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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0140**

Paul Omol Arkangelo Uchodu, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 5, 2017
Affirmed
Reyes, Judge**

Mower County District Court
File No. 50-CR-13-2328

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Kristen Nelson, Mower County Attorney, Scott K. Springer, Assistant County Attorney, Austin, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Toussaint, Judge.*

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

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct in this postconviction appeal, arguing that the state presented insufficient evidence to sustain his conviction and that the investigating police officer impermissibly vouched against appellant's credibility in his testimony. We affirm.

FACTS

In October 2013, respondent State of Minnesota charged appellant Paul O. Uchodu with one count of first-degree criminal sexual conduct occurring between June 1, 2010, and February 24, 2013, in violation of Minn. Stat. § 609.342, subd. 1(a) (2012) (victim under 13 years old), and one count of first-degree criminal sexual conduct occurring between February 25, 2013, and September 30, 2013, in violation of Minn. Stat. § 609.342, subd. 1(h)(iii) (2012) (significant relationship and multiple acts with victim under 16 years old).

At appellant's jury trial on May 27-29, 2014, the state presented testimony from the victim, E.M., who was 14 years old at the time of trial, her mother, M.O., and the investigating police officer. M.O. testified that E.M. is her oldest daughter and that she has three other children ages six, four, and one. Appellant is M.O.'s cousin who, in 2010, encouraged M.O. to move to Minnesota. When M.O. first moved to Minnesota with E.M. and her other children, they moved into appellant's apartment and stayed for approximately a month before moving into their own apartment. Over the years, appellant would frequently visit M.O. at her home by himself or with his children.

E.M. testified that appellant first touched her inappropriately in 2010 when her family was living with appellant in Minnesota. In that incident, M.O. had left E.M. with appellant and his children. E.M. stated that she was sitting on the couch next to appellant and watching a movie with the other children. Appellant began touching E.M.'s legs and breasts under her clothes while the other children were not paying attention. E.M. also testified that appellant committed multiple acts of sexual penetration between 2010 and 2013.

The investigating police officer testified about his initial interview with E.M. and the state introduced a video recording of the interview as evidence. In response to the state's question about appellant's reaction when confronted with E.M.'s allegations, the investigating police officer testified that he "felt [appellant's] response was somewhat deceptive and evasive" and that appellant denied the allegations.

On the third day of trial, the jury returned a verdict of not guilty on count one and guilty on count two. The district court sentenced appellant to 144 months in prison. Appellant filed a postconviction petition, seeking reversal of his conviction, arguing that the state failed to present sufficient evidence with respect to count two and that the investigating police officer impermissibly vouched against appellant's credibility. The postconviction court denied appellant's petition, and this appeal follows.

DECISION

I. The postconviction court did not abuse its discretion by denying appellant's postconviction petition because sufficient evidence supports his conviction.

Appellant argues that the state failed to prove beyond a reasonable doubt that he committed the alleged offense within the time period specified in the complaint and that E.M.'s testimony was not sufficiently credible to sustain the conviction. We disagree.

A. The jury did not need to find that specific acts of sexual penetration occurred on specific dates when E.M. was under the age of 16.

In a criminal prosecution, the state is required “to prove each element of the crime charged beyond a reasonable doubt.” *State v. Merrill*, 428 N.W.2d 361, 366 (Minn. 1988). A defendant may be convicted of first-degree criminal sexual conduct if: (1) the defendant engages in sexual penetration with the victim; (2) the defendant has a significant relationship with the victim; (3) the victim is under 16 years old at the time of the penetration; and (4) the abuse involves multiple acts committed over an extended period of time. Minn. Stat. § 609.342, subd. 1(h)(iii). Generally, in cases charging criminal sexual conduct based on multiple acts over an extended period of time, specific dates need not be charged or proved. *See, e.g., State v. Becker*, 351 N.W.2d 923, 927 (Minn. 1984) (concluding that defendant may be convicted of sexual abuse if prosecution proves that abuse occurred within reasonable period of time, and specific dates of abuse need not be proven); *State v. Poole*, 489 N.W.2d 537, 544 (Minn. App. 1992), (“[S]pecific dates need not be charged or proven in a sexual abuse case.”), *aff’d*, 499 N.W.2d 31 (Minn. 1993).

“When reviewing the sufficiency of the evidence leading to a conviction, we view the evidence in the light most favorable to the verdict and assume that the factfinder

disbelieved any testimony conflicting with that verdict.” *State v. Hayes*, 831 N.W.2d 546, 552 (Minn. 2013) (quotation omitted). “We 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 that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

In this matter, the complaint alleged wrongful conduct that occurred between June 1, 2010, and February 24, 2013, with respect to count one and between February 25, 2013, and September 30, 2013, with respect to count two, of which appellant was convicted. In denying appellant postconviction relief, the postconviction court determined that proving the “multiple acts” element under count two is not limited to the specified charging period. The postconviction court determined that the record in this case could lead a jury to the reasonable conclusion that appellant committed multiple acts of sexual penetration with E.M. over an extended period of time when she was under the age of 16.

