

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-0663**

State of Minnesota,  
Respondent,

vs.

Joseph James Nolan,  
Appellant.

**Filed May 20, 2019  
Affirmed  
Ross, Judge**

Hennepin County District Court  
File No. 27-CR-17-17904

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

Michael O. Freeman, Hennepin County Attorney, Jean E. Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Deborah Ellis, Ellis Law Office, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Jesson, Judge.

**UNPUBLISHED OPINION**

**ROSS, Judge**

A jury found Joseph Nolan guilty of second-degree criminal sexual conduct for fondling the genitals of his nine-year-old niece in his basement. Nolan appeals, arguing that there was insufficient evidence to convict him, that the prosecutor engaged in

misconduct during closing arguments, and that the district court erred by denying his motion for a mistrial after a juror admitted to conducting outside research. None of his arguments succeed and we affirm.

## **FACTS**

The state charged Joseph Nolan in 2017 and 2018 with both first- and second-degree criminal sexual conduct occurring in 2013. According to trial testimony leading to Nolan's conviction of second-degree criminal sexual conduct, Nolan was babysitting six children in late 2013 when he followed his nine-year-old niece into the basement. Nolan pushed her onto the couch and touched her genitals, first over and then under her clothing. The girl did not discuss the incident until May 2017, when she told her mother that her uncle had touched her. The girl then spoke with her therapist, who reported the incident to police.

At the close of the trial, the prosecutor argued that the jury should not believe Nolan's testimony because he had an interest in the outcome of the case. The prosecutor also emphasized that statements made by Nolan's attorney about documents not presented to the jury were not evidence. During deliberation, the foreperson sent the trial judge a note inquiring whether it violated the rules for a juror to consult a legal dictionary for the meaning of a legal term—"reasonable doubt." The judge brought the foreperson into the courtroom and answered the inquiry, explaining that a juror's conducting additional research violates the court's instructions. The judge brought the entire jury into the courtroom, repeated the same admonition, and instructed the jury not to allow any outside research to influence its decision. Nolan moved unsuccessfully for a mistrial. On the prosecutor's request, the judge called the researching juror into the courtroom,

reemphasized that no outside research should be performed, and instructed him to rely solely on the evidence in the case and the legal instructions given by the judge. The juror apologized and said he understood.

The jury found Nolan guilty. He appeals.

## **D E C I S I O N**

Nolan raises three arguments on appeal. None succeed.

### **I**

Nolan argues first that the state offered insufficient evidence for the jury to find him guilty of second-degree criminal sexual conduct. We review insufficient-evidence claims by examining whether the evidence, viewed in the light most favorable to the conviction, could support the jury's verdict of guilt beyond a reasonable doubt. *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004). We assume that the jury believed the state's witnesses and disbelieved contrary evidence. *Id.*

The eyewitness account is sufficient. A person commits second-degree criminal sexual conduct if he engages in sexual contact with a person who is under 13 years old and he is more than 36 months older than she is. Minn. Stat. § 609.343, subd. 1(a) (2012). Sexual contact includes “the intentional touching by the actor of the complainant’s intimate parts.” Minn. Stat. § 609.341, subd. 11(a)(i) (2012). The jury heard the victim testify that, when she was nine years old, Nolan touched her genitals both over and under her clothing. A victim’s testimony alone can support a conviction of second-degree criminal sexual conduct. Minn. Stat. § 609.347, subd. 1 (2018); *see also State v. Hill*, 172 N.W.2d 406, 407 (Minn. 1969). The state provided sufficient evidence to allow the jury to find him guilty.

Nolan asks for a different outcome, urging that the complainant's testimony is "not reliable or worthy of belief." He implores, "[S]urely this Court cannot agree that [the complainant's] testimony alone established a case against appellant beyond a reasonable doubt." Nolan's argument overlooks that it is the jury's "exclusive function" to determine witness credibility. *Dereje v. State*, 837 N.W.2d 714, 725 (Minn. 2013). Our deference rests on the reality that "[o]bviously the trial court is in a far better position than we are to evaluate the various factors bearing on the credibility of the witnesses, such as their demeanor, disposition, and character." *Albertson v. Albertson*, 67 N.W.2d 463, 466 (Minn. 1954); *see also Dereje*, 837 N.W.2d at 726 (applying *Albertson*'s observation in an appeal challenging a criminal conviction). Nolan's urging depends on our making a credibility determination and then substituting it for the jury's. This we cannot do. We see gaps in the complainant's account as Nolan's attorney emphasized during closing arguments. But our duty to defer to the jury's credibility finding as implied by its guilty verdict leads us to decline assessing credibility further except to say that Nolan has not identified a circumstance indicating that the complainant's testimony is incredible as a matter of law.

