

*This opinion is nonprecedential except as provided by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
A25-0782**

State of Minnesota,
Respondent,

vs.

Sergio Morocho,
Appellant.

**Filed April 13, 2026
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-24-3068

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

Mary F. Moriarty, Hennepin County Attorney, Nicholas G. Kimball, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Joshua S. London, London Defense, P.L.L.C., Minneapolis, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Larkin, Judge; and Segal, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this appeal from a judgment of conviction for second-degree criminal sexual conduct, appellant argues that (1) the evidence was insufficient to support the jury's guilty verdict and that (2) the district court erred by excluding evidence that the victim had made similar allegations against his father. We affirm.

FACTS

In February 2024, respondent State of Minnesota charged appellant Sergio Morocho with second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1a(e) (2022). The complaint alleged that the victim was twelve years old and had reported that Morocho, his uncle, inappropriately touched the victim's penis in a way that made him feel uncomfortable.

Before trial, the state sought to exclude statements that the victim made during a recorded interview at the Midwest Children's Resource Center alleging similar conduct by his father, as well as testimony from the victim's father about those allegations. In the recorded interview, the victim described how Morocho had touched him and how it made him feel. He also stated that his father—who is Morocho's brother—had touched him in a similar way. But the victim explained that his father's touching did not make him feel weird because it was his actual father, his father did it in a playful way, and his father did not hold him down. The victim explained that Morocho did not touch him in a playful way.

Morocho objected to redaction of the recorded interview based on the rule of completeness and to the exclusion of the testimonial evidence based on relevance. The district court admitted the interview as evidence, as redacted, and it was played for the jury.

At trial, the victim testified that when he was approximately 11 years old, he frequently attended family gatherings with his father's side of the family. These get-togethers usually occurred every other week for things like cookouts, holidays, and birthdays. Approximately 30 people attended. The gatherings were held at various family members' homes. Morocho attended these family gatherings.

Evidence at trial showed that the victim began to avoid Morocho because Morocho would touch, hold, or grab the victim's penis over his clothes when they were shaking hands or when Morocho was holding the victim by the shoulders. Morocho would sometimes stop if the victim told him to stop. But sometimes Morocho would not stop unless the victim pushed him or backed away. And Morocho would sometimes get mad when the victim pushed him away. In his recorded interview, the victim explained that Morocho would sometimes try to reach into the victim's pants, but he never managed to do so before the victim pushed him away. Because of these incidents, the victim stopped wearing shorts and bought a belt to feel safer. Morocho's conduct made the victim feel "[r]eally weird," and he never saw Morocho do this to anyone else. Morocho touched the victim this way "a bunch of times."

Morocho testified in his own defense at trial and claimed that he never touched the victim inappropriately. He testified that he told the police the same thing when they investigated the allegations. In addition, the victim's father, Morocho's wife, one of

Morocho's other brothers, the partner of another of Morocho's brothers, and Morocho's niece all testified that they had never seen Morocho touch the victim inappropriately.

The jury found Morocho guilty of second-degree criminal sexual conduct. The district court sentenced Morocho 36 months in prison and stayed that sentence for three years.

Morocho appeals.

DECISION

I.

Morocho contends that the evidence was insufficient to support the jury's guilty verdict. Specifically, he argues that the circumstantial evidence presented at trial does not support the conclusion that he acted with sexual or aggressive intent.

When considering a challenge to the sufficiency of the evidence to sustain a conviction, we "carefully examine the record to determine whether the facts 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. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). We view the evidence in the light most favorable to the verdict and assume the fact-finder believed the state's witnesses and disbelieved contrary evidence. *Id.* We defer to the jury's credibility determinations and will not reweigh the evidence on appeal. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009); *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002). We will not disturb a guilty verdict if the jury, acting with due regard for the presumption of innocence and requirement of proof beyond a reasonable doubt, could

reasonably have concluded that the state proved the defendant's guilt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

But if the state relied on circumstantial evidence to prove an element of an offense, as is the case here, we apply a heightened standard of review. *See State v. Harris*, 895 N.W.2d 592, 601-03 (Minn. 2017) (applying circumstantial-evidence standard to individual element of criminal offense that was proved by circumstantial evidence). Circumstantial evidence is “evidence from which the [fact-finder] can infer whether the facts in dispute existed or did not exist.” *Id.* at 599 (quotation omitted). “A state of mind generally is proved circumstantially, by inference from words and acts of the actor both before and after the incident.” *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000). “Intent is a state of mind,” which “is frequently proven with circumstantial evidence.” *State v. Irby*, 967 N.W.2d 389, 396 (Minn. 2021).

