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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1509**

State of Minnesota,
Respondent,

vs.

Gregory Gilbert Ashley,
Appellant.

**Filed July 27, 2010
Affirmed
Larkin, Judge**

Becker County District Court
File No. 03-CR-08-3144

Lori A. Swanson, Attorney General, James B. Early, Assistant Attorney General,
St. Paul, Minnesota; and

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Attorney, Detroit Lakes, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael F. Cromett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Shumaker, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of third-degree criminal sexual conduct, arguing that the evidence was insufficient to sustain his conviction. We affirm.

FACTS

The state charged appellant Gregory Gilbert Ashley with third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(c) (2008), based on V.W.'s claim that he had sexually assaulted her. The case was tried to a jury, and the state presented the following evidence at trial.

V.W. and Ashley are acquaintances who occasionally drank together and engaged in consensual sexual activity. On the evening of October 24, 2008, V.W. had been drinking. She called Ashley several times, and sent him text messages, inviting him to drink with her. At approximately three or four o'clock in the morning, V.W. went to Ashley's home. There, V.W., Ashley, and Ashley's cousin, drank alcohol in Ashley's bedroom. At some point, Ashley's cousin left the room and went to sleep on a couch in the living room. V.W. decided to sleep at Ashley's home because she was drunk. V.W. lay down on Ashley's bed and went to sleep. Ashley was sitting in a chair in the room when V.W. fell asleep.

V.W. woke to discover Ashley pulling off her pants. V.W. asked Ashley to stop, but he told her to shut up. Ashley removed V.W.'s pants and lay on top of her. V.W. tried to push Ashley away, but she was unsuccessful. When V.W. told Ashley to stop, he told her to keep her "f---ing mouth shut." Ashley then proceeded to have sexual

intercourse with V.W., while holding her arms and legs down. V.W. felt helpless and was too frightened to scream. Instead, she lay still and “went numb.”

After the sexual intercourse, while V.W. was getting dressed, Ashley called V.W. a “dumb b-tch” and told her that she “better not f---ing tell anybody.” Ashley also threw things at V.W., including her cell phone. V.W. called her close friend, A.V., and asked for a ride from Ashley’s home. V.W. did not tell A.V. what had happened over the phone, because she “didn’t want to say anything in front of [Ashley].” Nonetheless, A.V. knew something was wrong because V.W. sounded “scared.”

A.V. asked another friend, C.K., to go to Ashley’s home and pick up V.W. C.K. picked up V.W. and drove her to A.V.’s home. V.W. cried all the way to A.V.’s home. V.W. testified that during the drive, she told C.K. that Ashley had sexually assaulted her. C.K., however, testified that V.W. did not tell her about the assault until they reached A.V.’s home. But C.K. did testify that she had never before seen V.W. so upset.

When she arrived at A.V.’s home, V.W. sat on a bed and cried. Then, she told A.V. that Ashley had sexually assaulted her. V.W. called her mother, but V.W. was so upset that her mother could not understand what she was saying. A.V. got on the phone with V.W.’s mother and told her that Ashley had sexually assaulted V.W. A.V. drove V.W. to V.W.’s mother’s home. When V.W. arrived at her mother’s home, she was sobbing and shaking. V.W.’s mother tried to hug her, but V.W. did not want her mother to touch her. This was an unusual reaction, as V.W. and her mother were generally affectionate with each other and hugged often. V.W. told her mother that Ashley had sexually assaulted her.

V.W.'s mother urged V.W. to report the assault to the police. V.W. initially resisted calling the police because she was afraid that Ashley would do something to her. But V.W.'s mother convinced her that they needed to report the assault. The police were called, and an officer responded to V.W.'s mother's home. The officer observed V.W. crying, shaking, and holding her head down. The officer asked V.W. what had happened. V.W. stated that Ashley pulled her pants down, got on top of her, and pinned her arms. At that point, V.W. broke down in tears and would not answer additional questions. The officer noticed that V.W. had been drinking, but also observed that she understood what was going on, was not confused, and had no trouble remembering what had happened.

The officer transported V.W. and her mother to a hospital, and V.W. was examined by a sexual-assault nurse. The nurse described V.W. as crying, upset, angry, nauseated, and in pain. The nurse described V.W.'s vagina as "very swollen, red, [and] exquisitely tender." She also noted that she had never seen the type of trauma or injuries that she saw on V.W. during non-sexual-assault pelvic examinations, which she often performed. The nurse took forensic samples from V.W., and an analysis of those samples showed the presence of semen that was consistent with Ashley's DNA.

At trial, Ashley testified that he and V.W. had engaged in consensual sex three times prior to October 25, 2008. He further testified that in the early morning hours of October 25, V.W. showed up at his bedroom window and asked if she could come inside. Ashley allowed V.W. to come into his bedroom. According to Ashley, V.W. appeared to be "real drunk" and had a bottle of brandy with her. Ashley testified that V.W. consented to having sexual intercourse with him.

The jury convicted Ashley as charged, and the district court sentenced him to serve 48 months in prison. This appeal follows.

