NOT DESIGNATED FOR PUBLICATION

No. 124,783

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

ALAN CHRIS INGWERSEN,
Appellant.

MEMORANDUM OPINION

Appeal from Riley District Court; GRANT D. BANNISTER, judge. Opinion filed April 14, 2023. Affirmed.

Michael P. Whalen, of Law Office of Michael P. Whalen, of Wichita, for appellant.

David Lowden, deputy county attorney, *Barry R. Wilkerson*, county attorney, and *Derek Schmidt*, attorney general, for appellee.

Before COBLE, P.J., HILL and ATCHESON, JJ.

PER CURIAM: A jury sitting in Riley County District Court convicted Defendant Alan Chris Ingwersen of multiple counts of rape, aggravated criminal sodomy, and aggravated indecent liberties with a child between the ages of 14 and 16 years old for repeatedly assaulting the daughter of his much younger live-in girlfriend. On appeal, Ingwersen raises two challenges to the guilty verdicts on the aggravated indecent liberties charges. We find his contentions to be without merit and, therefore, affirm all of the convictions and the resulting sentences.

Given the limited issues on appeal, we need not recount the evidence in detail. Ingwersen initiated his sexual abuse of Y.A. in 2019 after she entered the eighth grade. The assaults continued unabated until shortly before Ingwersen was arrested in September 2020. The misconduct began with Ingwersen repeatedly touching Y.A.'s breasts and buttocks and progressed to cunnilingus, fellatio, and digital and penile penetration of Y.A.'s vagina. During a law enforcement investigation, Y.A. described the sexual abuse over the course of sequential interviews with police officers, social workers, and a nurse conducting a forensic examination of her. Ingwersen met with a detective and admitted to much of the sexual activity Y.A. had recounted. The State charged Ingwersen with multiple felony sex crimes.

At the conclusion of the trial in early October 2021, the jury convicted Ingwersen of five counts of rape, four counts of aggravated criminal sodomy, and eight counts of aggravated indecent liberties with a child between the ages of 14 and 16 years old. The district court later imposed a controlling sentence of 310 months in prison on Ingwersen based on a combination of consecutive terms on the rape and sodomy convictions capped under what is known as the double rule. See K.S.A. 2022 Supp. 21-6819(b)(4). Ingwersen, who is now about 70 years old, has appealed.

On appeal, Ingwersen contends the trial evidence failed to establish the aggravated indecent liberties with a child charges necessarily occurred during the time frame stated in the complaint, and, therefore, those convictions should be reversed. We view this as a challenge to the sufficiency of the evidence. In reviewing a sufficiency challenge, we construe the evidence in a light most favorable to the party prevailing in the district court, here the State, and in support of the jury's verdicts. An appellate court will neither reweigh the evidence generally nor make credibility determinations specifically. *State v. Jenkins*, 308 Kan. 545, Syl. ¶ 1, 422 P.3d 72 (2018); *State v. Butler*, 307 Kan. 831, 844-45, 416 P.3d 116 (2018); *State v. Pham*, 281 Kan. 1227, 1252, 136 P.3d 919 (2006). The issue for review is simply whether rational jurors could have found the defendant guilty

beyond a reasonable doubt. *Butler*, 307 Kan. at 844-45; *State v. McBroom*, 299 Kan. 731, 754, 325 P.3d 1174 (2014).

The complaint alleged that each of the alleged crimes occurred between October 1, 2019, and September 9, 2020. The trial evidence established that Y.A. had been living with family friends out of state and joined her mother, who had been residing in Ingwersen's home for some time, in late 2018. Ingwersen told the detective Y.A. arrived in November 2018—a statement the detective recounted during the trial. The evidence indicated that Y.A.'s mother often worked afternoons and evenings and could be emotionally distant. At trial, Y.A. testified that for the first year, Ingwersen treated her kindly, often taking her out to eat, to the movies, or on other outings. According to Y.A., Ingwersen's attitude and conduct then became sexually aggressive toward her. In her trial testimony, Y.A. did not give a fixed or approximate date the sexual assaults began. Nor did she indicate precise dates for the charged acts.

