STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0793

State of Minnesota,
Respondent,

vs.

William Oliver Labon,
Appellant.

Filed May 28, 2013
Affirmed
Smith, Judge

Ramsey County District Court
File No. 62-CR-10-7824

Lori Swanson, Minnesota Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David Merchant, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Smith, Judge.

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

SMITH, Judge

On appeal from his conviction of two counts of third-degree criminal sexual conduct, appellant argues that (1) the district court erred by admitting hearsay statements

the victim made to a nurse, and (2) the evidence is insufficient to support the jury's finding that appellant used force or coercion to sexually assault the victim. In a pro se supplemental brief, appellant makes additional arguments challenging his convictions. We affirm.

FACTS

Fourteen-year-old V.C. left her home to go on a bike ride on the afternoon of June 18, 2009. While riding her bike, a man she did not know approached her and asked her to accompany him to the park. After leaving the park and approaching an alley, the man grabbed V.C.'s bike, pushed her up against the alley wall, exposed himself, "grabbed [V.C.'s] head and pushed it down" to his genitals and, although she tried to keep her mouth closed, he continued to push until he penetrated her orally. He next attempted to penetrate her anally and, when she resisted, stuck his hand down her shorts. Throughout the encounter, she repeatedly protested and pulled away, but the man persisted and eventually pulled her shorts down and penetrated her vaginally with his penis. The incident ended when V.C. ran to her bike and "biked as fast as [she] could home."

When V.C. returned home she was "sobbing and crying and borderline hysterical." She described the events to her mother. Her parents then brought her to Midwest Children's Resource Center (MCRC) at the Children's Hospital in St. Paul. At MCRC, Laurel Edinburgh, a pediatric nurse practitioner, interviewed and examined V.C. Edinburgh interviewed V.C. alone in an examination room to obtain V.C.'s medical history and then conducted a thorough physical examination, including testing for pregnancy, HIV, and syphilis. Based on the information Edinburgh gathered during the

interview and examination, Edinburgh ordered medication for V.C. Edinburgh also collected samples for a sexual assault evidence kit. The DNA sample obtained from V.C.'s body matched that of appellant William Labon. Labon was arrested and was later charged with two counts of third-degree criminal sexual conduct.

Following the attack, the decline of V.C.'s mental and emotional condition prompted her parents to send her to an out-of-state treatment facility. V.C.'s therapist determined that returning to Minnesota would significantly damage her mental and emotional health and directed V.C. not to travel to Minnesota to testify at trial. Consequently, the state moved to admit the statements V.C. made during her MCRC interview with Edinburgh. Labon opposed the inclusion of these statements and wrote in a letter to the district court that "[t]he statements made to the doctors do not fit under other exceptions to the hearsay rule, such as the Medical Diagnosis Exception, as they deal with more than just what would be necessary for medical treatment." The district court ruled that V.C.'s statements to Edinburgh were admissible under the medical diagnosis hearsay exception of Minnesota Rule of Evidence 803(4).

A jury trial was held in December 2011 and Labon chose to proceed pro se. At the trial, the jury found Labon guilty of two counts of third-degree sexual conduct. *See* Minn. Stat. § 609.344, subd. 1(b), (c) (2008). The jury also found three aggravating factors, including V.C.'s vulnerability and the multiple forms of penetration. The district court sentenced Labon to 108 months' imprisonment. This appeal followed.

D E C I S I O N

I.

Labon argues that the district court failed to make the necessary foundational findings to admit Edinburgh's interview with V.C. Specifically, he contends that the record does not support the findings that V.C. knew that (1) she was talking to a medical professional and (2) it was important she tell the truth.

In the district court, Labon challenged the admission of V.C.'s statements to Edinburgh under the medical diagnosis hearsay exception on the basis that "they deal with more than just what would be necessary for medical treatment." He did not, as he does now, assert that the state's foundation was insufficient. *See State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980) (stating that failure to object to lacking foundation deprives the district court of the opportunity to evaluate the objection and deprives the state of the opportunity to provide additional foundation). Because he failed to raise his current objection at trial, we review his present claim for plain error. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (stating that a reviewing court has discretion to review unobjected-to issues if plain error is established). The three prongs of a plain-error analysis require that we assess whether there is (1) error, (2) that is plain, and (3) that affected the defendant's substantial rights. *Id.* If the three prongs are satisfied, we then assess whether fairness and the integrity of the judicial proceedings require addressing the error. *Id.*

