STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1648

State of Minnesota,
Respondent,

vs.

Jeffrey Paul Pennig,
Appellant.

Filed August 19, 2013
Affirmed
Hudson, Judge

Douglas County District Court
File No. 21-CR-12-243

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, St. Paul, Minnesota; and

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

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Hudson, Judge; and Bjorkman, Judge.

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

HUDSON, Judge

Jeffrey Paul Pennig hit his four-year-old son and shoved his wife while in a car in a fast-food-restaurant drive-through. He appeals from his domestic-assault convictions,

arguing the evidence from two eyewitnesses contained discrepancies and because one witness had a previous record for dishonesty. Because we defer to the jury's determinations of witness credibility, we affirm.

FACTS

In February 2012, Jeffrey Paul Pennig went to a fast-food restaurant in a car with his wife, Karen, his adult son, and his four-year-old son, M.P. Pennig was driving, Karen was in the front passenger seat, Pennig's adult son was behind Karen, and M.P. was in the rear passenger seat behind Pennig. While in the drive-through, M.P. threw a temper tantrum because he wanted an ice cream cone. Pennig turned in his seat and hit M.P. in the mouth. When Karen protested, Pennig shoved her towards the passenger-side door and cursed at her. After they received their food order, M.P. continued his tantrum, and Pennig reacted by pulling the car over, pulling M.P. out of the car, grabbing his face hard enough to leave marks, and slapping him. M.P. ran crying to Karen, who was still in the front passenger seat, and Pennig returned to the car and drove away.

An eyewitness told a personal friend, who works in the county social services office, about the incident. Social services staff reported it to the police. A police investigator and a social worker visited Karen's apartment and asked her to come to the police station to be interviewed. After the investigator told her what the eyewitness had reported, Karen stated that Pennig had assaulted her and M.P. The investigator then arrested Pennig, who denied assaulting either Karen or M.P.

The state charged Pennig with two counts of domestic assault in violation of Minn. Stat. § 609.2242, subd. 1(2) (2010). Because Pennig had two prior domestic-assault

convictions, he was charged with felonies in accordance with Minn. Stat. § 609.2242, subd. 4. At trial, Pennig's adult son contradicted the testimony of Karen and the eyewitness, stating that Pennig never grabbed or hit M.P.

The jury convicted Pennig on both domestic-assault counts, and the district court sentenced him to consecutive 30-month and 366-day prison sentences.

Pennig appeals his convictions.

D E C I S I O N

Pennig argues that there was insufficient evidence to convict him because Karen's testimony was not credible and because the eyewitness—due to his particular vantage point—could not clearly see the encounter. We are not persuaded. When reviewing a sufficiency-of-the-evidence challenge, we view the evidence in the light most favorable to the conviction and determine whether that evidence was sufficient to allow the jurors to convict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary," *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989), especially when the verdict depends mainly on conflicting witness testimony, *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). A conviction may rest on the testimony of even a single credible witness. *State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998). We will not reverse if, taking into account the presumption of innocence and requirement for proof beyond a reasonable doubt, the jury could reasonably conclude that the defendant was guilty. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Pennig argues that Karen's testimony cannot support his conviction because she "knowingly and willingly lied under oath before" when she provided false information to obtain public assistance benefits, because she did not report the incident to the police, and because her description of the assault did not match what the eyewitness reported seeing. But witness credibility is exclusively for the jury to determine, and we defer to its judgment. *See State v. Bliss*, 457 N.W.2d 385, 391 (Minn. 1990) ("Defendant's attempt to retry his case by asking us to reevaluate [a witness's] credibility is contrary to our role."). In cross-examination and in his closing argument, Pennig's counsel highlighted Karen's previous dishonesty and her failure to report the incident to the police. But the jury was free to believe her in spite of these problems. And minor discrepancies between witnesses' testimony do not warrant reversal of a jury's verdict. *See, e.g.*, *State v. Yang*, 627 N.W.2d 666, 673 (Minn. App. 2001), *review denied* (Minn. July 24, 2001).

Pennig cites several cases to argue that our deference to the jury's credibility determinations should not apply where "a witness's testimony was of dubious credibility and unsupported by other evidence." But the cases he cites do not reach nearly that far. Instead, each involves far more serious defects than merely a witness's prior untruthfulness, failure to report to police, or discrepancies with other witness accounts. *See State v. Huss*, 506 N.W.2d 290, 292–93 (Minn. 1993) (overturning conviction based solely on testimony of 3-year-old victim containing blatant contradictions and prompted by repeated exposure to "highly suggestive" materials); *State v. Housley*, 322 N.W.2d 746, 750–51 (Minn. 1982) (reversing conviction in nighttime shooting of officer by "extremely nearsighted" home resident where resident claimed self-defense and there was

no evidence that resident knew intruder was a police officer rather than a burglar); *State v. Langteau*, 268 N.W.2d 76, 76 (Minn. 1978) (ordering new trial based solely on uncorroborated testimony of victim where there was no evidence that defendant was even in the area); *State v. Gluff*, 172 N.W.2d 63, 64–66 (Minn. 1969) (invalidating conviction based solely on eyewitness identification where witness had brief opportunity to observe perpetrator and gave description to police that did not match defendant). These cases do not present merely "dubious credibility" and discrepancies, but rather grave doubts about the substantive bases for the convictions. Here it is uncontested that Pennig was driving the car, so his reliance on *Gluff* and *Langteau* is misplaced. Although Pennig's adult son testified that M.P. threw an object at Pennig, there is also no claim that Pennig was invoking his right to self-defense in the face of M.P.'s tantrum, so *Housley* does not apply. Pennig's trial included testimony from both Karen and another eyewitness, so it also does not share *Langteau*'s reliance on the uncorroborated testimony of a victim. And the suggestiveness that Pennig asserts—the police investigator's recounting of the eyewitness's report to Karen—does not approach the repetition, pervasiveness, or susceptibility of the victim in *Huss*.

The discrepancies Pennig asserts are also not as severe as he suggests. Pennig argues that the evidence used to convict him was insufficient in part because Karen testified that Pennig "backhanded" M.P. while the eyewitness described his motions in the car as "jab-like" and perceived them as possibly directed towards Pennig's adult son instead of M.P. But although these two accounts differ in their descriptions of Pennig's motions, they agree on the critical fact that Pennig was in some manner striking his arm

out toward the back seat where M.P was seated. Neither description is incompatible with the jury's finding that Pennig struck M.P. Similarly, the jury's finding that Pennig assaulted Karen is supported by the evidence notwithstanding the difference between Karen's statement that Pennig "shoved" her and the eyewitness's statement that Pennig swung his arm causing Karen's body to move. Either description supports a jury finding that an assault occurred. And none of the discrepancies Pennig highlights undermine Karen's testimony that he assaulted M.P. after pulling away from the drive-through and stopping the car. We therefore hold that the evidence was sufficient for the jury to convict Pennig of domestic assault.

Affirmed.