STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1543

State of Minnesota,
Respondent,

vs.

Michael Steel,
Appellant.

Filed September 9, 2019
Affirmed in part, reversed in part, and remanded
Halbrooks, Judge

Hennepin County District Court
File No. 27-CR-16-21788

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, 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 Slieter, Presiding Judge; Halbrooks, Judge; and Connolly, Judge.

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

HALBROOKS, Judge

On appeal from final judgments of two convictions of and sentences for third-degree criminal sexual conduct and one conviction of electronic communication with a child,

appellant argues that his conviction of third-degree criminal sexual conduct involving force or coercion must be reversed because the state failed to prove that he used force or coercion to accomplish sexual penetration of the victim. Alternatively, appellant argues that if his conviction of third-degree criminal sexual conduct involving force or coercion is affirmed, his conviction of and sentence for age-based third-degree criminal sexual conduct must be reversed under Minn. Stat. §§ 609.035, .04 (2014) because it arises out of the same behavioral incident. We affirm in part, reverse in part, and remand for resentencing.

FACTS

In April 2016, 15-year-old G.T.C. connected on a social media app with "Macy," who he believed to be a teenage girl. G.T.C. and Macy exchanged messages, which were often sexually explicit in nature. G.T.C. believed that he was in love with Macy. After a week of messaging back and forth, Macy suggested that G.T.C. contact her "nudist uncle" and implied that G.T.C. should have a sexual relationship with him. Macy became increasingly insistent that G.T.C. contact her uncle and have a sexual relationship with him, and then send her photos of their sexual contact. Macy suggested that if G.T.C. engaged in sexual acts with her uncle, she would participate in sexual activity with G.T.C. G.T.C. initially resisted the suggestions but eventually agreed to text Macy's uncle after Macy emphasized that it was important to her.

After messaging with both Macy and her uncle, G.T.C. agreed to attend a party. Appellant Michael Steel sent an Uber to G.T.C.'s home in Cottage Grove, and G.T.C. snuck out of his house at approximately 10:00 p.m. G.T.C. thought he was going to a party to play video games, drink alcohol, and possibly see Macy.

The Uber dropped G.T.C. off at Steel's home, and Steel met G.T.C. at the door and told him to wait outside. Steel returned with car keys and sexual lubricant. He drove G.T.C. to the Millenium Hotel in downtown Minneapolis. Steel told G.T.C., "When we get to the hotel, we're going to get naked." G.T.C. stated that he did not "feel like doing that." But Steel responded, "We're going to" and "You're going to have to."

Around 11:00 p.m., Steel checked into the hotel and purchased alcoholic beverages, which he gave to G.T.C. After the two entered the hotel room, Steel locked the door. Steel then engaged in multiple sexual acts with G.T.C., including oral sex and anal penetration. G.T.C. later testified that he cooperated with Steel because he was afraid of what Steel might do if he resisted.

G.T.C. texted Macy to describe the sexual acts that he and Steel engaged in. He stated to her that he "did more than [he] thought" he would with her uncle. Macy later responded "Yay." But her communication with G.T.C. subsequently slowed and then ceased altogether.

In late May, after G.T.C.'s mother saw some of the explicit text messages, G.T.C. told her what had occurred. She contacted police. In the course of the investigation, G.T.C. gave multiple statements and interviews to police and identified Steel as the man who had sexually assaulted him.

The police executed a search warrant of Steel's home and electronic media. Steel was arrested and charged with two counts of third-degree criminal sexual conduct and one count of electronic communication with a child. Following a six-day jury trial, Steel was found guilty on all three counts. The district court imposed a sentence of 140 months on

count one (third-degree criminal sexual conduct, force/coercion), 160 months on count two (third-degree criminal sexual conduct, age), and 30 months, stayed, on count three (electronic communication with a child). This appeal follows.

D E C I S I O N

I.

