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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A16-0752**

State of Minnesota,  
Respondent,

vs.

Javaris Martin,  
Appellant.

**Filed April 3, 2017  
Affirmed  
Schellhas, Judge**

Hennepin County District Court  
File No. 27-CR-15-16940

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Kirk, Judge; and Bratvold, Judge.

## UNPUBLISHED OPINION

**SCHELLHAS**, Judge

Appellant challenges his second-degree criminal-sexual-conduct conviction, arguing that the evidence is insufficient to support his conviction because he had an alibi defense that the district court improperly discounted. We affirm.

### FACTS

On May 2, 2015, N.H., then age 11, told her cousin, L.W., that her uncle, appellant Javaris Martin, touched her vagina with his hand the previous summer.<sup>1</sup> That same day, N.H. also told L.W.'s older sister that Martin had touched her. L.W.'s older sister relayed the information to her mother, and eventually N.H.'s mother reported the incident to the police. N.H. was interviewed at CornerHouse on May 18 and said that Martin touched her when she was at her paternal grandfather's house. N.H. explained that while she was lying on a couch watching TV and her aunt was asleep on the floor in the same room, Martin entered the house and asked N.H. to braid his hair. After N.H. braided Martin's hair and returned to the couch, Martin sat beside N.H., reached inside her pajama pants, and touched her vagina with his finger.

Respondent State of Minnesota charged Martin with second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(a) (2012), for engaging in sexual contact with N.H., who was under the age of 13 and more than 36 months younger than he, on or about June 6, 2014. Martin asserted the affirmative defense of alibi and waived his

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<sup>1</sup> The record reflects that N.H. was born on February 2, 2004.

right to a jury trial. The district court conducted a court trial on November 4–6, 23, 2015, and heard testimony from 11 witnesses, including Martin and N.H. The court found Martin guilty as charged. Before announcing its finding of guilt, the court noted which witnesses were credible and which were not and explained the reasons for its credibility determinations. The court subsequently issued a written order with extensive findings of fact, and the court sentenced Martin to 30 months’ imprisonment, a downward durational departure from the presumptive 60-month sentence. The court justified the downward durational departure on the basis that the offense was “on the less serious spectrum” of crimes involving second-degree criminal sexual conduct and because “[t]he touching was very fleeting.”

This appeal follows.

## **D E C I S I O N**

Martin argues that the evidence was insufficient for the district court to find him guilty beyond a reasonable doubt because his alibi-witness testimony demonstrates that he was not in Minneapolis at the time of the alleged offense and the district court improperly discounted the alibi-witness testimony. We “will not disturb the verdict if the factfinder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could have reasonably concluded that the defendant was guilty of the charged offense.” *State v. Dorn*, 887 N.W.2d 826, 830 (Minn. 2016). Appellate courts “view the evidence in the light most favorable to the verdict and assume that the factfinder disbelieved any testimony conflicting with that verdict.” *Id.* (quotation omitted). Assuming that the fact-finder “believed the state’s witnesses is particularly appropriate

when resolution of the case depends on conflicting testimony, as it is the function of the [fact-finder] to evaluate the credibility of the witnesses.” *State v. Pippitt*, 645 N.W.2d 87, 92 (Minn. 2002). “This standard applies to both bench trials and jury trials.” *Dorn*, 887 N.W.2d at 830. “Inconsistencies or conflicts between one witness and another do not necessarily constitute false testimony or serve as a basis for reversal.” *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006). “[I]n reviewing the sufficiency of the evidence [this court] do[es] not try the facts anew.” *Id.* (quotation omitted). “The [fact-finder] is free to accept part and reject part of a witness’s testimony.” *Id.* “In a prosecution under sections 609.342 to 609.3451 . . . the testimony of a victim need not be corroborated.” Minn. Stat. § 609.347, subd. 1 (2012). This court does not make findings of fact, and defers to the district court’s credibility determinations. *See Mems*, 708 N.W.2d at 531 (“Assessing the credibility of a witness and the weight to be given a witness’s testimony is exclusively the province of the [fact-finder].”).

“Under [appellate court] decisions, the defendant need not prove an alibi beyond a reasonable doubt.” *State v. Currie*, 267 Minn. 294, 306, 126 N.W.2d 389, 398 (1964) (footnote omitted). “[T]he burden rests on the state of proving the essential elements of the crime, including the presence of the defendant at the place where it was committed, in spite of a claim of alibi.” *Id.* at 306–07, 126 N.W.2d at 398; *see also State v. Brechon*, 352 N.W.2d 745, 750 (Minn. 1984) (noting that “[c]ourts have held that the presence of the accused at the scene of the crime is an essential element of an offense” and that defendant therefore need not prove an alibi beyond a reasonable doubt).

Martin first argues that the evidence is insufficient to prove beyond a reasonable doubt the timeframe of the offense—that the offense occurred between June and July 2014—and that Martin was in Minneapolis at that time, i.e., present at the scene of the crime. Martin points to N.H.’s uncertainty about the specific date of the sexual contact, L.W.’s recollection of what N.H. told her, and testimony about N.H.’s age at the time of the offense. We are not persuaded.

As to the timeframe of the offense, N.H. testified that she was out of school at the time and that Martin committed the offense in the summer of 2014. She provided details about other things that happened in her family that summer, and N.H.’s mother confirmed the timeframe based on the date on which N.H.’s school ended for the summer and the date on which she last saw Martin in Minneapolis during the summer of 2014.

