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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1615**

State of Minnesota,
Respondent,

vs.

Joshua Dale Swift,
Appellant.

**Filed September 17, 2018
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-16-30849

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, 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 Worke, Presiding Judge; Jesson, Judge; and Klaphake, Judge.*

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

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

JESSON, Judge

Appellant argues that the evidence is insufficient to support his conviction for third-degree criminal sexual conduct. We affirm.

FACTS

In March 2016, S.R. moved with her mother, step-father, and siblings to Sartell. S.R. was 14 years old. She had trouble making friends in Sartell, so she created profiles on social media sites Tinder and Plenty of Fish. While she initially thought these sites were just for meeting people and hanging out, she later learned that Tinder was more of a “hook up” site. Because Tinder requires users to be at least 18 years old, S.R. listed her age as 18.

It was on Tinder that S.R. first had contact with appellant Joshua Dale Swift. The two began communicating through other applications, including Snapchat and TextNow. Swift was 35 years old. The two decided to meet in person on April 6, 2016. This was a school day for S.R., who was in eighth grade. S.R. called her school, pretending to be her mother, and reported she would be out that day. Swift then picked up S.R. outside a church across the street from S.R.’s home. Swift drove the two of them to his home in Mound. They stopped for coffee and food on the road. When they reached Swift’s home, the two talked, watched movies, and kissed. Then Swift drove S.R. home. She arrived around 2:00 p.m., before her mother would return from work.

The two met three more times, under similar circumstances, on April 11, 21, and May 2, 2016. Each day was a school day, requiring S.R. to call her school, pretending to

be her mother, and excuse herself. During their last meeting on May 2, the two went to Minnehaha Falls because it was Swift's birthday, walked around and took photos, and then went to Swift's home where they had sexual intercourse.

On May 10, 2016, flowers from Swift arrived at S.R.'s home. S.R.'s younger sister alerted their mother. S.R.'s mother was concerned about who sent the flowers. S.R. eventually admitted the flowers were from a man and that she had sex with him. Records of text messages between S.R. and Swift demonstrate that S.R. thanked Swift for the flowers but told him he could not send things like that to her house. Swift indicated the flower company (alerted by S.R.'s mother) called him. And then he asked how old S.R. really was, and stated "[y]ou are only 14 years old. I cannot talk to you anymore. You lied to me."

The following day, S.R.'s mother brought her to the police station to report this relationship. An officer interviewed S.R., and she identified Swift as the man she had been seeing. The officer asked her about the sexual contact generally, but did not inquire in much detail. S.R. told the officer she had sexual intercourse with Swift twice, on the second and fourth meetings. The officer did not ask S.R. to complete a sexual-assault examination because more than 72 hours since the last alleged sexual encounter had already passed.

S.R. was interviewed again a few days later by a female officer. To that officer, S.R. reported she had sexual intercourse with Swift on three occasions—all of the meetings but the first—and she defined intercourse as a penis in a vagina. S.R. explained that Swift had performed oral sex on her, but that she had not performed oral sex on him. S.R. described and drew sketches of Swift's house including the outside, the living room, and

the bedroom. She described a medical device in Swift's room and identified the sheets on his bed as purple. S.R. said she only had sex with Swift in his bedroom.

Police executed a warrant on Swift's house. The layout of the outside of the house, along with the inside of the living room and bedroom, was largely consistent with S.R.'s drawings. And Swift's sheets were, in fact, purple. Swift volunteered to come to the police station to speak with officers. He explained that he thought he had been dealing with an 18 to 20 year old. He explained that he has trouble meeting women his own age (35) because he looks younger. He also explained that he had cystic fibrosis, explaining the medical device in his bedroom. When asked whether he brought S.R. to his home, Swift responded "[u]m, I would have to say that you can come to that conclusion on your own." And in response to whether the two had sex, Swift responded, "Um, um, I would love to have a lie detector test."

In November 2016, the state filed a complaint against Swift, charging him with third-degree criminal sexual conduct-victim between the ages of 13-15 and defendant more than 24 months older.¹ The charge stemmed from his last three meetings with S.R. on April 11, 21, and May 2. The case proceeded to a three-day jury trial, where S.R., her mother, and three police officers who investigated the case testified.

In her testimony, S.R. described her contacts with Swift. She told the jury they had sexual intercourse three times, during each of their last three meetings. During at least the first sexual encounter, the sex started in the living room before going to the bedroom. She

¹ In violation of Minnesota Statutes section 609.344, subd. 1(b) (2014).

reported that Swift performed oral sex on her, but that she also performed it on him on two occasions. She also reported that Swift took a video of them having sex during their third meeting. When asked about some of the inconsistencies between her testimony and her previous statements to police, S.R. explained that she was embarrassed to talk about the whole situation, especially with strangers and a male police officer.

The jury found Swift guilty of third-degree criminal sexual conduct for the final meeting on May 2, 2016. They acquitted him of the charge on the earlier two dates. The district court stayed imposition of Swift's sentence and placed him on 180 days of home monitoring, as well as five years' probation.

Swift appeals.

DECISION

Swift argues that there was insufficient evidence to convict him of third-degree criminal sexual conduct because the only eyewitness against him—S.R.—was not credible. When reviewing a claim of insufficient evidence, this court is limited to a painstaking 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).

