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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1714**

State of Minnesota,
Respondent,

vs.

Khammany Choulamontry,
Appellant.

**Filed August 24, 2020
Affirmed
Bjorkman, Judge**

Scott County District Court
File No. 70-CR-18-20172

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Robert A. Lengeling, Beito & Lengeling, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Bryan,
Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions and sentences for first- and second-degree
criminal sexual conduct, arguing that (1) insufficient evidence supports the convictions and

(2) the imposition of consecutive sentences unfairly exaggerates the criminality of his conduct. We affirm.

FACTS

On November 16, 2018, 13-year-old L.P. indicated on a medical screening form that someone had “hurt [her] physically or sexually.” She was reluctant to discuss her response but explained that her stepfather, appellant Khammany Choulamontry, had been “coming to her bed” for four years. Her medical provider reported the disclosure to Scott County Health and Human Services.

Later that day, a police detective and a child-protection worker interviewed L.P. at her school. L.P. told them that Choulamontry had been coming to her room at night for four years, starting when she was in fourth grade and living in Brooklyn Park, and continuing after her family moved to Shakopee for her sixth grade year. L.P. explained that Choulamontry used his hand to touch her breasts and vagina under her clothes; he did so more than ten times. When asked if he ever did “anything different,” she replied that he “inserted” his penis into her vagina more than six times. She explained that he would remove her shorts and underwear, then “[h]e would pull down his pants and he would put it in me.” She also told the interviewers that she had kept Choulamontry’s conduct a secret, and when her mother learned of her report she “got mad” at her and did not believe her.

Several days later, L.P. underwent a physical examination at Midwest Children’s Resource Center (MCRC). During a brief interview with a nurse, L.P. restated that Choulamontry touched her breasts and vagina. She added that she had seen a white substance come from his penis that ended up on her underwear. During the exam, L.P.

indicated that Choulamonty's penis did not go inside of her but touched her "on the outside of her vagina." The exam revealed no signs of trauma.

To follow up on L.P.'s statements to the MCRC nurse, the detective and child-protection worker interviewed L.P. again. L.P. reiterated that she saw "white stuff" from Choulamonty's penis on her underwear and that his penis had gone "inside." But when the child-protection worker asked where, L.P. denied that it had gone inside her "body," stating that it went "inside of [her] legs."

Choulamonty was charged with two counts of first-degree criminal sexual conduct and four counts of second-degree criminal sexual conduct. L.P. testified at the May 2019 jury trial. She stated that Choulamonty came to her bedroom at night and reached under her clothing to touch her breasts and vagina with his hand. This started when she was in fifth grade in Brooklyn Park and continued into her eighth grade year in Shakopee. L.P. testified that he put his penis "between [her] legs"—not inside of or touching her vagina—and she did not know why she told the detective, child-protection worker, and MCRC nurse differently. Sometimes, she later noticed "white stuff" on her underwear. Without objection, the state presented L.P.'s three prior statements as substantive evidence. The jury found Choulamonty guilty on all counts. The district court imposed consecutive sentences for the two first-degree offenses, for a total of 320 months' imprisonment. Choulamonty appeals.

DECISION

I. Sufficient evidence supports Choulamonty's convictions.

When reviewing a claim of insufficient evidence, we

view the evidence in the light most favorable to the verdict to determine whether the facts in the record 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. Stewart, 923 N.W.2d 668, 673 (Minn. App. 2019) (quotation omitted), *review denied* (Minn. Apr. 16, 2019). We assume the jury believed the state's witnesses and disbelieved any contrary evidence. *State v. Wright*, 679 N.W.2d 186, 189 (Minn. App. 2004), *review denied* (Minn. June 29, 2004).

To convict Choulamonty of first-degree criminal sexual conduct, the state was required to prove that he intentionally touched L.P.'s bare genitals with his bare genitals with sexual or aggressive intent, when she was less than 13 years old. Minn. Stat. §§ 609.341, subd. 11(c), .342, subd. 1(a) (2016).¹

Choulamonty argues that the state presented insufficient evidence to prove the element of genital-to-genital contact. He points to L.P.'s trial testimony that his penis went only between her legs, not into or near her vagina. But the jury also heard L.P.'s prior

