

*This opinion is nonprecedential except as provided by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
A23-1435**

State of Minnesota,
Respondent,

vs.

Lawrence Henry Blackwell,
Appellant.

**Filed August 18, 2025
Affirmed
Kirk, Judge***

Hennepin County District Court
File No. 27-CR-20-25623

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

Mary F. Moriarty, Hennepin County Attorney, Matthew D. Hough, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Bond, Judge; and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

In this appeal from the district court's denial of postconviction relief, appellant challenges the sufficiency of the evidence used to support the jury's determination that he

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

committed third-degree criminal sexual conduct when an actor uses force or coercion to accomplish sexual penetration. Appellant also contends that the district court abused its discretion when finding that his trial counsel was not ineffective when they failed to ask for a mistrial upon learning that the victim, P.H.K., was being spoken to by an individual in the gallery. Because the evidence is sufficient to support the jury's verdict and the district court did not abuse its discretion in denying postconviction relief, we affirm.

FACTS

In November 2020, respondent State of Minnesota charged appellant Lawrence Henry Blackwell with criminal sexual conduct in the third-degree (using force or coercion), in violation of Minnesota Statutes section 609.344, subdivision 1(c) (2020). The offense occurred on September 5, 2020. A jury trial began in March 2023.

P.H.K., the victim, testified that she and Blackwell met at a conference and went up to his hotel room for a massage. P.H.K. said that once they were in the hotel room, Blackwell locked the door and "he took off [her] shirt and pulled off [her] bra at the same time without unhooking it." P.H.K. testified that Blackwell forcefully inserted multiple fingers into P.H.K.'s vagina and a finger into her anus. P.H.K. said that Blackwell "started slamming his hand into [her] crotch and into [her] vagina." P.H.K. told Blackwell to stop and that he was hurting her. She also testified that she was crying at this point and had tears running down her face.

After her testimony, the district court was notified by a law clerk that P.H.K.'s advocate, seated in the gallery, had been mouthing to P.H.K. and nodding during her testimony. The court notified the attorneys and made a record of the gestures that the

advocate made during P.H.K.'s testimony. Attorney J. also stated that the "defense is not asking for a mistrial, just so we're abundantly clear. We'll try this case."

On March 13, 2023, the jury found Blackwell guilty of criminal sexual conduct in the third degree.

Blackwell's Posttrial Motion for New Trial

On March 27, 2023, Blackwell filed a motion for a judgment of acquittal or a new trial on the basis of the advocate's conduct and ineffective assistance of counsel. In April 2023, a hearing was held on Blackwell's motion. During this hearing, the district court denied Blackwell's motion on the record. The district court did not find that the advocate's "non-verbal communication denied Mr. Blackwell a fair trial" but did find that "all of the necessary elements for the offense were offered by [P.H.K.]."

In September 2023, Blackwell filed a notice of appeal. Blackwell then moved to stay the appeal to pursue postconviction relief, which this court granted in December 2023.

Postconviction Proceedings

Blackwell petitioned for postconviction relief in January 2024. The district court held a two-part evidentiary hearing on May 29, 2024, and August 6, 2024. During the first part of the hearing, P.H.K. testified, and during the second part of the hearing, P.H.K.'s advocate A.H. and Attorney J. testified.

P.H.K. said that her advocate, A.H., had mouthed "breathe" two times and she responded and said the word "okay" and nodded back to A.H. She testified that the jury was not in the courtroom when it occurred. And she stated that she only communicated

with A.H. once while on the stand and that her communication with A.H. did not influence her testimony.

On the second day of the evidentiary hearing, A.H. testified that she had not collaborated with P.H.K. regarding her testimony. A.H. also testified that she had mouthed “breathe” to P.H.K., and she did not recall whether P.H.K. responded to her in any way. While A.H. testified that she believed that the jury was not present when she communicated with P.H.K., the district court took judicial notice of the fact that the jury was present during A.H.’s communication with P.H.K.

Attorney J. testified that he had not witnessed the interaction between P.H.K. and A.H., however the court had made him aware of the interaction. He testified that he had been made aware of the interaction before he declined to ask for a mistrial and that he did not ask Blackwell or Blackwell’s other attorney about his decision to not ask for a mistrial. Attorney J. also testified that he had been a criminal defense attorney for 28 years, he felt that Blackwell’s case was going well, and he did not want to retry the case because he thought the jury would render a different verdict than it did.

The district court filed an order denying Blackwell’s postconviction petition to vacate his conviction and retry the case on December 10, 2024.

This reinstated appeal follows.

