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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1549**

State of Minnesota,
Respondent,

vs.

Alvin Alexander Bonilla-Sanchez,
Appellant.

**Filed July 24, 2017
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-15-34370

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bjorkman, Judge; and
Toussaint, Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct, arguing the evidence was not sufficient to establish that he resided regularly in the same dwelling as the victim. We affirm.

FACTS

On December 6, 2015, L.D.G. reported that her daughter, 13-year-old K.G., had been sexually assaulted by appellant Alvin Alexander Bonilla-Sanchez. At the time of the incident, Bonilla-Sanchez worked with L.D.G. and her husband as a painter, and had been living in their basement for three weeks. Bonilla-Sanchez admitted to police that he had engaged in sexual intercourse with K.G. every day over a two-week period, and that he had been staying in the basement of her home for three weeks.

Respondent State of Minnesota charged Bonilla-Sanchez with one count each of first-degree and third-degree criminal sexual conduct. Bonilla-Sanchez waived his right to a jury trial, and the case proceeded to a court trial in which the parties stipulated to the evidence.¹ The district court found Bonilla-Sanchez guilty of both offenses. After denying Bonilla-Sanchez's motion for a dispositional or durational departure, the district court imposed a 144-month sentence for the first-degree conviction. Bonilla-Sanchez appeals.

¹ The stipulated evidence includes relevant police incident reports and interviews, reports concerning and statements made by K.G., and photographs of the residence.

DECISION

In reviewing a sufficiency-of-the-evidence challenge, this court reviews the record “to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the [fact-finder] to reach the verdict [it] did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We will not disturb the verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offenses. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988). And we use the same standard of review in court trials and jury trials in evaluating the sufficiency of the evidence. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).²

To support a conviction of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(h)(iii) (2014), the state must prove that the defendant

engage[d] in sexual penetration with another person, . . . the [defendant] has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the sexual penetration, and . . . the sexual abuse involved multiple acts committed over an extended period of time.

A significant relationship exists if the defendant is “an adult who jointly resides intermittently or regularly in the same dwelling as the [victim] and who is not the [victim]’s spouse.” Minn. Stat. § 609.341, subd. 15(3) (2014). Bonilla-Sanchez argues that the

² The state and district court identify the proceeding as a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 3. We disagree. The district court made findings of fact based on stipulated evidence. Accordingly, we review the sufficiency of the evidence as we would in any case involving a court trial. *Dereje v. State*, 837 N.W.2d 714, 720-21 (Minn. 2013).

evidence is insufficient to establish that he resided with K.G. and did so “intermittently or regularly.” We are not persuaded.

In analyzing the “significant relationship” element of the first-degree criminal-sexual-conduct offense, this court previously concluded that “[t]o reside means to ‘live, dwell, abide, sojourn, stay, remain, lodge *** [or] have a settled abode for a time.’” *State v. Sebasky*, 547 N.W.2d 93, 100 (Minn. App. 1996) (quoting *Black’s Law Dictionary* 1308 (6th ed. 1990)), *review denied* (Minn. June 19, 1996).³ And we observed that a “dwelling is any ‘place of residence.’” *Id.* (quoting *Webster’s New Universal Unabridged Dictionary* 567 (2d ed. 1983)). Applying the plain meaning of the statutory terms, we concluded that Sebasky resided intermittently with the complainants because they stayed overnight at his apartment almost every weekend, and sometimes stayed up to six days at a time. *Id.* We rejected Sebasky’s argument that the statute only applies if the defendant lives in the complainant’s house, stating that the law merely requires “that the two reside in the same place.” *Id.*

It is undisputed that Bonilla-Sanchez had been living in the basement of K.G.’s residence for at least three weeks at the time of his arrest. During that time, he had no other place of residence, all of his belongings were in the basement, and he had access to the entire house. The fact that Bonilla-Sanchez did not pay rent to K.G.’s parents and intended to move out of the residence in the future to pursue his employment is irrelevant. Bonilla-Sanchez lived in only one place from November to December 2015—K.G.’s home. On

³ The current edition of *Black’s Law Dictionary* does not define “reside.” But neither party contends that this omission undermines the precedential value of *Sebasky*.

this undisputed record, sufficient evidence demonstrates that Bonilla-Sanchez resided with K.G. at the time of the offenses.

Bonilla-Sanchez next argues that he did not reside in the same dwelling as K.G. “intermittently or regularly” because he did not plan to stay there permanently. While the statute does not define “regularly,” we are guided by the term’s plain meaning. Minn. Stat. § 645.08(1) (2014). “Regular” is relevantly defined as “[c]ustomary, usual, or normal . . . [n]ot varying; constant.” *The American Heritage Dictionary* 1480 (5th ed. 2011). Bonilla-Sanchez had constantly resided in the basement of K.G.’s home during the three weeks preceding his arrest. He did not stay anywhere else during that period of time; it was his usual place of abode. Neither the plain meaning of “regular” nor the statutory language suggest that the defendant must intend to permanently dwell with the victim to establish a significant relationship. The undisputed evidence that Bonilla-Sanchez lived in K.G.’s home on a full-time, indefinite basis is sufficient to establish that he regularly resided with K.G. at the time of the offenses.

Affirmed.