STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1241

State of Minnesota,
Respondent,

vs.

Richard Dominguez,
Appellant.

Filed July 9, 2018
Affirmed
Hooten, Judge

Steele County District Court
File No. 74-CR-17-148

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

Jason Iacovino, Assistant City Attorney, Henefield & Iacovino, Blooming Prairie, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Hooten, Judge.

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

HOOTEN, Judge

Appellant challenges his conviction for domestic assault, arguing that the uncorroborated testimony of the victim was insufficient to sustain a conviction. He also

argues that the district court's restitution order should be vacated because it is not authorized by law. Because the victim's testimony was sufficiently reliable on its own and because it was also corroborated by another witness, we affirm appellant's domestic assault conviction. Because appellant's restitution argument is not properly before this court, we decline to consider it.

FACTS

Appellant Richard Dominguez lived with L.T. and her husband, R.T., in the basement of their house from approximately mid-November 2016 until January 22, 2017. The parties do not agree on whether L.T. was allowing Dominguez to live at the house for free or if he was paying rent.

L.T. testified at trial that on January 19 she asked Dominguez to move out, but that he did not immediately do so. On January 22, she and her husband resolved to confront Dominguez about moving out, so they went to the stairs leading down to the basement and called down, asking Dominguez to come talk to them. Dominguez then ran up the stairs and "started hitting [L.T.] with sticks," repeatedly hitting her arms. Dominguez also attempted to hit R.T. who was standing farther up the stairs behind L.T. R.T. initially grabbed a mop and tried to hit Dominguez with it, but he eventually ran off to get a baseball bat. L.T. was able to get away from Dominguez and call 911. As a result of the attack, she had a bruise on one arm and red marks on the other.

R.T. offered a similar version of the events when he testified at trial. He explained that when Dominguez was attacking L.T., he "saw [Dominguez] swinging both hands, and . . . assumed he was hitting" L.T., but his view was blocked.

Dominguez also testified at trial but told a very different story. He explained that there were tensions between L.T. and her husband regarding their finances and that L.T. had not told R.T. that Dominguez was paying rent to stay at the house. On January 22, L.T. and R.T. had a fight about money, and later that day, L.T. messaged Dominguez, telling him to move out. Dominguez started to pack up his clothes, but while doing so, the wooden dowel that his clothes were hanging on broke. The noise attracted L.T. and R.T.'s attention, and they came to the top of the stairs and screamed at him, asking him what he was breaking. In response, Dominguez walked to the stairs and showed L.T. one of the pieces of the broken dowel. R.T. then started throwing things at Dominguez, including a mop and a vacuum cleaner. Dominguez told L.T. to call the police because he wanted to be able to safely move his things out of the house. Dominguez denied ever going up the stairs or hitting L.T. with anything.

Dominguez was arrested and charged with gross misdemeanor domestic assault under Minn. Stat. § 609.2242, subds. 1(2), 2 (2016). After a two-day trial, the jury found Dominguez guilty. L.T. then filed an affidavit for restitution. The affidavit claimed $900 for three months of rent, $600 for three months of food, $100 for gas money, $400 for expenses related to a laptop and printer, $100 for the repair of a stair railing, $400 for two headlights, and $300 for utilities, totaling $2,800. Although L.T. filed her affidavit with the district court on May 5, 2017, Dominguez neither requested a restitution hearing nor objected to the restitution claimed by L.T. at the sentencing hearing on May 10. The district court sentenced Dominguez to 365 days in jail, stayed the sentence for a year, and awarded L.T. $2,800 in restitution. This appeal follows.

D E C I S I O N

I.

Dominguez first argues that his conviction should be overturned because L.T.'s uncorroborated testimony did not establish beyond a reasonable doubt that he assaulted her. When reviewing a conviction for sufficiency of the evidence, we are limited to determining whether the jury could reasonably have found the appellant guilty while giving due regard to the burden of proof and the presumption of innocence. *State v. Webster*, 894 N.W.2d 782, 785 (Minn. 2017). This involves adopting "the view of the evidence most favorable to the state" and "assuming the jury believed the state's witnesses and disbelieved any contradictory evidence." *Id.* (quotation omitted).

