

*This opinion is nonprecedential except as provided by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
A20-0981**

State of Minnesota,
Respondent,

vs.

Abdihakim Mohamed Isse,
Appellant.

**Filed April 5, 2021
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-05-053353

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Sarah J. Vokes,
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appellant)

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

NONPRECEDENTIAL OPINION

FRISCH, Judge

On direct appeal from his conviction of first-degree criminal sexual conduct,
appellant argues that the evidence is insufficient to sustain the jury's finding that he held a

position of authority as a school bus driver when he sexually assaulted a 13-year-old student on the bus. We affirm.

FACTS

In June 2005, appellant Abdihakim Mohamed Isse was working as a school bus driver when he stopped the bus, groped a developmentally delayed 13-year-old girl's breasts, and penetrated her vagina with his fingers. The state charged Isse with first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(b) (2004). After nearly 15 years, and only after Isse was extradited from the United Kingdom to Minnesota, the case proceeded to a jury trial. We summarize the evidence presented at trial as follows.

The victim was born in 1991 and exhibited signs of developmental delays early in life. Once she entered school, she began receiving special-education programming. In the summer of 2005, the victim was 13 years old and attending summer school. She rode the bus to and from school, and she was usually the last drop-off of the day.

The victim testified that her bus driver sexually assaulted her one day after he dropped off all the other children. She recalled that the driver told her to “[l]ie down on one of the [bus] seats” and then pulled her pants and underwear down. The victim testified that the driver began touching the victim's breasts and genital area, touched “inside [her] private area,” and kissed her. She claimed that the driver then returned to his seat, drove the bus to the victim's usual drop-off site, and asked the victim if she wanted to go to the movies with him.

The victim exited the bus and started walking home. She recalled speaking with her best friend at the time and telling her what had happened. At her friend's suggestion and with her help, the victim wrote her mother a note explaining what had happened and left it on her mother's dresser.

The victim's mother testified that she arrived home from work on June 23, 2005, and found the victim's handwritten note, which described the circumstances of the sexual assault. The victim's parents spoke with the victim and then called the police. An officer responded, conducted a short interview with the victim, and directed the parents to bring the victim to the hospital for an examination. The victim later told a registered nurse and a forensic interviewer what had happened. The jury heard the nurse's "word-for-word" notes of the victim's account of the sexual assault. And the jury heard the victim's forensic interview. Both accounts were consistent with the victim's testimony.

A sergeant with the Minneapolis Police Department testified that he was assigned to investigate the victim's allegations. The sergeant contacted the school's public-transportation office and identified Isse as the victim's bus driver. The sergeant contacted Isse, who agreed to a recorded interview.

The jury saw the recording of that interview. When asked whether anything had happened on June 23, Isse told police that he had been intending to write up the victim for bad behavior. Specifically, Isse claimed that the victim had been threatening to have her brothers beat up other children and that Isse told her, "[D]on't threaten on the bus . . . it's not acceptable." Isse then explained that the victim had moved forward on the bus as other children were being dropped off to occupy the front-most passenger seat. He claimed that

the victim stood before the bus had finished moving and that he put his arm out to stop her from falling. He explained, “I hit her breast,” to which the victim allegedly responded, “How you like my . . . t-ts then[?]” Isse told the officer that the victim then lifted her shirt and exposed her bra and chest to Isse and that he told her, “I’m gonna write you up, so please go home.” Isse denied having stopped the bus before the victim’s stop with her still onboard. He explained that there would have been no reason to stop and that, even if students were standing, he would simply “yell at them to sit down.”

The jury found Isse guilty. The district court adjudicated the conviction and sentenced Isse to 204 months’ imprisonment. This appeal follows.

DECISION

Isse argues that we must reverse his conviction because there is insufficient evidence to sustain the jury’s finding that he was “in a position of authority over the complainant” at the time of the sexual assault, an essential element of Minn. Stat. § 609.342, subd. 1(b).¹ The state urges us to affirm because the evidence at trial supports the jury’s finding.

“When considering a claim of insufficient evidence, we conduct a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury

¹ The state was required to prove that: (1) Isse engaged in sexual penetration with the victim; (2) the victim was at least 13 years old but less than 16 years old; (3) Isse was more than 48 months older than the victim; and (4) Isse was “in a position of authority over the” victim at the time of the penetration. Minn. Stat. § 609.342, subd. 1(b). Isse does not challenge the sufficiency of the evidence as to the other elements.

to reach its verdict.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotations omitted). “We will not disturb a guilty verdict if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged.” *Staunton v. State*, 784 N.W.2d 289, 297 (Minn. 2010) (quotations omitted). We review issues of statutory interpretation in the context of sufficiency challenges de novo. *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). “When interpreting a statute, we give words and phrases their plain and ordinary meaning.” *Id.* (quotation omitted). “If a statute is unambiguous, then we must apply the statute’s plain meaning.” *Id.* (quotation omitted).

