STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0029

State of Minnesota,
Respondent,

vs.

Tymaine Lee Muckle,
Appellant.

Filed December 11, 2017
Affirmed
Jesson, Judge

Traverse County District Court
File No. 78-CR-15-129

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

Matthew P. Franzese, Traverse County Attorney, Wheaton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi Lynn Proulx, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Florey, Judge.

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

JESSON, Judge

Sixteen-year-old appellant Tymaine Lee Muckle would periodically babysit his mother's friend's four-year-old daughter, H.Z. H.Z. testified that when Muckle babysat her, he sexually abused her, kept her from leaving the room where the abuse occurred, and

threatened to kill her if she told anyone about the abuse. Muckle argues the evidence presented at trial was insufficient to support his convictions for aggravated first-degree witness tampering, second-degree criminal sexual conduct, and false imprisonment. We affirm.

FACTS

While appellant Tymaine Muckle's sexual abuse of H.Z. took place years earlier, H.Z. did not report any abuse until she was in third grade. H.Z. disclosed the abuse as part of a game she was playing with a classmate, a game where the children told each other secrets. H.Z. told her friend that she had been sexually abused by Muckle. H.Z.'s friend insisted they tell their teacher, and the two reported the abuse. Law enforcement investigated, and Muckle was arrested.

While Muckle was a juvenile at the time of the abuse, the state moved to certify him as an adult. The motion was granted and Muckle was charged as an adult with two counts of each: second-degree criminal sexual conduct—complainant under 13 years of age and actor more than 36 months older;[1] second-degree criminal sexual conduct—actor used force or coercion to accomplish sexual contact;[2] aggravated first-degree tampering with a witness;[3] and false imprisonment—intentional restraint.[4] One of each of these counts related to the first incident of abuse and the other related to the last incident. While H.Z. testified that the abuse took place in 2011, the state charged the incidents as taking place

[1] Minn. Stat. § 609.343, subd. 1(a) (2008).
[2] Minn. Stat. § 609.343, subd. 1(e)(i) (2008).
[3] Minn. Stat. § 609.498, subd. lb(a)(4) (2008).
[4] Minn. Stat. § 609.255, subd. 2 (2008).

in January and May, 2010. Muckle pleaded not guilty to all counts and the case went to trial. At trial, the jury received evidence that we now summarize.[5]

From 2009 to approximately 2013, H.Z.'s mother and Muckle's mother were close friends. Each woman has multiple children and those children spent considerable time together over those years. Muckle is approximately 12 years older than H.Z. The mothers went out together throughout their friendship, and sometimes left H.Z. in Muckle's care. This was when Muckle sexually abused H.Z., restrained her against her will, and threatened to kill her if she told "anybody" about the abuse.

H.Z. testified and the jury saw a videotaped interview of H.Z. conducted by a forensic interviewer after she reported the abuse. H.Z. testified that she was either four or five years old when she was abused by Muckle. She characterized the abuse as beginning after New Year's Day during her kindergarten school year. The abuse lasted about five months and ended in May of that same year. H.Z. knew it ended in May, based on a conversation she had with her kindergarten teacher, where she learned about the May Day holiday. H.Z. was in kindergarten from fall 2010 to spring 2011.

H.Z. described the sexual abuse as Muckle touching her in her "private parts" and identified those private parts as her vagina. Sometimes this touching took place over her underwear and other times when her underwear was removed. When Muckle would attempt to touch her, H.Z. would push, kick and attempt to get him off of her. If H.Z. tried to get away from Muckle, he would stop her "almost every time." When H.Z. attempted

[5] Because Muckle was only convicted of charges pertaining to the May 2010 incident, we do not describe the alleged January 2010 incident in detail.

to leave, Muckle, on at least one occasion, grabbed her arm and on another occasion, spanked H.Z. When H.Z. asked Muckle why he was touching her, he told her it was because he did not have a girlfriend yet.

The final incident of abuse took place in the living room at the Wheaton Inn, where H.Z. and her family were living at the time. H.Z. told Muckle to stop touching her, or she would tell her mother. Muckle responded saying if she told "anybody" he would "give [her] a spanking or [] would kill [her]."

