STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1640

State of Minnesota,
Respondent,

vs.

Cermor Rio Boakai,
Appellant.

Filed January 10, 2022
Affirmed
Frisch, Judge

Hennepin County District Court
File No. 27-CR-19-213

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Eric Anunobi, Eric Bond Law Office, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

On appeal from two criminal-sexual-conduct convictions, appellant-stepfather argues that the district court (1) abused its discretion by improperly admitting prior-relationship evidence, (2) erred by denying his motion to sever amended charges,

(3) abused its discretion by improperly admitting expert-witness testimony, and (4) erred by convicting him with insufficient evidence. We affirm.

FACTS

In 2012, appellant Cermor Rio Boakai met victim's mother. When Boakai first met mother, she had three children from a previous relationship, victim (then age 12), brother 1 (then age 11), and sister 1 (then age 9). At that time, mother was pregnant with brother 2. Boakai began dating mother and, six months later, moved into her apartment. Soon after, mother gave birth to brother 2. Mother then became pregnant with sister 2, who was born in 2015. Boakai is the father of sister 2. In August 2015, Boakai and mother purchased a home on Irving Avenue in Brooklyn Center and moved in with the children. Victim shared a bedroom and the same bed with sister 1.

The following evidence was elicited at trial. Boakai engaged in inappropriate touching of victim soon after moving into the Irving home. The first incident occurred when Boakai entered victim's room late at night and touched victim's upper thigh. Victim, a deep sleeper, woke up and moved, which startled Boakai. Boakai then acted "like he was looking for something in [victim's] room" and left. Victim was 14 years old at the time of this incident.

Boakai engaged in multiple additional acts of inappropriately touching victim while the family lived at the Irving home. These incidents occurred late at night while victim was asleep in bed. For example, Boakai once touched victim's genital area while she was asleep late at night. After feeling his touch, victim "jerked up," which scared Boakai.

Boakai responded to victim's movement "like he was looking for something or he lost something in the room," and he left the bedroom.

In 2017, the family moved to a new home on Winchester Avenue in Brooklyn Center. Victim and sister 1 shared a bed and a bedroom in the Winchester home. Boakai continued to enter victim's bedroom at the Winchester home late at night, but more frequently. On one occasion, Boakai "crept . . . slowly" into the bedroom and "tried to touch [victim's] breast, but [she] moved." During another incident, victim was sleeping in a nightgown and "woke up to [Boakai] . . . trying to . . . lift it up with his fingers." Sister 1 was asleep in the bedroom during both incidents.

Boakai entered the bedroom late at night "about three to four times a week." During these incidents, victim would sometimes be awake but pretend to be sleeping. Boakai would "open the door, and . . . start walking slowly in the room." Victim, anticipating that Boakai would attempt to touch her, would move. After she moved, Boakai would pretend to look for something in the bedroom. Victim did not know exactly how many times Boakai touched her because "[t]here w[ere] a lot of times where [she] woke up to him touching [her]." Victim testified that it was "hard to remember each individual time."

In June 2018, Boakai committed an act of domestic assault. He argued with mother, threw a glass against the television, and physically choked mother. Victim pulled Boakai off mother. Boakai then "jumped on" victim and "wrestled" her "to the ground." Thereafter, a no-contact order was issued, prohibiting Boakai from returning to the

Winchester home.[1] In December 2018, however, mother allowed Boakai to sleep at the Winchester home, provided that he leave during the day.

In mid-December, with the help of her boyfriend, victim devised a plan to protect herself and gather evidence against Boakai. Victim installed software on a device that would automatically record video footage when it detected movement. Boyfriend could remotely access a live video feed from the device. Victim and boyfriend planned for boyfriend to stay up all night and monitor the video feed.[2]

Victim also testified that Boakai entered victim's bedroom in the middle of the night on January 2, 2019. Victim was awake and watched Boakai slowly move toward her while she lay on the bed. Boyfriend was also awake at this time and was monitoring the live video feed. Boakai "bent over" victim and touched her breast. Victim screamed. In response, Boakai "jumped" and left the bedroom. The device did not record this encounter.