Steel argues that the evidence is insufficient to sustain his conviction of third-degree criminal sexual conduct (force/coercion) in violation of Minn. Stat. § 609.344, subd. 1(c) (2014). In order to sustain a conviction under this statute, the state was required to prove that Steel intentionally penetrated G.T.C. without his consent, using force or coercion to accomplish penetration. Minn. Stat. § 609.344, subd. 1(c).

Force is defined as "bodily harm," including "physical pain." *See* Minn. Stat. §§ 609.02, subd. 7, .341, subd. 3 (2014). Minn. Stat. § 609.341, subd. 14 (2014), defines coercion as the use of "words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm . . . or the use by the actor of confinement . . . that causes the complainant to submit to sexual penetration or contact against the complainant's will." Coercion does not require "proof of a specific act or threat." Minn. Stat. § 609.341, subd. 14.

When reviewing a claim of insufficient evidence, this court reviews the record to determine whether the evidence, "when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach their verdict. . . . We assume that the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004) (citations omitted). This court will not "disturb

the verdict if the jury, while acting with proper regard for the presumption of innocence and regard for the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Id.* at 25-26.

G.T.C. testified at trial that he told Steel that he did not want to get naked or perform oral sex, but that Steel told him "You're going to have to" and "You're going to." G.T.C. stated that he was afraid of what would happen if he did not comply. G.T.C. also testified about the circumstances surrounding the penetration—he was lured to meet Steel by the fictional Macy and believed that he was going to a party.[1] Steel bought liquor at the hotel bar and gave it to G.T.C. before bringing him to the hotel room. G.T.C. testified that he was "scared," "did not know what to do," could not "think straight," and "just froze," and that he had no money or phone with him at the hotel, and no independent means of getting home. G.T.C. was confined in a locked hotel room with an adult stranger he did not know.

G.T.C. testified that when Steel locked the door he felt "worried" about "what was going to happen." G.T.C. stated that he was "just doing what [Steel] wanted me to do" because he "was afraid if I didn't do what [Steel] did I didn't know what was going to happen." G.T.C. testified that Steel told him "I want to get sucked off" and that he told Steel he was "not going to do it" but Steel "just started getting closer and [Steel] said, "'You're going to suck me off.'" G.T.C. testified he performed oral sex on Steel after Steel "pulled," "forced," and "just kept on pushing my head down." G.T.C. testified that he "wanted to stop" but did not feel that Steel would let him. Then, Steel initiated anal sex

[1] Macy was, in fact, Steel. Steel's former boyfriend has a younger sister named Macy. Steel adopted that name as a "catfishing" ploy for the text exchanges with G.T.C.

with G.T.C., who testified that Steel "was pushing me down." G.T.C. stated that he "told [Steel] I didn't want to do this" but Steel did not stop, even though G.T.C. kept telling him that "it hurts." G.T.C. testified that he asked Steel to stop, but Steel refused.

Steel contends that G.T.C.'s trial testimony lacks sufficient credibility because it "did not allege any threat or fear of bodily harm" and was "generally inconsistent and contradictory" on the element of force or coercion. We disagree. While G.T.C.'s statements to police and his testimony may have been somewhat inconsistent at points, G.T.C. never wavered in his assertion that the sexual acts were nonconsensual. Similarly, G.T.C. never wavered in his assertion that the sexual acts were forced. The jury heard G.T.C.'s testimony and found G.T.C. to be credible. Based on our review of the record, we conclude that the evidence is sufficient to support the jury's verdict of guilty on the third-degree criminal sexual conduct involving force or coercion.

II.

