

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1418**

State of Minnesota,
Respondent,

vs.

Yony Galan-Alvillar,
Appellant.

**Filed January 19, 2021
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CR-18-1618

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Soren Petrek, Bridge Litigators, Minneapolis, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Cochran, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal from his convictions on one count of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct, appellant claims the evidence was insufficient to support the jury's verdicts and that he was denied effective

assistance of counsel. Because it is the province of the jury to determine credibility and this jury found the victim's testimony credible, and appellant has not demonstrated that his counsel was ineffective, we affirm.

FACTS

Respondent State of Minnesota charged appellant Yony Galan-Alvillar with one count of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a) (2018), one count of second-degree criminal sexual conduct (significant relationship), in violation of Minn. Stat. § 609.343, subd. 1(g) (2018), and one count of second-degree criminal sexual conduct (multiple acts), in violation of Minn. Stat. § 609.343, subd. 1(h)(iii), after the victim alleged that she was sexually assaulted by appellant, her cousin, on three separate occasions. Appellant is approximately nine years older than the victim and the victim was between eight and 14 years old when the assaults were committed. At trial, the jury heard testimony from the victim, her brother, her mother, a school student advocate, a CornerHouse interviewer, and an officer of the Bloomington Police Department. The jury found appellant guilty of all three charges. The district court entered a judgment of conviction for the one count of first-degree criminal sexual conduct and the charge of second-degree criminal sexual conduct (multiple acts). This appeal follows.

DECISION

I. The evidence presented was sufficient to support appellant's convictions.

Appellant argues that the evidence presented was insufficient to support the jury's verdicts. Specifically, appellant argues that the evidence was insufficient because the

victim was the only witness to the offenses and she provided contradictory and inconsistent testimony. For the reasons outlined below, we disagree.

To evaluate the sufficiency of the evidence, reviewing courts “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). Appellate courts review the evidence “in the light most favorable to the conviction” and “assume the jury believed the State’s witnesses and disbelieved any evidence to the contrary.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation and citation omitted). Appellate courts “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.” *Id.*

The issue presented is whether the jury, based on the evidence presented at trial, could have reasonably found the victim’s testimony to be credible. *See State v. Foreman*, 680 N.W.2d 536, 538-39 (Minn. 2004). Appellant argues that inconsistency between the victim’s trial testimony and her CornerHouse interview, along with an alleged “motivation to lie and . . . lack of credibility,” results in the victim’s testimony being insufficient as a matter of law. As the sole witness, the reliability of the victim’s testimony was necessary to establish the elements of the offense. The victim testified that appellant sexually assaulted her on three separate occasions. The victim testified that one incident of penetration occurred during the third and final assault, thereby forming the basis for the

charge of first-degree criminal sexual conduct. However, it is undisputed that the victim, during an interview with a CornerHouse interviewer, indicated that the one act of penetration occurred during the first incident of assault.

In *State v. Reichenberger*, 182 N.W.2d 692 (Minn. 1970), the Minnesota Supreme Court affirmed a conviction for having sexual intercourse with a minor even though the victim made conflicting statements at various times prior to trial, because the victim testified positively at trial that intercourse had occurred. *Reichenberger*, 182 N.W.2d at 694. The court held that because the jury was apprised of the previous inconsistent statements, “the task of weighing credibility was for the jury, not [the appellate courts].” *Id.* at 695; *see also Foreman*, 680 N.W.2d at 539 (recognizing holding of *Reichenberger* as established good law). Just as in *Reichenberger*, the jury in this matter was fully apprised of the discrepancies between the victim’s statements at the CornerHouse interview and at trial. As a result, the jury weighed the evidence and found the victim credible. We are not to question the jury’s credibility finding.

As the Minnesota Supreme Court noted in *Foreman*, the distinction between cases like *Reichenberger*, where credibility is left to the jury, and cases where evidence may be insufficient as a matter of law, is when there are “additional reasons to question the victim’s credibility.” *Foreman*, 680 N.W.2d at 539 (analyzing *State v. Huss*, 506 N.W.2d 290, 292-93 (Minn. 1993)); *State v. Langteau*, 268 N.W.2d 76, 77 (Minn. 1978); *State v. Gluff*, 172 N.W.2d 63, 65 (Minn. 1969)). For example, in *Huss*, the Minnesota Supreme Court determined that the testimony of the alleged victim of child abuse was insufficient because there was expert testimony that the victim—who was three years old—had been exposed

by the state to highly suggestive material and her testimony was not sufficiently credible. *Huss*, 506 N.W.2d at 292-93. In *Langteau*, the Minnesota Supreme Court held that uncorroborated victim testimony was insufficient to establish aggravated robbery when “the actions by the victim were questionable or unexplained.” *Langteau*, 268 N.W.2d at 77 (“The reason why [victim] would have remained at the hospital until almost midnight long after normal visiting hours is unexplained. The reason why defendant would have held up [victim], with whom he was well acquainted, is left a mystery.”). In *Gluff*, the Minnesota Supreme Court held victim testimony to be insufficient when the victim “saw [an] intruder for only a matter of some 30 seconds” and “[h]er description to the police was *wholly* at variance with her later identification.” *Gluff*, 172 N.W.2d at 65 (emphasis added).

