STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1223

In the Matter of the Welfare of: T. C. G., Child.

Filed April 24, 2023
Affirmed
Gaïtas, Judge

McLeod County District Court
File No. 43-JV-21-206

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant T.C.G.)

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

Michael K. Junge, McLeod County Attorney, Anna Gusaas, Assistant County Attorney, Glencoe, Minnesota (for respondent State of Minnesota)

Considered and decided by Gaïtas, Presiding Judge; Ross, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Following a trial, the district court found appellant-juvenile T.C.G. guilty of fifth-degree criminal sexual conduct for having nonconsensual sexual contact with another minor and stayed adjudication. T.C.G. appeals, arguing that respondent State of Minnesota failed to prove beyond a reasonable doubt that the sexual contact was not consensual. Because the evidence was sufficient to prove T.C.G.'s guilt beyond a reasonable doubt, we affirm.

FACTS

In December 2021, the state filed a juvenile-delinquency petition charging T.C.G. with fifth-degree criminal sexual conduct, Minn. Stat. § 609.3451, subd. 1a(1) (Supp. 2021), for engaging in nonconsensual contact with M.S. T.C.G. had a trial, where the sole factual issue was whether M.S. consented to the sexual contact. The trial evidence was as follows.

T.C.G. and M.S. were eleventh graders at the same high school. While they shared a common friend group, they did not know each other well and did not spend time together outside of school. Most of their communication with each other occurred through a social media platform. Although M.S. did not have romantic feelings for T.C.G., she suspected that T.C.G. had a "crush" on her.

The incident at issue occurred on an afternoon between October 25 and November 12, 2021. During that time, M.S. was a member of "art club," an afterschool program at the high school, which she attended on the day of the incident. T.C.G. was not a member of art club, but M.S.'s friend invited T.C.G. to participate that day. In addition to M.S. and T.C.G., five other students were present in art club.

T.C.G. sat next to M.S. at a table while M.S. worked on an art project. M.S. testified that during a "random, casual conversation," T.C.G. touched her left thigh with a firm grip. To "get away" from him, M.S. temporarily left the table to get some water. She returned to where she had been sitting. T.C.G. then began rubbing M.S.'s back on top of her clothing. Eventually, according to M.S., T.C.G. moved his hand "all the way under to the skin." M.S. got up, went to refill her paint, and returned to her seat next to T.C.G.

Upon M.S.'s return, T.C.G. again touched her, this time on her stomach under her clothes. T.C.G. moved his hand to M.S.'s breasts. He touched M.S. over her bra and squeezed her breasts. While touching M.S., T.C.G. conversed with other students in the room. M.S. did not know whether any other students observed T.C.G. touching her, but she suspected someone did.

M.S. again got up from her seat, and this time she intentionally stayed far away from T.C.G. When art club concluded, M.S. was speaking with a friend when T.C.G. approached her from behind and hugged her. T.C.G. pulled M.S. on top of him while he laid back on a table, and M.S. felt T.C.G.'s erection.

According to M.S., she was still and silent every time T.C.G. touched her. Then, she would leave the table in an attempt to convey to T.C.G. that she did not want to be touched. M.S. explained that she did not want to "make a big scene," so she did not say anything to T.C.G. when he touched her. But later that day, she sent T.C.G. a message stating "please don't do that again" and "please leave me alone." M.S. testified that she felt "uncomfortable," "gross," and "disgusting" when T.C.G. touched her.

The school contacted the police on November 24, 2021, to report the incident. An officer spoke with both M.S. and T.C.G.

During T.C.G.'s conversation with the officer, which was recorded, T.C.G. admitted to touching M.S. But T.C.G. told the officer that he believed the touches were consensual. T.C.G. acknowledged "hugging and cuddling M.S." while she worked on her art project. He also admitted that he touched M.S.'s "upper thigh outside of her clothes," that he hugged her, and that he reached under her shirt to touch her breasts. But T.C.G. said that

he told M.S. to tell him if she was ever uncomfortable, and he repeatedly asked M.S. while touching her whether she was comfortable. And, according to T.C.G., he later texted M.S. to determine whether she was uncomfortable because he sensed that she was, and she responded that she had been uncomfortable. T.C.G. was upset to learn that M.S. had felt uncomfortable because he believed he had sufficiently checked in with her during the incident. But T.C.G. also acknowledged that he should have interpreted M.S.'s silence or stillness as an expression of her discomfort. Still, T.C.G. told the officer, "I really do not think I did anything bad. I had no malintent."

In a previous criminal sexual conduct case, T.C.G. received a stay of adjudication. As evidence of T.C.G.'s knowledge in the case involving M.S., the district court allowed the state to introduce evidence of T.C.G.'s probation conditions in the earlier case, which included programming on consent and sexual boundaries.[1]

The district court determined that the evidence established T.C.G.'s guilt of fifth-degree criminal sexual conduct beyond a reasonable doubt. In addressing T.C.G.'s consent defense, the district court found that M.S.'s "silence and stiffness" and repeated departures from the table showed her lack of consent. The district court also found that M.S. never affirmatively consented, with words or behavior, to T.C.G.'s touching. And the district court found that T.C.G. acknowledged knowing that M.S. had been uncomfortable during the encounter.

