NOT DESIGNATED FOR PUBLICATION

No. 124,785

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

JEREMIAH J. ORANGE,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; JEFFREY SYRIOS, judge. Opinion filed March 3, 2023. Affirmed.

Jennifer C. Bates, of Kansas Appellate Defender Office, for appellant.

Kristi D. Allen, assistant district attorney, *Marc Bennett*, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before GARDNER, P.J., MALONE and HILL, JJ.

PER CURIAM: Jeremiah J. Orange appeals his convictions of two counts of aggravated indecent liberties with a child and two counts of rape involving his then-girlfriend's daughter. Orange claims the district court erred in denying his motion to suppress his statement to law enforcement because the statement was not freely and voluntarily given. He also claims there was insufficient evidence to support the convictions. Orange does not prevail on either claim, and we affirm the district court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In 2018, K.B., who was 12 years old at the time, told her father's girlfriend that Orange, her mother's boyfriend, touched her chest and her private areas under her clothes a couple of years earlier when K.B. was 9 or 10 years old. Father's girlfriend took K.B. directly to her legal guardian, her grandmother. K.B. told her grandmother that the first time Orange touched her was at a motel where she was living in 2016 with her mother and Orange. K.B. later told her mother and father about the improper touching.

During the investigation, K.B. was interviewed by Wichita Police Detective Kevin Brown, of the Exploited and Missing Children's Unit (EMCU), and Julie Freese, a social worker with the Kansas Department for Children and Families. K.B. reported to them that Orange had touched her many times while she and her mother were living with Orange at a motel in 2016 and later that year when they moved into a house in Wichita. K.B. reported that when her mother would leave for work early in the morning, Orange would rub her chest and her private parts while they were in bed together. K.B. reported that when Orange would rub her private parts, his fingertip would penetrate her vagina.

Brown later conducted a videotaped interview of Orange in an interview room at the EMCU. Before answering any questions, Orange read aloud and signed a *Miranda* waiver form. During the interview, Orange denied ever touching K.B. in an improper way. He admitted that his arm may have accidently touched K.B.'s chest over her clothes while they were in bed together. Orange said he apologized to K.B. when this happened. Even though Orange insisted that any touching was accidental, he told Brown that he knew the touching could be considered a crime, which is why he never mentioned it to anyone when it happened.

The State charged Orange with two counts of aggravated indecent liberties with a child and two counts of rape. Orange moved to suppress his statement to Brown alleging

that the statement was not freely and voluntarily given. After conducting a hearing at which Brown testified and the videotaped interview was admitted as an exhibit, the district court denied the motion to suppress.

The case proceeded to a four-day jury trial. The State called seven witnesses including K.B., her mother, her father, father's wife (previously girlfriend), K.B.'s grandmother, Brown, and Freese. The State introduced into evidence the videotaped interviews of K.B. and other family members and Brown's videotaped interview with Orange over his objection. The State delineated that it was charging Orange with two counts of aggravated indecent liberties with a child for touching K.B.'s chest—once in the motel and once in the house; and it was charging Orange with two counts of rape for digitally penetrating K.B.'s vagina—once in the motel and once in the house. Orange did not testify at the trial or present any witnesses. In closing argument, he emphasized the inconsistencies in K.B.'s statements and the fact that it took her two years to report the incidents. He asserted that any touching of K.B.'s chest area in bed was accidental and there was no physical evidence to support the charges.

The jury found Orange guilty on all four counts. The district court sentenced Orange to four consecutive hard 25 life prison terms. Orange timely appealed the district court's judgment.

MOTION TO SUPPRESS

Orange claims the district court erred in denying his motion to suppress his statement to Brown, arguing that the statement was not freely and voluntarily given. The State responds that the district court did not err in denying the motion to suppress because, under the totality of the circumstances, Orange's statement to Brown was freely and voluntarily given.

"On a motion to suppress, an appellate court generally reviews the district court's findings of fact to determine whether they are supported by substantial competent evidence and reviews the ultimate legal conclusion de novo." *State v. Cash*, 313 Kan. 121, 125-26, 483 P.3d 1047 (2021). In reviewing the factual findings, an appellate court does not reweigh the evidence or assess the credibility of witnesses. *State v. Gibson*, 299 Kan. 207, 215-16, 322 P.3d 389 (2014).