No such circumstances are present here. Appellant points only to (1) the inconsistencies between the victim’s statements during the CornerHouse interview and her testimony at trial and (2) the victim’s apparent behavioral issues during the time period of the alleged incidents. It is true that a number of witnesses reported such behavioral issues, such as the victim acting out at school. Appellant argues such testimony is evidence that the victim had an incentive to deflect scrutiny by “fabricat[ing] a story declaring [herself] to be the victim of criminal assault.” However, appellant’s attempt to argue this as a reason to question the victim’s credibility is entirely speculative—he cites no case law in which such an argument was accepted. Such conduct is categorically distinct from the types of circumstances set forth in *Huss*, *Langteau*, *Gluff*, and other related caselaw in which victim testimony was found to be insufficient as a matter of law.

In sum, the issue here—whether the victim’s testimony regarding the assaults was true despite the inconsistencies between the trial testimony and the CornerHouse interview—is an issue of credibility, rather than one which can or should be disposed of as a matter of law. *See Foreman*, 680 N.W.2d at 539 (“[A]s long as the evidence was sufficient to reasonably support the jury’s finding, the credibility of a witness was for the jury to determine.”). In this matter, the jury found the victim’s testimony credible, and on the strength of her testimony found appellant guilty on all three counts. In such a case, the decision of the jury should not be disturbed. *Ortega*, 813 N.W.2d at 100.

II. Appellant has failed to show that he received ineffective assistance of trial counsel.

Appellant argues that his convictions must be overturned and he must be granted a new trial due to the ineffectiveness of his trial counsel.¹ Specifically, appellant argues that he received ineffective assistance of counsel when his attorney (1) failed to call any defense witnesses, (2) failed to present or seek to present evidence of the victim’s mental health, and (3) elicited damaging testimony during cross-examination of the victim’s brother.

“[T]he right to counsel is the right to the effective assistance of counsel.” *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984) (quotation omitted). *Strickland* establishes a two-part standard for claims of ineffective assistance of counsel.

¹ We note that ineffective-assistance-of-counsel claims should, generally speaking, be raised in a postconviction petition rather than on direct appeal. *State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000). Such a claim may be considered on direct appeal if it can be decided based on the existing district court record. *Torres v. State*, 688 N.W.2d 569, 572 (Minn. 2004). Because we find sufficient evidence within the district court record to resolve appellant’s claims, we do so here.

State v. Vang, 847 N.W.2d 248, 266 (Minn. 2014). To obtain reversal under *Strickland*, a defendant must demonstrate that (1) counsel’s performance “fell below an objective standard of reasonableness,” and (2) there is “a reasonable probability” that the outcome would have been different without counsel’s errors. *Id.* A failure as to either prong may be dispositive. *Id.* Whether a defendant received ineffective assistance of counsel involves mixed questions of law and fact, which we review *de novo*. *Dereje v. State*, 837 N.W.2d 714, 721 (Minn. 2013). Neither Strickland prong has been met.

Appellant first argues that his trial counsel provided ineffective assistance by failing to consult with defense witnesses or call them to testify at trial. However, “[d]ecisions about which witnesses to call at trial and what information to present to the jury are questions of trial strategy that lie within the discretion of trial counsel.” *Leake v. State*, 737 N.W.2d 531, 539 (Minn. 2007). *Leake* specifically contemplates that a defense attorney may present no witnesses at trial and yet be effective. *Id.* As appellant provides no rationale for why this court should “second-guess trial counsel’s strategic decisions,” this argument is not persuasive. *Id.*

Appellant additionally argues that his trial counsel erred by failing to seek admission of evidence relating to the victim’s mental health. However, as with the decision of whether to call defense witnesses, the decision of what evidence to present at trial is an issue of trial strategy which is not properly reviewed on appeal. *Id.*; *Cooper v. State*, 565 N.W.2d 27, 33 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997). The potential of addressing the victim’s mental health was discussed by the court and parties prior to the commencement of trial. In response, appellant’s trial counsel specifically decided against

raising such evidence at trial. Ignoring potential relevance issues, this was a strategic decision that trial counsel was entitled to make and appellant's trial counsel was not ineffective in so deciding. *Cooper*, 565 N.W.2d at 33; *Leake*, 737 N.W.2d at 539.

Finally, appellant argues that his trial counsel was ineffective due to her elicitation of damaging evidence while cross-examining the victim's brother. On cross-examination, appellant's trial counsel elicited testimony from the victim's brother indicating that appellant had frequently attempted to have close physical contact with the victim, including comments such as "I saw [appellant] constantly always trying to have [the victim] close . . . to him." Though the testimony elicited by appellant's trial counsel detailed the close physical relationship appellant had with the victim, and highlighted instances of appellant initiating physical contact with the victim, this was a mere extension upon what had already been testified to by the victim's brother on direct examination. The victim's brother had already testified extensively on direct examination as to the close (sometimes physically close) familial relationship which had existed between appellant and the victim. Furthermore, appellant's trial counsel's clear goal in eliciting testimony regarding what the victim's brother actually saw was to establish conclusively that he did not actually see the assaults—she did succeed in that goal.

In sum, appellant has not demonstrated that the conduct and errors alleged caused trial counsel to fall below the "objective standard of reasonableness" required. *Vang*, 847 N.W.2d at 266. Because appellant has failed to satisfy the first prong of an ineffective-assistance-of-counsel claim under *Strickland* and *Vang*, we need not address the second. *Id.* Regardless, given what had already been elicited from the victim's brother

on direct examination, there does not appear to be a “reasonable probability” the outcome of this matter would have been different had the allegedly detrimental statements not been elicited. *Id.*

Affirmed.