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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1913**

In the Matter of the Welfare of: J. S., Child.

**Filed July 23, 2012
Affirmed
Johnson, Chief Judge**

Washington County District Court
File No. 82-JV-10-86

Arthur R. Martinez, Minneapolis, Minnesota (for appellant J.S.)

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

Peter J. Orput, Washington County Attorney, Anthony J. Zdroik, Assistant County
Attorney, Stillwater, Minnesota (for respondent State of Minnesota)

Considered and decided by Johnson, Chief Judge; Rodenberg, Judge; and
Huspeni, Judge.*

UNPUBLISHED OPINION

JOHNSON, Chief Judge

J.S., a 13-year-old boy, was found guilty of first-degree criminal sexual conduct based on evidence that he sexually abused a neighbor boy when the neighbor boy was five and six years old. The victim testified at trial, and the state also introduced two

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

videotaped interviews in which the victim described repeated incidents of sexual abuse. On appeal, J.S. argues that the evidence is insufficient to support the finding of guilt. We affirm.

FACTS

In September 2009, the Washington County Sheriff's Office began investigating reports that J.S. had sexually abused a neighbor boy, both before and after the boy's sixth birthday. In January 2010, the state charged J.S. with three counts of first-degree criminal sexual conduct, violations of Minn. Stat. § 609.342, subd. 1(a) (2008), and one count of second-degree criminal sexual conduct, a violation of Minn. Stat. § 609.343, subd. 1(a) (2008).

The juvenile division of the district court held a two-day bench trial in July 2011. The state called five witnesses: the victim; the victim's mother; Kristine Wilk, a registered nurse at Midwest Children's Resource Center (MCRC) who had interviewed the victim; Jerry Lannon, a deputy sheriff who had investigated the report; and Craig Cilley, a sheriff's detective who had conducted a forensic examination of a computer at the victim's mother's home. J.S. testified but did not call any other witnesses.

The victim's mother testified that J.S. occasionally came to her home to babysit her three children during the summer of 2009. She explained that J.S. and the victim sometimes played in a "fort" that they assembled in the basement by draping blankets over a table and chairs. The victim testified that both he and J.S. sometimes removed their pants and underwear in the fort. The victim testified that, after undressing, J.S. "stuck his penis in my mouth" and "stuck his penis in my butt" and that this happened

“[m]ore than one time.” The victim also testified by saying, “I would stick my penis in his butt,” and “I put my penis in his mouth,” and that this type of sexual contact happened on “[m]ore than one day.” The victim further testified that he and J.S. used his mother’s computer to look at “[v]ideos of naked people . . . [s]howing their private parts.”

During Wilk’s testimony, the prosecution played a video-recording of her interview with the victim. During the videotaped interview, the victim said that J.S. placed his penis inside his anus and his mouth, that J.S. sucked on his penis, and that he tried but failed to place his own penis in J.S.’s anus. Wilk testified that the victim understood details about sexual matters that are not normally known to children his age, even accounting for the possibility that the victim had viewed pornography. Wilk also testified that her physical examination of the victim did not reveal any physical evidence of sexual abuse, but she explained that the lack of such evidence is consistent with the information that the victim provided. Deputy Lannon authenticated a video-recording of his own interview with the victim in which the victim described anal penetration, and the video-recording was admitted into evidence and played at trial. Detective Cilley testified that his forensic examination showed that pornographic websites had been viewed on the computer at the victim’s mother’s home.

J.S. denied all of the allegations. He testified that he and the boy never touched each other’s penises, that he never had any sexual contact with the boy, and that he never used the boy’s mother’s computer to look at pornography. J.S. testified that he was circumcised in April 2009 and was in pain “for quite a while.” J.S.’s attorney delivered a

closing argument that questioned the reliability of the victim's recollections because of his young age and because he may have been exposed to sexual content elsewhere.

The juvenile court found J.S. guilty of one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a), and adjudicated him a delinquent child. The juvenile court placed J.S. on probation. The three remaining counts were dismissed. J.S. appeals.

DECISION

J.S. argues that the evidence is insufficient to support the juvenile court's finding of guilt on the charge of criminal sexual conduct in the first-degree.

Our standard of review in an appeal from a finding of juvenile delinquency is as follows:

In a juvenile delinquency proceeding, the prosecution must prove the petition beyond a reasonable doubt. *In re Welfare of G.L.M.*, 347 N.W.2d 84, 85 (Minn. App. 1984). When reviewing a sufficiency of the evidence claim, this court carefully reviews whether the record and any legitimate inferences drawn from it reasonably support the fact-finder's conclusion that the defendant committed the offense charged. *State v. Ulvinen*, 313 N.W.2d 425, 428 (Minn. 1981); *see also In re Welfare of S.A.M.*, 570 N.W.2d 162, 167 (Minn. App. 1997) (applying same standard to juvenile cases). Where the facts and legitimate inferences drawn from the facts could reasonably lead the fact-finder to conclude that a defendant has committed the offense, the conviction should not be disturbed. *State v. Ring*, 554 N.W.2d 758, 760 (Minn. App. 1996).