Orange admits that he waived his *Miranda* rights. Even so, he asserts that his statement was coerced and involuntary. The State has the burden to prove the voluntariness of a statement by a preponderance of the evidence—that the statement was the product of the defendant's free and independent will. *State v. Mattox*, 305 Kan. 1015, 1042, 390 P.3d 514 (2017). The court looks at the totality of the circumstances surrounding the statement to determine whether it was voluntary by considering the following nonexclusive factors: (1) the accused's mental condition; (2) the manner and duration of the interrogation; (3) the ability of the accused to communicate on request with the outside world; (4) the accused's age, intellect, and background; (5) the fairness of the officers in conducting the interrogation; and (6) the accused's fluency with the English language. *State v. Palacio*, 309 Kan. 1075, 1087, 442 P.3d 446 (2019); *State v. Stone*, 291 Kan. 13, Syl. ¶ 8, 237 P.3d 1229 (2010).

The district court found that all six factors favored the State and weighed against Orange and his claim that his statement was involuntary. Orange now disputes the district court's findings on only the second and fifth factors. He does not dispute the district court's analysis or findings on the other four factors, meaning we can presume the district court correctly found that these factors favored the State.

As for the second factor—the manner and duration of the interrogation—the district court found that these facts supported the voluntariness of Orange's statement: (1) the interrogation room was standard with one table and two chairs; (2) Orange was not

handcuffed or shackled during the interview; (3) only one detective was in the room with Orange; (4) Orange was offered a drink; (5) Orange sat comfortably and smiled throughout the interview; (6) Orange was offered a bathroom break; (7) Orange did not have to wait for the interview to begin; (8) the interview lasted around 55 minutes; (9) the conversation was cordial and in polite tones; and (10) Brown did not exhibit extreme or demonstrative body language during the interview.

On appeal, Orange argues that his statement was involuntary because the interrogation was conducted at the EMCU. More specifically, he argues that the location of the interview at the EMCU "is more intimidating than . . . at the suspect's home or in some neutral area." Orange essentially argues that any interview in a law enforcement building favors coercion. But he does not explain any other circumstances that might show that the location of the interview was overly intimidating under the circumstances. Orange does not argue that arriving at the EMCU was particularly burdensome, that the environment was hostile, or that he was uncomfortable at the EMCU.

Orange also argues that Brown was seated between him and the room's exit and was thus blocking Orange's exit in a coercive fashion. Orange cites *United States v. Waksal*, 709 F.2d 653, 659 (11th Cir. 1983), for the general proposition that blocking an interviewee's exit may show coercion. Aside from describing Brown as sitting between him and the room's exit, Orange does not explain how the seating arrangement rises to the level of coercion. For example, Orange does not claim that Brown locked the door, stood directly in the doorway, or physically stopped Orange from leaving. Nothing in the record shows that Brown's location in the interview room was anything more than inadvertent or that it had any effect on Orange.

Even if the location of the interrogation or Brown's position in the interview room are facts weighing in Orange's favor, Orange's argument fails to refute the many other facts the district court found that weighed against him. Under these circumstances, the

district court did not err in finding that the second factor supported a finding that Orange gave a voluntary statement.

Turning to the fifth factor—the fairness of the officer in conducting the interrogation—the district court found this factor supported voluntariness for three reasons: (1) "nothing was sprung" on Orange, (2) the conversation was cordial, and (3) nothing "rose to the level of 'deceptive tactics' referred to by the higher court in *State v. Stone*." In *Stone*, the Kansas Supreme Court found a detective's interview tactics coercive. 291 Kan. at 32-33. Stone repeatedly denied committing a sexual assault. In response to Stone's many denials of wrongdoing, the detective fabricated a story that Stone's semen was found on the victim's clothing to try to provoke a confession. The detective also challenged each denial by admonishing Stone for failing to tell the truth, by repeating the victim's story and implying that was the only true version of events, and by telling Stone that his sentence would be reduced if he told the truth. Ultimately, Stone confessed, but the court found that he had merely adopted the version of events repeatedly put forward by the detective. 291 Kan. at 29.

