**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A10-1518**

State of Minnesota,
Respondent,

vs.

Kevin Lee Vraa,
Appellant.

**Filed July 5, 2011**
**Affirmed**
**Stoneburner, Judge**

Carver County District Court
File No. 10CR08260

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

Mark Metz, Carver County Attorney, Mary E. Shimshak, Assistant County Attorney, Chaska, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael F. Cromett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

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

**STONEBURNER**, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct, asking this court to review child-protection records reviewed in camera by the district court to

determine if the records contain any information favorable to the defense that should have been disclosed. Appellant argues that (1) the district court erred by permitting expert testimony on incremental reporting of sexual abuse by children and excluding evidence of appellant's reputation for truthfulness and (2) the evidence is insufficient to support the verdict. Because the child-protection files in the record do not contain any evidence that should have been disclosed to appellant, the district court did not err or abuse its discretion in evidentiary rulings, and the evidence is sufficient to sustain the conviction, we affirm.

## FACTS

Appellant Kevin Lee Vraa is the stepfather of complainant R.S., who was born in 1996. Vraa married R.S.'s mother, Amanda Vraa (mother), in 2002. R.S. and her mother had lived with Vraa for some time before the marriage. Until March 31, 2008, R.S. and Vraa had a very good relationship.

On the evening of March 31, 2008, while mother was at work, Vraa was, as usual, at home alone with R.S, who was then 11 years old. R.S. was watching television in her bedroom when Vraa came into the room, which was not unusual. They sat on her bed and engaged in some nudging and tickling that was normal for them, and they played a game. But then, according to R.S., Vraa held her at her waist, took her pajama bottoms and underwear off, and, despite R.S. asking him why he was behaving this way and screaming (or trying to scream), Vraa eventually touched her lower private areas with his hand for about fifteen minutes. Vraa left her room after suggesting that she think of

something fun they could do in the next week. R.S. put her underwear and pajamas back on and, after a while, went to the kitchen where Vraa paid her allowance of $10.

When mother got home from work, she went to R.S.'s room to say goodnight. R.S. started to cry. When mother asked what was wrong, R.S. told her that Vraa had touched her. Once mother understood what R.S. was telling her, she brought Vraa into the room to talk about the allegation. Mother asked R.S. to repeat what she had told her, and R.S. repeated her allegation. Vraa immediately denied touching R.S. on her private areas and has consistently denied that any sexual contact occurred that evening.

The next day, R.S. went to stay with her father. Mother told father what had happened. On April 4, 2008, R.S. was interviewed at the Carver County Sheriff's Office by a Carver County Social Services worker, who conducted a forensic interview with a detective observing from another room. During that interview, R.S. said that she had screamed on the night of the incident. Investigators were not able to find anyone in the apartment building who heard her scream. Vraa was charged with first-degree criminal sexual conduct on April 10, 2008. In March 2010, the complaint was amended to add a charge of second-degree criminal sexual conduct.

R.S. had previously made false statements accusing her stepmother of physical abuse.[1] The first allegation occurred when R.S. was between the ages of five and seven. She alleged that her stepmother had slammed a door into her back. But R.S. quickly admitted that she lied when confronted by her father. When R.S. was eight or nine, she accused her stepmother of throwing her against a wall, causing her to fall on a dollhouse,

[1] Father's marriage to this person ended sometime before March 31, 2008.

which left a bruise. R.S. also alleged that her stepmother bent her toes back until they felt as if they were breaking. R.S. eventually told her mother and Vraa that she lied about these incidents because she did not like her stepmother.

At a witness-preparation session on March 31, 2010, R.S. said that she remembered something but did not want to say what it was because she was afraid of appearing untruthful for not remembering. R.S. said that she remembered that she attempted to stand up and scream during the incident but that Vraa choked her and prevented her from screaming.

In preparation for trial, Vraa, pursuant to *State v. Paradee*, asked the district court to review child-protection records and any counseling or medical records regarding R.S. contained in Carver, Stearns, and Sherburne County social-services records and to disclose any information relevant to the defense.[2] In a March 2009 order, the district court stated that it had reviewed the Carver, Stearns, and Sherburne County social-services records pertaining to R.S. and determined that, except for records already disclosed by the state, there are no records in any of the files relevant to the charges. The district court ordered the Carver County records returned to Carver County Social Services, but the Sherburne and Stearns County records were retained in the district court file.

