STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1690

In the Matter of the Welfare of: C. E. S., Jr., Child

Filed May 6, 2013
Affirmed
Connolly, Judge

Mille Lacs County District Court
File No. 48-JV-12-968

David W. Merchant, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Janice S. Jude, Mille Lacs County Attorney, Heather A.B. Griesert, Assistant County Attorney, Milaca, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Stauber, Judge; and Harten, Judge.*

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges his adjudication of delinquency for first-degree criminal sexual conduct, arguing that the evidence at trial was insufficient to prove sexual penetration because the district court relied on the complainant's hearsay statement to a

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

social worker that appellant sexually assaulted her. Because the complainant's statement to the social worker and the corroborating evidence are sufficient to sustain the adjudication, we affirm.

FACTS

In May 2012, the Mille Lacs Band Tribal Police Department began investigating reports that appellant, 15-year old C.E.S. Jr. had sexually abused a neighbor girl, A.N.D., who was eight- or nine-years old. A Mille Lacs County Community and Veteran's Services social worker interviewed A.N.D. on April 26, 2012, and again on May 10, 2012. During the first interview, A.N.D. described the first time appellant tried to "do something nasty with a little girl" and took her clothes off. A.N.D. also pointed to her genital area when asked to describe what appellant had done and said he "started touching me right here" and it "felt like he was sticking his hands in . . . put his hands inside me." During the second interview, A.N.D. disclosed that the first time appellant touched her, he had also raped her, and that he had put his penis inside her. The Mille Lacs County Attorney's Office charged appellant with one count of first-degree criminal sexual conduct.

The district court held a two-day bench trial on July 30 and 31, 2012. The state called six witnesses: A.N.D.; A.N.D.'s mother; the social worker who interviewed A.N.D.; J.G., a family friend to whom A.N.D.'s initial disclosure was made; A.I., A.N.D.'s babysitter and appellant's 19-year old sister; and finally, the investigator who interviewed appellant and was assigned to investigate the case. Appellant personally testified, and also called two witnesses: C.D., appellant's uncle; and F.M., appellant's

best friend. At all times relevant to this offense, A.N.D. was under 13, and appellant was more than 36 months older than A.N.D.

A.N.D., her mother, and her two sisters moved to Isle, Minnesota in September 2011. Their neighbor, A.I., babysat for A.N.D. and her sisters between the months of September 2011 and April 2012, while their mother worked the swing-shift, from mid-afternoon until as late as 1:30 a.m. Because of different parenting schedules, however, there were times when A.N.D. was the only girl A.I. babysat. A.I.'s brother, appellant, was present "[a]lmost every day" when A.I. babysat for A.N.D., and he would sometimes watch her by himself (though at trial, A.I. and appellant deny he was ever left alone with her). In March 2012, A.N.D.'s mother went into treatment, leaving A.N.D. in A.I.'s care. In early April, however, A.N.D. instead went to stay with J.G., at which time A.N.D. disclosed that appellant was touching her inappropriately. J.G. testified that when A.N.D. confided in her regarding those occasions, A.N.D. acted "a little scared, [and] a little detached." In addition, J.G. testified that when she told A.N.D. that she would be talking to a social worker about appellant, A.N.D. started crying in the car and curled up.

The main factual disputes and conflicting testimony relate to whether appellant sexually penetrated A.N.D. A.N.D. and her mother testified that on multiple occasions, A.I. would leave A.N.D. alone by herself, while at other times A.N.D. was left alone with appellant. A.N.D. explained that during the times her mother was working and she was alone with appellant, he did things that made her feel "uncomfortable." She described how, after he took her pants and underwear off, appellant "stuck his penis inside of me," and that this happened "a lot," and that it felt "really weird."

The social worker took the stand and described the forensic interview protocol she used to investigate whether A.N.D. had been sexually assaulted. She stated that during her two interviews, A.N.D. disclosed that appellant had engaged in sexual contact with her. She also explained that she has found, based on her experience, it is "sometimes, especially with younger children[,]" helpful to conduct an interview in multiple sessions, and that "[k]ids don't normally talk sequentially," nor do they disclose every detail about what happened.

The county attorney then played the DVD recordings of A.N.D.'s two interviews with the social worker. During the first interview, A.N.D. explained that A.I. had left her alone with appellant in order to go to the movies with her boyfriend. A.N.D. said "[h]e grabbed me and took my clothes off . . . and he held me down" while they were in her bedroom. She stated that appellant touched her on her vagina with his hands while her clothes were off, but that he did not touch her anywhere else on her body. At first, A.N.D. said that appellant had his pants on during that time, but that his shirt was off, but later said "[h]e took his pants off." A.N.D. said this happened "a bunch of times" but that he never touched her with any other part of his body, except he kissed her on the lips. It was during the second interview that A.N.D. told the social worker that appellant raped her when he "put[] his penis inside of me," that "he had all of his clothes off," and that this happened "a lot." During both interviews, A.N.D. also said appellant had told her "[i]f I don't keep it a secret then he's going to kill my whole family."

A.I. then testified that appellant would visit her while she was babysitting A.N.D. "almost every day," that she would sometimes run errands, but that A.N.D. always came

with her. She also testified that she was always around when appellant came over, and that she never saw him touching A.N.D. inappropriately.

