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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0365**

State of Minnesota,
Respondent,

vs.

Jesse Lamee Motley,
Appellant.

**Filed January 22, 2018
Affirmed
Reilly, Judge**

Martin County District Court
File No. 46-CR-16-123

Lori Swanson, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

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

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

REILLY, Judge

Appellant Jesse Lamee Motley challenges the sufficiency of the evidence supporting his convictions of second-degree criminal sexual conduct—fear of imminent

great bodily harm and second-degree criminal sexual conduct—force or coercion. Because there is sufficient evidence to sustain the convictions beyond a reasonable doubt and appellant’s pro se arguments are without merit, we affirm.

DECISION

I.

Appellant challenges the sufficiency of the evidence underlying his conviction of second-degree criminal sexual conduct—fear of imminent great bodily harm, under Minn. Stat. § 609.343, subd. 1(c) (2014). Our review of a sufficiency-of-the-evidence challenge is “limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005) (quotation omitted). When an element of the offense, such as one’s state of mind, has been proven circumstantially, appellate courts apply a heightened standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (applying circumstantial-evidence test when there is no direct evidence of individual’s state of mind); *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010) (holding that a conviction based on circumstantial evidence warrants heightened scrutiny). We first identify the circumstances proved and defer to the jury’s “acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with” those circumstances. *State v. Porte*, 832 N.W.2d 303, 310 (Minn. App. 2013) (quotation omitted). Second, we “examine independently the reasonableness of all inferences that might be drawn from the circumstances proved,

including inferences consistent with a hypothesis other than guilt.” *Id.* (quotations omitted).

To convict appellant of second-degree criminal sexual conduct—fear of imminent great bodily harm, the state must prove that appellant “engage[d] in sexual contact with another person” and that “circumstances existing at the time of the act cause[d] the complainant to have a reasonable fear of imminent great bodily harm to the complainant.” Minn. Stat. § 609.343, subd. 1(c). “Great bodily harm” is “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” Minn. Stat. § 609.02, subd. 8 (2014).

With respect to the first prong of the circumstantial-evidence test, the circumstances proved are as follows: appellant entered his next-door neighbor’s apartment at night while she was sleeping, crawled into bed next to her, and put his finger into her vagina as she slept. When the victim awoke, appellant pulled the victim’s pants down and tried to force his penis into her vagina. The victim attempted to plug in a light, at which point he stabbed her in the neck with a knife from her kitchen. The victim began screaming and fighting and attempted to run away, but appellant choked her, punched her, threw her into a bookcase, threw her to the ground, and attempted to choke her again. The victim stated that she feared that she was going to die.

The second step requires us to consider whether the circumstances proved are consistent with guilt and inconsistent with any reasonable hypothesis other than guilt. *Al-Naseer*, 788 N.W.2d at 473-74. At this step, we do not defer to the jury’s “choice between

reasonable inferences.” *Id.* at 474 (quotations omitted). To successfully challenge a conviction based upon circumstantial evidence, appellant bears the burden of “point[ing] to evidence in the record that is consistent with a rational theory other than guilt.” *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). The possibility of a defendant’s innocence does not require reversal if “the evidence taken as a whole makes such theories seem unreasonable.” *Id.* Appellant argues that the evidence supports a determination that he was innocent because the victim left her apartment door unlocked, expecting her boyfriend to arrive later, and thus she could not have feared imminent great bodily harm at the time of the sexual contact because she could have thought appellant was her boyfriend.

This is not a reasonable inference based on the circumstances proved. Appellant put his finger into the victim’s vagina while she was asleep. Then, when she awoke, he crawled on top of her, pulled her pants down, and attempted to force his penis into her vagina. When she tried to roll away from him to turn on a light, appellant stabbed the victim in the neck with a steak knife. The only reasonable inference, given the totality of the circumstances, is that appellant caused the victim to fear imminent great bodily harm. *See, e.g., State v. Zernechel*, 304 N.W.2d 365, 366 (Minn. 1981) (holding that evidence was sufficient to sustain second-degree criminal-sexual-conduct conviction—fear of imminent great bodily harm, when female tenant awoke during sexual assault by neighbor). The jury was justified in finding that the victim experienced fear of imminent great bodily harm at the time of the sexual assault and that, under the circumstances, her fear was reasonable. *See id.* Sufficient evidence exists to permit the jury to conclude beyond a

reasonable doubt that appellant was guilty of criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(c).

II.

Appellant argues that the evidence was insufficient to support his conviction of second-degree criminal sexual conduct—force or coercion, under Minn. Stat. § 609.343, subd. 1(e)(i) (2014). Because the force-or-coercion charge exists within the same multi-tier statutory scheme as appellant’s fear-of-imminent-great-bodily-harm charge, the district court did not enter judgment or pronounce a sentence on the former charge. *See* Minn. Stat. § 609.04, subd. 1 (2016) (forbidding two convictions on both the crime charged and an “included offense”); *State v. Hackler*, 532 N.W.2d 559, 559 (Minn. 1995) (“If the lesser offense is a lesser degree . . . of a multi-tier statutory scheme dealing with a particular subject, then it is an ‘included offense’ under section 609.04.”); *see also State v. Spears*, 560 N.W.2d 723, 726-27 (Minn. App. 1997) (holding that defendant cannot be convicted of violations of both section 609.342, subdivisions 1(c) and 1(e)(i) because they constitute “duplicative convictions” under two different subdivisions of the first-degree criminal-sexual-conduct statute), *review denied* (Minn. May 28, 1997).

