STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0775

State of Minnesota,
Respondent,

vs.

Juan Raul Cardenas,
Appellant.

Filed April 21, 2014
Affirmed
Stauber, Judge

Kandiyohi County District Court
File No. 34CR12698

Lori Swanson, Minnesota Attorney General, John B. Galus, Assistant Attorney General, St. Paul, Minnesota; and

Shane Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

John E. Mack, Mack & Daby, P.A., New London, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal from his convictions of two counts of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct, appellant argues that (1) the evidence is insufficient to sustain his convictions; (2) the district court erred by

admitting the testimony of appellant's pastor under Minn. Stat. § 595.02, subd. 1(c) (2012); and (3) the district court abused its discretion by prohibiting appellant from introducing evidence of the pastor's prejudice against him. We affirm.

FACTS

Appellant Juan Cardenas is married to L.G. They have three children together. L.G. has three other children, including D.G., born January 11, 1998. In the spring of 2011, D.G., one of her brothers, and L.G. traveled to Mexico and stayed for many months. While D.G. was in Mexico, she dated a young man who was several years older than she. Appellant, who remained in Willmar, did not approve of the relationship because of the age difference.

In July 2012, a few days before returning from Mexico, D.G. told her mother that she had been sexually abused by appellant at the family home in Willmar when she was 11 or 12 years old. On July 31, 2012, upon returning home from Mexico, the family contacted their church pastor, Samuel Rodriguez, and asked him to come over because appellant had a "big problem." When Pastor Samuel and his wife, Mildred Rodriguez, who is also a licensed minister, arrived at the family home, appellant stated that "he had made a big mistake." Appellant and Pastor Samuel then went into a separate room to talk, while Pastor Mildred stayed in the living room and comforted D.G. and L.G., who were upset and crying. In the separate room, appellant confided in Pastor Samuel that he had "sexually penetrated" D.G. when she was 11 or 12 years old.

Pastors Samuel and Mildred reported the information they received to law enforcement. D.G. was interviewed the following day by Jolynn Sundstrom, a county

child-protection investigator. During the video-recorded interview, D.G. reported that appellant touched her sexually on three occasions. D.G. stated that she was 11 or 12 when the first incident occurred, and that the abuse consisted of appellant touching her buttocks and breasts over her clothes in appellant's bedroom.

On August 3, 2012, appellant was interviewed by Detective Christian Kolstad. Appellant initially denied intentionally touching D.G. sexually, but admitted that it could have happened accidentally. Appellant was again interviewed by Sundstrom immediately following his interview with Detective Kolstad. During the interview with Sundstrom, appellant stated "maybe I did it," in reference to the sexual abuse. Detective Kolstad, who was still in the room, asked Sundstrom to leave the room so that he could further investigate appellant's statement. Appellant then admitted that he touched D.G.'s breasts and vagina over her clothing approximately three times when D.G. was 10 or 11 years old. However, he denied any sexual penetration of D.G.

Appellant was charged with two counts of criminal sexual conduct in the second degree. The complaint was later amended to add two counts of first-degree criminal sexual conduct.

Prior to trial, the government subpoenaed Pastors Samuel and Mildred Rodriguez to testify. The Rodriguezes subsequently moved for an order quashing the subpoenas, asserting the clerical privilege. Appellant adopted their motion and similarly asserted the clerical privilege for all his communications with the Rodriguezes. Following an evidentiary hearing, the district court denied the motion.

At the bench trial, D.G. testified that appellant "raped" her "[m]ore than three" times when she was 11 or 12 years old. When asked to define "rape," D.G. explained that while her clothes were off, appellant touched her chest and between her legs. Although D.G. did not specifically identify "private parts," she acknowledged that sex is "when a guy puts his penis in between a girl's legs" and then "it go[es] inside her." D.G. further testified that appellant "did that" to her, and that appellant "told me to not tell nothing to my mom."

D.G. testified that after she reported the abuse to her mother, she talked with two social workers. But D.G. claimed that before the social workers "came over," appellant "told me to say that . . . I was lying about this whole situation and to say that . . . I'm lying because I wanted to stay in Mexico with a ex-boyfriend I had." D.G. also explained that she did not initially tell the social workers "everything that happened" because she was confused, worried, scared, and experiencing many different feelings. D.G. further explained that she eventually revealed more details "cause I wasn't around the people that would pressure me."

