

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2266**

In the Matter of the Welfare of: M. D. D.

**Filed August 22, 2011
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 27-JV-10-10786

William M. Ward, Hennepin County Public Defender, Carrie Prentice, Assistant Public Defender, Minneapolis, Minnesota (for appellant M.D.D.)

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

Michael O. Freeman, Hennepin County Attorney, Alan J. Harris, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Wright, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant challenges the sufficiency of the evidence to sustain his juvenile-delinquency adjudication of first-degree aggravated robbery, arguing that the sole witness to the offense was not credible and that there was no corroborating evidence. We affirm.

DECISION

In reviewing whether the evidence is sufficient to sustain appellant's delinquency adjudication, this court views the evidence in the light most favorable to the state and determines whether the district court could have reasonably found appellant guilty. *See In re Welfare of M.E.M.*, 674 N.W.2d 208, 215 (Minn. App. 2004). The district court's findings of fact are upheld unless clearly erroneous. *Id.*

Appellant was convicted of first-degree aggravated robbery. *See* Minn. Stat. § 609.245, subd. 1 (2010) ("Whoever, while committing a robbery, is armed with a dangerous weapon . . . is guilty of aggravated robbery in the first degree . . ."). Appellant argues that there was insufficient evidence to support the conviction because (1) the victim, D.M., is not a credible witness and (2) no evidence corroborates D.M.'s account of the robbery.

Credibility of D.M.

"[A] conviction may rest on the testimony of a single credible witness." *State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998). And it is the "exclusive role" of the factfinder to determine witness credibility. *In re Welfare of A.A.M.*, 684 N.W.2d 925, 927 (Minn. App. 2004), *review denied* (Minn. Oct. 27, 2004).

Appellant relies on *State v. Kemp* for the proposition that this court may reverse a criminal conviction if "the evidence to overcome the presumption of innocence is so completely dependent upon a single witness whose testimony, considered in the light of the record as a whole, is of dubious veracity." *See State v. Kemp*, 272 Minn. 447, 450, 138 N.W.2d 610, 612 (1965). But *Kemp* is distinguishable. The supreme court reversed

Kemp's conviction based on its concern that "the jury was not given the opportunity by way of easily available and material prior inconsistent statements to adequately test the veracity of [the sole witness's] unimpeached testimony." *Id.* at 449, 138 N.W.2d at 611. Here the fact-finder was not deprived of evidence that challenged D.M.'s credibility.

Appellant points to inconsistencies in (1) D.M.'s statements to the 911 dispatcher; (2) D.M.'s statements to Sergeant Madson, the officer who interviewed D.M. shortly after the robbery; and (3) D.M.'s trial testimony. Specifically, appellant argues: (1) D.M. told the 911 dispatcher that he was robbed at gunpoint but testified at trial that appellant had merely lifted his shirt, revealing a gun; (2) D.M. gave conflicting descriptions of appellant's clothing; (3) D.M. told Sergeant Madson that two other persons were present for the robbery but did not mention this to the dispatcher or at trial; (4) D.M. told Sergeant Madson that appellant had asked him if he had "weed" or a gun but testified at trial that appellant had asked him for money; and (5) D.M. did not tell the sergeant or the 911 operator that appellant attempted to take his cell phone.

Unlike in *Kemp*, the district court was aware of the inconsistencies. And it acknowledged that there were "some discrepancies" between D.M.'s testimony and the statements he made to law enforcement. But the district court found that the inconsistencies were "minor" and did not affect D.M.'s credibility. We agree. *See State v. Johnson*, 679 N.W.2d 378, 387 (Minn. App. 2004) ("Minor inconsistencies and conflicts in evidence do not necessarily render testimony false or provide the basis for reversal."), *review denied* (Minn. Aug. 17, 2004). In addition, many of the inconsistencies of which appellant complains may be attributable to the stress of the

robbery. *See State v. Mosby*, 450 N.W.2d 629, 634 (Minn. App. 1990) (“[I]nconsistencies 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).

Moreover, D.M. explained several of the alleged inconsistencies at trial. He clarified that when he told the 911 dispatcher he had been robbed at gunpoint, he meant that appellant had merely “flashed” the gun at him. And he explained that he had not paid attention to appellant’s clothing because he was looking at appellant’s face during most of their interactions, the robbery happened quickly, and he was focused on escaping the situation. Moreover, as the district court noted, D.M.’s description of appellant’s clothing “is not determinative of identification because [D.M.] recognized [appellant] . . . [and] was certain that it was [appellant] [who] committed the offense because [D.M.] knew [appellant] and . . . they used to be friends.”

We will not disturb the district court’s determination that the inconsistencies in D.M.’s statements to law enforcement and his trial testimony are minor and do not affect his overall credibility. *See State v. Pippitt*, 645 N.W.2d 87, 92 (Minn. 2002) (stating that inconsistencies and credibility determinations are for the fact-finder to assess).

Appellant also argues that because D.M. and appellant were “once friends and fellow troublemakers at school” but have since had a falling out, D.M. has “clear bias” against appellant and is therefore not credible. But the district court specifically addressed this issue, finding that, although D.M. and appellant are no longer friends, “[t]here has not been a sufficient showing of any bias on the part of the victim against

[appellant] to negate or affect the victim's credibility." We defer to the district court's resolution of this issue.

Corroborating evidence

Because the district court found D.M. credible, D.M.'s testimony alone is sufficient to sustain appellant's conviction. *See Miles*, 585 N.W.2d at 373 (stating that a conviction may be upheld on the testimony of a single credible witness). Thus, no corroborating evidence is required.

Moreover, the state produced evidence at trial that corroborated D.M.'s account of the robbery: (1) his prompt reporting of the crime to his mother; (2) the recording of D.M.'s phone conversation with the 911 dispatcher; (3) Sergeant Madson's testimony regarding his interview with D.M. after the robbery; and (4) the testimony of D.M.'s mother that D.M. was upset when he told her about the crime. *See State v. Reinke*, 343 N.W.2d 660, 662 (Minn. 1984) (holding that victim's testimony about sexual assault was corroborated in part by evidence that victim promptly reported the assault and testimony as to victim's emotional condition at the time of her report).

Affirmed.