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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1019**

State of Minnesota,
Respondent,

vs.

Jared Phillip Renner,
Appellant.

**Filed April 22, 2019
Affirmed
Schellhas, Judge**

Polk County District Court
File No. 60-CR-16-1751

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Greg Widseth, Polk County Attorney, Scott A. Buhler, First Assistant County Attorney,
Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Slieter,
Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his convictions of threats of violence and third-degree criminal
sexual conduct, arguing that they are not supported by sufficient evidence. Appellant also

argues that the district court erred in sentencing him for third-degree criminal sexual conduct and felony pattern-of-stalking conduct because the court sentenced him in the wrong chronological order and his convictions arose out of the same behavioral incident. We affirm.

FACTS

D.J., appellant Jared Renner's wife, told police that Renner threw her onto a car, choked her, beat her, threatened to kill her, and took her keys and cellphone from her; that the next day, Renner again threatened to kill her, bit her neck, choked her, "threw her around for hours," told her to have sex with him or "he would stick it in her ass," then had sex with her multiple times between fits of more violence, and again took her keys and cellphone from her. D.J. reported that the next day Renner prevented her from going to work and, using her cellphone, sent a text message to her co-workers, saying that she was "sick of that place." The following day, when Renner and D.J. went to a bar, D.J. revealed her injuries to a friend. When Renner tried to leave the bar with D.J., she refused. After causing "a scene," Renner left without D.J., and law enforcement later arrested him.

Respondent State of Minnesota charged Renner with two counts of domestic assault-strangulation, one count of threats of violence, one count of third-degree criminal sexual conduct (CSC), one count of felony pattern-of-stalking conduct, and one count of interfering with an emergency call. Following multiple pretrial hearings and the state's receipt of multiple letters from D.J., saying that she wished to recant her statements, the district court granted the state's request for a material-witness warrant for D.J. and law enforcement arrested her.

At a bench trial, the district court heard testimony from D.J.; Investigating Officer Heath Hanson; D.M., a manager of the bar visited by Renner and D.J.; K.B., a waitress at the bar; M.A., a bar patron; R.O., D.J.’s ex-boyfriend; and T.C., K.K., and S.R., friends of D.J.’s. Renner did not testify and presented no evidence. The court found Renner guilty of two counts of domestic assault-strangulation, one count of threats of violence, one count of third-degree CSC, and one count of felony pattern-of-stalking conduct. Before sentencing, the state made a global settlement offer to Renner that he be sentenced to a presumptive sentence of 23 months for felony pattern-of-stalking conduct and 90 months concurrent for third-degree CSC, and that he plead guilty to a pending charge of burglary and be sentenced to 90 months concurrent in exchange for the dismissal of all other pending charges. Renner accepted the state’s offer.

Renner entered a *Norgaard* plea to the burglary charge, and his attorney asked the district court multiple times to follow the plea agreement.¹ The court entered convictions on two counts of domestic assault-strangulation, one count of threats of violence, one count of third-degree CSC, and one count of felony pattern-of-stalking conduct. Consistent with the terms of the plea agreement, the court sentenced Renner first to 23 months’ imprisonment for felony pattern-of-stalking conduct and then to a concurrent sentence of 90 months’ imprisonment for third-degree CSC.

¹ A *Norgaard* plea refers to a plea where the defendant enters a plea but “claims a loss of memory, through amnesia or intoxication, regarding the circumstances of the offense but the record establishes that the defendant is guilty or likely to be convicted of the crime charged.” *State v. Johnson*, 867 N.W.2d 210, 215 (Minn. App. 2015) (quotation omitted), review denied (Minn. Sept. 29, 2015).

This appeal follows.

D E C I S I O N

I. Sufficiency of evidence

Renner argues that his convictions of third-degree CSC and terroristic threats are not supported by sufficient evidence. An appellate court examining a sufficiency-of-the-evidence challenge determines whether the evidence, viewed in a light most favorable to the verdict, was sufficient to allow the factfinder to reach a guilty verdict. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). The district court here based its verdicts on the direct evidence of D.J.’s testimony. *See State v. Hokanson*, 821 N.W.2d 340, 353 n.1 (Minn. 2012) (stating that a “witness’s testimony is direct evidence when it is based on the witness’s own knowledge of the facts”). Direct evidence is “sufficient to sustain a criminal conviction,” if “when so viewed, [it] would permit the [factfinder] to reasonably conclude that the State has proven the fact in question beyond a reasonable doubt.” *Id.* at 353. An appellate court assumes that “the factfinder disbelieved any testimony conflicting with th[e] verdict.” *State v. Peterson*, 910 N.W.2d 1, 7 (Minn. 2018) (quotation omitted).

