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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2036**

State of Minnesota,
Respondent,

vs.

Valentin Fuerte-Morales,
Appellant.

**Filed December 12, 2011
Affirmed
Klaphake, Judge**

Goodhue County District Court
File No. 25-CR-10-325

Lori Swanson, Attorney General, Kelly O'Neill Moller, Assistant Attorney General, St. Paul, Minnesota; and

Stephen N. Betcher, Goodhue County Attorney, Red Wing, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Lydia M. Villalva Lijo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

A jury found appellant Valentin Fuerte-Morales guilty of seven counts of first-through third-degree criminal sexual conduct against his minor nieces. Appellant

challenges his convictions, arguing that the evidence was insufficient to prove his guilt beyond a reasonable doubt and that the district court abused its discretion by admitting the victims' out-of-court statements regarding the sexual conduct. Because the district court did not abuse its discretion by admitting the statements and the evidence is sufficient to sustain the jury's verdict, we affirm.

DECISION

Out-of-Court Statements

Appellant contends that the district court abused its discretion by permitting the victims' mother, father, a family friend, and a police officer to testify regarding the victims' disclosure of sexual contact perpetrated by appellant. Appellant argues that the victims' out-of-court statements are not sufficiently reliable to be admitted at trial as substantive evidence under Minn. Stat. § 595.02, subd. 3 (2010).

"Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). We will not reverse unless appellant establishes that the district court abused its discretion by admitting the evidence and appellant was thereby prejudiced. *Id.* "A [district] court abuses its discretion when it acts arbitrarily, without justification, or in contravention of the law." *State v. Mix*, 646 N.W.2d 247, 250 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

"The totality of the circumstances surrounding the making of the statement must be considered when determining whether a child's out-of-court statements are reliable." *State v. Sime*, 669 N.W.2d 922, 927 (Minn. App. 2003). Relevant considerations include

“spontaneity, consistent repetition, mental state of the declarant, use of terminology unexpected of a child of similar age, and lack of motive to fabricate.” *In re Welfare of L.E.P.*, 594 N.W.2d 163, 171 (Minn. 1999). The court may consider other factors, such as the declarant’s knowledge, the motives of the declarant and witnesses to speak truthfully, the proximity in time between the statement and the event described, whether the person to whom the child made the statement had a preconceived idea of what the child would say, and lack of leading or suggestive questions. *Id.* District courts have “considerable leeway in their consideration of appropriate factors as long as the factors considered relate to whether the child was particularly likely to be truthful.” *Id.* (quotation omitted).

Before admitting the out-of-court statements at issue here, the district court considered several of the factors relevant to determining reliability of a child victim’s statements and concluded that the statements were sufficiently reliable to be admitted. The district court considered the circumstances in which the victims confided in a family friend one week after the alleged sexual contact, finding that the victims’ statements were “spontaneous, non-[pressured] descriptions of the alleged sexual contact” in age-appropriate language that reflected no signs of fabrication or preparation by an adult. The district court found that the statements of one of the victims to her mother were made in response to open-ended questions that were not leading or suggestive and reflected no attempt to elicit any certain response, that the victim had no reason or motive to lie, and that the mother observed that both victims appeared “scared” during the conversation. As to the circumstances of the victims’ statements to their father, the district court found that the victims appeared to be “nervous, scared, and shaken up”; their allegations were

consistent; and their father reassured them that he would not be angry, stressed the importance of telling the truth, and reacted to the allegations in a calm manner. And the district court found that, although the victims' father noted that one of the victims "tends to lie about little things," this was not a circumstance conducive to that victim exaggerating or "telling a 'fib.'" The district court found that the father's testimony was credible and suggested no motive to fabricate.

Finally, the district court considered the victims' statements to the Red Wing police officer who interviewed them separately shortly after they initially disclosed the sexual contact. The district court found that the officer was an experienced investigator for criminal-sexual-conduct cases, the interviews were conducted according to the Corner House Interview Protocol, the victims' statements were not the result of leading and suggestive questioning, and the intimate sexual acts described would not be typically known by children of the victims' ages. And although the district court observed that the interviews may have been stressful for the victims because they occurred late in the evening, "nothing indicates that the statements were thus less reliable." The district court also observed that the victims' statements to all of these witnesses were consistent.

The district court thus considered several of the relevant factors, including the spontaneity, repetition, mental state of the declarant, use of terminology unexpected in a child of similar age, the motives of the declarant and witnesses to speak truthfully, the proximity in time between the statement and the event described, the knowledge of the victims, and the lack of leading or suggestive questions. The district court's findings all relate to whether the child victims were particularly likely to be truthful and reflect the

district court's consideration of the totality of the circumstances in which the statements were made. Accordingly, the district court did not abuse its discretion by concluding that the victims' out-of court statements regarding sexual contact by appellant possess sufficient indicia of reliability for admission.

Sufficiency of the Evidence

Appellant contends that the evidence was insufficient to sustain the jury's verdict convicting him of seven counts of first- and second-degree criminal sexual conduct. He argues that the evidence is insufficient because the victims' testimony was not corroborated by other evidence.

