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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0765**

State of Minnesota,
Respondent,

vs.

James Charles Morgan,
Appellant.

**Filed May 27, 2014
Affirmed
Johnson, Judge**

Wright County District Court
File No. 86-CR-11-4928

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Thomas N. Kelly, Wright County Attorney, Greg T. Kryzer, Assistant County Attorney,
Buffalo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant
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Considered and decided by Johnson, Presiding Judge; Smith, Judge; and
Toussaint, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Judge

A Wright County jury found James Charles Morgan guilty of second-degree criminal sexual conduct based on evidence that he engaged in sexual contact with his nine-year-old step-granddaughter. We conclude that the evidence is sufficient to sustain the conviction and, therefore, affirm.

FACTS

This appeal arises from an incident in which Morgan inappropriately touched his nine-year-old step-granddaughter, A.S., at her home in the city of Otsego. Morgan is the father of A.S.'s step-father and was living with A.S. and her family on a temporary basis. The state introduced evidence that, on June 16, 2011, while A.S. and Morgan were sitting on the couch watching a movie, Morgan reached inside of A.S.'s shirt and touched her breasts and then reached inside of A.S.'s pants and underwear and touched her genital area.

In August 2013, the state charged Morgan with second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(a) (2010). The case was tried to a jury in September 2013. The state called four witnesses: A.S.; her mother, J.M.; Wright County Deputy Sheriff Jeffrey Fox; and Wright County Human Services social worker Jennifer Droneck. Morgan testified in his own defense and called one additional witness, A.S.'s biological father, J.S. After a two-day trial, the jury found Morgan guilty. The district court stayed the imposition of Morgan's 36-month prison sentence and placed Morgan on probation. Morgan appeals.

DECISION

Morgan argues that the state's evidence is insufficient to prove that he is guilty of second-degree criminal sexual conduct.

When considering a claim of insufficient evidence, this court conducts “a painstaking analysis of 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 a verdict of guilty. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We must assume that “the jury believed the state's witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). “[W]e will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

To establish Morgan's guilt of the offense charged, the state is required to prove that Morgan (1) “engage[d] in sexual contact” with A.S., (2) that A.S. was under 13 years of age, and (3) that Morgan was more than 36 months older than her. *See* Minn. Stat. § 609.343, subd. 1(a). “Sexual contact” includes “the intentional touching by the actor of the complainant's intimate parts [or] the clothing covering the immediate area of the intimate parts,” committed with sexual or aggressive intent. Minn. Stat. § 609.341, subd. 11(i), (iv) (2010). “Intimate parts” is defined as “the primary genital area, groin, inner thigh, buttocks, or breast of a human being.” *Id.*, subd. 5.

Morgan does not dispute that the second and third elements are satisfied. He focuses his argument on the first element, whether he engaged in “sexual contact” with A.S. Morgan does not dispute that A.S. testified about sexual contact, but he contends that her testimony is not true. He asks this court to reverse his conviction because A.S. is not credible and because there is no corroborating evidence.

We note that the state’s evidence consisted of more than A.S.’s testimony. The state also called three other witnesses. None of the other witnesses was an eyewitness to the incident, but each supported A.S.’s testimony in an indirect way by testifying about her initial reports of Morgan’s conduct. More importantly, Morgan’s argument is inconsistent with the caselaw. An appellate court must defer to the jury’s assessment of a witness’s credibility. *See State v. Green*, 719 N.W.2d 664, 673-74 (Minn. 2006); *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004); *State v. Reichenberger*, 289 Minn. 75, 79-80, 182 N.W.2d 692, 695 (1970). We must assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Furthermore, the state is not required to introduce evidence to corroborate the testimony of a victim of criminal sexual conduct. *See Foreman*, 680 N.W.2d at 539; *State v. Hill*, 285 Minn. 518, 518, 172 N.W.2d 406, 407 (1969); *State v. Folley*, 378 N.W.2d 21, 25 (Minn. App. 1985).

Morgan relies heavily on *State v. Ani*, 257 N.W.2d 699 (Minn. 1977), a criminal-sexual-conduct case in which the supreme court stated, “Even though corroboration is not a requirement under the statute or the constitution, ‘the absence of corroboration in an *individual* case . . . may well call for a holding that there is insufficient evidence upon

which a jury could find the defendant guilty beyond a reasonable doubt.” *Id.* at 700 (alteration in original) (quoting Note, *The Rape Corroboration Requirement: Repeal Not Reform*, 81 Yale L.J. 1365, 1391 (1972)). In the same opinion, however, the supreme court noted that the “corroboration requirement in prosecutions for sex crimes was unknown at common law.” *Id.* Furthermore, the supreme court actually affirmed the appellant’s conviction in *Ani* on the ground that the uncontradicted testimony of the victim was sufficient, by itself, to support the conviction. *Id.* Moreover, the supreme court later declined an opportunity to apply the corroboration rule suggested by *Ani* and instead reaffirmed that “a conviction can rest on the uncorroborated testimony of a single credible witness.” *Foreman*, 680 N.W.2d at 539 (quotation omitted). Thus, *Ani* does not require the state to introduce additional evidence to corroborate A.S.’s testimony.

Morgan also cites two other cases in which the supreme court reversed a conviction because of a weakness in the state’s evidence. Each case is distinguishable. In *State v. Huss*, 506 N.W.2d 290 (Minn. 1993), the appellant was convicted of second-degree criminal sexual conduct for sexually abusing his three-year-old daughter. *Id.* at 290. But the victim in that case was considerably younger than A.S., the victim’s testimony was wildly inconsistent and internally contradictory, and her testimony was “particularly troublesome” because she repeatedly had been exposed to highly suggestive material on sexual abuse, which “may have improperly influenced the child’s report of events.” *Id.* at 292-93. In *State v. Housley*, 322 N.W.2d 746 (Minn. 1982), the supreme court reversed the appellant’s assault conviction because it had “grave doubt” as to whether he acted in self-defense when he shot a police officer who had entered his home

forcefully to execute a search warrant. *Id.* at 751. The supreme court's rationale for reversal had nothing to do with witness credibility or corroboration. *See id.* Furthermore, the supreme court has not applied the grave-doubt standard since *Housley*.

In sum, the evidence is sufficient to sustain Morgan's conviction of second-degree criminal sexual conduct.

Affirmed.