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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1575**

State of Minnesota,
Respondent,

vs.

Lance Dean Plunske,
Appellant.

**Filed August 17, 2010
Affirmed
Schellhas, Judge**

Traverse County District Court
File No. 78-CR-09-4

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

Matthew P. Franzese, Traverse County Attorney, Alexandria, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the sufficiency of the evidence to support his criminal sexual
conduct convictions, arguing that the victim’s testimony lacked “strong corroboration.”

We affirm.

FACTS

A jury found appellant Lance Dean Plunske guilty of two counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct. The district court sentenced appellant to 144 months' imprisonment followed by 10 years of conditional release, and appellant now challenges the sufficiency of the evidence to support his criminal sexual conduct convictions.

The charges arose out of allegations that appellant sexually abused his step-daughter, A.O. A.O., who was 16 at the time of trial, testified that she began residing with appellant when she was about age one. About three years before trial, appellant began acting "meaner" toward A.O., yelling at her, and hitting her. Two years before trial, appellant began sexually abusing A.O. A.O. described in detail several incidents of sexual abuse, including sexual penetration. A.O. testified that while the abuse was occurring, she awoke some mornings afraid that she would "never wake up the next day." A.O. described the impact of the sexual abuse on her: she no longer feels comfortable around older men; she shies away from her male friends; she sometimes cannot make eye contact; and she has thought about taking her own life.

A.O. admitted that when she was nine years old, she falsely accused appellant of touching her breast. A.O. testified that her father, M.O., had persuaded her to make the accusation against appellant to get back at her mother, L.P., and because he wanted custody of A.O. Appellant actually had grabbed A.O.'s coat, which A.O. later told her mother. L.P. also testified that A.O.'s father had persuaded A.O. to make the false allegation because he did not want to pay child support and wanted custody of her.

K.K., A.O.'s maternal aunt, testified that A.O. had disclosed to her, another of A.O.'s aunts, and to L.P. that appellant had touched her. K.K. testified that A.O. was embarrassed and upset. K.K. also testified that she had noticed behavioral changes in A.O. during the previous year and a half; A.O. "seemed moody" and "hung her head a lot," which was "a stark contrast" to her previous behavior. L.P. testified that after A.O. reported the abuse, L.P. and A.O. did not go back to the house for a week and a half, and both had a fear of being in the house. At the time of trial, A.O.'s fear was still manifested in her waking up at night, having nightmares, not wanting to sleep alone, and crying.

A Traverse County Sheriff's Deputy testified for the prosecution about his interview with appellant. Appellant and his sister, J.P., testified in his defense. Appellant denied that he had touched A.O. sexually, and J.P. testified that she did not think doing sexually abusive things to A.O. was consistent with appellant's character.

DECISION

When considering a challenge to the sufficiency of the evidence, appellate courts "review the evidence presented at trial to determine whether the jury could reasonably have found the defendant guilty of the crime charged." *State v. Vick*, 632 N.W.2d 676, 690 (Minn. 2001). "A defendant bears a heavy burden to overturn a jury verdict." *Id.* The reviewing court views the evidence "in a light most favorable to the state" and assumes that the jury "believed the state's witnesses and disbelieved the defendant's witnesses." *State v. McBride*, 666 N.W.2d 351, 364 (Minn. 2003). "The assumption that the jury believed the state's witnesses is particularly appropriate when resolution of the

case depends on conflicting testimony, as it is the function of the jury to evaluate the credibility of the witnesses.” *State v. Pippitt*, 645 N.W.2d 87, 92 (Minn. 2002).

Appellant was convicted of criminal sexual conduct in violation of Minn. Stat. §§ 609.342, subd. 1(b) (2008), 609.342, subd. 1(h) (2008), and 609.343, subd. 1(b) (2008). Paragraph (b) of section 609.342, subdivision 1, prohibits a person from engaging in sexual penetration with another when the complainant is at least 13 but less than 16, the actor is more than 48 months older, and the actor is in a position of authority over the complainant. The relevant portion of paragraph (h) of section 609.342, subdivision 1, prohibits a person from engaging in sexual penetration with another when the actor has a significant relationship to the complainant, the complainant was under 16, and the sexual abuse involved multiple acts committed over an extended period of time. Paragraph (b) of section 609.343, subdivision 1, prohibits a person from engaging in sexual contact with another when the complainant is at least 13 but less than 16, the actor is more than 48 months older, and the actor is in a position of authority over the complainant. Appellant argues that A.O.’s testimony is insufficient to sustain his convictions because A.O. made a prior false allegation against him and A.O.’s testimony lacked “strong corroboration.”

