STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0202

State of Minnesota,
Respondent,

vs.

Michael Vernon Price,
Appellant.

Filed January 21, 2014
Affirmed
Hudson, Judge

Dakota County District Court
File No. 19HA-CR-11-1580

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

James C. Backstrom, Dakota County Attorney, Stacy St. George, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Villalva Lijo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and Hooten, Judge.

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

HUDSON, Judge

Appellant challenges the sufficiency of the evidence to support his convictions of first-degree criminal sexual conduct, arguing that the victim's testimony lacked

meaningful corroboration and that she had significant motive to fabricate allegations against him. He also raises additional arguments in a pro se supplemental brief. We affirm.

FACTS

After Eagan police investigated a report that appellant Michael Vernon Price had sexually abused his stepdaughter, K.R., when she was seven to eleven years old, the state charged appellant by amended complaint with two counts of first-degree criminal sexual conduct, based on sexual penetration and sexual contact of a person younger than 13, when the defendant is more than 36 months older than the victim.

At appellant's jury trial, K.R., who was then 15, recounted the following in her trial testimony. Appellant moved in with her mother when K.R. was in kindergarten, in 2003 or 2004. When she was in first and second grade and they lived in Burnsville, her mother, T.P., worked a night shift, and appellant would stay with her. Sometimes she would wake up in the middle of the night scared and watch TV in her mother's room, and appellant would come in, tell her to remove her underwear, and make her get on her hands and knees. Appellant "would put his penis in [her vagina] and then go back and forth." He would state that it was a sex test to see if anyone had been sexually touching her. It sometimes hurt and that he would give her money so that she would not tell her mother. It happened about three times, but she did not then tell her mother because she was scared that he would assault her mother, as he had done previously.

K.R. further testified that after the family moved to Eagan in 2006, the abuse happened three or four more times, and that she once tried to scream, but appellant put

his hands over her mouth and told her to be quiet, saying that she was making noise just like her mother. After the abuse, she saw "white stuff" running down her leg, and she felt a burning sensation with urination. She told appellant that she did not want him to sexually penetrate her, but she did not then tell anyone else because she was afraid of him. She testified that at the end of her fourth grade year, when they moved to Shakopee, the abuse stopped because she began to menstruate and her mother's work changed to a day schedule. She told T.P. about the abuse in 2010, when appellant was no longer living with them, because she had heard him talking to her mother on the phone about getting custody of her younger sister, and she did not want her sister to be abused.

T.P. testified that there was "a lot of arguing and fighting" in her relationship with appellant, which has since ended. She testified that sometimes K.R. was in the room during these arguments and that one such argument resulted in her going to the hospital with a broken jaw. T.P. testified that K.R. told her about appellant's abuse when they were watching a TV show about abuse, and K.R. did not want to elaborate, but when the subject came up again a couple of weeks later, T.P. reported the abuse.

A child-protection social worker conducted a videotaped interview of K.R., which was played for the jury. The social worker testified that, in her experience, it was not unusual for a child not to report sexual abuse when it was occurring. A physician who practices and consults in the area of child-abuse pediatrics conducted a physical examination of K.R. This examination showed an old injury to the fossa navicularis, an area of the vagina behind the hymen, which he testified was an unusual finding,

consistent with penetrating trauma. The jury found appellant guilty of both counts, and the district court sentenced him to 144 months. This appeal follows.

D E C I S I O N

I

When reviewing the sufficiency of the evidence to support a conviction, an appellate court views the record in the light most favorable to the jury's verdict and assumes that the jury disbelieved any conflicting evidence. *State v. Hayes*, 831 N.W.2d 546, 552 (Minn. 2013). We will not overturn the verdict if, giving due regard to the presumption of innocence and the state's burden to prove guilt beyond a reasonable doubt, the jury could reasonably have found the defendant guilty of the offense charged. *State v. Leake*, 699 N.W.2d 312, 319 (Minn. 2005).

Appellant argues that the evidence is insufficient to support his conviction because K.R.'s testimony lacked sufficient corroboration. But testimony of a sexual-abuse victim need not be corroborated to sustain a conviction. *See* Minn. Stat. § 609.347, subd. 1 (2012); *see also State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (stating that a conviction may rest on the uncorroborated testimony of a single credible witness). "Corroboration of an allegation of sexual abuse of a child is required only if the evidence otherwise adduced is insufficient to sustain conviction." *State v. Myers*, 359 N.W.2d 604, 608 (Minn. 1984).

