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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0332**

State of Minnesota,
Respondent,

vs.

Joseph William Curtis,
Appellant.

**Filed July 15, 2024
Affirmed in part, reversed in part, and remanded
Ede, Judge**

Dakota County District Court
File No. 19HA-CR-21-1446

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

Kathryn M. Keena, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Barry S. Edwards, Max A. Keller, Keller Law Offices, Minneapolis, Minnesota; and

Stacy Bettison, Bettison Law, Minneapolis, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Wheelock, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this reinstated direct appeal following a stay to pursue postconviction relief, appellant challenges his convictions for first-degree and third-degree criminal sexual

conduct and the denial of his postconviction petition based on: (1) the district court's failure to sua sponte evaluate the victim's competency; (2) the sufficiency of the evidence as to (a) the reliability of the victim's testimony and (b) whether appellant was in a "position of authority"; (3) the district court's admission of (a) the victim's forensic interview, (b) testimony from a social worker, and (c) evidence of appellant's assault of the victim's mother; (4) the district court's denial of postconviction relief based on claims relating to (a) appellant's request to continue the postconviction evidentiary hearing and (b) witness recantation; and (5) the imposition of multiple convictions for the same course of conduct. Because we conclude that there is sufficient evidence to sustain appellant's convictions and that appellant has not shown that he is entitled to relief based on his claims of error arising from the trial and postconviction proceedings, we affirm in part. But because we also conclude that the district court erred by imposing more than one conviction for the same course of conduct, we reverse in part and remand.

FACTS

Respondent State of Minnesota charged appellant Joseph William Curtis by amended complaint with two counts of first-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.342, subdivision 1(g) (victim under 16 years of age, significant relationship), and (b) (victim 13 to 15 years of age, position of authority) (2020), and two counts of third-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.344, subdivision 1(d) (mentally impaired), and (c) (force or coercion) (2020). All four counts arose from Curtis's sexual assault of J.H.—the son of Curtis's then-girlfriend—who was 15 years old at the time.

According to the complaint, on February 26, 2021, child protection workers learned of a criminal-sexual-conduct incident that occurred in mid-February 2021. During a videotaped forensic interview, J.H. described Curtis forcing him to drink alcohol, touching his “bum” and penis, and having J.H. touch Curtis’s penis and butt. J.H. said that this conduct occurred in his mother’s bedroom, while his mother was asleep. The complaint also alleged that J.H. has “cognitive deficits.” The matter proceeded to a jury trial, which the district court held over eight days in September 2021.

Jury Trial

At trial, the state presented testimony from 12 witnesses: J.H., his father, his 17-year-old brother, his great aunt, and his mother; the girlfriend of J.H.’s brother and her mother; J.H.’s therapist; a psychologist employed at J.H.’s school; the social worker who conducted J.H.’s forensic interview; and two detectives. Curtis did not call any witnesses.

The state’s evidence showed that the sexual assault occurred at night over the weekend of February 12-14, 2021. During that weekend, J.H. and his brother were staying with their mother at her apartment while their father was traveling for work. J.H.’s parents are divorced, and Curtis had recently begun dating J.H.’s mother. J.H., his mother, and Curtis were at the mother’s apartment throughout the weekend, and J.H.’s brother was in and out of the residence. J.H.’s mother was intoxicated throughout the weekend.¹ At the time of the assault and at trial, J.H. was 15 years old. Because of J.H.’s cognitive

¹ J.H.’s mother took anxiety medication on Friday and a sleeping pill on Saturday. When he arrived at the apartment that weekend, J.H.’s brother “could tell right away that [J.H.’s mother] was drunk or had some intoxication with her.” Because his “mom was obviously intoxicated[,]” J.H.’s brother picked up J.H. from the apartment on Saturday.

disabilities, however, he functioned at about a first- or second-grade level and struggled with communication, time, and sequencing of events.

The jury heard J.H.'s description of the sexual assault through his trial testimony and through a video recording of J.H.'s forensic interview with the social worker. During his trial testimony, J.H. accurately provided the following information: his age, birthday, and grade; the names of his father, brother, mother, and great aunt; the city in which his parents separately resided; and the fact that he participated in cross country running. J.H. also testified that he would stay with his mother while his father was traveling for work and that his mother "was not sober."