But, as the appellate courts have repeatedly recognized, even the gravest crime may be proved through circumstantial evidence. *State v. Douglas*, 313 Kan. 704, 716, 490 P.3d 34 (2021); *State v. Thach*, 305 Kan. 72, 84, 378 P.3d 522 (2016). Here, the trial evidence supported a reasoned inference by the jury that Y.A. moved into the residence in November 2018 (crediting that portion of Ingwersen's statement to the detective) and that the sexual abuse began about year later (crediting Y.A.'s testimony to that effect). Neither of those representations was seriously disputed. And they place all of the criminal conduct within the dates stated in the complaint.

Jurors act well within their fact-finding function to credit some parts of a witness' testimony but not necessarily all of it. See *Ater v. Culbertson*, 190 Kan. 68, 73-74, 372 P.2d 580 (1962) (In assessing the credibility of a witness, jurors may accept part of his or her testimony and reject the balance as "they feel warranted in so doing."); *State v. Seward*, 163 Kan. 136, 145, 181 P.2d 478 (1947) (A jury has the prerogative to believe in

part and disbelieve in part a witness' testimony or confession.), *aff'd on reh'g* 164 Kan. 608, 191 P.2d 743 (1948); *State v. Brown*, No. 112,454, 2015 WL 9457875, at *2 (Kan. App. 2015) (unpublished opinion). The jurors, therefore, could have accepted that portion of Ingwersen's statement without crediting other representations he made, such as his denial that he had sexual intercourse with Y.A.

We reject Ingwersen's point because credible trial evidence establishes a time frame for the crimes consistent with the allegations in the complaint. Accordingly, we need not consider the State's somewhat more involved legal argument that the times alleged in the complaint are not substantive elements of the crimes, so they merely had to show the offenses were committed within the applicable statutes of limitation and the trial evidence, in turn, did not have to conform exactly to those dates.

For his remaining point on appeal, Ingwersen disputes the sufficiency of the evidence to support one count of aggravated indecent liberties with a child that the prosecutor identified for the jury as alleging Ingwersen touched Y.A.'s breasts or buttocks in what had been described as the downstairs living room of the residence. The charged crime required the State to prove that Ingwersen lewdly fondled or touched Y.A. without her consent and "with the intent to arouse or satisfy" either his or Y.A.'s "sexual desires." See K.S.A. 2022 Supp. 21-5506(b)(2)(A).

Y.A. testified at trial that Ingwersen touched her breasts or buttocks in the downstairs living room, among other places in the residence. She also described the touching as not accidental, given the frequency with which Ingwersen assaulted her. And she consistently denied consenting to any of the sexual contact with Ingwersen. When Ingwersen spoke to the detective, he admitted to repeatedly "caressing" Y.A.'s breasts and buttocks.

The act, therefore, was sufficiently identified in the evidence as an intentional caressing of an intimate part of Y.A.'s body that would constitute lewd fondling of the sort supporting a conviction for aggravated indecent liberties with a child, given Y.A.'s age. And Ingwersen's use of the word "caressing" to describe his conduct conveys a purpose of sexual gratification, especially given the parts of Y.A.'s body he touched. In this sort of situation, the nature of the wrongful act itself may be sufficient to establish the proscribed sexual intent. *State v. Reed*, 300 Kan. 494, 502-03, 332 P.3d 172 (2014); *State v. Clark*, 298 Kan. 843, 850, 317 P.3d 776 (2014) (touching victim's "breast area," in contrast to body part "without sexual connotation," suggests "sexual intent" sufficient to support conviction for aggravated indecent liberties with a child). Here, the jury could infer the requisite bad intent from the descriptive evidence. Without belaboring our discussion, the State presented sufficient evidence to support the challenged count of aggravated indecent liberties with a child.

Affirmed.