Boyfriend called the police. Two police officers arrived at the Winchester home at 3:00 a.m. The officers located Boakai hiding in the basement laundry room behind a water heater. One officer detained Boakai while the other interviewed victim. Victim told the

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[1] At trial, Boakai disputed victim and mother's characterization of the domestic-assault incident. Boakai testified that "[w]e didn't get into a physical, physical fight . . . that I put my hands around her neck. No, I did not." Instead, Boakai claimed that he "took the pillow—like the pillow you sleep on. And I just knocking her . . . . And that was it." Boakai instead alleged that *victim* "put her hands around [his] neck" and, with the help of another young woman, "slammed [him] on the floor."

[2] Boyfriend frequently stayed up "all night" on the phone with victim to "protect her" from Boakai. Boyfriend would remotely alert victim to wake up if he heard noises in her room late at night.

officer that Boakai had touched her breast and that "this has been happening for a long time . . . probably almost 2 years." The officers arrested Boakai.

The following day, respondent State of Minnesota charged Boakai with fourth-degree criminal sexual conduct pursuant to Minn. Stat. § 609.345, subd. 1(e) (2018), based on the January 2 incident. In December 2019, the state amended its complaint to add two additional counts; one count of fourth-degree criminal sexual conduct pursuant to Minn. Stat. § 609.345, subd. 1(e) (2016), and one count of second-degree criminal sexual conduct pursuant to Minn. Stat. § 609.343, subd. 1(b) (2016)).[3] These additional counts were based on Boakai's inappropriate touching of victim over the course of the preceding three years. Also in December, the state moved in limine to admit, among other things, prior-relationship evidence of Boakai's June 2018 domestic assault pursuant to Minn. Stat. § 634.20 (2020) (allowing admission of prior-relationship domestic conduct in certain circumstances).[4]

In July 2020, Boakai moved to sever count one from counts two and three, claiming that "the alleged charges do not arise from a single course of conduct." Following a hearing, the district court found that the counts were related and denied Boakai's motion.

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[3] The criminal-sexual-conduct statutory scheme was unchanged from 2010 until 2019. To the extent that any offense occurred outside of the 2016 statute time frame, the result is the same. The legislature recently reorganized both statutes, separating criminal-sexual-conduct offenses committed against adult victims from children victims. 2021 Minn. Laws 1st Spec. Sess. ch. 11, art. 4, §§ 17, 19, at 91-93, 96-99.

[4] Minn. Stat. § 634.20 was amended in 2019 to include violations of domestic-abuse no-contact orders as admissible under the prior-relationship evidence rule. 2019 Minn. Laws 1st Spec. Sess. ch. 5, art. 2, § 27, at 26. The amendment does not affect this appeal.

At the same hearing, the state moved to amend the complaint to add two additional counts—one charge of second-degree criminal sexual conduct pursuant to Minn. Stat. § 609.343, subd. 1(h)(iii) (2016), and one charge of fourth-degree criminal sexual conduct pursuant to Minn. Stat. § 609.345, subd. 1(g)(iii) (2016). These counts related to Boakai sexually touching victim on multiple occasions over an extended time period. The district court granted the state's motion and concluded that these new charges were also properly joined.

In early September 2020, two weeks before trial, Boakai notified the district court that it had not yet ruled on certain outstanding motions in limine, including whether the state could admit the prior-relationship evidence of the domestic assault. Boakai did not object to the state's motion.[5] The next week, the district court ruled on the outstanding motions without a hearing and, among other things, granted the state's request to introduce the domestic-assault prior-relationship evidence.

The district court held a four-day jury trial. Victim testified to the aforementioned facts. Sister 1, boyfriend, and the state's child-protection investigator also testified, corroborating many of the facts to which victim attested.[6] Sister 1 also testified that Boakai

[5] In July 2019, Boakai filed a motion in limine in which he expressly conceded that the state could introduce evidence of the domestic-assault incident.

[6] Sister 1 testified that, although she never witnessed Boakai touch victim, victim would sometimes awaken her looking "terrified" and "breathing super hard." Sister 1 also testified that she would sometimes wake to Boakai standing over victim, with his face "right in her face"; that victim told her that Boakai inappropriately touched her; and that Boakai frequently entered their bedroom late at night—"like, four times out of the week."