During J.H.'s testimony about the sexual assault, J.H. identified Curtis as "Joe" and said that Curtis "used to sleep with [his] mom." J.H. testified that Curtis gave him vodka. J.H. also stated that Curtis did "sex things" and touched J.H. "all over" while J.H. was undressed. J.H. explained that this happened at night in his mother's bedroom, while she was sleeping. J.H. said that his penis was touched and, using a chart of the body, pointed to the penis and butt. J.H. testified that Curtis touched J.H.'s penis with his hands, that J.H.'s penis went into Curtis's butt, and that Curtis's penis went into J.H.'s butt. Although J.H. at first answered "no" when asked whether J.H.'s penis went "into any other body part," he stated that J.H.'s penis went into Curtis's mouth and that Curtis's penis went into J.H.'s mouth.

The district court admitted J.H.'s forensic interview at trial, without objection. The forensic interview was generally consistent with J.H.'s trial testimony about the following facts: that Curtis provided J.H. vodka; that Curtis anally penetrated J.H.; that J.H. anally

penetrated Curtis; that Curtis engaged in fellatio of J.H.; that the assault occurred in J.H.'s mother's bedroom at night while she was present and asleep; and that Curtis was the one who assaulted J.H.

In addition to J.H.'s trial testimony and the forensic interview, the state presented testimony about J.H.'s disclosures to his great aunt, his father, his therapist, a school psychologist, and the mother of his brother's girlfriend. The social worker who conducted J.H.'s forensic interview also testified.

Finally, J.H.'s mother testified that J.H. had recanted to her. She explained that J.H. has "been remorseful this entire time and in tears because he said that he made it up" and that J.H. "came crying to say that he made up the story and he was worried about being in trouble." J.H.'s mother said that she supported Curtis "a hundred percent." She also testified that Curtis assaulted her in June 2021. The district court admitted three photographs of the mother's injuries following the assault.

After the close of the state's case, Curtis moved for a judgment of acquittal on counts one and two, asserting that there was insufficient evidence to support a jury finding of a significant relationship or position of authority. The district court denied the motion. The state dismissed count four, third-degree criminal sexual conduct (force or coercion).

During its deliberations, the jury rewatched J.H.'s forensic interview. The jury ultimately found Curtis guilty of all three counts of criminal sexual conduct. The jury also determined that the state proved beyond a reasonable doubt that Curtis engaged in penetration with J.H. via fellatio, that he engaged in penetration with J.H. via anal intercourse, and that J.H. was particularly vulnerable.

Posttrial and Postconviction Proceedings

After the jury's verdicts, Curtis moved for a new trial based on video recordings made by J.H.'s mother in which J.H. recants. The district court denied that motion as untimely.

At the sentencing hearing, Curtis again moved for a new trial on the same grounds, which the district court again denied. Based on the aggravating factors found by the jury, the district court sentenced Curtis to 240 months in prison on count one, first-degree criminal sexual conduct, in violation of section 609.342, subdivision 1(g). The district court also entered convictions on count two, first-degree criminal sexual conduct, in violation of section 609.342, subdivision 1(b), and count three, third-degree criminal sexual conduct in violation of section 609.344, subdivision 1(d).

Curtis filed a direct appeal, but he later moved for a stay to pursue postconviction relief. This court granted that motion. Curtis petitioned for postconviction relief based on the recordings of J.H.'s recantations, among other issues. The same judge who presided at Curtis's trial also presided over the postconviction proceedings. The district court granted Curtis an evidentiary hearing based on J.H.'s alleged recantations. Shortly before the evidentiary hearing, however, Curtis's postconviction counsel learned that J.H.'s mother had died. Curtis requested a six-week continuance, which the district court denied. In lieu of testimony, the state and Curtis agreed to submit stipulated exhibits of four recordings and associated transcripts: three by J.H.'s mother, which Curtis submitted; and one by J.H.'s great aunt, which the state submitted.

The district court denied Curtis’s petition, finding that Curtis failed to establish that J.H. testified falsely at trial. This reinstated appeal follows.

DECISION

On appeal, Curtis contends: (1) that the district court erred in failing to sua sponte evaluate J.H.’s competency; (2) that the evidence was insufficient to sustain his convictions; (3) that the district court erred in admitting the forensic interview, evidence of Curtis’s assault of J.H.’s mother, and certain testimony from the social worker; (4) that the district court erred in denying postconviction relief; and (5) that the imposition of multiple convictions violated Minnesota Statutes section 609.04 (2020). We address each argument in turn.

I. The district court did not plainly err by failing to sua sponte evaluate J.H.’s competency.

Curtis challenges his convictions by asserting that the district court plainly erred in neglecting to evaluate J.H.’s competency.

