

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0406**

State of Minnesota,
Respondent,

vs.

Sullivan Michael,
Appellant.

**Filed May 3, 2021
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-18-22739

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

Michael O. Freeman, Hennepin County Attorney, Jordan W. Rude, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Reilly, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

In this direct appeal, appellant challenges the sufficiency of the evidence supporting his convictions of first-degree criminal sexual conduct. We affirm.

FACTS

The state charged appellant Sullivan Michael with two counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a) (2016) (sexual penetration or defined contact, complainant under 13), and Minn. Stat. § 609.342, subd. 1(h)(iii) (2016) (sexual penetration, complainant under 16, significant relationship, multiple acts over time), based on allegations that Michael sexually abused his step-granddaughter on numerous occasions over a two-year time frame. The matter proceeded to a court trial, where the district court heard the following evidence.

The State's Case-in-Chief

The victim testified that when she was between the ages of eight and nine years old, she lived in Minnesota in a two-bedroom apartment with her older brother, her paternal grandmother, and Michael—her grandmother's husband. She testified that, on multiple occasions, Michael touched her “[e]verywhere” on her body using “[h]is boy part” and that “[w]hite stuff would come out” of Michael's penis when he was touching her genitalia. The victim also testified that her mouth and hands touched Michael's penis and that Michael's penis penetrated inside her mouth. Sometime in 2018, the victim moved to Chicago, Illinois to live with her mother. The victim testified that she wrote her mother a note informing her about the sexual abuse.

Mother testified that the victim returned to mother's home in Chicago in June 2018. She took the victim to the hospital after discovering the victim's note. On the drive, the victim told mother that Michael “made [the victim] put her mouth on him, he made her play with him, white stuff came out of his penis.” Mother testified that she was present

when the victim described the sexual abuse to a hospital nurse, and mother recalled that the victim showed the nurse how Michael “made her [lie] down” by lying “flat on her back and . . . open[ing] her legs.” Mother also testified that grandmother came to Chicago to visit in June or July of 2018 and told mother how she could not believe that “[t]his sick bastard did this to [her] grandchild.” According to mother, grandmother also claimed she was planning on divorcing Michael.

The registered nurse who examined the victim testified that the victim reported that Michael sexually penetrated her vaginally and anally. The nurse examined the victim externally but observed no physical signs of injury. The nurse testified that 10 to 20 percent of reported victims exhibit injuries at the time of examination. The nurse did not perform an internal vaginal examination because the victim reported that the last instance of sexual abuse had occurred over one week prior and it was unlikely that any DNA evidence could be recovered.

On July 30, 2018, a forensic interviewer conducted a recorded interview of the victim, and the district court received that recording into evidence. During the interview, the victim described repeated instances of sexual contact and penetration. She recalled that, right before she left Minnesota, Michael told her to lie down on his bed, instructed her to “touch his boy parts,” and grabbed her hand and “put [her] hand on his boy part.” The victim stated that Michael then “went up and down” while “breathing hard” and that something that “looked like slime” came out of Michael’s “boy part.” She explained that Michael then took the “slime” and “put it in the sink” in the bathroom. The victim also described how Michael touched her breasts “[e]very[]day” and told her she would get in

trouble if she told on him. The victim recalled that, on her last day at Michael's house, he touched her breasts while she was lying on the living-room floor with her shirt off. The victim also reported that Michael had touched her vagina "[m]ore than once," recalling that he "put his boy parts" inside of her and that "slime stuff" came out "[i]n [her] private part." The victim reported a separate incident in which Michael told her to go into his bedroom, pulled her pants down, "put his boy parts" in her "front . . . [p]rivate part," and moved his body "up and down" until "slime" came out of his "boy parts" in her "private part."

The forensic interviewer testified at trial and described the difference between episodic and script memories; script memories are more general and typically concern repeated events while episodic memories concern specific episodes and incorporate sensory details. The interviewer testified that the victim's responses were indicative of script-like memory as opposed to episodic memory, which was not uncommon in cases of long-term, multiple-incident abuse.

A sergeant with the Minnetonka Police Department testified that she was assigned to investigate the victim's allegations and arrested Michael after her initial investigation. At the police station, Michael told the sergeant "that he didn't want [the victim and brother at the home] to begin with, but specifically with [the victim] that he didn't want her near him because he was afraid something like this would happen." Michael also told the sergeant that "the way [the victim] wanted to be around him was inappropriate and it made him frustrated."

Michael's Defense

The principal of the victim's school testified that he was familiar with Michael, grandmother, brother, and the victim. He testified that neither he, the school's teachers, nor the school counselor saw any reason for concern regarding the victim. The principal described Michael and grandmother as "more involved than many parents" and interested in ensuring the best situation possible for the victim.

Grandmother testified that Michael and the victim did not spend a lot of time together. She claimed that she disciplined the victim and that Michael disciplined brother. She also testified that there was never a time during the two years when Michael and the victim were truly alone together. Grandmother contradicted mother's testimony and denied calling Michael a "sick bastard" or claiming that she was going to divorce him.

