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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0991

In the Matter of the Welfare of:
D.J.I., Juvenile,
Appellant.

Filed June 17, 2008
Affirmed
Ross, Judge

Winona County District Court
File No. 85-JV-06-519

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Considered and decided by Johnson, Presiding Judge; Lansing, Judge; and Ross, Judge.

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

ROSS, Judge

D.J.I. appeals his juvenile-delinquency adjudication of fifth-degree criminal sexual conduct. He argues that the evidence is insufficient to demonstrate that he had a sexual intent when he prevented his girlfriend of one week from leaving a room, stood over her

with another boy and told her they were playing the "take-off-the-shirt game," and unclasped her bra. He also maintains that the district court violated his due process rights when it controlled the taking of testimony and limited the time for trial. Because we conclude that the district court received sufficient evidence to find that D.J.I. engaged in criminal sexual conduct and that the district court did not violate his due process rights, we affirm.

FACTS

S.G., a 15-year-old girl, had been dating appellant D.J.I., a 16-year-old boy, for about one week in November 2006 when the events giving rise to D.J.I.'s delinquency petition occurred on November 26, 2006. The Winona County Attorney's Office charged D.J.I. in a juvenile delinquency petition with one count of fourth-degree criminal sexual conduct, one count of false imprisonment, one count of fifth-degree criminal sexual conduct, and one count of fifth-degree assault. The district court found D.J.I. guilty of fifth-degree criminal sexual conduct, false imprisonment, and assault, after it received evidence during a February 2007 bench trial.

The trial evidence was mostly uncontested. During the week leading up to the incident, S.G. and D.J.I. spoke on the phone. During those calls, D.J.I. frequently talked about "going further than first base" and he told S.G. that he wanted to do "sexual stuff" with her. S.G. and D.J.I. were at the home of their friend, M.R., in the evening of November 26, 2006, along with M.R.'s mother, father, and brother, J.R. J.R. and D.J.I., who had been together in the game room while S.G. and M.R. watched television in the living room, summoned S.G. to take a telephone call from her sister in the game room.

According to S.G.'s trial testimony, D.J.I. became aggressive when S.G. tried to leave the game room after the call. She testified that D.J.I. and J.R. physically prevented her from leaving the room. S.G. told them that she wanted to leave, but D.J.I. took hold of her arm so that she could not. D.J.I. and J.R. hit S.G. with pillows and refused to stop when she asked them to. D.J.I. unclasped her bra strap, and he told her they were playing the "take-off-the-shirt game." Neither D.J.I. nor J.R. took off his shirt, but J.R. asked S.G. to take hers off. When S.G. again tried to leave the room, J.R. blocked the door and D.J.I. held her back. After a brief struggle, S.G. managed to get one leg out of the door and she began yelling for D.J.I. and J.R. to release her.

The evidence established that J.R.'s mother was in her bedroom above the game room when she heard noises from the room. She came downstairs and S.G. then ran from the room. S.G. told M.R. what had just happened and S.G. telephoned her mother, who came and drove her home.

After dropping S.G. off, S.G.'s mother returned and confronted J.R. and D.J.I. about the assault, but D.J.I. denied it. S.G.'s father also came to the house and confronted D.J.I. and J.R. At that point, D.J.I. fled out the back door, but his parents recovered him.

Officer Kate Bernatz soon arrived. D.J.I. told Officer Bernatz that he, J.R., and S.G. were in the room having a pillow fight and that he and J.R. got hot, so they took their shirts off and asked S.G. to do the same. D.J.I. admitted that he grabbed S.G., who was attempting to leave the room. When Officer Bernatz interviewed S.G. at S.G.'s

home, she noticed that S.G. had been crying, was very upset, and had a red mark on her arm.

Based on the trial evidence, the district court adjudicated D.J.I. to be a juvenile delinquent for committing the acts charged. D.J.I. appeals the delinquency adjudication regarding fifth-degree criminal sexual conduct, but he does not raise any challenge to the judgment as it regards false imprisonment or assault.

