STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1336

State of Minnesota,
Respondent,

vs.

Reuel Moshe Yehuda,
Appellant.

Filed August 12, 2019
Affirmed
Reilly, Judge

Blue Earth County District Court
File No. 07-CR-17-3946

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

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

Reuel Moshe Yehuda, Fayetteville, North Carolina (pro se appellant)

Considered and decided by Reilly, Presiding Judge; Hooten, Judge; and Klaphake, Judge.*

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

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

REILLY, Judge

In this direct appeal from judgment of conviction, appellant argues that (1) the evidence was insufficient to prove that he committed criminal sexual conduct, and (2) the trial court erred by convicting him of disorderly conduct because it is a lesser-included offense of criminal sexual conduct. Appellant also raises numerous pro se arguments. We affirm.

FACTS

On October 13, 2017, appellant Reuel Moshe Yehuda walked past L.W. and her friends, C.H. and B.A., as they were sitting on the front stoop of their apartment building. At this point, the victim's and the defendant's versions of events diverge. According to L.W., Yehuda came back to talk to her and her friends for approximately twenty minutes. The group talked about tattoos and L.W. pulled the neck of her shirt aside to show a tattoo on her shoulder. Yehuda asked if he could touch L.W.'s tattoo, and she agreed. Yehuda touched L.W.'s tattoo, but then grabbed and cupped L.W.'s breast—without her consent—for two to three seconds. L.W., C.H., and B.A. went inside their apartment building and called the police. However, according to Yehuda, he walked down the street and saw L.W. and her friends, but did not interact with them or touch L.W.'s breast.

The state charged Yehuda with fifth-degree criminal sexual conduct, in violation of Minn. Stat. § 609.3451, subd. 1(1) (2016), and disorderly conduct, in violation of Minn. Stat. § 609.72, subd. 1(3) (2016). The case proceeded to a jury trial; L.W., C.H., and B.A.

testified for the state and Yehuda testified in his own defense. At the conclusion of trial, the jury found Yehuda guilty of both counts.

Yehuda appeals.

D E C I S I O N

I.

Yehuda argues that the evidence was insufficient for the jury to find him guilty of criminal sexual conduct because the state did not prove that he acted with the requisite intent. To convict Yehuda of fifth-degree criminal sexual conduct, the state had to prove that he engaged in nonconsensual criminal sexual contact, which is defined as the nonconsensual touching of intimate parts "performed with sexual or aggressive intent." Minn. Stat. § 609.3451, subd. 1 (2016). Because intent is a state-of-mind requirement, it is generally proved through circumstantial evidence. *State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015).

When reviewing a conviction based on circumstantial evidence, appellate courts apply a two-step test to determine the sufficiency of the evidence. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). First, we must "identify the circumstances proved." *Id.* (citing *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010)). In identifying the circumstances proved, this court assumes that the fact-finder resolved any factual disputes in a manner that is consistent with its verdict. *Id.* Here, the state proved that: (1)Yehuda walked up to L.W., C.H., and B.A; (2) L.W. showed her tattoo to the group; (3) Yehuda asked L.W. if he could touch the tattoo on her shoulder; (4) Yehuda touched L.W.'s tattoo with his fingertips; (4) L.W. did not consent to any other touch; (5) Yehuda grabbed and

cupped L.W.'s breast with his entire hand for a period of two to three seconds; (6) Yehuda then smiled at L.W.; (7) L.W., C.H., and B.A. went inside behind a locked door and called police; and (8) L.W. described and later identified Yehuda.

Second, we independently examine the "reasonableness of the inferences that might be drawn from the circumstances proved," and then "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id*. (quotations omitted). Yehuda argues that the evidence is consistent with the rational hypothesis that he accidentally touched L.W.'s breast while attempting to touch her tattoo. However, it is not reasonable to believe that Yehuda touched L.W.'s breast by accident when he grabbed L.W.'s breast with his entire hand. Because the circumstances proved are inconsistent with any rational hypothesis except guilt, we determine that the evidence was sufficient to convict Yehuda of fifth-degree criminal sexual conduct.

II.

Yehuda argues, in the alternative, that his conviction for disorderly conduct must be vacated because it is a lesser-included offense of criminal sexual conduct.[1] Under Minn. Stat. § 609.04, subd. 1 (2018), a person may be convicted of either the crime charged or an included offense, but not both. Here, the district court did not explicitly state on the record or in its sentencing order whether Yehuda was adjudicated for only one or both charges.

[1] Generally, this court does not consider issues that were not presented to the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). The supreme court, however, has "held that an appellant does not waive claims of multiple convictions or sentences by failing to raise the issue at the time of sentencing." *Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007).

And we cannot look to the warrant of commitment because there is none in this case.[2] *See Spann*, 740 N.W.2d at 573 (noting that a written judgment of conviction provides "conclusive evidence of whether an offense has been formally adjudicated" (quotation omitted)). It is, however, uncontested that the district court imposed a sentence only for the criminal sexual conduct crime.[3] The supreme court has "long recognized that the 'conviction' prohibited by [section 609.04] is not a guilty verdict, but is rather a formal adjudication of guilt." *State v. Pflepsen*, 590 N.W.2d 759, 767 (Minn. 1999). Because nothing in the record indicates that Yehuda was formally adjudicated guilty of disorderly conduct, we need not continue our analysis.[4]

III.

