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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1296**

State of Minnesota,
Respondent,

vs.

Soyan Mohamed-Rashid Abdirahman,
Appellant.

**Filed May 28, 2019
Affirmed
Worke, Judge**

Carver County District Court
File No. 10-CR-17-953

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mark Metz, Carver County Attorney, Angella Erickson, Assistant County Attorney,
Chaska, Minnesota (for respondent)

Max A. Keller, Keller Law Offices, Minneapolis, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the evidence is insufficient to support his conviction for
soliciting a child to engage in sexual conduct. We affirm.

FACTS

On September 12, 2017, 13-year-old N.H. was at the Carver County courthouse for a child-protection hearing. Appellant Soyan Mohamed-Rashid Abdirahman approached N.H. as she waited outside of a courtroom and asked her name and age. N.H. told Abdirahman her name and that she was 13 years old. N.H. asked Abdirahman his age, and he stated that he was 17 (he was actually 22 years old). Abdirahman then asked N.H. if she had “ever given head,” “would [she] ever give head,” and “[w]ould [she] ever give him head.” N.H. replied, “no.” Abdirahman asked N.H. if she ever “f-cked a black guy.” N.H. replied, “no.” Abdirahman asked N.H. if they could hang out. N.H. replied, “no.” Abdirahman asked N.H. if she wanted him to go away, and N.H. replied, “yes.” N.H. told C.S., an adult she knew, what happened. C.S. reported the encounter. Abdirahman was charged with soliciting a child to engage in sexual conduct, in violation of Minn. Stat. § 609.352, subd. 2 (2016).

At Abdirahman’s jury trial, N.H. testified about the encounter. N.H. testified that when Abdirahman asked her if they could hang out, she believed that he wanted to do the things he asked her about. N.H. testified that she felt uncomfortable and was confused because Abdirahman’s questions are not ones asked of a 13 year old.

C.S. testified that N.H. “sprinted over to [him],” and “looked pretty scared, flustered like she had something to say.” C.S. testified that N.H. stated that “some guy just asked . . . [her] to give him head.” Detective Kuhnau testified that N.H. told him that Abdirahman asked her “if she had ever given head . . . or would give him head” and if she had ever “f-cked a black guy or would f-ck a black guy.”

Abdirahman testified that on September 12, 2017, he was at the courthouse for a criminal matter waiting for his probation officer and attorney. Abdirahman testified that his phone stopped working, so he asked N.H. for the time. N.H. told Abdirahman the time. He noticed that she was playing a computer game that was similar to one that he used to play, so he asked her if she was playing that game. She replied, “no” and told him the name of the game she was playing. Abdirahman testified that he then tried to call a friend through an app on his phone. When his attempt failed, N.H. stated, “[y]ou people are ignorant.” Abdirahman replied, “[e]xcuse me? I’m sorry you feel that way.” Abdirahman testified that he had been yelling into his phone, so he apologized to N.H. and asked if she was uncomfortable. She replied, “[y]eah,” and he walked away. Abdirahman claimed that was the only conversation he had with N.H.

On cross-examination the prosecutor asked Abdirahman if he knew N.H.’s age. He replied, “[n]o that was never a topic of conversation.” The prosecutor played a recorded phone call Abdirahman placed on September 13, 2017, from the jail to his girlfriend:

And then the girl is sitting right next to me on her laptop. I go like “Excuse me, hey what time is it?” And she goes, “8:22.” And I go, “Oh, okay. Thank you.” And then she’s like -- proceeded to talk to me and say something to me. . . . [S]he said I only -- I only -- I only like men -- like black -- black or something weird like that. . . . And then . . . she asks me how old I am. And I’m like “I’m 22 years old” and I’m like, “Yeah, I have a felony -- I have a felony case.” And then she was like, “Oh, okay. Well I’m --” she didn’t say she was 16 yet. She said . . . “I’m here on probation” something, “My PO is right there and they are about to take me.” I remember that. And she said, “Oh, by the way, I’m 15.” And I was like, “Oh.” And as soon as she said that (unintelligible) I walked away

Abdirahman testified that he lied in the conversation and did not tell his girlfriend about his actual interaction with N.H. because he wanted his girlfriend to feel comfortable.