Boyfriend testified that, on the night of January 2, he witnessed Boakai touch victim through the live video feed. Boyfriend testified that he watched Boakai slowly enter

would find excuses to be in their room late at night, including checking on brother 2 and sister 2, who sometimes slept in the same bed as victim and sister 1.

At trial, Boakai testified that he did not sexually touch victim and had never committed a sexual crime. Boakai provided several explanations of why he entered victim and sister 1's room late at night—to turn off lights, to check on brother 2 and sister 2, and to ensure that victim and sister 1 were not on their phones.

Boakai also testified about the January 2 incident. Boakai testified that the upstairs television was on, that he did not know where sister 2 and brother 2 were sleeping, and that he did not know if mother was in the house.[7] Boakai testified that he went upstairs to check on sister 2 and brother 2 and found victim and sister 1's bedroom door "already open." Boakai testified that he walked into the bedroom toward the bed, but victim screamed before he even touched the comforter. Boakai testified that victim told him that brother 2 and sister 2 were not in the bedroom, so Boakai went back downstairs. Boakai became concerned when he heard the police arrive because the no-contact order prohibited him from being in the Winchester home, so he hid in the laundry room.

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victim's room, bend over victim, and touch her breast. Boyfriend also testified that victim had previously told him that Boakai inappropriately and sexually touched her. Boyfriend's testimony was largely, although not entirely, consistent with victim's testimony.

The child-protection investigator had interviewed victim, sister 1, mother, and Boakai following the January 2 incident. Her testimony largely corroborated victim's testimony.

[7] Mother's trial testimony directly contradicted Boakai's assertions: Mother testified that Boakai picked her up from work that evening, that the upstairs television was off, and that Boakai would have seen sister 2 and brother 2 asleep in the downstairs bedroom.

After the conclusion of trial testimony, the jury returned guilty verdicts for counts two through five and acquitted Boakai of count one, the January 2 incident. The district court convicted Boakai of counts four and five and sentenced him to 90 months' imprisonment. Boakai appeals.

DECISION

Boakai argues that the district court (1) abused its discretion by admitting prior-relationship evidence, (2) erred by denying his motion to sever, (3) abused its discretion by admitting certain expert-witness testimony, and (4) erred by convicting him with insufficient evidence.[8] We address each issue in turn.

I. The district court did not plainly err by admitting prior-relationship evidence.

Boakai first argues that the district court abused its discretion by admitting evidence of the June 2018 domestic assault as prior-relationship evidence under Minn. Stat. § 634.20. Boakai failed to object to the district court's ruling to admit the prior-relationship evidence.

"[A] defendant's failure to object to an error during trial forfeits appellate consideration of the issue." *State v. Epps*, 964 N.W.2d 419, 422 (Minn. 2021); *see also State v. Vick*, 632 N.W.2d 676, 684 (Minn. 2001) (stating that failure to object to admission of evidence at trial amounts to a forfeiture of that issue on appeal). "But we have the discretionary power to grant relief when a particularly egregious error seriously affects the

[8] Boakai also argues that the district court violated his due-process rights by granting the state's motion in limine without a hearing. Our review of the record shows that Boakai did not request a hearing for the motion in limine. Even so, Boakai cites no authority requiring a district court to hold a hearing before ruling on evidentiary matters.

fairness, integrity, or public reputation of judicial proceedings even if a party fails to object to the error below." *Epps*, 964 N.W.2d at 422 (quotation omitted). "To invoke this discretionary power, the plain error doctrine must be satisfied." *Id.* To satisfy the plain-error doctrine, the appellant must establish: "(1) an error, (2) that was plain, and (3) that affected his substantial rights." *State v. Zinski*, 927 N.W.2d 272, 275 (Minn. 2019). An error is plain if it "contravenes case law, a rule, or a standard of conduct." *Id.* (quotation omitted). Here, we discern no plain error because the district court acted within its discretion by admitting the prior relationship evidence. *See State v. Hayes*, 826 N.W.2d 799, 807-08 (Minn. 2013) (concluding that no plain error existed when the district court acted within its discretion by admitting certain evidence).

