STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0984

In the Matter of the Welfare of:
P. D. Y.

Filed May 5, 2009
Affirmed
Randall, Judge[*]
Concurring specially, Larkin, Judge
Concurring specially, Stauber, Judge

Hennepin County District Court
File No. 27-JV-08-4004

Lawrence Hammerling, Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

G. Paul Beaumaster, Rice County Attorney, Benjamin Bejar, Assistant County Attorney, 218 Northwest Third Street, Faribault, MN 55021 (for respondent)

Considered and decided by Larkin, Presiding Judge; Stauber, Judge; and Randall, Judge.

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

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

RANDALL, Judge

Appellant P.D.Y. challenges his delinquency adjudication for violation of Minn. Stat. § 609.344, subd. 1(a) (2006), third-degree criminal sexual conduct. Appellant argues there was insufficient evidence to support a finding of guilt. We affirm.

FACTS

Appellant was charged in Rice County District Court with two counts of third-degree criminal sexual conduct (sexual penetration, complainant under 13, and actor no more than 36 months older) and one count of fourth-degree criminal sexual conduct (sexual contact, complainant under 13, and actor no more than 36 months older). Prior to trial, the district court determined that Rice County was not the proper venue for the first count of third-degree criminal sexual conduct because the alleged conduct occurred in Hennepin County. The first count was dismissed without prejudice.

At trial, the state presented testimony of five witnesses, including the victim, I.C., to establish appellant's guilt on the remaining two counts. I.C. testified that she and appellant attended the Minnesota State Academy for the Deaf (MSAD). Both appellant and I.C. were living in the dorms at MSAD during the school week. I.C. testified that she and appellant used to be friends and were dating but, prior to the May 2007 incident, she and appellant broke up. Before I.C. and appellant's dating relationship ended, appellant and I.C. had to be reminded periodically that they were not allowed to engage in physical touching at school.

At trial, I.C. provided the following testimony: On or about May 16 of 2007,[1] she was at school and between classes appellant asked her to talk privately with him. Appellant then grabbed her arm and pulled her into the men's bathroom and asked her to perform oral sex on him. Appellant sat on the toilet, pulled his pants down, and forced I.C.'s head toward appellant's penis. I.C.'s mouth touched appellant's penis, and his penis entered her mouth. I.C. was born November 6, 1994, and was 12 years old on the date of the criminal sexual conduct.

According to I.C., she and appellant were in the bathroom for approximately 15-20 minutes and because of the assault, she was late to her next class. This bathroom was located near the library, and a key from the library was needed to unlock the door.

I.C. testified that she told her friend M.P. about the assault the same day it occurred. M.P. was called to testify and confirmed that I.C. told her about the incident in the restroom, including that appellant had forced I.C. to perform oral sex. M.P. testified that I.C. appeared worried and scared, and M.P. encouraged I.C. to report the assault. The morning after the assault, I.C. testified she told a teacher about the incident. The incident was eventually reported to the school director, and the police were informed approximately one week later.

The MSAD assistant director, Janet Pauley, testified at trial that the bathroom in which the assault occurred is kept locked, and the keys are kept in the library. M.P.

[1] There was conflicting testimony about the date of the assault. In response to a prosecutor's question, I.C. originally stated the assault occurred on May 16, but later stated that the assault occurred on May 15 and was reported to school officials on May 16.

testified that a student can check out the bathroom key from the library. I.C. testified that the keys were set out for students to use and, though a key was necessary to unlock the door, an adult did not need to know that a student had come to get the key in order to take it. No one from the library was called to testify regarding whether or not the appellant checked out or took the key. Additionally, no one was called to testify about whether or not appellant and I.C. were marked tardy on or about May 16, 2007. Pauley testified that, though appellant and I.C. should have received a tardy if they were late to class, whether or not they received a tardy would be up to the particular staff member.

When interviewed by a police detective and the social worker for MSAD, appellant admitted engaging in mutual sexual acts with I.C. but denied engaging in sexual acts with I.C. at MSAD. Appellant's statements were admitted through the testimony of the officer and the social worker. At the close of the state's evidence, the defense moved for a directed verdict and the court denied the motion, finding that the state had established a prima facie case on the remaining counts of criminal sexual conduct. Following the denial of the motion for a directed verdict, the defense also rested.

The district court found appellant guilty on the remaining third- and fourth-degree criminal sexual conduct charges, but determined that appellant could not be adjudicated guilty of both third- and fourth-degree criminal sexual conduct because both charges arose from the same behavioral incident. The district court transferred the case to Hennepin County for disposition on the third-degree criminal sexual conduct adjudication. This appeal follows.

D E C I S I O N

The issue on appeal is whether the state introduced sufficient evidence to permit the fact-finder to conclude, beyond a reasonable doubt, that appellant committed third-degree criminal sexual conduct. In a delinquency adjudication, the state is required to prove beyond a reasonable doubt every element of the charged crime. *In re Welfare of S.M.J.*, 556 N.W.2d 4, 6 (Minn. App. 1996). When an appellant challenges a conviction based on insufficient evidence, "this court must ascertain whether given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged." *In re Welfare of J.G.B.*, 473 N.W.2d 342, 344-45 (Minn. App. 1991) (quotation omitted). This court evaluates the record and takes any legitimate inferences that can be drawn from the record in the light most favorable to the adjudication. *In re Welfare of S.A.M.*, 570 N.W.2d 162, 167 (Minn. App. 1997). Minor inconsistencies and conflicts in evidence do not necessarily render testimony false and compel a reversal. *State v. Stufflebean*, 329 N.W.2d 314, 319 (Minn. 1983).