Generally, “a conviction can rest on the uncorroborated testimony of a single credible witness.” *State v. Hill*, 285 Minn. 518, 518, 172 N.W.2d 406, 407 (1969). And

in criminal-sexual-conduct crimes, the testimony of a victim does not require corroboration. Minn. Stat. § 609.347, subd. 1 (2016).

S.R. was the only witness who testified to the sex act that constituted Swift's conviction for criminal sexual conduct. Swift argues that because S.R. lied at multiple instances throughout this case, and because she made inconsistent statements, she is not credible enough to provide sufficient proof for that conviction and there is no corroborating evidence. We address each argument in turn.

Swift argues that, because of S.R.'s multiple lies, she is not credible. And S.R. did lie—she misrepresented her age on a dating site and did not inform Swift of her actual age until after he found out from the flower company. She excused herself from school, pretending to be her mother. S.R. initially lied to her mother about who sent her the flowers, telling her she did not know who they were from, then saying they were from a friend, before admitting they came from an older man. But these are all lies that the jury was made aware of. During her testimony, S.R. admitted to each of the above instances and explained some of the reasoning behind it. The jury heard this and still determined she was sufficiently credible to support the verdict. This is the appropriate role for the jury. *See State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006) (“Assessing the credibility of a witness and the weight to be given a witness's testimony is exclusively the province of the jury.”).

Swift further argues that S.R.'s statements to police are inconsistent with her testimony at trial, making her not credible. Some inconsistencies in S.R.'s testimony do exist, but inconsistencies do not necessarily constitute false testimony or require reversal.

State v. Daniels, 361 N.W.2d 819, 826 (Minn. 1985). And when assessing the sufficiency of evidence, a reviewing court must recognize that inconsistencies in evidence are resolved in favor of the state. *State v. Budreau*, 641 N.W.2d 919, 929 (Minn. 2002).

The inconsistencies here are minor and do not directly relate to the elements of the crime that the jury determined took place on May 2, 2016. Swift points to the fact that S.R. told police that she did not perform oral sex on Swift, but at trial testified that she had. S.R. also said to police that the two only had sex in the bedroom, while she testified that sex began in the living room and moved to the bedroom. But in this case, the required elements for third-degree criminal sexual conduct are that sexual penetration occurred between a victim who is between 13 and 16 years old, with a perpetrator who is more than 24 months older than the victim. Minn. Stat. § 609.344, subd. 1(b). S.R. never wavered on the fact that there was sexual intercourse during multiple meetings with Swift.

Inconsistencies “are a sign of the fallibility of human perception—not proof that false testimony was given at trial.” *State v. Stufflebean*, 329 N.W.2d 314, 319 (Minn. 1983) (quoting *State v. Hanson*, 286 Minn. 317, 355, 176 N.W.2d 607, 618 (1970)). This is especially true in regard to a traumatic or extremely stressful incident. *Id.* And S.R. is a 14 year old who was admittedly nervous and embarrassed to discuss sexual acts with strangers.²

² Swift also states in his brief that S.R. “lied” about Swift videotaping the two having sex because she did not bring it up prior to trial. But there is no indication in the record that this was at all inconsistent with her previous statements, because there is no evidence that S.R. was ever asked if Swift had videotaped their interactions.

Finally, Swift argues there is no corroborating evidence to support S.R.’s testimony. But corroborating evidence is not necessary in criminal-sexual-conduct cases. Minn. Stat. § 609.347, subd. 1. Swift argues that this case is an exception to that general rule, since it is the type of case contemplated in *State v. Ani*, 257 N.W.2d 699, 700 (Minn. 1977), which states that while corroboration of a victim’s testimony is not required, 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.” But in *Ani*, the court determined corroboration was not needed because the victim’s testimony was positive, uncontradicted, and there was corroborating evidence. *Id.* Here, too, the victim’s testimony was detailed, largely consistent as to the elements of the crime, and uncontradicted because Swift never denied the crime on the record. No corroboration is required.

And even if corroboration was required, there is corroborating evidence here. The number of times S.R. met with Swift is corroborated by the days she missed school in April and May—and her mother never called in her absence during those months. S.R. could accurately describe Swift’s house, both the exterior and interior. She knew the color of his sheets, and other accurate details about his bedroom. This corroborates S.R.’s testimony.³

³ Swift argues these facts only corroborate that she was in his home, not that the two had sex. But this argument is not persuasive. The fact that S.R. was there, in Swift’s bedroom, and familiar with details as specific as the color of his sheets does provide some corroboration and support for her testimony. See *State v. Myers*, 359 N.W.2d 604, 608 (Minn. 1984) (determining that even with no physical evidence to corroborate a victim’s testimony, other witness testimony supporting the date and time of an alleged incident, and testimony that provided support for the consistent and positive nature of the victim’s statements, provided some corroboration); *State v. Star*, 248 Minn. 571, 576, 81 N.W.2d 94, 98 (1957) (holding that in the context of accomplice corroboration, corroborating

Credibility determinations are the province of the jury, and the testimony of a criminal-sexual-conduct victim does not require corroboration. Thus we determine S.R.'s testimony provided sufficient evidence to prove Swift committed third-degree criminal sexual conduct.

Affirmed.

evidence “may be circumstantial in nature and may relate to the conduct of the accused, such as evidence of his presence at the scene of the crime”).