“The determination of a witness’ competency is one peculiarly for the [district] court to consider” and, “[a]s such, it rests within the sound discretion of the district court.” *State v. Sime*, 669 N.W.2d 922, 925 (Minn. App. 2003) (quotation omitted). When competency is challenged, the district court typically conducts a “preliminary examination” of whether the witness has “(1) the capacity to tell the truth and (2) the ability to recall facts.” *Id.* at 926; *see also State v. Berry*, 309 N.W.2d 777, 782 (Minn. 1981). We usually review a district court’s witness-competency determination for an abuse of discretion. *See Sime*, 669 N.W.2d at 926.

But here, because Curtis neither objected to J.H. testifying nor requested that the district court evaluate J.H.’s competency, the forfeiture doctrine generally precludes us from granting appellate relief on this basis. *See State v. Beganovic*, 991 N.W.2d 638, 655 (Minn. 2023) (explaining that a defendant’s failure to object in district court to an alleged error “generally prevents us from affording him appellate relief”). The plain-error doctrine, however, “provides appellate courts a limited power to correct errors that were forfeited.” *Id.* (quotation omitted). “To establish plain error warranting reversal of a conviction based on an unobjected-to error, an appellant must show (1) an error (2) that is plain (3) that affects a defendant’s substantial rights.” *Id.* Even if a defendant makes that showing, an appellate court “may only correct a plain error if we determine that failure to correct the error would cause the public to seriously question the fairness and integrity of our judicial system.” *Id.* In addition, if a defendant fails to satisfy one of the prongs, we need not evaluate the other prongs. *See State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017). “An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct.” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted).

Curtis argues that the district court should have held a hearing to evaluate J.H.’s competency on its own initiative. But Curtis did not challenge J.H.’s competency. And on appeal, Curtis does not identify any authority requiring a district court to evaluate a witness’s competency before allowing them to testify. Instead, the caselaw Curtis cites provides that the “[d]etermination of a person’s competency as a witness is within the sound discretion of the [district] court and is ordinarily made by such preliminary

examination of the proposed witness *as may be deemed necessary by the court.*” *State ex rel. Dugal v. Tahash*, 153 N.W.2d 232, 234 (Minn. 1967) (emphasis added). And “[w]here the court is in doubt as to the child’s competency, it is best to err on the side of determining the child to be competent.” *State v. Lanam*, 459 N.W.2d 656, 660 (Minn. 1990).

Nor does Curtis identify record evidence suggesting that J.H. was incompetent to testify. We note, however, that any inconsistencies in J.H.’s statements about the assault relate to J.H.’s credibility, not his competency. And “[i]t is the jury’s province to sort out the inconsistencies and determine credibility[.]” *Id.*; *see also Sime*, 669 N.W.2d at 927 (explaining that, although the alleged victim “did not readily acknowledge that sexual abuse had occurred, this fact relates to her credibility, not to her competency”). Moreover, the record evidence—including J.H.’s trial testimony—does not suggest that J.H. was incompetent to testify. Instead, it establishes that he correctly stated: his age, birthday, and grade; the names of his father, brother, mother, and great aunt; where his mother and father lived; and his participation in cross country running. On redirect, J.H. acknowledged that he had an imaginary friend named Vinny. This testimony sufficiently accords with caselaw discussing assessments of child-witness competency. *See Sime*, 669 N.W.2d at 926 (“Children often are asked their names, where they go to school, how old they are, whether they know who the judge is, whether they know what a lie is, and whether they know what happens when one tells a lie.” (quotation omitted)). J.H.’s responses to those types of questions established that he could both remember information and truthfully convey facts.

On this record, we cannot say that the district court committed any clear or obvious error by contravening case law, a rule, or a standard of conduct. *See Webster*, 894 N.W.2d

at 787. We therefore conclude that the district court did not plainly err by failing to evaluate J.H.'s competency.

II. Sufficient evidence sustains Curtis's convictions.

Curtis raises two bases for his position that the state's evidence is insufficient to support his convictions. He contends (A) that J.H.'s testimony was too unreliable to sustain his convictions and (B) that there was insufficient evidence that Curtis was in a "position of authority," which is an element of count two, first-degree criminal sexual conduct, in violation of section 609.342, subdivision 1(b).

When considering a sufficiency-of-the-evidence claim, "appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [fact-finder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). We view the evidence in the light most favorable to the verdict and assume that the fact-finder believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). "As the fact finder, the jury is in a unique position to determine the credibility of the witnesses and weigh the evidence before it" and the jury may "accept part and reject part of a witness's testimony." *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017) (quotation omitted). "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." *Griffin*, 887 N.W.2d at 263.

A. J.H.’s Reliability

Curtis asserts that J.H.’s testimony was too unreliable to sustain the convictions. We are unpersuaded.