In a prosecution under Minn. Stat. § 609.342, the testimony of a victim need not be corroborated. Minn. Stat. § 609.347, subd. 1 (2008). The supreme court has stated that the absence of corroboration in an individual case could call for a holding that the evidence was insufficient, *State v. Ani*, 257 N.W.2d 699, 700 (Minn. 1977), but this court

has characterized that language as dictum. *State v. Folley*, 378 N.W.2d 21, 25 (Minn. App. 1985).

The testimony of a criminal-sexual-conduct victim alone may still be insufficient, however, when there are additional reasons to question the victim's credibility. In *State v. Huss*, a case in which the state prosecuted a father for allegedly sexually abusing his three-year-old daughter, the state's direct evidence consisted only of the victim's testimony. 506 N.W.2d 290, 292 (Minn. 1993). That testimony was "particularly troublesome" because the child was on the stand for almost an hour before she made an accusation of abuse; she testified that both of her parents had touched her in a bad way; she denied having "yucky secrets"; she testified that six people, including a playmate, had touched her private parts; she identified a hug and a touch to her hair as "bad touches"; she testified that she had taken a shower at her father's the day of trial but evidence established that she had not seen her father for a year; she was not able to identify her father, the defendant, even though he was pointed out to her; and she testified that her father was bald and blind even though he was neither. *Id.* The supreme court stated that the child's testimony "was contradictory as to whether any abuse occurred at all, and was inconsistent with her prior statements and other verifiable facts." *Id.*

But the *Huss* court added: "even given this contradictory testimony, we might not be persuaded to reverse absent the repeated use of a highly suggestive book on sexual abuse." *Id.* In *Huss*, the child's mother and therapist had repeatedly exposed the child to highly suggestive materials beginning in April or May, and the child had not mentioned sexual abuse until the following October, after five months of therapy. *Id.* at 293.

Stating that the use of the suggestive materials was “key” to the insufficiency claim, the supreme court ruled that the evidence was insufficient and reversed the conviction. *Id.* at 292-93.

By contrast, in *State v. Reichenberger*, victim testimony alone was sufficient to sustain a conviction for carnal knowledge of a child. 289 Minn. 75, 76-77, 79-80, 182 N.W.2d 692, 693, 695 (1970). The child, age 13 at the time of the offense, had made inconsistent statements before trial about whether intercourse occurred. *Id.* at 77-79, 182 N.W.2d at 693-95. At trial, the victim testified that intercourse had taken place and that her inconsistent statements were caused by threatening phone calls. *Id.* The supreme court ruled that the evidence was sufficient, stating that there was “ample direct testimony” from the victim and that the jury was apprised of the inconsistent statements and had the task of weighing credibility. *Id.* at 79-80, 182 N.W.2d at 695.

The circumstances in this case are far removed from the “unusual facts” of *Huss*, 506 N.W.2d at 293. Appellant identifies one reason to question A.O.’s credibility—her prior false allegation. But the jury was apprised of the prior false allegation made by A.O., that A.O. made the false allegation when she was much younger, that her father prompted her to make the allegation, and that A.O. subsequently revealed the falsity of the allegation. A.O. was 16 at the time of trial and testified cogently and consistently about the circumstances of the abuse. The jury had the task of weighing her credibility.

And even if corroboration were required here, in spite of the plain language of § 609.347, A.O.’s testimony was adequately corroborated. This court has characterized “a prompt complaint of the incident, evidence of the victim’s physical and emotional

condition,” and “detailed descriptions by the victim of the incidents” as “strong corroborating evidence.” *State v. Marshall*, 395 N.W.2d 362, 365 (Minn. App. 1986), *review denied* (Minn. Dec. 17, 1986). Although appellant is correct that A.O. did not make a prompt complaint of the incident, K.K., L.P., and A.O. testified about A.O.’s emotional condition, and A.O. provided detailed descriptions of the incidents. The evidence here included two of the three types of corroborating evidence noted in *Marshall*. We conclude that the evidence was sufficient to support the jury’s verdicts in this case.

Affirmed.