On March 15, 2018, the jury found Abdirahman guilty of soliciting a child to engage in sexual conduct. The district court sentenced Abdirahman to a stay of imposition, with three years on probation and 90 days in jail. This appeal followed.

DECISION

Abdirahman argues that the evidence is insufficient to support his conviction. In considering a claim of insufficient evidence, this court's review is limited to a thorough analysis of the record to determine whether the evidence, viewed in the light most favorable to the conviction, is sufficient to allow the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court assumes that "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 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 that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

The jury found Abdirahman guilty of soliciting a child to engage in sexual conduct. "A person 18 years of age or older who solicits a child or someone the person reasonably believes is a child to engage in sexual conduct with intent to engage in sexual conduct is guilty of a felony" Minn. Stat. § 609.352, subd. 2. A "child" is "15 years of age or younger." *Id.*, subd. 1(a) (2016). "[S]exual conduct" is "sexual contact of the individual's primary genital area, sexual penetration as defined in section 609.341, or sexual

performance as defined in section 617.246.” *Id.*, subd. 1(b) (2016). Sexual penetration includes, “sexual intercourse, cunnilingus, fellatio, or anal intercourse.” Minn. Stat. § 609.341, subd. 12 (2016). “[S]olicit” means “commanding, entreating, or attempting to persuade.” Minn. Stat. § 609.352, subd. 1(c) (2016).

Abdirahman argues that there is no evidence that he solicited N.H. because she denied that he asked her to do anything to him. Abdirahman relies on Detective Kuhnau’s recorded interview with N.H., a portion of which was played at trial. On the recording, Detective Kuhnau asked, “[d]id he ever ask you directly to do anything to him?” N.H. replied, “no.” Detective Kuhnau asked, “he never directly asked you that[,] [b]ut he did ask . . . if you guys could hang out?” N.H. replied, “[w]hich I immediately assumed since he was asking that that he meant it like --.”

But Detective Kuhnau testified, and the record shows, that just prior to that question, N.H. told him that Abdirahman asked her if she “ever f-cked a black guy” or “would [she] f-ck a black guy.” When N.H. replied, “no,” it was in the context of whether Abdirahman asked her “to f-ck him.” Detective Kuhnau testified that N.H. told him that Abdirahman asked if she “would give him head.” N.H. denied that Abdirahman asked her to “f-ck him,” but she stated that he asked if she “would give him head”; thus, N.H. did not deny that Abdirahman asked her to do anything to him.

Moreover, N.H. testified that Abdirahman asked if she would “ever give him head.” This is direct evidence of solicitation sufficient to support Abdirahman’s conviction. *See* Minn. Stat. § 609.352, subd. 1(c) (defining solicit to mean entreating or attempting to persuade); *see also Bernhardt*, 684 N.W.2d at 477 n.11 (stating that direct evidence is

“based on personal knowledge or observation and that, if true, proves a fact without inference or presumption” (quotation omitted)); *State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997) (“It is a well-established rule that a conviction can rest upon the testimony of a single credible witness.”).

Additionally, in *State v. McGrath*, this court determined that “[s]olicitation, like the offer to engage in sexual conduct for hire, is an inchoate activity which permits application of Minn. Stat. § 609.352 to conduct that is in some degree ambiguous.” 574 N.W.2d 99, 102 (Minn. App. 1998) (quotation marks omitted), *review denied* (Minn. Apr. 14, 1998). *McGrath* relied on *State v. Bennett*, in which the supreme court held that because the statute criminalizing an offer to engage in prostitution required neither a completed sex act nor a substantial act in furtherance of the act, but rather proscribed inchoate activity, it was likely to be applied to ambiguous conduct. 258 N.W.2d 895, 897 (Minn. 1977). Thus, whether a defendant engaged in solicitation of a child to engage in sexual conduct “may be implied from the words and actions of the defendant taken in context.” *See id.* N.H. testified that Abdirahman asked her name and age; stated that he was 17 years old; and asked if she had “ever given head,” “would [she] ever give head,” “[w]ould [she] ever give him head,” had she ever “f-cked a black guy,” and if they were able to hang out. Abdirahman’s guilt can be implied from his words.

