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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-899**

State of Minnesota,  
Respondent,

vs.

Lawrence Martin Valencour,  
Appellant.

**Filed May 29, 2012  
Affirmed  
Hudson, Judge**

Dakota County District Court  
File No. 19HA-CR-09-3589

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

James C. Backstrom, Dakota County Attorney, Kevin J. Golden, Assistant County  
Attorney, Hastings, Minnesota (for respondent)

Bradford Colbert, Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for  
appellant)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and  
Crippen, Judge.\*

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

## UNPUBLISHED OPINION

**HUDSON**, Judge

Appellant challenges the sufficiency of the evidence to support his convictions of fourth-degree criminal sexual conduct arising from massages he performed while employed as a therapeutic massage therapist. We affirm.

### FACTS

The state charged appellant Lawrence Valencour with six counts of fourth-degree criminal sexual conduct, in violation of Minn. Stat. § 609.345, subd. 1(o) (2008), arising from his conduct while performing massages on six women while working at a therapeutic-massage business. Valencour waived his right to a jury trial and agreed to trial by the district court.

The owner of the massage business hired appellant as an independent contractor in early 2008. In November 2008, she received complaints from three women who had received massages from appellant. She ended her working relationship with appellant, sent out a letter stating that he was no longer working with her, and forwarded the complaints to the Apple Valley Police Department. When other women then inquired about appellant, she also referred them to the police.

The six complainants testified at trial. P.H. testified that when she arrived for a massage one evening, she saw only appellant, who told her that the owner was in another room performing a massage. She testified that appellant massaged her buttocks without draping and that, during a leg massage, she felt that her foot was touching appellant's groin area. She testified that appellant told her that because her body was used to his

hands, she should come back for a front massage. She testified that, although she did not believe appellant deliberately threatened her, his actions made her feel “very uncomfortable” and “completely violated.”

H.V. testified that when she arrived for a massage with appellant, she saw no one else present. She testified that when she was lying on her front and appellant was massaging her arm, he pulled her arm from beneath her hip, and she felt as though he were intentionally placing his erect penis in her hand through his sweat pants. She testified that “[i]t became basically unbearable,” and when he asked if she wanted to extend the massage for no charge, she refused and “couldn’t wait to get out of there.” She testified that she did not get up and leave because she was wearing only underwear.

L.L. testified that during a massage, appellant told her that it was important to release the lymph nodes in the breast to remove toxins, and he asked her to move her hands over her breasts. She testified that, without asking, he placed his hands on her wrists to massage her breasts, which were covered by a towel. She also testified that in massaging the top of her thighs, appellant touched her genital area once or twice on each side and that when he massaged her back, he placed something in the palm of her hand that was the size and shape of a penis. L.L. stated that appellant told her that next time, he “would like to do skin-to-skin massage” because he “[didn’t] like all of this clothing in the way.” She did not tell appellant to stop his behavior, but, after these comments, she “put it all together” and believed his conduct was sexual.

J.S. testified that, while receiving a massage from appellant, she felt his penis in her hand. She testified that, although she initially told police that she was not sure it was

his penis, she later realized it could not be anything else. She testified that the situation made her feel “[v]ery uncomfortable” and “taken advantage of,” and she was afraid appellant would do something else. She also testified that appellant, without asking permission, had her place her hand on her breast and massage it with his hand on top while talking about breast cancer awareness. She testified that this contact did not feel like a breast exam from a doctor. When appellant found a lump near her shoulder, appellant called the business owner in to look at it.

C.S. received a massage from appellant one evening and did not recall seeing people other than appellant at the business. She testified that, for 10-15 minutes during the massage, appellant, who was wearing sweat pants, had his partially erect penis against her hand. She testified that when she tried to pull away, he moved his body closer. She testified that, although appellant has a large stomach, she had no doubt that what she felt was his penis. C.S. testified that appellant’s conduct “[s]eemed very deliberate” and that “[i]t appeared basically that he was there for his own pleasure.” She also believed that he massaged her buttocks more than usual. She testified that she did not tell appellant to stop and did not try to get up because she was partially unclothed, but she felt very uncomfortable and later called the owner of the business to ask for her money back.

K.C. testified that, during a massage, appellant asked her to move her hands alongside her body and leaned his groin area into her hand. She then felt his penis become more erect through his pants. She testified that, when appellant moved to the other side of the table, she tried to move her hand, but he pulled it back, placing it on the table with the palm out, and pressed his penis into her hand for about ten minutes. She

testified that this action appeared “very much” intentional. She testified that when appellant asked her if it felt good, she told him that her back felt better, but he replied, “That’s not what I meant.” She stated that she told appellant that she was uncomfortable, but she was afraid to say anything else and wanted to get it over with. She did not get up because she was wearing only underwear and because she and appellant were alone.

