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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0784**

State of Minnesota,
Respondent,

vs.

Paul James Frederick,
Appellant

**Filed April 21, 2014
Affirmed
Worke, Judge**

Douglas County District Court
File No. 21-CR-11-2285

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Chad Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Bridget K. Sabo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Klaphake, Judge.*

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

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct, arguing that he was not in a “position of authority” over the complainant. We affirm.

DECISION

Appellant Paul James Frederick was charged with three counts of first-degree criminal sexual conduct and three counts of third-degree criminal sexual conduct. On October 11, 2012, the parties jointly submitted stipulated evidence to the district court related to one count of first-degree criminal sexual conduct; the state dismissed the other counts. Based on the stipulated evidence, the district court found Frederick guilty of first-degree criminal sexual conduct, under Minn. Stat. § 609.342, subd. 1(b) (2010).

Frederick argues that the evidence was insufficient to prove beyond a reasonable doubt that he was guilty of first-degree criminal sexual conduct. Frederick was 42 years old and the complainant, S.H., was 14 years old when the conduct occurred. Frederick challenges only whether he was in a “position of authority” over S.H.¹ He argues that he was not charged with any duties related to health, welfare, or supervision, because he was merely a concerned friend and his “benevolence was a gift, not a duty.”

Frederick couches his argument as an issue of statutory construction, subject to de novo review. *See State v. Rucker*, 752 N.W.2d 538, 545 (Minn. App. 2008) (stating that construction of a criminal statute is a question of law subject to de novo review), *review*

¹ A used condom in a dated, sealed bag with S.H.’s name on it was found in Frederick’s bedroom and DNA testing matched S.H. and Frederick.

denied (Minn. Sept. 23, 2008). But our review of the argument presented supports only a challenge to the sufficiency of the evidence.

When the sufficiency of the evidence is challenged, this court carefully analyzes the record to determine whether the fact-finder could reasonably find the defendant guilty of the offense charged based on the facts in the record and the legitimate inferences that can be drawn from them. *State v. Buckingham*, 772 N.W.2d 64, 71 (Minn. 2009). This court views the evidence in the light most favorable to the conviction, assuming that the fact-finder believed the state's witnesses and disbelieved any contrary evidence. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999).

A person commits first-degree criminal sexual conduct when he “engages in sexual penetration with another person” over whom he is “in a position of authority.” Minn. Stat. § 609.342, subd. 1(b). A person in a “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 (2010).

The statute “does not contain an exclusive list of persons in a position of authority.” *State v. Larson*, 520 N.W.2d 456, 461 (Minn. App. 1994) (stating that evidence was sufficient that defendant was in a position of authority over the complainant because he was ten years older and acted as her confidante, and she described him as her “favorite uncle”), *review denied* (Minn. Oct. 14, 1994). This court has held that, under

this statute, “position of authority” is “broadly defined.” *State v. Willette*, 421 N.W.2d 342, 345 (Minn. App. 1988) (stating that defendant held a position of authority over complainant, an unrelated child residing with him), *review denied* (Minn. May 16, 1988); *see also Rucker*, 752 N.W.2d at 542, 546 (determining that “[g]iven the broad reading of the statutory definition of ‘position of authority,’” co-facilitator of an after-school program was in a position of authority over two complainants because he supervised them in the program, exchanged contact information with them, encouraged them to maintain their relationships with him outside of the program, and obtained parental permission to take one complainant out to reward her achievements).

A variety of relationships qualify a person to be in a “position of authority” over the complainant. *State v. Hall*, 406 N.W.2d 503, 504 (Minn. 1987) (complainant babysat for defendant’s children); *State v. Bird*, 292 N.W.2d 3, 4 (Minn. 1980) (complainant was occasionally left in the care of defendant uncle who showed the complainant pornographic movies and coerced her into sexual activity by telling her that she had to do it or be in “big trouble”); *State v. Fero*, 747 N.W.2d 596, 599 (Minn. App. 2008) (complainant was a cook working under the supervision of defendant assistant manager when conduct occurred after work hours and off work premises), *review denied* (Minn. July 15, 2008); *State v. Mogler*, 719 N.W.2d 201, 205, 209 (Minn. App. 2006) (complainant and defendant, a uniformed on-duty police officer, had sexual intercourse in a conference room at a police station).

The evidence showed that S.H. dated Frederick’s 16-year-old son, J.F. S.H. frequently stayed overnight at Frederick’s apartment, even when J.F. was not home.

Frederick obtained S.H.'s mother's permission before S.H. slept over. S.H.'s mother assumed that S.H. slept on the couch, but Frederick often made S.H. sleep with him.

Frederick drove S.H. to and from school and bought S.H. "anything she . . . ask[ed] for." He bought her clothes and Victoria's Secret underwear. Frederick "bought [S.H.] some jewelry," and in a quest to "help[] [S.H.] become a girl," "bought her a bunch of shirts and everything purple," and took her to a tanning salon and paid for her sessions. Because S.H. was "inexperienced" and a "virgin," Frederick took her to Planned Parenthood to get birth control.

Frederick would sit up with S.H. and they would talk about "everything," such as her past and family. Frederick told S.H.: "[Y]ou don't know what you do for me. . . . [Y]ou make me feel better." He stated that he "gave in too much and when [he] gave in . . . she was thinking, 'hey my mom and dad aren't being good to me, but he is.'" He said: "I'm treating her. But I'm also . . . the parent . . . and I'm also the one being nice to her. I'm being so nice that she's looking at me thinking, you know . . . he'll give me anything." When S.H. stopped Frederick's advances, he threatened to end her relationship with J.F. Frederick also forced S.H. into having sex with him by telling her: "[S]ex relaxes me so much. Why don't you help me relax?" The evidence was sufficient for the district court to find that Frederick was in a position of authority over S.H. under the statutory definition.

Further, despite Frederick's claim that he was not "charged with any duties related to [S.H.'s] health, welfare, or supervision," it makes no difference whether he was asked explicitly by S.H.'s mother to supervise S.H. or if he simply invited S.H. over and

accepted responsibility for her. *See State v. Waukazo*, 269 N.W.2d 373, 374 (Minn. 1978) (determining that evidence was sufficient to support first-degree criminal-sexual-conduct conviction because defendant, the adult son of the complainant's foster parents who lived in the same home, was in a position of authority over the complainant despite lack of express duty or authority to care for the child).

In his pro se supplemental brief, Frederick essentially challenges S.H.'s credibility. But the district court found credible the evidence supporting Frederick's conviction, and we defer to the district court's credibility determinations. *See DeMars v. State*, 352 N.W.2d 13, 16 (Minn. 1984) (stating that witness credibility is a determination to be made by the fact-finder).

Affirmed.