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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0452**

State of Minnesota,
Respondent,

vs.

Brett Allen Goulet,
Appellant.

**Filed March 26, 2018
Affirmed
Jesson, Judge**

Polk County District Court
File No. 60-CR-15-2078

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

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Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Randall,
Judge.*

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

UNPUBLISHED OPINION

JESSON, Judge

Appellant Brett Allen Goulet was convicted of first-degree criminal sexual conduct for sexually penetrating his minor step daughter. On appeal, he argues that the only evidence of penetration was the victim's own testimony which—he contends—was so contradictory and inconsistent that it could not lead a reasonable juror to find him guilty. Goulet also claims the district court's erroneous decision to allow prosecutors to question him about being on probation caused him not to testify in his own defense. He argues that either error requires this court to reverse and remand for a new trial. We disagree and affirm.

FACTS

Appellant Brett Allen Goulet married Dwan Thompson in 2010. Thompson had four children from a previous relationship, one of whom was the victim in this case, six-year-old M.A. But the marriage did not last and the couple divorced in February 2013.

One day in August of 2014, about a year and a half after the divorce, M.A. approached Thompson in such a strange way that Thompson later testified that she thought M.A. must have “had a bad dream.” According to Thompson, M.A. said “I need to talk to you mom and I have to talk to you alone.” M.A. shut the door behind her and told Thompson that Goulet had done “something bad to her,” that Goulet “had touched her private parts with his mouth and his . . . penis.” After more questioning, Thompson learned that the abuse occurred sometime in 2012 before she and Goulet separated. Thompson went to the police.

M.A. was interviewed by a social worker for child protection in Polk County. M.A. discussed the abuse with the interviewer, stating that Goulet “put his private in [her].” When the interviewer asked how this felt, M.A. described it as “pokey” and that Goulet “smelled like sweat.” The interviewer asked M.A. how she knew that Goulet’s penis went inside her, and M.A. replied that she knew because she “felt it.” During a follow-up interview, M.A. again said that Goulet put his penis “in” her.

M.A. was examined by a medical professional who reported that her exam was normal and did not reveal evidence of injury, either new or old. But the professional cautioned that a normal examination is not unusual in child-abuse situations. Later, the professional testified that in the world of child-abuse pediatrics “a normal exam never rules out that something has occurred.” The professional estimated that in sexual abuse cases, 95% of cases would show a normal exam.

In November, 2015, the state charged Goulet with two counts of first-degree criminal sexual conduct, alleging that Goulet sexually penetrated M.A. While on the stand, the prosecutor asked M.A. if Goulet’s “boy parts” went “inside of [her] private parts?” M.A. replied, “[y]es,” and testified that she felt discomfort when it happened. But on cross-examination M.A. admitted that she did not remember saying in her interview with child protection that her underwear had been on when the abuse occurred. After more questioning, M.A. admitted that she could not actually remember if she was wearing underwear when the abuse occurred.

During trial, the state made it clear that it intended to use impeachment evidence against Goulet if he took the stand. One of the pieces of evidence the state wanted to use

was the fact that Goulet was on probation for a 2012 assault conviction in North Dakota. Goulet opposed the use of this evidence because he only pleaded guilty to—and was put on probation for—this offense *after* the alleged sexual abuse occurred. But the district court allowed the state to question Goulet about being on probation if he took the stand. When the time came, Goulet chose not to testify in his own defense.

The jury found Goulet guilty of both counts of first-degree criminal sexual conduct-penetration. He was sentenced to 306 months in prison on count one,¹ and 144 months for count two against M.A., with count two running consecutively. Goulet appeals.

D E C I S I O N

I. There was sufficient evidence that Goulet penetrated M.A.

Goulet was convicted of first-degree criminal sexual conduct. An element of Goulet’s charge required the state to prove that he engaged in “sexual penetration,” defined as “any intrusion however slight into the genital or anal openings . . . of the complainant’s body by any part of the actor’s body” Minn. Stat. § 609.341, subd. 12(2)(i) (2014). Goulet argues that the state did not present sufficient evidence that would have allowed the jury to find beyond a reasonable doubt that he sexually penetrated M.A. He contends that the only evidence showing penetration was M.A.’s testimony and her prior statements, which were contradictory and inconsistent.

¹ There was another victim as well and Goulet was eventually convicted of first-degree criminal sexual conduct against both victims, but only M.A. is the focus of this appeal. Count one corresponds to the allegations against the second victim.