Prior-relationship evidence is admissible against an accused when the victim alleges that they were harmed by defendant's act of domestic conduct. Minn. Stat. § 634.20. Domestic conduct includes the infliction of physical harm, bodily injury, assault, and criminal sexual conduct. Minn. Stat. § 518B.01, subd. 2(a)(1), (3) (2018). The statute permits the state to introduce evidence of a defendant's act of domestic conduct committed against another of the victim's family members. Minn. Stat. § 634.20.

"Domestic abuse is unique in that it typically occurs in the privacy of the home, it frequently involves a pattern of activity that may escalate over time, and is often underreported." *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (discussing the rationale for Minn. Stat. § 634.20's relatively lax standard to admit prior-relationship evidence). "Evidence of prior domestic abuse . . . may be offered to illuminate the history of the relationship, that is, to put the crime charged in the context of the relationship." *Id.*

at 159. "[E]vidence showing how a defendant treats his family or household members . . . sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim." *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. 2010).

Boakai was convicted of fifth-degree assault for his June 2018 domestic act against mother. This assault charge constitutes "domestic conduct" under the prior-relationship statute. Minn. Stat. § 634.20. Because Boakai, mother, and victim all resided in the same household, the statute allowed the state to introduce evidence of the domestic assault as evidence that Boakai committed a criminal-sexual-conduct offense against victim. *Id.* The district court acted within its discretion by admitting this prior-relationship evidence. We discern no plain error from the district court's decision.

Neither do we discern plain error from unfair prejudice of the prior-relationship evidence. Prior-relationship evidence must be excluded when its unfair prejudice substantially outweighs its probative value. Minn. Stat. § 634.20. Here, the prejudicial nature of the prior-relationship evidence did not substantially outweigh its probative value.

"Evidence that helps to establish the relationship between the victim and the defendant or which places the event in context bolsters its probative value." *State v. Lindsey*, 755 N.W.2d 752, 756 (Minn. App. 2008) (quotation omitted), *rev. denied* (Minn. Oct. 29, 2008). "When balancing the probative value against the potential prejudice, unfair prejudice is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotation omitted).

Here, the evidence of the June 2018 domestic-assault incident is probative because it contextualizes Boakai's relationship with the family. Although this evidence is prejudicial, such prejudice does not substantially outweigh its probative value. Moreover, the district court minimized any prejudice by instructing the jury multiple times that the evidence was "being offered for the limited purpose of demonstrating the nature and extent of the relationship between [Boakai] and [victim]," emphasizing that "[Boakai] is not being tried for, and may not be convicted of, any behavior other than the charged offenses." Boakai also explicitly testified about the domestic-assault incident at trial, disputing victim, sister 1, and mother's characterization of the incident. We therefore conclude that Boakai was not unfairly prejudiced by the admission of the prior-relationship evidence and that the admission of the evidence did not constitute plain error.

Because the district court did not abuse its discretion by admitting the prior-relationship evidence, "we need not, and do not, consider the remaining prongs of the plain-error test." *Hayes*, 826 N.W.2d at 808.

II. The district court did not err by denying the motion to sever.

Boakai next argues that the district court erred by refusing to sever count one from counts two through five because the additional counts "were not part of a single behavioral incident or course of conduct" and they "caused much prejudice to [Boakai], as the Jurors likely perceived him as a career criminal." This claim is without merit.

A. The offenses were related in time and place and conducted with a single criminal objective.

Boakai contends that the offenses must be severed because they are "not connected in time and place" and because they occurred over a long period of time at two different locations. We disagree.

We review a district court's severance decision de novo. *State v. Kendell*, 723 N.W.2d 597, 607 (Minn. 2006). "When the defendant's conduct constitutes more than one offense, each offense may be charged in the same charging document in a separate count." Minn. R. Crim. P. 17.03, subd. 1. On such a motion, the district court "must sever offenses or charges if . . . the offenses or charges are not related" or if "severance is appropriate to promote a fair determination of the defendant's guilt." *Id.*, subd. 3(1)(a)-(b).

