STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1561

State of Minnesota,
Respondent,

vs.

Maurice Ray Washington,
Appellant.

Filed August 27, 2018
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CR-16-10405

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Connolly, Judge; and Rodenberg, Judge.

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

CONNOLLY, Judge

Appellant appeals his conviction for third-degree criminal sexual conduct, arguing that the state failed to prove his guilt beyond a reasonable doubt and that the prosecution committed serious misconduct while cross-examining him. He also raises additional issues in his pro se brief. We affirm.

FACTS

Appellant Maurice Ray Washington was charged with and convicted of third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(b) (2014). Appellant waived his right to a jury trial. During a bench trial, the district court heard the following evidence, among other things.

In late 2014 and early 2015, K.Y. was 13 years old and in eighth grade. She lived in a two-bedroom apartment with her sister and her mother. K.Y. and her sister each had a bedroom, and their mother slept in the living room. K.Y.'s sister met appellant in either 2012 or 2013 when she was a senior in high school and he was in prison, and they eventually started a romantic relationship. When appellant got out of prison, he began spending nights at the family's apartment. Appellant was 24 years old at the relevant time, and he knew that K.Y. was in middle school because he "went along" when K.Y. was driven to school and, according to appellant's testimony, he believed K.Y. was 10 to 11 years younger than he was. Appellant earned money from selling marijuana, and he would sometimes sell it to K.Y. and her friends.

In early 2015, appellant began spending almost every night at the family's apartment. He was neither working nor going to school and he did not have a car. K.Y.'s sister was away at work from 7:30 a.m. to 5:30 p.m. every day. During this time, appellant and K.Y. began to interact more; they began to "hang out" by watching movies, listening to music, and talking. K.Y.'s sister and mother noticed that K.Y. and appellant had begun spending time together, and they were grateful that appellant was "acting and expressing that he was like an older brother" to K.Y. because K.Y. had no father or brother living with her.

At some point between March 1, 2015, and May 1, 2015, while K.Y. and appellant were alone in K.Y.'s room watching a movie, appellant had sexual intercourse with K.Y. Afterward, K.Y.'s sister came to the bedroom door, and appellant left to go to the store with her. K.Y. did not tell her sister what had happened. After this first assault, appellant assaulted K.Y. many more times, and for an unknown number of days, appellant assaulted K.Y. almost daily. These incidents happened when no one else was home or when her sister was sleeping, cooking, or in another room.

Appellant assaulted K.Y. at least once outside of her apartment. In April of 2015, K.Y.'s sister and appellant were house sitting for a friend in the city of New Hope. Appellant drove K.Y.'s sister's car, picked up K.Y. from the family apartment, and brought her to the New Hope home. K.Y.'s sister had left to give plasma and was gone for two to three hours. Appellant had sexual intercourse with K.Y. while K.Y. was menstruating, and blood got on the sheets. When K.Y.'s sister returned, she noticed the blood, and after K.Y. had left, her sister asked appellant about it. Appellant said it came from one of the dogs

biting its nails, but K.Y.'s sister checked the dogs and did not see any blood on them. She also did not see blood on appellant.

K.Y. told no one of the sexual assaults. Appellant did not threaten her, but told her that he would get in trouble and "go away for a long time" if she told. K.Y. testified that she did not tell anyone because she was embarrassed and thought it was her fault. She also knew that her sister was in love with appellant, and K.Y. did not want to hurt her.

Appellant and K.Y. began texting each other after the first assault. Appellant told K.Y. to delete the text messages, which were sometimes of a sexual nature and sometimes included plans to meet her. Appellant initially denied texting K.Y., and he denied texting her at "all hours of the day and night." However, K.Y.'s sister paid for appellant's cell phone, and she testified that she saw the bills and saw that K.Y. and appellant messaged each other often. Additionally, a police examination of K.Y.'s cell phone records revealed extensive communication between appellant and K.Y., beginning on March 3, 2015. The communication was initiated by appellant and included over 2,000 text messages over two months. The time frame of the text messages was consistent with the time frame that appellant was having sex with K.Y.

K.Y.'s sister first became suspicious about a sexual relationship between appellant and K.Y. after she found the bloody sheets. She became more suspicious one day when she, K.Y., and appellant went to the park across the street from the family's apartment. She wanted bread to feed the ducks, and appellant said he and K.Y. would go get some. After waiting about 30 minutes, K.Y.'s sister walked back to the apartment; both doors were locked, and when she yelled for someone to open the door, appellant came from the

hallway that led to the bedrooms. He had changed from jeans and a t-shirt into basketball shorts and no shirt. K.Y., who had followed behind appellant, had changed into shorts and a shirt. K.Y.'s sister asked appellant what was going on, and they began to argue. He said "I'm not talking to you," and left.