Generally, “a conviction can rest on the uncorroborated testimony of a single credible witness.” *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted). And in prosecutions for criminal-sexual-conduct offenses, Minnesota law dictates that “the testimony of a victim need not be corroborated.” Minn. Stat. § 609.347, subd. 1 (2022). Both this court and the supreme court have underscored that inconsistencies and contradictions in an alleged victim’s statements—even a recantation—are not a basis to ignore a jury’s credibility determination and to reverse a conviction based on sufficiency of the evidence. *See Foreman*, 680 N.W.2d at 538-39 (rejecting the defendant’s argument that, because of the victim’s recantation, corroboration was required); *State v. Balsley*, 999 N.W.2d 880, 887 (Minn. App. 2023) (concluding that, despite some discrepancies in the victim’s statements, “this case does not present any unusual circumstances that would justify a determination that [the victim’s] testimony was not reliable”), *rev. granted on other grounds* (Minn. Feb. 28, 2024).

Curtis contends that there are inconsistencies between J.H.’s testimony and forensic interview that require a determination that J.H.’s testimony was not reliable. Curtis also cites testimony from J.H.’s therapist that J.H. told the therapist about an incident of Curtis touching J.H. in the kitchen and testimony from J.H.’s mother that J.H. recanted to her. These arguments essentially ask us to ignore our well-settled precedent governing sufficiency claims, under which we “defer[] to the fact-finder’s credibility determinations

and will not reweigh the evidence on appeal.” *State v. Olson*, 982 N.W.2d 491, 495 (Minn. App. 2022). Although Curtis acknowledges that we must view the evidence in the light most favorable to the verdict, he provides no authority that would compel us to disregard J.H.’s testimony in this case. *See Griffin*, 887 N.W.2d at 263.

Moreover, we discern no “unusual circumstances” here that would justify a determination that J.H. was not credible. *See Balsley*, 999 N.W.2d at 887; *cf. State v. Huss*, 506 N.W.2d 290, 292 (Minn. 1993) (explaining that, “even given [the alleged victim’s] contradictory testimony, we might not be persuaded to reverse absent the repeated use of a highly suggestive book on sexual abuse”). J.H.’s testimony established the “sexual penetration” element of all three counts of criminal sexual conduct. *See* Minn. Stat. §§ 609.342, subd. 1(g), (b), .344, subd. 1(d). Sexual penetration includes “(1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or (2) any intrusion however slight into the genital or anal openings.” Minn. Stat. § 609.341, subd. 12 (2020). J.H.’s trial testimony and forensic interview were generally consistent about the oral and anal penetration perpetrated by Curtis, and about the location, timing, and circumstances surrounding the incident, i.e., that it occurred in J.H.’s mother’s bedroom at night while she was present and asleep, after Curtis gave J.H. vodka. The jury heard J.H.’s descriptions of the assault, as well as his disclosures to others and his mother’s testimony that J.H. recanted. The jury also heard testimony about J.H.’s cognitive abilities from both his father and the school psychologist, and, in closing argument, Curtis’s trial counsel highlighted J.H.’s disabilities and the inconsistencies between J.H.’s accounts of the incident. The jury

ultimately credited J.H.’s testimony and found Curtis guilty of all three counts of criminal sexual conduct.

Considering the trial record, we see no basis for disturbing the jury’s verdicts. *See Balsley*, 999 N.W.2d at 887 (rejecting sufficiency-of-the-evidence challenge where, despite inconsistencies, the victim consistently “described the sexual assault and identified [the defendant] as the perpetrator”).

B. Position of Authority

As to count two, first-degree criminal sexual conduct in violation of Minnesota Statutes section 609.342, subdivision 1(b), Curtis argues that the state failed to present sufficient evidence that he occupied a “position of authority” over J.H. We disagree.

Under section 609.342, subdivision 1(b), the state needed to prove that Curtis was “in a current or recent position of authority over the complainant[,]” which is defined as follows:

“Current or recent 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 or assumes any of a parent’s rights, duties or responsibilities to a child, or a person who is charged with or assumes 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 or within 120 days immediately preceding the act.

Minn. Stat. § 609.341, subd. 10 (2020). “[T]he circumstances in which a person is in a position of authority are not limited to the examples of ‘position of authority’” in that definition, and “[t]his court has held that ‘position of authority’ is broadly defined under

this statute.” *State v. Rucker*, 752 N.W.2d 538, 546 (Minn. App. 2008) (quotation omitted), *rev. denied* (Minn. Sept. 23, 2008).

