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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0746**

State of Minnesota,
Respondent,

vs.

Jose Luis Argueta-Joj,
Appellant.

**Filed March 6, 2017
Affirmed
Smith, John, Judge***

Hennepin County District Court
File No. 27-CR-15-14317

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Stauber, Presiding Judge; Rodenberg, Judge; and Smith, John, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We affirm appellant Jose Luis Argueta-Joj's criminal-sexual-conduct convictions because they are supported by the victim's testimony, which does not require corroboration and is therefore sufficient.

FACTS

T.F., a child, reported that her stepfather, Jose Luis Argueta-Joj, had touched and penetrated her vagina with his fingers on two occasions in 2014. The state charged Argueta-Joj with twelve counts of criminal sexual conduct, three first-degree and three second-degree counts for each incident. Argueta-Joj waived his right to a jury trial and elected to proceed with a bench trial. The state proceeded on one first- and second-degree charge for each incident.

T.F. testified that the first incident occurred in August 2014, when she was 11 years old. T.F.'s mother was at the hospital because she was having a baby. While T.F. was trying to sleep, Argueta-Joj entered the living room where she slept and kneeled near her. He was close enough for T.F. to hear his breathing and smell an alcoholic odor on him. T.F. was wearing a shirt, leggings, and underwear. Argueta-Joj put his hand underneath her leggings and underwear and "touched [her] in places that weren't appropriate." Argueta-Joj also put one of his fingers "in [her] stuff" (meaning inside her vagina) and moved his finger around. T.F. stated that she felt "violated" and wanted to tell Argueta-Joj to stop but could not because the incident was "traumatizing." Argueta-Joj eventually stopped and left the room. T.F. "cried most of the night," and did not report the incident to her mother because she

was “scared” and did not think her mother would believe her. T.F. did not report the incident to anyone else because she felt “ashamed” and “scared.”

The second incident occurred on October 31, 2014, when T.F. was 12 years old. T.F.’s mother was again at the hospital, this time caring for T.F.’s older brother. Again, just before T.F. fell asleep, Argueta-Joj entered the room where she slept and got close enough for T.F. to “feel his breathing.” He again took his hand and placed it under her sweatpants and underwear. He touched the skin of her “stuff,” put his finger “inside,” and moved the finger. T.F. told Argueta-Joj to stop, and he left without saying anything. T.F. reported feeling violated and scared. T.F. did not report this incident to her mother either because she “was still scared . . . of [her] mom choosing [Argueta-Joj] over [her.]”

T.F. began having trouble in school and with relationships, and she eventually began seeing a school therapist. She reported the incidents to her therapist in May 2015. T.F. eventually told her mother what happened, and her mother was initially supportive. But once her mother became unsupportive, T.F. began running away from home staying out until late at night.

On May 21, 2015, T.F.’s mother reported to the police that T.F. was missing. The police arrived after T.F. had returned. She explained to Officer William Martin that her stepfather had touched her sexually in an inappropriate place on two occasions. Officer Martin testified that T.F. reported the sexual assaults as the reason she was running away. T.F. told the officer that her stepfather had pinned her hands over her head while he touched her. Officer Martin did not ask any further questions of T.F. and filed a police report listing Argueta-Joj as the suspect.

Sergeant Patrick Myslajek investigated Officer Martin's report beginning May 22, 2015. He testified that he took a statement from T.F.'s school therapist, who advised him that T.F. had alleged that Argueta-Joj sexually assaulted her. He also spoke with T.F.'s mother, who confirmed that she was out of the home having a baby during the first incident and out of the home caring for T.F.'s brother during the second incident.

Sergeant Myslajek arranged for T.F. to be forensically interviewed by Judy Weigman at CornerHouse. Weigman testified that T.F. reported the details of the sexual assaults consistently with her previous reports. The district court admitted the video recording of the interview as a prior consistent statement over the defense's rule 403 objection and viewed it in chambers.

Argueta-Joj also testified, denying that he had touched T.F. inappropriately. He confirmed that he was 29 years old and that T.F. was 11 and 12 years old on the dates in question. He also confirmed that T.F.'s mother was out of the home at the hospital on both dates. He opined that T.F. made the allegations because she did not want her mother to be happy, and he indicated that T.F.'s grandmother may have influenced T.F. He confirmed that T.F. was living with him and T.F.'s mother at the times of the alleged incidents, and admitted to being out drinking alcohol but denied being drunk on August 17. He also admitted to being out and drinking eight or nine beers on October 31 but claimed that he did not come home that night. He claimed that he went straight from drinking at his friend's house to work at six in the morning. But he could not remember his friend's last name, precise address, or phone number, nor could he recall his work address or his boss's name despite allegedly working for him six days a week.

The district court found Argueta-Joj guilty of all four counts. The district court found T.F. credible and Argueta-Joj not credible. It concluded that T.F.’s testimony sufficiently proved the charges beyond a reasonable doubt. It sentenced Argueta-Joj to concurrent prison terms of 144 and 180 months.

Argueta-Joj appeals.