The district court received *Spreigl* evidence of an uncharged 2006 incident in which appellant, who was then working at a massage business in Shakopee, massaged a client’s exposed breasts without her permission. That massage client testified that she was nervous and scared, that appellant was twice her size, and that nobody else was there to hear if she screamed.

Appellant testified on his own behalf. He testified that he cannot massage a client’s arms if they are under the client’s body and that he stays close to the table so that he does not hurt himself because of a medical condition that contracts the tendons in his hands. He testified that he weighs about 290 pounds, which may be more than at the time of the incidents. He denied that he touched clients for sexual gratification and testified that he tries not to touch the genital area, though it may happen inadvertently. He stated that he has been taught to do breast or lymphatic massage. He could not explain complainants’ testimony that he improperly touched their breasts without permission or that he placed his genitals in contact with their bodies. He stated that his penis had never become erect when he was giving a massage and that he never wears sweat clothes to give a massage. He testified that during the massages, the women never told him they were uncomfortable or left.

The district court issued its findings of fact, conclusions of law, and order, finding appellant guilty of all six counts. The district court found that appellant intentionally had nonconsensual sexual contact with the complainants while performing bodywork for hire; that he was in a position of authority over them at the time of the contact; and that his behavior amounted to coercion because he used his superior size, greater strength, and coercive words and actions to accomplish sexual contact. This appeal follows.

## D E C I S I O N

In addressing a challenge to the sufficiency of the evidence to support a conviction, this court carefully reviews the record to determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to permit the factfinder to convict appellant. *State v. Pendleton*, 759 N.W.2d 900, 909 (Minn. 2009). We will not disturb the verdict “if the [factfinder] could reasonably conclude, given the presumption of innocence and the requirement of proof beyond a reasonable doubt, that the defendant was guilty of the charged offense.” *Id.* In evaluating the verdict, we recognize that “[a]ssessing witness credibility and the weight given to witness testimony is exclusively the province of the [factfinder],” and we “may assume that the [factfinder] credited the state’s witnesses and rejected any contrary evidence.” *Id.* The same standard of review on the sufficiency of the evidence applies to jury trials and to bench trials, in which the district court is the trier of fact. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999).

The district court found appellant guilty of fourth-degree criminal sexual conduct against each of the complainants based on a violation of Minn. Stat. § 609.345, subd. 1(o), which requires that “the actor performs massage or other bodywork for hire,

. . . and nonconsensual sexual contact occurred during or immediately before or after the actor performed . . . one of those services for the complainant.” *Id.* For the purpose of this offense, “sexual contact” includes

(i) the intentional touching by the actor of the complainant’s intimate parts, or

(ii) the touching by the complainant of the actor’s, the complainant’s, or another’s intimate parts effected by a person in a position of authority, or by coercion, or by inducement if the complainant is under 13 years of age or mentally impaired, or

(iii) the touching by another of the complainant’s intimate parts effected by coercion or by a person in a position of authority, or

(iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts.

Minn. Stat. § 609.341, subd. 11(a) (2008). The act must be committed with sexual or aggressive intent and must occur without the complainant’s consent. *Id.* Consent is defined as “words or overt actions . . . indicating a freely given present agreement to perform a particular sexual act . . . . Consent does not mean . . . that the complainant failed to resist a particular sexual act.” *Id.*, subd. 4(a) (2008).

Appellant does not challenge the portion of the district court’s findings that he touched each of the women with sexual intent, but he argues that the evidence is insufficient to prove beyond a reasonable doubt that the contact was nonconsensual and that he used coercion to accomplish it. In this context, “[c]oercion means the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm” or the actor’s use of “confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual . . .

contact against the complainant's will." Minn. Stat. § 609.341, subd. 15 (2008). "Proof of coercion does not require proof of a specific act or threat." *Id.*

*P.H.*

Appellant argues that, although he had contact with P.H.'s underwear, which covered her intimate parts, she consented because she did not tell him to stop. He also argues that P.H.'s foot touching his groin was not accomplished by coercion because there was no evidence that his size or strength caused her to submit to the contact. But "[c]onsent does not mean . . . that the complainant failed to resist a particular sexual act." Minn. Stat. § 609.341, subd. 4(a). And "[t]here is sufficient evidence of coercion when [the actor] creates an atmosphere of fear." *State v. Gamez*, 494 N.W.2d 84, 87 (Minn. App. 1992), *review denied* (Minn. Feb. 23, 1992). Although P.H. did not directly testify that she was fearful, she testified that she felt "threatened," that she was "very uncomfortable," and that she "just wanted to get out of there really fast." She further testified that she felt "completely violated" as a result of the massage. We conclude that the evidence is sufficient to support the district court's finding that appellant had intentional nonconsensual contact with P.H., which was accomplished by coercion.