Hearsay is inadmissible except as provided by the Minnesota Rules of Evidence. Minn. R. Evid. 802. Hearsay is defined as "a statement, other than one made by the

declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

The medical diagnosis hearsay exception admits out-of-court statements if the statements are "made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment." Minn. R. Evid. 803(4). Rule 803(4) relies on the patient's belief that accuracy is essential to effective treatment, thereby bolstering the inference that the statement is true. *See State v. Robinson*, 718 N.W.2d 400, 404 (Minn. 2006). Therefore, these statements are admissible only if the evidence suggests that the declarant knew that (1) he or she was speaking to medical personnel and (2) it was important to tell the truth. *State v. Salazar*, 504 N.W.2d 774, 777 (Minn. 1993).

The district court did not make explicit findings that V.C. knew she was talking to a medical professional and that it was important for her to be truthful, but these findings are implicit. This is particularly evidenced by the district court's findings regarding Edinburgh interviewing, administering tests, and prescribing medications "to protect" V.C. from various conditions, and the district court's conclusion that the "MCRC nurse practitioner's purpose in interviewing [V.C.] was to assess [V.C.]'s medical condition." These implicit findings are also supported by the record.

Speaking to medical personnel

The record establishes that V.C.'s statements to Edinburgh were made under circumstances that suggest V.C. knew Edinburgh was a medical professional. Edinburgh conducted the interview alone in a room that "look[s] like any clinic room that most people have been to in a medical office." The room included an exam table, small couch, chair, stool, and sink "so the exam room looks like a doctor's office." Edinburgh entered the examination room by identifying herself and saying, "I'm gonna talk with you and then I'm gonna do . . . a check up on your body." During the interview, Edinburgh used diagrams of children to learn what happened to V.C. These circumstances support the implied finding that V.C., a fourteen-year-old child, understood from the setting and Edinburgh's explanations that Edinburgh was a medical professional and that the purpose of the interview and examination was to determine whether V.C. needed medical treatment.

Importance of truthfulness

The record also supports the implied finding that V.C. understood the importance of telling the truth. V.C. met with Edinburgh shortly after the attack. When Edinburgh entered the room she told V.C. that she asks "a lot of questions . . . some of the questions I think are gonna be very easy for you . . . and some might be harder. If you don't understand a question that I'm asking, I just want you to tell me that you don't understand it." She followed up by saying, "It's really important to me that you don't guess about anything." Moreover, throughout the interview V.C. indicated she did not

know the answers to various questions, and at one point Edinburgh responded, "Thanks for telling me you didn't know something."

Regarding the importance of truth-telling, Labon argues that V.C. lacked the selfish motive to be truthful, as discussed in *State v. Larson*, because she was not seeking treatment for any condition. *See* 472 N.W.2d 120, 126 (Minn. 1991). In *Larson*, the Minnesota Supreme Court held that a three-year-old child, who was taken to a medical clinic to be examined after complaining of vaginal soreness and burning urination, had "the same 'selfish' treatment-related motive to speak the truth that anyone has when one goes to a doctor's office sincerely inquiring about one or more symptoms." *Id.* Although Labon contends that V.C. was not complaining of any medical problems, V.C. was "bawling," described herself as "just really sad," and her mother described her as "sobbing and crying and practically hysterical." Moreover, the interview environment "look[ed] like a doctor's office." We conclude that V.C. had a treatment-related motive for truthfulness and reasonably could have believed that the visit would result in some medical treatment.

Because the record supports the district court's implicit findings that the state laid sufficient foundation to admit V.C.'s statements to Edinburgh under the medical diagnosis exception of rule 803(4), the district court did not plainly err by admitting the statements.

II.

Labon next argues that the evidence at trial was insufficient to prove beyond a reasonable doubt that he "use[d] force or coercion to accomplish the penetration" as required by Minn. Stat. § 609.344, subd. 1(c).[1] "Force" is defined as

> the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

Minn. Stat. § 609.341, subd. 3 (2008). "Coercion" is defined as

> words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant's will. Proof of coercion does not require proof of a specific act or threat.

Id., subd. 14 (2008).