D E C I S I O N

I

D.J.I. argues that we must reverse the district court's adjudication of delinquency for fifth-degree criminal sexual conduct because the evidence is insufficient to support the judgment. To prove fifth-degree criminal sexual conduct, the state had to establish beyond a reasonable doubt that D.J.I. removed or attempted to remove clothing covering S.G.'s intimate parts or her undergarments with sexual or aggressive intent. Minn. Stat. § 609.3451, subd. 1 (2006). D.J.I. argues that unclasping S.G.'s bra does not amount to fifth-degree criminal sexual conduct because there is no evidence that he did so with sexual intent. On these facts, the argument is implausible.

When assessing the sufficiency of evidence on appeal, we analyze the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the factfinder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We apply the same standard to bench trials as to jury trials. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). The verdict will stand 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 based on the facts in evidence and the legitimate inferences that can be drawn from those facts. *State v. Crow*, 730 N.W.2d 272, 280 (Minn. 2007). This court assumes that the factfinder believed the state's witnesses and disbelieved contrary evidence. *State v. Vick*, 632 N.W.2d 676, 690 (Minn. 2001); *see also Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995) (noting that judging the credibility of witnesses is the exclusive function of the factfinder).

Applying that standard of review to the facts presented to the district court, acquittal on the charge of criminal sexual conduct would have been remarkable. The evidence establishes that during their one-week boyfriend-girlfriend relationship, D.J.I. had been pressuring S.G. by phone to become sexually active with him. He restrained her from leaving a partially enclosed room against her express and demonstrated will. He unclasped her bra and asked her to remove her shirt in his presence and in front of another boy. He did so during a supposed shirt-removal "game" in which S.G. was apparently the only player and the clear focus of both boys' aggressive and implicitly prurient attention. We have no difficulty concluding that the evidence supports the district court's conclusion that D.J.I. removed or attempted to remove clothing covering S.G.'s intimate parts or her undergarments with sexual or aggressive intent. There is ample evidence supporting the district court's determination that D.J.I. committed the offense of fifth-degree criminal sexual conduct.

II

D.J.I.'s due process argument has no greater strength than his sufficiency-of-the-evidence argument. He contends that the district court violated his rights by controlling the taking of testimony and limiting the time allowed for his trial. We see no signs of fundamental unfairness in the manner in which the district court managed D.J.I.'s trial.

D.J.I. contends that the district court unfairly controlled the testimony. He complains that the district court interrupted witness testimony and expressed impatience during the proceedings. But he did not object to the alleged impropriety during trial, so we review his allegations under a plain-error analysis. *See State v. Litzau*, 650 N.W.2d 177, 182 (Minn. 2002) (noting that when a defendant fails to object at trial he has generally forfeited his right of review of the alleged error on appeal except for review of and relief from a plain error). To obtain reversal for a plain error, the defendant must prove that there was an error, that the error is plain, and that the error affected his substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). An error is plain if it is clear or obvious. *State v. Ihle*, 604 N.W.2d 910, 917 (Minn. 2002). To show that the error affected substantial rights, the defendant bears the "heavy burden" of showing that there is a reasonable likelihood that the error substantially affected the verdict. *Griller*, 583 N.W.2d at 741. If the three plain-error factors are met, this court may correct the error only if the fairness, integrity, or public reputation of the judicial proceeding is seriously affected. *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002).

D.J.I. does not establish any of the plain-error factors. Trial courts have a weighty responsibility to oversee and regulate courtroom conduct and procedure during trials.

Minn. R. Gen. Prac. 2.02. We presume that a trial judge has properly discharged these judicial duties. *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006). The mode, manner, and method of receiving testimony rest almost entirely within the discretion of the district court. *In re Preston*, 629 N.W.2d 104, 115 (Minn. App. 2001); *see also* Minn. R. Evid. 101, 102 (stating that the rules of evidence govern proceedings in district court and that the rules shall be construed to promote fairness and efficient administration of justice). And the district court may exercise that discretion to facilitate judicial administration and judicial efficiency. *State v. Lindsey*, 632 N.W.2d 652, 658–59 (Minn. 2001).

