STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0474

State of Minnesota,
Respondent,

vs.

Emmanuel Thompson,
Appellant.

Filed January 17, 2023
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CR-20-10313

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

Mary F. Moriarty, Hennepin County Attorney, Peter R. Marker, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Andrew C. Wilson, Wilson & Clas, Minneapolis, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his conviction of third-degree criminal sexual conduct, arguing that his conviction must be reversed because there was insufficient evidence that he used coercion to accomplish penetration. We affirm.

FACTS

In April 2020, respondent State of Minnesota charged appellant Emmanuel Thompson with third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(c) (Supp. 2019) (force or coercion). At trial, evidence was presented that, in January 2020, A.F., and her best friend G.B., met another friend, R.T., at a hotel in Brooklyn Park where they planned to celebrate R.T.'s birthday. R.T.'s boyfriend had rented a hotel room suite that consisted of a living room area and a separate bedroom. A.F. and G.B. planned to sleep on the fold-out couch in the living-room area, and R.T. was going to sleep in the bedroom with her boyfriend.

After arriving at the hotel, the women began consuming alcohol, and R.T.'s boyfriend eventually joined them. The group became very intoxicated at the hotel and then decided to go to the bars in downtown Minneapolis. But, because R.T.'s boyfriend was too drunk to drive, he contacted appellant and arranged for him to drive the group downtown.

Appellant drove the group downtown, where they consumed more alcohol. While they were downtown, G.B. arranged to be picked up by her boyfriend. The remainder of the group, R.T., her boyfriend, A.F., and appellant, returned to the hotel around 1:00 a.m. A.F. and R.T. then changed into their pajamas and the group sat and talked for a while before R.T. and her boyfriend retired to the separate bedroom.

A.F. testified that, after R.T. and her boyfriend went into the bedroom, she was sitting on one side of the bed of the pull-out couch and appellant sat down on the other side and asked if he could watch TV next to her. A.F. acquiesced, and the two casually

conversed for a short time. According to A.F., she was uncomfortable because appellant had not yet left, but she was "drunk" and "really tired," and eventually got under a blanket and rolled onto her side away from appellant and began to fall asleep.

A.F. testified that, as she began to pass out, she felt appellant move up behind her. According to A.F., appellant suddenly moved her onto her stomach, "grabbed [her] arms," pinning her down, and "jumped on top of [her]" and penetrated her with his penis. A.F. stated that appellant "was holding me down" and I "kept saying stop, stop," and "was trying to push my legs and my arms," but "they couldn't move because of the force of his body on top of mine holding it down." A.F. testified that when she told appellant to stop, "he responded and said something like no, I'm not done yet, or, no, I'm not finished." And A.F. recalled that she "stayed there on [her] stomach the whole time" because she was "scared" and her arms were "stuck."

A.F. testified that, after appellant finished, she confronted him and told him that "he just raped" her. She then ran into the bathroom, started crying, threw up, and took a shower. After showering, A.F. went into the bedroom and told R.T. and her boyfriend that appellant had just raped her. R.T.'s boyfriend testified that A.F. was crying and panicked, and A.F. testified that she was afraid to go back out and gather her belongings alone because she feared that appellant might kill her. A.F. then spoke with police and later went to a hospital where a sexual-assault exam was performed. Vaginal swabs collected during the examination contained DNA matching appellant's DNA.

Appellant testified in his defense and admitted having sex with A.F. But appellant claimed that the sex was consensual.

The jury found appellant guilty as charged. In response to special interrogatories, the jury answered "no" to the question of whether appellant used force in the commission of the offense, and "yes" to the question of whether appellant used coercion in the commission of the offense. The jury also answered "no" to the question of whether appellant used force and coercion in the commission of the offense. The district court imposed the presumptive sentence of 76 months in prison. This appeal follows.

DECISION

Appellant challenges the sufficiency of the evidence supporting his conviction. In reviewing such a challenge, we review 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. Hanson*, 800 N.W.2d 618, 621 (Minn. 2011) (quotation omitted). We will not disturb the verdict if the jury acted with "due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt" and could reasonably have concluded that the defendant was proven guilty of the offense charged. *Id.* (quotation omitted).

The jury found appellant guilty of third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(c),[1] which required the state to prove that appellant penetrated the

[1] In 2021, after appellant committed the charged offense, the legislature amended Minn. Stat. § 609.344, subd. 1. *See* 2021 Minn. Laws 1st Spec. Sess. ch. 11, art. 4, § 18, at 2044 (creating new subparts under subdivision 1 for both "force" and "coercion"). Because the amendments were "effective September 15, 2021, and appl[y] to crimes committed on or after that date," the amendments do not affect our analysis. *Id.* at 2046.

victim without her consent and used force or coercion to accomplish the penetration. "Force" is defined as

> 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 (2018). "Coercion" is defined as

> the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or 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. Proof of coercion does not require proof of a specific act or threat.

Id., subd. 14 (2018).