Appellant argues that, because K.R. was not a credible witness, her testimony was insufficient to prove beyond a reasonable doubt that he sexually abused her. *See State v. Kemp*, 272 Minn. 447, 450, 138 N.W.2d 610, 612 (1965) (noting that an appellate court

may reverse a conviction if the state's case is "completely dependent upon a single witness whose testimony, considered in the light of the record as a whole, is of dubious veracity"). In *Kemp*, the Minnesota Supreme Court held that a defendant was entitled to a new trial based on "grave doubts" as to the defendant's guilt, when the jury did not hear the witness's prior inconsistent statements or newly discovered alibi evidence. *Id.* at 449, 138 N.W.2d at 611; *see also State v. Huss*, 506 N.W.2d 290, 292–93 (Minn. 1993) (concluding that evidence was insufficient to a support a criminal-sexual-conduct conviction for abuse of a three-year-old child in light of a suggestive book to which child had been exposed).

No such "grave doubts" exist in this case. Appellant maintains that his prior abuse of T.P. provided a reason for K.R. to fabricate sexual-abuse allegations against him, and he points out that K.R. failed to tell anyone about the abuse when it occurred. But "the jury is in the best position to weigh the credibility of evidence and thus determines which witnesses to believe and how much weight to give to their testimony." *State v. Moore*, 481 N.W.2d 355, 360 (Minn. 1992). K.R. testified that she did not immediately tell anyone about the abuse because she was afraid, based on appellant's past abuse of T.P. and his threats to injure T.P. or K.R. in the future. And the physician who examined K.R. testified that she had injuries consistent with past sexual assault, which corroborated her version of events. We conclude that, viewed in the light most favorable to the jury's verdict, the evidence sufficiently supports appellant's convictions. *See Hayes*, 831 N.W.2d at 552.

II

In a pro se supplemental brief, appellant raises several additional arguments. He argues that the physician's expert testimony did not link appellant to K.R.'s injuries and that the nature and extent of her injuries does not conclusively establish that she was sexually abused. But the jury was entitled to weigh the expert testimony in conjunction with K.R.'s testimony, and based on the evidence presented, it could reasonably have concluded that appellant was guilty of the charged offense. *See Leake*, 699 N.W.2d at 319.

Appellant also argues that he should have received a summons to appear in court, rather than being arrested. *See* Minn. R. Crim. P. 3.01 (noting situations in which a summons, rather than a warrant, properly seeks a defendant's presence in court). But "the nature of and circumstances of the particular case," such as appellant's charge of first-degree criminal sexual conduct, may overcome the presumption of issuing a summons rather than a warrant. *Id.*, cmt. And "[i]ssuance of a warrant instead of a summons should not be grounds for objection to the arrest, to the jurisdiction of the court, or to any subsequent proceedings." *Id*. Appellant was given the opportunity for release with conditions pending trial, which is the appropriate remedy for a defendant who wishes to challenge an arrest by warrant. *See id*.

Finally, appellant argues that his trial counsel was prejudicially ineffective because his counsel failed to object to the jury-panel composition based on a lack of racial diversity. In addition, appellant claims his counsel failed to subpoena certain witnesses and failed to object to the admission of appellant's past domestic-abuse charge.

A defendant claiming that he did not receive effective assistance of counsel "must show that (1) his counsel's performance fell below an objective standard of reasonableness, and (2) that a reasonable probability exists that, but for his counsel's unprofessional errors, the result of the proceedings would have been different." *State v. Nissalke*, 801 N.W.2d 82, 111 (Minn. 2011) (quotation omitted). A defendant must overcome the "strong presumption" that counsel's performance was within a wide range of reasonable assistance. *Gail v. State*, 732 N.W.2d 243, 248 (Minn. 2007).

The record shows that the district court and counsel extensively questioned the jury-panel members, and it does not suggest that any racial-group member was peremptorily excluded from the jury under circumstances raising an inference that the exclusion was based on race. *See State v. Martin*, 773 N.W.2d 89, 101 (Minn. 2009) (stating framework for *Batson* challenge). And tactical decisions, such as which witnesses to call and what evidence to present, are matters of trial strategy, which are left to counsel's discretion and do not show ineffective assistance. *Nissalke*, 801 N.W.2d at 111. We therefore conclude that none of appellant's pro se arguments provide a basis for reversal.

Affirmed.