

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1418**

State of Minnesota,
Respondent,

vs.

Faissal Bouanane,
Appellant.

**Filed August 5, 2024
Affirmed
Schmidt, Judge**

Carver County District Court
File No. 10-CR-22-535

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

Mark Metz, Carver County Attorney, Cassandra K. Shepherd, Assistant County Attorney,
Chaska, Minnesota (for respondent)

Kirk M. Anderson, Anderson Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Cochran, Judge; and
Ede, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this direct appeal of appellant Faissal Bouanane's conviction of second-degree criminal sexual conduct, Bouanane argues that (1) the evidence was insufficient to prove beyond a reasonable doubt that he acted with sexual intent, (2) the district court abused its

discretion by admitting evidence of appellant's prior contacts with the victim, and (3) the district court erred by admitting his non-custodial statements to police. We affirm.

FACTS¹

A.G., a 12-year-old girl, was friends with Bouanane's daughter, T.B., and frequently spent time with T.B. at Bouanane's home. On June 25, 2022, A.G. and T.B. played computer games while lying on their stomachs on T.B.'s bed. Bouanane entered the bedroom and moved his hands down A.G.'s back. Bouanane then placed his left hand on A.G.'s left shoulder, slid his right hand underneath her chest, and squeezed her breast over her clothing. With his hand still on A.G.'s shoulder, he pushed A.G. down into the bed and squeezed her breast harder. A.G. was unable to push Bouanane away, but managed to adjust the way she was lying so that Bouanane's hand was no longer on her breast.

T.B. got up to use the restroom. Bouanane then put his head on A.G.'s upper thigh and talked to her. A.G. was in shock, uncomfortable, and scared. When T.B. returned, Bouanane left the bedroom. A.G. continued playing with T.B. for approximately ten more minutes, then left for home. A.G. did not mention the incident to T.B. A.G. believed that T.B. did not notice what happened because T.B. was focused on the computer game.

When A.G. returned home, she told her stepmother what happened. Her stepmother immediately told A.G.'s father. A.G. described the incident to her father while crying and shaking. Her father called the police. A sergeant and an officer arrived and interviewed A.G. with her father and stepmother present.

¹ The facts are derived from the evidence presented at trial.

Police then interviewed Bouanane for approximately 30 minutes; the interview was recorded on the officer's body-worn camera. The police informed Bouanane that they had received a call about potential inappropriate contacts with a young girl and asked Bouanane what had happened that day. The officers and Bouanane spoke in a calm, conversational tone throughout the interview. And although English is not Bouanane's first language, Bouanane and the officers appeared to understand each other and Bouanane never asked for an interpreter. Bouanane denied touching A.G. inappropriately and repeatedly claimed that he only tapped her on her back to get the girls to quiet down. Bouanane explained that if A.G. thought he touched her inappropriately, he may have touched the side of her back or breast by accident, but he maintained that he did nothing wrong.

In the days following the incident, A.G. was uncharacteristically anxious. She was also afraid to be left alone.

Respondent State of Minnesota charged Bouanane with second-degree criminal sexual conduct. *See* Minn. Stat. § 609.343, subd. 1a(e) (2022). Prior to trial, the state moved to introduce evidence that Bouanane had touched A.G.'s thigh on prior occasions. The district court granted the motion to admit the evidence.

At trial, A.G. testified that Bouanane had touched her upper thigh on at least ten prior occasions, beginning when A.G. was eight years old. A.G. also described Bouanane's actions on the date of the offense, including touching and squeezing her breast.

A.G.'s father testified that when officers interviewed A.G. on the night of the incident, A.G. said Bouanane had touched her "nine or ten other times" in the past. The prosecutor asked about the other incidents, "What did she say had happened before?"

Following an off-the-record bench conference, the prosecutor reframed the question by asking A.G.’s father, “Those touches that she provided to you were resting his hand on her thigh, correct?” A.G.’s father answered, “Yes.” After A.G.’s father’s testimony finished, the district court instructed the jury, “Mr. Bouanane has not been charged with any crime other than the alleged incident on June 25, 2022. There is no allegation that any touches that may have occurred prior to that alleged incident are criminal in nature.”

