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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2016**

State of Minnesota,
Respondent,

vs.

Robert Garza,
Appellant.

**Filed September 7, 2010
Affirmed
Minge, Judge**

Clay County District Court
File No. 14-CR-08-4974

Lori Swanson, Attorney General, Kimberly R. Parker, Assistant Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Moorhead, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Minge, Presiding Judge; Johnson, Judge; and Collins,
Judge.*

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

UNPUBLISHED OPINION

MINGE, Judge

Following his conviction for second-degree criminal sexual conduct, appellant challenges the sufficiency of the evidence supporting the jury's finding that he was in a position of authority over the victim. Because the record adequately supports the verdict, we affirm.

FACTS

In 2008, when appellant Robert Garza was 31 years old, he lived with his 18-year-old girlfriend in a Moorhead apartment. They had two children together. The girlfriend had a 15-year-old half-sister, who is the victim in this case. The sisters' mother passed away in May 2008, and neither of the girls' fathers was present at any time relevant to this matter. After the mother's death, the sister/victim moved in with her aunt, who lived approximately 25 miles from Moorhead. The victim was in ninth grade at Moorhead High School and occasionally stayed with her sister and Garza from May to October 2008. When the victim stayed in Moorhead, Garza gave her rides, bought her things, cleaned up after her, told her to pick up after herself, and gave her lunch money. The victim testified that Garza never "bossed [her] around or [told her] what to do," that he mediated disputes between her and her sister, and that she got along well with him.

In October 2008, during one of the victim's stays in Moorhead, Garza gave her a ride back to the apartment after a band concert. According to the victim, after they watched a movie and she was asleep, she felt Garza touch her vaginal area and chest. The victim testified that because she was afraid, she pretended to stay asleep and did not

attempt to stop him. The next day the victim reported the incident to a school counselor, who reported it to social services.

Four days later, a detective interviewed Garza. Garza described his relationship with the victim as “like a big brother” or a “parenting thing.” He said that he did “everything for that girl,” and gave examples of mediating her arguments with her sister, giving her rides, making her do household chores, helping her pick out her school dance dress, and complimenting her to improve her self-esteem. He said he would “kiss her on the forehead [and] tell her I love her.” Garza agreed with the detective’s characterization of him as a “father figure” to the victim.

A week after the alleged assault, the state charged Garza with second-degree criminal sexual conduct, Minn. Stat. § 609.343, subd. 1(b) (2008), and fifth-degree criminal sexual conduct, Minn. Stat. § 609.3451, subd. 1(1) (2008). At trial, among other witnesses, the victim, her older sister, and the detective testified, and a tape of Garza’s police interview was played for the jury. Garza did not testify.

A jury found Garza guilty on both counts. The district court dismissed the fifth-degree count as a lesser-included offense and sentenced Garza to 143 months in prison. Garza directly appeals the conviction.

DECISION

Second-degree criminal sexual conduct occurs when a person (1) has sexual contact with another who is between 13 and 16 years of age; (2) is at least 48 months older than the victim; and (3) is “in a position of authority over” the victim. Minn. Stat. § 609.343, subd. 1(b). The only issue on appeal is whether the evidence is adequate to

prove the element of the offense that Garza was in “a position of authority over” the victim at the time of the offense. In conducting appellate review of a sufficiency-of-the-evidence claim “[w]e conduct a painstaking review of the record to determine whether the evidence and reasonable inference drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the [court] to reach its verdict.” *Staunton v. State*, ___ N.W.2d ___, ___, 2010 WL 2606229, at *4 (Minn. June 30, 2010). This review assumes that “the jury believed the state’s witnesses and disbelieved contrary evidence.” *Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995). Questions of statutory interpretation are reviewed de novo. *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002).

The Minnesota statutes define “position of authority” as follows:

“Position of authority” includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent’s rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

Minn. Stat. § 609.341, subd. 10 (2008). This court has applied this definition broadly. *State v. Rucker*, 752 N.W.2d 538, 546 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008); *see State v. Larson*, 520 N.W.2d 456, 459 (Minn. App. 1994) (finding appellant “in a position of authority over” victim when victim’s favorite uncle, who was over 10 years older than the victim, and acting as her confidante), *review denied* (Minn. Oct. 14, 1994). In *State v. Mogler*, this court further interpreted the definitional language in response to a vagueness challenge, noting that “position” denotes a social standing that includes a person who stands in the place of a parent or is charged to have “any duty or

responsibility for the health, welfare, or supervision of the child,” while “[a]uthority refers to the power to enforce laws, exact obedience, command, determine, or judge . . . relative to the position of the minor.” 719 N.W.2d 201, 207 (Minn. App. 2006) (quotation omitted).

Garza’s admissions that he took responsibility for the victim’s well-being and his agreement that he was a type of “father figure” in the absence of her parents, place him within a listed example under the “position of authority” definition—namely, that he is “acting in the place of a parent and charged with any of a parent’s rights, duties or responsibilities to a child.” Minn. Stat. § 609.341, subd. 10. Although both the victim’s older sister and Garza described the relationship as brother-sister, the jury was free to believe that Garza’s social position was more parental than brotherly. In addition to Garza’s admissions regarding his parental relationship with the victim, other evidence showed that Garza assumed responsibility for the victim’s welfare:

- Garza was 31 years old; the victim was 15.
- The victim stayed with her sister and Garza while attending school.
- Garza drove the victim to and picked her up from school and other places.
- Garza bought the victim candy and other things while she stayed with him.
- Garza told her to pick up after herself.
- Garza would compliment the victim to help perceived self-esteem issues.
- Garza mediated disputes between the sisters.

Garza claims that he had no “authority over” the victim because she did not protest Garza’s counsel’s statement that Garza “didn’t boss [her] around or tell [her] what to do.” But this statement does not mean that the jury could not conclude that Garza had a power to “enforce obedience, command, determine, or judge” the victim. *Mogler*, 719 N.W.2d

at 207. The evidence revealed Garza's influence over the victim's actions while she was staying at his apartment, including directing various aspects of her conduct. Garza's authority over the victim is also shown by her fear and reluctance to resist Garza's unwanted sexual advances. *See Bjerke v. Johnson*, 727 N.W.2d 183, 195 (Minn. App. 2007) (noting that purpose of charged statute is teenagers' inability to "resist pressure or protect themselves" against persons of authority), *aff'd*, 742 N.W.2d 660 (Minn. 2007); *State v. Hanson*, 514 N.W.2d 600, 604 (Minn. App. 1994) (noting that victim's silence due to fear during sexual assault shows defendant used "position of authority" to obtain victim's submission to fourth-degree sexual contact).

In sum, we conclude that the evidence adequately supports the jury's finding that Garza was in a position of authority over the victim during the assault.

Affirmed.

Dated: