

*This opinion is nonprecedential except as provided by  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  
A22-0529**

State of Minnesota,  
Respondent,

vs.

Cha NMN Yang,  
Appellant.

**Filed May 22, 2023  
Affirmed  
Bjorkman, Judge**

Lyon County District Court  
File No. 42-CR-20-885

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

Rick Maes, Lyon County Attorney, Abby Wikelius, Assistant County Attorney, Marshall,  
Minnesota (for respondent)

Barry S. Edwards, Max A. Keller, Keller Law Offices, Minneapolis, Minnesota (for  
appellant)

Considered and decided by Bjorkman, Presiding Judge; Frisch, Judge; and Cleary,  
Judge.\*

---

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

## **NONPRECEDENTIAL OPINION**

**BJORKMAN**, Judge

Appellant challenges his conviction and sentence for third-degree criminal sexual conduct, arguing that (1) his jury-trial waiver was invalid, (2) the evidence was insufficient to convict him, (3) the district court abused its discretion by admitting expert witness testimony, and (4) the district court abused its discretion by denying his motion for a sentencing departure. We affirm.

### **FACTS**

In August 2020, P.V. reported to police that appellant Cha Yang sexually assaulted her sometime between September 2008 and December 2009. During that period of time, P.V. and her siblings often visited and stayed overnight with their sister S.V., who lived in an apartment with Yang. One night, P.V. and her siblings slept on the floor next to the bed S.V. and Yang shared. P.V. was sleeping closest to the bed; Yang was sleeping on the side of the bed closest to her. In the “middle of the night,” P.V. woke up to feel Yang’s hand on her stomach underneath her shirt. Yang then moved his hand beneath her underwear and put a finger inside her vagina. P.V. was scared, “froze up,” and pretended to be asleep, even when Yang shook her. P.V. could tell it was Yang because the hand that touched her reached down from the bed, where he was lying. When Yang stopped touching her, P.V. switched spots with one of her siblings on the floor to be farther away from Yang.

P.V. was afraid to tell her family what happened, but in July 2020, one of P.V.’s sisters told her that she had been “touched inappropriately” by someone. This disclosure prompted P.V. to tell S.V. what Yang had done years earlier. After telling other siblings

and her parents, P.V. confronted Yang. He denied sexually assaulting her but told her that he remembered “touching [P.V.] in [her] legs and [her] stomach.” P.V. then reported the assault to the police, and respondent State of Minnesota charged Yang with one count each of first-, second-, third-, fourth-, and fifth-degree criminal sexual conduct. All counts related to the single incident involving P.V., who was under age 16 at the time of the offense.

The case was initially scheduled for trial in October 2021. The state filed a pretrial motion to admit the testimony of Erica Staab-Absher, the executive director of a domestic-violence and sexual-assault advocacy organization, as an expert on “counterintuitive victim behaviors, trauma-informed victim behavior and delayed reporting in cases of sexual assault.” The state included a copy of Staab-Absher’s curriculum vitae (CV) detailing her 25 years of experience in the field, a summary of her proposed testimony, and several articles addressing the topics about which she would testify. Yang did not object. The district court granted the motion “provided the State establishes appropriate qualifications of the witness and the witness’ testimony is limited.”

During the final pretrial hearing, Yang expressed his desire to proceed with a bench trial. The district court explained to Yang that he had a right to a jury trial, asked Yang if he understood that right, and confirmed that Yang wanted to waive it. Yang stated that he had not been threatened or pressured, and that he was freely and voluntarily waiving his right to a jury trial.

One day before trial was set to begin, the state requested a continuance. The prosecutor explained that in meeting with P.V. to prepare for trial, she learned that P.V.

told two friends about the incident prior to reporting it to her family and the police in 2020, and that P.V. had not previously disclosed this to the police. Yang did not object, and the district court granted the state's request.

In November 2021, the case proceeded to a bench trial. The state presented testimony from P.V., S.V., the first police officer who interviewed P.V., the two people to whom P.V. previously disclosed the incident (friend 1 and friend 2), two of P.V.'s other siblings, and Staab-Absher. P.V. and the officer testified consistent with the facts as described above.

S.V. testified that she did not "remember personally" the night of the incident. But she spoke with Yang about the incident after P.V. disclosed it to her. Yang responded that he remembered one time that P.V. "might be talking about" when "the kids were all asleep on the floor" and "during the night he had turned and his hand landed on [P.V.'s] stomach . . . but he took his hand off right away and that nothing happened." S.V. explained that it "was hard for [her] to figure out what [she] believed really happened." But she acknowledged that she told P.V. and one of their brothers that Yang confessed he "had his hand in [P.V.'s] pants" but that "it was just an accident." This brother confirmed that S.V. told him about Yang's confession.

