STATE OF MINNESOTA
IN COURT OF APPEALS
A10-132

State of Minnesota,
Respondent,

vs.

Robert Charles Cook, Jr.,
Appellant.

Filed May 23, 2011
Affirmed
Bjorkman, Judge

Steele County District Court
File No. 74-K0-06-000384

Lori Swanson, Attorney General, Kelly O'Neill Moller, Assistant Attorney General, St. Paul, Minnesota; and

Daniel A. McIntosh, Steele County Attorney, Owatonna, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, G. Tony Atwal, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Stoneburner, Judge.

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

BJORKMAN, Judge

Appellant challenges his conviction of second-degree criminal sexual conduct, contending that the district court erred in failing to suppress incriminating statements he

made during a police interrogation and that the evidence is insufficient to support his conviction. We affirm.

FACTS

On the evening of March 16, 2006, appellant Robert Charles Cook, Jr. and his wife, K.C., were entertaining friends and drinking at their home. After their son, C.C., and 11-year-old daughter, T.C., went to bed, K.C. and the other adults went to a bar, leaving Cook at home with the sleeping children. T.C. awoke to find someone in her bed, touching her breast underneath her bra, and the skin on her lower stomach below her belly button. She did not see the person's face, but the person stayed next to her for a few minutes and then started touching her again. T.C. rolled off the bed, and the person tried to grab her. She ran down the hallway to the master bedroom, but nobody was there. T.C. could not reach her mother by telephone, so she decided to go to her brother's room.

As she passed by the stairs, T.C. saw a male she believed to be Cook standing downstairs with a towel around his waist. T.C. went into her brother's room, locked the door from the inside, and got into her brother's bed. A nude man unlocked the door and entered the room with a towel draped over his head. He walked over to the bed and said, "Pretend I'm Deion," a boy T.C. had dated. The man attempted to grab T.C., but when her brother woke up, the man left the room and went into the master bedroom. T.C. then saw Cook emerge from the master bedroom wearing boxer shorts and a robe.

K.C. called home and T.C. answered the phone. T.C. told her mother that somebody touched her, and K.C. and the others returned to the apartment. Cook was

asleep and K.C. had difficulty waking him. K.C. explained that T.C. said someone was in the home and had touched her. Cook said that he had been downstairs sleeping and moved upstairs because T.C. was scared. He became angry when K.C. and the others accused him of being the person who touched T.C.

The next day, T.C. reported the incident to a school counselor who contacted K.C. T.C. accompanied her mother to the Steele County Human Services office where they spoke with child-protection worker Janel Pitzen and Investigator Robbe Kniefel, an officer with the plain-clothes division of the Owatonna Police Department. Pitzen and Investigator Kniefel asked K.C. to direct her husband to come in to meet with them. She called Cook, advising him that T.C. "told them what happened the night before."

Investigator Kniefel and Pitzen interviewed Cook at the human services building. The interview lasted approximately 40 minutes and was recorded. Early in the interview, Investigator Kniefel attempted to give Cook a *Miranda* advisory from memory.[1] He also stated:

> I am going to make something perfectly clear to you Bob. You are not under arrest. Okay? And the door is not locked or anything, we are in an interview room at Human Services. The door is not locked, this is not jail, you can get up and walk out of here at anytime. You don't have to talk . . . but you are the suspect right now, and this is a very serious matter[.]

Cook replied that he understood. Investigator Kniefel asked Cook about the events that occurred the night before. Cook admitted consuming alcohol, and stated that he was

[1] Cook asserts that the warning was inadequate. Because the state does not contest this argument, we do not consider the substance of the warning.

"tired." Eventually, Investigator Kniefel confronted Cook with the allegations of sexual abuse. Cook admitted that it was "possible" that he thought T.C. was his wife, and that he entered her room, crawled into her bed, and touched her. When K.C. entered the interview room, Cook repeated that he "was tired" and "thought it was [his wife]." He stated that he felt "ashamed" and asked his wife to tell T.C. that he was sorry. Investigator Kniefel arrested Cook at the end of the interview.

Prior to trial, Cook moved to suppress his statements to Investigator Kniefel. The district court determined that the *Miranda* warning was inadequate but that the majority of the interrogation was noncustodial so Cook's statements were admissible. The district court suppressed the statements Cook made during the last ten minutes of the interview, the point at which Investigator Kniefel "began to articulate . . . that he had probable cause to believe [Cook] had committed criminal sexual conduct" and conveyed "the reality" of the situation. The district court reasoned that these comments provided "an objective basis for a reasonable person to believe he or she was in police custody of the degree associated with formal arrest."

