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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1641**

State of Minnesota,
Respondent,

vs.

Otto Rene Gonzalez Bautista,
Appellant.

**Filed September 8, 2020
Affirmed
Slieter, Judge**

Nobles County District Court
File No. 53-CR-15-35

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

Joseph M. Sanow, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijo,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reyes, Judge.

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

SLIETER, Judge

Appellant Otto Rene Gonzalez Bautista appeals his conviction for first-degree criminal sexual conduct, arguing that the state provided insufficient evidence and that the district court plainly erred by allowing the nurse practitioner who examined the victim to

vouch for the victim's credibility. There existed sufficient evidence to support the jury's guilty verdicts and the nurse practitioner's testimony did not affect Gonzalez Bautista's substantial rights. Therefore, we affirm.

FACTS

On January 13, 2015, respondent State of Minnesota charged Gonzalez Bautista with first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a) (2014), and second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(a) (2014), for sexual penetration and sexual contact with a person under the age of 13. Both charges arose from allegations of Gonzalez Bautista's inappropriate sexual behavior with victim L.M. A three-day jury trial occurred beginning on July 5, 2019, in Nobles county district court, and the following facts are consistent with the jury's guilty verdicts.

L.M., who was 12 years old when she testified, stated that L.B. was her babysitter almost every day and sometimes overnight. Gonzalez Bautista lived in L.B.'s home, and it was at L.B.'s home that Gonzalez Bautista committed the sexual conduct. L.M. testified that Gonzalez Bautista began to touch her inappropriately when she was five or six years old, and the incidents occurred for about one year. She testified that he would touch her "bad parts" two to three times a day when L.B. babysat her. Gonzalez Bautista would rub her vagina and insert two of his fingers inside of her. Sometimes the touching occurred while he was watching pornography. He also made her touch his penis, grabbing and moving her hand if she did not do it when he asked.

On cross examination, Gonzalez Bautista's trial counsel asked L.M. about sexual abuse from John Doe, a man who also lived at L.B.'s home. L.M. testified that Doe also abused her by inappropriately touching her "bad parts" when she was between the ages of five and seven, and that he would insert his pinkie into her vagina. L.M. admitted that she gets some things confused between what Gonzalez Bautista did and what Doe did "[b]ecause it's hard to like like because what they did was similar but there was some stuff that was different that makes me mixed up." She later clarified that she is confident that Gonzalez Bautista sexually abused her while L.B. babysat her "[b]ecause he used to do it mostly like every day when I was at their house."

The state obtained testimony from the nurse practitioner from Child's Voice who, within two months following the period in which L.M. was abused, completed the physical and medical evaluation of L.M. The nurse practitioner testified that the results of L.M.'s physical genital exam were normal, which means that "[s]he didn't have any signs of trauma on any part of her body." The nurse practitioner testified that this is typical as genital tissue heals quickly and any acute stress typically does not last more than five days. She opined that, "based on her history," L.M. had been sexually abused. She explained that "our histories are very important . . . a lot of times [children] cannot verbally give the details that we as adults can. So it's really important that we talk to the adults who are their caregivers, ah, and the child as well." On cross examination, the nurse practitioner stated that L.M. did mention vaginal and anal penile penetration by Doe. She elaborated that it is common for children to make additional statements about other sexual abuse when they feel they are in a safe space.

Gonzalez Bautista denied all of the criminal sexual conduct during his testimony. The jury found Gonzalez Bautista guilty on both counts. The district court entered a conviction only for the first-degree criminal sexual conduct count and sentenced Gonzalez Bautista to 144 months' imprisonment. Gonzalez Bautista appeals.

DECISION

I. The state provided sufficient evidence to convict Gonzalez Bautista of first-degree criminal sexual conduct.

Gonzalez Bautista argues that the state provided insufficient evidence to support his conviction for first-degree criminal sexual conduct¹ because (1) L.M.'s testimony was not credible, (2) the state did not prove the specific timeframe in which the abuse occurred, and (3) L.M.'s testimony left a possibility that she confused Gonzalez Bautista with Doe.

When reviewing the sufficiency of the evidence, appellate courts conduct “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.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). Appellate courts “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). “This is especially true whe[n] resolution of the case depends on conflicting testimony, because weighing credibility of witnesses is the exclusive function of the jury.” *State v. Pieschke*,

¹ Although Gonzalez Bautista’s sufficiency-of-the-evidence argument covers both first- and second-degree criminal sexual conduct, the district court entered a conviction for the first-degree count only. Because Gonzalez Bautista was not adjudicated and sentenced for second-degree criminal sexual conduct, we need not decide if there is sufficient evidence for that count. See *State v. Ashland*, 287 N.W.2d 649, 650 (Minn. 1979).