[1] The district court allowed the evidence under Minnesota Rule of Evidence 404(b), which permits evidence of other crimes or acts under limited circumstances, including to show a person's knowledge.

After finding T.C.G. guilty, the district court granted T.C.G.'s request for a stay of adjudication. The district court placed T.C.G. on juvenile probation during the period of the stay.

T.C.G. appeals.

DECISION

T.C.G. argues that the trial evidence was insufficient to support the district court's finding of guilt. Before considering T.C.G.'s argument, we note our standard of review. "In considering a claim of insufficient evidence, this court's review 'is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction,' is sufficient to allow the fact-finder to reach the verdict that it did." *In re Welfare of C.J.W.J.*, 699 N.W.2d 328, 334 (Minn. App. 2005) (quoting *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989)). We "must assume the fact-finder believed the state's witnesses and disbelieved any evidence to the contrary." *Id.* (citing *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989)). "The reviewing court will not disturb the verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense." *Id.* (citing *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988)). Appellate courts "use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence." *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

"A person is guilty of criminal sexual conduct in the fifth degree if . . . the person engages in nonconsensual sexual contact." Minn. Stat. § 609.3451, subd. 1a(1). To

establish guilt, the state must prove four elements: "(1) intentional touching of an intimate area . . . ; (2) lack of consent of the victim; (3) the touching was done with sexual or aggressive intent; and (4) date and place of the act." *In re Welfare of J.J.R.*, 648 N.W.2d 739, 742 (Minn. App. 2002) (citing 10 *Minnesota Practice*, CRIMJIG 12.52 (1999)). "Intimate parts" are defined by statute as, "the primary genital area, groin, inner thigh, buttocks, or breast of a human being." Minn. Stat. § 609.341, subd. 5 (2020). Minnesota law defines "consent" as "words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor." Minn. Stat. § 609.341, subd. 4(a) (2020). Consent does not exist simply because of "the existence of a prior or current social relationship between the actor and the complainant." *Id.* Consent is also not established if "the complainant failed to resist a particular sexual act." *Id.* Finally, to convict a defendant, the state must prove each element of a charged crime beyond a reasonable doubt. U.S. Const. amends. V, XIV; Minn. Const., art. I, § 7; *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020).

The only factual issue at trial was whether M.S. consented to T.C.G.'s touches of her breasts.[2] On appeal, T.C.G. argues that the state's evidence failed to establish that the touching was nonconsensual.

As a threshold matter, T.C.G. asks us to review the evidence of consent through the lens of a "reasonable juvenile." T.C.G. acknowledges that we explicitly rejected this standard in *In re Welfare of A.A.M.*, 684 N.W.2d 925, 927-28 (Minn. App. 2004), *rev.*

[2] Although M.S. reported other nonconsensual touching, the state alleged that the touching of M.S.'s breasts constituted the offense of fifth-degree criminal sexual conduct.

denied (Minn. Oct. 27, 2004). But, T.C.G. argues, we should reconsider *A.A.M.* because it is an older decision, it provided no rationale for rejecting a reasonable-juvenile standard, and new developments in law and science require courts to consider "a juvenile's diminished level of maturity and ongoing brain development."

We reject T.C.G.'s invitation to overrule *A.A.M.* We must follow our own precedents. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) ("[I]t is the responsibility of appellate courts to decide cases in accordance with law . . . ."); *State v. Chauvin*, 955 N.W.2d 684, 686-87 (Minn. App. 2021) (stating that the court of appeals is bound by its own precedential decisions), *rev. denied* (Minn. Mar. 10, 2021). Moreover, as an error-correcting court, our role is not to create law. *See Lake George Park, L.L.C. v. IBM Mid-America Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998) (stating that "[t]his court, as an error correcting court, is without authority to change the law"), *rev. denied* (Minn. June 17, 1998).

Applying our established standard of review, we also determine that the trial evidence was sufficient to establish M.S.'s lack of consent to the sexual contact. As noted, "consent" means "words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act." Minn. Stat. § 609.341, subd. 4. M.S. said no words and engaged in no overt actions that would have conveyed to T.C.G. that she consented to the touching of her breasts. There was also ample evidence showing that M.S. did not consent. M.S. was silent and still whenever T.C.G. touched her. She repeatedly left the table in response to T.C.G.'s touching. And T.C.G. recognized that M.S. was uncomfortable during the encounter. Viewing the evidence in the light most favorable to

the district court's finding of guilt, *C.J.W.J.*, 699 N.W.2d at 334, there was sufficient evidence to prove beyond a reasonable doubt that T.C.G. committed the offense of fifth-degree criminal sexual conduct.

Affirmed.