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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2178

In the Matter of the Welfare of: R. A. H.

Filed September 15, 2009
Affirmed
Shumaker, Judge

Stearns County District Court
File No. 73-JV-07-14932

David W. Buchin, Buchin Law Office, 16 North Ninth Avenue, St. Cloud, MN 56303 (for appellant R.A.H.)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Janelle P. Kendall, Stearns County Attorney, Dana D. Erickson, Assistant Stearns County Attorney, 705 Courthouse Square, Room 448, St. Cloud, MN 56303 (for respondent)

Considered and decided by Lansing, Presiding Judge; Shumaker, Judge; and Hudson, Judge.

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

SHUMAKER, Judge

On appeal from his adjudication of first-degree criminal sexual conduct, appellant argues that the evidence was insufficient to support his adjudication. We affirm.

FACTS

In the summer of 2005, eight-year-old K.T.P. was visiting in appellant R.A.H.'s home with two other juveniles, R.D. and C.V. Two years later, R.D. told law enforcement that during that visit he had seen R.A.H. having anal sex with K.T.P. Police interviewed R.A.H., but he denied any sexual contact with K.T.P. and claimed that R.D. was making the story up to get "revenge" on him. Law enforcement also interviewed K.T.P. on two occasions. During his second interview, K.T.P. stated that R.A.H. forced him into the bathroom, pulled down his pants, and "put his private in my butt."

R.A.H. was charged with first- and second-degree criminal sexual conduct, and, after a trial, the district court found R.A.H. guilty as charged. At sentencing, no adjudication or sentence was entered on the second-degree criminal sexual conduct charge.

R.A.H. appealed, claiming the evidence was insufficient to support his adjudication for first-degree criminal sexual conduct.

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 R.A.H. committed first-degree criminal sexual conduct. In a delinquency adjudication, the state is required to prove every element of the crime charged beyond a reasonable doubt. *In re Welfare of S.M.J.*, 556 N.W.2d 4, 6 (Minn. App. 1996). When reviewing a claim of insufficiency of the evidence, we "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). We view the record and its legitimate inferences in the light most favorable to the adjudication. *In re Welfare of S.A.M.*, 570 N.W.2d 162, 167 (Minn. App. 1997).

The district court found R.A.H. guilty of first-degree criminal sexual conduct in violation of Minnesota Statute section 609.342, subdivision 1(a) (2004). That statute criminalizes sexual contact with a person who is under 13 years of age when the actor is more than 36 months older than the complainant. "Sexual contact with a person under 13" is defined as:

> the intentional touching of the complainant's bare genitals or anal opening by the actor's bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant's bare genitals or anal opening of the actor's or another's bare genitals or anal opening with sexual or aggressive intent.

Minn. Stat. § 609.341, subd. 11(c) (2004).

The only question for our review is whether sufficient evidence existed to reasonably support the district court's conclusion. R.A.H. concedes that "[t]he [t]rial [c]ourt's conclusion is one that could be reached in reviewing the testimony offered by the State . . . ." Given this concession, it is not imperative that we inquire further. However, we briefly address R.A.H.'s assertions that his convictions should be reversed and vacated because "[t]he State's witnesses at trial did not tell a consistent story," and the district court "ha[d] to be selective in which testimony to listen to" in order to reach its conclusion. As to this latter point, it is the prerogative of the fact-finder to make

credibility determinations. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990). Credibility determinations necessarily entail the district court's selection of which testimony to believe or disbelieve.

At trial, K.T.P. explained his recollection of the assault. "He pushed me into the bathroom, then he closed the door and then he locked it and then he pulled down my pants and he took his off and then he stuck his private into my butt." K.T.P. agreed that by "in my butt," he meant "the hole in your butt." K.T.P. said that R.A.H.'s "private" was "like a stick" and that it hurt. K.T.P. thought that someone pounded on the bathroom door while he was being assaulted, but he did not remember making any noise. K.T.P. said that when the assault was over, he pulled up his pants and went home. K.T.P. said he did not tell anyone about the incident because he was afraid and embarrassed.