Goulet's argument is better known as a sufficiency-of-the-evidence claim. To analyze this claim, we review the trial record to determine if the evidence was sufficient to allow the jury to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We view the evidence in a way that paints that verdict in a favorable light. *Id.* And we enter the analysis assuming 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). If we determine that the jury, after considering the evidence, reasonably concluded that the defendant was guilty, then we will not disturb its verdict. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). Of course, to reach its verdict, the jury must have kept in mind that the defendant was presumed innocent and the state was required to prove his guilt beyond a reasonable doubt. *Id.*

Although Goulet claims that the victim's statements were contradictory and inconsistent, it is important to note that credibility assessments and how much weight to give a witness's testimony are exclusively in the hands of the jury. *State v. Wright*, 679 N.W.2d 186, 190 (Minn. App. 2004), *review denied* (Minn. Jun. 29, 2004). Juries are free to accept some aspects of a witness's testimony and reject others. *State v. Poganski*, 257 N.W.2d 578, 581 (Minn. 1977). But even if there are inconsistencies and conflicts in testimony, this does not automatically justify a reversal. *State v. Stufflebean*, 329 N.W.2d 314, 319 (Minn. 1983). As we have said, "inconsistencies are a sign of human fallibility and do not prove testimony is false, especially when the testimony is about a traumatic event." *State v. Mosby*, 450 N.W.2d 629, 634 (Minn. App. 1990), *review denied* (Minn. Mar. 16, 1990).

We begin by examining the record for evidence that Goulet penetrated M.A. Goulet is correct that the only direct evidence of penetration were M.A.'s statements in three contexts: (1) accusations of penetration M.A. made when she testified at trial, (2) accusations of penetration she made in an interview with child protection after telling her mother, and (3) general statements she made to a medical professional during a physical examination. We will discuss all three contexts through the prism of the jury's verdict.

First, we begin with M.A.'s trial testimony. M.A. testified that during the summer between her first- and second-grade years,² Goulet "touched [her] personal parts" with "[h]is boy parts." The prosecutor asked M.A. how this felt and she responded that it was uncomfortable. Finally, the prosecutor asked, "when [Goulet's] boy parts touched your private parts, did they go inside of your private parts?" "Yes," M.A. answered.

But M.A. could not remember if Goulet was wearing any clothes. And on cross-examination, M.A. admitted that she did not remember giving a statement years ago where she claimed to be wearing underwear during the abuse. Pressed further by defense counsel, M.A. admitted that she did not remember if she was wearing underwear or not.

The second piece of evidence showing penetration were M.A.'s statements to child-abuse interviewers. After revealing the abuse allegations to her mother, M.A. met with a social worker whom she told that Goulet touched her in "the bad part." M.A. identified

² M.A. testified at trial that she was currently twelve years old and a sixth grader, and that the incident happened about four years prior.

“the bad part” as her “private.” She also told the examiner that Goulet “put his private in mine” on one occasion.³

Goulet argues that M.A. is not consistent in these interviews, pointing to an exchange where the examiner asked M.A. if Goulet’s penis touched her underwear, her skin, or someplace else. In that interview, M.A. answered, “[m]y underwear.” The examiner followed up by asking, “Then what?” and M.A. responded, “Um, that’s all.” Later, the examiner tries to clarify what happened, telling M.A. “I wanna understand your situation the best I can. Did the skin of [Goulet’s] private touch your skin at all?” M.A. apparently made a “no” noise⁴ which the examiner confirmed by answering back, “No,” signaling some hesitation about admitting to penetration.

Despite this hesitation, a few questions later the examiner asked, “Then you woke up? Then what happened?” and M.A. replied that Goulet “put his private in mine.” The examiner asked how M.A.’s body felt when this happened. “Surprised,” M.A. said. And when asked what Goulet’s penis felt like inside her, M.A. described the feeling as “pokey.”

The examiner eventually circled back to the question of penetration and tried once more to clarify what happened:

EXAMINER: Okay. I’m gonna go back to something and I just wanna remind you that it’s not that I don’t believe you, or I want you to change your message, it means I need to understand—I’m trying to understand it better. Um, but—you said that his private touched your underwear . . .

M.A.: Mm-hm.

EXAMINER: . . . And it went inside? How do you know it went inside?

M.A.: Because I felt it.

