

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-592**

State of Minnesota,
Respondent,

vs.

Raymond Darrel Pfarr,
Appellant.

**Filed April 9, 2012
Affirmed
Stauber, Judge**

Chippewa County District Court
File No. 12CR10160

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

David M. Gilbertson, Chippewa County Attorney, Montevideo, Minnesota (for respondent)

Frederick J. Goetz, Goetz & Eckland, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Stauber, 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UNPUBLISHED OPINION

STAUBER, Judge

On appeal from his conviction of criminal sexual conduct in the third degree appellant argues that the evidence was insufficient to prove that he engaged in sexual conduct with the complainant because the testimony of the state's witnesses was inconsistent, not supported by physical evidence, and contradicted by appellant's alibi witness. We affirm.

FACTS

Appellant Raymond Darrel Pfarr was charged with one count of criminal sexual conduct in the third degree in violation of Minn. Stat. § 609.344, subds. 1(b), 2 (2008), after he allegedly sexually penetrated H.S. At trial, H.S. testified that on February 11, 2010, several individuals went to appellant's trailer home. In addition to H.S., who was 14 years old at the time, the group consisted of J.O. and G.D., two 15-year-old males; V.T. and R.M., two 14-year-old females; and 20-year-old M.R. H.S. testified that appellant, who was 27 years old, provided the group with drugs and alcohol, and that she became intoxicated after drinking whiskey and smoking marijuana. H.S. also testified that at some point in the evening, she and appellant had sexual contact on appellant's living-room couch. According to H.S, the sexual contact, which included sexual intercourse and oral sex, occurred out in the open where they were observed by other individuals in the home. Although H.S. admitted that there were parts of the evening that she could not remember due to her level of intoxication, she specifically remembered having sex with appellant.

J.O., G.D., and M.R. also testified for the state. J.O. and G.D. testified that they observed appellant and H.S. engaging in oral sex and sexual intercourse. M.R. testified that he also observed appellant and H.S. engage in oral sex.

Montevideo Police Chief Adam Christopher testified that he executed a search warrant at appellant's home on March 5, 2010. During the execution of the warrant, Chief Christopher discovered a text message from H.S. on appellant's phone. The text message, dated February 12, stated: "Yeah, We did. But it's okay I took advantage of you." Chief Christopher also testified that he used a "Blue Max light" on appellant's couch and cushions to check for bodily fluids. Chief Christopher acknowledged that the use of the Blue Max light did not reveal any semen stains on appellant's couch or cushions.

Appellant testified that he knew J.O., and that J.O. and a "bunch of kids" showed up at his home uninvited at about 9:00 p.m. on February 11. Although appellant acknowledged that H.S. was among the group at his home, appellant denied having sex with her. Instead, appellant claimed that he had arranged for a taxi, which arrived at the home shortly after the group arrived. According to appellant, he then left his home, spent the evening with the taxi driver, Amy Strommer, and did not return to his home until the following morning, finding it trashed. Strommer's testimony corroborated appellant's testimony. But on cross-examination, Strommer admitted that she had a "vested interest" in the outcome of the case because at the time of trial, she had left her husband for appellant and was living in appellant's trailer home.

The jury found appellant guilty of the charged offense. The district court then sentenced appellant to 72 months in prison. This appeal follows.

D E C I S I O N

When reviewing a claim of insufficient evidence, an appellate court reviews the evidence to determine “whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Moore*, 481 N.W.2d 355, 360 (Minn. 1992). The verdict will be upheld if, “giving due regard to the presumption of innocence and to the state’s burden of proof beyond a reasonable doubt, [the jury] could reasonably have found the defendant guilty.” *State v. Pierson*, 530 N.W.2d 784, 787 (Minn. 1995). The reviewing court considers “the evidence in the light most favorable to the verdict and assume[s] that the jury disbelieved any evidence conflicting with the result reached.” *State v. Gatson*, 801 N.W.2d 134, 143 (Minn. 2011).

Appellant was convicted of third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(b). This statute provides that “[a] person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if . . . the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant.” Minn. Stat. § 609.344, subd. 1(b).

Appellant argues that the state failed to prove that he had sex with the complainant because the testimony of the state’s witnesses was inconsistent, not supported by the physical evidence, and contradicted by appellant’s alibi witness. We disagree. H.S.

testified that she had oral sex and sexual intercourse with appellant. If believed, this testimony alone is sufficient to sustain appellant's conviction. *See State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998) (stating that a conviction of criminal sexual conduct may be upheld on the testimony of a single credible witness). Moreover, H.S.'s testimony was corroborated by J.O., G.D., and M.R., all of whom testified that they observed appellant and H.S. engage in sexual intercourse, oral sex, or both. Although some of the testimony of the state's witnesses was inconsistent, the inconsistencies involved minor details such as the time the group arrived at appellant's home and what alcohol was present. *See State v. Johnson*, 679 N.W.2d 378, 387 (Minn. App. 2004) (stating that "[m]inor inconsistencies and conflicts in evidence do not necessarily render testimony false or provide the basis for reversal"), *review denied* (Minn. Aug. 17, 2004). The testimony of the state's witnesses was consistent with regard to appellant's sexual contact with H.S., and if believed, this testimony supports the jury's conclusion that appellant had sex with the complainant. Further, although appellant and his alibi witness gave differing accounts of the events of February 11, the jury is in the best position to assess witness credibility and was free to disregard testimony regarding appellant's alibi. *See State v. Witucki*, 420 N.W.2d 217, 221 (Minn. App. 1988) (stating that the jury is in the best position to assess the credibility of the witnesses and was free to disregard the defendant's testimony), *review denied* (Minn. Apr. 15, 1988). The jury believed the state's witnesses and disbelieved any testimony to the contrary. Therefore, when viewing the evidence and testimony in the light most favorable to the conviction, there was

sufficient evidence in the record to support appellant's conviction of third-degree criminal sexual conduct.

Affirmed.