At trial, T.C. testified that the perpetrator was a female neighbor. T.C. admitted that she did not identify the neighbor until two years after the incident. T.C. also acknowledged telling a counselor that she recognized the voice of the person who touched her as Cook's. The state emphasized Cook's incriminating statements in closing argument. The jury convicted Cook of the charged offense. This appeal follows.

D E C I S I O N

Cook argues that the district court erred in admitting his incriminating statements because they were coerced during a custodial interrogation conducted without an adequate *Miranda* warning. He also challenges the sufficiency of the evidence. We address each argument in turn.

I. The district court properly admitted portions of Cook's statement to police.

Statements made by a suspect during a "custodial interrogation" are generally inadmissible unless the suspect received a *Miranda* advisory. *State v. Heden*, 719 N.W.2d 689, 694 (Minn. 2006); *see also Miranda v. Arizona*, 384 U.S. 436, 444-45, 86 S. Ct. 1602, 1612 (1966). There is no dispute that the interview constituted an interrogation under *Miranda*, so the focus of our analysis is whether the interrogation was custodial. We independently determine whether a suspect was in custody, but we defer to the district court's findings of fact relating to the issue unless they are clearly erroneous. *Heden*, 719 N.W.2d at 695.

"The test for determining whether a suspect was in custody is whether a reasonable person in the suspect's situation would have understood that he was in custody." *Id.* When a suspect was not under arrest, the court considers all of the circumstances with an eye toward evaluating "whether a reasonable person in the suspect's position would have believed he was in custody to the degree associated with arrest." *Id.* (quotation omitted).

> In reviewing the circumstances to determine whether a suspect was in custody, we look to many factors. While no factor alone is determinative, we have noted that the

> following factors may combine to indicate custody: the police interviewing the suspect at the police station; the police telling the individual that he or she is the prime suspect; the police restraining the suspect's freedom; the suspect making a significantly incriminating statement; the presence of multiple police officers; and a gun pointing at the suspect. We have also recognized circumstances that may indicate that a suspect is *not* in custody: questioning taking place in the suspect's home; the police expressly informing the suspect that he or she is not under arrest; the suspect leaving the police station at the close of the interview without hindrance; the brevity of questioning; the suspect's freedom to leave at any time; a nonthreatening environment; and the suspect's ability to make phone calls.

Id. (citations omitted).

Cook argues that a reasonable person in his position would have believed he was in custody to the degree associated with arrest during the entire interview, emphasizing that the interrogation room was small, the door was closed, and that he was told he was a suspect. We disagree. We acknowledge that certain of the factors—the length of the interview and Cook's significant incriminating statements that resulted in his immediate arrest—support a finding that Cook was in custody. But these factors are not determinative. *See State v. Staats*, 658 N.W.2d 207, 212 (Minn. 2003) (stating that, while 90 minutes of questioning was not brief and suspect was arrested immediately after questioning concluded, "the overall circumstances" suggested he was not coerced and "a reasonable person would not believe he was in custody").

Other factors support a finding that Cook was not in custody when he made his incriminating statements. The interview took place at the human services center in the county administration building, not at the police station. Cook voluntarily drove himself

to the interview at the request of his wife, not a police officer or other official. The interview room was approximately 14 x 14, the door was unlocked, and there was a small window. While Cook was informed that he was a "suspect" during the interview, he also was told several times that he was "not under arrest," that "[t]he door is not locked, this is not jail," and that he was free to leave at any time. And there was no show of force. While Investigator Kniefel wore a sidearm and badge around his waist, he was dressed in plain clothes. Cook testified that he was not even aware that Kniefel was a police officer.

The supreme court has determined interrogations to be noncustodial under similar circumstances. *See, e.g.*, *State v. Thompson*, 788 N.W.2d 485, 492 (Minn. 2010) (concluding an interrogation was noncustodial when defendant voluntarily came to the station for the interview and was told he was not under arrest and was free to leave); *State v. Wiernasz*, 584 N.W.2d 1, 5 (Minn. 1998) (holding that interrogation was noncustodial because defendant voluntarily came to the police station and was told by police that she was not under arrest); *State v. Champion*, 533 N.W.2d 40, 43 (Minn. 1995) (holding that initial interrogation of a suspect was noncustodial because, in part, suspect voluntarily came with the officer to the station). Because we discern no clear error in the district court's factual findings, we conclude that the overall circumstances surrounding the interview indicate that a reasonable person in Cook's position would not believe he was in custody until he was told that probable cause existed for his arrest.

