

*This opinion is nonprecedential except as provided by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
A22-1453**

State of Minnesota,
Respondent,

vs.

Luis Alberto Diaz,
Appellant.

**Filed July 24, 2023
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CR-21-13163

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

Mary F. Moriarty, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Cochran, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal from a conviction of first-degree criminal sexual conduct, appellant argues that the evidence was insufficient to support his conviction beyond a reasonable doubt. We affirm.

FACTS

This case arises from appellant Luis Alberto Diaz's conviction of first-degree criminal sexual conduct after a court trial based on stipulated facts and evidence. The stipulated facts and evidence establish the following.

In May 2021, K.I. reported that Diaz had sexually abused them¹ when K.I. was between the ages of 13 and 15 years old. Diaz was in a romantic relationship with K.I.'s mother at the time and lived in the same home as K.I.'s mother and K.I. When K.I.'s mother was away at work or elsewhere, Diaz was the only adult in the house with K.I. Diaz was born in February 1978 and K.I. was born in April 2006.

K.I. first reported the abuse to a school social worker. K.I. told the social worker that Diaz had attempted to have sex with K.I. on or about April 25, 2021. K.I. also stated that Diaz propositioned them for sex "all the time." The social worker reported the alleged abuse to law enforcement.

K.I.'s Interview Statements

Soon thereafter, K.I. participated in a forensic interview at CornerHouse. During the interview, K.I. described several instances of sexual abuse. K.I. explained that the abuse occurred when K.I. and Diaz were home alone together. K.I. stated that Diaz had put his penis in K.I.'s mouth "multiple times" and made K.I. "suck his penis." K.I. described one particular instance where Diaz told K.I. to "make me cum with [your]

¹ In accordance with K.I.'s expressed preference, we use they/them pronouns to refer to K.I., but we note that the district court used she/her pronouns to refer to K.I. in its order.

mouth.” K.I. also described instances where Diaz placed his fingers “on top” of and “between” their vagina. K.I. stated that Diaz had “tried” to put his penis inside K.I.’s vagina on multiple occasions, but it would not fit. And, on one occasion, K.I. kicked Diaz in response. K.I. also reported that he “tried” licking K.I.’s vagina multiple times and “tried” to touch K.I.’s breasts. In response to a follow-up question from the interviewer, K.I. clarified that when K.I. said that Diaz “tried” to do a sexual act, most of the time they meant that “he did actually” do the act. But K.I. insisted that Diaz had never successfully inserted his penis into K.I.’s vagina, even though he had tried on multiple occasions. Lastly, K.I. explained that they told their mother about the abuse after they reported it to the school social worker. K.I. decided to tell their mother about the abuse before child protective services visited their house, but doing so was stressful. After being told, K.I.’s mother expressed concern that K.I. would be taken away from her.

A week after the forensic interview, K.I. received a medical examination. During the medical examination, K.I. described multiple instances of sexual abuse. K.I. also stated that the last instance occurred in late April of 2021. K.I.’s statements were consistent with, but not identical to, the statements K.I. made to the school social worker and during the forensic interview. K.I. reported that Diaz had put his penis in their mouth multiple times. K.I. also recounted multiple instances of Diaz attempting to put his penis into K.I.’s vagina. K.I. explained that they experienced a burning pain afterwards but insisted that Diaz had not succeeded in inserting his penis into their vagina. K.I. also stated that, on multiple occasions, Diaz had licked K.I.’s vagina, placed his mouth on K.I.’s breasts, and touched K.I.’s vagina and breasts with his hands.

Police Interviews of Diaz and Family Members

After K.I. reported the alleged sexual abuse, police spoke with Diaz. During the interview, Diaz confirmed that he lived with K.I.'s mother and K.I. Diaz also confirmed that K.I.'s mother and he worked different schedules and that he was sometimes home alone with K.I. Diaz stated that, on these occasions, he "check[ed] in on" K.I. When asked if he had any idea as to why he was being interviewed, he answered, "No." And, when asked if there was some reason why K.I. would want to get Diaz into trouble, Diaz explained that he came home one day and discovered a boy in the house and the house smelling like cigarettes. At the end of the interview, police told Diaz about the allegations of sexual abuse by K.I., and Diaz responded by requesting a lawyer.

Police also spoke with K.I.'s mother. K.I.'s mother confirmed that she and K.I. had been living in the same house as Diaz for several years. She also confirmed that she would leave K.I. in Diaz's sole care when she was not home. K.I.'s mother told police that she had been unaware of any sexual contact between Diaz and K.I. before K.I.'s recent report.

