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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0816**

State of Minnesota,
Respondent,

vs.

Jason Earl Moos,
Appellant.

**Filed March 19, 2018
Affirmed
Smith, Tracy M., Judge**

Sherburne County District Court
File No. 71-CR-15-1102

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

Kathleen A. Heaney, Sherburne County Attorney, Dawn R. Nyhus, Assistant County Attorney, Elk River, Minnesota (for respondent)

Scott Cody, Tarshish Cody, PLC, Richfield, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and
Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

Appellant Jason Moos challenges the sufficiency of the evidence to support his conviction of first-degree criminal sexual conduct. He argues that the victim's testimony

required corroboration because her testimony and her reports before trial were inconsistent and contradictory and that no corroboration was provided. We affirm.

FACTS

Moos is the cousin of J.H., the former boyfriend of the victim's mother. From 2003 to 2005, Moos would babysit the victim, M.F. when she was about three to five years old, along with her younger brothers, when the family lived in an apartment in St. Cloud. After J.H. and M.F.'s mother split up in 2005, the children continued to see Moos that year when they would visit J.H. at his home in Big Lake.

In 2013, then 14-year-old M.F. told her friend, K.B., that she had been sexually assaulted as a child by a man named Jason. K.B. did not share this information with anyone. Nearly a year later, M.F. told her boyfriend, J.M., that Moos had sexually molested her from age three to age eight. J.M. told his mother, and J.M.'s mother told M.F.'s mother, R.S., about the sexual assault. This was the first time M.F.'s mother learned of the abuse.

In early 2015, R.S. asked M.F. about the sexual abuse. After M.F. told her mother about the abuse, and following a contact from M.F.'s school, a Sherburne County police officer contacted M.F.'s mother. Around this same time, M.F. wrote a note recounting her memories of Moos's sexual abuse. M.F. later brought this note to her interview with Sherburne County Child Protection Investigator Julie Mlsna and sent it to St. Cloud Investigator Christopher Voth, who interviewed the other witnesses.

M.F. reported Moos's abuse to Mlsna during the initial forensic interview in February 2015. In June, M.F. spoke about the abuse with a person from the county attorney's office. A couple months later, M.F. gave a statement—including that Moos had

penetrated her—to a different person at the county attorney’s office. Following these accounts, Moos was charged with multiple counts of criminal sexual conduct.

At trial in October 2016, M.F., who was seventeen years old at the time, testified against Moos. K.B., J.M., and R.S. also testified, as did Mlsna, Voth, J.H., and Moos. The jury found Moos guilty, and he was convicted of first-degree criminal sexual conduct for sexual penetration of a person under 13 years of age.

Moos appeals his conviction.

D E C I S I O N

In considering a claim of insufficient evidence, review by an appellate court is “limited to 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.” *See State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). Appellate courts cannot retry the facts. *See State v. Merrill*, 274 N.W.2d 99, 111 (Minn. 1978). Accordingly, appellate courts assume that the jury believed the state’s witnesses and disbelieved any contradictory evidence. *See State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). An appellate court will not disturb a 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).

Moos contends that the only evidence supporting his guilt is M.F.’s inconsistent and contradictory testimony. The crux of his argument is that “M.F.’s testimony was so basically unreliable that, to support the jury’s finding, the [s]tate also needed to present

evidence corroborating it.” In support of his assertion that corroboration was necessary, Moos argues that “key components” of M.F.’s story were inconsistent and contradictory. Moos points out that M.F. did not mention penetration in her earlier reports and that, while M.F. testified to being in immense physical pain when Moos allegedly penetrated her, neither M.F.’s mother nor J.H. recalled M.F. complaining of pain as a child. Moos also emphasizes the discrepancies between M.F.’s reports and her trial testimony as to whether there was digital penetration and the number of times Moos put M.F.’s hand on his penis. Additionally, Moos notes that, although M.F. stated in an earlier report that he never spoke to her during the sexual abuse, she later reported specific statements that Moos would make to her. Finally, Moos points to M.F.’s “widely different” ranges on how long the sexual abuse lasted, varying from her early report to her boyfriend of the abuse ending at age eight to a later report to the child-protection investigator of it ending when she was five or six years old.

Moos’s argument is unconvincing. It is well-established 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) (quotation omitted); *see also* Minn. Stat. § 609.347, subd. 1 (2016) (providing that “the testimony of a victim need not be corroborated” in a criminal sexual conduct prosecution).¹ The determination of whether a witness is credible is a

¹ Appellant argues that *State v. Ani* requires more. 257 N.W.2d 699 (Minn. 1977). It is true that, in *Ani*, the Minnesota Supreme Court stated that the absence of corroboration of the complainant’s testimony “in an individual case . . . may well call for a holding that there is insufficient evidence upon which a jury could find the defendant guilty beyond a reasonable doubt.” *Id.* at 700 (quotation omitted) (emphasis omitted). However, in *State v. Foreman*, the Minnesota Supreme Court clarified that “*Ani* clearly states that

matter for the jury, not the reviewing court. *See State v. White*, 357 N.W.2d 388, 390 (Minn. App. 1984).