We conduct a two-step analysis when reviewing a district court's decision not to sever charges: First, we "decide whether the offenses are related"; second, we "determine whether joinder would prejudice the defendant." *Kendell*, 723 N.W.2d at 607. "Offenses are related . . . if the offense arose out of a single behavioral incident." *Id.* at 608 (quotation omitted). Relevant factors in determining whether an offense constitutes a "single behavioral incident" are "the time and geographic proximity" of the offenses and whether the conduct behind the offenses was "motivated by a single criminal objective." *State v. Profit*, 591 N.W.2d 451, 458, 460 (Minn. 1999) (quotation omitted). "The determination of whether offenses arise from a single behavioral incident is dependent upon the particular facts and circumstances of each case." *State v. Jackson*, 615 N.W.2d 391, 394 (Minn. App. 2000), *rev. denied* (Minn. Oct. 17, 2000).

The five criminal charges against Boakai were related as to time and place. These offenses occurred continuously from 2016 until Boakai was arrested in early 2019. Boakai entered victim and sister 1's bedroom multiple times a week, always late at night. In these frequent late-night intrusions, Boakai regularly touched or attempted to touch victim inappropriately. And Boakai did sexually touch victim at least 25 times during this time period. Boakai's continuous conduct represented a series of offenses related in time, each occurring shortly after the next, always occurring in the same late-night pattern.

In addition, the offenses always occurred in victim's bedroom in the family home where the family was then residing. Victim was always in bed. The incidents occurred late at night. And the record indicates that victim was often asleep when Boakai entered the room. Although the offenses occurred at two different houses, each incident occurred in victim's bedroom within the family home. The two locations were also geographically proximate, with the incidents all occurring at either the Irving home or the Winchester home, both located in Brooklyn Center. The frequent and continuous nature of Boakai's late-night intrusions into victim's bedroom and inappropriate touching of victim supports the conclusion that the five counts are related in time and place.

Our decision in *State v. Ivy* is illustrative. 902 N.W.2d 652 (Minn. App. 2017), *rev. denied* (Minn. Dec. 19, 2017). In *Ivy*, we affirmed the district court's refusal to sever a dozen counts related to a prostitution ring run by the defendant, despite the underlying incidents taking place "within a period of a few months" of one another and only occurring within "the same geographical vicinity" rather than at the same exact location. *Id.* at 659. We determined that the unity of time was met because "each count of the complaint

overlapped with the time period of another count." *Id.* And we held that the unity of place was met because, "[a]lthough much of the activity occurred throughout the Twin Cities metro area, all of the victims were eventually brought to appellant's apartment." *Id.*

Ivy demonstrates that the time of the offenses need not be instantaneous or even occur on the same day. *See id.* at 659-60. And here, as in *Ivy*, Boakai's conduct was continuous and the offenses were interrelated. *See id.* at 659 (finding charges to be related in time where defendant was alleged to have trafficked multiple victims during overlapping periods of time). *Ivy* also reveals that the offenses need not occur in the same place, so long as there is a nexus in location connecting the offenses. *See id.* Such a nexus exists here—all of the offenses occurred in the bedroom of the Brooklyn Center family home where the family was then living.

Finally, we note that Boakai's offenses were united by a single criminal objective: to sexually touch victim in her bedroom while she was asleep. This factor also directs us to conclude that the five charges were properly joined.

B. Boakai was not unfairly prejudiced by joinder of the charges.

Boakai claims that, even if the charges were related, he was unfairly prejudiced by the state's joinder of counts two through five, and that the district court thus erred by refusing to sever them from count one. We disagree.

"[T]he ultimate question in a severance claim is one of prejudice." *Profit*, 591 N.W.2d at 460 (quotation omitted). "Joinder is not unfairly prejudicial if evidence of each offense would have been admissible at a trial of the other offenses had the offenses been tried separately." *Kendell*, 723 N.W.2d at 608. This includes the admissibility

considerations under Minn. R. Evid. 403. *State v. Townsend*, 546 N.W.2d 292, 296 (Minn. 1996).

