**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A18-0324**

State of Minnesota,
Respondent,

vs.

Isaias Hidalgo Morales,
Appellant.

**Filed August 6, 2018**
**Affirmed**
**Florey, Judge**

Dakota County District Court
File No. 19HA-CR-16-4470

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

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Carrie H. Peltier, Peltier Law, P.L.L.C., Roseville, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Halbrooks, Judge; and Kalitowski, Judge.

**U N P U B L I S H E D  O P I N I O N**

**FLOREY**, Judge

Appellant challenges his conviction of second-degree criminal sexual conduct, arguing that the jury disregarded the presumption of innocence and the requirement of proof beyond a reasonable doubt. We affirm.

## FACTS

Appellant Isaias Hidalgo Morales was charged with second-degree criminal sexual conduct after 10-year-old C.F. told an investigator in August 2016 about sexual contact that occurred between herself and appellant in December 2015.

At trial, C.F. testified that her aunt is married to appellant, and C.F. would regularly visit her aunt. On two occasions in December 2015, appellant touched her inappropriately. On both occasions, a group of family members was present at the home for a party. C.F. continued to visit her aunt's house after the incidents.

According to C.F., the first time it happened, "the little kids were fighting in the room, and [she] tried to get them out." Then, "[appellant] got [her] into the room and he pushed [her] harshly on the bed." C.F. tried to leave. One of appellant's children got hurt as appellant made the children leave the room. Appellant shut the door, ran to turn off the lights, and then began touching her while she was on the bed. Appellant touched her "breast and [her] private spot" with his hand over her clothes. He was standing and "touching [her] over [her] clothes and he was trying to go under, but [she] kept on hitting him so he would stop." Appellant "tried to push in [her] private spot" over her clothes. C.F. identified her "private spot" as her vagina.

The second time it happened, C.F. was exiting the bathroom when appellant "tried to carry [her] . . . and he brought [her] into the room and then he started—he closed the door, he turned off the lights, and then one of the kids tried to get in and they hurt his fingers, and then he started touching [her]." Appellant touched her "chest and [her] private spot" over her clothes.

C.F.'s statement to an investigator was also played to the jury. Her statement to investigators mirrors her testimony at trial. She described the incidents to the investigator as occurring in her aunt's room with appellant closing the door and keeping her in the room, appellant turning off the light, a child getting hurt, appellant touching C.F.'s breast and vaginal area over her clothes while she hit appellant and tried to get away, and appellant trying to "push into" her private spot with a finger.

Appellant waived his right to remain silent and testified in his defense. Appellant testified that he "roughhouses" with his kids and would roughhouse with C.F. too when she was playing with the kids, but he denied ever touching C.F.'s breast or vaginal area.

The jury returned a guilty verdict. This appeal followed.

**D E C I S I O N**

In challenging the jury's verdict, appellant argues the "timing, manner, and surrounding facts make the victim's story implausible." He argues the presence of family in the house, C.F.'s continued visits with appellant, the rushed touching, and the testimony that appellant harmed his own children to get to C.F., make C.F.'s testimony "completely unbelievable." Therefore, he argues, the jury "fail[ed] in their duty to act with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt."

Appellant essentially challenges C.F.'s credibility and the evidence upon which the jury relied. In reviewing a claim of insufficient evidence, appellate courts review the record to determine whether the evidence, when viewed in the light most favorable to the verdict, is sufficient to allow the jury to reach a guilty verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that the jury "believed the state's witnesses and disbelieved

any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably find the defendant guilty of the offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). Under Minnesota law, "the testimony of a [sexual-assault] victim need not be corroborated." Minn. Stat. § 609.347, subd. 1 (2016).

To convict appellant of second-degree criminal sexual conduct, the state was required to prove that appellant engaged in sexual contact with C.F. when she was under 13 years of age and that appellant is more than 36 months older than she is. *See* Minn. Stat. § 609.343, subd. 1(a) (2014). To prove "sexual contact" the state must show that appellant "intentional[ly] touch[ed] . . . the complainant's intimate parts" or "the clothing covering the immediate area of the intimate parts" and that he did so with "sexual or aggressive intent." Minn. Stat. § 609.341, subd. 11(a)(i), (iv) (2014). "'Intimate parts' includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being." *Id.*, subd. 5 (2014).

Intent "is generally proved by inferences drawn from a person's words or actions in light of all the surrounding circumstances." *State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996). This court has construed second-degree criminal sexual conduct to be a "specific-intent crime," requiring the state to prove the defendant "intend[ed] the specific result of touching intimate body parts"; the statute does not criminalize "merely reckless or negligent" conduct, *State v. Austin*, 788 N.W.2d 788, 792-93 (Minn. App. 2010), *review denied* (Minn. Dec. 14, 2010), or a touch with a benign intent, such as in the course of

caregiving activities, *State v. Vick*, 632 N.W.2d 676, 691 (Minn. 2001). Because the state was required to prove that appellant intentionally touched C.F.'s private parts with "sexual or aggressive intent" a circumstantial-evidence analysis is required. We apply a two-step analysis in determining whether circumstantial evidence is sufficient to support a guilty verdict. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010). First, we identify the circumstances proved, deferring to the jury's verdict and, second, independently determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

C.F.'s testimony establishes the following circumstances: (1) in December 2015, C.F. was nine and appellant was 29; (2) C.F. routinely spent time with appellant and his family; (3) on two occasions in December, appellant hosted parties with C.F. and other family members present; (4) on both occasions, appellant lifted C.F. and placed her on his bed; (5) appellant turned off the lights and shut the door, after removing other children from the room; (6) he then touched the clothing over C.F.'s breasts and vagina and tried to "push in" C.F.'s genital area with a finger; (7) C.F. repeatedly hit appellant to get him to stop and ran from the room.

These circumstances prove that contact occurred between appellant and the clothing immediately over C.F.'s genital area and breasts. While an accidental touch during horseplay would not be sufficient to establish guilt, the surrounding circumstances of this case demonstrate the contact was not accidental and was with sexual intent. C.F. testified that appellant turned off the lights, shut the door, removed any other children from the room, attempted to "push in" her genital area with a finger, and did so while C.F. struck at

him with the intent to get him to stop touching her. The privacy and the location of the touching are facts from which his intent is reasonably inferred. The circumstances are also sufficient to infer that appellant's contact with C.F.'s intimate parts was intentional and not the result of accidental contact during horseplay. The circumstances proved are consistent with guilt and inconsistent with any hypotheses other than guilt.

**Affirmed.**