appellant to touch the complainant]"); *Vick*, 632 N.W.2d at 691 (noting that the nature of touching a child's buttocks and other intimate parts for a prolonged time and touching the child twice "negate[d] the possibility of an innocent explanation"); *State v. Makarrall*, No. A23-1130, 2024 WL 3493872, at *3 (Minn. App. July 22, 2024) (noting that the fact that the appellant "restricted [the child's] movement . . . and stopped the touching only when someone else came in the room . . . supports guilt").[6]

Giefer argues that the circumstances proved support a reasonable inference that he did not act with sexual or aggressive intent because the touching was merely innocuous horseplay or roughhousing. This hypothesis is not reasonable in light of the circumstances proved as a whole. There was no evidence that Giefer and G.Z. normally engaged in horseplay. And as the district court observed, grabbing G.Z.'s breast while she was sitting on the bed and slapping her buttocks after rolling her over is inconsistent with innocuous horseplay. In addition, Giefer straddled G.Z., pinning her to the bed. He only got off G.Z. when J.K.-G. came into the room. He sent suggestive text messages later that evening and subsequently deleted G.Z.'s text messages and contact information from his phone. These

[6] We cite nonprecedential opinions for their persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).

circumstances are inconsistent with any reasonable inference that Giefer acted with innocuous, nonsexual intent. *Makkarrall*, 2024 WL 3493872, at *2-3 (concluding that lying on top of the child, grabbing the child near their buttocks and waist, and grabbing their breast under the clothing was inconsistent with a reasonable inference that the conduct was innocuous horseplay or roughhousing).

Because the only reasonable inference from the circumstances proved is that Giefer acted with sexual or aggressive intent, the evidence is sufficient to support his conviction.

Affirmed.