We conclude that the state presented sufficient evidence that Curtis occupied a “current or recent position of authority” over J.H. At the outset, we underscore that the statutory language specifies that a person occupies a position of authority—“no matter how brief”—if they assume “any duty or responsibility for the health, welfare, or supervision of a child[.]” Minn. Stat. § 609.341, subd. 10. And here, the state presented evidence that Curtis was dating J.H.’s mother and was at the mother’s apartment throughout the weekend of February 12-14, 2021. The trial evidence also showed that J.H.’s mother was intoxicated throughout the weekend. In addition, the state introduced evidence about J.H.’s cognitive disabilities, including testimony that J.H.’s cognitive profile “predict[s] limited ability of being independent” and that J.H. “is supervised at all times” at school. Finally, J.H.’s mother testified that Curtis cooked a meal for her and J.H. during the weekend. Thus, in the absence of supervision by J.H.’s mother, Curtis assumed responsibility for J.H.’s health and welfare, including by preparing food for J.H.

Based on our review of the sufficiency of the evidence, we conclude that a jury acting with due regard for the presumption of innocence could reasonably have found that Curtis occupied a “current or recent position of authority” over J.H. *See Griffin*, 887 N.W.2d at 263. We therefore cannot overturn the jury’s verdict based on insufficient evidence. *See id.*

III. Curtis’s claims of evidentiary error do not entitle him to a new trial.

Curtis also seeks a new trial based on three of the district court’s evidentiary decisions: (A) the admission of the forensic interview as a prior consistent statement; (B) the admission of certain parts of the social worker’s testimony; and (C) the admission of evidence related to Curtis’s assault of J.H.’s mother several months after the charged criminal sexual conduct in this case. We address each of Curtis’s evidentiary contentions sequentially.

A. The district court did not plainly err by admitting J.H.’s forensic interview.

At trial, Curtis did not object to the admission of J.H.’s forensic interview, which the state moved to admit as a prior consistent statement. When offered the opportunity to argue that parts of the interview were inadmissible, Curtis’s trial counsel declined to do so. As a result, we review the admission of the forensic interview for plain error.² We conclude that Curtis has not met his burden to show plain error. *See Beganovic*, 991 N.W.2d at 655.

If a witness’s credibility is challenged, a prior statement that is reasonably consistent with the declarant-witness’s trial testimony may be admissible as substantive evidence under Minnesota Rule of Evidence 801(d)(1)(B). *State v. Bakken*, 604 N.W.2d 106, 108-09 (Minn. App. 2000), *rev. denied* (Minn. Feb. 24, 2000). Trial testimony and a prior

² The state contends that Curtis waived, rather than forfeited, his arguments about the admission of the forensic interview. *See State v. Beaulieu*, 859 N.W.2d 275, 278 n.3 (Minn. 2015) (clarifying that “whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right” (quotation omitted)). Because the state nonetheless agrees that the plain-error doctrine applies to waived issues, we need not address this distinction.

statement “need not be identical” to be consistent. *State v. Zulu*, 706 N.W.2d 919, 924 (Minn. App. 2005); *see also Bakken*, 604 N.W.2d at 109 (“The trial testimony and the prior statement need not be verbatim.”). Thus, admission of a statement “that is reasonably consistent with the trial testimony is not reversible error[.]” *Zulu*, 706 N.W.2d at 924 (quotation omitted).

Curtis asserts generally that “the trial testimony was internally inconsistent, and the forensic interview is internally inconsistent, they are inconsistent with each other, and much of both is simply incomprehensible.” In short, Curtis’s argument about the admission of the forensic interview reiterates his sufficiency-of-the-evidence claim relating to J.H.’s reliability. As noted above, J.H.’s descriptions of the sexual assault were reasonably consistent across his trial testimony and forensic interview, including J.H.’s reports of both oral and anal penetration. J.H. also provided reasonably consistent details about the location, timing, and circumstances surrounding the assault.

Despite the discrepancies Curtis has identified on appeal, Curtis has not shown that those differences render the forensic interview inconsistent with J.H.’s trial testimony for the purpose of rule 801(d)(1)(B). *Bakken* is instructive. There, we concluded that a prior videotaped statement was erroneously admitted as a prior consistent statement because of “significant” inconsistencies. *Bakken*, 604 N.W.2d at 110. We explained that the inconsistencies were “significant because, if the jury believed the inconsistent videotaped statements, the criminal conduct would legally escalate from third-degree [criminal sexual conduct] to first-degree.” *Id.* But here, to the extent that J.H.’s forensic interview contained

more details than his trial testimony, the jury did not need to believe any of the additional information to find Curtis guilty of first-degree or third-degree criminal sexual conduct.

We therefore conclude that the district court did not plainly err by admitting the forensic interview as a prior consistent statement.