Steel asserts that, if his conviction under Minn. Stat. § 609.344, subd. 1(c), is affirmed, his conviction of and sentence for count two, age-based third-degree criminal sexual conduct, should be vacated and the case remanded for resentencing because the offenses arose out of the same behavioral incident in violation of Minn. Stat. § 609.04 (2014). A criminal defendant may be convicted "of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1. Minn. Stat. § 609.035, subd. 1, states that if "a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." When a defendant is convicted on more than one charge for the same act, the proper procedure is for the district court to

formally adjudicate and impose sentence on just one count. *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). "If the adjudicated conviction is later vacated for a reason not relevant to the remaining unadjudicated conviction(s), one of the remaining unadjudicated convictions can then be formally adjudicated and sentence imposed, with credit, of course, given for time already served on the vacated sentence." *Id.*

We review de novo a claim of a violation of Minn. Stat. § 609.04. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012). Whether an offense occurred as part of a single behavioral incident for the purposes of Minn. Stat. § 609.035 is a mixed question of law and fact. *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014). We review factual findings for clear error, and the district court's application of the law de novo. *Id.*

Steel was convicted of two counts of third-degree criminal sexual conduct for violating Minn. Stat. § 609.344, subd. 1(b), (c) (2014). Minn. Stat. § 609.344, subd. 1 (2014), states that "[a] person who engages in sexual penetration with another person is guilty" of third-degree criminal sexual conduct if: "(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant" or "(c) the actor uses force or coercion to accomplish the penetration." Violations of both subdivision 1(b) and (c) are punishable by imprisonment "for not more than 15 years or to a payment of a fine of not more than $30,000, or both." Minn. Stat. § 609.344, subd. 2(1) (2014). These offenses are part of the same criminal statute and are "alternative means" of committing the same crime. *State v. Dalbec*, 789 N.W.2d 508, 512-13 (Minn. App. 2010), *review denied* (Minn. Dec. 22, 2010).

The state argues that these were separate behavioral incidents because of the "factors of time and criminal objective." The state contends that the "first two criminal sexual acts . . . occurred shortly after the two entered the hotel room" and the additional criminal acts occurred after G.T.C. went into the bathroom, thought about leaving, and concluded that he could not. The state asserts that G.T.C. going to the bathroom "created a gap in time between the second round of criminal sexual acts" sufficient to render the offenses separate behavioral incidents. We disagree.

When determining whether multiple offenses have arisen from a single behavioral incident, we consider the defendant's "singleness of purpose, i.e., whether the defendant was 'motivated by a desire to obtain a single criminal objective.'" *State v. Johnson*, 653 N.W.2d 646, 651 (Minn. App. 2002) (quoting *State v. Chidester*, 380 N.W.2d 595, 597 (Minn. App. 1986), *review denied* (Minn. Mar. 21, 1986)). We also consider whether the offenses "(1) arose from a continuous and uninterrupted course of conduct, (2) occurred at substantially the same time and place, and (3) manifested an indivisible state of mind." *Id.* at 651-52.

The state relies, in part, on *State v. Stevenson*, where the supreme court affirmed two third-degree criminal-sexual-conduct convictions involving the same victim on the same day. 286 N.W.2d 719, 720 (Minn. 1979). But in *Stevenson*, the supreme court noted that while both offenses "occurred in the same general place and on the same day, the offenses were separated by a period of approximately 5 hours and neither act bore any essential relationship to the other." *Id.* Here, the offenses occurred in close succession over the course of approximately three hours on a single night in the same hotel room. The

moments that G.T.C. spent in the bathroom did not sufficiently separate the offenses so as to make them separate behavioral incidents. And unlike in *Stevenson*, the sexual acts bore relationship to one another because the nature of the offenses escalated from touching and oral sex to anal penetration. Here, the sexual acts were part of the same "continuous and uninterrupted course of conduct" and manifested the same criminal intent.

Accordingly, we conclude that, pursuant to Minn. Stat. §§ 609.035, .04, the district court erred by imposing separate sentences when both offenses of criminal sexual conduct arose from a single behavioral incident. *State v. Skipintheday*, 717 N.W.2d 423, 425 (Minn. 2006). Because the evidence is sufficient to support the jury's guilty verdict, we affirm the conviction of third-degree criminal sexual conduct involving force or coercion. But because section 609.04 "bars multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident," *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985), we remand for the district court to exercise its discretion in determining which one of appellant's criminal-sexual-conduct convictions to vacate and for resentencing.

Affirmed in part, reversed in part, and remanded.