Here, the joinder was not unfairly prejudicial to Boakai because, had the offenses been tried separately, each offense would have been admissible at a trial of the other offenses as prior-relationship evidence under Minn. Stat. § 634.20. Alternatively, each offense would be admissible as *Spreigl* evidence to demonstrate Boakai's common plan and intent to sexually touch victim. *See* Minn. R. Evid. 404(b)(1); *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965).

Boakai does not dispute that these offenses would be admissible in separate trials; rather, Boakai contends that joinder was unfairly prejudicial under Rule 403 because "the Jurors likely perceived him as a career criminal based on the number and enormity of the charges." We again disagree.

In determining the probative value of the evidence under Rule 403, we "focus on the closeness of the relationship between the other crimes and the charged crimes in terms of time, place and modus operandi." *Profit*, 591 N.W.2d at 461 (quotation omitted). "The closer the relationship, the greater is the relevance or probative value of the evidence and the lesser is the likelihood that the evidence will be used for an improper purpose." *Id.* The supreme court has defined prejudice under Rule 403 in this context to mean "only the unfair advantage that results from the capacity of the evidence to persuade by illegitimate means." *Townsend*, 546 N.W.2d at 296 (quotation omitted).

We conclude that the joinder of these offenses did not unfairly prejudice Boakai. There was a close relationship between the offenses, thus the probative value of the

additional offenses was high. And because evidence of these offenses would be admissible in any individual trial, we are unpersuaded that Boakai was unfairly prejudiced by the joinder of all offenses in one trial.

Thus, the district court did not err by denying Boakai's motion to sever count one from counts two through five.

III. The district court did not admit unqualified expert-witness testimony into evidence.

Boakai next argues that he was unfairly prejudiced because the state introduced certain unqualified expert-witness testimony at trial. We disagree.

We review the district court's decision regarding expert-testimony evidence for an abuse of discretion. *Marquardt v. Schaffhausen*, 941 N.W.2d 715, 719 (Minn. 2020). A district court abuses its evidentiary discretion "when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

Boakai's argument stems from the child-protection investigator's trial testimony regarding "delayed reporting," the theory behind why a child might not promptly report a sexual-abuse incident, even to their parent. Boakai twice objected at trial to the child-protection investigator's delayed-reporting testimony because she was not a qualified expert on the subject. Boakai first objected during the state's direct examination of the child-protection investigator; he objected a second time during the state's closing argument when the state invoked direct reporting as a rationale for why victim may not have told mother that Boakai inappropriately touched her.

The district court sustained both objections and issued limiting instructions to the jury at Boakai's request.[9] *See State v. Gatson*, 801 N.W.2d 134, 151 (Minn. 2011) ("We presume that juries follow instructions given by the court and thereby recognize the effectiveness of curative instructions." (quotation omitted)). Accordingly, none of the testimony was admitted as evidence, and we therefore find no abuse of discretion.

IV. The evidence presented at trial was sufficient to support Boakai's conviction.

Boakai's final argument is that the evidence presented at trial was insufficient to support his conviction. We disagree.

To convict Boakai of the counts of criminal sexual conduct, the state was required to prove the following elements: (1) Boakai intentionally touched victim's intimate parts,[10] (2) with sexual intent, (3) when victim was between 13 and 16 years old and also when she was between 16 and 18 years old, (4) when Boakai was more than 48 months older than victim, (5) Boakai was in a position of authority over victim, (6) Boakai had a significant relationship to the victim, and (7) that the sexual touches involved multiple acts committed over an extended period of time. Minn. Stat. §§ 609.341, subds. 5, 10, 11(a)(i), (b)(i), 15(1), (3), .343, subd. 1(b), (h)(iii), .345, subd. 1(e), (g)(iii) (2016).

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[9] Boakai himself cross-examined the investigator about why a child might not report a sexual assault, implicating the exact same testimony. The district court agreed with the state that Boakai opened the door to discussion of delayed reporting through cross-examination of the investigator, but determined that "it was the safest course to sustain the objection and instruct the jury not to consider [the delayed-reporting evidence]."