K.Y.'s mother made a police report the same day as the park incident. She testified that when she was visiting her niece in the hospital, her niece told her that appellant was having sex with K.Y. K.Y.'s sister did not call the police. She and appellant broke up after May 2, 2015, when the police got involved. She was angry with appellant because he refused to answer whether or not he did what was alleged. The day that the police were called, K.Y. was angry, upset, crying, yelling at everyone, and would not speak to anyone. K.Y. testified that she did not want to get appellant in trouble. After the police report was made, K.Y. told her mother that what was said about her "physical involvement" with appellant was true. About a month after the police got involved, on June 4, 2015, K.Y. participated in a forensic interview with an interviewer qualified as an expert in the area of child sexual abuse. In mid-May, after the police report was made, K.Y. and her family became aware that appellant had fraudulently claimed K.Y. as a dependent on his taxes.

Appellant waived a jury trial and the district court found appellant guilty of third-degree criminal sexual conduct and sentenced him to 168 months in prison. This appeal follows.

D E C I S I O N

Appellant argues that his conviction for third-degree criminal sexual conduct should be reversed because there is insufficient evidence to prove beyond a reasonable doubt that

appellant sexually penetrated K.Y. Alternatively, appellant argues that his conviction should be reversed and remanded for a new trial because the prosecutor committed serious misconduct through cross-examination questioning. Additionally, appellant's pro se supplemental brief adds multiple arguments that are either waived or duplicative.

I.

When considering a claim of insufficient evidence, this court will affirm 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. Dorn*, 887 N.W.2d 826, 830 (Minn. 2016). The reviewing court must assume that the fact-finder "believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). "This is especially true where resolution of the case depends on conflicting testimony, because weighing the credibility of witnesses is the exclusive function of the [fact-finder]." *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). Appellate courts "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).

To convict appellant of third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(b), the state was required to prove that appellant sexually penetrated K.Y. when she was at least 13 years old but less than 16 years old and appellant was more than 24 months older than K.Y. Minn. Stat. § 609.344, subd. 1(b). Sexual penetration includes "sexual intercourse, cunnilingus, [or] fellatio," or "any intrusion however slight into the genital or anal openings." Minn. Stat. § 609.341, subd. 12 (2014).

Appellant does not challenge the sufficiency of the state's evidence with respect to his or K.Y.'s age.

Appellant's argument solely challenges K.Y.'s credibility. He argues that this court must reverse his conviction because there are "additional reasons" to question K.Y.'s credibility and the state presented no corroborating evidence. *See State v. Huss*, 506 N.W.2d 290, 292-93 (Minn. 1993) (holding that testimony of the alleged victim of child abuse was insufficient to convict because it was not sufficiently credible and the victim had been exposed to highly suggestive material by the state). The "additional reasons" that appellant gives for questioning K.Y.'s credibility include that K.Y. initially denied the incident to the police, and that it is reasonable to believe that K.Y. had a motive to fabricate the allegations. These arguments were considered by the district court when weighing K.Y.'s credibility.

"[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). Appellate courts defer to the fact-finder's credibility determinations. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). Here, the district court found that K.Y. was "an extremely credible witness" because her demeanor was consistent with the nature of her testimony and her testimony was "remarkably consistent" with her forensic interview even though they were two years apart and she had not reviewed that interview. The defense argued that K.Y. was not credible because she initially denied everything to the police. The district court found:

> It is not surprising that [K.Y.] initially failed to acknowledge what happened to [the] police, considering she was a 13 year old girl confronted with accusations about which she felt conflicted, angry, afraid, and ashamed. Her initial reaction – that of nondisclosure – is consistent with the possible reactions of a child victim of sexual assault.

On the other hand, the district court found that appellant's credibility was negatively affected by, among other things, the following facts that he admitted in his testimony:

- Appellant cheated on K.Y.'s sister with other females and lied to her by telling her that he was not cheating;
- Appellant was illegally providing and selling marijuana to K.Y. and other middle-school- and high-school-aged children and using marijuana with K.Y.;
- Appellant initially denied that K.Y.'s sister let him use her car, but later referred to it as "basically our car";
- Appellant filed a fraudulent tax return to receive an improper $6,000 refund;
- Appellant initially denied texting K.Y., but later acknowledged that he texted her "a couple times";
- Appellant has four prior felony convictions in the last ten years;
- Appellant acknowledged that he and his friends are "in the streets" and "doing stuff they aren't supposed to be doing";
- Appellant repeatedly denied that he was ever alone with K.Y. in the whole time that he knew her—a period of two to three years; and
- Appellant described his relationship with K.Y. as being "close" but not friends.