H.Z.'s testimony was largely consistent with the video-taped forensic interview, with a few exceptions. In the video-taped interview, H.Z. stated the touching happened only over her underwear, instead of sometimes over her underwear and sometimes when her underwear was removed. In the video, H.Z. noted that Muckle would pinch her to get her to open her legs, but at trial said she did not remember the pinching.

H.Z.'s mother also testified and described changes in H.Z.'s behavior that she noticed prior to H.Z. beginning kindergarten in the fall of 2010. H.Z. would drop to the floor and beg her mother not to be left with Muckle or go to his home. H.Z. began to play in a sexual manner with her dolls, and that she googled terms including movie or pop stars and "sex." H.Z. started counseling due to this behavior and she was later diagnosed with ADHD. H.Z. never reported the sexual abuse to a counselor. H.Z.'s mother testified that Muckle was out of the state for a time but when he returned to Minnesota, H.Z. stopped going to the local pool and stopped spending time with her friends. H.Z., her mother and her siblings resided at the Wheaton Inn from December 2009 to March 2011.

The jury heard from H.Z.'s third-grade teacher, who was also the dean of students at H.Z.'s school when H.Z. was in kindergarten. The teacher testified that H.Z. had trouble in school starting at the beginning of her kindergarten year. Specifically, H.Z. seemed not to care about the consequences of her actions.

Lastly, the jury heard from Muckle's mother. She testified that Muckle was not present in the state of Minnesota during the time H.Z. was in kindergarten. While he lived with his mother in Wheaton during his 2009-2010 school year, completing his freshman year of high school, Muckle moved to Colorado in August 2010 to live with his father. Muckle was 16 years old at the time of the move. He completed his sophomore and junior years of high school in Colorado. His school transcripts from those years were produced at trial. During those years, Muckle's mother testified that Muckle never visited Minnesota.

After receiving this evidence, the jury deliberated and found Muckle guilty of aggravated first-degree tampering with a witness; second-degree criminal sexual conduct—complainant under 13 years of age and actor more than 36 months older; and false imprisonment, all relating to the May 2010 incident. Muckle was acquitted of both counts of second-degree criminal sexual conduct—actor used force or coercion to accomplish sexual contact, as well as all other charges stemming from the alleged January 2010 incident. The district court entered convictions for the May 2010 offenses and sentenced Muckle on the most serious offense, aggravated first-degree witness tampering, to 96 months in prison.

Muckle appeals the convictions.

D E C I S I O N

Muckle challenges each of his three convictions, arguing that insufficient evidence was produced at trial to find him guilty beyond a reasonable doubt. In considering sufficiency-of-the-evidence claims, this court's review is limited to an analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). We examine the convictions for witness tampering, criminal sexual conduct and false imprisonment each in turn.

I. Evidence was sufficient to prove Muckle committed aggravated first-degree witness tampering.

Muckle makes two arguments to support his assertion that the state failed to present adequate evidence to support his witness tampering conviction. First, he argues that stating he would kill H.Z. if she told "anybody" about the sexual abuse does not fit within the plain meaning of Minnesota's witness tampering statute. Second, he argues that even if that

language could fall within the conduct the statute prohibits, the state failed to prove Muckle had the adequate intent to commit the crime.

Minnesota Statutes section 609.498, subdivision 1b (2008), states:

> (a) A person is guilty of aggravated first-degree witness tampering if the person causes or, by means of an implicit or explicit credible threat, threatens to cause great bodily harm or death to another in the course of committing any of the following acts intentionally:
>
> . . . .
>
> (4) preventing or dissuading or attempting to prevent or dissuade a person from providing information to *law enforcement authorities* concerning a crime.

(Emphasis added.) Because "the meaning of a criminal statute is intertwined with the issue of whether the State proved beyond a reasonable doubt that the defendant violated the statute, it is often necessary to interpret a criminal statute when evaluating an insufficiency-of-the-evidence claim." *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). Muckle argues that because he threatened to kill H.Z. if she told "anybody," and not specifically law enforcement authorities as the statutory language states, this threat is too broad to fall within the statute's purview. We disagree.