After speaking with K.I.'s mother, police also spoke with K.I.'s father, stepmother, and stepsister. According to K.I.'s stepmother, K.I. stayed at their house approximately two weekends a month. K.I.'s stepsister was very close to K.I. at the time. K.I.'s stepsister told police that K.I. had disclosed some of the alleged sexual abuse to her and that the disclosure was made around the same time as K.I. disclosed the abuse to the school counselor. K.I.'s stepmother told police that K.I. told her about the abuse after disclosing it to K.I.'s stepsister. And K.I.'s father stated that K.I. had not shared any details about the alleged abuse with him, but he had been told of the allegations of abuse by K.I.'s mother

and stepmother. In response to a question by police about whether K.I. had a dislike of Diaz, K.I.'s father mentioned that K.I. does not like the way that Diaz treats their mother.

Criminal Complaint and Trial

In July 2021, respondent State of Minnesota charged Diaz with first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(b) (2020), alleging sexual penetration of a victim while the victim was at least 13 years of age and less than 16 years of age by a perpetrator who is in a position of authority and more than 48 months older than the victim.² Diaz pleaded not guilty.

Diaz thereafter waived his right to a jury trial, and the parties agreed to submit the case for a court trial based on stipulated facts and evidence pursuant to Minn. R. Crim. P. 26.01, subd. 3. The stipulated facts included: the identity and birth date of the victim (K.I.), the identity and birth date of the defendant (Diaz), and that all witnesses would testify consistently with their prior statements. The parties also stipulated to six exhibits: (1) the transcript and video of the forensic interview; (2) the forensic interviewer's report; (3) anatomical diagrams of male and female bodies used during the forensic interview; (4) easel paper that K.I. drew on during the forensic interview; (5) the medical-examination report; and (6) various police reports, including summaries and transcripts of witness interviews.

² Minn. Stat. § 609.342, subd. 1(b) (2020) was in effect at the time of the alleged crime, but it has since been amended and recodified. 2021 Minn. Laws 1st Spec. Sess. ch. 11, art. 4, § 16, at 2038-40; *compare* Minn. Stat. § 609.342, subd. 1(b) (2020), *with* Minn. Stat. § 609.342, subd. 1a(f) (2022).

Based on the stipulated facts and evidence, the district court determined that each of the elements of Minn. Stat. § 609.342, subd. 1(b), was proven beyond a reasonable doubt. The district court emphasized that the law establishes that “[p]rior consistent statements and the credible testimony of a victim are sufficient for a finding of guilt of first-degree criminal sexual conduct.” The district court then noted that K.I. “provided numerous, consistent statements to various individuals detailing multiple instances of intentional sexual abuse by [Diaz].” The district court further noted that the statements “were consistent” but “not identical.” The district court found that these statements “did not seem practiced or rehearsed” or designed “to get [Diaz] into as much trouble as possible.” And, the district court specifically found that K.I. “was credible.” Consequently, based on K.I.’s statements and the stipulated facts as to the ages of Diaz and K.I., the district court found Diaz guilty of first-degree criminal sexual conduct.

The district court sentenced Diaz to 90 months in prison, a downward durational departure. The sentence was in accordance with the parties’ agreement.

Diaz appeals.

DECISION

Diaz argues that there was insufficient evidence to convict him of first-degree criminal sexual conduct because “[t]he state’s evidence consisted solely of K.I.’s allegations” and those allegations alone, without corroboration, were not sufficient to prove beyond a reasonable doubt that Diaz committed the crime. We are not persuaded.

Under the Due Process clauses of the United States and Minnesota Constitutions, the state must prove beyond a reasonable doubt every element of a charged offense. U.S.

Const. amends. V, XIV; Minn. Const. art. I, § 7; *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020). “We use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence.” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). In conducting our review, we undertake 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 [fact-finder] to reach the verdict which [it] did.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted). We assume that the fact-finder “believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Friese*, 959 N.W.2d 205, 214 (Minn. 2021) (quotation omitted). “[W]e will not disturb the verdict if the [fact-finder], 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.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012).

