STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1640

State of Minnesota,
Respondent,

vs.

Anthony Allen Tessman,
Appellant.

Filed September 9, 2013
Affirmed
Halbrooks, Judge

Ramsey County District Court
File No. 62-CR-12-535

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Worke, Judge.

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

HALBROOKS, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct pursuant to Minn. Stat. § 609.342, subd. 1(a) (2010), arguing that the evidence was

insufficient because the victim was not a credible witness and her allegations were uncorroborated. He also raises two evidentiary challenges and argues that the jury-selection process was unfairly prejudicial. We affirm.

FACTS

M.H. is the mother of five young children. From May to September 2011, two of M.H.'s children, H.D. and E.D., lived with M.H.'s brother, C.H., in a one-bedroom apartment in St. Paul. Appellant Anthony Allen Tessman and his two children also lived in C.H's apartment. The men usually slept in the living room while the children slept in the bedroom.

In October 2011, M.H. was driving with four of her children and a friend. While arguing with her friend, M.H. said, "Suck my dick." H.D., then six years old, sat up in the back seat and said, "Oh my God, Mom, that is so nasty. I had to do that at [C.H.'s] house. [Tessman] told me to keep it a secret, but it's so nasty. It was just so nasty, I had to wash my mouth." Upon arriving at her cousin's house, M.H. called the police. While M.H. spoke with the police, her cousin, T.M., asked H.D. if anyone touched her in a "no-zone." H.D. told T.M. that "[Tessman] made her suck his dick."

The police instructed M.H. to take H.D. to Midwest Children's Resource Center, a clinic that specializes in child abuse. Kristine Wilk, a registered nurse trained in interviewing children about allegations of abuse, interviewed H.D. Wilk later testified that H.D. told her that "[Tessman] had essentially put his penis on [H.D.'s] lips," and "a little what she referred to as peep—it was like a drop of pee went on her tongue."

Tessman was charged with first-degree criminal sexual conduct. He pleaded not guilty and requested a jury trial. The district court found H.D. to be competent to testify. H.D. identified Tessman and testified that he had slept with her in the bedroom on the night of the incident. Although H.D. initially had some difficulty focusing on the questions, she testified that Tessman "was trying to make me suck his wienie" and "[i]t touched my lip." She testified that Tessman told her not to tell anyone.

Tessman testified that he and C.H. usually slept in the living room, but he admitted to sleeping in the bedroom with his children on one occasion. But he stated that he never slept with H.D. and never placed his penis next to her mouth or asked her to suck his penis. Tessman testified that he believed that someone had sexually abused H.D. because she would inappropriately touch him over his clothes. But he acknowledged that he did not report this behavior to social services.

The jury found Tessman guilty of first-degree criminal sexual conduct. The district court sentenced him to 156 months' imprisonment, the presumptive sentence under the Minnesota Sentencing Guidelines. This appeal follows.

D E C I S I O N

I.

Tessman argues that the evidence was insufficient to prove beyond a reasonable doubt that he sexually penetrated H.D. because (1) H.D. was not a credible witness and (2) the jury showed a concern for lack of corroborating evidence. When considering a claim of insufficient evidence, we are limited to a painstaking analysis of the record to determine whether the evidence, viewed in the light most favorable to the verdict, 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 that "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). This is particularly true when resolution of the matter depends primarily on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). We defer to the fact-finder's credibility determinations. *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002).

Tessman argues that H.D. is not a credible witness because of her age, "individual characteristics," and inconsistency in her testimony. He also contends that H.D.'s "chaotic [living] situation" could have caused her to confuse the identity of her perpetrator and where it occurred and that her claim is implausible because of the size of the apartment and the number of individuals living there. But the jury was fully aware of H.D.'s age, living situation, difficulty answering some of the questions posed to her, and inconsistent statements. Further, the only inconsistent statement that Tessman identifies concerns the number of siblings residing at C.H.'s apartment. Minor inconsistencies as to collateral details are insufficient to render a child-victim's testimony not credible. *See State v. Levie*, 695 N.W.2d 619, 627 (Minn. App. 2005). We will not second-guess the jury's credibility determinations on review.