EXAMINER: Okay.

³ M.A. identified Goulet’s “private” as his “weenie” during the interview.

⁴ In the record, this is written as “Mm-mm.”

In a second interview with a different examiner, the interview returned to the topic of penetration in the following exchange:

EXAMINER: Okay. Um, then what happened?

M.A.: And he [Goulet] pulled down my shorts and then pulled down his pants.

EXAMINER: Okay. And then what?

M.A.: He put it in.

EXAMINER: Um, where was his underwear?

M.A.: His underwear were – he had to – it was still on him but the – he had something that opened it in the – his pants.

....

EXAMINER: Okay. Um, you said he put his penis in your vagina?

M.A.: Mm-hm.

EXAMINER: Okay. Was it his skin to your skin then?

M.A.: Yes.

Lastly in our examination of M.A.'s statements showing penetration, we look to her comments to a medical professional who conducted a physical examination. This professional testified that during the examination M.A. said that Goulet touched her with "his front area," and that it "tingled when his genital area touched hers." According to the professional, M.A. reported some "discomfort" after this and she experienced painful urination the next day. M.A. did not explicitly describe penile penetration to this professional.

Goulet argues that all of M.A.'s statements were too contradictory to sustain the jury's verdict finding that penetration occurred. He highlights two alleged inconsistencies: the first being a statement during M.A.'s medical examination where she did not tell the professional that she had been penetrated. Second, during M.A.'s trial testimony, she could

not remember if her clothes were on or off when the abuse occurred. Both inconsistencies, Goulet believes, cast enough doubt on the question of penetration to reverse his conviction.

To support his argument for reversal based on these inconsistencies, he cites to two cases. The first case is *State v. Ani* for the general idea that evidence lacking corroboration may be enough to reverse a jury's verdict, depending on the circumstances. *State v. Ani*, 257 N.W.2d 699, 700 (Minn. 1977). In *Ani*, however, the verdict remained intact because the supreme court concluded that the victim's testimony was "positive and not contradicted, and was strongly corroborated by other evidence." *Id.*

Goulet's second support is *State v. Huss*, 506 N.W.2d 290 (Minn. 1993). In *Huss*, the only direct evidence that the defendant sexually abused his three-year-old daughter was the victim's own testimony—testimony that took nearly an hour of questioning on the stand to finally reach the abuse accusations. *Id.* at 290, 292. Even when the victim finally discussed the abuse, she implicated both of her parents when the father was the only one suspected. *Id.* The victim was asked by the prosecutor multiple times if she had "yucky secrets" and she denied it each time. *Id.* The victim then testified that six people touched her private parts, which was completely baseless; she considered hugs and anyone touching her hair to be "bad touches"; she claimed to have been at her father's house on the day of trial despite not having seen him for the last year; she could not identify her father in the courtroom; and finally, she testified that her father was bald and blind when he actually had hair and could see just fine. *Id.*

The supreme court in *Huss* concluded that the victim's testimony was contradictory and inconsistent with her prior statements. *Id.* Even so, the supreme court wrote that it

might be inclined to keep the conviction intact if it were not for the fact that the victim was clearly influenced by a suggestive book and videotape on sexual abuse that her mother repeatedly showed her for months leading up to the allegations. *Id.* at 292-93. The supreme court concluded that the repetitious use of this book and video “raise[d] questions about the validity of the accusations made against [the father]. This is especially so in light of the child’s testimony.” *Id.* at 293. The supreme court then reversed the conviction for insufficient evidence. *Id.*

We do not believe the inconsistencies in this case are as troubling as those in *Huss*. Goulet does identify some minor inconsistencies or narrative holes in M.A.’s statements, like failing to tell her examining physician that Goulet penetrated her or failing to remember if she wore underwear. But none of these issues call into question the very essence of the allegations and make us second-guess the jury’s credibility determination regarding M.A. Of course, some inconsistencies are to be expected. Inconsistencies are a “sign of human fallibility,” but they do not automatically prove that the testimony is false—especially when it comes to young children recounting their own sexual abuse. *Mosby*, 450 N.W.2d at 634.

In a sufficiency-of-the-evidence claim, the task is not to hunt for minor incongruities; the task is to comb through the record to determine if the evidence was sufficient to allow a jury to arrive at its decision. *Webb*, 440 N.W.2d at 430. For our purposes, this means asking whether Goulet’s jury could have reasonably concluded that he penetrated M.A., and whether we are convinced that the jury gave due regard to the

presumption of innocence and proof beyond a reasonable doubt. *Bernhardt*, 684 N.W.2d at 476-77.