¹ The record does not establish the precise dates of the offenses, only a range of approximately November 2014 to November 2018, when L.P. reported the abuse. With respect to the first-degree counts, the state alleged that Choulamonty engaged in the requisite conduct first when the family lived in Brooklyn Park (count 1), and again when the family moved to Shakopee, but before L.P. turned 13 in February 2018 (count 2). Because the 2016 version of the statute was in effect for most of that time frame, we cite that version herein.

statements, in which she indicated that he either inserted his penis into her vagina or touched his penis to the outside of her vagina. Those statements are direct substantive evidence of what happened and sufficient, if believed, to prove genital-to-genital contact. *See State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (defining direct evidence). The jury was free to believe those earlier statements and reject her trial testimony as the product of trauma, conflicting emotions about losing a significant adult in her life, or the pressure of knowing that her mother and brother did not believe her. *See State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006) (stating that a jury is free to accept part and reject part of a witness's testimony); *see also State v. Stufflebean*, 329 N.W.2d 314, 319 (Minn. 1983) (explaining that inconsistencies in a witness's testimony do not necessarily indicate falsehood but the "fallibility of human perception," particularly when the witness is describing "the particulars of a traumatic and extremely stressful incident" (quotation omitted)). Accordingly, Choulamonty's challenge to his first-degree convictions fails.

Choulamonty also contends that insufficient evidence supports his convictions of second-degree criminal sexual conduct. This argument is also unavailing. Choulamonty was charged with four counts of second-degree criminal sexual conduct, all involving "sexual contact" with a minor. *See Minn. Stat. § 609.343*, subd. 1(a) (complainant was under 13 and actor more than 36 months older), (b) (complainant was between 13 and 16 and actor more than 48 months older and in a "position of authority"), (g) (actor had "significant relationship" to complainant, who was under 16), (h)(iii) (actor has a significant relationship to complainant, who was under 16, and the sexual abuse involved multiple acts committed over an extended period of time) (2016). Sexual contact includes

“the intentional touching by the actor of the complainant’s intimate parts.” Minn. Stat. § 609.341, subd. 11(a)(i), (b)(i) (2016). L.P. consistently indicated in her pretrial statements and trial testimony that Choulamonty, her stepfather, touched her bare breasts and vagina with his hand on many occasions from the time she was in fourth or fifth grade until she reported the abuse in eighth grade. This evidence amply supports Choulamonty’s convictions.

II. Choulamonty’s consecutive sentences do not exaggerate the criminality of his conduct.

A district court may impose consecutive sentences, without a departure, for multiple current convictions of first-degree criminal sexual conduct. Minn. Sent. Guidelines 2.F.2.a.(1)(ii), 6 (2016). We review imposition of permissive consecutive sentences for an abuse of discretion. *State v. Fardan*, 773 N.W.2d 303, 322 (Minn. 2009). We will not reverse consecutive sentences unless the total sentence “is disproportionate to the offense or unfairly exaggerates the criminality of the defendant’s conduct,” as determined by past sentences imposed for similar offenses. *Id.* (quotations omitted); *see also* Minn. Sent. Guidelines 2.F (2016) (requiring aggregation of consecutive sentences into “a single fixed sentence”).

Choulamonty argues that his sentence is disproportionate and exaggerates the criminality of his conduct.² We disagree. As L.P.’s trial testimony and multiple pretrial

² The state contends Choulamonty forfeited this argument by failing to provide a sentencing transcript. It is an appellant’s burden to provide a sufficient record for appellate review, including any necessary transcripts. Minn. R. Civ. App. P. 110.02, subd. 1(a); *State v. Heithecker*, 395 N.W.2d 382, 383 (Minn. App. 1986). A transcript would have

statements establish, Choulamonty sexually abused his young stepdaughter at least a dozen times over a four-year period. Such long-term abuse merits a substantial sanction. *See, e.g., State v. Perleberg*, 736 N.W.2d 703, 707 (Minn. App. 2007) (upholding permissive consecutive sentencing, resulting in total of 432 months' imprisonment, for three of six convictions of first-degree criminal sexual conduct as commensurate with the defendant's multi-year abuse of his daughter), *review denied* (Minn. Oct. 16, 2007). Moreover, Choulamonty cites no other cases to show that his consecutive sentences are out of line compared to those imposed for similar offenses. On this record, we discern no abuse of discretion by the district court in imposing permissive consecutive sentences for a total term of 320 months' imprisonment.

Affirmed.

been helpful, but it is not necessary to our review, which looks to Choulamonty's conduct and any similar offenses. We therefore do not deem the sentencing challenge forfeited.