[10] A victim's intimate parts include the genital area, groin, inner thigh, buttocks, and breast. Minn. Stat. § 609.341, subd. 5 (2016). Sexual contact includes the touching of the clothing covering the area immediately over these intimate parts. Minn. Stat. § 609.341, subd. 11(a)(iv) (2016).

In evaluating sufficiency-of-the-evidence challenges, we "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). We assume that the fact-finder "believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

When a conviction is based on circumstantial evidence, rather than direct evidence, we apply a higher level of scrutiny. *State v. Salyers*, 858 N.W.2d 156, 160-61 (Minn. 2015). Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Direct evidence is "evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Id.*

Here, the state presented direct evidence in the form of victim's testimony establishing the majority of the necessary elements to convict Boakai for counts two through five. "No other evidence was required to establish the *actus reus*" of Boakai touching victim's intimate parts. *See Salyers*, 858 N.W.2d at 161. Trial testimony also directly established all elements related to Boakai's relationship to victim and the parties' ages. The only element that the state could not establish via direct evidence was Boakai's

state of mind—that is, whether Boakai touched victim with sexual intent. In order to prove this element, the state relied on circumstantial evidence.[11]

We review the sufficiency of circumstantial evidence by conducting a two-step analysis. *State v. German*, 929 N.W.2d 466, 472 (Minn. App. 2019). First, we identify the circumstances proved by the state. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). We "assume that the [fact-finder] resolved any factual disputes in a manner that is consistent" with the verdict. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). "Juries are generally in the best position to weigh the credibility of the evidence and thus determine which witnesses to believe and how much weight to give their testimony." *State v. Anderson*, 784 N.W.2d 320, 329 (Minn. 2010) (quotation omitted).

Second, we determine whether the circumstances proved are "consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted). We do not defer to the fact-finder's choice between reasonable inferences. *Silvernail*, 831 N.W.2d at 599. We must reverse the conviction if a reasonable inference other than guilt exists. *Loving*, 891 N.W.2d at 643. But we will uphold the verdict if the circumstantial evidence forms "a complete chain" which leads "directly to the guilt of the defendant as to exclude beyond a reasonable doubt

[11] We note that Boakai does not argue that the district court lacked sufficient evidence to establish his sexual intent. Generally, arguments not properly briefed are waived when an appellant "alludes to the[] issues . . . [but] fails to address them in the argument portion of his briefs." *McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998). Boakai is, however, unclear about which element of the offense was unsupported by sufficient evidence to uphold his conviction. We infer that he challenges the sufficiency of the evidence of his sexual intent, and nevertheless find that sufficient evidence supports the conviction.

any reasonable inference other than guilt." *State v. Peterson*, 910 N.W.2d 1, 7 (Minn. 2018) (quotation omitted).

Applying the circumstantial-evidence test, we first determine the circumstances proved by the state. *Silvernail*, 831 N.W.2d at 598. The state proved the following circumstances: Boakai entered victim and sister 1's room late at night on a frequent basis over the course of multiple years; victim awoke to Boakai touching her intimate parts at least 25 times; Boakai touched victim's breast, butt, upper thigh, and vagina; victim also awoke to Boakai lifting up her nightgown on at least one occasion; sister 1 would sometimes wake to Boakai bent over victim with his face "right in her face"; victim would often move when she discovered Boakai in the bedroom and, in response, Boakai would act as though he was looking for something in the bedroom; and Boakai looked for excuses to enter victim's bedroom late at night, including checking on brother 2 and sister 2.

We next consider whether the circumstances proved are consistent with Boakai's guilt and preclude any rational hypothesis inconsistent with guilt. *Loving*, 891 N.W.2d at 643. Specifically, we evaluate whether these circumstances proved established that Boakai had the necessary sexual intent to touch victim during these incidents.

Based on the circumstances proved, there is no rational hypothesis other than that Boakai acted with sexual intent when he touched victim's intimate parts. Boakai acted with deliberation in touching the victim specifically on her intimate parts, purposefully doing so late at night, in victim's bedroom, and pretending to look for things after detecting victim's movement. These circumstances proved are therefore consistent with only one rational hypothesis: that Boakai touched the victim with sexual intent.

We conclude that sufficient evidence exists to sustain the convictions.

Affirmed.