STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1035

State of Minnesota,
Respondent,

vs.

Quentin Pierre Arnold,
Appellant.

Filed December 20, 2021
Affirmed
Klaphake, Judge[*]

Hennepin County District Court
File No. 27-CR-19-6081

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Ira Whitlock, Whitlock Law Office, L.L.C., St. Paul, Minnesota (for appellant)

Considered and decided by Segal, Chief Judge; Cochran, Judge; and Klaphake, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

In this appeal from appellant Quentin Pierre Arnold's convictions for promoting prostitution, appellant argues that the evidence is insufficient, the district court abused its discretion in its evidentiary rulings, and he received ineffective assistance of counsel. Because the evidence was sufficient to support the jury's verdict and the district court did not abuse its discretion in its evidentiary rulings, we affirm. We decline to address appellant's ineffective-assistance-of-counsel claim.

DECISION

I.

When evaluating the sufficiency of the evidence, we "examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). A verdict will not be overturned if the jury, giving due regard to the presumption of innocence and the state's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense. *Id.* When a conviction is based on circumstantial evidence, we use a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). We first identify the circumstances proved, deferring to the jury's acceptance of the state's evidence and its rejection of conflicting evidence. *Id.* at 598-99. We then determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt. *Id.* at 599.

Appellant was convicted by a jury of promoting the prostitution of D.K., C.H., and C.J., in violation of Minn. Stat. § 609.332, subd. 1a(2) (2016). There are three elements of promoting prostitution under that statute: (1) a person acting other than as a prostitute or patron; (2) intentionally; (3) promotes the prostitution of an individual. A person "promotes the prostitution of an individual" if a person knowingly:

> (1) solicits or procures patrons for a prostitute;
> (2) provides, leases or otherwise permits premises or facilities owned or controlled by the person to aid the prostitution of an individual;
> (3) owns, manages, supervises, controls, keeps or operates, either alone or with others, a place of prostitution to aid the prostitution of an individual;
> (4) owns, manages, supervises, controls, operates, institutes, aids or facilitates, either alone or with others, a business of prostitution to aid the prostitution of an individual;
> (5) admits a patron to a place of prostitution to aid the prostitution of an individual; or
> (6) transports an individual from one point within this state to another point either within or without this state, or brings an individual into this state to aid the prostitution of the individual.

Minn. Stat. § 609.321, subd. 7 (2016).

The circumstances proved at appellant's trial are extensive. Law enforcement received a tip that appellant was promoting prostitution. A police officer located a vehicle associated with appellant in the parking lot of the AmericInn Hotel in Bloomington. The officer followed the vehicle as it drove away and initiated a traffic stop, during which the officer recognized appellant and arrested him. When appellant was arrested, appellant had a keycard for room 342 at the AmericInn Hotel and multiple cell phones.

Room 342 had been rented by appellant's mother, and appellant's mother had texted appellant the room number. A police officer found D.K. in room 342, along with another woman, condom boxes, lingerie, and several cell phones. While the officer spoke with the women, D.K.'s cell phone was ringing continuously with unsaved phone numbers. Search warrants were obtained for the phones found with appellant and for the phones found in room 342. The contents retrieved from appellant's cell phones included photographs, text messages, call logs, and websites visited.

Officers found several ads online depicting D.K., C.H., and C.J. The ads solicited sex for money. Several of the ads listed appellant's phone number. Appellant's cell phone contained screenshots of C.H.'s sex ad and photographs from C.J.'s sex ad. Appellant exchanged text messages about posting ads and reserving hotel rooms for C.J., and he exchanged messages with D.K. agreeing to post sex ads online for her. Appellant used terms consistent with sex trafficking in his text messages.