When considering a challenge to the sufficiency of the evidence, our review is limited to a careful analysis of the record to determine whether the evidence, when viewed in the light most favorable to the verdict, was sufficient to permit the jury to reach a guilty verdict. *See State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). In doing so, we assume that the jury believed the evidence supporting the verdict and disbelieved any evidence to the contrary. *State v. Asfeld*, 662 N.W.2d 534, 544 (Minn. 2003). We give

[1] We note that even if we were to conclude that the evidence was insufficient to support Labon's conviction under Minn. Stat. § 609.344, subd. 1(c), such a conclusion would not affect the jury's verdict of guilty under Minn. Stat. § 609.344, subd. 1(b).

deference to the jury's determination of witness credibility and to the weight given to each witness's testimony. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990). We 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 is guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Contrary to Labon's assertion, the finding that he committed the offense with force or coercion is supported by the record. In V.C.'s account of the assault, she described herself as "up against a fence," repeatedly described Labon as "pushing her head down," and said she repeatedly tried to pull away. When discussing the oral penetration, she described that she had her mouth shut and was trying to say no, but indicated that Labon forced himself into her mouth. She also reported that Labon grabbed the back of her pants and was "trying to have . . . anal sex with [her]." During the vaginal intercourse he had his arms around her arms and hips. Numerous times during the encounter V.C. said "no!," "[p]lease don't!," "I don't want that," "[p]lease stop it!," and "[d]on't do that!" When Labon released her, V.C. ran over to her bike and "biked as fast as [she] could home." When asked how she felt during the incident, V.C. described herself as "really scared."

From the evidence presented, the jury could reasonably conclude that Labon used force or coercion to accomplish the penetration. This is especially true because the statutory definition of coercion does not require proof of a specific act or threat. Minn. Stat. § 609.341, subd. 14. Accordingly, Labon's argument fails.

III.

Finally, Labon raises a number of issues in his pro se supplemental brief. An assignment of error in a brief based on mere assertion and unsupported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006), *aff'd*, 728 N.W.2d 243 (Minn. 2007).

Labon argues that the "grand jury was all hearsay because there [were] no witness there every witness was ask to raise they hands and [swear] to tell the truth under oath how do we know they did." A review of the record reveals that Labon is not challenging a grand jury proceeding, but instead a preliminary hearing conducted in a grand jury room. The hearing was held to determine whether V.C. was available to testify at the trial. The district court asked each witness who was not physically present to raise his or her right hand and swear under oath to tell the truth. The witnesses complied. Although Labon is correct that we cannot determine with complete certainty whether each witness raised his or her hand when taking the oath or whether each was truthful, no dishonesty is apparent from the record. V.C.'s mother testified at both the preliminary hearing and at trial, and her testimony at both proceedings was consistent. A mental health counselor also testified at the preliminary hearing. Labon asserts that the counselor "never really stated who he was." But this assertion is without merit. The counselor provided his name and stated his credentials as a licensed professional counselor, and then discussed his educational history, work history, professional associations, professional licenses, current work duties, and the types of patients he treats.

Labon makes additional assertions but does not support them with authority or argument. First, Labon argues that the district court erred in its application of the hearsay rules of evidence because it "rule[d Labon] out to say a lot to the witness." However, he does not identify which particular hearsay ruling was erroneous or what information he was prevented from procuring, nor does he name the witness holding the suppressed information. Labon also asserts that the state never established the time of the offense. But the state established that the incident occurred in the late afternoon of June 18, 2009, and that V.C. was away from her house for approximately one hour. Indeed, Labon's counsel included this information in his brief to this court. Next, as he did at trial, Labon challenges the lack of a lineup or photographic array. In his closing argument at trial, Labon stated: "I thought when you got a sexual assault case you're supposed to be put in a line-up to be picked to see if you are the guy or not. I never was." However, he offers no authority to support that a lineup or photographic array is required. Finally, Labon asserts, "I score a minus seven a minus six of these points come from allegations themselves." These numbers ("minus six" and "minus seven") were discussed at the March 4, 2011, hearing regarding his bail amount. However, without a more precise argument regarding what Labon is challenging, we are unable to grant relief. Mere inspection of the record does not reveal obvious prejudicial error. *See Wembley*, 712 N.W.2d at 795.

Affirmed.