Following trial, the jury found Bouanane guilty of second-degree criminal sexual conduct. The district court imposed a stayed sentence of 36 months.

Bouanane appeals.

DECISION

I. The evidence was sufficient to prove that Bouanane acted with sexual intent.

Bouanane argues that the state failed to prove his guilt of second-degree criminal sexual conduct beyond a reasonable doubt because the evidence was insufficient to prove that he acted with sexual intent. “A person who engages in sexual contact with anyone under 18 years of age is guilty of criminal sexual conduct in the second degree if . . . the complainant is under 14 years of age and the actor is more than 36 months older than the complainant.” Minn. Stat. § 609.343, subd. 1a(e). For purposes of subdivision 1a(e), “sexual contact” means intentionally touching a complainant’s intimate parts or the clothing covering the complainant’s intimate parts without consent and with “sexual or aggressive intent.” Minn. Stat. § 609.341, subd. 11(a) (2022). “Sexual intent” is not defined by statute. *See* Minn. Stat. § 609.341 (2022).

The purpose of requiring the state to prove sexual intent is “to avoid criminalizing contact that is accidental or that serves an innocuous, non-sexual purpose.” *State v. Austin*, 788 N.W.2d 788, 792 (Minn. App. 2010), *rev. denied* (Minn. Dec. 14, 2010). “[A] showing of sexual intent does not require direct evidence of the defendant’s desires or gratification because a subjective sexual intent typically must be inferred from the nature of the conduct itself.” *Id.*; *see also State v. Ness*, 707 N.W.2d 676, 687 (Minn. 2006) (concluding that “[s]exual or aggressive intent [could] readily be inferred from the contacts themselves” when state proved that defendant touched victim’s intimate parts and “there could be no other reason” for defendant to do so). The “nature of the touching” may also “negate[] the possibility of an innocent explanation.” *State v. Vick*, 632 N.W.2d 676, 691 (Minn. 2001). The victim’s reaction to and perception of the defendant’s conduct is also relevant to sexual intent. *See id.* (concluding evidence was sufficient when “primary evidence” was victim’s “word and evidence of behavioral change”); *State v. Myers*, 359 N.W.2d 604, 607-08 (Minn. 1984) (concluding evidence was sufficient when victim gave “detailed description of the manner in which [defendant] perpetrated the abuse”).

The evidence of Bouanane’s intent is circumstantial. To evaluate the sufficiency of circumstantial evidence, we apply a two-step standard of review. *State v. Loveless*, 987 N.W.2d 224, 247 (Minn. 2023). First, we identify the circumstances proved at trial, resolving all factual disputes in the light most favorable to the verdict. *Id.* Second, we independently examine the reasonable inferences that may be drawn from those circumstances to determine whether the circumstances proved “are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted).

If we conclude that the only reasonable inferences from the circumstances proved support a finding of guilt beyond a reasonable doubt, we will affirm the conviction. *See State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010).

Viewing the evidence of sexual intent in the light most favorable to the verdict, and disregarding any evidence to the contrary, the state proved the following circumstances:

- Bouanane slid his hand underneath A.G.’s chest, squeezed her breast, then pushed her down into the bed and squeezed her breast harder.
- A.G. could not push Bouanane off of her, but managed to move so her breast was not in his hand.
- Bouanane laid his head on A.G.’s thigh after his daughter left the room.
- Bouanane’s actions made A.G. feel scared and uncomfortable.
- A.G. returned home ten minutes after the incident and reported it to her stepmother.
- A.G. cried and shook when telling her father what happened.
- When officers arrived, A.G. described the incident in detail.
- In the days following the incident, A.G. was uncharacteristically anxious and afraid to be left alone.