Law enforcement also obtained a search warrant for the Facebook profile "Quentae Pierrce Evans." That name is similar to appellant's legal name, "Evans" is the last name of appellant's father, and appellant had tried to legally change his name to "Evans" in the past. The profile had hundreds of pictures of appellant, the birth date listed on the profile matched appellant's birth date, and the profile was used for conversations with appellant's mother, former girlfriend, and D.K., C.H., and C.J. Appellant posted prostitution-related messages using the Facebook account, such as "pimpin is really at a high and I'm going to the top this year . . . love to have u win with me[,]" and "4 hoes 2 cribs and I'm pimpin like a mutha f*cka[.]"

Appellant exchanged messages with D.K. regarding the prostitution of D.K. D.K. and appellant discussed the price of D.K.'s prostitution services, the length of time she spent with patrons, and D.K. sent updates on when the patrons finished with her and left. D.K. told appellant that he should let her "bring some money in" before he hit her. At another point, D.K. complained about lack of sleep to appellant, and he told her that she could sleep once she made him $500. Appellant also exchanged messages with C.H. regarding the prostitution of C.H. C.H. told appellant that her hotel checkout time was nearing and asked whether appellant would re-rent the room. C.H. requested more condoms from appellant and told appellant that a man was coming to pay C.H. for sex. Appellant requested better photographs to put on C.H.'s online sex ad. Appellant also exchanged messages with C.J. regarding the prostitution of C.J. Appellant and his former girlfriend arranged for an AmericInn Hotel room to be rented under C.J.'s name. C.J. asked appellant to post a sex ad for her. C.J. sent appellant a nude photograph of herself and asked appellant if she could perform "outcalls."

Law enforcement officers also found contact information on D.K.'s phone for one of her patrons, B.M. In exchange for immunity, B.M. testified that he had paid D.K. several times for sex after finding her through online sex ads. On one occasion, B.M. left his wallet behind after paying D.K. for sex. A photograph of B.M.'s ID was found on appellant's cell phone. B.M. testified at trial that he saw someone who looked like appellant approach him while he was with D.K. and another prostituted woman called Holly.

The circumstances proved are consistent with guilt. They establish that appellant, who was not a patron or prostitute, intentionally promoted the prostitution of D.K., C.H.,

and C.J. The circumstances proved are also inconsistent with any rational hypothesis except that of guilt. Appellant appears to argue that the evidence was insufficient because room 342 was rented to appellant's mother, not appellant. But appellant was seen in a vehicle outside of the hotel, he was arrested with the key to the room in his possession, and appellant's mother had messaged appellant to tell him the room number. Given the connections between appellant and the hotel room, the fact that the booking was in appellant's mother's name does not support a reasonable inference that appellant did not promote the prostitution of D.K., C.H., and C.J.

Appellant also appears to argue that the facts support an inference that the state's witness, B.M., was supporting prostitution. Appellant argues that B.M. was an accomplice whose testimony was not sufficient to support the jury's guilty verdict. Appellant's claim is unsupported by the record; there is no evidence that B.M. was promoting the prostitution of D.K., C.H., and C.J. We will not disturb the jury's verdict on conjecture alone. *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). Additionally, B.M. was not an accomplice. An accomplice "could have been indicted and convicted for the crime with which the accused is charged." *State v. Henderson*, 620 N.W.2d 688, 701 (Minn. 2001). The statute under which appellant was charged expressly precludes the prosecution of a patron of a prostitute. B.M. admitted to being a patron of D.K., so he could not have been indicted for the crime with which appellant was charged. And finally, the jury was not asked to convict solely on B.M.'s testimony; the record contained extensive other evidence of appellant's guilt, including the information from appellant's phone, posts from the "Quentae Pierrce Evans" Facebook profile, and messages between appellant and D.K., C.H., and C.J.

Appellant argues generally that the evidence was insufficient because the victims, D.K., C.H., and C.J., did not testify. Appellant cites no legal authority for the proposition that victims must testify to support a guilty verdict, nor does he explain why the aforementioned circumstances proved are insufficient to support the jury's finding of guilt without additional testimony by D.K., C.H., or C.J. On this record, the evidence was sufficient to establish appellant's convictions without any victim testimony.

II.