Viewing this set of facts in the light most favorable to the conviction, this is a situation where after H.Z. threatened to tell her mother about what Muckle was doing, Muckle, who was 16 years old, told H.Z., who was four years old, not to report abuse to anybody. He threatened to kill her if she did not comply. Muckle's contention is that to be convicted of witness tampering he must precisely tell a four-year-old not to report abuse to "law enforcement." This argument flies in the face of reality. Most four-year-olds could

not define the phrase "law enforcement." But a four-year-old can understand—as this one did—a threat to kill her if she told *anybody*. We do not interpret the witness tampering statute to always equate the term "anybody" with "law enforcement," but in the specific context of this case Muckle's comments fall within the purview of those the statute prohibits.[6]

This application of the statute is consistent with a Missouri Court of Appeals decision in a case with analogous facts, *State v. Pullum*, 281 S.W.3d 912, 913-14 (Mo. Ct. App. 2009). In *Pullum*, the defendant threatened the seven-year-old victim by saying "he would kill her if she told *anyone* about his sexual misconduct with her." *Id*. at 914 (emphasis added). The victim then waited more than a year to report the defendant's actions. *Id*. The court engaged in an analysis of whether a threat not to tell "anyone" is sufficient to violate Missouri's witness tampering statute which, similar to the Minnesota statutes, requires an attempt to persuade a victim from reporting a crime "to any peace officer, or state, local or federal law enforcement officer or prosecuting agency or to any

[6] In support of his argument that "anybody" should not qualify under Minnesota Statutes section 609.048, subdivision 1b(a)(4), Muckle cites multiple unpublished cases decided by this court, where the language at issue is much more specific to law enforcement. *See State v. Johnson*, No. A10-965, 2011 WL 2622688, at *1 (Minn. App. July 5, 2011) (the defendant "threatened to kill the victim if she told *police* what had happened") (emphasis added), *review denied* (Minn. Sept. 28, 2011); *State v. Rios*, No. CX-00-1726, 2001 WL 856243, at *1 (Minn. App. July 31, 2001) (the defendant told the victim's friend that "if the victim *pressed charges*, he would ruin the victim's life or kill her") (emphasis added); and *State v. McGinnis*, No. A15-1043, 2016 WL 3659127, at *2 (Minn. App. July 11, 2016) (the defendant told a witness to a shooting "to keep her mouth shut, and said, 'If the *cops* talk to you, you don't know me, you weren't there, [you] don't know nothing'") (emphasis added) (alteration in original), *review denied* (Minn. Sept. 28, 2016). While these cases hold that phrases like "cops," "police," and "press charges" are sufficient to sustain a conviction, they do not reach the issue here where more general language is used.

judge." *Id.* at 915 (citing Mo. Rev. Stat. § 575.270.2 (2000)). The court held that a reasonable juror could find that the "defendant attempted, by threatening [the victim] if she told 'anyone,' to prevent or dissuade [the victim] from reporting defendant's actions to the proper authorities." *Pullum*, 281 S.W.3d at 916. Just as the defendant's more general threat in *Pullum* could reasonably include law enforcement authorities, so does Muckle's threat to the four-year-old here.

Muckle further argues that even if his behavior could be prohibited by the aggravated witness tampering statutory language, the state failed to prove he had the requisite intent to commit the crime. Again, we disagree.

The statute requires that a defendant *intentionally* prevent, or *attempt* to prevent, a person from providing law enforcement with information about a crime. Minn. Stat. § 609.498, subd. 1b(a)(4). The use of the words intentionally and attempt makes witness tampering a specific intent crime. *State v. Collins*, 580 N.W.2d 36, 44 (Minn. App. 1998), *review denied* (Minn. July 16, 1998). While intent is often proved by circumstantial evidence, this is not always the case. *See State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997) (stating intent is generally proved through circumstantial evidence). Here, there is direct evidence of Muckle's intent, in his statement that he would kill H.Z. if she told "anybody." And if Muckle intended that H.Z. understand this threat, he would likely not have stated explicitly "law enforcement authorities" because most four-year-olds would

not understand such language. It is much more likely that a four-year-old would understand not to tell "anybody."[7]

Because "anybody" can include law enforcement, Muckle's threat is direct evidence of his intent. This fulfills the intent element the statute requires, and the state has therefore met its burden in providing sufficient evidence for a jury to find Muckle guilty of aggravated witness tampering.

