

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1441**

State of Minnesota,
Respondent,

vs.

Fabian Jonathan Suggs,
Appellant.

**Filed September 25, 2017
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-15-29219

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

Appellant Fabian Jonathan Suggs was convicted of first- and second-degree criminal sexual conduct for sexual contact with his girlfriend's minor daughter. He argues

that the child's uncorroborated testimony was insufficient evidence to sustain his convictions. Because the child's testimony was consistent and specific, and Suggs admitted to having sexually contacted the child, we affirm.

FACTS

In 2015, Suggs lived with his girlfriend and her three children at an apartment in St. Louis Park. Suggs was often responsible for looking after the children because the girlfriend had a long commute to and from work. On one occasion, in the middle of the night, Suggs directed S.L., who was 11 years old and the eldest of the children, to get on her hands and knees. He pulled down her pants and underwear. He licked S.L. near her vagina. S.L. testified that Suggs also touched her vagina with his finger, but S.L. protested when Suggs said he was going to "stick it in." Suggs stopped and explained to S.L. that he was trying to discipline her.

On a separate occasion, according to S.L., Suggs instructed her to get on her hands and knees. He pulled down her pants and squeezed hand sanitizer out of a bottle, which ran down from S.L.'s anus to her vagina. S.L. said it felt like "a hundred pinches."

In early October 2015, S.L. told her mother that Suggs had been "touching me in my lower girl part, he had licked me in my lower girl part, he had burned me in my lower girl part."¹ Her mother told S.L. that she would talk with Suggs. Shortly thereafter, during an overnight at a friend's apartment, S.L. told her friend and the friend's mother that Suggs

¹ S.L. identified her vagina as her "lower girl part," clarifying that her lower girl part was "[w]here the baby comes out."

had touched her private parts. The friend's mother alerted the police, who arrived to conduct a welfare check.

Suggs was arrested and charged with first- and second-degree criminal sexual conduct in violation of Minnesota Statutes sections 609.342, subdivision 1(a); .343, subdivision 1(a) (2014).² In a *Mirandized* statement, Suggs admitted that he licked S.L.'s buttocks. During an interview at CornerHouse, a child-abuse evaluation center that provides forensic interview services and family resources, S.L. confirmed the occurrence of the sexual contacts. During that interview, S.L. stated specifically that it felt as if Suggs's tongue went inside her vagina during the licking incident. Due to a lapse in time between the incidents and police intervention, there was no sexual assault examination of S.L.

After a three-day trial, the jury found Suggs guilty of first- and second-degree criminal sexual conduct. The district court sentenced Suggs to 144 months' imprisonment and placed him on ten years' conditional release for the first-degree conviction and imposed no sentence for the second-degree conviction.³ Suggs appeals.

² At trial, the state amended the initial complaint to include the second-degree charge, but an amended complaint was not included in the district court record on appeal.

³ While the district court entered a judgment of conviction on both counts of criminal sexual conduct, the district court explained on the warrant of commitment that the sentence for the second-degree conviction "merged with sentence on [the first-degree conviction.]" *Cf.* Minn. Stat. § 609.035, subd. 1 (2014) (prohibiting sentencing for more than one offense arising out of the same course of conduct). Because Suggs was not sentenced on his second-degree conviction, we do not consider his challenge to that conviction. *See State v. Ashland*, 287 N.W.2d 649, 650 (Minn. 1979) (declining to review sufficiency challenge on unadjudicated counts where no sentence was imposed).

DECISION

Suggs argues that there was insufficient evidence to prove that he sexually penetrated S.L. We will not disturb a verdict if the jury, 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. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). In our review, we assume that the jury believed the state’s evidence and disbelieved any contrary evidence. *State v. Heiges*, 806 N.W.2d 1, 17 (Minn. 2011). This is true even if there are inconsistencies in the state’s case. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). And we defer to the jury’s credibility determinations. *See State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016).