## II

Nolan argues next that the prosecutor erred by saying that Nolan has "the most interest" in the outcome of the case and by asking the jury not to consider Nolan's attorney's interpretation of documents not entered into evidence. Because Nolan did not object to the prosecutor's arguments at trial, we review both arguments under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under this

standard, Nolan must first show that the prosecutor committed plain error. *See id.* If he is successful, the burden shifts to the state to prove that the error did not affect Nolan's substantial rights. *See id.* Because no error occurred, our analysis ends there.

Nolan maintains that the prosecutor erred by urging the jury to consider Nolan's interest in the outcome of the case at closing arguments, contending that commenting on a defendant's interest in the outcome of a case violates his constitutional rights. Both the United States Constitution and the Minnesota State Constitution protect the right of a defendant to remain silent at his own criminal trial. U.S. Const. amend. V; Minn. Const. art. I, § 7. Both the United States Supreme Court and the Minnesota Supreme Court have held that the prosecution cannot comment on the defendant's right to remain silent. *Griffin v. California*, 380 U.S. 609, 615, 85 S. Ct. 1229, 1233 (1965); *State v. Whittaker*, 568 N.W.2d 440, 451 (Minn. 1997). Nolan argues that, just as the prosecution cannot comment on a defendant's right to remain silent, it also cannot attack the credibility of a testifying defendant on the basis that the defendant has an interest in the outcome of the case. The argument is unconvincing.

In contrast to when a defendant exercises his right to remain silent, when a defendant testifies at trial, he is willingly acting as a witness and exposing himself to credibility challenges. *State v. Silvers*, 40 N.W.2d 630, 632 (Minn. 1950). By choosing to testify, Nolan exposed himself to the same credibility challenges that face any other witness, including questions of bias. A witness's bias through self-interest bears on his credibility. *State v. McArthur*, 730 N.W.2d 44, 51 (Minn. 2007). And it is "generally permissible for counsel to attempt to discredit a criminal defendant by emphasizing that he is a party and

has an interest in the outcome.” *City of St. Paul v. Willier*, 231 N.W.2d 488, 489 (Minn. 1975). That the prosecutor called attention to Nolan’s interest in the outcome of the criminal trial did not violate Nolan’s constitutional rights.

Nolan maintains also that the prosecutor erred by telling the jury to disregard his attorney’s arguments about documents not admitted into evidence. Before this argument, the district court had instructed jurors that “the arguments or other remarks of an attorney are not evidence.” This fits the maxim that attorney arguments are not evidence. *See State v. McCoy*, 682 N.W.2d 153, 158 (Minn. 2004). Nolan’s attorney’s interpretation of the documents is not evidence, and the prosecutor did not improperly inform the jury that neither the attorney’s description nor his interpretation of documents constituted evidence.

Nolan complains that the prosecutor’s argument implied that Nolan’s attorney was manufacturing evidence. The prosecutor’s actual argument dispels the contention:

A lot of . . . [Nolan]’s closing argument here was explaining to you sort of back scene things from his perspective. He was making an argument about reports and things that he looked at that you didn’t see. So if you didn’t see it, if it’s not an exhibit here and it didn’t come out of the mouth of a witness, it’s not evidence.

The argument reiterated that an attorney’s arguments are not evidence. We see no misconduct here, even if Nolan’s attorney believes the argument questioned his integrity.

### III

Nolan next argues that the district court erred by denying his mistrial motion after a juror consulted a legal dictionary for the definition of “reasonable doubt.” We review a

denial of a motion for mistrial for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016). The state does not defend the juror's conduct, but it defends the district court's decision not to order a mistrial. The district court should grant a mistrial motion only if there is a reasonable probability that an error created sufficient prejudice to deny the defendant a fair trial. *Id.* The district court took multiple remedial steps to minimize any potential impact of the juror's improper behavior, leading us to conclude that it did not abuse its discretion by denying the motion.

The record reveals the district court's reaction to the juror's research activity. As soon as the district court learned of it, it told the foreperson that researching legal terminology contradicted the court's directives. It then summoned all jurors and repeated what it had told the foreperson. It also reinstructed the jury to rely solely on the evidence heard in court and the admitted exhibits. And it summoned the offending juror individually and told him that he was not permitted to conduct research, that he must rely on the district court's instructions on the law, and that he should disregard whatever he learned in his research. Nolan points to nothing in the record suggesting that the district court's corrective admonition was ineffective, and he instead asks us to conclude that the outside research affected the jury's verdict so significantly that it necessitated a mistrial.

We reject Nolan's argument. Factors bearing on whether outside information affected the jury's verdict include the nature and source of the material, the number of exposed jurors, and the effectiveness of the curative measures taken to reduce prejudice. *State v. Cox*, 322 N.W.2d 555, 559 (Minn. 1982). Neither party found it necessary to inquire into what the juror's research revealed. The record therefore discloses nothing from

which we can infer that the research misinformed the juror about reasonable doubt. Nor does it suggest that any other juror learned the content of the research or that the district court's prompt curative measures failed to fix any problem. We have no reason to suppose that the lone juror's improper research so prejudiced Nolan's defense that it infected the verdict.

**Affirmed.**