STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1248

State of Minnesota,
Respondent,

vs.

Keith Allan Baker,
Appellant.

Filed July 18, 2022
Affirmed
Klaphake, Judge[*]

Dakota County District Court
File No. 19HA-CR-19-3179

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

Kathryn M. Keena, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Charles S. Clas Jr., Wilson & Clas, Minneapolis, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Jesson, Judge; and Klaphake, Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant Keith Allan Baker challenges the sufficiency of the evidence underlying his convictions of first- and second-degree criminal sexual conduct. He argues that his convictions are not supported by sufficient evidence because the state failed to prove that the offenses occurred within the time period specified in the complaint. Because the only material element relating to time is the age of the complainant—and because the state proved that the complainant was at all relevant times under the age of 13—sufficient evidence supports Baker's conviction, and we affirm.

DECISION

Baker asserts that his two convictions must be reversed for insufficient evidence because the state failed to prove that he committed both offenses within the time period specified in the complaint. Due process requires the state to prove every element of an offense beyond a reasonable doubt. *State v. Pakhnyuk*, 926 N.W.2d 914, 919 (Minn. 2019); *see also In re Winship*, 397 U.S. 358, 364 (1970). Guided by this principle, we begin with our standard of review.

When evaluating the sufficiency of the evidence, we carefully examine "the record to determine whether the facts and the legitimate inferences drawn from them would permit the [fact-finder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). In conducting this analysis, we view the evidence in the light most favorable to the verdict and assume that the jury disbelieved any evidence

contradicting the verdict. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). If the jury—mindful of the presumption of innocence and the state's burden to prove the offense beyond a reasonable doubt—could reasonably have found the defendant guilty, we will not overturn the verdict. *Waiters*, 929 N.W.2d at 900. With this standard in mind, we consider the offenses of which Baker was convicted.

Here, the jury found Baker guilty of first- and second-degree criminal sexual conduct. To prove Baker guilty of first-degree criminal sexual conduct, the state had to show that he engaged in sexual penetration with a person under 13 years of age, and that he was more than 36 months older than the complainant. Minn. Stat. § 609.342, subd. 1(a) (2014). To prove Baker guilty of second-degree criminal sexual conduct, the state had to show that he engaged in multiple instances of sexual contact with a person under 16 years of age over an extended period of time. Minn. Stat. § 609.343, subd. 1(h)(iii) (2014). We now consider the facts produced at trial in light of these offense definitions.

The state charged Baker with one count of second-degree criminal sexual conduct and three counts of first-degree criminal sexual conduct following allegations that he engaged in sexual contact and penetration with his son's former girlfriend's daughter.[1] The complainant used to go over to Baker's home for childcare from the ages of seven to ten. When the complainant turned eight, he began to touch her. This lasted until she stopped going over to Baker's house.

[1] The jury found Baker not guilty of two counts of first-degree criminal sexual conduct and guilty of the remaining counts of first- and second-degree criminal sexual conduct.

The complainant told her stepmother about what Baker had done when she was 11 years old. After the complainant's stepmother contacted the police, a detective with special training in interviewing children who report sexual abuse conducted a videotaped interview with the complainant. The state played the video of this interview at trial. In the recording, and in her testimony at trial, the complainant reported multiple instances of Baker touching and penetrating her intimate parts.

The state proved that Baker committed both first- and second-degree criminal sexual conduct at trial. With respect to his first-degree conviction, the complainant—who testified that she was born in August 2007—was under the age of 13 at all relevant times. Baker, having been born in 1958, was more than 36 months older than her. "Sexual penetration" includes "cunnilingus, fellatio" and "any intrusion however slight into the genital . . . openings . . . of the complainant's body by . . . any part of the body of another person." Minn. Stat. § 609.341, subd. 12 (2014). The complainant testified that Baker touched the "inside" of her intimate parts and instructed her to perform fellatio on him. Sufficient evidence supports Baker's first-degree criminal-sexual-conduct conviction.

With respect to Baker's second-degree conviction, the complainant testified that Baker had sexual contact with her. "Sexual contact" includes "the intentional touching by the actor of the complainant's intimate parts" if the act is done with "sexual or aggressive intent." Minn. Stat. § 609.341, subd. 11 (2014). And "sexual or aggressive intent can readily be inferred" from the act of inappropriate contact itself. *State v. Ness*, 707 N.W.2d 676, 687 (Minn. 2006). The complainant testified that Baker touched her intimate parts on

many occasions over a two-year period until she was ten years old. Sufficient evidence supports Baker's second-degree criminal-sexual-conduct conviction.

But Baker argues that insufficient evidence supports both convictions because "the state failed to prove [he] committed these offenses within the time frame charged in the complaint."[2] But the "precise time" at which an offense was committed "need not be stated in the indictment," unless the time is a material ingredient of the offense. Minn. Stat. § 628.15 (2020). The only element to which the timing of Baker's actions were relevant would be his age and the complainant's age. Minn. Stat. §§ 609.342, subd. 1(a) (prohibiting sexual penetration of a person younger than 13 years of age if the actor is more than 36 months older), .343, subd. 1(h)(iii) (prohibiting multiple acts of sexual contact over extended period of time with person under the age of 16). The complainant's testimony, viewed in the light most favorable to the verdict, establishes that she was younger than 13 for all relevant time periods. *Griffin*, 887 N.W.2d at 653. Because the jury could have reasonably found Baker guilty, we will not overturn its verdict. *Waiters*, 929 N.W.2d at 900.

Affirmed.

[2] Baker further argues that we should infer that, because the jury found him not guilty on two counts of first-degree criminal sexual conduct, the jury must have concluded that the evidence supporting his other convictions was insufficient. But Baker points to no precedent supporting his contention that an acquittal on one count should undermine confidence in a conviction on another count, and our research has revealed none. Instead, we consider whether the jury, mindful of Baker's presumed innocence and the state's burden to prove that he committed the charged offenses beyond a reasonable doubt, could have reasonably found him guilty. *Waiters*, 929 N.W.2d at 900.