Orange argues that his case is like *Stone* because Brown repeated questions and "repeatedly insisted that a touching of K.B. at a motel . . . was not an accident as Mr. Orange described it." The district court distinguished this case from *Stone* because Brown did not fabricate facts to induce a confession. The district court also found that Brown had a legitimate purpose for challenging Orange's responses and repeating questions. Throughout the interview Orange's story changed slightly in response to basic clarifying questions. Brown then circled back and pressed Orange on the additional and often conflicting information. This interview tactic was not unduly coercive. The district court also distinguished *Stone* in that the interview in that case was 7 hours long, compared to Orange's interview lasting about 55 minutes. Nothing in Orange's case rises to the level of the detective's misconduct in *Stone*. Thus, the district court did not err in finding that the fifth factor supported the voluntariness of Orange's statement.

In sum, the district court's factual findings were supported by substantial competent evidence and support the district court's legal conclusion that Orange's statement was freely and voluntarily given. As a result, the district court did not err in denying Orange's motion to suppress his statement to Brown.

SUFFICIENCY OF THE EVIDENCE

Orange also claims the evidence was insufficient to support his convictions. Conversely, the State argues that it presented sufficient evidence at trial to sustain Orange's convictions of aggravated indecent liberties with a child and rape.

> "'When the sufficiency of the evidence is challenged in a criminal case, we review the evidence in a light most favorable to the State to determine whether a rational factfinder could have found the defendant guilty beyond a reasonable doubt. An appellate court does not reweigh evidence, resolve conflicts in the evidence, or pass on the credibility of witnesses. [Citations omitted.]'" *State v. Aguirre*, 313 Kan. 189, 209, 485 P.3d 576 (2021).

Orange argues that K.B.'s testimony was "wildly inconsistent as to when the alleged touching occurred and how many times it occurred" to a point that no reasonable fact-finder could convict him beyond a reasonable doubt. Orange cites *State v. Matlock*, 233 Kan. 1, 5-6, 660 P.2d 945 (1983), where the Kansas Supreme Court held in a four to three decision that based on uncontradicted factual circumstances shown in the record in a criminal prosecution for rape, no rational fact-finder could have believed the uncorroborated testimony of the victim and found the defendant guilty beyond a reasonable doubt. The *Matlock* majority listed 14 facts adduced at trial that directly, and often severely, controverted the victim's testimony. Under these circumstances, the majority found that the victim's credibility was so undermined by controverting evidence that no rational fact-finder could have believed her testimony. 233 Kan. at 4-6.

Matlock is the only reported case in Kansas where our Supreme Court found that the victim's testimony in a prosecution for rape was so incredulous that it did not support the defendant's conviction. After *Matlock*, our Supreme Court has clarified that the uncorroborated testimony of the complaining witness can be enough to sustain a conviction for a sex crime if the evidence is clear and convincing and the testimony is not so incredible as to defy belief. *State v. Brinklow*, 288 Kan. 39, 53, 200 P.3d 1225 (2009).

In *Matlock*, the rape victim's testimony was controverted by essentially all the other evidence in the case. Orange's case is nothing like *Matlock*. K.B. told her father's girlfriend, her grandmother, her mother, and her father that Orange touched her inappropriately. K.B. repeated these allegations to Brown and Freese during the formal investigation. Granted, there were inconsistencies in K.B.'s various statements about when and how many times the inappropriate touching occurred. The jury heard these inconsistencies and still found K.B.'s testimony was credible. Moreover, K.B.'s testimony was partially corroborated by Orange's own statement to Brown that he touched K.B.'s chest while they were in bed together, although Orange claimed the touching was accidental. Orange is essentially asking this court to reweigh the evidence presented at trial, which we will not do. *Aguirre*, 313 Kan. at 209. Reviewing all the evidence in a light most favorable to the prosecution, we conclude the State presented sufficient evidence for a rational fact-finder to find Orange guilty of all four charges beyond a reasonable doubt.

Affirmed.