Next, we examine whether the reasonable inferences drawn from the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Id.* Intent can be inferred from Bouanane’s actions alone because it is reasonable to infer that squeezing A.G.’s breast indicates sexual intent. *See, e.g., Ness*, 707 N.W.2d at 687; *Vick*, 632 N.W.2d at 691. A.G. also believed Bouanane’s actions were sexual in nature: she unsuccessfully tried to push Bouanane away, she immediately reported the incident—while crying and shaking—to a trusted adult, and the incident left her anxious

and afraid. These circumstances, viewed as a whole, support a reasonable inference that Bouanane acted with sexual intent and are inconsistent with any rational hypothesis other than that Bouanane acted with such intent. We, therefore, conclude that the evidence was sufficient to prove Bouanane's conviction of second-degree criminal sexual conduct.

II. The district court acted within its discretion when it admitted evidence of Bouanane's prior contacts with A.G.

Bouanane contends that the district court abused its discretion by admitting evidence that he had touched A.G.'s thigh on prior occasions. "Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). To obtain a new trial, Bouanane must establish both that the court abused its discretion and that he was prejudiced. *See State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009).

We need not decide if the prior acts were appropriately admitted because, even if the evidence of the prior contacts should have been suppressed, admitting the evidence did not prejudice Bouanane. To obtain reversal of his conviction based on the erroneous admission of other-acts evidence, Bouanane must "demonstrate that the erroneous admission of evidence created a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *See State v. Riddley*, 776 N.W.2d 419, 427 (Minn. 2009) (quotation omitted). We examine the entire record to determine whether the evidence significantly affected the verdict. *State v. Jaros*, 932 N.W.2d 466, 474 (Minn. 2019). In doing so, we consider whether: (1) the state presented other evidence on the issue for which the other-acts evidence was offered, (2) the district court issued

cautionary instructions, (3) the state relied on the inadmissible evidence in its closing argument, and (4) other evidence of guilt was overwhelming. *Riddley*, 776 N.W.2d at 428.

First, the state presented other evidence relevant to Bouanane's sexual intent, including A.G.'s testimony and prior consistent statements that Bouanane squeezed her breast, which made her uncomfortable and scared. The evidence further showed A.G. was crying and shaking when disclosing to her father and was then anxious and afraid to be left alone in the days that followed. Second, the district court issued a cautionary instruction immediately after A.G.'s father testified about the prior contacts. We presume that the jury followed the district court's instructions, *see State v. Matthews*, 779 N.W.2d 543, 550 (Minn. 2010), and only focused on the June 25, 2022 incident when considering whether to convict. Third, the state's closing argument never mentioned the prior contacts. Finally, the other evidence of guilt was strong. A.G.'s testimony, standing alone, was enough to show beyond a reasonable doubt that Bouanane acted with sexual intent when he grabbed and squeezed her breast. *See Ness*, 707 N.W.2d at 691 (concluding that the admission of other-acts evidence was not prejudicial because the district court determined that the victim and another witness's testimony proved sexual intent). A.G.'s father's testimony that A.G. was crying and shaking when she told him what happened, and that she was anxious and afraid in the days following the incident, corroborated A.G.'s testimony.

Without deciding whether the district court abused its discretion in admitting the evidence of Bouanane's prior contacts with A.G., we conclude that the evidence did not prejudice Bouanane and that any error was harmless. All four factors that we consider demonstrate that any error did not significantly affect the verdict.

III. The district court did not err by denying Bouanane’s motion to suppress his non-custodial statements to police.

Bouanane contends that the district court erred by admitting the statements he made to police when they interviewed him outside of his home, arguing that his statements were involuntary because they were a product of police coercion. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits the admission of an involuntary or coerced confession. *State v. Nelson*, 886 N.W.2d 505, 509 (Minn. 2016). When a defendant seeks to suppress a confession as involuntary, the state must prove by a preponderance of the evidence that the confession was voluntary. *State v. Zabawa*, 787 N.W.2d 177, 182 (Minn. 2010). We review the voluntariness of a confession de novo “based on all factual findings that are not clearly erroneous.” *State v. Farnsworth*, 738 N.W.2d 364, 373 (Minn. 2007) (quotation omitted).

