STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0480

State of Minnesota,
Respondent,

vs.

Nathan Lund,
Appellant.

Filed July 1, 2008
Affirmed
Toussaint, Chief Judge

Anoka County District Court
File No. K7-06-1112

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Robert M.A. Johnson, Anoka County Attorney, Catherine M. McPherson, Assistant County Attorney, 2100 Third Avenue, Suite 720, Anoka, MN 55303-5025 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Jessica B. M. Godes, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN (for appellant)

Considered and decided by Toussaint, Chief Judge; Connolly, Judge; and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

TOUSSAINT, Chief Judge

Appellant Nathan Lund was employed as a temporary substitute paraprofessional in a metro-area middle school and was charged with second-degree criminal sexual conduct after a seventh grader reported that he had inappropriately touched her while she was in the room he was supervising. *See* Minn. Stat. § 609.343, subd. 1(b) (2004) (making it crime to engage in sexual contact with person who is between 13 and 16 years of age and defendant is more than 48 months older and in position of authority). Appellant was convicted following a jury trial and granted a stay of imposition of sentence on a variety of probationary conditions, including payment of $250 in restitution to Anoka County Sexual Assault Committee. Because the evidence is sufficient to sustain the conviction and because appellant did not timely object to the award of restitution, we affirm.

D E C I S I O N

I.

Appellant challenges the sufficiency of the evidence to support his conviction. When considering a challenge to the sufficiency of the evidence, "we must make a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in the light most favorable to the verdict, were sufficient to allow the jury to reach its verdict." *State v. Pendleton*, 706 N.W.2d 500, 511 (Minn. 2005). We assume that the jury believed the state's witnesses and disbelieved any

evidence to the contrary. *State v. Asfeld*, 662 N.W.2d 534, 544 (Minn. 2003). We defer to the jury's determinations on witness credibility and to the weight to be given each witness's testimony. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990).

Appellant first argues that the evidence is insufficient because the testimony of the complainant, M.H., was uncorroborated. Appellant recognizes that corroboration of a sexual-assault complainant's testimony is not required and that a conviction can rest on the uncorroborated testimony of a single witness. *See State v. Ani*, 257 N.W.2d 699, 700 (Minn. 1977); Minn. Stat. § 609.347 (2004). But appellant insists that convictions have been reversed when based on the testimony of a sole witness who is of dubious credibility and whose testimony is uncorroborated. *See State v. Huss*, 506 N.W.2d 290, 292-93 (Minn. 1993); *see also State v. Foreman*, 680 N.W.2d 536, 538-39 (Minn. 2004) (discussing cases in which convictions have been reversed based on uncorroborated testimony of victim).

Contrary to appellant's assertions, much of M.H.'s testimony is corroborated, even by appellant himself. M.H. reported the incident to her counselor and principal within hours of its occurrence. What is more, appellant admitted that he may have told M.H. that she made his "hormones go crazy." Within a few weeks of the incident, appellant made the same admission to his employer and to a police detective. He also admitted to the detective that he may have touched M.H. on the breast and buttocks. While appellant tried to deny his actions at trial, when confronted with these earlier admissions to others, he abandoned his denials and attempted to offer explanations. Thus, appellant's

conviction is not based solely on the uncorroborated testimony of the complainant.

Appellant next argues that M.H.'s testimony was inconsistent. He asserts that because her accusations changed each time she made a report, her testimony was not credible and should not have been believed by the jury. Appellant highlights what he characterizes as several inconsistencies in M.H.'s testimony: M.H. first reported appellant's comment about his hormones tingling or going crazy, she then added that he touched her breast and buttocks, and she finally claimed that he touched her vagina. But these are not true inconsistencies; rather, M.H. continued to add details to the incident as time passed and as she became more comfortable talking about those details. M.H. never recanted her prior accusations and never contracted her prior statements at trial. Even if the jury found some of M.H.'s statements to be inconsistent, it obviously found her credible despite any discrepancies in her testimony. *See Bliss*, 457 N.W.2d at 390 (holding that jury determines credibility of witnesses).

Finally, appellant argues that at a minimum, "in light of the district court's inappropriate jury instruction regarding witness credibility, appellant should be granted a new trial in the interests of justice." In particular, the district court stated:

> You should keep in mind that any inconsistencies and contradictions in a witness's testimony does not necessarily mean that you should disbelieve a witness. It is not unusual for someone to forget or be mistaken about what they remember. This may help you explain some of the inconsistencies or contradictions. Also, it is not uncommon for two honest people to witness the same event and see or hear things differently. It may be necessary, when you evaluate the testimony, to consider whether the inconsistencies or contradictions relate to important or unimportant facts.

Appellant did not object to the jury instruction, which was given at the beginning and at

the end of trial. Even on appeal, appellant does not claim that the instruction misstates the law, and he does not provide this court with any caselaw from which such a conclusion might be reached. Indeed, as the state points out, the instruction easily benefitted the defense as much or more than the prosecution because appellant's trial testimony included many contradictory and inconsistent statements.

II.

Appellant argues that the district court abused its discretion in ordering him to pay $250 in restitution to the Anoka County Sexual Assault Committee.

When a victim has been fully compensated, a district court may order payment of restitution to a victim-assistance program or other program as directed by the court at sentencing. Minn. Stat. § 609.10, subds. 1(5), 2(a)(2) (2004). If a defendant objects to a claim for restitution, he or she must request a restitution hearing within 30 days after the sentencing hearing. Minn. Stat. § 611A.045, subd. 3(b) (2004).

In this case, the presentence investigation report included the following recommendation: "Pay restitution as deemed appropriate by the Court. If there is no request for restitution from the victim, pay $250.00 restitution to the Anoka County Sex Assault Committee." At the sentencing hearing, the prosecutor stated that there was no request for restitution from the victim and that he would leave to the court's discretion the restitution request for the sexual assault committee. Appellant did not object to the ordering of restitution. Because appellant did not challenge the restitution order within 30 days after sentencing, his current challenge to restitution is rejected as untimely. *See*

Mason v. State, 652 N.W.2d 269, 272-73 (Minn. App. 2002), *review denied* (Minn. Dec. 30, 2002).

Affirmed.