R.A.H. points to various inconsistencies between K.T.P.'s version of events and those recounted by R.D. and C.V. Specifically, he notes that K.T.P. testified that he was assaulted in the bathroom and made no sound, while C.V. testified that he heard laughing in the bathroom, and R.D. reported that K.T.P. was assaulted in the living room behind the couch.

In a first-degree sexual assault case, "the testimony of a victim need not be corroborated." Minn. Stat. § 609.347, subd. 1 (2004). Thus, K.T.P.'s testimony alone could support R.A.H.'s conviction of first-degree criminal sexual conduct. But the district court also found that K.T.P.'s testimony was corroborated by C.V.'s version of events. C.V. testified that he was at R.A.H.'s home to play video games, and at some point, he heard R.A.H. and K.T.P. laughing in the bathroom. He said that he looked

under the bathroom door and saw hands on the floor. C.V. disclosed that K.T.P. later told him that R.A.H. "was holding his hands down to him so he couldn't get up." C.V.'s testimony corroborates K.T.P.'s testimony as to the location of the assault and R.A.H.'s restraint of him.

R.D., on the other hand, testified that, on the day of the assault, he and C.V. were over at R.A.H.'s playing video games, when he "looked back and then I remember that [K.T.P.] had his clothes off and also did [R.A.H.] and then that's when [C.V.] and me decided to go." R.D. was adamant that the assault took place in the living room, not in the bathroom. This testimony conflicts with K.T.P.'s version of events, but appellate courts resolve inconsistencies in the light most favorable to the adjudication. *S.A.M.*, 570 N.W.2d at 167. Although R.D. remembered the location of the assault differently from K.T.P., his testimony was nonetheless clear that he saw R.A.H. sexually assault K.T.P.

R.A.H. also points to "inconsistencies" between K.T.P.'s original statements to the police and his testimony at trial. In K.T.P.'s first interview, he stated that R.A.H. "tried to touch my private with his private . . . about 2 years ago" in R.A.H.'s bathroom. K.T.P. reported that he and R.A.H. were alone in the home, and that he had his clothes on during the assault. At trial, the interviewing officer testified that he believed that K.T.P. was reluctant to talk at that first meeting, and that he was not disclosing everything that had happened. He told this to K.T.P.'s parents, and, approximately one week later, K.T.P.'s parents contacted the officer to report that K.T.P. had revealed more details of the event to them. In the second interview, K.T.P. said that R.A.H. "told me to get in the bathroom which he pushed me into the bathroom and then he forced my pants down." K.T.P. said

that R.A.H.'s clothes were off, but that his own underwear was "up." He said that R.A.H. "put his private in my butt." This time, K.T.P. stated his belief that R.D. was outside the bathroom when it happened.

The state called an expert witness who testified that it is common for children to delay reporting sexual abuse, or even deny that it has occurred in the face of irrefutable evidence. The expert also testified that data on child reporting suggests that disclosures of abuse are usually true, but that "the story tends to come out in bits and pieces, if you will. It's almost as if the child is testing the waters to see what's going to happen if I talk about this experience." Inconsistency in the "peripheral" details of the story, the expert stated, was not uncommon.

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). Any inconsistencies in K.T.P.'s previous version of events were peripheral to the core issue in this case. K.T.P.'s second interview revealed, as did his testimony at trial, that R.A.H. put his penis into K.T.P.'s anal opening. More than sufficient evidence exists upon which a fact-finder could reasonably conclude that R.A.H. had sexual contact with K.T.P. as defined by statute. *See State v. Blair*, 402 N.W.2d 154, 158 (Minn. App. 1987) (holding that, despite numerous inconsistencies, a child victim's testimony was sufficient to support the verdict).

Affirmed.