

*This opinion is nonprecedential except as provided by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
A23-1692**

State of Minnesota,
Respondent,

vs.

Jesus Nava Carranza,
Appellant.

**Filed September 16, 2024
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-22-79

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

Mary F. Moriarty, Hennepin County Attorney, Britta Nicholson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Smith, Tracy M., Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

After a court trial, the district court found appellant guilty of first-, second-, and fifth-degree criminal sexual conduct against his niece, who was in kindergarten at the time of the abuse. Appellant challenges the district court's guilty verdicts, arguing that the

evidence was insufficient to prove sexual penetration, an element of the first-degree offense. Appellant more generally asserts that the evidence was insufficient to prove his guilt beyond a reasonable doubt on all three offenses, arguing that the victim's testimony was not credible and uncorroborated. We affirm.

FACTS

Respondent State of Minnesota charged appellant Jesus Nava Carranza with first-, second-, and fifth-degree criminal sexual conduct against his niece, who was five-to-six years old when the alleged abuse occurred. Carranza waived his right to trial by jury and agreed to a court trial. Nine witnesses testified at trial: the alleged victim, DR; DR's mother; a retired Minneapolis Police Department officer who took DR's initial report; the lead investigator; another of DR's uncles, MCO; Carranza's two daughters; Carranza's wife; and Carranza. The court also received two screenshots of messages between Carranza and DR's uncle MCO into evidence. The district court found the facts to be as follows.

When she was three years old, DR moved to the U.S. from Mexico with her mother and brother. They stayed with a friend of DR's mother before moving in with DR's aunt, her aunt's husband (Carranza), and their two daughters at their Minneapolis apartment. DR lived in the apartment during her kindergarten year when she was five and six years old.

On occasion, when DR's mother and Carranza's wife left the apartment, the children were left alone in Carranza's care. When they were too loud, Carranza would banish them to their rooms and prohibit them from being in the living room. As to the alleged sexual abuse, Carranza would sit on a couch in the living room and pull down DR's pants and

underwear while she stood in front of him. More than once, he “caressed” DR’s bare skin outside her labia and her vagina in between the labia. Carranza sometimes told DR that he was “just checking” her. These incidents happened several times during DR’s kindergarten year. The district court inferred that Carranza had acted with sexual intent during these incidents.

On one occasion, Carranza brought DR into the bathroom when the lights were off. DR was seated on the toilet, and when Carranza turned on the lights, he was standing in front of her with his erect penis outside of his pants.

During her kindergarten year, DR touched her uncle MCO’s genitals over his pants. When she was asked why she did that, DR said that Carranza taught her to do it. DR’s uncle and her aunt told DR’s mother about this incident, and DR’s mother immediately moved DR out of Carranza’s apartment.

No one reported the abuse to law enforcement; DR’s family was undocumented at that time. In May 2021, when she was 19, DR decided to report the abuse to police. Her mother advised against it, but one of her aunts supported DR. DR made a police report on May 21. Later in May, Carranza messaged DR’s uncle MCO regarding DR and her aunt stating, “b-tches bark a lot at night,” and “when the dog dies, the rabies does too.” MCO responded that DR had already gone to the police. Carranza did not ask what DR had reported. An investigator interviewed DR in June 2021.

At the time of the trial, DR was 21 years old. The district court found that her testimony at trial was consistent with the initial police report, with her statement to the investigator, and with evidence produced at trial. The district court found that DR’s

testimony was “entirely credible,” noting that DR “indicated when she did not know or did not remember an answer to a question from counsel.” As to the credibility of the other witnesses at trial, the district court found that although DR’s mother’s recollection was limited, her testimony was credible; that the professional witnesses’ testimony was credible; and that the testimony of Carranza’s daughters was generally credible on background matters, but not regarding Carranza’s supervision of the children.

The court found that Carranza’s testimony and his wife’s testimony were not credible. The court noted that Carranza was evasive and “gave entirely incredible, detailed accounts” of events from over a decade ago. The court “gave no credence” to Carranza’s claim that he had only been left alone with his daughters and DR twice during the period at issue. The court also “found not credible and unpersuasive the defense’s apparent theory” that DR “fabricated allegations . . . because [Carranza] had threatened to report her for driving while intoxicated or because of [a] dispute between [Carranza] and [DR’s] mother over payment for car repairs.”

The court found Carranza guilty of all three counts of criminal sexual conduct. The court entered judgment of conviction for the first- and fifth-degree criminal-sexual-conduct offenses and sentenced Carranza to serve executed concurrent sentences of 144 months and 364 days respectively, as well as ten years of conditional release after confinement.

Carranza appeals.

DECISION

Carranza challenges the district court’s ruling, claiming that the evidence was insufficient to support the court’s findings of guilt. When considering a claim of

insufficient evidence, an appellate court carefully analyzes 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 that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). An appellate court assumes that the fact-finder believed the state’s witnesses and disbelieved the defense witnesses. *State v. Tschu*, 758 N.W.2d 849, 858 (Minn. 2008). The court will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was proved guilty of the offense charged. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). An appellate court “review[s] criminal bench trials the same as jury trials when determining whether the evidence is sufficient to sustain convictions.” *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998).

I.

