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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1188**

State of Minnesota,
Respondent,

vs.

Michael Arthur Jack,
Appellant.

**Filed July 19, 2021
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-19-15693

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by allowing the victim's mother to testify and vouch for her daughter. We affirm.

FACTS

The state charged appellant Michael Arthur Jack with first-degree criminal sexual conduct for committing sexual penetration or sexual contact against a person under 13 years of age, and second-degree criminal sexual conduct for committing multiple sexual acts against a person under 16 years of age with whom he had a significant relationship. *See* Minn. Stat. §§ 609.342, subd. 1(a), .343, subd. 1(h)(iii)(2008). These charges were brought after N.S. disclosed during a CornerHouse interview that Jack, who was previously married to N.S.'s mother, sexually abused her from when she was six or seven years old until she was 13 or 14 years old.

Jack waived his right to a jury trial, and the case proceeded to a bench trial. Several witnesses testified, including N.S.'s mother. On cross-examination, defense counsel asked the mother whether she wondered if N.S.'s allegations could be untrue when she first heard them. The mother responded, "No. . . . I don't recall saying that but I probably was like, oh, my God I can't believe it, or it's not untrue but there's never a question in my mind when [N.S.] came and told me. My daughter has always been able to come and talk to me." Defense counsel again asked the mother about her disbelief after the CornerHouse interview:

Q: And at that time, same day, you were still expressing surprise, right?

A: Disbelief, yes.

Q: Disbelief. You said that you hadn't seen any signs of it, right?

A: Right. Again, as a mom you think you catch everything. You put filters on the computer, you do all that, you don't realize the monsters are in your house.

Q: You said that you didn't know how it could have happened?

A: Again, you're quoting me like I'm saying – No, you are taking it [out] of context. It's disbelief, like how could this have happened? I did everything I was supposed to do. I thought I could catch all the signs. You don't know that a monster is in your house.

The state addressed the mother's reaction on redirect examination, and defense counsel objected:

Q: [Defense counsel] asked you about expressing disbelief about saying it couldn't be true. Do you think it's untrue?

A: No

DEFENSE COUNSEL: Objection.

THE COURT: What's the objection?

DEFENSE COUNSEL: She's asking for a credibility determination of a witness in this case.

THE COURT: I'm going to overrule the objection. I'm going to accept the testimony as it goes to your questioning her about that she didn't think it could be true, not as to whether it actually is true or not.

DEFENSE COUNSEL: And, Your Honor, if I may?

THE COURT: It's not for the truth of the matter, it's in response to the door you opened.

The state asked the question again:

Q: So [defense counsel] asked you about learning about this initially, expressing disbelief, thinking it couldn't be true. Do you believe it's untrue?

A: I never once doubted [N.S.], no.

Q: And have you supported her since she disclosed this?

A: Every step of the way.

The district court later made a record explaining its reasons for overruling the objection:

I did think the defense opened the door by asking those questions. I also thought it was not for the truth of the matter asserted whether the allegations actually were true or not, I was not going to accept it or consider it for that, but it certainly did [go to] her credibility as a witness based on what she had told

police then and what she believed and that was, in my understanding, what the state was asking that for. So I did allow it for that purpose, the credibility of the witness.

The district court found Jack guilty on both counts and sentenced him to 172 months in prison, the upper end of the presumptive range. This appeal followed.

DECISION

Jack argues that the district court abused its discretion by admitting improper vouching testimony.

“Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion.” *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). The credibility of a witness is for the fact-finder to determine; therefore, a witness cannot vouch for the credibility of another. *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998). Improper vouching testimony that prejudices the defendant warrants a new trial. *See Van Buren v. State*, 556 N.W.2d 548, 552 (Minn. 1996) (reversing for a new trial because defendant was prejudiced by admission of vouching testimony). Even when improper vouching testimony is admitted, we will not reverse a conviction unless the appellant establishes “a reasonable possibility that the [fact-finder] would have reached a different verdict had the wrongfully admitted testimony not come in.” *State v. Jaros*, 932 N.W.2d 466, 472 (Minn. 2019).

The district court first admitted the mother’s testimony because it did not go to the truth of the matter asserted. The district court stated that the testimony related to the mother’s first impression upon hearing the allegations and her credibility as a witness. In its finding of facts, the district court wrote, “When she heard the allegations, [the mother]

believed N.S.’s report, but she was in disbelief about the whole thing because she had not seen any signs and thought that, as a mom, she would have seen some signs in her child that she was being abused.” Therefore, the district court correctly determined that the testimony did not relate to the truth of the matter asserted—whether the mother currently believes N.S.—so it was not impermissible vouching testimony. Jack has not shown that the district court abused its discretion.

The district court also admitted the testimony because Jack opened the door on cross-examination. “The opening-the-door doctrine is essentially one of fairness and common sense, based on the proposition that one party should not have an unfair advantage and that the factfinder should not be presented with a misleading or distorted representation of reality.” *State v. Valtierra*, 718 N.W.2d 425, 436 (Minn. 2006) (quotation omitted).

Here, defense counsel asked the mother twice whether she thought that the initial allegations were untrue. Defense counsel appears to have been trying to raise doubt about Jack’s guilt by highlighting the mother’s initial doubt. Therefore, fairness and common sense would allow the mother to testify about how she did not doubt her daughter. The district court did not abuse its discretion by determining that Jack opened the door to this line of testimony on cross-examination.

Finally, even if there had been error, Jack has not shown that he was harmed. Jack, citing *Van Buren v. State*, argues that the error was prejudicial because this was a case of credibility. See 556 N.W.2d 548, 549 (Minn. 1996). But in *Van Buren*, the supreme court stated that the defendant was prejudiced because “[t]he evidence of Van Buren’s guilt in

this case was close, and the jury's verdict hinged on who the jury found more credible, [the complainant] or Van Buren." *Id.* at 551.

This case is distinguishable because there is substantial corroborating evidence. N.S.'s testimony matches the same general accounts that several witnesses testified she told them. This includes N.S.'s friends who she initially told, the school nurse, the CornerHouse interviewer, and the doctor who examined her. The district court also found N.S. credible:

The Court finds N.S. to be a very credible witness. Although she clearly was anguished and traumatized by her experiences, her testimony was consistent and believable. She was straightforward, regardless of whether what she said seemed to support or negate the State's case. She did not exaggerate or embellish her report of [Jack]'s actions. She provided ample, clear, details which were consistent with age-appropriate perceptions of what she was experiencing at different ages. N.S.'s testimony was also largely consistent with prior statements She displayed no motive to fabricate and, in fact, was reluctant to have the matter revealed.

N.S.'s testimony was also corroborated by her mother testifying that N.S. was hysterical when she said that she may be getting back together with Jack. N.S. also told her mother that she would continue living with her grandmother if her mother and Jack got back together.

Finally, the district court found Jack not credible in how he testified that he never had any contact with N.S., even though he was her morning caretaker when she was four to five years old. His testimony was contradicted by a photograph showing him with his arm around her. The district court also found that he was not credible in testifying that, in the nine to ten years of living at the home together, he was never in a room alone with her

unless she happened to enter a room to ask him a question when he was playing video games. Even if the mother's testimony was admitted in error, Jack has not met his burden in showing that he was prejudiced.

Affirmed.