II. Sufficient evidence supports Muckle's second-degree criminal sexual conduct conviction.

Muckle argues that insufficient evidence was produced at trial to prove he committed the convicted offense of second-degree criminal sexual conduct. To support this argument, Muckle asserts the testimony of the child victim was "not credible" and the corroborating evidence presented in the case was "entirely lacking and utterly unconvincing, even recognizing the appellate standard of review."

Generally, the testimony of a single credible witness may be sufficient to sustain a conviction. *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004). The credibility and the weight to afford a witness's testimony is a question for the jury. *State v. Weyaus*, 836 N.W.2d 579, 586-87 (Minn. App. 2013), *review denied* (Minn. Nov. 12, 2013). Under

[7] Muckle argued that his comment not to tell "anybody" was not direct evidence as it was too broad to show his intent, and asked instead that this court consider the comment circumstantial evidence and apply the heightened scrutiny circumstantial evidence requires. In doing so, Muckle urges the court to consider that he made the comment in response to H.Z. stating she would tell her mother about the abuse, and therefore could have intended simply to dissuade H.Z. from telling her mother. But because we hold that "anybody" includes law enforcement, Muckle's comment is direct evidence of his intent and we reject Muckle's argument that the circumstantial evidence standard should apply.

Minnesota law, in cases involving criminal sexual conduct, the victim's testimony need not be corroborated. Minn. Stat. § 609.347, subd. 1 (2008); *see also State v. Ani*, 257 N.W.2d 699, 700 (Minn. 1977) (upholding constitutionality of the statute). While a lack of corroboration in an individual case may call for a holding of insufficient evidence, such is not the case when a victim's testimony is "positive and not contradicted, and was strongly corroborated by other evidence." *Ani*, 257 N.W.2d at 700.

Muckle's credibility argument rests on H.Z.'s inconsistencies as to the nature of the sexual conduct, where it took place and when it occurred. We consider then, how those inconsistencies relate to the elements of the offense.

In order to prove this sexual misconduct offense, the state needed to show that: (1) Muckle touched H.Z.'s intimate parts, or the clothing in the immediate area of her intimate parts; (2) Muckle's act was committed with sexual or aggressive intent; (3) at the time of the act, H.Z. was under the age of 13; (4) Muckle was more than 36 months older than H.Z.; and (5) the act took place on or about May 1, 2010. Minn. Stat. § 609.343, subd. 1(a); 10 *Minnesota Practice*, CRIMJIG 12.15 (2017).

The first four of these elements are clearly met. H.Z. consistently stated that Muckle touched her "private parts" either over her underwear or without underwear, and identified her private parts as her vagina. Muckle's act was committed with sexual intent, exemplified by him telling H.Z. he was touching her because he did not have a girlfriend yet. A comparison of H.Z.'s and Muckle's birthdates show that she was under 13, and he is over 36 months older than her.

The last element we consider then is when the act took place. In contrast to the charged date of May 1, 2010, H.Z. testified that the sexual abuse took place during her kindergarten year, on or about May 1, 2011. She identifies this date specifically based on a conversation with her kindergarten teacher. But in May of 2011, Muckle was living with his father in Colorado. And H.Z. alleges that the abuse took place at the Wheaton Inn, but she and her family had already moved out of the Wheaton Inn and into a house in March, 2011. While contradictory, these two inconsistencies fail to show that there was insufficient evidence to convict Muckle of criminal sexual conduct, in light of H.Z.'s consistent testimony that the abuse happened on multiple occasions, that each time Muckle touched her vagina, and that Muckle threatened her life. "[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). Minor inconsistencies are immaterial when a victim's testimony is consistent as a whole. *State v. Jackson*, 741 N.W.2d 146, 153 (Minn. App. 2007).

Further, there is corroborating evidence that Muckle committed criminal sexual conduct around the charged date. First, while H.Z. states she was in kindergarten at the time of the abuse, she also stated she was *either* four or five years old. H.Z. would have been four years old in May 2010, and five years old in May 2011. Second, H.Z.'s mother testified that H.Z. started exhibiting behavioral problems including sexualized behavior around the time she started kindergarten, this would be in fall 2010 and prior to May 2011. Third, the dean of students at H.Z.'s school reported challenging behaviors from H.Z.

starting at the beginning of kindergarten in fall 2010. Lastly, H.Z. reported the abuse happened at the Wheaton Inn where she was living with her family. In May 2010, she would have been living at the Inn. By May 2011, her family had already moved from the Wheaton Inn to a house. And in May 2011, Muckle would have already left the state and moved to Colorado to live with his father. In May 2010, Muckle lived with his mother in the same town as H.Z.[8] Given H.Z.'s consistent testimony that the abuse happened on multiple occasions, the type of touching it involved, and statements Muckle made to H.Z., and the corroborating evidence that Muckle abused H.Z. in May 2010, there is sufficient evidence for a reasonable jury to find Muckle guilty of the offense.