Dominguez relies on a line of cases that overturned convictions based largely on uncorroborated testimony. While "a conviction can rest on the uncorroborated testimony of a single credible witness," the Minnesota Supreme Court has overturned convictions when there is reason to doubt the credibility of the single witness providing the uncorroborated testimony. *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted); *see also State v. Ani*, 257 N.W.2d 699, 700 (Minn. 1977) ("[T]he absence of corroboration 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." (emphasis omitted) (quotation omitted)).

Dominguez cites to three cases where such convictions were overturned. In *State v. Gluff*, the supreme court overturned an aggravated-robbery conviction because the eyewitness called to testify made a highly unreliable identification of the defendant, leading

the court to say that "proof on the one critical issue is permeated with doubt." 285 Minn. 148, 151, 172 N.W.2d 63, 65 (1969). In *State v. Langteau*, the supreme court overturned another aggravated robbery conviction where the only witnesses who testified were the defendant and the victim. 268 N.W.2d 76, 77 (Minn. 1978). The defendant "at all times . . . categorically denied any involvement in the crime" and "nothing was discovered to link him with the crime." *Id.* And the supreme court seemed to find the victim's version of events odd, pointing out that his actions were unexplained. *Id.* In *State v. Huss*, the supreme court overturned a criminal-sexual-conduct conviction. 506 N.W.2d 290 (Minn. 1993). The supreme court explained that the victim, who was three years old at the time of the alleged abuse, gave contradictory testimony "as to whether any abuse occurred at all, and was inconsistent with her prior statements and other verifiable facts," and that she had repeatedly been exposed to a highly suggestive book by her mother and therapist, which "may have improperly influenced [her] report of events." *Id.* at 292–93.

Dominguez's case is distinguishable from these cases. Unlike in *Gluff*, where the eyewitness did not know the defendant and had only observed the attacker for a short period of time, L.T. knew Dominguez and there is no real question as to whether she accurately identified him. Unlike in *Huss*, L.T. is not a small child, she did not give any flagrantly contradictory testimony, and there is nothing in the record that suggests that she was improperly influenced in her version of what happened.

The only case that could be comparable is *Langteau*. Just like Langteau, Dominguez "categorically denie[s] any involvement in the crime." 268 N.W.2d at 77. But the comparison between the two cases fails for two reasons.

First, unlike in *Langteau*, where there was nothing to link the defendant to the crime, there were things linking Dominguez to this assault. He was admittedly in the house at the time of the alleged assault, the dowel allegedly used to hit L.T. was in his living area, and he acknowledges having part of it in his hands at the bottom of the stairs.

Second, R.T. corroborates L.T.'s testimony. While he testified that he did not see Dominguez actually make contact with L.T., R.T. still described Dominguez as swinging the two parts of the dowel at his wife and he assumed that Dominguez was succeeding in striking her. Dominguez argues that this does not constitute corroboration. But there is minimal distinction between actually seeing Dominguez strike L.T. as opposed to seeing him swing the dowels at her and, as evidenced by the bruise on her one arm and the red marks on her other arm, presumably making contact. We conclude that L.T.'s testimony *was* corroborated by her husband's own testimony.

We also note that even if there was no corroboration, L.T.'s testimony did not have the same indicia of unreliability as was demonstrated in *Langteau*, *Gluff*, and *Huss*, so it could stand on its own without corroboration. We conclude that there was sufficient evidence to convict Dominguez of domestic assault.

II.