We next consider whether Cook's statements were coerced. This assessment requires an examination of the totality of the circumstances to determine "whether police actions, together with the other circumstances surrounding the interview were so

coercive, manipulative, and overpowering that the defendant was deprived of his ability to make an independent decision to speak." *State v. Zabawa*, 787 N.W.2d 177, 182 (Minn. 2010). The key question is whether the will of the defendant was overborne. *State v. Riley*, 568 N.W.2d 518, 525 (Minn. 1997). Relevant factors include the defendant's age, maturity, intelligence, education, experience, and ability to comprehend. *Id.* Courts also consider the nature of the interview, including its length, the lack of or adequacy of warnings, whether the defendant's physical needs were met or ignored, and whether the defendant was denied access to friends. *Zabawa*, 787 N.W.2d at 183. We review the legal issue of whether a defendant's statement was voluntary de novo but defer to the district court's factual determinations unless they are clearly erroneous. *Id.* at 182.

The district court determined that Cook's will "was not overborne when he agreed that he may have mistook his daughter for his wife." The court found that Cook was a 35-year-old high-school graduate who held a full-time job. Cook testified that he felt threatened during the interview and that Investigator Kniefel was "digging" his insides out, "hounding" him, and making him feel worthless. The district court did not credit this testimony, instead finding that Cook was not under any physical restraints, deprivations, or other limits prior to his arrest at the conclusion of the interview.

Cook argues that Investigator Kniefel's actions "encouraged" Cook's statements because Kniefel "demanded" the truth, and that these circumstances created "a coercive, manipulative, and overpowering environment." We disagree. Cook admitted that he was not deprived of anything during the interview, was allowed to talk to his wife, was not

handcuffed until the end of the interview, and did not even realize he was talking to a police officer until he was arrested. These admissions contradict Cook's depiction of the interview. And the record reflects that Investigator Kniefel attempted to reassure Cook, saying, "Okay, Bob, you know I've been there. I've . . . been very tired and had a couple of beers and stuff too." He asked Cook to talk "man to man," and when Cook's wife came into the interview, Investigator Kniefel let Cook talk to her, noting that "this is all about you and your family."

In short, the record is devoid of the "promises, trickery, deceit, and stress-inducing techniques" that are the hallmarks of involuntary confessions. *See State v. Pilcher*, 472 N.W.2d 327, 333 (Minn. 1991). It is irrelevant whether Investigator Kniefel encouraged Cook to communicate with him. *See id.* ("The judicial inquiry . . . is not concerned with whether the police actions contributed to the utterance of inculpatory statements."). Courts recognize that police officers must be "allowed to encourage suspects to talk," including the use of "empathetic tactics that prod suspects to speak with [police] and cooperate." *Zabawa*, 787 N.W.2d at 184 (alteration in original) (quotations omitted). Nothing in the record indicates that Cook's will was overborne at any point during the interrogation. Accordingly, we conclude that the district court correctly determined that Cook's incriminating statements were voluntary.

II. The evidence is sufficient to support Cook's conviction.

In considering a claim of insufficient evidence, we carefully analyze the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v.*

Webb, 440 N.W.2d 426, 430 (Minn. 1989). We must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Weighing the credibility of witnesses is the exclusive function of the jury. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). 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 the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Conviction of second-degree criminal sexual conduct requires proof of sexual contact with a victim under the age of 13 by someone more than 36 months older than the victim. Minn. Stat. § 609.343, subd. 1(a) (2004). "Sexual contact" is defined as the intentional touching of the victim's intimate parts, including the breasts and vagina, with sexual or aggressive intent. Minn. Stat. § 609.341, subds. 5, 11(a)(i) (2004). Cook argues that the evidence was insufficient because T.C. testified that the perpetrator was a woman and Cook's incriminating statements did not establish the elements of the offense. We disagree.

Beyond Cook's recorded admissions that he thought he was going to "cuddle up with" his wife and that it was "possible" that he touched T.C.'s breast underneath her bra, our review of the record reveals sufficient corroborating evidence to allow the jury to reach their verdict. While T.C. did testify that she thought her assailant was the female neighbor, she frequently referred to the perpetrator as "he" during her detailed testimony about the sexual contacts. T.C. stated that she saw Cook in the house during the time

frame of the assaults wearing a towel around his waist, and when T.C. sought refuge in her brother's room, a nude male with a towel draped over his head entered the locked room and asked her to "pretend" he was a boy named "Deion." Cook knew Deion was T.C.'s former boyfriend. And the fact that T.C. did not seek Cook's help during or after the incidents supports her initial reports identifying Cook as the perpetrator. The jury could reasonably conclude that T.C.'s testimony about a female assailant was not credible. *See State v. Johnson*, 568 N.W.2d 426, 436 (Minn. 1997) (holding that the jury "as the sole judge of credibility, is free to accept part and reject part of a witness' testimony" (quotation omitted)).

Giving due regard to the jury's credibility determinations, and viewing Cook's admissions, T.C.'s testimony, and the other evidence in the light most favorable to the conviction, we conclude that the evidence is sufficient to support the conviction.

Affirmed.