The investigator took the stand and testified that during his interview of appellant, appellant admitted to being alone with A.N.D. on different occasions. On cross-examination, the investigator stated that appellant admitted to babysitting A.N.D. twice, but that both times were at his home when other family members were also present.

At trial, appellant denied being alone with A.N.D., and denied ever taking A.N.D.'s clothes off, touching her private parts, or inserting his penis into her vagina. Appellant's uncle, C.D., testified that he lived at A.I. and appellant's home beginning in March 2012. During that time, he noticed A.N.D.'s discipline problems and temper tantrums, but stated he did not see any inappropriate touching between appellant and A.N.D. Appellant's friend, F.M., also testified that on a couple occasions he spent time with appellant while he was with A.N.D., but that he never noticed any inappropriate touching.

The district court found appellant guilty of one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd.1(a) (2010) and adjudicated him delinquent. This appeal follows.

D E C I S I O N

In determining whether the evidence is legally sufficient to sustain the district court's delinquency adjudication, we evaluate the record and the legitimate inferences from the record in the light most favorable to the court's finding. *In re Welfare of S.A.M.*, 570 N.W.2d 162, 167 (Minn. App. 1997). The evidence must be sufficient to permit the

fact-finder, given the presumption of innocence, to reach a guilty verdict, and a reviewing court must assume that the fact-finder believed the state's witnesses and disbelieved any evidence presented by the defense. *Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995); *see also In re Welfare of L.B.*, 404 N.W.2d 341, 345 (Minn. App. 1987) (applying same standard in a juvenile-delinquency proceeding). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). The reviewing court will not disturb the verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Minnesota law defines criminal sexual conduct in the first degree as follows:

> A person who engages in sexual penetration with another person, or in sexual contact with a person under 13 years of age . . . 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).

> "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 (2010).

Appellant argues that the state failed to meet its burden of proving his guilt beyond a reasonable doubt because "the only evidence the state offered to prove its case was A.N.D.'s uncorroborated and inconsistent allegations of sexual abuse." First, citing *State v. Johnson*, 679 N.W.2d 378, 388 (Minn. App. 2004), *review denied* (Minn. Aug. 17, 2004), he argues that an absence of corroboration may allow for a holding that there is insufficient evidence to find a defendant guilty beyond a reasonable doubt. He points to the lack of physical evidence in this case—no medical examination for physical injuries or disease, no forensic analysis of A.N.D.'s clothing or bed sheets, and the fact that A.N.D.'s mother never reported any behavioral changes in A.N.D.—to show an absence of corroboration. This argument fails, however, because "the testimony of a victim [of criminal-sexual conduct] need not be corroborated." Minn. Stat. § 609.347, subd. 1 (2010). Positive testimony by the victim describing the incident, evidence of the victim's emotional condition at the time she complained to others, and evidence establishing that defendant was at the victim's residence when she said he was are all corroborating circumstances. *See State v. Reinke*, 343 N.W.2d 660, 662 (Minn. 1984). "[A] criminal sexual conduct conviction can rest upon the testimony of a single credible witness." *State v. Jones*, 647 N.W.2d 540, 548 (Minn. App. 2002), *rev'd on other grounds*, 659 N.W.2d 748 (Minn. 2003). Furthermore, there does not need to be an emission of semen or evidence of physical trauma or penetration so as to provide physical evidence for forensic analysis. *See* Minn. Stat. § 609.341, subd. 12; *see also State v. Wright*, 679 N.W.2d 186, 190 (Minn. App. 2004), *review denied* (Minn. June 29, 2004).

Second, appellant argues the district court downplayed the inconsistencies between A.N.D.'s testimony at trial and her statements during the social worker's interviews, and that because of these inconsistencies, the district court was unreasonable in relying on A.N.D.'s testimony alone. He points out that when A.N.D. initially spoke with the social worker, she reported that appellant touched her vagina only with his hand. It was only during her second interview, after A.N.D. had time to talk with J.G., that she reported being raped, but that his hands remained outside her vagina. Then, at trial, A.N.D. said that appellant did not touch her with any part of his body other than his penis.

This argument also fails because we defer to the fact-finder's determination of whether the inconsistencies reflect on witness credibility. *See Johnson*, 679 N.W.2d at 387. The district court found "A.N.D.'s testimony credible regarding penetration. Her descriptions of [appellant's] conduct were detailed and specific." Furthermore, the district court stated that despite the inconsistencies, A.N.D. both told the social worker and testified at trial "in detail about how [appellant] had sexual intercourse with her." A.N.D. consistently reported that appellant penetrated her genital opening on numerous occasions while A.I. was supposed to be watching her. J.G. testified to A.N.D.'s emotional state, and indicated that A.N.D. was scared and uncomfortable when she spoke of these incidents, which is consistent with her statements made during trial and two forensic interviews. In addition, A.N.D. clearly described multiple instances of penetration both at trial and throughout her interviews. Minor inconsistencies do not necessarily provide the basis for reversal, and some inconsistency is to be expected,

especially in cases of a traumatic nature, such as sexual assault. *Id.*; *State v. Mosby*, 450 N.W.2d 629, 634 (Minn. App. 1990), *review denied* (Minn. Mar. 16, 1990).

We conclude that the evidence in the record is sufficient to support the elements of first-degree criminal sexual conduct beyond a reasonable doubt.

Affirmed.