Appellate courts do not consider sufficiency-of-the-evidence challenges to counts on which a defendant was found guilty but neither formally adjudicated nor sentenced. *See State v. Ashland*, 287 N.W.2d 649, 650 (Minn. 1979); *see also State v. Hoelzel*, 639 N.W.2d 605, 609 (Minn. 2002) (concluding that verdict of guilt, without recorded judgment of conviction, is not final, appealable judgment). And if the district court imposed a sentence on this charge in the future, appellant would have an opportunity to pursue a direct appeal

and challenge the sufficiency of the evidence at that time. *See, e.g., State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984).

However, even if we were to address appellant's sufficiency-of-the-evidence challenge, it fails on the merits. Because the victim provided direct evidence of sexual assault, the circumstantial-evidence standard does not apply and our review is limited to a "painstaking analysis of the record" to determine whether the evidence supports the verdict. *DeRosier*, 695 N.W.2d at 108 (quotation omitted). We 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). "This is especially true whe[n] resolution of the case depends on conflicting testimony, because weighing the credibility of witnesses is the exclusive function of the jury." *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). Inconsistencies in testimony go to witness credibility, which is an issue reserved for the jury. *State v. Pendleton*, 706 N.W.2d 500, 511-12 (Minn. 2005). Appellate courts 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 that the defendant was guilty of the charged offense." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012).

A person is guilty of second-degree criminal sexual conduct if "the actor causes personal injury to the complainant, and . . . the actor uses force or coercion to accomplish the sexual contact." Minn. Stat. § 609.343, subd. 1(e)(i) (2014). "Force" is

the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which

(a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

Minn. Stat. § 609.341, subd. 3 (2014). “Coercion” is “the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant’s will.” *Id.*, subd. 14 (2014).

Appellant argues that “the evidence does not show that sexual contact was accomplished by, or even accompanied by, the use of force.” Appellant claims that the victim did not testify that it hurt when appellant put his finger in her vagina or attempted to put his penis in her vagina. Appellant also argues that he did not use coercion to accomplish the sexual contact because he “used no words or threats to accomplish sexual contact,” and merely “lay[] down next to an intoxicated, sleeping woman and touch[ed] her while she was waking.”

We reject this argument. First, it is undisputed that appellant engaged in sexual contact with the victim by putting his finger in her vagina and by attempting to force his penis in her vagina. Second, the victim presented direct evidence that she suffered personal injuries when appellant crawled on top of her, stabbed her in the neck with a steak knife, choked her, punched her, and threw her into a bookcase and onto the floor. The doctor, the sexual-assault nurse, the victim’s downstairs neighbor, and the responding police officers all testified that the victim sustained physical injuries and was emotionally upset following the attack. Third, the record supports a determination that appellant used force

or coercion during the sexual contact by pulling down the victim's pants, crawling on top of her, stabbing her with a knife, and physically assaulting her.

When viewed in the light most favorable to the jury's verdict, *Pieschke*, 295 N.W.2d at 584, the evidence in the record sustains the jury's verdict that appellant used force or coercion to accomplish the sexual contact. See, e.g., *State v. Solberg*, 882 N.W.2d 618, 627 (Minn. 2016) (recognizing that defendant's "use of his overwhelming physical size and strength" to cause victim to submit to unwanted sexual contact "fits squarely within the statute's prohibition of sexual assault by coercion"); *State v. Carter*, 289 N.W.2d 454, 455 (Minn. 1979) (affirming criminal-sexual-conduct conviction where defendant, "although neither using actual force nor verbalized threats of force, intentionally created an atmosphere of fear" during sexual assault); see also *State v. Grampre*, 766 N.W.2d 347, 352 (Minn. App. 2009) (holding that defendant's use of a knife during sexual assault "easily fits within th[e] definition of 'force'" employed in criminal code related to criminal-sexual-conduct crimes), review denied (Minn. Aug. 26, 2009); *State v. Gamez*, 494 N.W.2d 84, 87 (Minn. App. 1992) (noting that, for purpose of third-degree criminal sexual conduct, "[t]here is evidence of coercion where an abuser intentionally creates an atmosphere of fear"), review denied (Minn. Feb. 23, 1993). In sum, we conclude that the evidence sufficiently supports the jury's determination that appellant committed second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(e)(i).

III.

Appellant raises additional pro se arguments, asserting that his convictions should be overturned because (1) the jury was not fair and impartial; (2) the evidence was

insufficient; (3) the jury instructions were erroneous; (4) discovery was incomplete; (5) the judge was biased; (6) trial counsel was ineffective; (7) due process was violated; (8) venue was improper; (9) the DNA evidence was insufficient; and (10) the sentencing decision was erroneous. Because appellant failed to support these arguments with citations to relevant facts or legal authority, we deem them forfeited. *See State v. Manley*, 664 N.W.2d 275, 286 (Minn. 2003) (considering arguments forfeited when they are unsupported by facts in the record and contain no citation to relevant legal authority).

Affirmed.