We are convinced on all accounts. Whether M.A. remembers if she had her underwear on years after the abuse occurred does not undercut the reasonable conclusion that Goulet penetrated her. And just because M.A. did not tell the examining physician that Goulet penetrated her does not mean it did not happen. M.A. was a young child who had just endured a traumatic experience. It was reasonable for the jury to determine that she was none too eager to effusively discuss the event with a stranger. Given M.A.'s age, the overall detail in her statements, and the general consistencies, we conclude that the jury could reasonably find that Goulet penetrated M.A. For these reasons, we conclude that Goulet's sufficiency-of-the-evidence claim fails.

II. The district court's decision to allow the state to cross-examine Goulet about his probationary status was an error, but the error did not substantially influence the jury's verdict.

Goulet also argues that the district court's decision allowing the state to impeach him with his probationary status was reversible error. We will not overturn a district court's evidentiary rulings unless the ruling was an abuse of discretion, even when constitutional rights are implicated. *State v. Pendleton*, 706 N.W.2d 500, 510 (Minn. 2005). And even if a district court's evidentiary ruling is an abuse of discretion, we will not reverse that decision unless the error substantially influenced the jury's verdict. *State v. Carridine*, 812 N.W.2d 130, 141 (Minn. 2012).

The district court decided that, if Goulet took the stand, the state would be allowed to impeach him with the fact that he was on probation in another state. The court reasoned

that Goulet’s probationary status gave him an incentive to lie about committing the sexual abuse since this would likely be a violation of his probation. The state admits this was likely an error because Goulet was not placed on probation until *after* the criminal sexual conduct in Minnesota occurred.⁵

Goulet argues that the court’s error was serious enough to demand reversal of his conviction because it tipped the scales in his decision not to testify in his own defense. We disagree. Besides allowing the state to impeach Goulet with his out-of-state probationary status, the district court also allowed the state to impeach him with three previous felony convictions.⁶ These prior felonies appear far more damaging to Goulet’s credibility than being on probation in another state. And we have stated that, even if a district court improperly admits evidence of prior bad acts, if there is other properly admitted evidence of prior bad acts that counterbalances the error, this can render the net result a harmless error. *See Laughnan v. State*, 404 N.W.2d 326, 330 (Minn. App. 1987) (concluding that although the admission of two prior felony convictions was improper it was not prejudicial error in light of properly admitted evidence of ten other previous convictions), *review denied* (Minn. June 9, 2017); *see also State v. Hendrickson*, 528 N.W.2d 263, 267 (Minn. App. 1995), *review denied* (Minn. Apr. 27, 1995) (determining that trial court incorrectly

⁵ The state writes in its brief that “at the time of trial, [Goulet] was on supervised probation for his Aggravated Assault conviction, but this offense and conviction occurred after [Goulet] committed the crimes in this case. Accordingly, it seems doubtful that [Goulet]’s probation could have been revoked based solely upon his conviction in this case.”

⁶ Two of these convictions were for theft of a motor vehicle; the third conviction was for aggravated assault but would only be referred to as an “unspecified felony.”

admitted two previous burglary offenses, but the error was harmless since the remaining evidence was sufficiently strong).

Even if we assume that Goulet did not testify because he feared facing this improper impeachment evidence, the cumulative effect of three properly-admitted felony convictions overwhelmed any prejudicial effect of his probationary status. We will not reverse the district court unless its error substantially influenced the jury's verdict. *Carridine*, 812 N.W.2d at 141. While we acknowledge that the district court made an error in this case, that error did not substantially influence the jury's verdict. For this reason, Goulet's evidentiary argument fails as well.

In summary, M.A. faced her abuser in court and testified in graphic detail about her sexual abuse. That is difficult for any victim to do, let alone a child. While Goulet isolates some inconsistencies in her testimony and statements, they are relatively minor and ultimately inconsequential when put in context of the overall allegations. So too is the district court's decision to admit Goulet's probationary status, which was an error, but not a prejudicial error. We conclude that Goulet fails to show that the evidence against him was insufficient to sustain the jury's verdict and that the district court's evidentiary error was substantially prejudicial. For these reasons, we affirm the district court.

Affirmed.