STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1629

State of Minnesota,
Respondent,

vs.

James Calvin Tucker,
Appellant.

Filed October 3, 2011
Affirmed
Kalitowski, Judge

St. Louis County District Court
File No. 69DU-CR-10-356

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Nathaniel T. Stumme, Assistant County Attorney, Duluth, 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 Kalitowski, Presiding Judge; Johnson, Chief Judge; and Stoneburner, Judge.

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

KALITOWSKI, Judge

Appellant James Calvin Tucker argues that the evidence was insufficient to sustain his conviction of first-degree criminal sexual conduct. Appellant makes additional arguments in two pro se supplemental briefs. We affirm.

D E C I S I O N

I.

Appellant challenges the sufficiency of the evidence to sustain his conviction of first-degree criminal sexual conduct (using force or coercion and causing personal injury). *See* Minn. Stat. § 609.342, subd. 1(e)(i) (2008).

In considering a challenge to the sufficiency of the evidence, this court's review is limited to a careful analysis of the record to determine whether the evidence, when viewed in the light most favorable to the verdict, was sufficient to permit the jury to reach a guilty verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court assumes that the jury believed the evidence supporting the verdict and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Deference is to be given to the jury's determinations of witness credibility and the weight to be given each witness's testimony. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990). This 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, reasonably could conclude that the defendant is guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

In a prosecution for first-degree criminal sexual conduct, "the testimony of a victim need not be corroborated." Minn. Stat. § 609.347, subd. 1 (2008); *see also State v. Ani*, 257 N.W.2d 699, 700 (Minn. 1977) (stating that a conviction can rest on the uncorroborated testimony of a single witness). But "in an individual case the absence of corroboration might mandate a holding on review that the evidence was legally

insufficient." *Marshall v. State*, 395 N.W.2d 362, 365 (Minn. App. 1986), *review denied* (Minn. Dec. 17, 1986).

Appellant does not dispute that the testimony of the victim, J.C., by itself and taken in the light most favorable to the verdict, satisfies all the elements of the offense. But appellant argues that J.C.'s testimony was "of dubious credibility" and is not corroborated by other evidence that appellant caused personal injury to J.C. and used force to accomplish sexual penetration. We disagree.

The record contains extensive evidence that corroborates J.C.'s testimony about appellant's use of force and the injuries she sustained. J.C. testified that while appellant forced her to perform oral sex, she bit his penis. Within hours of his arrest, police discovered that appellant's penis was bleeding. Appellant provided conflicting explanations for this injury, including that J.C. had caused the injury. In addition, the evidence contradicts appellant's assertion that "the physical examination [of J.C.] revealed no signs of injury to any part of [J.C.]'s body, which could have supported a conclusion that appellant had used force during their sexual encounter." The nurse who examined J.C. after the assault testified that she saw "some redness" on the back of J.C.'s neck, corroborating J.C.'s testimony that appellant had pulled her hair. J.C. also testified that appellant had caused her physical pain by penetrating her vagina and anus. Her testimony is supported by the nurse's observations of three lacerations in J.C.'s anal area, an additional laceration in her vaginal area, and an "unusual" red area on her cervix—injuries that the nurse testified are consistent with J.C.'s claim of being violently assaulted.

Moreover, J.C.'s testimony about the nature of her sexual contact with appellant is corroborated by: (1) her reporting of the assault shortly after she escaped from appellant to two officers and the manager of the apartment building where she resided; (2) her providing law enforcement and the examining nurse with descriptions of the assault that were detailed and largely consistent with her trial testimony; and (3) the testimony of the apartment manager and one of the officers that J.C. was distraught, hysterical, crying, and in shock when she reported the assault. *See State v. Reinke*, 343 N.W.2d 660, 662 (Minn. 1984) (holding that victim's testimony about sexual assault was corroborated by evidence that victim promptly reported the assault and "testimony by others as to the victim's emotional condition at the time she complained"); *State v. Johnson*, 679 N.W.2d 378, 387 (Minn. App. 2004) ("Testimony from others about a victim's emotional condition after a sexual assault is also corroborative evidence."), *review denied* (Minn. Aug. 17, 2004); *Marshall*, 395 N.W.2d at 365 (noting that "strong corroborating evidence" can include "detailed descriptions by the victim of the incidents").

Thus, we conclude that the evidence is sufficient to sustain the guilty verdict.

II.

Appellant has submitted two pro se supplemental briefs. Appellant challenges the sufficiency of the evidence, which we have addressed. Appellant also asserts that his trial counsel was ineffective. But because appellant's supplemental brief cites no legal authority to support his arguments, appellant has waived these claims. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (stating that if a brief contains no argument or citation to legal authority in support of its allegations, the allegations are waived).

Moreover, appellant's ineffective-assistance claim is without merit. To prove ineffective assistance of counsel, the defendant must show that his counsel's representation "fell below an objective standard of reasonableness" and "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quotation omitted).

Appellant's ineffective-assistance claim appears to be based on his attorney's failure to call as a witness J.B., a man with whom J.C. has two children. But this is a matter of trial strategy and not a basis for an ineffective-assistance claim. *See Leake v. State*, 737 N.W.2d 531, 539 (Minn. 2007) (refusing to second-guess decisions about which witnesses to call at trial and what evidence to present); *see also Francis v. State*, 781 N.W.2d 892, 898 (Minn. 2010) (stating that whether to call expert witness, whether to call "alibi" witnesses, and whether to cross-examine another expert on a certain issue are matters of trial strategy).

Affirmed.