A. Third-degree CSC conviction

To convict Renner of third-degree CSC, the state had to prove that he engaged in sexual penetration with D.J. and that he used “force or coercion to accomplish the penetration.” *See* Minn. Stat. § 609.344, subd. 1(c) (2016) (listing elements of offense).

“Force” means

the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor committed against the complainant or

another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

Minn. Stat. § 609.341, subd. 3 (2016). And “coercion” means

the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that cause the complainant to submit to sexual penetration or contact against the complainant’s will. Proof of coercion does not require proof of a specific act of threat.

Id., subd. 14 (2016).

The district court concluded that the state proved “that [Renner] sexually penetrated [D.J.’s] vagina with his penis, and that [D.J.] did not consent to the act and made it clear to [Renner] that she did not want to have sex.” The record supports this conclusion. D.J. testified that, on September 16, Renner “all of a sudden got angry” and “started getting violent and throwing me around and choking me,” and then he “bit” her “[o]n the neck”; that Renner had taken her phone away and continued to strangle her; that Renner told her “[y]ou’re going to get it”; that if she would not let him have sex with her, he would “penetrate [her] anally”; that Renner “forced himself” on her, and “had sex” with her by putting “it inside [her] vagina”; that this occurred without her consent; and that she was afraid and “crying” and pleading with him, “[p]lease don’t.” This testimony supports the court’s conclusion that Renner threatened to penetrate D.J. anally and threatened to kill her.

Renner challenges the reliability of D.J.’s testimony, based on her prior recantations and her inconsistent timeline of events, arguing that the evidence was “unclear what exactly happened those nights.” But the district court found D.J.’s testimony credible, and we will not reweigh this determination. *See State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010) (stating that the factfinder “is in the best position to weigh credibility and thus determines which witnesses to believe and how much weight to give their testimony”). Renner cites to no authority for the proposition that the court erred by finding D.J. credible despite her recantations, and he admits in his brief that D.J. testified that she “was manipulated” into recanting her testimony because he “asked her to do so.”

Renner also argues that the state failed to provide corroborating evidence of the offense. But in a prosecution for third-degree CSC, “the testimony of a victim need not be corroborated.” Minn. Stat. § 609.347, subd. 1 (2016); *see also* Minn. Stat. § 609.341, subd. 4(c) (2016) (“Corroboration of the victim’s testimony is not required to show lack of consent.”). Moreover, Renner’s argument ignores the corroborating evidence in the record, including the testimony of a witness who took Renner’s phonecall prior to his arrest, during which he told her that he had “put his hands on [D.J.] and tried to strangle her,” “had hurt [D.J.] in the past few days,” and had “forced her to have sex.” And Renner’s recorded statement reveals his admission to choking D.J. When viewed in the light most favorable to the verdict, the evidence is sufficient to allow the district court to reach a guilty verdict. We therefore affirm Renner’s third-degree CSC conviction.

B. Threats-of-violence conviction

To convict Renner of threats of violence, the state had to prove that he “threaten[ed], directly or indirectly, to commit any crime of violence with purpose to terrorize another.” Minn. Stat. § 609.713, subd. 1 (2016) (listing elements of offense). “Crime of violence” includes murder and CSC. *Id.* (defining “crime of violence” as “violent crimes”); Minn. Stat. § 609.1095, subd. 1(d) (2016) (listing murder and CSC as “violent crime”). Here, D.J. testified that Renner threatened to “kill her” and to anally penetrate her multiple times, and that she “gave in” to Renner’s demands because she was scared. Multiple witnesses testified that D.J. told them about her injuries and that she was scared to go home to Renner.

Renner argues that the district court made improper credibility determinations regarding the testifying witnesses. We will not reweigh the court’s credibility determinations. *Fleck*, 777 N.W.2d at 236. When viewed in the light most favorable to the factfinder, the evidence is sufficient to support the court’s finding of guilt as to the threats-of-violence offense. We therefore affirm Renner’s threats-of-violence conviction.