DECISION

I. The direct evidence is sufficient to support the jury's verdict.

Blackwell argues that the evidence is insufficient to support his conviction of third-degree sexual assault under Minnesota Statutes section 609.344, subdivision 1(c). Specifically, he argues that because the statute utilizes the phrase “to use” when referring to “coercion” and “force,” there is a mens rea element and that element is not sufficiently established by the evidence presented at trial. Blackwell also argues that the evidence is insufficient to prove the element of coercion. We disagree with both arguments.

When analyzing a sufficiency-of-the-evidence claim, the “relevant standard of review depends on whether the factfinder . . . reached its conclusion of law based on direct or circumstantial evidence.” *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018). “[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence is “evidence from which the fact[-]finder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted).

“When reviewing the sufficiency of direct evidence, [appellate courts] painstakingly review the record to determine whether that evidence, viewed in the light most favorable to the verdict, was sufficient to permit the jurors to reach the verdict that they did.” *State v. Segura*, 2 N.W.3d 142, 155 (Minn. 2024) (quotation omitted).

“[I]n some cases, a sufficiency-of-the-evidence challenge may turn on the meaning of the statute under which a defendant has been convicted.” *State v. Metcalfe*, 13 N.W.3d

704, 711 (Minn. App. 2024) (quotation omitted). “In such cases, [appellate courts] first determine the meaning of the statute, which presents a question of statutory interpretation that we review de novo.” *Id.* (citing *State v. Bradley*, 4 N.W.3d 105, 109 (Minn. 2024)). “Once [an appellate court] construe[s] the statute, [the court] then ‘appl[ies] that meaning to the facts to determine whether there is sufficient evidence to sustain the conviction.’” *Id.* (quoting *Bradley*, 4 N.W.3d at 109). “And in doing so, [appellate courts] apply the direct-evidence or circumstantial-evidence standard of review.” *Id.* (citing *Bradley*, 4 N.W.3d at 110-11) (other citation omitted).

Minnesota Statutes section 609.344 provides:

Subdivision 1. **Crime defined.** A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

....

(c) the actor uses force or coercion to accomplish the penetration

Minn. Stat. § 609.344, subd. 1(c).

“Coercion” is defined as “words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant’s will to accomplish the act.” Minn. Stat. § 609.341, subd. 14 (2020).

Minnesota Statutes section 609.344, subdivision 1(c), requires “force or coercion”; the Minnesota Supreme Court has explained, “If the Legislature unambiguously uses the

word ‘or,’ we read the term ‘in the disjunctive and require that only one of the possible factual situations be present in order for the statute to be satisfied.’” *State v. Abdus-Salam*, 1 N.W.3d 871, 878 (Minn. 2024) (citing *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008)) (other citation omitted). This court has held that the “coercion” is proved when the actor coerces the complainant by causing fear while accomplishing sexual contact. *State v. Middleton*, 386 N.W.2d 226, 230 (Minn. 1986). Additionally, “[t]he coercion required by the statute need not precede or be separate from the sexual contact. It is enough that the coercive words or conduct, and the fear they produce in the victim . . . happen concurrently with, the sexual contact.” *Id.*

Blackwell argues that third-degree criminal sexual conduct requires proof that a defendant specifically intended to use coercion to commit the offense. But the supreme court has clearly held that criminal sexual conduct is a general intent crime. *See State v. Wenthe*, 865 N.W.2d 293, 302 (Minn. 2015) (“Generally, criminal sexual conduct offenses require only an intent to sexually penetrate, unless additional mens rea requirements are expressly provided.”). Because we are bound to follow precedent, we must conclude the state was not required to prove that Blackwell specifically intended to use “coercion” to commit the charged offense.

Additionally, the evidence presented at trial supports the jury’s finding that Blackwell sexually penetrated P.H.K. with coercion based upon P.H.K.’s testimony. Criminal sexual conduct cases do not require corroboration. *State v. Wright*, 679 N.W.2d 186, 190 (Minn. App. 2004), *rev. denied* (Minn. Jun. 29, 2004). “[A] conviction can rest on the uncorroborated testimony of a single credible witness.” *State v. Hill*, 172 N.W.2d

406, 407 (Minn. 1969). P.H.K. testified that she felt as though she could not leave the hotel room after Blackwell aggressively removed her shirt and bra and locked the door due to Blackwell's physical size. And she testified that she was crying with tears running down her face and that she had told Blackwell to stop. Lastly, she testified that she was terrified because she had been hurt and assessed the situation as being dangerous. These portions of P.H.K.'s testimony establish that Blackwell used coercion to accomplish sexual penetration.

Blackwell maintains that the jury must have unanimously found that “coercion” was used in the commission of the criminal sexual conduct because the jury had explicitly rejected that force had been used.¹ We do not agree. The supreme court has held that if the statute establishes alternative means for satisfying an element, unanimity on the means is not required. *State v. Day*, 501 N.W.2d 649, 653 (Minn. App. 1993). Thus, unanimity on the means—either force or coercion—is not required.