At trial, the district court, over Vraa's objection, allowed the state to call a licensed psychologist as an expert witness to testify about children's incremental

[2] *State v. Paradee*, 403 N.W.2d 640 (Minn. 1987) (allowing in camera review of confidential records when requested by a defendant to determine whether the records are discoverable).

reporting of sexual abuse. And the district court excluded evidence of Vraa's character for truthfulness, holding that the state had not challenged his character for truthfulness.

The jury found Vraa guilty of first- and second-degree criminal sexual conduct. Vraa was sentenced to 144 months, with 96 months to be served in custody and 48 months to be served on supervised release. This appeal followed.

## D E C I S I O N

### I. The county social-services files in the record do not contain evidence relevant to the defense.

Vraa asks this court to review the social-services files that were reviewed by the district court to determine whether the files contain any discoverable information or material. But only the Stearns County and Sherburne County files were retained in the record. Because Vraa failed to object to the return of the Carver County files, or otherwise ensure that they were made part of the record for review, we conclude that he has forfeited his request for appellate review of the Carver County social-services files. *See State v. Medibus-Helpmobile, Inc.*, 481 N.W.2d 86, 92 (Minn. App. 1992) (noting that appellants are responsible for providing a record adequate for review and holding that by failing to preserve the issue of disclosure during trial and to object to return of the material, appellants forfeited their claim to appellate review of such material), *review denied* (Minn. Mar. 19, 1992).

Our review of the Stearns and Sherburne County social-services files revealed no information relevant or material to the issues in this case. There is no merit to Vraa's

speculation that the district court failed to disclose from these files information relevant and material to his defense.

## II. The district court did not abuse its discretion by permitting expert testimony on incremental reporting of sexual abuse by children.

Vraa argues that the expert testimony in this case was not helpful to the jury, that it was highly prejudicial, and that the district court abused its discretion by allowing the testimony. The district court's decision on whether to admit expert testimony is reviewed for a clear abuse of discretion. *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999). Expert testimony is generally admissible if it assists the factfinder, has a reasonable basis, is relevant, and has probative value that outweighs its prejudicial effect. *State v. Jensen*, 482 N.W.2d 238, 239 (Minn. App. 1992), *review denied* (Minn. May 15, 1992). An expert's opinion should not comprise opinions that the jury could readily form without expert help. *State v. Saldana*, 324 N.W.2d 227, 230 (Minn. 1982). An expert witness may not vouch for or against the credibility of another witness. *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998).

In *Saldana*, the defendant admitted that sexual intercourse with the adult complainant occurred but claimed that it was consensual. 324 N.W.2d at 229. The relevant issue was "whether admission of testimony concerning typical post-rape symptoms and behavior of rape victims . . . was . . . error." *Id.* The supreme court noted that it is not necessary that a rape victim react in a typical manner to convince a jury that her view of the facts is the truth and stated that "[r]ape trauma sy[n]drome is not the type of scientific test that accurately and reliably determines whether a rape has occurred." *Id.*

The supreme court stated that "[b]ecause the jury need be concerned only with determining the facts and applying the law, and because evidence of reactions of other people does not assist the jury in its fact-finding function," admission of expert testimony about rape-trauma syndrome was error.[3] *Id.* at 230.

Vraa also relies on *State v. Danielski*, 350 N.W.2d 395, 396 (Minn. App. 1984). In *Danielski*, the issue was whether the district court abused its discretion in *excluding* expert testimony concerning typical familial-sexual-abuse symptoms and behavior. *Id.* In *Danielski*, we affirmed the district court's exercise of discretion to exclude such testimony, citing *Saldana* and stating that the 17-year-old complainant was "capable of testifying at trial" and "need not display any typical post-familial sexual abuse symptoms and behavior to convince the jury that she is telling the truth." *Id*. at 398.