B. The district court did not plainly err with respect to the social worker’s testimony.

Curtis next maintains that the district court plainly erred by admitting certain portions of the social worker’s testimony. Because Curtis did not object to the allegedly improper testimony in district court, we review for plain error. *See Beganovic*, 991 N.W.2d at 655. As explained below, we conclude that Curtis has not shown plain error here. As a result, we do not reach the other prongs of the analysis. *See Lilienthal*, 889 N.W.2d at 785.

To be admissible expert testimony under Minnesota Rule of Evidence 702, a witness must be qualified as an expert, the witness’s opinion must have foundational reliability, and the testimony must be helpful to the jury. *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). Generally, “[t]o have the requisite foundation to testify, the witness must have both the necessary schooling and training in the subject matter involved, plus practical or occupational experience with the subject.” *Marquardt v. Schaffhausen*, 941 N.W.2d 715, 719 (Minn. 2020) (quotation omitted).

Curtis does not dispute that the social worker’s testimony was helpful to the jury. He argues only that portions of her testimony “exceeded her expertise” and lacked foundational reliability. Curtis cites *State v. Myers*, 359 N.W.2d 604 (Minn. 1984), in contending that the social worker’s education and skills do not qualify her to “opine on

psychology or the behaviors, tendencies or capacities of disabled children.” In *Myers*, the supreme court considered testimony from a clinical psychologist with a Ph.D. who “had a caseload of sixty familial sexual abuse cases at the time of the trial.” 359 N.W.2d at 608. The supreme court observed that “[t]here is no doubt that [the clinical psychologist] is sufficiently qualified to render an opinion with respect to the emotional and psychological characteristics often observed in children who are victims of sexual abuse.” *Id.* at 609.

We are not convinced that the challenged portions of the social worker’s testimony exceeded—much less clearly and obviously exceeded—her qualifications and practical experience. *Cf. State v. Manthey*, 711 N.W.2d 498, 504-05 (Minn. 2006) (concluding that statements were not “clearly or obviously inadmissible hearsay” and thus that the appellant did not show plain error). The social worker was a child protection investigator with a bachelor’s degree and master’s degree in social work, had conducted between 100 and 300 forensic interviews, and had attended several trainings and professional development programs related to abuse. The relevant portions of the social worker’s testimony are: (1) her statement that it is “not uncommon for children who have disabilities to not be able to explain an exact time,” and (2) her response, when asked about the pauses in J.H.’s speech during the forensic interview, that “sexual abuse is something that’s very difficult to talk about” and that, when adding “a layer of disabilities to a child and processing questions and answers[,]” “pauses like that are very normal[.]” As a result, the social worker’s testimony was limited to her opinions and observations about children’s speech patterns and behaviors when talking about abuse in forensic interviews.

We therefore conclude that Curtis has not shown that the district court plainly erred by allowing the social worker's testimony.

C. Any error in admitting the evidence about Curtis's assault of J.H.'s mother was harmless.

Curtis maintains that the district court prejudicially abused its discretion by admitting evidence relating to Curtis's June 2021 assault of J.H.'s mother, including three photographs of injuries to her face and neck. We conclude that, even assuming without deciding that the evidence's prejudicial effect substantially outweighed its probative value, any error was harmless.

Over Curtis's objections, the district court admitted evidence of the assault under Minnesota Statutes section 634.20 (2020), which provides that "[e]vidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice[.]" The district court determined that the subject evidence was probative as to the credibility of J.H.'s mother—who testified that J.H. recanted to her and that she supported Curtis—and to contextualize the relationship between J.H.'s mother and Curtis.

We review the district court's admission of section 634.20 evidence for an abuse of discretion. *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008), *rev. denied* (Minn. Oct. 29, 2008). The appellant "has the burden to establish that the district court abused its discretion and that appellant was prejudiced." *Id.* As to prejudice, an appellant "must prove that there is a reasonable possibility that the wrongfully admitted evidence significantly

affected the verdict.” *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016). To determine whether evidence significantly affected the verdict, we consider how the state presented the evidence, whether the evidence was highly persuasive, whether the state used the evidence in closing argument, and whether the defense effectively countered the evidence. *Id.*

Here, even if the district court abused its discretion in determining that the evidence’s probative value was not substantially outweighed by its prejudicial effect, we conclude that there is no reasonable likelihood that the section 634.20 evidence affected the verdict in this case. During the eight-day trial, the jury heard from 12 witnesses, including J.H., and the jury watched the 42-minute video of J.H.’s forensic interview. The section 634.20 evidence was limited to three photographs and five pages of testimony. Although the state mentioned the assault during closing argument, the reference was brief, not graphic, and focused on the credibility of J.H.’s mother. Moreover, although Curtis asserts that he was unable to effectively counter the evidence, his trial counsel referenced J.H.’s mother’s testimony about the assault in closing argument to contend that she was credible. In other words, both the state and the defense framed the section 634.20 evidence in terms of the credibility of J.H.’s mother, rather than as a reflection of Curtis’s conduct or as relevant to the elements of the charged offenses. Finally, the jury requested to rewatch—and did rewatch—J.H.’s forensic interview during deliberations, during which J.H. described the sexual assault in detail.