295 N.W.2d 580, 584 (Minn. 1980). “The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State’s burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016).

Gonzalez Bautista first argues that L.M.’s testimony was not credible because there was no corroborating evidence and she “did not connect any specific incidents of abuse with dates or events and she testified only in broad strokes.” Gonzalez Bautista argues that we cannot assume that the jury found L.M. credible based on the guilty verdict because multiple witnesses testified and they could have believed one of those witnesses instead of L.M. We are unconvinced. First, “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 (2014). Second, L.M. was the only testifying witness, other than Gonzalez Bautista, to the incidents of sexual assault. The state’s other witnesses relayed L.M.’s prior consistent statement, bolstering her testimony. We infer from the jury’s verdicts that they found L.M. credible.

Gonzalez Bautista next argues that the state did not prove beyond a reasonable doubt that the offense occurred within the timeframe listed on the complaint. Our supreme court has previously held that the exact date of an offense is not an essential element of criminal sexual conduct crimes. *State v. Becker*, 351 N.W.2d 923, 927 (Minn. 1984). The jury was provided a general timeframe based on the victim’s testimony regarding her age at the time of the offense and the date of her disclosures. The complaint specified that the crime occurred “on or about September, 2012 and continu[ed] through November, 2014.”

Because L.M.’s testimony supports the events having occurred within this date range, Gonzalez Bautista’s argument fails.

Finally, Gonzalez Bautista argues that L.M.’s testimony left the possibility that she confused Gonzalez Bautista with Doe as her abuser. We disagree. Though L.M. admitted that she confused some of the abuse caused by the two individuals, she stated that she definitely knew that Gonzalez Bautista sexually abused her “[b]ecause he used to do it mostly like every day when I was at their house.” As previously analyzed, we must presume the jury found L.M. credible and her testimony is enough to support the conviction.

II. The testimony of the nurse practitioner did not affect appellant’s substantial rights.

Gonzalez Bautista argues that reversible error occurred because the nurse practitioner testified that, “based on her history,” L.M. had been sexually abused. Gonzalez Bautista claims this is improper vouching testimony. Because we conclude that any purported error did not affect Gonzalez Bautista’s substantial rights, we need not decide whether such testimony was improper vouching.

Because Gonzalez Bautista did not object to this aspect of the nurse practitioner’s testimony at trial, he generally forfeits any right to appellate relief. *State v. Webster*, 894 N.W.2d 782, 786 (Minn. 2017). However, appellate courts can review the claim pursuant to the plain-error doctrine. *Id.* “Under the plain error doctrine, the appellant must show (1) error; (2) that was plain; and (3) that affected substantial rights.” *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017); see Minn. R. Crim. P. 31.02. An

appellant's argument fails under the plain-error analysis if any one of these elements are not met. *See Webster*, 894 N.W.2d at 786. Even if an appellant establishes these three elements, appellate courts may only correct the error "if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Lilienthal*, 889 N.W.2d at 785 (quotation omitted).

The nurse practitioner testified, "Based on her history, um, I diagnosed that [L.M.] had been sexually abused, even with a normal genital exam." She later testified that gathering the history from the child's parents is important because "[a] lot of times [children] cannot verbally give the details that we as adults can." She described her usual examination by stating, "I will give my medical impression of what was disclosed during that forensic interview, in conjunction with the history that I have gotten from the parents as well."

We will presume without deciding that the district court plainly erred by allowing the nurse practitioner's testimony. However, Gonzalez Bautista has not shown that the error affected his substantial rights. "With respect to the substantial-rights requirement, [the appellant] bears the burden of establishing that there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted).

Gonzalez Bautista fails to meet this requirement. First, the jury heard L.M.'s testimony, the testimony of the man to whom L.M. initially disclosed the abuse, the testimony of the officer to whom L.M. initially disclosed the abuse, and L.M.'s complete Child's Voice interview. Therefore, Gonzalez Bautista has not shown there is a reasonable

likelihood that the absence of the nurse practitioner's testimony would have had a significant effect on the jury's verdict. Gonzalez Bautista's argument fails the plain-error analysis because he did not show that his substantial rights were affected.

Affirmed.