Yehuda also raises several arguments in his pro se supplemental brief, including that the evidence was insufficient to support his conviction, the district court erred in its

[2] A warrant of commitment is required when a court "sentences a defendant for a felony or gross misdemeanor to the custody of the commissioner of corrections or to the superintendent of the workhouse or work farm." Minn. Stat. § 243.49 (2018). Though Yehuda was sentenced to 216 days in jail, he had credit for 216 days served, and therefore, no warrant of commitment was required.

[3] If a person is charged with multiple offenses arising from the same behavioral incident, punishment may be imposed for only one of the offenses. Minn. Stat. § 609.035, subd. 1 (2018); *see also State v. Bakken*, 871 N.W.2d 418, 423 (Minn. App. 2015), *aff'd*, 883 N.W.2d 264 (Minn. 2016). Here, the state does not dispute that both the criminal sexual conduct and the disorderly conduct arose out of the same course of conduct, but because Yehuda was only sentenced for one count, the parties do not raise a section 609.035 argument in this case.

[4] We also note that it is not clear from this record that the victim of the criminal sexual conduct, L.W., was the only victim of disorderly conduct because the state presented evidence that L.W.'s friends, C.H. and B.A., were also alarmed by Yehuda's offensive conduct.

exclusion of evidence, and his constitutional rights were violated because he did not have an impartial jury or a line-up.

a. Sufficiency of the Evidence

Yehuda argues that "the testimony [of three] college girls whom were intoxicating themselves at the time [of] the alleged incident . . . doesn't prove any element of the crime . . . beyond a reasonable doubt." We interpret this argument as an additional challenge to the sufficiency of the evidence. We note that because Yehuda, L.W., and witnesses, C.H. and B.A., testified, we must assume that the jury considered and disregarded Yehuda's version of events. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998) (An appellate court "assume[s] that the jury believed the state's witnesses and disbelieved contrary evidence."). Therefore, Yehuda's argument is without merit.

b. Exclusion of Evidence

Yehuda argues that the district court erred when it excluded the testimony of his witness on relevance grounds.[5] This court reviews a trial court's evidentiary ruling for an abuse of discretion. *State v. Jenkins*, 782 N.W.2d 211, 229 (Minn. 2010). The district court wrote its pretrial order:

> Defendant may not call [M.A.] as a witness because his testimony is irrelevant. In November 2017, the alleged Victim called police because someone was throwing rocks at her window. The police talked to [M.A.] and found he was trying to reach his friend, who lived in a different apartment. No arrests were made and no charges were filed. Further, [M.A.]'s

[5] Generally, evidence is relevant if it has "any tendency to make the existence of any [material] fact . . . more probable or less probable." Minn. R. Evid. 401. All parties are entitled to present relevant evidence at trial so long as the probative value of the evidence is not substantially outweighed by its prejudicial effect. Minn. R. Evid. 403.

> current charges for criminal sexual conduct have no relation to the alleged victim or Defendant's current case.

Yehuda claims that M.A.'s testimony was relevant because the victim identified both himself and M.A. as the perpetrator of the crime. Because nothing in the record supports Yehuda's claim, we see no abuse of discretion in the district court's determination that the witness's testimony was irrelevant.

c. Impartial Jury

Yehuda next argues that he was not provided an impartial jury because the jury was composed of "all females of European descent." Yehuda argues that the state systematically excluded all male jurors and therefore the *Duren* test was violated. In *Duren v. Missouri*, the Supreme Court held that,

> [i]n order to establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

439 U.S. 357, 364, 99 S. Ct. 664, 668 (1979). Here, after Yehuda passed the jury panel for cause and all peremptory challenges had been exercised, he argued that the jury was biased because there were no males on the panel. Yehuda's argument lacks merit because he has not alleged any facts that tend to show that the jury selection was improper or that the lack of men on his jury panel was due to systemic exclusion. Moreover, the record indicates that Yehuda himself exercised preemptory strikes on males from his jury pool.

d. Due Process Violation

Lastly, Yehuda argues that he was entitled to a photographic or in-person line-up. We interpret this argument to mean that the district court erred in admitting the identification of Yehuda because it was impermissibly suggestive. As a preliminary matter, Yehuda waived this argument by failing to support it with citation to legal authority. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (holding if the brief does not contain an argument or citation to legal authority in support of the allegations raised, the allegation is deemed waived); *see also State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) ("Arguments are forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred.").

Even if we determined that that the officer's actions constituted an impermissibly suggestive identification procedure, Yehuda's argument is unpersuasive because there is little likelihood of misidentification in this case. *See State v. Porter*, 411 N.W.2d 187, 190 (Minn. App. 1987) (analyzing the unlikeliness of misidentification in its analysis of the identification procedure). Here, the responding officer testified during trial that the victim and witnesses provided a description of the man, and reported that he was wearing a headlamp and had told the group that he lived in a camper that was parked on the street around the corner. The officer located the camper, ran the license plate of the attached vehicle, pulled up a photograph of the owner, and noted that the photograph matched the description that the victim had provided earlier. The officer showed the victim and the witnesses the photograph, and they positively identified the man in the photograph as the

man that assaulted L.W. Yehuda was wearing a headlamp when he answered the door of the camper and all three witnesses identified Yehuda at trial. There is little likelihood of misidentification in this case.

Affirmed.