Recently, the Minnesota Supreme Court in *State v. Martin*, set out the five statutory circumstances under which a criminal-sexual-conduct offense by force or coercion can be accomplished, stating:

> a defendant may be convicted of fourth-degree criminal sexual conduct[2] by force or coercion in Minnesota when the defendant accomplishes sexual contact by (1) using words or circumstances that causes the victim reasonably to fear that the defendant would inflict physical pain, physical injury, illness, or impairment of physical condition upon the victim or another; (2) using confinement of the victim that causes the victim to submit to sexual contact; (3) using superior size or strength against the victim to cause the victim to submit to

[2] Fourth-degree criminal sexual conduct requires only sexual contact, whereas third-degree criminal sexual conduct requires sexual penetration. *Compare* Minn. Stat. § 609.345, subd. 1 (2018), *with* Minn. Stat. § 609.344, subd. 1.

> sexual contact; (4) inflicting, attempting to inflict, or threatening to inflict physical pain, physical injury, illness, or impairment of physical condition; or (5) committing or threatening to commit another crime against the victim or another person.

941 N.W.2d 119, 125 (Minn. 2020) (footnote added).

Appellant argues that, because the jury found that he did not use force to accomplish penetration, there must be sufficient evidence in the record of coercion to sustain his conviction. He then cites *Martin* to argue that, because the jury found that he did not use force to accomplish penetration, there was insufficient evidence to prove that he committed the offense under circumstance (4) as described in *Martin*. *See id.* (stating that, under (4), a defendant can be convicted of criminal sexual conduct by force or coercion if the defendant accomplishes the sexual act by "inflicting, attempting to inflict, or threatening to inflict physical pain, physical injury, illness, or impairment of physical condition"). He also contends that, because there is no evidence that he committed or threatened to commit another crime against the victim or another person, circumstance (5) as outlined in *Martin* is eliminated. *See id.* (stating that a defendant can be convicted of criminal sexual conduct by force or coercion if the defendant accomplishes the sexual act by "committing or threatening to commit another crime against the victim or another person"). And appellant argues that, "[b]ecause the definitions of force and coercion materially overlap, the jury finding that Appellant did not use force to accomplish the act also precluded a finding that Appellant used coercion to accomplish the act" under the remaining three circumstances set forth in *Martin*. Thus, appellant argues that the evidence was insufficient to sustain his conviction.

We are not persuaded. In *State v. Meech*, the defendant sat down next to the victim and tried to put her hand on his penis. 400 N.W.2d 166, 167 (Minn. App. 1987). When the victim resisted, the defendant told her to "shut up," pushed up her nightgown, got on top of her, and engaged in sexual intercourse with her while "holding her hands down." *Id.* On appeal, from the defendant's conviction of third-degree criminal sexual conduct under Minn. Stat. § 609.344(c) (1984), this court recognized that the coercion element is satisfied when the actor coerces the victim by causing fear while accomplishing the sexual conduct. *Id.* at 168. This court concluded that there was sufficient evidence to sustain the defendant's conviction, where the victim attempted to stop the defendant, "but she was fearful and overpowered by his words and actions in pushing up her nightgown and holding her hands down." *Id.*

Here, similar to the victim in *Meech*, A.F. testified that appellant held her down so that she could not move, and when she told him to stop, "he responded and said something like no, I'm not done yet, or, no, I'm not finished." A.F. also testified she "stayed there on [her] stomach the whole time" because she was "scared" and "stuck." A.F. further testified that, when appellant was finished, she ran into the bathroom and threw up, and she later went into the adjacent bedroom and told R.T. and her boyfriend what happened. And according to A.F., she was afraid to go back out and gather her belongings alone because she feared that appellant might kill her. In fact, R.T.'s boyfriend corroborated A.F.'s state of mind when he testified that A.F. was crying and panicked. If believed, this evidence establishes that appellant used words and circumstances that reasonably caused A.F. to fear that appellant might inflict physical pain on A.F. *See Meech*, 400 N.W.2d at 168 (stating

that the evidence was sufficient to sustain a conviction under section 609.344(c) where the victim attempted to stop the defendant, but the victim "was fearful and overpowered by his words and actions in pushing up her nightgown and holding her hands down"); *see also Martin*, 941 N.W.2d at 125 (stating that a defendant accomplishes criminal sexual conduct through force or coercion if he uses "words or circumstances that causes the victim reasonably to fear that the defendant would inflict physical pain, physical injury, illness, or impairment of physical condition upon the victim").

Moreover, the evidence presented at trial was also sufficient to sustain appellant's conviction under either the second or third circumstance outlined in *Martin*. A.F. testified that, after she turned onto her side so that she was facing away from appellant, she felt appellant move up behind her and then suddenly move her onto her stomach, "grab[] [her] arms," pin her down, "jump[] on top of [her]," and penetrate her with his penis. And A.F. testified that appellant held her down so that she could not move, and that she "stayed there on [her] stomach the whole time" because she was "stuck." If believed, this evidence establishes that appellant used both "confinement" and "superior size and strength" to cause A.F. to submit to the penetration. *See Martin*, 941 N.W.2d at 125 (stating that a defendant accomplishes criminal sexual conduct by force or coercion if the defendant uses "confinement of the victim" or "superior size or strength," that causes the victim to submit to the sexual contact). The jury believed the evidence presented by the state and disbelieved any contrary evidence. Therefore, when viewing the evidence in the light most

favorable to the verdict, we conclude that the evidence was sufficient to sustain appellant's conviction of third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(c).

Affirmed.