The district court heard conflicting testimony about N.H.’s age at the time of the offense. L.W. testified that N.H. told her that Martin sexually touched her when she was eight or nine years old. N.H.’s mother initially testified that N.H. was nine years old when the sexual contact occurred and later testified that N.H. would have been nine or ten years old. But each witness who testified about N.H.’s reports of the offense testified that N.H. said that Martin touched her during the summer of 2014. The determination of when the offense was committed depended entirely on the district court’s credibility determinations. The district court found that N.H. was credible.

Martin also argues that even if N.H. had testified with certainty that the crime occurred in June 2014, the evidence would still be insufficient to convict him because of the conflicted testimony about Martin’s whereabouts during the timeframe of the crime,

i.e., whether he was in Minneapolis or Indianapolis. But the fact-finder must resolve conflicting testimony by weighing the evidence and making credibility determinations, and we defer to the fact-finder's credibility determinations. *See Mems*, 708 N.W.2d at 531 (stating that “[t]he [fact-finder] is free to accept part and reject part of a witness’s testimony”). Here, the evidence that supports Martin’s alibi defense—that he was not in Minneapolis during the summer of 2014—consists of testimony by Martin, A.L., and F.G. The district court had to assess that testimony in light of all other witnesses’ contradictory testimony. The evidence contradicting Martin’s alibi defense consists of testimony by N.H., N.H.’s aunt, N.H.’s mother, and Martin’s sister.

The record before us reflects that the district court, as fact-finder, carefully reviewed the evidence and considered the credibility of the witnesses in finding Martin guilty. *See, e.g., State v. Scruggs*, 822 N.W.2d 631, 645 (Minn. 2012) (stating that, “It was properly left to the jury [as fact-finder] to assess [the witness’s] credibility and determine the weight it believed her testimony deserved”). Considering all the evidence, nothing suggests that the court improperly credited the state’s witnesses in determining that the witnesses who testified that Martin was in Indianapolis during the entire summer of 2014 were not credible. Significantly, the court found that “N.H.’s testimony that [Martin] . . . digitally penetrated her on or around June 6, 2014, was credible, consistent in and out of court and largely unimpeached.” And the court noted that “the presence of Mr. Martin at the same location as N.H. in June of 2014 was corroborated by” more than one person. Moreover, the court discredited Martin’s alibi testimony because when he was interviewed by police in 2015, although police repeatedly asked him where he was living in June 2014, he never

mentioned that he was living in Indiana and working long hours for A.L. Although A.L. testified that Martin worked long hours at A.L.'s restaurant in Indiana from April 2014 to July 2014, and that Martin never took a vacation, the court did not believe his testimony because "the description of his record keeping of his employees' work and hours just wasn't credible." The court found that F.G.'s testimony was biased because she was still in love with Martin. In sum, the court found that "Martin's alibi defense was fabricated."

Martin also argues that the district court improperly shifted the burden of proof to him when "it erroneously found that his alibi was unsupported because he has failed to submit dated documentation of his time in Indianapolis." Martin states in his brief that, "During the hearing, as well as in its written findings, the court specifically noted that part of the reason for its verdict was that Martin had failed to prove his alibi." But Martin's argument seems to rest on an erroneous interpretation of the reason for the court's finding of guilt. The record reveals that the court never said that Martin "had failed to prove his alibi." The court did state that Martin "did not provide any evidence, any dated evidence of [his] presence in Indianapolis in June of 2014." But the context of this statement is important to understanding the court's rationale for rejecting Martin's alibi defense—the court found that neither Martin nor A.L. was credible. The court stated:

I do find, based on your interview with the police in . . . 2015—that your failure to mention your alibi defense seriously undermined your credibility. That you were . . . living in Indianapolis the entire time during June of 2014. While I do find that [A.L.] — I couldn't figure out any reason why he would provide false testimony regarding your whereabouts in June of 2014, I simply didn't believe his testimony. . . . [B]asically because the description of his record keeping of his employees' work and hours just wasn't credible.

And finally, I note that you did not provide any evidence, any dated evidence of your presence in Indianapolis in June of 2014. There were no bank statements, any cancelled paychecks, any receipts, there was no documentation that showed that you were present in Indianapolis during the entire month of June, 2014.

We agree that Martin had no burden of proof, but he had the burden of going forward with evidence to support his defense. *See Currie*, 267 Minn. at 307, 126 N.W.2d at 398 (stating, with regard to alibi defense, that defendant does not have burden of proving essential elements of crime, including presence at place where crime was committed, but defendant does have the “burden of going forward with the evidence” of the alibi defense (quotation omitted)). In this case, the state overcame Martin’s alibi-defense evidence at least in part because the district court did not find his alibi-defense witnesses credible. The record does not reflect that the court improperly shifted the state’s burden of proof to Martin.

Although N.H. could not provide a specific date on which the criminal sexual conduct occurred, viewing the evidence in the light most favorable to the verdict, we conclude that the evidence is sufficient to support the district court’s finding that Martin digitally penetrated N.H. on or about June 6, 2014. The evidence is sufficient to support Martin’s conviction of second-degree criminal sexual conduct. Martin therefore is not entitled to have his conviction reversed.

**Affirmed.**