Sarah Norbie, a child-protection worker with Kandiyohi County Family Services testified that she was assigned to work with D.G. According to Norbie, D.G. disclosed to her in January 2013, that she had actually been touched more than the three times that she reported to Detective Kolstad. D.G. reported to Norbie that appellant and her mother were pressuring her and telling her what to say, including concocting the story that she was mad at appellant for making her break up with the boy she dated in Mexico. In relaying "her full story" to Norbie, D.G. revealed that when her mom was not home,

appellant would call her up to his room where he would touch D.G.'s breasts and buttocks under her clothes; would take his clothes off, attempt to pull her pants off, and then do "that" to her. Norbie testified that D.G. became very emotional when attempting to explain to her what "that" meant, and only elaborated by stating that appellant would "hurt her" and that she would "cry harder hoping that it would stop."

Detective Kolstad testified, and the transcript of his interview with appellant was admitted into evidence. In addition, Sundstrom testified that during her interview with appellant, he stated "maybe he did it," in reference to the sexual abuse. Sundstrom also testified that she has investigated more than 100 reports of sexual abuse and that in her experience a child may delay reporting sexual abuse or initially make an incomplete disclosure of the extent of the sexual abuse. According to Sundstrom, delayed reporting or incomplete disclosure typically happens because the child has been threatened, does not feel safe, or worries that the disclosure may destroy the family. Sundstrom testified that a child only later reveals the full nature of the abuse in a therapeutic relationship with someone whom the child has come to trust.

Finally, the Rodriguezes testified about their meeting with appellant on July 31. Pastor Samuel testified that when he and his wife arrived at the family residence, they met with appellant, his wife, and D.G. According to Pastor Samuel, appellant "kept on saying that he had done something really bad . . . to [D.G.]." Pastor Samuel stated that he then went into an adjacent room with appellant, where appellant admitted that he sexually penetrated D.G. and provided details of the abuse. Pastor Samuel also testified that after conversing with appellant in the adjacent room, the two of them went into the living room

to discuss the matter further with Pastor Mildred, L.G., D.G., and appellant's mother, who had just arrived at the family home.

Pastor Mildred testified that when she and her husband arrived at appellant's residence, appellant, D.G., and L.G., were all visibly upset. Pastor Mildred testified that after appellant went into the adjacent room with Pastor Samuel, D.G. acknowledged that appellant had sexually abused her. Pastor Mildred also testified that when appellant and Pastor Samuel returned to the living room and rejoined L.G., D.G., and her, appellant "confirm[ed] what he had talked about to [Pastor Samuel]."

Appellant testified in his defense, denying the sexual abuse. Appellant also denied telling the pastors that he raped D.G. and claimed that he only admitted the sexual contact with D.G. to Detective Kolstad because he felt pressured and confused. Moreover, appellant's wife, mother, sister, and oldest son testified that appellant was a good father and had a good relationship with D.G., and appellant's current Methodist pastor testified that appellant was a good man who would not hurt children.

The district court found appellant guilty of the charged offenses. The court then sentenced appellant to the presumptive 144-month prison term. This appeal followed.

D E C I S I O N

I.

Appellant challenges the district court's denial of his motion to quash the subpoenas of the Rodriguezes as testimony that was protected by the clergy-communicant privilege. "The availability of a privilege established under statutory or common law is an evidentiary ruling to be determined by the [district] court and reviewed

based on an abuse of discretion standard." *State v. Gianakos*, 644 N.W.2d 409, 415 (Minn. 2002). "Whether a communication, oral or recorded, is privileged is a question of fact." *State v. Lender*, 266 Minn. 561, 563, 124 N.W.2d 355, 357-58 (1963). But the interpretation of a statute is a legal question that is reviewed de novo. *State v. R.H.B.*, 821 N.W.2d 817, 820 (Minn. 2012).

Minnesota law provides that:

> A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules of practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other ministers professional character, without the consent of the person.

Minn. Stat. § 595.02, subd. 1(c).