Appellant argues that K.Y.'s testimony was unreliable because she had a motive to lie about the incident. Appellant claims that K.Y.'s sister may have asked K.Y. to create her testimony to "get back at him" for his "alleged infidelity." Appellant also claims that K.Y. may have lied in her testimony because her family was upset with him for fraudulently claiming K.Y. as a dependent on his taxes.

The determination of whether a witness was reliable is a matter for the fact-finder, not the reviewing court. *See State v. White*, 357 N.W.2d 388, 390 (Minn. App. 1984). Evidence of bias and motive are relevant considerations for a fact-finder to assess witness

credibility. *See State v. Larson*, 787 N.W.2d 592, 598 (Minn. 2010). Here, the district court found that "[t]here is no credible evidence that there was a scheme by any of the women to get [appellant] in trouble because [K.Y.'s sister] was trying to get revenge on him." The district court also found that:

> There is insufficient evidence to support the claim that [appellant] was being set up by any of the female witnesses related to [appellant] fraudulently claiming [K.Y.'s] exemption on his tax return in early 2015. By all accounts, this did not become an issue of concern within the family until mid-May, well after the police report was made.

Appellant raises no persuasive reasons for this court to second guess the district court's credibility assessment. Appellant merely states that it is reasonable to believe that the women had motive to "get back at" appellant. Thus, K.Y.'s credible testimony—along with other corroborating witness testimony—is evidence that sufficiently supports appellant's third-degree criminal-sexual-conduct conviction.

II.

Appellant also argues that serious prosecutorial misconduct occurred when the prosecutor cross-examined appellant because the questions were (1) criticisms of the presumption of innocence and appellant's right to have a contested trial, (2) attempts to inflame the passions of the fact-finder, and (3) attempts to elicit inadmissible evidence from appellant.

Defense counsel objected to the relevant cross-examination questions. There are two standards for determining whether objected-to prosecutorial misconduct merits reversal; serious misconduct requires reversal unless it is harmless beyond a reasonable

doubt. *State v. Caron*, 300 Minn. 123, 127, 218 N.W.2d 197, 200 (Minn. 1974). An error is "harmless beyond a reasonable doubt if the verdict rendered was surely unattributable to the error." *State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003) (quotation omitted). If the misconduct is "less serious," the standard for reversal is "whether the misconduct likely played a substantial part in influencing the [fact-finder] to convict." *Id.* Appellant argues that serious misconduct occurred here.

The following exchange ensued during direct-examination of appellant:

> Q: [Appellant], you've heard that the [s]tate is probably going to bring up some prior convictions that you have, right?
> A: Yes, I do.
> Q: Did you go to trial in those cases?
> A: No, I did not.
> Q: Why not?
> A: I was – I know I did it, so it wasn't no point with me playing around knowing I did do those things.
> Q: Okay. And so you're here today because you didn't have any sexual contact with [K.Y.]?
> A: Correct. Yes.

After appellant's attorney opened the door to this line of questioning, the prosecutor and appellant had the following exchange on cross-examination:

> Q: You said you are on trial in this case, but you didn't go to trial to any of those on [other] cases; is that correct?
> A: Correct. Yes.
> Q: And that's why you're here in trial; is that right?
> A: Yes.
> Q: You know you didn't have an offer to resolve this case going into this trial?
> [APPELLANT'S COUNSEL]: Objection. That's not true.
> [PROSECUTOR]: It is true.
> [APPELLANT]: An offer? Can you define what you mean by that?
> [PROSECUTOR]: The judge has to rule.

[THE COURT]: I'm going to sustain the objection. My notes indicate there was an offer. I'm sorry, that's the other case. No. I show that there was an offer in January. I'm sustaining the objection.
[PROSECUTOR]: Can I rephrase, Your Honor?
[THE COURT]: Depends on what your rephrase is.
Q: [Appellant], you know that the offer to resolve your case was withdrawn two weeks ago?
A: Yes.
. . . .
Q: You don't want to admit in front of women who you associate with that you have sex with children do you, [appellant]?
[APPELLANT'S COUNSEL]: Objection; argumentative.
[APPELLANT]: Never had sex with a child.
[THE COURT]: Sustained.
[PROSECUTOR]: It's a far cry from admitting to an assault or an aggravated robbery than it is to admit that you have sex with a child. Would you agree?
[APPELLANT'S COUNSEL]: Objection; argumentative.
[APPELLANT]: Those are all—
[THE COURT]: Sto[p]. Just wait, sir.
[APPELLANT'S COUNSEL]: Argumentative.
[THE COURT]: Sustained.