Friend 1 testified that P.V. was her best friend during middle school. Sometime within approximately two years of the incident, P.V. asked friend 1 if she had ever been "touched sexually." P.V. did not initially say "outright" that this had happened to her, but later gave friend 1 a note that said "something like, do you remember what I was trying to

tell you and then something like it had happened to me.” Friend 1 recalled “something in the note that said that [P.V.] didn’t want [her] to say anything, so [she] didn’t.”

Friend 2 testified that she and P.V. were friends in high school. At some time during those years, P.V. “opened up” to her about “being assaulted.” Friend 2 “could see it was really hard for [P.V.] to talk about it.” But eventually P.V. “said that she was touched in places that she didn’t like” and the person who touched her was “her relative . . . Cha [Yang].” Friend 2 was “very shocked” because she knew Yang. She acknowledged that she could not remember anything when the police first contacted her. But she then “checked in on” P.V. via text message, and the police helped to “kind of refresh [her] memory.” Friend 2 maintained that she was merely confused when first contacted and that her testimony was “based on [her] own independent recollection.”

Staab-Absher was the state’s final witness. She testified about her knowledge, skills, experience, training, and education related to sexual-assault victim behavior. When the prosecutor asked the district court to certify Staab-Absher as an expert witness, Yang’s counsel responded with a series of foundational questions. Yang’s counsel specifically challenged Staab-Absher’s qualifications to testify about neurobiology because she “is not actually a PhD or a doctor and has limited general knowledge of this stuff.” The district court overruled Yang’s foundational objection, noting that Staab-Absher’s CV and her testimony established that she was qualified to testify as an expert in “counterintuitive victim behaviors, trauma informed victim behavior and delayed reporting in cases of sexual assault.” She testified generally about these topics without referring to P.V. or the specific facts of this case.

Yang testified in his own defense. He corroborated P.V.'s testimony about the siblings' sleeping arrangements in the apartment and said that he remembered the night in question. He stated that "one night [he] turned and [his] hand land[ed] on somebody's stomach and then [he] moved it right away and then [he] looked and then it was [P.V.] sleeping there." Yang explained that he "just turned the wrong way in sleeping," felt "kinda weird," and "just didn't want something like that to ever happen again."

The district court found Yang guilty of third-, fourth-, and fifth-degree criminal sexual conduct. It ordered a psychosexual evaluation and a presentence investigation (PSI), which recommended a 48-month guidelines sentence. Yang submitted an alternative PSI and moved for a downward dispositional or durational departure.

At the beginning of the sentencing hearing, the district court stated that it had reviewed all of the parties' submissions, including numerous letters provided on Yang's behalf and the victim's impact statement. Counsel each had two opportunities to present oral arguments. Yang also addressed the court, maintaining his innocence but apologizing for "accidentally turning over and touching her stomach." After pausing to further consider the arguments, the district court denied Yang's departure motion. It convicted him of the third-degree offense and imposed a presumptive 48-month prison sentence.

Yang appeals.

## **DECISION**

Yang argues that his conviction must be reversed because his jury-trial waiver was invalid, the evidence was insufficient, and expert testimony regarding delayed reporting of sexual abuse was improperly admitted. He also contends that the district court abused its

discretion by denying his motion for dispositional and durational departures. None of Yang's arguments persuades us to reverse.

**I. Yang validly waived his right to a jury trial.**

The United States and Minnesota Constitutions guarantee a criminal defendant the right to a jury trial. U.S. Const. art. III, § 2, cl. 3, amend. VI; Minn. Const. art. 1, § 6. A defendant may waive this right so long as their waiver is knowing, intelligent, and voluntary. *Brady v. United States*, 397 U.S. 742, 748 (1970); *State v. Little*, 851 N.W.2d 878, 882 (Minn. 2014).

Whether a defendant's waiver meets these requirements depends on the circumstances of the case, including the defendant's background, experience, and conduct. *Little*, 851 N.W.2d at 882. A defendant must personally waive this right "in writing or on the record in open court, after being advised by the court of the right to trial by jury, and after having an opportunity to consult with counsel." Minn. R. Crim. P. 26.01, subd. 1(2)(a). We review de novo whether a jury-trial waiver is valid. *State v. Kuhlmann*, 806 N.W.2d 844, 848-49 (Minn. 2011).

During the final pretrial hearing, the district court questioned Yang about his expressed intention to waive his right to a jury:

COURT: So, the first thing that we talked about in this case is the fact that you, Mr. Yang, have discussed with your attorney your right to have a jury trial and in discussions with your attorney you have determined that you would prefer to waive your right to a jury and instead have a trial to the court. That means, we would not have a jury of twelve people that would decide your case and instead after presentation of the evidence, I would make a decision as to, your guilt or innocence with regard to these charges. So, I just first want to confirm with

you, Mr. Yang, that this is a topic that you have discussed with your attorney. Is that right?

YANG: Yes, Your Honor.

COURT: Okay, and do you feel you've had adequate time to discuss this issue with your attorney?

YANG: Yes, Your Honor.

COURT: And I'm assuming that you and your attorney have weighed the pros and cons of going through your trial both with a jury and—and to the court?

YANG: Yes.

COURT: Okay, and at this time then, is it your decision to waive your right to a jury trial and instead have a court trial?

YANG: Yes, Your Honor.

After Yang's attorney and the prosecutor both declined the district court's invitation to make a further record of Yang's waiver, the district court continued:

COURT: Okay. Well, let me, let me just follow up a little bit more here, Mr. Yang. Did anybody threaten you or pressure you into making this decision?

YANG: No.

COURT: Are you making this decision to waive your trial, waive your jury trial, freely and voluntarily?

YANG: Yes, Your Honor.

COURT: Okay. All right, then I find that the defendant is making a knowing, voluntary and intelligent waiver of his right to a jury trial . . . .

Yang first argues that this colloquy was inadequate because the district court's questions were "suggestive, if not coercive," and his responses were "mere rote affirmation of what the authority in the black robe had just said." Because of this, he contends that his waiver was not knowing, voluntary, and intelligent. Yang cites no authority that supports his contention, and the record defeats it.

A district court must ensure that a defendant is adequately informed of his jury-trial rights, and the nature and extent of the inquiry into a defendant's decision to waive a jury trial may vary with the circumstances of the case. *State v. Ross*, 472 N.W.2d 651, 653-54 (Minn. 1991). But a district court need not make an exhaustive inquiry into why a defendant waived their right to a jury. *Id.* at 654. The critical question is “whether the defendant understands the basic elements of a jury trial.” *Id.*

Here, Yang was informed that by waiving his jury-trial right he “would not have a jury of twelve people that would decide [his] case and instead after presentation of the evidence [the district court] would make a decision as to [his] guilt or innocence with regard to these charges.” Yang confirmed that he had discussed his right to a jury trial with his lawyer, who apparently concluded it was not necessary to make an additional record as to Yang's waiver. But the district court did so on its own volition, ensuring that Yang did not feel pressure to waive his jury-trial right and made his decision freely and voluntarily. We see nothing suggestive—let alone coercive—in the district court's discussion with Yang. And to the extent Yang suggests that a district court must use open-ended questions to establish a valid waiver, Minnesota law imposes no such requirement.

Yang next contends that even if his waiver was constitutionally sound, developments that occurred during the nine weeks leading up to the trial rendered it invalid. Citing *Little*, Yang asserts that “the issues had changed considerably,” requiring a renewed waiver. We are not persuaded.

In *Little*, the appellant was charged with third- and fourth-degree criminal sexual conduct and waived his right to a jury trial. 851 N.W.2d at 880-81. Thereafter, the state

amended the complaint to include a charge of first-degree criminal sexual conduct and the case proceeded to a court trial. *Id.* at 881. In reversing Little’s conviction, our supreme court held that jury-trial waivers only apply to “issues formed at the time of the waiver and not to issues added after the waiver.” *Id.* at 882. Accordingly, “when the State amends the complaint after a defendant’s jury-trial waiver, the district court must obtain a renewed waiver of the defendant’s right to a jury trial on the newly added charge.” *Id.* at 883.

Unlike in *Little*, Yang did not face amended charges after waiving his right to a jury trial. Moreover, Yang does not identify what *issues* purportedly changed in the period between his waiver and the trial. Instead, he asserts the late addition of P.V.’s friends as witnesses to “contemporaneous disclosure completely changed the *trial strategy*.” (Emphasis added.) But he cites no authority to support his suggestion that a decision to change trial strategy, if that indeed occurred, is equivalent to a change in the issues for trial. On this record, we conclude that Yang’s jury-trial waiver was valid.

## **II. Sufficient evidence supports Yang’s conviction.**

When considering a sufficiency-of-the-evidence challenge, we carefully review 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.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted). We assume that the fact-finder believed the state’s witnesses and did not credit any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). And we will not overturn a conviction if the fact-finder could have reasonably found the defendant guilty, giving due regard to

the presumption of innocence and the burden of proof beyond a reasonable doubt. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016).

To support a conviction for third-degree criminal sexual conduct, the state needed to prove that Yang (1) “engage[d] in sexual penetration with another person” and (2) knew or had reason to know “that the [person was] mentally impaired, mentally incapacitated, or physically helpless.” Minn. Stat. § 609.344, subd. 1(d) (2008). “Sexual penetration” includes “any intrusion however slight into the genital or anal openings.” Minn. Stat. § 609.341, subd. 12 (2008). Importantly, “the testimony of a victim [of sexual assault] need not be corroborated.” Minn. Stat. § 609.347, subd. 1 (2008); *see also State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (stating that a conviction for sexual assault can rest on the uncorroborated testimony of a single credible witness).

Yang challenges only the first element, arguing that the state did not prove he digitally penetrated P.V. He questions the veracity of P.V.’s account and those of her two friends because their testimony was incomplete or too vague to support a determination of guilt. He suggests—without evidence—that someone else may have digitally penetrated P.V. He concedes that “[t]here is no evidence in this case that conflicted with the verdict” but contends this is so because “there were no specific facts to rebut.” And he maintains that the district court drew unreasonable inferences from the evidence.<sup>1</sup>

---

<sup>1</sup> Yang’s brief states that the direct-evidence standard governs our sufficiency review. But he cites *Griffin*, 887 N.W.2d at 263, which involved a sufficiency-of-the-evidence review of circumstantial evidence. Because Yang did not argue for the circumstantial-evidence standard of review and direct evidence supports the verdict, we do not analyze whether the evidence supports a rational hypothesis other than guilt. *Horst*, 880 N.W.2d at 39-40.

Contrary to his bald assertions, direct evidence—most notably, P.V.’s testimony—supports Yang’s conviction. As the finder of fact, the district court evaluated P.V.’s testimony and determined it was credible. *See State v. Reichenberger*, 182 N.W.2d 692, 695 (Minn. 1970) (stating that it is the duty of the fact-finder, not an appellate court, to weigh the credibility of witnesses). Because the evidence, when viewed in favor of the verdict, shows that Yang digitally penetrated P.V., and Yang makes no other sufficiency challenge, we conclude that sufficient evidence supports the determination of guilt.

### **III. The district court did not abuse its discretion by admitting expert testimony.**

An expert is a person who is qualified by “knowledge, skill, experience, training or education” to testify about and provide an opinion on “scientific, technical, or other specialized knowledge.” Minn. R. Evid. 702. Whether a witness is “sufficiently qualified as an expert in a given subject area to justify testimony in the form of an opinion” is discretionary with the district court; qualification is not solely determined by formal training but includes “knowledge, skill, or experience that would provide the background necessary for a meaningful opinion on the subject.” Minn. R. Evid. 702 1977 comm. cmt.

We review the admission of expert testimony for an abuse of discretion. *State v. Sandberg*, 406 N.W.2d 506, 511 (Minn. 1987) (quotation omitted); *see also State v. Hall*, 406 N.W.2d 503, 505 (Minn. 1987) (holding that in cases of child sexual assault, “expert testimony as to the reporting conduct of such victims and as to continued contact by the adolescent with the assailant is admissible in the proper exercise of discretion” by the district court).

Yang argues that the district court abused its discretion because Staab-Absher was not qualified to offer expert testimony as to counterintuitive victim behavior, trauma-informed victim behavior, and delayed reporting in sexual-assault cases. And he asserts that she improperly vouched for P.V.'s credibility. Both arguments are unavailing.

First, the record reveals that Staab-Absher has worked with victims of sexual assault for 25 years. For the past 14 years, she has been the executive director of a domestic-violence and sexual-assault advocacy organization while continuing to provide direct services to sexual-assault victims. Prior to that, Staab-Absher served as a national sexual-assault trainer, statewide coordinator of sexual-assault support and advocacy programs, a sexual-violence-prevention community educator, and a support group leader for victims of sexual assault. She has completed more than 500 hours of training and provided more than 200 trainings to others on the topic of sexual assault. On this record, we discern no abuse of discretion by the district court in permitting Staab-Absher to testify regarding how victims respond to trauma and delayed reporting in sexual-assault cases.