The purpose of the privilege is to allow individuals freedom to unburden themselves by seeking spiritual healing without the threat of incriminating themselves. *In re Swenson*, 183 Minn. 602, 605-06, 237 N.W. 589, 591 (1931). "In determining whether the privilege applies, the [district] court should look to the circumstances leading up to the communication." *State v. Orfi*, 511 N.W.2d 464, 469 (Minn. App. 1994), *review denied* (Minn. Mar. 15, 1994). An assertion of the clergy privilege "requires proof of the following: (1) the potential witness is a religious minister; (2) the communicant intended the conversation to be private; and (3) the communicant was

seeking religious or spiritual help." *Id.* (citing *Lender*, 266 Minn. at 564, 124 N.W.2d at 358). "The burden is on the party asserting the clergy privilege to show he was seeking spiritual aid in a confidential conversation when he spoke with a member of the clergy." *State v. Rhodes*, 627 N.W.2d 74, 85 (Minn. 2001).

Here, the district court concluded that although appellant initially met his burden of proving the conversation was intended to be private, he waived the privacy after he left the room and continued the conversation with Pastor Mildred, L.G., D.G, and his mother. The court further concluded that appellant "failed to establish that the communication that occurred alone with Pastor Samuel was for the purpose of seeking penitential or spiritual advice, aid, or comfort."

Appellant contends that because he specifically went to a separate room with Pastor Samuel and was "very reluctant even then to indicate what he had done," the record supports his claim that he intended his conversation with Pastor Samuel to be private. Appellant also contends that by specifically contacting his minster, who had been his minister for about ten years, he established that his communication with Pastor Samuel "was a confession made for the purpose of spiritual guidance." Therefore, appellant argues that the district court erred by concluding that his conversation with Pastor Samuel was not privileged under Minn. Stat. § 595.02, subd. 1(c).

Although appellant's initial conversation with Pastor Samuel in the separate room arguably establishes appellant's desire to keep the communication private, the Rodriguezes testified that when appellant left the separate room, the details of his conversation with Pastor Samuel were shared immediately with Pastor Mildred, D.G.,

appellant's wife, and appellant's mother, who were waiting in the living room. Appellant does not dispute this testimony. The Rodriguezes' testimony that appellant openly discussed his initial communications with Pastor Samuel with all of the other people in the living room belies appellant's claim that his conversation with Pastor Samuel was intended to be private. Moreover, Pastor Samuel specifically testified that appellant never asked him or Pastor Mildred to keep any of their conversations that day confidential. Thus, the district court did not err by concluding that appellant failed to establish that he intended his conversation with Pastor Samuel to be private.

There is also no evidence in the record indicating that appellant was seeking religious or spiritual help from Pastor Samuel. The record reflects that appellant did not seek to repent, and Pastor Samuel testified that appellant did not seek spiritual guidance, comfort, aid, or religious counseling. Instead, the discussions involved a family problem; appellant's sexual assault of D.G. Although appellant did contact his minister, this fact alone does not invoke the clergy privilege. The district court did not err by concluding that appellant's statements to the Rodriguezes were not covered by the clergy privilege.

II.

When determining the sufficiency of the evidence, this court conducts "a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This analysis is the same for bench trials as for jury trials. *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). In either case, "[t]he credibility of the witnesses and the weight to be

given their testimony are determinations to be made by the factfinder." *DeMars v. State*, 352 N.W.2d 13, 16 (Minn. 1984). This court will not reverse the verdict so long as the factfinder, acting with due regard for the presumption of innocence and the requirement of "proof beyond a reasonable doubt, could reasonably conclude that [a] defendant was proven guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (alteration in original) (quotation omitted).

Appellant was convicted of two counts of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a) and (g) (2010), and two counts of second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(a) and (g) (2010). A defendant is guilty of first-degree criminal sexual conduct under section 609.342, if he "engages in sexual penetration with another person, or in sexual contact with a person under 13 years of age" and "(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant;" or "(g) the actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration." Minn. Stat. § 609.342, subds. 1(a), (g). A defendant is guilty of second-degree criminal sexual conduct under section 609.343, if the person "engages in sexual contact with another person" under either of the same circumstances provided in section 609.342, subdivisions 1(a) and (g). Minn. Stat. § 609.343, subds. 1(a), (g). For any of the above-described offenses, neither mistake as to the complainant's age nor consent to the act is a defense. *See* Minn. Stat. §§ 609.342, subds. 1(a), (g), .343, subds. 1(a), (g).