D.J.I. complains that the district court asked questions of S.G. and told D.J.I.'s attorney that "[s]ooner or later we're going to have to move on" after D.J.I.'s attorney asked for a moment to confer with D.J.I. during her cross-examination of S.G. We observe no issue of unfairness. The district court is free to question a witness called by either party. Minn. R. Evid. 614(b). This approach may be especially appropriate where, as here, the court has the duty to weigh the evidence and find the facts, and there is no concern that a jury might be influenced by the substance or tone of the court's inquiries. And it appears that the exchange to which D.J.I. now objects is one in which the district court was reasonably attempting to clarify the salient facts:

> THE COURT: All right. . . . [m]aybe we should take a break, but before we do, let me ask you this. Were you afraid at any time while you were in the game room?
> THE WITNESS: Yes.
> THE COURT: Why?
> THE WITNESS: Because I was alone with two boys.
> THE COURT: What were they doing to make you afraid?
> THE WITNESS: Just—they weren't the same. They were acting different.
> THE COURT: How?

THE WITNESS: They just kept on telling me to do stuff that I didn't want to do.
THE COURT: Like take your shirt off?
(The witness nods head yes.)
THE COURT: What else?
THE WITNESS: Just not let me go.
THE COURT: Did you get hurt?
THE WITNESS: My arm was red.
THE COURT: Which arm? Both arms?
THE WITNESS: This one and a little bit on that one.
THE COURT: You've got a band-aid on that or something. Is that because of this incident?
THE WITNESS: No.
THE COURT: Okay. How about your leg? When you had your leg out the door and [J.R.] was pushing on it, did you get hurt then?
(The witness shakes head no.)
THE COURT: Why were you crying when you went and talked to your mom?
THE WITNESS: Because I was so scared.

The district court appropriately exercised its authority to question the state's chief witness, and its questions do not demonstrate bias or prejudice or otherwise impact the fairness of D.J.I.'s trial. The court's questioning also did not preclude D.J.I.'s opportunity to cross-examine S.G further. After its own questioning, the court asked D.J.I.'s attorney whether she had any additional questions, and she did not.

D.J.I. points to the district court's action during D.J.I.'s own direct examination as the most significant example supporting his contention that the district court violated his constitutional right to due process. He complains that the district court appeared frustrated at how slowly he was writing on an easel, directing D.J.I., "Just put an S. Come on. We have another whole trial, and I have first appearances, So I mean – ." He asserts that when his attorney then asked how much time was allotted for the trial, the court answered, "And you got an hour and a half, and we started fifteen minutes late."

We are not persuaded by D.J.I's contention that this exchange demonstrates that the district court was improperly "controlling the taking of testimony" or "limit[ing D.J.I.'s] ability to present a defense." A criminal defendant has a due process right to present a complete defense. *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006). The district court did not interfere with this right, it merely urged him to provide his evidence in a way that the district court felt was more efficient, and the court gave the scheduling reason for the directive that he do so. We add that the trial transcript reflects that the district court did not actually limit the length of trial to the stated time constraint, and it is unclear whether the time for trial was actually limited. And we note also that there appears to have been no bias, since the district court encouraged both D.J.I.'s attorney and the state to hasten the presentation of evidence.

Independently, disposing of D.J.I.'s due process complaint, he does not argue, let alone prove, that the court's hastening of the process prejudiced his defense in any way. *See State v. Quick*, 659 N.W.2d 701, 718 (Minn. 2003) (determining that the defendant waived the issue of whether the district court improperly hurried to finish the trial because the defendant failed to articulate how he had been prejudiced by the rush). D.J.I. identifies no witness whose testimony was consequently omitted or even slightly truncated, and the record does not suggest any actual restriction. D.J.I. does not expressly contend that the district court's conduct impacted the verdict, and we have no reason to speculate that it did.

Affirmed.