*H.V.*

Appellant argues that his contact with H.V. was consensual because she consented to his contact with her clothed body parts and that H.V.'s contact with his penis through his clothing was not accomplished by coercion. We defer to the district court's assessment of witness credibility. *See Pendleton*, 759 N.W.2d at 909 (stating that "[a]ssessing witness credibility and the weight given to witness testimony is exclusively

the province of the [factfinder]”). H.V. testified that appellant intentionally placed his erect penis in her hand while massaging her arm, that the massage became “unbearable,” and that the reason she did not leave was that she was wearing only underwear. The district court expressly found this testimony credible and appellant’s testimony not credible. We agree and conclude that the evidence is sufficient to prove beyond a reasonable doubt that appellant had nonconsensual sexual contact with H.V. and that he accomplished this contact by coercion.

*L.L.*

Appellant argues his contact with L.L.’s hands, which were placed on her own breasts, was not contact with L.L.’s intimate parts because he did not directly touch her breasts. *See* Minn. Stat. § 609.341, subd. 11(a)(iv) (defining element of offense to include the actor’s “touching of the clothing covering the immediate area of the intimate parts”). He also argues that any contact with her genital area was not intentional. But L.L. also testified that appellant placed his penis in her hand and that after the massage, appellant told her to return for a “skin-to-skin massage.” The district court was entitled to credit L.L.’s testimony. *Pendleton*, 759 N.W.2d at 909. We conclude that, based on L.L.’s testimony, the district court did not clearly err by finding that the state proved beyond a reasonable doubt that appellant engaged in nonconsensual sexual contact with L.L., which was accomplished by coercion.

*J.S.*

Appellant argues that his conduct of placing his hands on J.S.’s hands and massaging her breast did not amount to sexual contact and, even if it were, it was

consensual. But J.S. also testified that appellant leaned into her body with his penis and as he was doing so, she felt “[v]ery uncomfortable” and “scared,” and she may have been afraid that he would do something else. We conclude that, taken in the light most favorable to the conviction, the evidence sustains the district court’s finding that appellant engaged in nonconsensual sexual contact with J.S., which was accomplished by coercion.

*C.S.*

Appellant argues that his act of placing his penis in C.S.’s hand, although nonconsensual, did not amount to coercion. But C.S. testified that, when she tried to pull away, appellant only moved his body closer. She also testified that she did not try to get up because she was partially unclothed. We conclude that the district court properly credited C.S.’s testimony and that appellant’s intentional sexual contact with C.S., when she tried to move away and felt prevented from leaving because of her state of undress, amounted to coercion.

*K.C.*

Appellant argues that his act of placing his penis in K.C.’s hand did not amount to coercion. But K.C. testified that she tried to move her hand away and he pulled it back, pressing his penis into her hand for about ten minutes. She also testified that she told appellant she was uncomfortable but was afraid to say more, and she did not leave because she had on only underwear and was alone with appellant. We conclude that K.C.’s testimony provides sufficient evidence of coercive behavior to sustain the district court’s finding that appellant’s sexual contact with her was accomplished by coercion.

*See, e.g., State v. Daby*, 359 N.W.2d 730, 733 (Minn. App. 1984) (noting that creating an atmosphere of fear, which caused submission to sexual advances, constitutes sufficient evidence of force).

This court views the evidence in the light most favorable to the convictions. *Pendleton*, 759 N.W.2d at 909. The evidence shows that, except for a brief time when the business owner was in the room during J.S.'s massage, the women were alone with appellant during the massages. The record strongly suggests that appellant weighed at least 200 pounds at the time of the incidents. P.H., H.V., J.S., C.S., and K.C. all testified that they were uncomfortable with appellant's actions. H.V., C.S., and K.C. testified that they did not leave because they were wearing only underwear, and K.C. testified that she tried to move away from appellant, but he moved closer. Viewing the evidence in the light most favorable to the convictions and giving deference to the district court's assessment of witness credibility, we conclude that the evidence is sufficient to sustain appellant's convictions as to each complainant.

Because we affirm appellant's convictions on the basis that he used coercion to accomplish nonconsensual sexual contact with the complainants, we need not address appellant's additional argument that, as a matter of law, he was not acting in a position of authority over the complainants at the time of that contact.

**Affirmed.**