But this case, involving an 11-year-old victim, is more similar to *State v. Hall*, 406 N.W.2d 503, 505 (Minn. 1987), in which the supreme court distinguished the circumstances of a 14-year-old victim from *Saldana*, based partially on the victim's age, and held that "[i]t is within the [district] court's discretion to admit expert testimony concerning the behavioral characteristics typically displayed by *adolescent* sexual assault victims." *Id.* at 503 (emphasis added). Here, as in *Hall*, the expert testimony was quite limited. The expert testified that children who have been sexually abused generally

[3] In *Saldana*, the expert also opined that the complainant was a victim of rape and did not fantasize the rape. The supreme court considered all of the expert's opinions in holding that, "in this prosecution for criminal sexual conduct . . . it was reversible error for an expert to testify concerning typical post-rape symptoms and behavior of rape victims and give opinions that the complainant was a victim of rape and had not fantasized the rape." 324 N.W.2d at 232.

disclose the abuse over time, "in bits and pieces," often failing to initially disclose the more "horrific elements" of the abuse, which could vary from child to child. But the expert refused to offer an opinion on whether R.S. had actually been choked, and she was not permitted to give an opinion about whether R.S.'s allegations were truthful.

We conclude that the district court acted within its discretion by finding that the expert testimony in this case would be helpful to the jury to evaluate R.S.'s late disclosure of a detail of the incident that is inconsistent with her earlier statements describing the incident. *See State v. Myers*, 359 N.W.2d 604, 610 (Minn. 1984) (stating, in an appeal involving a 7-year-old sexual-assault victim, that "[b]ackground data providing a relevant insight into the puzzling aspects of the child's conduct and demeanor which the jury could not otherwise bring to its evaluation of her credibility is helpful and appropriate in cases of sexual abuse of children"). Because the expert did not examine R.S., and therefore did not attempt to describe any of R.S.'s characteristics or conditions or express an opinion as to R.S.'s credibility, we conclude that the district court acted within its discretion in determining that the danger of unfair prejudice from the expert's testimony did not outweigh its probative value. The district court did not abuse its discretion by admitting the expert testimony.

## III. The district court did not abuse its discretion by excluding evidence of Vraa's character for truthfulness.

Vraa sought to present the testimony of three witnesses in support of his character for truthfulness. But the district court ruled that the testimony was inadmissible because the state had not challenged Vraa's character for truthfulness. Evidentiary rulings lie

within the district court's discretion and "will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). "A court abuses its discretion when it acts arbitrarily, without justification, or in contravention of the law." *State v. Mix*, 646 N.W.2d 247, 250 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

The general rule governing character evidence is that "[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." Minn. R. Evid. 404(a). But evidence of a person's pertinent character traits is admissible when "offered by an accused, or by the prosecution to rebut the same." Minn. R. Evid. 404(a)(1). Pertinent traits are "those involved in the offense charged." *State v. Miller*, 396 N.W.2d 903, 906 (Minn. App. 1986).

Contrary to Vraa's assertion, his character for truthfulness is not a pertinent trait of either first- or second-degree criminal sexual conduct. *See* Minn. Stat. §§ 609.342, subd. 1(a) (2010) (defining crime as engaging in sexual penetration with a person under 13 years of age where the actor is more than 36 months older than the complainant); .343, subd. 1(a) (2010) (defining crime as engaging in sexual contact with a person under 13 years of age where the actor is more than 36 months older than the complainant).

Minn. R. Evid. 608 governs the introduction of evidence of a person's character for truthfulness when, as here, it is not a pertinent trait of an offense charged. Minn. R. Evid 608(a) provides:

> The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

Vraa argues that, because the outcome of this case depended on credibility determinations, the state attacked his character for truthfulness, thereby opening the door for him to introduce the testimony of character witnesses. But the record plainly shows that the state did not offer any "opinion or reputation" evidence or otherwise attack Vraa's character for truthfulness: the state only challenged Vraa's credibility as it related to his version of the events that occurred on March 31, 2008.

Vraa's argument implies that any challenge to a witness's credibility is an attack on the witness's general character for truthfulness. But in Minnesota, evidence of truthful character is admissible only after the *character* of the witness for truthfulness has been attacked. Minn. R. Evid. 608(a)(2). Because the prosecution did not put Vraa's character for truthfulness at issue, the district court did not abuse its discretion by excluding the testimony of Vraa's character witnesses. *See State v. Lasnetski*, 696 N.W.2d 387, 396 (Minn. App. 2005).