The Minnesota Supreme Court recently reiterated “our long-standing two-step circumstantial-evidence test.” *State v. Firkus*, ___ N.W.3d ___, ___, 2026 WL 517248, at *1 (Minn. Feb. 25, 2026). Under that test, we first “winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury’s verdict, which results in a subset of facts that constitute the circumstances proved.” *Id.* at *5 (quotations omitted). Next, “we consider whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* (quotations omitted). “During the second step, we do not defer to the factfinder but examine the reasonableness of the inferences ourselves.” *Id.* at

*9 (quotation omitted). “If the circumstances proved when viewed as a whole, support a reasonable inference that is inconsistent with guilt, the evidence is not sufficient to support the conviction and we must reverse.” *Id.* (quotations omitted). But appellate courts “will not reverse a conviction based on mere conjecture” or “speculation.” *Id.* (quotation omitted); *State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010).

Morocho was convicted under Minn. Stat. § 609.343, subd. 1a(e),¹ which required the state to prove “sexual contact.” For the purposes of the statute, sexual contact occurs when the actor engages in contact with “sexual or aggressive intent.” Minn. Stat. § 609.341, subd. 11(b) (2022).

Although the statute does not define “sexual or aggressive intent” we have stated that sexual intent exists if a person acts “based on sexual desire or in pursuit of sexual gratification.” *State v. Austin*, 788 N.W.2d 788, 792 (Minn. App. 2010), *rev. denied* (Minn. Dec. 14, 2010). “But 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

¹ Section 609.343, subdivision 1a(e), was enacted by the legislature in 2021 and became effective September 15, 2021. 2021 Minn. Laws ch. 11, art. 4, § 17, at 2041-44. The complaint alleged that the crime occurred between January 1, 2021, and September 19, 2023. The jury was also instructed that, to find Morocho guilty, the jury had to find that the criminal act took place between January 1, 2021, and September 19, 2023. Although this issue was not raised by the parties, we acknowledge that the date range includes a period of time before section 609.343, subdivision 1a(e), took effect. However, we are satisfied that the evidence introduced at trial—particularly the victim’s recorded statement that the last time Morocho assaulted the victim was in August 2023—showed that the criminal conduct occurred on at least one occasion after the statute took effect. Accordingly, to the extent that the date range in the complaint or jury instructions was erroneous, it did not affect Morocho’s substantial rights. *See* Minn. R. Crim. P. 31.01 (“Any error that does not affect substantial rights must be disregarded.”).

inferred from the nature of the conduct itself.” *Id.* Based on its common usage, “aggressive” means “[a]ssertive, bold, and energetic.” *The American Heritage Dictionary of the English Language* 33 (5th ed. 2018); see *State v. Thonesavanh*, 904 N.W.2d 432, 436 (Minn. 2017) (stating that if a statute does not provide a definition, we “look to dictionary definitions to determine the common and ordinary meanings of these terms”). The statute permits a conviction based upon the finding of either sexual intent or aggressive intent. *State v. Ahmed*, 782 N.W.2d 253, 256 (Minn. App. 2010).

Sexual or aggressive intent can be inferred from the nature of the conduct. *State v. Ness*, 707 N.W.2d 676, 687 (Minn. 2006); *State v. Vick*, 632 N.W.2d 676, 691 (Minn. 2001). This intent can be “established through repeated attempts to accomplish sexual contact.” *In re Welfare of T.J.C.*, 670 N.W.2d 629, 633 (Minn. App. 2003), *rev. denied* (Minn. Jan. 20, 2004). The victim’s reaction to and perception of the conduct may also be relevant to establishing sexual intent. *Vick*, 632 N.W.2d at 691 (concluding that the nature of the touching and the victim’s reaction to it was sufficient to prove sexual or aggressive intent); see also *Austin*, 788 N.W.2d at 792.

Viewing the evidence in the light most favorable to the verdict, the circumstances proved are as follows:

- When the victim was approximately 11 years old, he attended family gatherings approximately every other week with his father’s side of the family.
- The victim began to avoid Morocho because Morocho would touch the victim’s penis over his clothes when they were alone.