We review a claim of insufficient evidence to determine whether, given the record evidence and legitimate inferences drawn from the evidence, a jury could conclude beyond a reasonable doubt that the defendant was guilty of the charged offenses. *State v. Flowers*, 788 N.W.2d 120, 133 (Minn. 2010). We view the evidence in the light most favorable to the verdict and assume that the jury believed the evidence supporting the verdict and disbelieved contrary evidence. *Id.* We will not disturb the guilty verdicts 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 was guilty of the charged offenses. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Appellant was convicted of two counts of first-degree criminal sexual conduct and three counts of second-degree criminal sexual conduct against eight-year-old S.Y.H. and two counts of second-degree criminal sexual conduct against nine-year-old S.S.H. To

prove the first-degree criminal-sexual-conduct offenses, the state had to demonstrate that appellant sexually penetrated S.Y.H., defined as “sexual intercourse, cunnilingus, fellatio, or anal intercourse” or “any intrusion however slight into the genital or anal openings . . . of the complainant’s body by any part of the actor’s body.” Minn. Stat. §§ 609.341, subd. 12(1)(1)-(2)(i) (2010); .342, subds. 1(a), (g) (2010). To prove the second-degree criminal-sexual-conduct offenses, the state had to demonstrate that appellant had sexual contact with S.Y.H. and S.S.H, defined as “the intentional touching . . . of the complainant’s intimate parts,” which include the genital area, groin, inner thigh, buttocks, or breast. Minn. Stat. §§ 609.341, subds. 5, 11(a)(i) (2010); .343, subds. 1(a), (g) (2010). In addition, all of the offenses contain elements based on the victims’ ages, and some of the offenses contain a significant-relationship element. Minn. Stat. §§ 609.342, subds. 1(a), (g); .343, subds. 1(a), (g), (h)(iii) (2010). And one of the second-degree offenses pertaining to S.Y.H. is based on appellant’s commission of multiple acts. Minn. Stat. § 609.343, subd. 1(h)(iii).

The state’s evidence included the testimony of the victims, who are the nieces of appellant’s wife. S.Y.H. testified that while she was sleeping with her sister in the living room at appellant and his wife’s apartment, appellant pulled down her clothing and placed his fingers inside her vagina, then licked his fingers. S.Y.H. testified that appellant had touched her vagina with his fingers on several other occasions and on at least one other occasion, appellant licked her vagina with his tongue. Using anatomically correct dolls, S.Y.H. demonstrated how appellant touched her on these occasions. S.S.H. testified that appellant touched her “on top” of her “private” with his fingers while she was

sleeping with S.Y.H. in the living room at appellant and his wife's apartment. She explained that appellant "put his finger down [her] panties," and she demonstrated appellant's actions using anatomically correct dolls. She testified that she was touched only on this one occasion. S.S.H. also testified that, when she confided in S.Y.H., S.Y.H. revealed that appellant had touched her as well, although S.S.H. did not see appellant touch S.Y.H. In addition to this testimony, the state presented the testimony of the victims' parents, a family friend, and the investigating officer regarding the victims' statements about appellant's sexual contact.

The defense cross-examined these witnesses regarding the circumstances of the victims' statements, elicited testimony that the victims did not like appellant, and presented the testimony of the victims' grandparents and aunt, who were present during the time in which the sexual contact occurred and who did not recall appellant entering the living room where the victims slept, or touching the victims inappropriately. Appellant also testified that he did not sexually assault S.Y.H. and S.S.H.

Appellant did not object to the competency of S.Y.H. and S.S.H. to testify. It is well-established that a guilty verdict may be based on the testimony of a single witness. *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004). The testimony of a criminal-sexual-conduct victim need not be corroborated.¹ Minn. Stat. § 609.347, subd. 1 (2010).

¹ Appellant correctly contends that Minnesota courts have recognized that the absence of corroboration of a sexual-assault victim's testimony may require a reviewing court to conclude that there was insufficient evidence upon which a jury could find a defendant guilty beyond a reasonable doubt. *See State v. Ani*, 257 N.W.2d 699, 700 (Minn. 1977) (upholding conviction based only on sexual abuse victim's uncorroborated testimony but observing in dicta that absence of corroboration may support conclusion that there was

Moreover, here, the consistent statements to adult witnesses, including a police officer, corroborated the victims' testimony. *See State v. Christopherson*, 500 N.W.2d 794, 798 (Minn. App. 1993) (observing that statements child victim made to others regarding the sexual assault corroborated victim's testimony).

“[W]eighing the credibility of witnesses is a function exclusively for the jury.” *State v. Pippitt*, 645 N.W.2d 87, 94 (Minn. 2002). The jury had the opportunity to evaluate the credibility of the victims and the state's other evidence, as well as the defense witnesses, and to determine credibility accordingly. The testimony of the victims establishes that appellant sexually penetrated S.Y.H. with his fingers and tongue on at least one occasion, had sexual contact with S.Y.H. on multiple occasions, and had sexual contact with S.S.H. on at least one occasion. The jury was free to believe this testimony. On this record, the evidence is sufficient to permit the jury to conclude beyond a reasonable doubt that appellant was guilty of the charged offenses.

Affirmed.

insufficient evidence); *but see Foreman*, 680 N.W.2d at 539 (“*Ani* clearly states that corroboration is not mandated by statute or the constitution.”). Here, the victims' testimony is corroborated and sufficient to sustain the convictions.