An acquaintance of Michael and grandmother testified that she accompanied grandmother on a September 2018 church road trip when she overheard a phone call from the victim and brother. The acquaintance testified that the children were excited to see grandmother.

The victim's aunt testified that she stayed at Michael's home on the night of June 27, 2018, and that she, grandmother, and the victim took a road trip to Chicago the next day. She testified that everyone was in "good spirits" and that she never had any concerns about the victim.

Michael testified and denied any sexual abuse. He claimed that he and the victim did not get along, that she did not listen to him, and that she mostly annoyed him by interrupting his routines and pestering him. Michael claimed he was never alone with the

victim, but he also testified that the victim would often “call her grandmother” whenever there was a problem. He claimed that his work as a journeyman carpenter kept him busy and that, during the relevant time period, he was “more out of town doing 60, 70 hours per week.” The state questioned Michael regarding his interview with police, during which he told officers that he had “never” been accused of “anything like this” before. Michael admitted that statement was not true and that he had been arrested for sexual battery in 1989.

Findings, Guilty Verdict, Convictions & Sentence

The district court issued a written verdict finding Michael guilty of both counts of criminal sexual conduct. It then issued a 30-page memorandum in which it made exhaustive findings of fact and conclusions of law. The district court credited the victim’s testimony describing how Michael touched her breasts; how his penis contacted her hands, mouth, and genitalia; and how he penetrated her orally and vaginally with his penis. It found that grandmother was not a credible witness, observing that she had little knowledge of the allegations against Michael; that she “was inconsistent, evasive, and contradictory throughout her testimony”; and that “[i]n light of all the other testimony received in the trial, [her] version of events simply does not make sense.” The district court similarly found that Michael was not credible, explaining:

The Court finds Mr. Michael not credible. His testimony that he was never alone with [the victim] is not credible and highly implausible taken into consideration with his own testimony that [the victim] would repeatedly call her grandma to tell on him when they would get in fights. The Court also finds Mr. Michael not credible due to his testimony regarding when [he] said he was never alone with [the victim], when what he

meant was [the grandmother] may have been gone, but [brother] . . . was home and, therefore, Mr. Michael was not alone with [the victim]. The inconsistencies between the hours he works, where he works, who he works for, how often he is home and his very specific after-work routine demonstrate inconsistencies which bolsters his lack of credibility. The Court does not find Mr. Michael credible when discussing his time alone or not alone with [the victim].

Regarding the violation of Minn. Stat. § 609.342, subd. 1(a), the district court found beyond a reasonable doubt that (1) the victim was under 13 years old, (2) Michael was more than 36 months older than the victim, (3) Michael engaged in genital-to-genital contact with the victim, and (4) Michael sexually penetrated the victim's mouth and vagina with his penis. As for the violation of Minn. Stat. § 609.342, subd. 1(h)(iii), the district court found that (1) the victim was under 16 years old, (2) Michael had a significant relationship to the victim, (3) Michael sexually penetrated the victim's mouth and vagina with his penis, and (4) the sexual abuse involved multiple acts over a two-year period, including "multiple instances of oral and vaginal penetration." In addition to its written verdict and findings, the district court orally adjudicated Michael's guilt on both counts. It sentenced Michael to 172 months in prison for the violation of Minn. Stat. § 609.342, subd. 1(a).

This appeal follows.

DECISION

Michael challenges the sufficiency of the evidence supporting his convictions, arguing that there are "grave doubts" as to whether he committed the crimes and insisting

that the victim’s testimony and forensic interview cannot sustain the district court’s verdicts.

“We use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence.” *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018) (quotation omitted). If the state relies upon direct evidence to prove disputed elements, we apply traditional scrutiny in reviewing the sufficiency of the evidence. *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). “Under the traditional standard, we limit our review to a painstaking analysis of 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 which [it] did.” *Id.* at 40 (quotation omitted). “The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). “The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State’s burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *Id.*

A person who engages in sexual penetration with another person, or in sexual contact with a person under 13 years of age as defined in section 609.341, subdivision 11, paragraph (c),^[1] is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists:

¹ “‘Sexual contact with a person under 13’ means the intentional touching of the complainant’s bare genitals or anal opening by the actor’s bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant’s bare genitals or anal

(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. . . .

....

[or]

(h) the actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the sexual penetration, and:

....

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Minn. Stat. § 609.342, subd. 1(a), (h)(iii). On appeal, Michael challenges the sufficiency of the evidence regarding (1) the sexual-penetration-or-contact element of Minn. Stat. § 609.342, subd. 1(a), and (2) the penetration and multiple-acts elements of Minn. Stat. § 609.342, subd. 1(h)(iii).

Michael acknowledges that the victim testified to numerous instances of sexual penetration. But he contends that inconsistencies in her version of events, weighed against other evidence in the record, render her testimony and statements insufficient to sustain the convictions. In essence, Michael challenges the district court’s credibility determinations.