Pursuant to Minn. Stat. § 609.341, subd. 10 (2004), the phrase “position of authority”

includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent’s rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

“[T]he circumstances in which a person is in a position of authority are not limited to the examples of ‘position of authority’ described in section 609.341, subdivision 10.” *State v. Rucker*, 752 N.W.2d 538, 546 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008). The statutory definition is instead “broadly defined.” *State v. Willette*, 421 N.W.2d 342, 345 (Minn. App. 1988), *review denied* (Minn. May 16, 1988). We have explained, “The plain meaning of the words in the phrase ‘position of authority’ provides additional

guidance on the types of people encompassed in the statutory definition. ‘Position’ indicates either a person’s social standing or employment while ‘authority’ refers to the ‘power to enforce laws, exact obedience, command, determine, or judge.’” *State v. Mogler*, 719 N.W.2d 201, 207 (Minn. App. 2006) (quoting *American Heritage Dictionary* 121, 1369 (4th ed. 2000)).

Isse argues that the proof of his position of authority consisted only of: (1) the fact that he was the bus driver, and (2) his statement that he put his arm out to stop the victim from falling. He argues that the jurors were therefore “left to base their decision . . . off of their collective general knowledge of a bus driver in today[’]s society along with Isse’s own statement that he took steps to prevent [the victim] from falling when she was on [his] bus.”

Contrary to Isse’s narrow reading of the record, the state presented far more evidence that Isse occupied a position of authority over the victim. Isse told the officers that it was his job to transport the school children. He claimed he would keep kindergartners on the bus “somewhere we can keep an eye on them.” He said he would instruct children to sit down when necessary. And when asked about his specific interactions with the victim, Isse admitted that he told her “don’t threaten on the bus” and that he would write her up for bad behavior. Further, the victim testified that she had no chaperone with her at the time of the sexual assault and that she remembered Isse “*telling* [her to go and lie] down on one of the seats.” (Emphasis added.)

This direct evidence was more than sufficient to allow the jury to reach its verdict. *See Loving*, 891 N.W.2d at 643. The state presented evidence that: (1) Isse was employed

as a school bus driver charged with transporting the children to and from school; (2) he looked after other children on the bus; (3) he gave directions and maintained order on the bus; (4) he would reprimand children—including the victim—and warn that he would write them up for misbehaviors; and (5) at the time of the sexual assault, Isse was the only adult present on the bus. A jury acting with due regard for the presumption of Isse’s innocence and the state’s burden of proof could easily conclude that Isse was “charged with any duty or responsibility for the health, welfare, or supervision of a child” at the time of the sexual assault. Minn. Stat. § 609.341, subd. 10; *see also Staunton*, 784 N.W.2d at 297.²

Isse’s arguments to the contrary are unavailing. He distinguishes his case from numerous others in which we have considered a defendant’s position of authority. *See Rucker*, 752 N.W.2d at 546 (concluding that evidence of after-school program facilitator’s position of authority was sufficient because appellant supervised victims during program and used program to encourage contacts and develop relationships with victims); *State v. Fero*, 747 N.W.2d 596, 598-99 (Minn. App. 2008) (concluding that evidence of supervisor’s position of authority over employee victim was sufficient), *review denied* (Minn. July 15, 2008); *Mogler*, 719 N.W.2d at 212 (concluding that evidence of police officer’s position of authority over victim was sufficient given that officer developed relationship with victim and had sex with victim while “on duty and in uniform”). Isse

² Even if we characterized the state’s evidence as circumstantial proof of Isse’s position of authority and reviewed the sufficiency of the evidence by applying heightened scrutiny, *see Loving*, 891 N.W.2d at 643, we would reach the same conclusion. The circumstances proved by the state are consistent with the hypothesis that Isse was in a position of authority over the victim, and they preclude any rational hypothesis inconsistent with guilt. *See id.*

claims that he had “zero” direct contact with the victim, that he was “an incidental person” in her life, and that his job “could not be more opposite than law enforcement or that of an after-school facilitator.” These factual distinctions are immaterial. The fact that other cases have addressed circumstances in which a defendant’s position of authority is *more* evident does not negate the evidence showing that Isse held a position of authority as broadly defined. The state presented ample evidence that Isse supervised, controlled, and was otherwise responsible for the students on the bus, including the victim.

To that end, Isse admits that a bus driver bears a general responsibility “to transport to and from safely.” But he reasons that such a general duty is insufficient pursuant to Minn. Stat. § 609.341, subd. 10, because it would produce an untenable result: “Is an airline pilot in a position of authority over all children passengers? A taxicab driver? Train conductor? The answer would appear to be no.” But the jury’s verdict rested not *only* on the nature of Isse’s role as a school bus driver,³ but also on his *actions* as the bus driver in this matter. And we do not foreclose the possibility that a jury might find, under the proper circumstances, that an airline pilot, a taxicab driver, or a train conductor occupied a position of authority as defined by statute. Whether a person holds such a position is a fact-dependent determination; here, the jury weighed the evidence and found that Isse was in a

³ We observe that Minn. Stat. § 169.443 (2004) charges school bus drivers with several duties regarding the safety of school children specifically. Minn. Stat. § 171.321, subd. 4(b) (2004), also requires that school bus drivers meet minimum competencies, including the competency to “encourage orderly conduct of students on the bus and handle incidents of misconduct appropriately.”

position of authority over the victim, and we perceive no grounds on which to alter this determination.

Because sufficient evidence in the record establishes that Isse held a position of authority over the victim at the time of the offense, we affirm.

Affirmed.