On appeal, the sufficiency of the evidence is viewed in a light most favorable to the state. *G.L.M.*, 347 N.W.2d at 85. This court assumes the trier of fact believed the state's witnesses and disbelieved any contradictory evidence. *State v. Parker*, 353 N.W.2d 122, 127 (Minn. 1984). Accordingly,

an appellant has the burden of showing that the trier of fact could not reasonably find the appellant committed the charged acts. *In re Welfare of T.M.V.*, 368 N.W.2d 421, 423 (Minn. App. 1985).

In re Welfare of J.R.M., 653 N.W.2d 207, 210 (Minn. App. 2002).

Before we apply the law to the facts of this case, we will respond to J.S.'s two arguments concerning the applicable standard of review. First, he argues that his adjudication is entitled to stricter scrutiny because he was tried by the court rather than a jury. This argument rests on an incorrect statement of the law. An appellate court's analysis of the sufficiency of the evidence is the same for bench trials as for jury trials. *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). This is true as well in a case of juvenile delinquency. *See, e.g., In re Welfare of M.E.M.*, 674 N.W.2d 208, 215 (Minn. App. 2004). Second, J.S. argues that his adjudication deserves stricter scrutiny because it is based in part on circumstantial evidence. J.S. is incorrect; his adjudication does not rely on circumstantial evidence. "Direct evidence' is 'evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.'" *Bernhardt v. State*, 684 N.W.2d 465, 477 n.11 (Minn. 2004) (alteration omitted) (quoting *Black's Law Dictionary* 596 (8th ed. 2004)). The evidence of J.S.'s guilt came directly from the victim himself. No inferences are necessary to connect the victim's testimony to the elements of first-degree criminal sexual conduct. Thus, J.S.'s adjudication is not entitled to a stricter form of scrutiny than is stated above.

Criminal sexual conduct in the first degree is defined by statute as follows:

A person who engages in sexual penetration with another person, or in sexual contact with a person under 13

years of age as defined in section 609.341, subdivision 11, paragraph (c), is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

Minn. Stat. § 609.342, subd. 1(a). In addition,

“Sexual penetration” means any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, whether or not emission of semen occurs:

- (1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or
- (2) any intrusion however slight into the genital or anal openings

Minn. Stat. § 609.341, subd. 12 (2008).

The evidence in the trial record amply supports the elements of first-degree criminal sexual conduct. The victim testified at trial that J.S. performed anal sex and fellatio on him, and he also testified that he was forced to perform fellatio on J.S. The recorded interviews show the victim describing the same conduct. This evidence plainly is sufficient to support the juvenile court's finding of guilt.

J.S. makes a few additional specific arguments, but each is without merit. First, J.S. contends that the evidence regarding his use of a computer at the victim's mother's home is inconsistent. The juvenile court expressly considered the inconsistent nature of the evidence on that topic but nonetheless concluded that “such inconsistencies did not relate to important facts in this case and there was other information that corroborated

[the victim]’s specific allegations.” We agree. Even if the factfinder were to believe that J.S. did not access pornography on the computer in the victim’s presence, that belief would not necessarily undermine the more specific evidence of sexual penetration. Furthermore, we defer to the juvenile court’s determination as to whether inconsistencies affect witness credibility. *See DeMars v. State*, 352 N.W.2d 13, 16 (Minn. 1984). Thus, the inconsistent evidence concerning the computer does not undermine the evidence supporting the finding that criminal sexual conduct occurred.

Second, J.S. contends that the sexual abuse could not have occurred because the victim did not sustain any physical injuries. This argument fails because Wilk explained in her testimony that the victim’s lack of physical injury was consistent with the abuse he described. Thus, the lack of evidence of physical injuries does not undermine the evidence supporting the finding that criminal sexual conduct occurred.

Third and finally, J.S. contends that the sexual abuse could not have occurred because sexual activity would have been too painful for him because he had been circumcised four months before the incidents. Although J.S. testified about his circumcision and resulting pain, his attorney did not make this argument in closing argument to the juvenile court. The issue does not appear in the juvenile court’s findings of fact. In this situation, we construe the juvenile court’s general finding of guilt to include a specific finding rejecting the argument. *See Minn. R. Juv. Delinq. P. 13.09*. Because we defer to the juvenile court’s determinations of witness credibility, *see DeMars*, 352 N.W.2d at 16, and in light of all the evidence in the trial record, we cannot conclude that the juvenile court clearly erred by not accepting J.S.’s testimony on this

point and by not concluding that it is inconsistent with guilt. Thus, J.S.'s testimony concerning his circumcision does not undermine the evidence supporting the finding that criminal sexual conduct occurred.

In sum, the evidence is sufficient to support the juvenile court's finding of guilt.

Affirmed.