Appellant was found guilty of third-degree criminal sexual conduct, which makes sexual penetration criminal if "the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant." Minn. Stat. § 609.344, subd. 1(a) (2006). Mistake as to the age of the complainant or consent to the act by the complainant is not a defense. *Id*. The term "sexual penetration" includes fellatio. Minn. Stat. § 609.341, subd. 12(1) (2006).

Under Minnesota law, in a prosecution of third-degree sexual assault, "the testimony of a victim need not be corroborated." Minn. Stat. § 609.347, subd. 1 (2006). Here, in fact, the testimony of I.C. was corroborated by her report to M.P. and by M.P's testimony regarding I.C.'s demeanor. *See State v. Johnson*, 679 N.W.2d 378, 387 (Minn. App. 2004) (holding that a sexual assault victim's prompt complaint and emotional state following the assault can provide corroboration of the victim's testimony), *review denied* (Minn. Aug. 17, 2004). Specifically, I.C. testified that appellant pulled her into the bathroom, forced her head onto appellant's penis, and that appellant's penis entered her mouth. I.C. testified that she told her friend M.P. about the assault the same day it occurred. M.P. confirmed I.C.'s report of the assault and testified that I.C. appeared to be worried and scared. It is accepted that I.C. was less than 13 years old at the time of the incident and that appellant is no more than 36 months older than I.C. This gave the district court the evidence to support all elements of a third-degree criminal-sexual-conduct conviction.

Appellant argues that there was insufficient evidence to support the district court's findings regarding the circumstances surrounding the assault. Appellant points to the state's failure to introduce any evidence that the keys to the bathroom were checked out on the day of the incident or any evidence that either appellant or I.C. were marked tardy on the day of the incident. In addition, appellant argues that the state failed to explain why the school administrator did not learn of the incident or contact the police until a week later. Appellant argues that the state's failure to explain these inconsistencies,

along with appellant's denial of the incident, indicate that the district court's findings supporting the guilty verdict are clearly erroneous.

We agree that the state's case cannot be classified as "airtight." However, appellate courts resolve inconsistencies in the light most favorable to the adjudication. *S.A.M.*, 570 N.W.2d at 167. First, a reasonable fact-finder could have determined that appellant had access to the men's bathroom. While there was testimony that the bathroom was locked and that a key was needed to be obtained from the library in order to access it, there also was testimony that the key was not always monitored by the staff, and I.C. directly testified that appellant had the key. Assessing the credibility of witness testimony is the exclusive province of the fact-finder. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990).

Second, a reasonable fact-finder could have credited the MSAD assistant director Pauley's testimony that, though appellant and I.C. should have received a tardy if they were late to class, whether or not they received a tardy would be up to the particular staff member. Finally, testimony that the assault was not reported by the administrators to the police until a week after the assault occurred does not compel a fact-finder to discount other evidence indicating that the assault did occur, and was reported to a teacher the day after the assault.

There was sufficient evidence to support a finding of guilt by a reasonable fact-finder. We do note that the "sexual predator" label is too harsh an attachment for this juvenile defendant on this set of debatable facts. Juveniles adjudicated delinquent for third-degree criminal sexual conduct, the crime adjudicated here, are required to register.

Minn. Stat. § 243.166, subd. 1b(1)(iii) (2006). This offense appears to be one that would require registration. *Id*.

Affirmed.

LARKIN, Judge (concurring specially)

I concur with the majority's holding, but take no position on the majority's comment regarding collateral consequences.

STAUBER, Judge, concurring specially

I concur but expand upon the opinion comment which states, "We do note that the 'sexual predator' label; is too harsh an attachment for this juvenile defendant on this set of debatable facts." Here, the "debatable facts" are troublesome because of the ages of these juveniles (P.D.Y., 14 and I.C., 12) and their prior longstanding "boyfriend-girlfriend" youthful romantic relationship. Also because both have significant hearing impairments. Both attended the Minnesota State Academy for the Deaf (MSAD).

P.D.Y., by statute, and without an opportunity for mitigation or lenity, is now required to register as a sexual predator with law enforcement in any community in which he resides, be it inside or outside of Minnesota. Failure to properly register is a felony subject to five years imprisonment.

Perhaps more onerous for juvenile offenders, and particularly sexual predators, regardless of age, are the unanticipated collateral consequences which will stigmatize the juvenile and follow him into adulthood. These collateral consequences deprive him of educational and employment opportunities otherwise taken for granted.

Minn. Stat. § 245C.02 subd. 5 (2008), requires the Minnesota Commissioner of Human Services to conduct a background study ". . . to determine whether a subject is disqualified from having access to persons served by a program." Minn. Stat. § 245C.08, subd. 4, extends the background study to juvenile court records. A juvenile court adjudication of delinquency is deemed a "conviction." Minn. Stat. § 245C.08, subd. 4(d). The unanticipated result is disqualification from employment in any number of state-licensed careers. Employment in education, public safety, and medical fields for

example, are essentially prohibited. The ownership of a hunting firearm is also prohibited.