Muckle compares this case to *State v. Butenhoff*, 279 Minn. 177, 188, 155 N.W.2d 894, 900 (1968), a case where the court held that inconsistent, contradictory and uncorroborated testimony of a seven-year-old victim was not enough to sustain a criminal sexual conduct conviction. But *Butenhoff* presented significantly more inconsistencies than we observe here. The victim there provided alternative explanations for the

[8] Muckle points to other inconsistencies in H.Z.'s testimony including whether Muckle touched her over her underwear or when she was not wearing underwear, whether Muckle pinched her during the abuse, whether Muckle had his clothes off or whether he asked H.Z. to touch him. These inconsistencies are immaterial to the conviction. The elements of the crime include either directly touching the intimate parts or touching of the clothing immediately above those intimate parts. Muckle was acquitted of second-degree criminal conduct using force or coercion and causing personal injury, so the pinching is inconsequential. *See* Minn. Stat. § 609.343, subd. 1(e)(i). Whether Muckle had his clothes off or asked H.Z. to touch him are not elements of the criminal sexual conduct offense he was convicted of.

defendant's actions, and stated he did not know the difference between truth and a lie.[9] *Id.* at 180, 155 N.W.2d at 895-96. And, critically, there was no corroboration of the victim's testimony in *Butenhoff*. *Id.* at 183, 155 N.W.2d at 897.

Here, H.Z. is unequivocal that the abuse happened and provides consistent details as to how it happened. H.Z. does know the difference between truth and a lie, something she explained during her forensic interview. And there is corroborating evidence provided through testimony about H.Z.'s behaviors and her living situation. H.Z.'s largely consistent testimony and corroborating evidence provides a course of events that is much more consistent than that in *Butenhoff*.

Because H.Z.'s testimony was credible and the corroborating evidence sufficient to correct any inconsistencies, there is sufficient evidence that Muckle committed criminal sexual conduct in the second degree against H.Z.

III. Sufficient evidence proves Muckle committed false imprisonment.

Muckle further contends that insufficient evidence was presented at trial to convict him of false imprisonment. That offense requires: (1) Muckle intentionally restrained H.Z.; (2) that Muckle knew he had no authority to restrain her; (3) H.Z. was a child, and not Muckle's child, and H.Z.'s parent did not consent to the restraint; and (4) Muckle's actions took place on or about May 1, 2010. *See* Minn. Stat. § 609.255, subd. 2; 10 *Minnesota Practice*, CRIMJIG 15.04 (2017).

[9] The district court ultimately found that the victim knew the difference between the truth and a lie and therefore allowed him to testify but, as the supreme court noted, that testimony was notably inconsistent. *Butenhoff*, 279 Minn. at 180, 155 N.W.2d at 895.

The record plainly establishes the first three elements of false imprisonment. H.Z. testified that Muckle stopped her from leaving the room at times when he abused her. Muckle would reasonably have known that he could not restrain her from leaving certain rooms while babysitting her. And even though Muckle was left in charge of watching H.Z. at times, there is no indication that H.Z.'s mother consented to her confinement to certain rooms. The last element is time, and Muckle asserts that there is no testimony or other evidence on the record supporting a conviction for false imprisonment specifically during the May incident. While this is true, H.Z. testified that Muckle kept her from leaving "almost every time" he abused her, and we assume that the jury believed her. *See Moore*, 438 N.W.2d at 108. This testimony is sufficient evidence to satisfy the final element of false imprisonment.

Because the state presented evidence to satisfy each element of each convicted offense, we hold that there was sufficient evidence for a jury to find, beyond a reasonable doubt, that Muckle committed aggravated first-degree witness tampering, second-degree criminal sexual conduct, and false imprisonment.

Affirmed.