## IV. The evidence is sufficient to sustain the conviction.

In considering a claim of insufficient evidence, review by this court is limited to a thorough review of the record "to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). An

appellate court "cannot retry the facts, but must take the view of the evidence most favorable to the state." *State v. Merrill*, 274 N.W.2d 99, 111 (Minn. 1978). The jury is in the best position to weigh the evidence and evaluate the credibility of witnesses; therefore, its verdict must be given due deference. *State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1990); *see also State v. Anderson*, 379 N.W.2d 70, 75 (Minn. 1985) (discussing a jury's evaluation of circumstantial evidence). An appellate court must assume that the jury believed the state's witnesses and disbelieved any contradictory evidence. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). And the reviewing court 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 was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

In this case, the state's evidence consisted primarily of R.S.'s testimony. Vraa correctly notes that "there was no physical evidence to corroborate [R.S.]'s claims—especially her claim that she was choked with enough force to cause breathing difficulties." But Minnesota law specifically provides that the testimony of a victim need not be corroborated in a prosecution for criminal sexual conduct. Minn. Stat. § 609.347, subd. 1 (2010). And it is well established that "a conviction can rest on the uncorroborated testimony of a single credible witness." *See State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted). "As a general matter, judging the credibility of witnesses is the exclusive function of the jury." *Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995).

Vraa brought to the jury's attention R.S.'s false allegations against her former stepmother; the inconsistencies between R.S.'s initial accounts of the incident and the version of events she recounted two years later, shortly before and during trial in 2010; and the "unusual" fact that R.S. went to the kitchen and accepted her monthly allowance from Vraa after the alleged sexual contact. The jury nonetheless found R.S.'s testimony concerning the sexual contact credible, as was its prerogative. *See State v. Bergeron*, 452 N.W.2d 918, 924 (Minn. 1990) (stating that appellate court must resolve any inconsistencies in the evidence in favor of the jury verdict); *see also State v. Mosby*, 450 N.W.2d 629, 634 (Minn. App. 1990) ( stating that "inconsistencies are a sign of human fallibility and do not prove testimony is false, especially when the testimony is about a traumatic event"), *review denied* (Minn. Mar. 16, 1990); *see also State v. Blair*, 402 N.W.2d 154, 158 (Minn. App. 1987) (upholding criminal-sexual-conduct conviction despite inconsistency between child complainant's testimony and prior statement).

Vraa asserts that the evidence adequately suggests several motives R.S. may have had to fabricate claims of the sexual assault, including her desire to live with her father, her desire for her mother and father to get back together, her desire for more attention, and the fact that she had seen television programs about sexual abuse and had relatives who had made allegations of sexual abuse. But the evidence also demonstrated that R.S. "adored" Vraa, was very quick to defend him, and had a very strong relationship with him, prior to this incident. The jury apparently concluded, based on all of the evidence, that R.S. did not have a motive to fabricate this allegation against Vraa.

Vraa attempts to equate this case with three supreme court cases reversing

convictions that were based on uncorroborated allegations of sexual conduct: *State v. Huss*, 506 N.W.2d 290 (Minn. 1993); *State v. Langteau*, 268 N.W.2d 76 (Minn. 1978); and *State v. Gluff*, 285 Minn. 148, 172 N.W.2d 63 (1969). But Vraa's reliance on these cases is misplaced. In *State v. Huss*, the supreme court reversed a conviction of second-degree criminal sexual conduct when the only direct evidence presented was equivocal on whether abuse had occurred, the victim was unable to accurately identify the defendant as her abuser, and the victim had been exposed to highly suggestive material. 506 N.W.2d at 292–93. The supreme court noted that the holding was limited to the "unusual facts" of the case. *Id.* at 293. In *State v. Langteau*, the supreme court reversed and remanded a conviction of aggravated robbery "in the interests of justice" when the actions of the victim at the time of the underlying incident were questionable. 268 N.W.2d at 77.

Finally, in *State v. Gluff*, the supreme court—again citing the interests of justice—reversed an aggravated-robbery conviction because the uncorroborated identification of the defendant lacked probative value when the witness had seen the perpetrator for only a short time and there had been errors in the lineup process. 285 Minn. at 151–52, 172 N.W.2d at 65–66. No similar circumstances exist in this case that are sufficient to override the credibility determination made by the jury. R.S. was never equivocal about whether the incident occurred, the identification of Vraa was positive and unquestionable, there is no evidence that R.S.'s knowledge about sexual abuse came from "highly suggestive" sources or circumstances, and the only arguably questionable act of R.S. is

receiving her allowance after the incident. We conclude that, based on this record, the evidence is sufficient to support Vraa's conviction.

**Affirmed.**