D E C I S I O N

Ashley claims that the “credible” evidence was insufficient to sustain his conviction. In considering a claim of insufficient evidence, this court’s review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume “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). 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 jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). “A defendant bears a heavy burden to overturn a jury verdict.” *State v. Vick*, 632 N.W.2d 676, 690 (Minn. 2001).

In order to establish Ashley’s guilt, the state was required to prove, beyond a reasonable doubt, that Ashley engaged in sexual penetration with V.W. and that he used force or coercion to accomplish the penetration. *See* Minn. Stat. § 609.344, subd. 1(c) (defining third-degree criminal sexual conduct).

V.W. testified that Ashley sexually penetrated her, over her objection and without her consent, while restraining her. Ashley testified that the sex was consensual. We must assume that the jury believed V.W. and disbelieved Ashley. *See Moore*, 438 N.W.2d at 108. And V.W.’s testimony, by itself, is sufficient to sustain the verdict. *See Minn. Stat. § 609.347, subd. 1* (2008) (“In a prosecution under sections 609.342 to 609.3451; 609.3453; or Minnesota Statutes 2004, section 609.109, the testimony of a victim need not be corroborated.”); *State v. Hanson*, 382 N.W.2d 872, 874 (Minn. App. 1986), (“[C]orroboration of the testimony of a complainant in sex crime offenses is not required.”), *review denied* (Minn. Apr. 11, 1986).

But while corroborating evidence is not necessary, it was presented in this case. “[E]vidence of prompt complaint by the victim” can be corroborating evidence in a sexual-assault case. *State v. Reinke*, 343 N.W.2d 660, 662 (Minn. 1994). V.W. promptly reported the assault to A.V. when she arrived at A.V.’s home. Next, V.W. went to her mother’s home and told her mother about the assault. Finally, V.W. provided a partial report to the police officer who responded to her mother’s home. These reports, which occurred within a few hours of the assault, corroborate the sexual-assault claim.

A victim’s testimony may also be corroborated by “testimony by others as to the victim’s emotional condition.” *Id.* A.V. testified that she knew V.W. was upset when V.W. called her from Ashley’s home. C.K. testified that V.W. cried in the car on the way to A.V.’s home and that C.K. had never seen V.W. so upset. V.W.’s mother testified that when V.W. arrived at her home, she was sobbing, scared, and shaking, and V.W. would not allow her mother to hug her. The officer who responded to V.W.’s mother’s home

also testified that V.W. was emotionally distraught. This evidence establishes that V.W.'s emotional condition was fragile, which tends to corroborate V.W.'s claim.

Lastly, "medical evidence supporting the conclusion that forced intercourse had occurred" is also relevant corroborating evidence. *Id.* The nurse who examined V.W. testified that V.W.'s vagina was "very swollen, red, [and] exquisitely tender." She further testified that she had never seen the type of trauma or injuries that she observed on V.W. during non-sexual-assault pelvic examinations. Thus, the medical evidence supports V.W.'s report of forced intercourse and corroborates her sexual-assault claim.

Ashley's arguments concern V.W.'s credibility and the weight of the evidence. They are summarized as follows: V.W. was not candid about her relationship with Ashley; V.W. made the sexual-assault allegation as "a way to get back at [Ashley] for [not reciprocating her feelings toward him] and his poor treatment of her"; V.W.'s emotional condition was the result of intoxication and not a sexual assault; V.W.'s degree of intoxication casts doubt on her credibility; V.W. omitted details regarding what happened on October 24-25; V.W.'s testimony was contradicted by other witnesses and evidence; V.W. did not tell A.V. over the phone that the assault had occurred, nor did she inform C.K. of the incident in the car; there were several omissions and discrepancies in V.W.'s sexual-assault claim as told to different individuals; and the physical evidence showed "nothing more than that V.W. was drunk and that she and Ashley had sexual intercourse."

While Ashley's arguments might have been compelling at trial, they are unavailing on appeal. "The determination of the credibility of witnesses and the weight

given to their testimony is exclusively within the province of the jury.” *State v. Travica*, 398 N.W.2d 666, 670 (Minn. App. 1987). Ashley provided the jury with several reasons to doubt V.W.’s credibility, which the jury was able to take into consideration when assessing the evidence. *See State v. Erickson*, 545 N.W.2d 624, 629 (Minn. App. 1990) (stating that jury is entitled to believe evidence even if it is inconsistent or contradictory), *review denied* (Minn. May 23, 1990); *Pieschke*, 295 N.W.2d at 584 (observing that the jury considers any testimonial inconsistencies when weighing evidence). The jury considered the conflicting testimony, and it rejected Ashley’s claim that the sexual activity was consensual. It was the jury’s prerogative to do so, as the fact-finder “has no obligation to believe a defendant’s story.” *State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995).

In conclusion, we will not second-guess the jury’s credibility determinations or its weighing of evidence. We must assume the jury believed V.W.’s testimony, which alone is sufficient to sustain the conviction. The jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that Ashley was guilty as charged. The evidence in the record is therefore sufficient to sustain Ashley’s conviction.

Affirmed.

Dated:

Judge Michelle A. Larkin