Voluntariness is determined by examining the “effect that the totality of the circumstances had upon the will of the defendant and whether the defendant’s will was overborne when he” made the statements. *State v. Pilcher*, 472 N.W.2d 327, 333 (Minn. 1991). “Confessions need not be in a custodial setting to be involuntary,” *State v. Jensen*, 349 N.W.2d 317, 320 (Minn. App. 1984), but whether a suspect is in custody is relevant to whether an interrogation is coercive. *State v. Edwards*, 589 N.W.2d 807, 813 (Minn. App. 1999) (stating that “[t]he nature of the interrogation was non-coercive” when suspect “was not handcuffed, threatened, cajoled, or placed under arrest”), *rev. denied* (Minn. May 18, 1999); *State v. Martinson*, 422 N.W.2d 282, 287-88 (Minn. App. 1988) (stating evidence insufficient that defendant’s “will was overborne”

because she was aware that “she was free to go at any time during the interviews”). We also consider whether the police used “violence or direct or implied promises calculated to induce the confession.” *State v. Budke*, 372 N.W.2d 799, 803 (Minn. App. 1985).

At the outset, we question whether Bouanane’s statements constituted a confession. During the interview, Bouanane consistently maintained that he never inappropriately touched A.G. Bouanane insisted only that *if* what A.G. was saying was true, Bouanane only meant to tap her back and “maybe” touched the side of her back or her breast by mistake. Bouanane categorically denied having any sexual intent. Without a *confession*, Bouanane’s statements raise no due process concerns. Nonetheless, we will analyze the issue as if an inference of a confession could be made from Bouanane’s statements.

Bouanane does not challenge on appeal the district court’s determination that he was not in custody during the interview. And we agree with the district court that he was not. The interview took place in the front yard of Bouanane’s home and he moved around freely during the interview. Because Bouanane was not in custody, officers were not required—as Bouanane now argues on appeal—to stop the questioning when Bouanane asked if he needed an attorney. *See State v. Ronnebaum*, 449 N.W.2d 722, 724 (Minn. 1990) (“a suspect has no right to counsel, even if he asks for it, if no charge has been filed against him” and he is not in custody).

Bouanane argues the statements should have been suppressed because English is not his first language and the officers never asked if he needed an interpreter. But the body-camera footage shows that Bouanane appeared to have no difficulty conversing with the officers. Since Bouanane was not in custody and had no issue understanding the

conversation, the officers had no obligation to offer an interpreter. *See* Minn. Stat. §§ 611.30-.32 (2022) (guaranteeing the right to an interpreter when, upon apprehension or arrest, a person cannot fully understand charges against them because of “difficulty in speaking or comprehending the English language”).

The district court also found that the interrogation lasted 30 minutes; the tone of the conversation was calm and deliberate; the officers did not make any promises or threats; Bouanane was not deprived of any physical needs, family, or friends; and Bouanane was of sufficient age, maturity, education, and experience to hold a conversation with the officers. These detailed findings all find support in the record and are not, therefore, clearly erroneous. The district court acted well within its discretion by admitting Bouanane’s non-custodial statements to police because the record supports the district court’s conclusion that Bouanane’s will was not overborne and that his statements were voluntary.

We further conclude that any possible error was harmless. *See State v. Forcier*, 420 N.W.2d 884, 887 (Minn. 1988) (stating that an erroneously admitted confession is harmless if “the admission of the statement did not have a substantial or significant impact on the verdict” beyond a reasonable doubt (emphasis omitted)). The state’s case, even without the statements, was strong. *See id.* (determining that error in admitting confession was harmless based on the strength of the state’s case). Bouanane’s prosecution and conviction was not a result of his statements to police.²

Affirmed.

² We also find Bouanane’s interpreter argument unconvincing because Bouanane declined an interpreter throughout the entire criminal proceedings.