With respect to the issue of penetration, the difference between M.F.'s trial testimony that Moos penetrated her and her previous accounts of his abuse was reasonably explained. M.F. did not deny penetration in earlier reports; rather, she disclosed more details of the sexual abuse as she continued through the process. During her initial reports, M.F.'s friends and family, as well as Mlsna, did not ask M.F. to recount every detail of her abuse; instead, they focused on providing M.F. an opportunity to be heard. For example, M.F.'s mother testified that, during their discussion of the sexual abuse, she never "pried into [M.F.] to make her open up and tell me everything that's happened." M.F. confirmed that she had not shared all details of her abuse with her mother and testified that the interview with Mlsna "brought up things I didn't want to be brought up. . . . And I was trying to do anything to avoid talking about the situation." In addition, M.F. told the jury how her reluctance to share details of her abuse had changed over time because, as M.F. put it, "people were there for me and showed that they cared and that I could open up and be more comfortable." Moreover, Mlsna, an experienced investigator, explained that it was common for sexually abused children and adolescents not to immediately disclose specifics of their abuse, and that victims may disclose past abuse in pieces, rather than all at once.

corroboration is not mandated by statute or the constitution" and affirmed an assault conviction based on the victim's trial testimony despite her temporary pretrial recantation. 680 N.W.2d at 539.

As to other asserted inconsistencies between M.F.'s testimony and her prior reports, the state presented testimony by K.B., J.M., R.S., and Mlsna demonstrating that M.F. had made disclosures of sexual abuse similar to the testimony she gave at trial. Significantly, while some details of M.F.'s testimony were not consistent with her prior reports (such as the number of times M.F. was forced to touch Moos's penis, whether Moos talked to M.F. during the sexual abuse, and the specific age range when the abuse occurred), M.F. repeatedly described the majority of the abuse occurring in the same place (in a bed he made for her with blankets on the living room floor) and under a similar pattern of circumstances (when Moos would babysit, after her brothers were put to bed, and while M.F. was lying on the makeshift bed of blankets on the floor watching TV). M.F. also consistently described much of Moos's sexual contact with her in the same way (first removing her clothes, then lying behind her without pants with his penis exposed, masturbating, and rubbing and slapping his penis repeatedly against her vagina). These repeated, detailed accounts of abuse provided a basis for the jury to find M.F.'s testimony credible despite some inconsistencies in her prior recollections or reports.

Moos also contends that M.F.'s credibility was "impugned" when she "equivocated on whether she remembered K.B. disclosing her own childhood abuse." Yet M.F.'s remarks were not inconsistent with K.B.'s testimony and do not necessarily cast doubt on her credibility. At trial, K.B. testified that M.F. shared details about her sexual abuse after K.B. told M.F. about her own sexual-assault experience. When asked about her conversation with K.B., M.F. affirmatively recalled K.B. "mention[ing]" her prior sexual abuse around the same time that M.F. shared her own sexual abuse. When pressed further

on cross-examination, M.F. explained that the girls had a “deep discussion” where they “talked about a lot of things.”

Overall, contrary to appellant’s argument, the jury had a sufficient basis to reasonably believe M.F.’s testimony. Moos argues, however, that there was no corroborating evidence of M.F.’s allegations of sexual contact, such as prompt reporting, unusual displays of emotion immediately following the abuse, physical injuries, or DNA evidence. He also points to the fact that neither R.S. nor J.H. received any complaints from M.F., nor did they notice any “red flags” following M.F.’s interactions with Moos. Moos asserts that M.F.’s prior reports cannot corroborate her testimony since M.F. changed the details of her alleged abuse on multiple occasions.

Although corroborating evidence was unnecessary, we note that M.F.’s version of events was in fact corroborated by other witnesses. Corroboration included the timeframe within which the abuse occurred, the opportunity for sexual abuse while Moos was babysitting M.F., the pattern of circumstances surrounding the abuse, and M.F.’s later demeanor toward Moos following the abuse, all of which were confirmed by other witnesses. While Moos argues that this evidence does not go to the actual act of sexual abuse, he does not direct us to any authority stating that corroborating evidence must specifically address the elements of the crime.

In *State v. Garden*, this court upheld a conviction of second-degree criminal sexual conduct over the defendant’s assertion that the 12-year-old victim gave inconsistent, uncorroborated reports and fabricated her story. 404 N.W.2d 912, 916 (Minn. App. 1987), *review denied* (Minn. June 25, 1987). Moos attempts to distinguish *Garden* by arguing

that M.F.'s testimony contained "serious defects," rather than a "minor inconsistency," but he provides no authority on what constitutes a "serious defect" requiring corroboration. In this case, despite some inconsistencies between M.F.'s prior reports and her trial testimony, "[t]he jury apparently believed her allegations had some basis in truth." *See id.* "Weighing a witness's credibility is for the jury, not a reviewing court." *Id.* We conclude that M.F.'s testimony was sufficient for the jury to find beyond a reasonable doubt that Moos was guilty of first-degree criminal sexual conduct. Therefore, the evidence supports Moos's conviction.

Affirmed.