Appellant first argues that the prosecutor criticized appellant's decision to not plead guilty and exercise his constitutional right to trial, which Minnesota courts have held is misconduct. *See State v. McNeil*, 658 N.W.2d 228, 235 (Minn. App. 2003) ("It is misconduct for a prosecutor to attack a defendant for exercising his right to a fair trial."). Appellant argues that the prosecutor's questions were attempts to establish that appellant's exercising his right to trial was not based on his presumption of innocence, but by his reluctance to admit to having sex with children.

Appellant next argues that the prosecutor's questions constituted serious misconduct because they were intended to inflame the passions and prejudices of the fact-

finder, which, as a general rule, the state must avoid. *State v. Porter*, 526 N.W.2d 359, 363 (Minn. 1995). Appellant argues that the prosecutor's questions were not related to the facts of the case, "but instead focused on the prosecutor's narrative of why [a]ppellant would not admit to having 'sex with children.'"

Finally, appellant argues that the prosecutor's questioning was serious misconduct because he was attempting to elicit inadmissible evidence from appellant. The "inadmissible evidence" that appellant cites is appellant's reason for not entering into a plea agreement. *See State v. Jackson*, 325 N.W.2d 819, 822 (Minn. 1982) (holding that evidence of guilty-plea negotiations is inadmissible at trial).

It is likely that no prosecutorial misconduct occurred here because defense counsel opened the door for appellant's character to be challenged by the prosecutor's line of questioning. *See State v. Nunn*, 399 N.W.2d 193, 196 (Minn. App. 1987) (holding that the appellant's trial testimony that he pleaded guilty in a prior case because he was guilty and went to trial in the instant case because he was innocent "put one aspect of appellant's character into issue: his asserted attribute of taking responsibility for his criminal acts"), *review denied* (Minn. Mar. 13, 1987). However, assuming for the sake of argument that serious misconduct occurred, any error is harmless beyond a reasonable doubt because the district court's verdict is surely unattributable to the prosecutor's cross-examination questions.

Appellant received a bench trial because he had waived his right to a jury trial. The district court sustained appellant's objections to the prosecutor's questions on the grounds that they were argumentative. The Minnesota Supreme Court has held that during bench

trials, "judges will set aside 'extraneous matters' and decide cases on their merits." *State v. Dorsey*, 701 N.W.2d 238, 247 (Minn. 2005); *see State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009) (holding that the distinction between jury trial and bench trial is important and that risk of unfair prejudice is reduced because there is comparatively less risk that a judge would use *Spreigl* evidence for improper purpose). There was no prejudice to appellant resulting from the prosecutor challenging appellant's motive to go to trial rather than plead guilty.

III.

Appellant also filed a pro se supplemental brief, wherein he raises multiple incoherent arguments. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) ("We will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority.").

Appellant states that he received ineffective assistance of counsel because he was "deprived a 'motion' for months, which caused [his] 'defense' in trial to be labeled unprepared." Appellant cites no legal authority to support his assertion that this amounts to ineffective assistance of counsel; therefore, this argument is waived. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (holding that a pro se defendant's assertions are deemed waived if they contain no argument or legal authority to support the allegations).

Appellant also argues that certain evidence should not have been admitted. "The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn.

1997) (quotation omitted). Again, appellant cites no legal authority to support his assertion that the district court's evidentiary rulings were based on erroneous views of the law or constituted an abuse of discretion. Thus, this argument is also waived.

Appellant also argues that he was deprived of his constitutional right to confront the witnesses against him because the state did not subpoena K.Y.'s cousin, who K.Y.'s mother testified told her about K.Y. and appellant's sexual relationship. Appellant claims that K.Y.'s cousin's testimony was used as evidence to support the state's case against him, but there is no evidence that K.Y.'s cousin testified. *See State v. Manley*, 664 N.W.2d 275, 286 (Minn. 2003) (refusing to consider portions of pro se briefs that contain only argument and are not supported by the facts in the record).

Finally, appellant argues that K.Y.'s testimony was not credible, which is duplicative of appellant's insufficiency-of-evidence argument addressed above.

Affirmed.