Appellant argues that the evidence was insufficient to support his convictions because D.G.'s testimony about the sexual abuse was vague and inconsistent, and because there was substantial evidence in the record demonstrating that appellant was a good father, had a great relationship with D.G., and would not do anything to harm his children. We disagree. "[I]nconsistencies are a sign of human fallibility and do not prove testimony is false, especially when the testimony is about a traumatic event." *State v. Mosby*, 450 N.W.2d 629, 634 (Minn. App. 1990), *review denied* (Minn. Mar. 16, 1990). And inconsistencies in testimony go to witness credibility, which is an issue for the factfinder, not this court. *State v. Pendleton*, 706 N.W.2d 500, 512 (Minn. 2005).

Here, although D.G. initially told investigators that appellant only touched her breasts and buttocks over her clothes, she later told Norbie that appellant had sexual intercourse with her. And, more importantly, she testified at trial that appellant "raped" her "[m]ore than three" times when she was 11 or 12 years old at the family home in Willmar. Moreover, D.G. acknowledged at trial that sex is "when a guy puts his penis in between a girl's legs" and then "it go[es] inside her." If believed, D.G.'s testimony is sufficient to support appellant's convictions. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990) (stating that a conviction can be based solely on testimony from one credible witness).

And in addition to D.G.'s testimony, the state presented sufficient evidence supporting the factfinder's findings of guilt. The record reflects that Norbie testified that D.G. eventually admitted to her in January 2013 that she had not fully reported the extent of the sexual abuse, that appellant had actually sexually penetrated D.G., and that D.G.'s

family was pressuring her to claim that she made up the allegations of sexual abuse because she was upset at appellant for making her break up with an older boyfriend in Mexico. Moreover, Sundstrom testified that it is common for a child to delay reporting sexual abuse or initially make an incomplete disclosure of the extent of the sexual abuse. Sundstrom testified that it is common for a child to only later reveal the full nature of the abuse to persons in a therapeutic relationship whom the child has come to trust, which was consistent with the events that occurred in this case. The state also presented the transcript of appellant's interview with Detective Kolstad in which appellant acknowledged that he touched D.G.'s breasts and vagina over her clothing. And finally, the Rodriguezes both testified that appellant admitted to them that he had sexual intercourse with D.G. Although appellant testified that he did not have sex with D.G., and called several witnesses who testified to his good character, the factfinder believed the evidence and testimony presented by the state and disbelieved any evidence to the contrary. It is well settled that the factfinder is in the best position to judge witness credibility and we defer to the factfinder's credibility determinations. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Therefore, we conclude that there is sufficient evidence in the record to support appellant's convictions of first- and second-degree criminal sexual conduct.

III.

Finally, appellant argues that the district court abused its discretion by prohibiting him from introducing evidence demonstrating that Pastor Samuel had a motive to fabricate his testimony. Specifically, appellant sought to elicit testimony from L.G. that

Pastor Samuel made inappropriate sexual advances toward her. The district court sustained the state's objection, concluding that the testimony was inadmissible "impeachment and character evidence" under Minn. R. Evid. 608. The court also appeared to conclude that the testimony was inadmissible because appellant failed to provide notice of the testimony, thereby causing prejudice to the state.

Rulings concerning the admissibility of evidence are subject to an abuse-of-discretion standard of review. *Bernhardt*, 684 N.W.2d at 474. The party who challenges an evidentiary ruling has the burden of establishing that the district court abused its discretion and that the party was prejudiced by the ruling. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

Here, even if appellant is correct that the district court abused its discretion by refusing to allow the challenged testimony, appellant is unable to demonstrate prejudice. *See id.* The state's evidence against appellant was particularly strong. The evidence included (1) the victim's testimony; (2) the testimony from two ministers—Pastors Samuel and Mildrid—that appellant admitted to them that he sexually penetrated his step-daughter; and (3) evidence of appellant's interview with Detective Kolstad in which appellant indicated that he sexually abused his step-daughter. Accordingly, appellant is not entitled to a new trial.

Affirmed.