We begin by recognizing that “[a]ssessing the credibility of a witness and the weight to be given a witness’s testimony is exclusively the province of the [fact-finder].” *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006); *see also State v. Landa*, 642 N.W.2d 720, 725 (Minn. 2002). Accordingly, we typically defer to a fact-finder’s credibility determinations. *State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016). And “[i]n a prosecution under [Minn. Stat. § 609.342 (2016)] . . . the testimony of a victim need not be corroborated.”

opening of the actor’s or another’s bare genitals or anal opening with sexual or aggressive intent.” Minn. Stat. § 609.341, subd. 11(c) (2016).

Minn. Stat. § 609.347, subd. 1 (2016); *see also State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (“[A] conviction can rest on the uncorroborated testimony of a single credible witness.” (quotation omitted)).

In some exceptional circumstances, a victim’s uncorroborated testimony is insufficient to sustain a conviction if there are strong reasons to doubt credibility. In *State v. Huss*, for example, the supreme court reversed a conviction for criminal sexual conduct where the only direct evidence of guilt was a child’s testimony that was internally inconsistent, contradicted prior statements and verifiable facts, and came only after the child was exposed to a highly suggestive book. 506 N.W.2d 290, 292-93 (Minn. 1993). And in *State v. Langteau*, the supreme court reversed a conviction and ordered a new trial because the record failed to explain the victim’s actions or the defendant’s motives and there was no other evidence connecting the defendant to the crime. 268 N.W.2d 76, 77 (Minn. 1978). But the record here does not contain the type of exceptional circumstances present in *Huss* and *Langteau*, and none of Michael’s arguments persuade us otherwise.

Michael emphasizes that the state presented no physical evidence to corroborate the victim’s claims of sexual abuse. But the nurse explained that she did not expect to discover any physical evidence of sexual abuse given the time of the reported abuse, and the district court found the nurse credible. Further, the forensic interviewer testified that delayed disclosures of sexual abuse were “very common” and happened “more often than not,” contextualizing the reason for a lack of physical evidence of sexual abuse.

Michael also argues that the victim's recorded statement contradicted aunt's testimony; the victim reported that Michael sexually abused her the last day before she left for Chicago, whereas aunt testified that she stayed in Michael's home and slept in the living room with the victim that night. We note that, even though the district court found aunt credible generally, it did not refer to or specifically credit her claim that she slept at Michael's home that night. But the district court *did* find that the victim claimed that Michael "touched her boobs the last day she was leaving," and it found the forensic-interview video "to be credible in all respects." The task of determining which witness to believe and what particular testimony to credit is also properly within the role of the fact-finder. See *Mems*, 708 N.W.2d at 531; *State v. Moore*, 481 N.W.2d 355, 360 (Minn. 1992). Michael fails to explain how the district court erred by crediting the victim's specific claims when it did *not* explicitly credit the relevant testimony from aunt. "Inconsistencies or conflicts between one witness and another do not necessarily constitute false testimony or serve as a basis for reversal." *Mems*, 708 N.W.2d at 531. We add that any contradiction is merely one of timing, and the district court found the forensic interviewer credible and noted her testimony that she generally refrained from inquiring about specific dates because children typically do not develop that type of understanding until age 11.

Similarly, Michael argues that the victim's claim that sexual abuse started in the "old" apartment is contradicted by grandmother's testimony that they occupied the apartment for only three days and that she took vacation days to facilitate the move into the new apartment. But the district court found that grandmother was not credible, and her

testimony therefore provides no ground to undermine the district court's findings crediting the victim's testimony. *See id.*

Michael cites his own testimony and statements as demonstrating his consistent denial of the victim's allegations. But again, Michael essentially invites us to revisit and second-guess the credibility determinations of the district court. We decline to do so because the district court was in the best position to resolve credibility contests and weigh the evidence before it. *See id.*

In his supplemental brief, Michael offers additional reasons why the district court should have rejected the victim's version of events, emphasizing the absence of some evidence, potential conflicts in the victim's testimony, and inconsistencies in record evidence.² As set forth herein, credibility determinations and the choice of which evidence to credit is within the province of the fact-finder, and our review of the record reveals no basis for reversal. *See id.*

Finally, we emphasize that the victim testified in detail about numerous instances of sexual contact and penetration and that her forensic interview similarly and consistently described the abuse. On this record, the district court could have reasonably found that

² In an apparent attempt to contextualize record evidence, Michael refers to evidence not introduced into the record in the district court and offers to supplement the record. But "[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01.

Michael was guilty of both counts of criminal sexual conduct. The evidence is therefore sufficient to sustain the convictions.³

Affirmed.

³ Michael hints at other arguments in his supplemental brief, suggesting that the fact of his 1989 arrest should not have been introduced and that officers read him a *Miranda* advisory only after he spoke to officers. But the prosecutor referred to the fact of Michael's arrest to impeach him, *see* Minn. R. Evid. 613, and the recording of Michael's discussion with police indicate he was given a *Miranda* advisory before he was questioned about the allegations against him. We have carefully reviewed Michael's supplemental brief and discern no basis to reverse his convictions.