Appellant next argues that the district court erred in several of its evidentiary decisions. Appellant argues that he was denied the right to present a complete defense because the district court prohibited appellant's trial counsel from commenting on the absence of victim testimony. Due process requires affording defendants a meaningful opportunity to present a complete defense. U.S. Const. amend. XIV § 1; Minn. Const. art. I, § 7. The right to present a complete defense is not unlimited; a defendant must still comply with rules of procedure and evidence. *State v. Richards*, 495 N.W.2d 187, 195 (Minn. 1992) (quoting *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)). "We review a district court's restricting the scope of a closing argument for an abuse of discretion." *State v. Caldwell*, 815 N.W.2d 512, 516 (Minn. App. 2012), *rev. denied* (Minn. June 27, 2012).

Appellant's trial counsel made several comments regarding the absence of victim testimony during appellant's opening statement. In response to the state's motion asking the district court to preclude any further comments on the lack of victim testimony, the district court prohibited appellant's trial counsel from commenting on the absence of victim

testimony during closing arguments. The supreme court has held that defense counsel may be prohibited from commenting on the prosecution's failure to call particular witnesses as part of "the general rule that no adverse inference may be drawn from a party's failure to produce evidence equally available to both sides." *See State v. Swain*, 269 N.W.2d, 707 717 (Minn. 1978); *see also State v. Bernardi*, 678 N.W.2d 465, 470-71 (Minn. App. 2004) ("The district court has the authority to order defense counsel to refrain from commenting on the prosecutor's failure to call a witness if the witnesses are equally available to both parties.") (citing *State v. Thomas*, 232 N.W.2d 766, 768 (Minn. 1975)).

Here, the victim-witnesses were equally available to appellant. The state included D.K., C.H., and C.J. in its list of potential witnesses in December 2019, months before appellant's March 2020 trial. Appellant does not argue that D.K., C.H., or C.J. were unavailable to him, and nothing in the record suggests that D.K., C.H., or C.J. were not equally available to appellant. The district court therefore did not abuse its discretion when it prohibited appellant's trial counsel from commenting on the lack of victim testimony during appellant's closing argument.

Appellant next argues that the district court abused its discretion when it allowed witness B.M. to identify or suggest appellant's identity to the jury during trial. A district court's ruling on the admissibility of identification evidence is reviewed for an abuse of discretion. *State v. Booker*, 770 N.W.2d 161, 168 (Minn. App. 2009), *rev. denied* (Minn. Oct. 20, 2009).

As an initial matter, the record does not clearly show that B.M. identified appellant as the man he recalled seeing with the prostituted women B.M. hired. When B.M. was

shown a photograph lineup prior to trial, B.M. selected photograph 6, which was not a photograph of appellant. In his trial testimony, B.M. described the man he had seen with D.K. as "a black gentleman, had a gold grill, looked somewhat like the gentleman seated next to [appellant's trial counsel]." When the prosecutor asked B.M. if he could definitively say whether it was the gentleman seated next to appellant's trial counsel, B.M. responded "I think definitively, I mean, looking at the gentleman, he looks like the person I saw." The state asked appellant to stand up and show the jury his gold grill, and the appellant stood and smiled. The district court asked B.M. if that was the grill he remembered seeing, and B.M. answered, "Yeah, I remember there was gold in his mouth." The state did not ask the district court to record an in-court identification, and the district court never made a finding that B.M. identified appellant.

Whether this testimony amounted to an in-court identification is a close question. We need not determine whether B.M.'s testimony amounted to an in-court identification, though, because even if it did, appellant cites no legal authority in support of his claim that the district court erred and does not explain why the identification was improper. "Arguments are forfeited if they are presented in summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred." *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017). Additionally, even if we accepted appellant's argument that B.M.'s testimony amounted to improperly admitted identification evidence, appellant has not shown that the admission of that evidence was anything more than harmless error. *See State v. Anderson*, 657 N.W.2d 846, 852 (Minn. App. 2002) (applying harmless-error rule to erroneously admitted identification

evidence). There is extensive other evidence connecting appellant to the charged offenses. Under these circumstances, we conclude that any error by the district court in admitting B.M.'s testimony does not warrant reversal.

