STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0019

State of Minnesota,
Respondent,

vs.

Samuel Dwight Simmons,
Appellant.

Filed December 5, 2022
Affirmed in part and remanded
Ross, Judge

Dakota County District Court
File No. 19HA-CR-21-160

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

Kathryn M. Keena, Dakota County Attorney, Jessica A. Bierwerth, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Frisch, Presiding Judge; Ross, Judge; and Connolly, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Samuel Simmons entered the bedroom of a sleeping teenage girl, propositioned her for sex, and groped her buttocks through the blanket covering her. On appeal challenging the sufficiency of the evidence underlying his conviction after being charged with fourth-

and fifth-degree criminal sexual conduct, Simmons argues that groping is not a crime if effected by touching through a blanket. Because our well-settled precedent defeats the argument, we affirm in part. Although the state concedes that the district court erroneously entered a conviction on both criminal-sexual-conduct charges and accurately concedes that the lesser-included offense should not have resulted in a conviction, neither the sentencing transcript nor the sentencing order indicates certainly that count two resulted in a conviction or that it did not. We therefore remand for the district court to amend the sentencing order to indicate clearly that the fifth-degree offense resulted only in a finding of guilt but not a conviction.

FACTS

South St. Paul police went to a home responding to a reported overnight incident in January 2021. The officers met a thirteen-year-old girl (whom we will call Debra to maintain her privacy), the girl's mother, and appellant Samuel Simmons, who was dating the girl's mother. Debra accused Simmons of touching her inappropriately. The state charged Simmons with one count of fourth-degree criminal sexual conduct and the district court held a bench trial.

Debra's testimony was the state's primary trial evidence. She testified that, at about 2:00 a.m., Simmons entered her bedroom while she slept under a blanket. He approached her bed, woke her, and asked, "Do you want to do this now or later?" Simmons reached toward Debra and touched her over her blanket, groping her buttocks for several seconds. The state amended the complaint at the close of trial to add one count of fifth-degree criminal sexual conduct. The district court found that Simmons touched Debra's buttocks

through her pajamas and a blanket. It found him guilty on both counts. The record is unclear as to whether the district court entered a judgment of conviction on both counts.

Simmons appeals.

DECISION

Simmons challenges his conviction by maintaining that the evidence was insufficient to establish his guilt. Evidence-sufficiency appeals that rest on statutory meaning call for our de novo review. *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019). Simmons argues alternatively that the district court improperly entered convictions on two counts rather than only one. Only his second argument is persuasive.

Simmons argues that he cannot be guilty of criminal sexual conduct because he did not make "sexual contact" with Debra by touching her blanket rather than either her intimate parts or her garments immediately covering those parts. *See* Minn. Stat. § 609.345, subd. 1(b) (2020) (criminalizing any sexual contact with a victim aged 13 to 16 if the perpetrator is more than 48 months older than the victim); Minn. Stat. § 609.3451, subd. 1(1) (2020) (criminalizing nonconsensual sexual contact); Minn. Stat. § 609.341, subd. 11(a)(iv) (2020) (defining "sexual contact" as "the touching of the clothing covering the immediate area of the intimate parts"). The argument fails under our caselaw.

This case closely resembles *State v. Lockhart*, 376 N.W.2d 249 (Minn. App. 1985), *rev. denied* (Minn. Dec. 30, 1985). The *Lockhart* defendant mounted and began thrusting against a sleeping woman who was lying under a bedsheet, blanket, quilt, and bedspread. 376 N.W.2d at 251. Like Simmons, Lockhart argued that he did not make "sexual contact" with the victim because he touched her intimate parts through bed coverings while the

statute instead criminalizes touching through "clothing." *Id.* at 252. We rejected the argument, holding that "clothing" as used in the criminal-sexual-conduct statutes included bed coverings. *Id.* at 253. We reasoned that, had the legislature intended a narrow definition of "clothing" that excluded bed coverings, it would have used a term like "wearing apparel" or "garments." *Id.* at 252. We presume "that the legislature acts with full knowledge of previous statutes and existing caselaw," *Pecinovsky v. AMCO Ins. Co.*, 613 N.W.2d 804, 809 (Minn. App. 2000), *rev. denied* (Minn. Sept. 26, 2000), and the *Lockhart* holding has stood undisturbed by the legislature for 37 years.

Simmons does not contend that the evidence was insufficient to find him guilty of criminal sexual conduct under *Lockhart*, staking his appeal entirely on his plea that we overrule *Lockhart*. We will not consider overruling precedent—a substantially disfavored turn—unless a challenger presents a compelling reason, establishing that the prior decision is "clearly and manifestly erroneous." *State v. Noor*, 964 N.W.2d 424, 435 (Minn. 2021) (quotation omitted); *see also State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017). Simmons argues only that *Lockhart* improperly interpreted the statute. He does not contend, let alone establish, that the holding is manifestly erroneous. *Lockhart* stands.

Simmons also argues, and the state concedes, that the district court erred by entering convictions of both fourth- and fifth-degree criminal sexual conduct. The parties are correct that, if the district court entered convictions on both counts, it erred. The district court may enter a conviction "of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2020). An included offense for our purposes is a "lesser degree of the same crime." *Id.*, subd. 1(1). Fifth-degree criminal sexual conduct is a lesser-included

offense of fourth-degree criminal sexual conduct and should not have resulted in a conviction. But we look to the record to determine from the "official judgment of conviction" whether a finding of guilt has in fact been adjudicated as a conviction. *See Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007) (quotation omitted). Typically that official judgment is embodied in the "sentencing order" (or "warrant of commitment"). The sentencing order in this case does not, but must, clarify the disposition of the fifth-degree offense.[1] We therefore remand for the district court to amend the sentencing order to clarify expressly that the charge of fifth-degree criminal sexual conduct has not resulted in a conviction.

Affirmed in part and remanded.

[1] The "Case Charges" portion of the sentencing order indicates "convicted" for counts one and two, which is how a sentencing order generally records a finding of guilt or a guilty plea. But in the section designated "Terms of Disposition," the order does not state that the district court entered a conviction for count two. It does not include a reference such as "no adjudication – lesser included," to establish that count two was not adjudicated. Nor does it include the kind of notation that typically informs us that count two was adjudicated. The order simply lacks the signals that typically inform us clearly whether or not the district court has entered a judgment of conviction on the lesser-included offense.