STATE OF MINNESOTA
IN COURT OF APPEALS
A11-230

In the Matter of the Welfare of: F. M. I., Child.

Filed September 26, 2011
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27JV106207

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and Schellhas, Judge.

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

STONEBURNER, Judge

Appellant challenges the sufficiency of the evidence to support his adjudication of delinquency for attempted second-degree criminal sexual conduct and argues that the juvenile court abused its discretion by denying his request for a stay of adjudication. Because the evidence is sufficient to support the finding that the juvenile committed second-degree criminal sexual conduct and the district court did not abuse its discretion in denying appellant's request for a stay of adjudication, we affirm.

FACTS

On an evening in July 2010, Minneapolis Park Police agent Erica Fossand was entering the women's restroom at Riverside Park to ensure that it was empty before locking the restroom doors for the night. Before she reached the restroom door, she heard a young child crying, "No, stop, stop, stop." Fossand entered and announced her presence. The door to a stall opened, and an adolescent male in a wet swimsuit, later identified as appellant F.M.I., whose date of birth is January 1, 1998, backed out of the stall. Fossand walked to the open door of the stall and saw a young, crying child who spontaneously stated, "He made me suck him." Fossand led this child out of the restroom. The child, later identified as A.A.M., whose date of birth is April 13, 2005, ran to his mother and repeated the same statement. Katherine Hammes, another park-police agent arrived. Hammes asked A.A.M. what had happened, and he said that F.M.I. had put his penis on A.A.M's buttocks and then turned him around and told him to suck his penis.

F.M.I. was placed in a squad car while Hammes tried to identify him. Before she asked him any questions about what had happened in the restroom, F.M.I. stated the "kid is lying, and . . . he is gonna say I did bad things to him." Fossand found F.M.I.'s clothes on a bench in the pool area of the park.

Park-police agent Calvin Noble also arrived at the scene and asked A.A.M. what had happened. A.A.M. said, "he tried to make me suck his penis but I was able to fight him off." A.A.M. also said that F.M.I.'s penis had gone into his bottom "just a little."

At Children's Hospital Emergency Department, a certified pediatric nurse practitioner talked to A.A.M. in the presence of his mother. A.A.M. told her that he was in the bathroom when another boy took him into a stall and tried to put his penis into A.A.M.'s bottom, but A.A.M. fought him off. A.A.M. did not know if the penis went into his rectum or between his buttocks. A.A.M. said that the boy then told him to suck his penis, and he did but then stopped and yelled that he did not want to do it. The examination did not reveal any trauma or semen. The nurse practitioner later explained that she did not expect to find any trauma or semen because prepubescent boys normally do not have "full function of an adult male penis to be able to penetrate or ejaculate."

Minneapolis Police Sergeant Bernard Martinson later interviewed F.M.I. During the interview, F.M.I. said that he had gone into the restroom to change clothes and went into a stall to use the toilet. F.M.I. said that there was a young boy in the restroom in a different stall, but F.M.I. denied saying or doing anything to him. He said that a park-police agent came into the restroom and spoke with the boy and then detained F.M.I. until the police arrived.

A petition was filed in juvenile court alleging that F.M.I. is delinquent by reason of having committed first- and second-degree criminal sexual conduct, in violation of Minn. Stat. §§ 609.342, subd. 1(a), subd. 1(a) (2008). After trial, the juvenile court acquitted F.M.I. of those charges but found that he had committed attempted second-degree criminal sexual conduct in violation of Minn. Stat. §§ 609.17, .343, subd. 1(a) (2008) (acting with the intent to commit second-degree criminal sexual conduct and taking a substantial step toward committing that crime). The juvenile court found that the state had proved beyond a reasonable doubt that F.M.I. had attempted to place his penis in A.A.M.'s mouth.

At the disposition hearing, the juvenile court denied F.M.I's request for a stay of adjudication and adjudicated him delinquent. The juvenile court placed F.M.I. on probation and ordered him to complete sex-offender treatment at Mille Lacs Academy. This appeal followed.

D E C I S I O N

I. The evidence is sufficient to support the juvenile court's determination that F.M.I. committed attempted second-degree criminal sexual conduct.

In reviewing whether the evidence is sufficient to sustain a delinquency adjudication, we analyze the evidence in the light most favorable to the state and determine whether the fact-finder could have reasonably found that the juvenile committed the crime for which the juvenile was adjudicated. *See In re Welfare of M.E.M.*, 674 N.W.2d 208, 215 (Minn. App. 2004). The juvenile court's findings of fact will be upheld unless clearly erroneous. *See id.*

A.A.M. did not testify at trial, but the statements he made to others about the incident were admitted. F.M.I. argues that, because A.A.M. gave inconsistent statements, none of A.A.M.'s statements were credible. The juvenile court acknowledged the inconsistencies in A.A.M.'s descriptions of what occurred, but found credible the initial, unsolicited statements that A.A.M. made to Fossand and his mother. And the juvenile court found that these statements were corroborated by what Fossand saw, the spontaneity of A.A.M.'s statements, and the lack of credibility of F.M.I.'s account of events.