We therefore cannot conclude that the admission of the section 634.20 evidence significantly affected the jury's verdict. *See Peltier*, 874 N.W.2d at 802. Curtis has not carried his burden of establishing that he was prejudiced. *See Lindsey*, 755 N.W.2d at 755.

For all these reasons, Curtis is not entitled to a new trial based on his evidentiary challenges.

IV. The district court did not abuse its discretion in denying Curtis's postconviction petition.

Curtis maintains that the district court erred by denying his petition for postconviction relief. He raises two grounds on appeal: (A) that the district court erred by denying his request to continue the postconviction evidentiary hearing; and (B) that the district court erred by rejecting his postconviction claim of witness recantation. We consider each ground below.

A. The district court did not abuse its discretion by denying Curtis's request to continue the postconviction evidentiary hearing.

Curtis contends that the district court abused its discretion by "refus[ing] to continue the [postconviction evidentiary] hearing until the recanting witness was in a more stable emotional state." This argument is unavailing.

"The decision to grant or deny a continuance lies within the discretion of the trial judge." *State v. Lloyd*, 345 N.W.2d 240, 247 (Minn. 1984). "In determining whether the [district] court soundly exercised its discretion, this court must examine the circumstances before the [district] court when the motion was made to determine whether the defendant was so prejudiced in preparing or presenting his defense as to materially affect the outcome

of the trial.” *Id.* “A defendant must show that he was prejudiced to justify reversal.” *State v. Courtney*, 696 N.W.2d 73, 81 (Minn. 2005).

Based on Curtis’s petition for postconviction relief and the recordings of J.H.’s alleged recantations to his mother, the district court ordered an evidentiary hearing. At that hearing, Curtis requested a six-week continuance because Curtis’s counsel had recently learned that J.H.’s mother died. Acknowledging that the death of J.H.’s mother was tragic, the district court nonetheless denied the continuance request, reasoning that no delay was justified because J.H.’s mother would never be available for a hearing. The district court also noted that J.H. needed closure.

Despite Curtis’s position that the district court should have continued the evidentiary hearing because J.H. was not in a stable emotional state, the record reveals that J.H. responded to Curtis’s subpoena and was present at the hearing. The prosecutor also informed the district court that, although J.H. had been emotional, he was no longer crying. The prosecutor explained that, based on her conversations with them, J.H. and his father would want the hearing to go forward. And Curtis did not inform the district court about any other witnesses that he needed to call or other grounds he had for a continuance. Under these circumstances, we discern no abuse of discretion in the district court’s denial of Curtis’s request to continue the hearing.

Curtis also asserts that the district court violated his due-process rights by accepting stipulated recordings rather than continuing the hearing to a later date for J.H. to testify. Even assuming without deciding that Curtis’s due-process right to present a complete defense applies to postconviction proceedings, Curtis identifies no record evidence that the

district court or the state prevented Curtis from examining J.H. or otherwise presenting Curtis's desired evidence that same day. *Cf. McKenzie v. State*, 872 N.W.2d 865, 871 (Minn. 2015) (concluding that appellant was not entitled to relief "because he failed to prove that the State substantially interfered with the decisions made by his witnesses about whether to testify at the postconviction hearing"). Rather, after the district court denied Curtis's request for a continuance, the court provided Curtis the opportunity to elicit J.H.'s testimony. Curtis's counsel and the prosecutor instead agreed to submit Curtis's recordings of J.H. and his mother and the state's recording of J.H. speaking with his great aunt.

Given this record, we discern no due-process violation arising from the district court's decision to accept stipulated exhibits rather than continue the hearing for testimony by J.H. on another day.

B. The district court did not abuse its discretion by rejecting Curtis's claim of witness recantation.

Curtis insists that the district court abused its discretion by determining that he was not entitled to postconviction relief based on J.H.'s recorded recantations to his mother. This argument lacks merit.

We review the district court's factual determinations for clear error, its legal conclusions de novo, and its ultimate decision to deny postconviction relief for an abuse of discretion. *Eason v. State*, 950 N.W.2d 258, 263-64 (Minn. 2020). Because the district court "is in a unique position to assess witness credibility" in postconviction proceedings, we must accord the district court "considerable deference in this regard." *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006). "We will disturb a district court's credibility

determinations only when, after a thorough review of the record, we are left with the definite and firm conviction that a mistake has been made.” *Andersen v. State*, 940 N.W.2d 172, 177 (Minn. 2020).