The district court found Diaz guilty of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(b). A person is guilty of this crime if the person engages in “sexual penetration” with a complainant while “the complainant is at least 13 years of age but less than 16 years of age and the actor is more than 48 months older than the complainant and in a current or recent position of authority over the complainant.” Minn. Stat. § 609.342, subd. 1(b). “Sexual penetration” is defined as “sexual intercourse, cunnilingus, fellatio, or anal intercourse,” or “any intrusion however slight into the genital or anal openings” of a complainant’s body. Minn. Stat. § 609.341, subd. 12 (2020). A person is in a “[c]urrent or recent position of authority” over a complainant if the person is

the complainant's parent or acting in the place of a parent and is charged with or assumes any parental rights, duties, or responsibilities, including responsibilities related to the complainant's health, welfare, and supervision, at the time of or within 120 days immediately before the sexual act occurs. *Id.*, subd. 10 (2020).

Generally, a conviction can be sustained by “the uncorroborated testimony of a single credible witness.” *State v. Hill*, 172 N.W.2d 406, 407 (Minn. 1969); *see also State v. Cao*, 788 N.W.2d 710, 717 (Minn. 2010) (explaining that “a conviction may be based on a single person's testimony”). And, in criminal-sexual-conduct cases, the victim's testimony does not require corroboration. Minn. Stat. § 609.347, subd. 1 (2020).

The stipulated facts and evidence in this case, viewed in the light most favorable to the verdict, are sufficient to support Diaz's conviction. It is uncontested that Diaz is more than 48 months older than K.I.—Diaz was born in 1978 and K.I. was born in 2006. The stipulated evidence also establishes that Diaz engaged in sexual penetration with K.I. As the district court noted, K.I. provided multiple consistent statements to various individuals describing how Diaz put his penis in K.I.'s mouth multiple times. K.I. also detailed how he placed his mouth and fingers in K.I.'s vagina. K.I. explained that these instances of abuse occurred when K.I. was between the ages of 13 and 15 years old. K.I. also stated that sexual penetration occurred at the family home when their mother was away, and Diaz was caring for K.I. In sum, the evidence demonstrates that Diaz sexually penetrated K.I. when he was in a position of authority over K.I. and when K.I. was between the ages of 13 and 15 and Diaz was more than 48 months older. Thus, the state's evidence was sufficient to prove each element of the crime beyond a reasonable doubt.

Diaz seeks to persuade us otherwise by arguing that the district court had reason to doubt the credibility of K.I.’s statements—the primary evidence upon which the district court relied to find Diaz guilty. Diaz contends that these statements were not credible because K.I. had a strained relationship with Diaz and “there is a reasonable possibility that K.I. was trying to get Diaz out of the home.” Diaz also argues that inconsistencies in K.I.’s statements create doubt as to the reliability of the statements. These arguments are unavailing.

“It is the province of the fact-finder to determine the weight and credibility to be afforded the testimony of each witness.” *State v. Kramer*, 668 N.W.2d 32, 38 (Minn. App. 2003), *rev. denied* (Minn. Nov. 18, 2003). Accordingly, “we defer to the fact-finder’s credibility determinations” when deciding whether the evidence is sufficient to support a criminal conviction. *State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016).

Here, the district court found that K.I. “provided numerous, consistent statements to various individuals detailing multiple instances of intentional sexual abuse by [Diaz].” The district court acknowledged that K.I.’s statements “were not identical” but emphasized that they “were consistent.” The district court also explained that the statements “did not seem practiced or rehearsed” or designed “to get [Diaz] into as much trouble as possible.” And the district court noted that K.I. “displayed an appreciation for the seriousness of [their] allegations” and “was worried about being removed from [their] mother’s care.” For these reasons, the district court specifically found K.I. to be “credible.” We defer to that determination. *See id.*

Any inconsistencies in K.I.’s testimony do not provide a reason for concluding that the evidence was insufficient to support the conviction. Inconsistencies in testimony “do not necessarily constitute false testimony” or require reversal. *State v. Daniels*, 361 N.W.2d 819, 826 (Minn. 1985). And, when reviewing the sufficiency of the evidence, “inconsistencies in the evidence are resolved in favor of the state.” *State v. Budreau*, 641 N.W.2d 919, 929 (Minn. 2002) (quotation omitted). The inconsistencies pointed to by Diaz are minor (if they even amount to inconsistencies). For example, Diaz asserts that K.I. made inconsistent statements during the CornerHouse interview, noting that K.I. stated that Diaz “tried” to do certain sexual acts but later stated: “[W]hen I say tried, most of the time it’s he did.” Because K.I.’s later statement clarified their earlier use of the word “tried,” these statements are not necessarily inconsistent. And K.I.’s clarification of the use of the word “tried” is not unexpected, given that K.I. was a teenager at the time and was being interviewed about a difficult topic by an individual they did not know. Accordingly, any discrepancies in K.I.’s use of the word “tried” during the CornerHouse interview do not require reversal. *See State v. Stufflebean*, 329 N.W.2d 314, 319 (Minn. 1983) (concluding that the victim’s testimony about “the particulars of a traumatic and extremely stressful incident . . . did not evince an attempt to commit perjury”).