"Minor inconsistencies and conflicts in evidence do not necessarily render testimony false or provide the basis for reversal." *State v. Johnson*, 679 N.W.2d 378, 387 (Minn. App. 2004), *review denied* (Minn. Aug. 17, 2004); *see also State v. Pippitt*, 645 N.W.2d 87, 94 (Minn. 2002) (stating that it is for the fact-finder to evaluate testimony in light of impeachment evidence). And inconsistent testimony may be less damaging when it relates to a traumatic event. *State v. Mosby*, 450 N.W.2d 629, 634 (Min. App. 1990) (stating that "inconsistencies are a sign of human fallibility and do not prove testimony false, especially when the testimony is about a traumatic event"), *review denied* (Minn. Mar. 16, 1990). The juvenile court noted that the inconsistencies in A.A.M.'s statements related only to *completion* of the crimes charged.

F.M.I. argues that the juvenile court expressed the mistaken view "that children don't lie and are insulated from information of a sexual nature." This argument is based on the juvenile court's findings that the type of attempted sexual conduct that took place "is not the type of information that 5 year olds know about or would relate to adults, especially to police officers" and that "there is no motive here for [a] 5 year old . . . to lie" by accusing a stranger. There is no evidence in the record to indicate that A.A.M. had been exposed to information about oral sex or had any motive to fabricate allegations against F.M.I. But A.A.M. did not testify, and there is no direct evidence in the record to show that the juvenile court's generalizations about what a five year old would know or relate to adults apply to A.A.M. Nonetheless, the evidence, even without the challenged findings, is sufficient to support the juvenile court's conclusion that F.M.I. committed attempted second-degree criminal sexual conduct. A.A.M. made immediate, spontaneous, consistent statements to Fossand and his mother that F.M.I. made him suck F.M.I.'s penis, and A.A.M. subsequently and consistently asserted that F.M.I., at a minimum, attempted to put his penis in A.A.M's mouth. Fossand heard A.A.M. say "No, stop" from the restroom and saw F.M.I. back out of the stall in which she found A.A.M. crying. F.M.I. spontaneously stated that A.A.M. would say that F.M.I. "did bad things" to him, and told park-police that he was in the restroom to change clothes when his clothes were outside of the restroom. The evidence is sufficient to support the finding that F.M.I. committed attempted second-degree criminal sexual conduct.

II. The juvenile court did not abuse its discretion by denying F.M.I.'s request for a stay of adjudication.

"A [juvenile] court has broad discretion in determining whether to continue an adjudication in a delinquency proceeding." *In re Welfare of J.R.Z.*, 648 N.W.2d 241, 244 (Minn. App. 2002) (quotation omitted), *review denied* (Minn. Aug. 20, 2002). Dispositions that are not arbitrary will be affirmed by a reviewing court. *In re Welfare of N.T.K.*, 619 N.W.2d 209, 211 (Minn. App. 2000).

A stay of adjudication may be ordered "[w]hen it is in the best interests of the child and the protection of the public to do so." Minn. R. Juv. Delinq. P. 15.05, subd. 4(A). For a child who is not in detention, the juvenile court "may continue the case without adjudication for a period not to exceed ninety (90) days from the date of disposition[, and] may extend the continuance for an additional successive period not to exceed ninety (90) days." *Id.* subd. 4(B).[1] F.M.I. argues that the juvenile court did not sufficiently describe the need to protect the public or consider the benefits of a stay of adjudication to him, and F.M.I. asserts that the district court's finding that he would need more than 180 days of treatment is not supported by the record. We disagree.

The record reflects that F.M.I. was willing to participate in recommended sex-offender treatment and told the juvenile court that he would consent to an extension of a continuance if more time was needed to complete programming. But the juvenile court does not have authority to extend a continuance beyond 180 days: the juvenile court loses jurisdiction over the juvenile after a 180-day continuance period has expired, even though the juvenile may not have complied with conditions of the stay. *In re Welfare of M.A.R.*, 558 N.W.2d 274, 276 (Minn. App. 1997). And the juvenile court's disposition options are limited when adjudication is stayed. *See* Minn. Stat. § 260B.198, subd. 7 (2010) (providing that if adjudication is continued, the juvenile court may counsel the child, parents, guardian or custodian as provided in subdivision 1(1); place the child on probation in the child's own home as provided in subdivision 1(2); or enter an order to hold the child for up to 15 days for further information gathering). F.M.I. does not challenge the juvenile court's finding that "the least restrictive appropriate placement

[1] *See also* Minn. Stat. § 260B.198, subd. 7 (2010) (providing that "[w]hen it is in the best interest of the child to do so and when . . . the allegations contained in the petition have been duly proven . . . the court may continue the case for a period not to exceed 90 days . . . [and] [s]uch a continuance may be extended for an additional successive period not to exceed 90 days . . . ").

necessary to return [F.M.I.] to law-abiding behavior" is out-of-home placement at Mille Lacs Academy. And F.M.I. does not challenge his placement in sex-offender treatment at Mille Lacs Academy. A stay of adjudication would not have permitted the placement for treatment necessary for F.M.I.'s rehabilitation. The juvenile court did not abuse its discretion by denying F.M.I.'s request for a stay of adjudication.[2]

Affirmed.

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[2] F.M.I. asserts that the juvenile court "should at least be troubled by the fact that [its] refusal to stay adjudication of delinquency means that [F.M.I.], a 12-year-old boy, has to register as a sexual predator." But "the plain language of the registration statute compels" a juvenile's sex-offender registration, and, although this may be a harsh result "harsh or not, the decision rests with the legislature." *J.R.Z.*, 648 N.W.2d at 248.