I. Order of sentencing

Renner challenges the order in which the district court sentenced him for his convictions of felony pattern-of-stalking conduct and third-degree CSC, arguing that we should vacate his sentences and remand for resentencing. We disagree.

As an initial matter, the parties dispute the standard of review for this issue. Renner argues that this issue requires an interpretation of the sentencing guidelines, which this court reviews de novo. *See State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009) (interpreting sentencing guidelines de novo). The state argues that this issue involves a

review of the district court’s calculation of a criminal-history score, which we review for an abuse of discretion. *See State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014) (analyzing calculation of criminal-history score for an abuse of discretion). Because we conclude that the district court did not err in the order in which it sentenced Renner, and we therefore need not interpret the sentencing guidelines, we review Renner’s sentence for an abuse of discretion. *See id.* (stating that district courts have “great discretion in the imposition of sentences” and that appellate courts reverse a sentence “only for an abuse of that discretion”).

Minnesota courts “follow the Minnesota Sentencing Guidelines unless the applicable provision is contrary to statute.” *State v. Jones*, 848 N.W.2d 528, 537 (Minn. 2014). The sentencing guidelines require the imposition of sentences in the order in which they occurred. Minn. Sent. Guidelines cmt. 2.B.107 (2016). “[F]or prior convictions to be used in computing the criminal history score, the felony sentence for the prior offense must have been stayed or imposed before sentencing for the current offense.” *Id.*

Here, the district court first sentenced Renner to 23 months’ imprisonment for felony pattern-of-stalking conduct, and then sentenced him to 90 months’ imprisonment for third-degree CSC. *See* Minn. Sent. Guidelines 4.B (listing 76-month sentence with range of 65-91 months as presumptive sentence with two criminal-history points).²

² Prior to sentencing, Renner had one criminal-history point; he received another criminal-history point upon pronouncement of the district court’s sentence for felony pattern-of-stalking conduct. *See Williams*, 771 N.W.2d at 521 (“Under the *Hernandez* method, when a defendant is sentenced for multiple offenses on the same day, a conviction for which the defendant is first sentenced is added to his or criminal-history score for another offense for which he or she is also sentenced.”).

Renner argues that the district court erred by sentencing him first for felony pattern-of-stalking conduct and then for third-degree CSC. He argues that the court should have sentenced him first to a 62-month sentence for third-degree CSC, *see* Minn. Sent. Guidelines 4.B (listing 62-month sentence with range of 53-74 months as presumptive sentence for third-degree CSC with one criminal-history point), and then to a stayed 28-month sentence for felony pattern-of-stalking conduct, *see* Minn. Sent. Guidelines 4.A (listing 28-month stayed sentence as presumptive sentence for felony pattern-of-stalking conduct with two criminal-history points). We conclude that the court correctly sentenced Renner in the order in which he committed the crimes.

In determining the order in which offenses occurred, this court looks to the elements of the offenses. *State v. Patterson*, 796 N.W.2d 516, 532 (Minn. App. 2011), *aff'd*, 812 N.W.2d 106 (Minn. 2012). A conviction of felony pattern-of-stalking conduct requires that (1) an actor engages in “a pattern of stalking conduct,” (2) where the actor “knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm,” and (3) “cause[s] this reaction.” Minn. Stat. § 609.749, subd. 5(a) (2016). A “pattern of stalking conduct” includes “two or more acts within a five-year period” of threats of violence, domestic assault, or third-degree CSC. *Id.*, subd. 5(b)(3), (5), (15) (2016).

Here, when Renner committed third-degree CSC, he already had committed two prior domestic-assault crimes to satisfy the requirement of “two or more” qualifying acts for the commission of felony pattern-of-stalking. Renner’s felony pattern-of-stalking conduct was not dependent on his commission of the third-degree CSC crime. The district

court therefore did not err in sentencing Renner first for felony pattern-of-stalking conduct and then to third-degree CSC. And regardless, no manifest injustice occurs when a plea agreement includes nonchronological sentencing. *Carey v. State*, 765 N.W.2d 396, 401 (Minn. App. 2009) (concluding no manifest injustice where plea included nonchronological sentencing).