Furthermore, circumstantial evidence supports Abdirahman’s conviction. Circumstantial evidence, while entitled to the same weight as direct evidence, warrants a higher level of scrutiny. *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988). If a conviction is based in part on circumstantial evidence, this court must identify the circumstances

proved, and then determine whether they are “consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.*

C.S. testified that N.H. “sprinted over to” him and told him that “some guy just asked . . . [her] to give him head.” Detective Kuhnau testified that N.H. told him that Abdirahman asked her if she “would give him head.” These circumstances proved that N.H. immediately reported that Abdirahman asked her to give him head, are consistent with the hypothesis that Abdirahman is guilty of soliciting a child to engage in sexual conduct, and inconsistent with any other rational hypothesis.

Further, Abdirahman’s testimony that conflicts with the jail phone call supports his conviction. Abdirahman testified that N.H.’s age was never a topic of conversation. But in the jail phone call, Abdirahman stated that N.H. said, “I only like men -- like black -- black or something weird like that.” He stated, “she asks me how old I am. And I’m like ‘I’m 22 years old’ . . . [a]nd she said, ‘[o]h, by the way, I’m 15.’” The conversation that he relayed in the phone call is consistent with the type of conversation that N.H. described. N.H. testified that Abdirahman asked her name and age, and she asked his age. And N.H. testified that Abdirahman asked whether she ever “f-cked a black guy.”

Abdirahman also challenges the admission of C.S.’s and Detective Kuhnau’s statements that support N.H.’s complaint. Abdirahman did not object to the admission of what he now refers to as “second-hand hearsay.” Absent an objection, this court may review the admission of evidence for plain error. *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006); Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (stating that this court has discretion to consider an alleged error absent an objection if

there is plain error affecting the appellant’s substantial rights). Under these circumstances, Abdirahman must show that there was (1) an error; (2) that is plain; and (3) that affects substantial rights. *See Griller*, 583 N.W.2d at 740.

In this plain-error context, an error is a “[d]eviation from a legal rule [] unless the rule has been waived.” *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014) (quotation omitted). “An error is plain if it was clear or obvious.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotations omitted). A clear or obvious error “contravenes caselaw, a rule, or a standard of conduct.” *Id.* Plain error affects substantial rights when it was prejudicial. *Griller*, 583 N.W.2d at 741. The appellant bears “a heavy burden” in establishing prejudice. *Id.* Prejudice is shown if there is a “reasonable likelihood” that the error “had a significant effect” on the jury’s verdict. *Id.* The appellant must satisfy each plain-error prong. *Kelley*, 855 N.W.2d at 273. Even if the appellant satisfies each prong, this court will reverse only if the error “seriously affects the fairness and integrity of the judicial proceedings.” *State v. Little*, 851 N.W.2d 878, 884 (Minn. 2014).

Abdirahman argues that the testimony that N.H. told C.S. and Detective Kuhnau that Abdirahman asked her to give him head is inadmissible. But a prior out-of-court statement is not hearsay if “[t]he declarant testifies . . . and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant’s testimony and helpful to the trier of fact in evaluating the declarant’s credibility.” Minn. R. Evid. 801(d)(1)(B). In considering whether to admit a prior consistent statement, the district court determines whether the witness’s credibility has been challenged and whether the prior consistent statement would “bolster the witness’ credibility with respect to that aspect

of the witness' credibility that was challenged.” *State v. Fields*, 679 N.W.2d 341, 348 (Minn. 2004) (quotation omitted). Trial testimony and prior statements need not be verbatim to be considered consistent. *State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000), *review denied* (Minn. Feb. 24, 2000).

Here, N.H.'s prior out-of-court statements are not hearsay under rule 801. N.H. testified and was subject to cross-examination concerning the statements. The statements are consistent with N.H.'s trial testimony. And the out-of-court statements were helpful to the jury in evaluating N.H.'s credibility, which Abdirahman attempted to challenge on cross-examination. For example, in addressing the statements she made in the interview with Detective Kuhnau, Abdirahman's attorney asked N.H., “[s]o you told the detective that my client never asked you to specifically do anything to him, correct?” The prior out-of-court statements corroborated N.H.'s testimony with respect to the disputed comment, thereby bolstering her credibility. The district court did not commit plain error in admitting the statements as substantive evidence.

Affirmed.