Similarly, Diaz argues that K.I.’s testimony about whether Diaz showed K.I. pornographic material was inconsistent. Diaz bases this argument on responses that K.I. provided to questions during the CornerHouse interview and the medical examination. Based on our review of the record, it is unclear whether there is an inconsistency in the responses because the questions posed were ambiguous. But, even if we assume that K.I.’s

testimony about pornographic material was inconsistent, this testimony has no bearing on the elements of the charged offense. *See* Minn. Stat. § 609.342, subd. 1(b) (providing the elements of first-degree criminal sexual conduct). And, with regard to the elements of the crime, K.I. provided numerous consistent accounts of multiple instances of sexual abuse by Diaz. They did not waiver in that regard. Thus, any inconsistencies in K.I.’s statements were minor and do not require reversal. *See State v. Jackson*, 741 N.W.2d 146, 153-54 (Minn. App. 2007) (concluding that the evidence was sufficient to support the appellant’s first-degree criminal-sexual-conduct conviction despite “relatively minor” inconsistencies in the victim’s testimony, which this court viewed “in light of the traumatic nature of the [victim’s] rape and her other consistent testimony”), *rev. denied* (Minn. Oct. 21, 2008).

Next, we consider Diaz’s argument that the “lack of corroboration [of K.I.’s statements] and lack of other evidence create such doubt about Diaz’s guilt that his conviction must be reversed.” In making this argument, Diaz acknowledges that “the testimony of a victim of criminal sexual conduct generally need not be corroborated.” But Diaz asserts that this case is an exception to that general rule, relying on language from *State v. Ani*, 257 N.W.2d 699, 700 (Minn. 1977). In *Ani*, the supreme court explained that, “[e]ven though corroboration is not a requirement under the statute or the constitution, the absence of corroborations in 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.” *Id.*

Nevertheless, the court in *Ani* held that the case before it was “not such a case.” *Id.* The court noted that the victim’s testimony was positive, uncontradicted, and corroborated

by other evidence. *Id.* Similarly, here, K.I.’s statements were detailed, consistent as to the elements of the offense, and not contradicted by Diaz on the record. K.I. made multiple, consistent statements to various individuals—the school social worker, the forensic interviewer, and the medical examiner—detailing the abuse. These statements were corroborated by the statements of K.I.’s stepmother and stepsister. Thus, this is not a case “that may well call for a holding that there is insufficient evidence.” *Id.*; *see also State v. Myers*, 359 N.W.2d 604, 608 (Minn. 1984) (concluding that the child victim’s testimony was corroborated “to some extent” by the testimony of the child’s mother, a social worker, and a psychologist); *State v. Ross*, 451 N.W.2d 231, 237 (Minn. App. 1990) (holding that the evidence was sufficient to sustain criminal-sexual-conduct convictions where the child victim’s testimony was corroborated, in part, by her out-of-court statements), *rev. denied* (Minn. Apr. 13, 1990).

Finally, to support his contention that reversal is required here, Diaz cites to several supreme court cases where the court reversed criminal convictions due to questions about the victim’s testimony. *See 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). But each of these cases is distinguishable. In *Huss*, the court reversed the defendant’s criminal-sexual-conduct conviction because the child victim had been exposed to highly suggestive material before offering testimony. 506 N.W.2d at 292-93. Here, there is no evidence that K.I.’s testimony was influenced by another party. In *Langteau*, the court concluded that the victim’s uncorroborated testimony was insufficient to sustain the appellant’s aggravated-robbery conviction because the victim’s actions were

questionable. 268 N.W.2d at 77. Here, K.I. provided consistent statements to multiple individuals in various settings. And K.I. did not exhibit the sort of questionable behavior that would undermine the district court's credibility determination and warrant reversal of Diaz's conviction. *See id.* Finally, in *Gluff*, the court determined that a witness's identification of the defendant in a line-up was insufficient to sustain his conviction because the line-up was tainted and the witness saw the perpetrator only briefly. 172 N.W.2d at 65. This factual scenario does not apply here either. For these reasons, none of the cases relied on by Diaz suggest that reversal is required in this case.

In sum, we defer to the district court's credibility determination and conclude that the parties' stipulated evidence and facts were sufficient to prove beyond a reasonable doubt that Diaz committed first-degree criminal sexual conduct.

Affirmed.