II. Multiple convictions from the same behavioral incident

Renner argues that the district court erred in sentencing him for both felony pattern-of-stalking conduct and third-degree CSC because the offenses arose out of the same behavioral incident. The state argues that Renner forfeited this argument because he failed to raise this issue below. But as the state acknowledges, “the Minnesota Supreme Court has held that this issue generally is not waived or forfeited by failing to raise it before the district court.” *See State v. Osborne*, 715 N.W.2d 436, 441 n.3 (Minn. 2006) (stating that “the statutory protection against multiple sentencing” under section 609.035 “is *not* forfeited by failing to raise the issue in the district court”). And we are “bound by supreme court precedent.” *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). We therefore conclude that Renner did not forfeit this issue.

“[I]f a person’s conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them.” Minn. Stat. § 609.035, subd. 1 (2016). “Whether a defendant’s offenses occurred as part of a single course of conduct is a mixed question of law and fact.” *Jones*, 848 N.W.2d at 533. We review a

district court's factual findings for clear error and whether offenses occurred as part of a single course of conduct de novo. *Id.*

Minnesota law contains exceptions to the bar of multiple sentences for offenses occurring during the same course of conduct. *See* Minn. Stat. § 609.035 (2016) (establishing exceptions to bar for multiple punishments). One such offense that does not preclude “conviction of or punishment for any other crime committed by the defendant as part of the same conduct” is third-degree CSC. *Id.*, subd. 6. To meet this exception, the CSC offense must be committed “with force or violence.” *Id.* In other words, the “plain language of Minn. Stat. § 609.035, subd. 6, allows for the conviction of and sentence for ‘any other crime,’ including a crime committed during the same behavioral incident as a [CSC] offense involving force or violence.” *State v. Patzold*, 917 N.W.2d 798, 810 (Minn. App. 2018), *review denied* (Minn. Nov. 27, 2018). Here, the district court concluded that Renner “used force or coercion to have sex with [D.J.] by threatening to penetrate her anally or to kill her if she did not submit to sex.” Renner argues that this exception does not apply because the court did not specifically find that he committed third-degree CSC with force, and that his conduct falls only under the definition of “coercion.” We disagree.

“The plain language of the elements of the offense indicates that third-degree [CSC] can be committed by coercion alone, force alone, or both force and coercion.” *State v. Leake*, 699 N.W.2d 312, 323–24 (Minn. 2005). To determine whether the exception to the bar for multiple punishments for offenses arising from the same behavioral incident applies, we must determine if the record evidence shows that Renner committed third-degree CSC with force or violence and not with coercion alone. *See id.* at 321 (stating that

to determine if third-degree CSC fulfilled the requirement of using “force or violence,” the court must determine if the offense was “committed with force or violence—and not coercion alone”).

In *Leake*, using the definition of “force” under Minn. Stat. § 609.341, subd. 3, the supreme court concluded that the defendant committed third-degree CSC with force when he admitted to “physically pull[ing] [the victim] back and forc[ing] her to have sex” with him. *Leake*, 699 N.W.2d at 324–25 (emphasis omitted). Conducting an analysis similar to the analysis used by the supreme court in *Leake*, we conclude that Renner committed third-degree CSC with force because the district court’s findings meet the definition of “force.” The court found that Renner threatened to “penetrate [D.J.] anally,” and that “he would kill her” if she did not have sex with him. Following these threats, D.J. “was scared and gave in to [Renner]’s demand for sex.” D.J.’s testimony supports these findings. Renner’s threats to anally penetrate and kill D.J. amount to a “threatened infliction by [Renner]” that caused D.J. to “reasonably believe” that Renner had “the present ability to execute the threat,” and “to submit” to Renner’s demand, which fall squarely within the definition of “force.” See Minn. Stat. § 609.341, subd. 3 (defining “force” in part as “threat of any other crime by the actor against the complainant,” that “causes the complainant to reasonably believe that the actor has the present ability to execute the threat”).

We conclude that the district court did not err in sentencing Renner for both felony pattern-of-stalking conduct and third-degree CSC. Even if the offenses arose from a single behavioral incident, the plain language of Minn. Stat. § 609.035, subd. 6, allowed for the conviction of, and sentence for, both crimes. See *Patzold*, 917 N.W.2d at 810 (stating that

Minn. Stat § 609.035, subd. 6 “allows for the conviction of and sentence for ‘any other crime,’ including a crime committed during the same behavioral incident as a criminal-sexual-conduct offense involving force of violence” (footnote omitted)).

Affirmed.