¹ While the jury found Blackwell guilty of the charged offense, the jury did not unanimously find that Blackwell had used force or violence in the commission of the event. The Criminal Jury Instruction Guide explains that: “The purpose of asking the additional question to the jury whether the alleged act involved force or violence is to capture the jury finding upon conviction. The aggravating-sentencing factor provided in Minn. Stat. § 609.106, subd. 1(3), requires a finding that a prior conviction be committed with force or violence.” 10 *Minnesota Practice*, CRIMJIG 12.21, n. 24 (2024). This means that there need not be a requirement for force or violence to convict Blackwell. Minnesota Statutes section 609.106, subdivision 1(3) (2020), provides that use of force or violence in a prior conviction is an aggravating-sentencing factor for future sentencing.

II. The district court did not abuse its discretion in denying Blackwell's postconviction petition to vacate the conviction.

Blackwell asserts that the district court abused its discretion when finding that he did not have ineffective assistance of counsel at his trial when his trial counsel did not ask for a mistrial upon learning that P.H.K. was being coached by the victim advocate in the gallery. More specifically, he contends that a structural error occurred when his trial counsel did not ask him if he would like to ask for a mistrial because asking for a mistrial during a court proceeding is a fundamental right. We are not persuaded.

This court reviews the denial of postconviction relief for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). “A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Ries v. State*, 920 N.W.2d 620, 627 (Minn. 2018) (quotation omitted). “Because claims of ineffective assistance of counsel are mixed questions of law and fact, [appellate courts] review the postconviction court’s legal conclusions on such questions de novo.” *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013).

“The Sixth Amendment to the United States Constitution and Article I, section 6, of the Minnesota Constitution guarantee a criminal defendant ‘the right to the effective assistance of counsel.’” *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016) (quoting *Strickland v. Washington*, 466 U.S. 668, 686 (1984)). To establish that counsel was ineffective under the two-prong *Strickland* test, Blackwell must show (1) that his trial counsel’s performance “fell below an objective standard of reasonableness” and (2) that,

but for counsel's unreasonable performance, there is a reasonable probability that the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687-88, 694. In reviewing a claim of ineffective assistance of counsel, our "scrutiny of counsel's performance must be highly deferential." *State v. Rhodes*, 657 N.W.2d 823, 844 (Minn. 2003) (quotation omitted).

The Minnesota Supreme Court has held that moving for mistrial or objecting to alleged errors at trial are trial strategy decisions. *See White v. State*, 711 N.W.2d 106, 110 (Minn. 2006). An attorney's trial strategy is generally unreviewable because public policy favors allowing attorneys flexibility to represent a defendant as fully as possible. *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004). Blackwell did not have a fundamental right to make the strategic procedural decision to move for a mistrial. This constitutes a trial error, not a structural error. Moreover, "[i]neffective-assistance-of-counsel claims are generally analyzed as trial errors under *Strickland*" *State v. Dalbec*, 800 N.W.2d 624, 627 (Minn. 2011). Blackwell's claims on appeal must be analyzed under the *Strickland* test.

Blackwell's ineffective-assistance claim is unsuccessful because his attorney's decision not to move for a mistrial was a matter of trial strategy, which is not reviewable on appeal. Attorney J., the trial attorney that made the decision not to call for a mistrial, testified in the postconviction evidentiary hearing that: in his opinion Blackwell had "a great case" and thought that there should have been an acquittal, he had practiced for 28 years as a criminal defense attorney, he knew how to call for a mistrial, and he had previously done so in past cases. Most importantly, Attorney J. testified that he believed

the trial was going well and he did not want to re-try the case because he thought it was going so well. Because Attorney J.'s decision to not request a mistrial was part of unreviewable trial strategy, Blackwell's claim of ineffective assistance of counsel fails.

Even if his attorneys' trial performance were reviewable, Blackwell has not shown that failing to request a mistrial affected the verdict. When applying the second prong of the *Strickland* test regarding prejudice, "the proper standard requires the defendant to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 669. Here, the district court took judicial notice of the fact that the jury was present during A.H.'s communication with P.H.K. but she later testified that the communication did not influence her testimony. The district court also applied a curative response—A.H. was no longer allowed in the courtroom after the parties learned of the non-verbal communication. The district court points out in its order denying Blackwell postconviction relief that "[i]f the jury had been questioned, and they had observed it, a curative instruction to the jury is likely all that would have resulted." Blackwell has not shown that, but for his attorney's alleged trial error, there is a reasonable possibility that the outcome would have been different.

Affirmed.