Dominguez next challenges the district court's $2,800 restitution order. Courts are authorized to order restitution for "out-of-pocket losses resulting from" a crime for which a defendant is convicted. Minn. Stat. § 611A.04, subd. 1(a) (2016). Such orders are reviewed for an abuse of discretion, "[b]ut determining whether an item meets the statutory

requirements for restitution is a question of law that is fully reviewable by the appellate court." *State v. Nelson*, 796 N.W.2d 343, 346–47 (Minn. App. 2011) (quotation omitted).

A defendant may challenge a restitution request. To do so, he typically must "request[] a hearing within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of sentencing, whichever is later," and he must do so in writing. Minn. Stat. § 611A.045, subd. 3(b) (2016). A defendant "may not challenge restitution after the 30-day time period has passed." *Id.* But this 30-day written-notification requirement only applies when the defendant challenges "the amount or type of restitution," and it does not apply when the defendant is challenging the district court's legal authority to award restitution. *State v. Gaiovnik*, 794 N.W.2d 643, 647 (Minn. 2011) (examining a defendant's challenge to the district court's legal authority to award restitution when the victim had not requested restitution). While Dominguez made no such written request, he argues that his challenge falls under the *Gaiovnik* exception.

Specifically, Dominguez argues that because the losses claimed by L.T. in her restitution request were not directly caused by the crime for which he was convicted, the district court did not have the authority to order restitution for those losses. It is true that "a loss claimed as an item of restitution . . . must have some factual relationship to the crime committed—a compensable loss must be directly caused by the conduct for which the defendant was convicted." *Nelson*, 796 N.W.2d at 347 (quotation omitted). But even assuming, without deciding, that his challenge is to the district court's legal authority and that he was therefore not required to submit a written challenge, Dominguez was nonetheless required to first raise the restitution issue in district court. *See Thiele v. Stich*,

425 N.W.2d 580, 582 (Minn. 1988) (stating that an issue generally has to be presented to the district court in order for an appellate court to consider it). Indeed, the court in *Gaiovnik* noted specifically that the exception it created was limited to circumstances "where the only challenge is to the legal authority of the court to order restitution *and that challenge was raised in the district court*." 794 N.W.2d at 648 (emphasis added). Accordingly, the question of whether the district court had the legal authority to order these particular items of restitution is not properly before this court.

Dominguez maintains that we can address the restitution question despite the fact that he did not raise it in district court. His argument relies upon three premises. First, that restitution is part of a defendant's sentence. *State v. Borg*, 834 N.W.2d 194, 197–98 (Minn. 2013). Second, that the right to a lawful sentence cannot be waived or forfeited. *State v. Maurstad*, 733 N.W.2d 141, 146–48 (Minn. 2007). And third, that "[t]he court may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. While these premises are individually correct, they do not together permit this court to disregard *Gaiovnik*'s express requirement that claims of this nature be submitted to the district court before they may be raised on appeal.

We also note that considering the restitution issue for the first time on appeal would not only be unfair to the state and the victim, but it would also be contrary to the statutory scheme set forth in Minn. Stat. §§ 611A.04 and .045, subd. 3(a) (2016). Under the restitution statutes, when a defendant challenges restitution by timely requesting a restitution hearing, "the court must notify the offender, the offender's attorney, the victim, the prosecutor, and the Crime Victims Reparations Board at least five business days before

the hearing." Minn. Stat. § 611A.04, subd. 1(b). At the hearing, the defendant has the "burden to produce evidence" challenging restitution, but once that burden has been met, "[t]he burden of demonstrating the amount of loss sustained by a victim as a result of the offense . . . is on the prosecution." Minn. Stat. § 611A.045, subd. 3(a). By vacating the restitution order on appeal, as proposed by Dominguez, we would be denying the state the opportunity to meet its burden and disallowing the victim's claim for restitution without her participation. Such a result would not further the restitution statutes' purpose of compensating victims for their out-of-pocket losses resulting from a crime. We therefore decline to consider appellant's legal challenge to the district court's restitution award, but note that this issue is preserved for further proceedings in district court should appellant later choose to initiate them.

Affirmed.