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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-798**

In the Matter of the Welfare of: J. R. A., Child

**Filed December 12, 2011
Affirmed
Stauber, Judge**

Ramsey County District Court
File Nos. 62JV10825; 62JV09501, 62JV101764

David W. Merchant, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John J. Choi, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, Andrew W. Johnson, Certified Student Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Klaphake, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

The state filed a delinquency petition alleging that appellant committed third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(a) (2008), by having sexual intercourse with a 12-year-old girl when he was 14 years old. Appellant argues on appeal that the district court's finding that the allegations were proved must be reversed because the state failed to prove beyond a reasonable doubt that his sexual contact with

the complainant occurred four days before her 13th birthday. Because the evidence was sufficient to sustain the district court's finding that appellant committed the charged act, we affirm.

FACTS

In March 2010, appellant J.R.A. was charged with third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(a) (complainant under 13; defendant no more than 36 months older). Before trial, appellant stipulated that he had sexual intercourse with the complainant, K. H. Consequently, the only issue at trial was whether the alleged sexual act occurred before or after K.H. attained age 13.

At trial, K.H. testified that her birthdate is February 12, 1996. According to K.H., she went to appellant's house on February 8, 2009, and had dinner with appellant and his mother. After dinner, appellant's mother went to the grocery store and appellant and K.H. went to appellant's room where they had sexual intercourse. K.H. testified that she then walked home from appellant's house feeling "very sad," and said to herself: "[w]ow, I'm only 12 and it happened four days before my birthday." K.H. also testified that after the sexual encounter, she did not tell anyone about the incident for about a week and was "quieter" than normal during that time period.

K.H. admitted on redirect that it "possibly" happened on February 9, 2009, but then insisted that she was "certain" that it happened on February 8. According to K.H., she clearly remembers the date because it was the first time she had sexual intercourse. K.H. further testified that appellant was 14 at the time.

J.B., the mother of K.H.'s best friend, testified that before her 13th birthday, K.H. "seemed to be more silly and more talkative and out there . . . just a happy girl." But J.B. testified that she noticed a "drastic change" in K.H.'s behavior after her 13th birthday. According to J.B., K.H. told her about the sexual encounter in August 2009. J.B. testified that she was told by K.H. that the encounter took place before her 13th birthday.

Appellant testified that he "believe[d]" he and K.H. had sex on February 16, because that was President's Day. According to appellant, his mother does not allow girls in the house when she is gone, but on President's Day, his mother would have been at work and he would not have had school. Appellant further testified that "it . . . is very clear in my head that [K.H.] was 13" when he and K.H. had sexual intercourse.

J.A., appellant's mother, testified that her first day back to work was February 16, after taking a one-month leave from her job due to foot surgery. According to J.A., she met K.H. one time when she came over to her house to have dinner on either February 1 or February 8. J.A. denied going to the grocery store after dinner, stating that it was not her "policy" to leave appellant "home alone with a young lady" because it is not appropriate for a young man and woman to be alone at that age.

A.B., J.B.'s daughter and K.H.'s best friend, also testified for the defense. A.B. claimed that K.H. told her that she had sexual intercourse with appellant on "a Friday" following "Teen Night." A.B., however, admitted that she did not know when they had sexual intercourse because K.H. did not tell her "the exact date." A.B. further testified that about two months after K.H.'s birthday, K.H. underwent a noticeable attitude

change. According to A.B., the girls began to “fight a lot” and K.H. started holding “grudges . . . more than she used to.”

The district court found the complainant’s “testimony regarding the reasons why she remembers that [the sexual intercourse occurred] before her 13th birthday was especially credible since it was the first time she had ever had sexual intercourse.” The court also found that appellant’s “testimony regarding the date of the sexual intercourse with the victim was not credible.” Thus, the court found that appellant committed the charged offense. The court stayed adjudication of delinquency and continued appellant on probation, with conditions. This appeal followed.

D E C I S I O N

“On appeal from a delinquency-petition determination concluding that each of the elements have been proved beyond a reasonable doubt, an appellate court is limited to ascertaining whether, given the facts and legitimate inferences, a factfinder could reasonably make that determination.” *In re Welfare of A.A.M.*, 684 N.W.2d 925, 927 (Minn. App. 2004) (quotation omitted), *review denied* (Minn. Oct. 27, 2004). The reviewing court is “required to view the record in the light most favorable to the determination and assume that the factfinder believed the testimony supporting the determination and disbelieved any contrary evidence.” *In re Welfare of S.M.J.*, 556 N.W.2d 4, 6 (Minn. App. 1996). This court will not disturb the determination if the factfinder, 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. Eller*, 780 N.W.2d 375, 380 (Minn. App. 2010), review denied (Minn. June 15, 2010).

Minnesota law provides that a person is guilty of third-degree criminal sexual conduct if “the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant’s age nor consent to the act by the complainant shall be a defense.” Minn. Stat. § 609.344, subd. 1(a). Because appellant admitted having sexual intercourse with the complainant, the only issue is whether the sexual act occurred before or after the complainant’s 13th birthday.

Appellant argues that the state failed to prove beyond a reasonable doubt that he and the complainant had sexual intercourse before the complainant’s 13th birthday. But “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. *A.A.M.*, 684 N.W.2d at 927.

Here, K.H. testified that she was “certain” that she and appellant had sexual intercourse on February 8, 2009, four days before her 13th birthday. K.H. also testified that the sexual encounter was her first and that she felt “very sad” afterwards. And others noticed a change in K.H.’s demeanor and behavior about the same time. If believed, the testimony elicited by the state establishes that appellant had sex with K.H. before her 13th birthday. Although appellant claimed that he was certain that K.H. was 13 when they had sex, the district court did not find appellant’s testimony to be credible and found the complainant’s testimony to be “especially credible.” *See State v. Al-Naseer*, 788

N.W.2d 469, 473 (Minn. 2010) (stating that the factfinder is in the best position to assess the credibility of witnesses and appellate courts defer to the factfinder's credibility determinations). Moreover, J.B.'s testimony that she was told by K.H. that the sexual encounter occurred after "Teen Night" was not sufficiently developed because the date of the "Teen Night" was never established. Therefore, the state met its burden of proving beyond a reasonable doubt that appellant had sex with K.H. before her 13th birthday.

Finally, we observe that a four-day difference between a lawful and unlawful sexual encounter between two children may seem harsh, but the legislature has adopted this distinction and the courts are bound to apply it.

Affirmed.