Minnesota courts apply the three-pronged *Larrison* test³ to determine whether a petitioner is entitled to a new trial based on recantation of trial testimony. *Martin*, 825 N.W.2d at 740. To award postconviction relief based on recantation, the prongs require:

(1) [that] the court is reasonably well-satisfied that the testimony given by a material witness was false; (2) that without the testimony, the jury might have reached a different conclusion; and (3) [that] the petitioner was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after trial.

Id. “The first two prongs are compulsory” and “[t]he third prong is relevant, but not an absolute condition precedent to a new trial.” *Id.* (quotation omitted).

Because we discern no abuse of discretion in the district court’s determination that Curtis failed to satisfy the first *Larrison* prong, our analysis begins and ends there. *See Opsahl*, 710 N.W.2d at 782-83. In assessing Curtis’s postconviction petition, the district court⁴ determined it was not “reasonably well-satisfied” that J.H.’s testimony was false after reviewing Curtis’s three recordings of J.H.’s alleged recantations to his mother and the state’s recording of J.H. and his great aunt. The district court found that the recordings

³ Although *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928), has been overruled, Minnesota courts still apply the *Larrison* test to claims of witness recantation. *Martin v. State*, 825 N.W.2d 734, 739 n.6 (Minn. 2013).

⁴ We note that the same judge who oversaw the jury trial also presided over the postconviction proceedings.

of J.H. and his mother were not credible “based on [J.H.’s] statements, demeanor, and how the statements are elicited by [J.H.’s mother].” The district court noted that J.H.’s mother used leading questions and that, in the state’s recording, “[J.H.] is adamant that he does not understand why his mom made him say those things and that his mom making him say those things was wrong.”

The district court’s concerns about the use of leading questions and J.H.’s demeanor are fully supported by our careful review of the recordings, and we discern no basis to disturb the district court’s credibility determinations. The district court therefore did not abuse its discretion by determining that Curtis did not satisfy the first *Larrison* prong. *See Andersen*, 940 N.W.2d at 178 (“When a district court determines that postconviction testimony that challenges trial testimony is not credible, it is not an abuse of discretion to conclude that the postconviction testimony was insufficient to show that trial testimony was false.”).

We therefore conclude that the district court did not abuse its discretion in denying Curtis’s petition for a new trial based on J.H.’s alleged recantations.

V. The district court erroneously imposed multiple convictions based on the same course of conduct.

Finally, Curtis argues, and the state concedes, that the district court violated Minnesota Statutes section 609.04 (2020) by imposing multiple convictions based on the same course of conduct. Here, we agree.

Under section 609.04, an individual “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1. An included offense

is, among other things, “a lesser degree of a multi-tier statutory scheme dealing with a particular subject,” even if the lesser offense is not necessarily proved by the greater offense. *State v. Hackler*, 532 N.W.2d 559, 559 (Minn. 1995); *see also* Minn. Stat. § 609.04, subd. 1(1). Section 609.04 further prohibits convictions for “two counts of criminal sexual conduct (different sections of the statute or different subsections) on the basis of the same act or unitary course of conduct.” *State v. Folley*, 438 N.W.2d 372, 373 (Minn. 1989). We review de novo whether the imposition of multiple convictions violates section 609.04. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

The district court convicted and sentenced Curtis on count one, first-degree criminal sexual conduct, in violation of section 609.342, subdivision 1(g). And the district court also convicted Curtis of count two, first-degree criminal sexual conduct, in violation of section 609.342, subdivision 1(b), and count three, third-degree criminal sexual conduct in violation of section 609.344, subdivision 1(d). Counts one and two arise under different sections or subsections of the same statute, and count three is a lesser-included offense of both counts one and two. In addition, as the state concedes and the record bears out, all three convictions were based on the same course of criminal sexual conduct. The district court therefore erred by convicting Curtis of all three counts. *See Folley*, 438 N.W.2d at 373. As a result, we reverse the convictions on counts two and three, leaving the jury’s guilty verdicts intact, and we remand for the district court to vacate those convictions.

In sum, based on the foregoing analysis, we affirm count one, Curtis’s first-degree criminal-sexual-conduct conviction. But we reverse count two, Curtis’s first-degree criminal-sexual-conduct conviction, and count three, Curtis’s third-degree criminal-

sexual-conduct conviction. And we remand for the district court to amend the warrant of commitment.

Affirmed in part, reversed in part, and remanded.