The record supports the postconviction court’s determination. E.M. testified about an incident that occurred after her one-year-old sister was born where appellant anally penetrated her. E.M. also testified about an incident that occurred in September 2013, where appellant again took her to a bedroom in her home, while her mother was not home, and anally penetrated her. The record also includes an incident where appellant vaginally penetrated E.M., the timing of which is unclear.

All of these acts occurred before E.M. was 16 years old, because she was only 14 years old at the time of trial. Because count two only requires that the state prove “multiple acts committed over an extended period of time,” without specific dates, the evidence at

trial did not need to demonstrate that the acts occurred between February 25, 2013, and September 30, 2013. Minn. Stat. § 609.342, subd. 1(h)(iii); *see also Becker*, 351 N.W.2d at 927. Based on this evidence, the jury could reasonably conclude that appellant engaged in multiple acts of sexual conduct against E.M. over an extended period of time under count two. Accordingly, the postconviction court did not abuse its discretion in determining that the state did not need to prove specific sexual acts on specific dates.

B. The postconviction court did not abuse its discretion by determining that E.M.’s testimony supports appellant’s conviction.

Appellant also argues that the evidence is insufficient because E.M.’s testimony was inconsistent and uncorroborated. “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). In addition, we have long held that a defendant’s conviction can be based on “the uncorroborated testimony of a single credible witness.” *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004). And we assume the jury believed all the evidence favorable to the verdict. *State v. Fox*, 868 N.W.2d 206, 223 (Minn. 2015).

Based on E.M.’s testimony alone, the jury could reasonably find appellant guilty. E.M.’s testimony implicated appellant in many inappropriate sexual acts against E.M. E.M.’s mother also testified on behalf of the state, which added further context to E.M.’s testimony. Therefore, the postconviction court did not abuse its discretion when it denied appellant’s postconviction petition because the record supports the jury’s finding of guilt.

II. Appellant is not entitled to reversal because, even if the investigating police officer's testimony constituted improper vouching, such testimony did not affect appellant's substantial rights.

Appellant next argues that the postconviction court abused its discretion by determining that testimony elicited by the state from the investigating police officer during trial was not plain error that affected appellant's substantial rights. We are not persuaded.

"[V]ouching . . . occurs when the government implies a guarantee of a witness's truthfulness, refers to facts outside the record, or expresses a personal opinion as to a witness's credibility." *State v. Lopez-Rios*, 669 N.W.2d 603, 614 (Minn. 2003) (quotation omitted). A witness may not vouch for or against the credibility of another witness because it usurps the jury's authority to determine the credibility of that witness. *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998). The challenged testimony here is the investigating police officer's statement that he believed appellant was being "somewhat deceptive and evasive" when he confronted appellant with the allegations.

Appellant did not object to the testimony at trial. Therefore, we review the alleged error to admit the testimony for plain error. *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). Under the plain-error standard, an appellant must show (1) error, (2) that is plain, (3) and that affected the appellant's substantial rights. *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011). Once an appellant establishes these three elements, "we will correct the error only if the error seriously affects the fairness, integrity, or the public reputation of judicial proceedings." *Id.* But if the appellant fails to meet any of these three elements, we need not address the other elements. *Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011).

Even if we were to assume error that is plain, appellant cannot show that the plain error affected his substantial rights. “An error affects substantial rights if there is a reasonable likelihood that it substantially affects the verdict.” *State v. Robertson*, 884 N.W.2d 864, 876 (Minn. 2016). Appellant bears the heavy burden of proving prejudice. *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). When considering whether an error affected a defendant’s substantial rights, we consider “the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions.” *State v. Mosley*, 853 N.W.2d 789, 803 (Minn. 2014) (quotations omitted).

Appellant asserts that, because the conviction rests on E.M.’s uncorroborated testimony and the state did not present any physical or medical evidence against appellant, the strength of the evidence supporting the conviction is weak. Despite the lack of physical evidence, E.M.’s testimony was consistent, and she described at least three different occasions where appellant committed unlawful sexual acts against her. Additionally, while E.M.’s testimony was largely uncorroborated, it was consistent with her interview with the investigating police officer.

The evidence against appellant was strong, the challenged testimony was the result of a single question that was not repeated or referenced by the state in its closing argument, and appellant had the opportunity to cross-examine the investigating police officer on the challenged testimony, which his attorney did effectively. Further, the district court instructed the jury that it is the sole judge of credibility, diminishing any possible negative impact from the challenged testimony. See *State v. Forcier*, 420 N.W.2d 884, 885 n.1

(Minn. 1988) (noting courts presume juries follow instructions they are given). Appellant fails to demonstrate that any alleged error affected his substantial rights. Therefore, the postconviction court's determination that appellant was not entitled to reversal was well within its discretion.

Affirmed.