Second, while an expert may not testify directly or indirectly regarding her opinion about the credibility of a sexual-assault victim, *State v. Wembley*, 712 N.W.2d 783, 791-92 (Minn. App. 2006), *aff'd*, 728 N.W.2d 243 (Minn. 2007), the record shows Staab-Absher did not do so. Her testimony did not reference P.V., directly or indirectly. Indeed, the state's pretrial motion states that "[s]pecifics of the case were not discussed" with Staab-Absher. Yang's effort to persuade us otherwise—premised solely on the order in which the district court recited its findings of fact—falls short. The fact that the court made findings regarding various aspects of Staab-Absher's testimony immediately before

finding P.V. was a credible witness does not in and of itself suggest improper vouching. Absent support in the record, Yang's vouching argument fails.

**IV. The district court did not abuse its discretion by imposing the presumptive sentence.**

A district court must impose a sentence within the Minnesota Sentencing Guidelines presumptive range unless it finds substantial and compelling circumstances to depart. Minn. Sent'g Guidelines II.D (2008); *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017).

A district court may grant a downward dispositional departure when a defendant is "particularly amenable to individualized treatment in a probationary setting." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Mere amenability is not sufficient; "requiring a defendant to be *particularly* amenable to probation . . . distinguishes the defendant from most others and . . . presents the substantial and compelling circumstances that are necessary to justify a departure." *State v. Soto*, 855 N.W.2d 303, 308-09 (Minn. 2014) (quotation omitted). In determining whether a defendant is particularly amenable to probation, district courts consider "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family." *Trog*, 323 N.W.2d at 31.

A district court may grant a durational departure based on factors that reflect "the seriousness of the offense, not the characteristics of the offender." *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (emphasis omitted). "A downward durational departure is justified only if the defendant's conduct was significantly less serious than that typically involved in the commission of the offense." *Id.* at 624 (quotation omitted).

Even if substantial and compelling circumstances exist, a district court is not *required* to depart from the presumptive sentence. *Wells v. State*, 839 N.W.2d 775, 781 (Minn. App. 2013), *rev. denied* (Minn. Feb. 18, 2014). We will not disturb the district court’s exercise of discretion in imposing “a presumptive guidelines sentence when the record shows that the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013). Indeed, we will only reverse a district court’s refusal to depart from the guidelines in “rare” cases. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (quoting *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)).

Yang asserts that the district court abused its discretion by denying a dispositional departure because he was a “perfect probationer” between the time of the incident and when P.V. reported it, demonstrating his “amenability to probation.” And he contends that the court abused its discretion by denying a durational departure because his conduct was less serious than that typically associated with third-degree criminal sexual conduct. Neither argument persuades us to reverse.

During the sentencing hearing, the district court stated that it had reviewed both PSIs, the sentencing worksheet, the psychosexual evaluation, correspondence from more than 20 of Yang’s family members, friends, and acquaintances, and the parties’ other written submissions. The district court acknowledged that Yang’s familial support and lack of a criminal record are factors that “weigh in [Yang’s] favor.” But it also noted Yang’s lack of remorse or responsibility, and that his letters of support made no reference

to the criminal sexual conduct of which he was found guilty. The district court ultimately concluded, “While there are some factors that weigh in [Yang’s] favor, others weigh heavily against defining that [Yang] is particularly amenable to probation, such that the court is willing to find that they constitute substantial and compelling reasons to depart . . . .” The record reflects the district court’s careful and thoughtful consideration of Yang’s motion and the competing departure factors. We see no abuse of discretion by the district court in denying a dispositional departure.

As to his requested durational departure, Yang points out that the offense involved a single incident of short duration that happened more than a decade ago. The district court considered these same arguments, acknowledging that they weighed in Yang’s favor, but declined to depart. Yang provides no authority for his argument that his conduct was significantly less serious than that typically involved in third-degree criminal sexual conduct, or that the fact it was a “single incident” warrants a shorter sentence. The legislature did not distinguish between offenders who commit single and multiple incidents. *See* Minn. Stat. § 609.344, subd. 1(d) (establishing third-degree criminal sexual conduct as a crime that requires only “penetration,” not multiple incidents of penetration). And, as the district court observed, the fact the sexual assault may have been brief and occurred years ago does not change its “lifelong” and “significant impact on the victim.”

In sum, the district court acted well within its discretion when it considered all of the sentencing information before it, found no substantial and compelling reasons to depart, and imposed a presumptive sentence.

**Affirmed.**