During deliberations, the jury asked for copies of the police report, the DVD transcript from Wilk's interview, and the transcript of C.H.'s testimony. The district court denied these requests. Tessman argues that these requests indicate the jury's "struggle to convict based solely on H.D.'s allegations." A sexual-abuse victim's

testimony need not be corroborated to sustain a conviction, and a conviction can rest on the uncorroborated testimony of a single credible witness. Minn. Stat. § 609.347, subd. 1 (2010); *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004). A determination that the evidence is legally sufficient to support the verdict disposes of any necessity for corroboration. *State v. Myers*, 359 N.W.2d 604, 608 (Minn. 1984).

Because H.D.'s testimony established the elements of the charged crime, corroboration was unnecessary as a legal matter. And although corroboration was not necessary, H.D.'s testimony was corroborated by the testimony of M.H., T.M., and Wilk. *See State v. Christopherson*, 500 N.W.2d 794, 798 (Minn. App. 1993) (concluding that consistent statements about an assault to multiple individuals corroborates a child victim's testimony).

II.

Tessman raises two evidentiary challenges, neither of which was asserted at trial. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). On appeal, the appellant bears the burden of establishing that the district court abused its discretion and that the appellant was prejudiced as a result. *Id.*

If an appellant fails to object to the admission of evidence, we utilize a plain-error standard of review. Minn. R. Crim. P. 31.02. Plain-error analysis requires that the appellant show: "(1) error; (2) that was plain; and (3) that affected substantial rights." *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). An error is plain when it contravenes a rule, case law, or a standard of conduct, or when it disregards well-

established and longstanding legal principles. *State v. Brown*, 792 N.W.2d 815, 823 (Minn. 2011). An error affects an appellant's substantial rights when "there is a reasonable likelihood that the error substantially affected the verdict." *Id.* at 824 (quotation omitted). If the three-part test is met, the reviewing court may correct the error only if it "seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." *Strommen*, 648 N.W.2d at 686 (quotation omitted).

Tessman argues that the district court erroneously allowed T.M. to testify, "I don't know if this is the right thing to say, but it's disgusting. I don't know how anybody could ever do anything like that . . . [H.D.] was violated, period." Tessman's attorney did not object. While the admission of T.M.'s testimony may have been improper, the error was not reasonably likely to have substantially affected the jury's verdict. The statement, although objectionable, was brief, and the prosecutor did not develop this line of testimony.

Tessman also challenges a comment that T.M. made as she stepped down from the witness stand. T.M. uttered the word "[p]ig" under her breath. Again, Tessman's attorney did not object, and it is unclear whether the jury even heard the comment. But the district court instructed the jury to disregard the comment and ordered that it be stricken from the record. Jurors are presumed to follow the district court's instructions. *State v. James*, 520 N.W.2d 399, 405 (Minn. 1994). On this record, we conclude that there was no reasonable likelihood that this comment substantially affected the verdict. *See State v. Budreau*, 641 N.W.2d 919, 926 (Minn. 2002).

III.

Finally, Tessman argues that he was unfairly prejudiced by jury selection because several prospective jurors voiced concerns about their ability to decide his case fairly and impartially. Tessman argues that this created a "charged" atmosphere for trial. But Tessman provides no legal citation or analysis to support the proposition that an expression of bias from prospective jurors during voir dire warrants reversal. *See State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) ("An assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection." (quotation omitted)), *aff'd*, 728 N.W.2d 243 (Minn. 2007). Because Tessman's argument is unsupported and inadequately briefed, he has waived it.

Nevertheless, we note that there is no support in the record that Tessman was unfairly prejudiced. Several jurors indicated that they might have a difficult time being fair and impartial because of the young age of the victim or because of personal feelings about or experiences with child sexual abuse. The jurors who stated that they would be unable to decide the case impartially were dismissed. The only juror who expressed such concerns and was impanelled indicated that he was concerned that his "sympathy or . . . emotions" could be a factor because he had children. But he clearly stated that he would be able to be fair and impartial, to listen to the evidence presented, and to apply the law as instructed by the judge.

Affirmed.