To obtain a conviction for first-degree criminal sexual conduct, the state must prove that Suggs “engage[d] in sexual penetration with” S.L. Minn. Stat. § 609.342, subd. 1. Any intrusion, however slight, into the genital or anal openings constitutes sexual penetration. Minn. Stat. § 609.341, subd. 12(2) (2014). Sexual penetration also includes cunnilingus, which is defined as any contact with the female genital opening of one person with the mouth, tongue, or lips of another. *Id.*, subd. 12(1); *see 10 Minnesota Practice*, CRIMJIG 12.05 (2014).

Even if we were to address his challenge, as addressed below, Suggs does not dispute that he admitted to licking S.L.’s buttocks in his *Mirandized* statement. We conclude that his admission corroborated S.L.’s statement and that constituted sufficient evidence for the jury to conclude that he touched S.L.’s private parts and that he was guilty of second-degree criminal sexual conduct. *See* Minn. Stat. §§ 609.343, subd. 1; .341, subds. 5, 11(a)(i) (stating that to constitute second-degree criminal sexual conduct, the state must prove that the defendant touched the victim’s “intimate parts,” which includes the buttocks).

Suggs contends that there was insufficient evidence to sustain his conviction. He argues that, given inconsistencies in S.L.'s testimony and the suggestive nature of the CornerHouse interview, corroboration of S.L.'s testimony was necessary. We disagree.

Overall, S.L.'s testimony was both consistent and specific. At trial S.L. testified that Suggs had inappropriately touched her on two separate occasions. S.L. explained that Suggs was licking her labia near her vagina in one incident. He also used his finger, but S.L. said his finger "didn't go in but he was touching my lower girl part." In critical portions, S.L.'s testimony at trial was also consistent with her statement in a prior recorded CornerHouse interview, which was played for the jury. During her interview, she explained that Suggs licked her between her anus and vagina, "close to where you have a baby." In the video, she pointed to an anatomical doll to demonstrate where Suggs had licked her. She stated specifically that it felt as if Suggs's tongue went inside her vagina during the licking incident. And she said that she felt his cold finger touching her vagina. *See* Minn. Stat. § 609.341, subd. 12(2) (stating that any intrusion, however slight, into the genital or anal openings establishes sexual penetration). We recognize that while S.L. was inconsistent about details (e.g., mother's presence in the home during the incidents and the precise location of the sexual contact), S.L. consistently asserted that the sexual contacts occurred. *Cf. State v. Mosby*, 450 N.W.2d 629, 634 (Minn. App. 1990), *review denied* (Minn. Mar. 16, 1990) ("[I]nconsistencies are a sign of human fallibility and do not prove testimony is false, especially when the testimony is about a traumatic event."). And her recorded interview included specific evidence of sexual penetration. Nor does our review reveal that the interview was overly suggestive. For instance, while Suggs takes issue with

the interviewer introducing the word “tongue”, this took place *after* S.L. explained that Suggs had licked her.

In light of S.L.’s unwavering assertion that sexual contact occurred, corroboration of S.L.’s testimony was unnecessary. First, inconsistencies in the state’s case do not require reversal of the jury verdict. *See Pieschke*, 295 N.W.2d at 584. Second, credibility determinations are for the jury. *Barshaw*, 879 N.W.2d at 366. And we assume that the jury resolved minor inconsistencies in S.L.’s testimony in favor of the state. *See Heiges*, 806 N.W.2d at 17. Third, the victim’s testimony in cases of first-degree criminal sexual conduct need not be corroborated. Minn. Stat. § 609.347, subd. 1 (2014). Like the principal case that Suggs relies upon, *State v. Ani*, 257 N.W.2d 699, 700 (Minn. 1977), corroboration is unnecessary where the victim’s testimony was “not contradicted” and “corroborated by other evidence.”

Significantly, Suggs corroborated S.L.’s testimony. In his statement, Suggs explained that the incident occurred in the living room and in the early morning. He had asked S.L. to get on her hands and knees. He admitted to removing her pants and licking her. Although he denied licking S.L.’s vagina, Suggs acknowledged that he licked S.L. near her anus, which he suspected that she had confused with her vagina when she spoke with police. We conclude that there was sufficient evidence for the jury to conclude that Suggs sexually penetrated S.L.

Affirmed.