- Morocho's acts were preceded by Morocho staring or looking at the victim in a way that made him uncomfortable.
- Morocho would then touch, hold, or grab the victim's penis over his clothes when they were shaking hands or as he was holding the victim by the shoulders.
- When the victim told Morocho to stop, he sometimes would stop.
- But sometimes Morocho would not stop unless the victim pushed him or backed away.
- Morocho would sometimes get mad when the victim pushed him away.
- Due to this conduct, the victim stopped wearing shorts and bought a belt to feel safer.
- Morocho's conduct made the victim feel "[r]eally weird," and he never saw Morocho do it to anyone else.
- Morocho touched the victim this way multiple times.

The circumstances proved support a reasonable inference that Morocho acted with sexual or aggressive intent. The circumstances as a whole show that over the course of approximately two years, Morocho repeatedly touched, held, or grabbed the victim's penis over his clothes while physically restraining the victim by the hand or shoulder. This happened when the victim and Morocho were alone at family gatherings. Morocho continued to touch the victim this way even though the victim told Morocho to stop. And Morocho's conduct made the victim feel weird and unsafe, such that the victim tried to

avoid Morocho, stopped wearing shorts around Morocho, and bought a belt to prevent Morocho from touching him inside of his pants. These circumstances, taken together, show a pattern of intentional touching without innocent explanation. *See Vick*, 632 N.W.2d at 691 (noting that the location, duration, and repetition of the touching “negate[d] the possibility of an innocent explanation”).

As to whether the circumstances proved are consistent with a rational hypothesis other than guilt, Morocho claims “there is a possible innocuous reason for the contact.” Morocho suggests that the circumstances could support an inference that he was only performing a “jocular greeting” or “gentl[y] chiding.” Morocho relies on the absence of evidence that he rubbed the victim’s penis or touched himself while he touched the victim’s penis. But “[t]he absence of evidence in the record regarding certain circumstances does not constitute a circumstance proved from which reasonable inferences may be drawn.” *State v. Segura*, 2 N.W.3d 142, 158 (Minn. 2024).

If an alternative inference finds no support in the record, the inference is speculative. *Firkus*, 2026 WL 517248, at *13 n.14. We do not set aside verdicts “based on mere conjecture” or “speculation.” *Firkus*, 2026 WL 517248, at *9 (quotation omitted); *Al-Naseer*, 788 N.W.2d at 480. Because the only reasonable inference to be drawn from the circumstances proved is that Morocho acted with sexual or aggressive intent, the evidence is sufficient to support his conviction. We therefore do not disturb the verdict.

II.

Morocho contends that the district court violated his constitutional right to present a complete defense by excluding portions of the victim's recorded interview in which the victim alleged that his father had also touched his penis over his clothes.

"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). This is true even when, as is the case here, Morocho "claims that the exclusion of evidence deprived him of his constitutional right to a meaningful opportunity to present a complete defense." *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

The district court excluded portions of the victim's recorded interview under Minnesota Rule of Evidence 403, which provides that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

In response to Morocho's objection to the exclusion, the district court noted that "[t]he father is not on trial here," as well as its concern that the evidence would "confus[e] the jury about who[] [is] on trial here." The district court indicated that it did not "want two or three different trials in this case" and after hearing further arguments of counsel, ruled the evidence inadmissible under rule 403, explaining that the parties "need[ed] to

focus the evidence on the allegations as against Mr. Morocho and certain circumstances surrounding” the allegations.

Morocho argues that the exclusion prevented him “from arguing [,] if there was any touching by [Morocho], it was in the same ‘playful’ manner that [the victim’s] father touched him.” He asserts that the unredacted interview would have “place[d] the allegations in the proper context.” He suggests that, because the victim thought his father’s touching was playful, “[i]t is entirely possible that if the jury heard that [the victim’s] father engaged in this sort of conduct ‘playfully,’ then maybe [Morocho] was making a ham-fisted attempt at being playful as well.” According to Morocho, this evidence could have been used to negate Morocho’s sexual or aggressive intent.

We are not persuaded that the district court abused its discretion. Again, the district court stated its concern that it did not “want two or three different trials in this case,” and that admitting that evidence might confuse the jury “about who[] [is] on trial here.” That reasoning was sound. *See State v. Smith*, 876 N.W.2d 310, 331-32 (Minn. 2016) (affirming exclusion of evidence that risked creating a “trial-within-a-trial” that “would misdirect the jury away from the key inquiry” (quotation marks omitted)).

In sum, the district court did not abuse its discretion by excluding the evidence under rule 403.

Affirmed.