D E C I S I O N

Argueta-Joj claims that the evidence at trial did not establish his guilt beyond a reasonable doubt. In evaluating the sufficiency of the evidence, we apply the same standard of review in bench trials and in jury trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). Under that standard, we “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [fact-finder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Fox*, 868 N.W.2d 206, 223 (Minn. 2015), *cert. denied*, 136 S. Ct. 509 (2015). “We view the evidence presented in the light most favorable to the verdict, and assume that the fact-finder disbelieved any evidence that conflicted with the verdict.” *Id.* We will not overturn a verdict if the fact-finder, “upon application of the presumption of innocence and the [s]tate’s burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *Id.*

Argueta-Joj urges that T.F.’s testimony is insufficient on its own to sustain his convictions for first- and second-degree criminal sexual conduct. His convictions required the district court to find that the acts occurred while T.F. was under 13 years old, while

Argueta-Joj was more than 36 months older than T.F., and that they occurred on August 17 and October 31, 2014, in Hennepin County. *See* Minn. Stat. §§ 609.342, subd. 1(a), 609.343, subd. 1(a) (2014). Argueta-Joj disputes T.F.’s testimony that he touched and digitally penetrated her vagina. First-degree criminal sexual conduct requires intentional sexual penetration. Minn. Stat. § 609.342, subd. 1(a). Second-degree criminal sexual conduct requires intentional touching of intimate parts or clothing over the immediate area of intimate parts, with sexual or aggressive intent. Minn. Stat. § 609.343, subd. 1(a); *see also* Minn. Stat. § 609.341, subd. 11(a) (2014). Argueta-Joj urges that T.F.’s testimony on these crucial elements needed to be corroborated to be sufficient. He is incorrect.

By statute, the victim’s testimony need not be corroborated in first- and second-degree criminal sexual conduct cases. Minn. Stat. § 609.347, subd. 1 (2014). T.F. testified that Argueta-Joj touched and digitally penetrated her vagina under her clothes on two occasions. This is sufficient evidence that needed no corroboration to convict Argueta-Joj. The controlling statute allows us to affirm on this point alone. But we will nonetheless address Argueta-Joj’s remaining arguments.

Argueta-Joj recognizes that it is the exclusive role of the district court to determine witness credibility but insists that T.F.’s testimony was of dubious credibility and unsupported by other evidence. We have long recognized that a conviction can rest on the uncorroborated testimony of a single credible witness. *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004). And corroboration of a child’s allegation of sexual abuse is required only if the evidence otherwise adduced is insufficient. *State v. Myers*, 359 N.W.2d 604, 608 (Minn. 1984).

Argueta-Joj points to *State v. Huss*, which involved the testimony of a three-year-old alleged sexual-abuse victim who provided the state's only direct evidence. 506 N.W.2d 290, 291-92 (Minn. 1993). The supreme court summarized the child's testimony as "contradictory as to whether any abuse occurred at all, and . . . inconsistent with her prior statements and other verifiable facts." *Id.* at 292. The court also stated that the "repetitive use" of a therapy book and its audio tape "may have caused the child to imagine the abuse." *Id.* at 293. The court concluded that, "on these unusual facts . . . the state did not meet its burden of proof beyond a reasonable doubt and that the conviction should be reversed." *Id.* The "unusual facts" in *Huss* are not present here. T.F. was ten years older than the victim in *Huss* when she testified, her courtroom testimony matched her CornerHouse interview, there was no "repetitive use" of methods indicating T.F. might have imagined the abuse, and there were no apparent contradictions in T.F.'s testimony.

Argueta-Joj also highlights the lack of physical evidence, T.F.'s delay in reporting the assaults, and the timing of T.F.'s self-harm and emotional instability to support his arguments. We agree with the state that these circumstances are either not unusual in sexual-assault cases or there is a reasonable explanation for them. Sergeant Myslajek explained that a months-old digital penetration was unlikely to yield DNA evidence. Argueta-Joj's characterization of T.F.'s reporting coming "long after" the alleged abuse is misleading; T.F. reported these assaults seven months after the October incident. That is not a delay that raises suspicion of her truthfulness, and even if it was, the district court was aware of the delay, and we defer to its credibility determinations. Finally, the district court did not appear to consider T.F.'s cutting and other emotional issues in its credibility

determination. Argueta-Joj gives us no reason to question the district court's determination of T.F.'s credibility. Her uncorroborated testimony is therefore sufficient on its own to support Argueta-Joj's convictions.¹

Moreover, T.F.'s prior consistent statements to her school therapist, to Officer Martin, and in her CornerHouse interview support the details of her testimony. *See Myers*, 359 N.W.2d at 608 (testimony revealing the "consistent and positive nature of the complainant's statements" supported the victim's allegations). T.F. reported that the assaults occurred when her mother was out of the home giving birth on one occasion and taking care of another sibling at the hospital on the other. Her mother and Argueta-Joj confirmed that the mother indeed was at the hospital for those reasons on those dates. T.F. also reported the odor of an alcoholic beverage coming from Argueta-Joj during the incidents, and Argueta-Joj admitted to drinking alcoholic beverages on both dates. T.F. was consistent and accurate about both significant and peripheral details of the incident.

T.F.'s consistent testimony was that Argueta-Joj touched and digitally penetrated her vagina underneath her underwear with his hand and fingers. This is sufficient evidence of intentional contact and penetration. Viewed in a light favorable to the guilty verdict, the record shows that the facts and the legitimate inferences from those facts permitted the court to find the elements of first- and second-degree criminal sexual conduct beyond a reasonable doubt.

Affirmed.

¹ Appellant filed a pro se supplemental brief, however the brief is not supported by any legal arguments upon which relief may be granted.