STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1352

State of Minnesota,
Respondent,

vs.

Ellric Alfred Giroux, III,
Appellant.

Filed August 21, 2023
Affirmed
Smith, Tracy M., Judge

Wilkin County District Court
File No. 84-CR-21-499

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Joseph P. Glasrud, Wilkin County Attorney, Breckenridge, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Smith, Tracy M., Judge; and Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from his judgment of conviction for second-degree criminal sexual conduct, appellant Ellric Alfred Giroux, III, argues that his conviction must be reversed because the state's evidence is insufficient to prove his guilt beyond a reasonable doubt. We affirm.

FACTS

In November 2021, police received a report indicating that, earlier that month, Giroux had inappropriately touched his cousin, nine-year-old J.L. Giroux was 25 years old. A child advocacy center conducted a forensic interview with J.L. Thereafter, a police detective conducted a *Mirandized* interview with Giroux,[1] during which Giroux admitted to touching J.L.'s groin. Respondent State of Minnesota charged Giroux with second-degree criminal sexual conduct under Minnesota Statutes section 609.343, subdivision 1a(e) (Supp. 2021) (sexual contact with victim under age 14 and defendant more than 36 months older).

At the jury trial, J.L. testified that, when she was at her aunt's house for her brother's birthday, Giroux touched her vagina with his hand, over her clothes. The state also presented portions of the forensic interview in which J.L. said that her cousin touched her vagina and that the touch was over her clothes.

[1] Under *Miranda v. Arizona*, an individual must be advised of their right to counsel prior to a custodial interrogation. 384 U.S. 436, 473 (1966).

Giroux did not testify, but the state presented portions of Giroux's interview with the detective. In it, Giroux initially denied touching J.L. After the detective pressed him, Giroux apologized for lying and said that he did not want to go back to prison. Giroux then told the detective that, while he had J.L. on his lap, he covered her with a blanket and rubbed her knee. After touching her knee, he "drift[ed] down to her groin." Giroux said that he "started rubbing her pubic bone" and was "on her groin like 30 seconds, maybe less, 25, 30 seconds."

When the detective asked Giroux's reason "for going from the knee to the groin area," Giroux explained, "It was a stupid decision to do sir and I hate myself for doing it. I know it can get me into a sh-t ton of trouble." When the detective asked again, Giroux said that "it was not for any sexual gratification whatsoever." He explained, "I know I did it for a reason and the reason is unclear to me." Later in the interview, Giroux said that he had been "in a trance."

The jury found Giroux guilty of second-degree criminal sexual conduct as charged. Giroux moved for judgment notwithstanding the verdict, contending there was no evidence about sexual intent. The district court denied the motion and convicted Giroux. The district court sentenced Giroux to 48 months in prison and stayed execution for 25 years.

Giroux appeals.

DECISION

Giroux argues that the state did not present sufficient evidence to support his conviction.

Minnesota Statutes section 609.343, subdivision 1a (Supp. 2021), requires that the state prove Giroux engaged in "sexual contact" with J.L. As related to the charge in this case, "sexual contact" means "the intentional touching by the actor of the complainant's intimate parts" if "committed with sexual or aggressive intent." Minn. Stat. § 609.341, subd. 11(b) (Supp. 2021). Giroux does not deny that he touched J.L. Instead, he argues that the state's evidence was insufficient to prove that he did so with sexual intent.[2]

The standard of review for evaluating the sufficiency of the evidence to support a conviction turns on whether the elements of an offense are adequately supported by direct evidence or whether proof of the elements depends on circumstantial evidence. *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017); *see also State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). "[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Harris*, 895 N.W.2d at 599 (quotation omitted). Circumstantial evidence is "evidence from which the factfinder can infer whether the fact in dispute existed or did not exist" and "always requires an inferential step to prove a fact that is not required with direct evidence." *Id.* (citation and quotations omitted).

The state relied on circumstantial evidence to prove Giroux's intent. We therefore apply the two-step analysis used to review the sufficiency of circumstantial evidence to support a conviction. *See Silvernail*, 831 N.W.2d at 598. First, we "identify the circumstances proved." *Id.* Because "the jury is in a unique position to determine the

[2] The state did not argue in the district court, and does not argue here, that Giroux acted with aggressive intent.

credibility of the witnesses and weigh the evidence before it," this step "requires an appellate court to winnow down the evidence presented at trial by resolving questions of fact in favor of the jury's verdict." *Harris*, 895 N.W.2d at 600. As a result, "[i]n determining the circumstances proved, we disregard evidence that is inconsistent with the jury's verdict." *Id.* at 601. Second, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Silvernail*, 831 N.W.2d at 599 (quotation omitted). In performing this second step, we do not defer to the jury's choice between reasonable inferences. *See id.* To sustain the conviction, the "[c]ircumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted).

Again, Giroux challenges the sufficiency of the evidence to prove sexual intent. "Sexual intent," as interpreted by caselaw, means that "the actor perceives himself to be acting based on sexual desire or in pursuit of sexual gratification" and "must be established 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). "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 inferred from the nature of the conduct itself." *Id.*

First, we identify the circumstances proved. The circumstances proved include the following: Giroux had J.L. on his lap and pulled a blanket over himself and J.L.; Giroux

rubbed J.L.'s knee and then moved his hand to her "groin," "over her pubic bone"; Giroux rubbed J.L.'s groin over her clothes for about 25 to 30 seconds; and, when asked why he touched J.L., Giroux explained, "It was a stupid decision to do sir and I hate myself for doing it. I know it can get me into a sh-t ton of trouble." When viewed as a whole, as Giroux concedes, the circumstances proved support a reasonable inference that Giroux acted with sexual intent.

Second, we determine whether the circumstances proved are consistent with any reasonable inference except for guilt. Giroux argues that the circumstances proved are consistent with the reasonable hypothesis that he did not act with sexual intent but rather "experienced a momentary loss of awareness of his limbs." The evidence he relies on to support such an inference are his statements to the detective that his conduct "was not for any sexual gratification whatsoever" and that he was "in a trance." But those statements, if accepted as true, are evidence that Giroux did not act with sexual intent and thus conflict with the jury's verdict. Because we must defer to the jury's credibility determinations and resolve questions of fact in favor of the jury's verdict, we do not consider those statements in identifying the circumstances proved or the inferences that may be drawn from them. *See Harris*, 895 N.W.2d at 600.

Based on the evidence properly considered in our review, we conclude that the circumstances proved are inconsistent with any reasonable hypothesis of innocence. The location of the contact alone—J.L.'s groin area—means that sexual intent can be "readily" inferred. *See State v. Ness*, 707 N.W.2d 676, 687 (Minn. 2006) ("In cases such as this one, sexual or aggressive intent can readily be inferred from the contacts themselves; here, there

could be no other reason for [defendant] to touch [alleged victim's] intimate parts."). Second, the nature of the conduct negates the inference that Giroux touched J.L. accidentally or innocently. While J.L. was on his lap, Giroux covered them both with a blanket. He began touching J.L.'s knee with his hand before moving his hand to her groin. Giroux then rubbed J.L.'s groin for about 25 to 30 seconds. Finally, Giroux described touching J.L. as a "bad decision" and told the detective that he "hate[d]" himself for it. These statements are inconsistent with the inference that Giroux had an innocuous, nonsexual purpose and consistent only with the inference that he touched J.L. for his sexual gratification. *See Austin*, 788 N.W.2d at 792. Because the only reasonable inference from the circumstances proved is that Giroux acted with sexual intent, the evidence is sufficient to support his conviction.

Affirmed.