Appellant next argues that the district court violated his Confrontation Clause rights by allowing B.M. to testify about his interactions and discussions with "Holly," another prostituted woman associated with appellant. The Confrontation Clause of the Sixth Amendment guarantees to the accused the right to confront the witnesses against him. U.S. Const. amend. VI; Minn. Const. art. I, § 6. A declarant's out-of-court "testimonial statements" are inadmissible unless the declarant is unavailable to testify, and the defendant had a prior opportunity for cross-examination. *Crawford v. Washington*, 541 U.S. 36 (2004). "Testimonial statements" are statements that declarants would reasonably expect to be used in a prosecution. *Id.* at 51-52; *see also State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006). Whether admitted testimony violates a defendant's Confrontation Clause rights is a question of law that we review de novo. *Id.*

At trial, B.M. testified about a time that he encountered appellant with a woman called Holly. B.M. testified that the second time he saw the man who looked like the defendant he was with Holly whom B.M. knew to be a "prostitute" because B.M. had paid her for sex. B.M. described the interaction between Holly and the man as "tense," told the prosecutor that "[Holly] wished to leave, and [appellant] was not happy about that," answered "yes" when the prosecutor asked B.M. if it was clear to him that the man he saw was Holly's pimp, and said that "[Holly] asked me to take her away from there." With perhaps the exception of "[Holly] asked me to take her away from there," B.M.'s testimony

relayed no statements from Holly to the jury. B.M.'s testimony consisted of his own recollection of the interaction and B.M.'s own perception of Holly's relationship to the man. To the extent B.M.'s testimony that "[Holly] asked me to take her away from there" did relay an out-of-court statement by Holly, that statement was not testimonial, as it was not made under a circumstance which would lead an objective witness to believe that the statement would be available for use at a later trial. It was therefore not inadmissible under *Crawford* as a testimonial statement, and the district court did not violate appellant's Confrontation Clause rights in admitting it.

Appellant next argues that the district court abused its discretion when it refused to admit evidence of D.K.'s continued prostitution after appellant's arrest. "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). "Criminal defendants are bound by the rules of evidence." *Henderson*, 620 N.W.2d at 698. "The threshold test for the admissibility of evidence is the test of relevancy." *State v. Wilson*, 900 N.W.2d 373, 385 (Minn. 2017) (quotation omitted). Relevant evidence is "any evidence that tends to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Minn. R. Evid. 401.

The district court denied appellant's attempt at trial to introduce evidence that sex ads featuring D.K. were posted in August 2019. Appellant argued that D.K.'s 2019 ads, which were posted months after appellant was arrested, showed that D.K. did not need anyone to help her engage in prostitution and that she was her own promoter. The district

court denied appellant's request because it found that D.K.'s August 2019 ads had no bearing on appellant's trial for conduct occurring from February 2018 to November 2018. That D.K. was capable of posting sex ads for herself in 2019 does not show that appellant did not engage in the promotion of prostitution almost a year earlier. The district court therefore did not abuse its discretion when it determined that the 2019 ads were irrelevant and denied appellant's request to introduce them into evidence.

III.

Finally, appellant argues that he received ineffective assistance of counsel at trial because his trial counsel failed to investigate allegations against appellant, made prejudicial claims during appellant's opening statement, and failed to investigate and present the jury with evidence of third-party perpetrators. Generally, issues concerning the effectiveness of defense counsel are properly raised in a petition for postconviction relief so that a sufficient record can be developed regarding the facts underlying those claims. *State v. Christian*, 657 N.W.2d 186, 194 (Minn. 2003). There are no facts in the record regarding trial counsel's defense strategy in making the allegedly prejudicial claims during appellant's opening statement, nor are there any facts in the record about the extent of trial counsel's investigation into appellant's case. We therefore decline to address appellant's ineffective-assistance-of-counsel claims because the record is insufficient.

Affirmed.