Carranza first argues that the evidence was insufficient to demonstrate that the proved conduct met the definition of “sexual penetration” as required under the first-degree criminal-sexual-conduct statute. See Minn. Stat. § 609.342, subd. 1(h)(iii) (2006) (classifying multiple acts of sexual penetration of a child under sixteen with whom the actor has a significant relationship as first-degree criminal sexual conduct).¹

“When a sufficiency-of-the-evidence claim turns on the meaning of the statute under which a defendant has been convicted, [appellate courts] are presented with a question of

¹ The 2006 version of the statute would have been in place at the beginning of the abuse period. Carranza concedes that, “[f]or purposes of this argument, the 2007 version does not differ materially from the 2006 version” and relies on the 2006 statute.

statutory interpretation that [they] review de novo.” *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018). In such circumstances, an appellate court uses a two-step process: first, it uses statutory interpretation to determine the meaning of the relevant statutory language; and second, it determines whether the evidence was sufficient to establish guilt using that interpretation. *See State v. Robinson*, 921 N.W.2d 755, 756-58, 761-62 (Minn. 2019) (interpreting Minn. Stat. § 518B.01, subd. 2(b) (2018) to define “significant romantic or sexual relationship” and concluding that the evidence was sufficient to sustain a conviction using that definition).

The provision at issue—Minn. Stat. § 609.342, subd. 1(h)(iii)—states:

A person who engages in *sexual penetration* with another person, or in sexual contact with a person under 13 years of age as defined in section 609.341, subdivision 11, paragraph (c), is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists: . . . (h) the actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the *sexual penetration*, and: . . . (iii) the sexual abuse involved multiple acts committed over an extended period of time.

(Emphasis added.)

“Sexual penetration” is defined to include “acts committed without the complainant’s consent, except in those cases where consent is not a defense,” including “any *intrusion* however slight into the *genital or anal openings* . . . of the complainant’s body by any part of the actor’s body.” Minn. Stat. § 609.341, subd. 12(2)(i) (2006) (emphasis added). Although Minn. Stat. § 609.341, subd. 12(2)(i), defines “sexual penetration” as used in Minn. Stat. § 609.342, subd. 1(h)(iii), it does not define the meaning of intrusion or genital opening as used in the definition.

Carranza turns to dictionary definitions to define “intrusion.” Next, he asserts that “[t]he vaginal canal, not the labia, is the medically recognized genital opening for the female body,” citing an article entitled “Vagina: Anatomy, Function, Conditions & What’s Normal.”² Based on that understanding of the phrase “genital opening,” Carranza argues that the district court’s finding that he caressed DR’s vagina in between her labia does not establish an “intrusion . . . into the genital or anal openings.” *See id.* Carranza further argues that “to be guilty of sexually penetrating [DR], [he] must have put a part of his body in [her] vaginal canal.” Thus, Carranza contends that the state did not prove that he sexually penetrated DR, and the evidence was insufficient to sustain the district court’s guilty verdict on the first-degree criminal-sexual-conduct offense.

We reject Carranza’s approach because it is inconsistent with precedent. In *State v. Shamp*, we held that the victim’s testimony that her father “would rub his fingers between the folds of skin over her vagina, but not insert his fingers ‘all the way’” was “sufficient evidence for the jury to reasonably find penetration.” 422 N.W.2d 520, 526 (Minn. App. 1988), *rev. denied* (Minn. June 10, 1988). We did not require proof that the defendant’s finger(s) intruded into the victim’s vaginal canal. The district court’s finding in this case that Carranza “caressed [DR’s] bare skin . . . on the vagina in between the labia” is consistent with the language supporting our finding of sexual penetration in *Shamp*. *See id.* Indeed, the district court cited *Shamp* in finding that there was sexual penetration in this case.

² Cleveland Clinic, *Health Library, Vagina* [<https://perma.cc/3GE8-AWPF>].

Shamp is not an anomaly: this court has ruled similarly in previous nonprecedential opinions, which, although nonbinding, are persuasive.³ See Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that “nonprecedential opinions may be cited as persuasive authority”); *Cerrito v. State*, No. A21-1430, 2022 WL 1446783, at *4 (Minn. App. May 9, 2022) (holding that the child’s demonstration with an anatomical doll that appellant’s “‘fingers went in between kind of the lips of [the child’s] vulva’” supported a finding of vaginal penetration), *rev. denied* (Minn. July 19, 2022); *State v. Zapata*, No. A17-1085, 2018 WL 3097735, at *2 (Minn. App. June 25, 2018) (ruling that “[e]ven if the jury interpreted [the child’s] statements to mean that [appellant’s] hand went inside the folds of skin over her vagina, that evidence would still be sufficient to sustain his conviction”); *Blevins*, 2008 WL 942578, at *3 (holding that the district court reasonably found appellant digitally penetrated the victim in part because the victim testified to “three separate times at which [appellant] rubbed her vagina”); *State v. Robinson*, No. A20-0159, 2021 WL 416700, at *2-3 (Minn. App. Feb. 8, 2021) (rejecting argument that “‘genital opening’ must mean only the vaginal opening”).

³ In addition, in other jurisdictions “courts in numerous cases have stated or recognized that, although the vagina is intact and not penetrated in the least, entry of the anterior of the female genital organ, known as the vulva or labia, is sufficient penetration to constitute rape.” James J. Rigelhaupt, Jr., Annotation, *What Constitutes Penetration in Prosecution for Rape or Statutory Rape*, 76 A.L.R. 3d 163, 178 § 3 (1977); see *State v. Blevins*, No. A06-2199, 2008 WL 942578, at *3 (Minn. App. Apr. 8, 2008) (“Several state courts have specifically held, in the context of digital or object rape, that penetration of the ‘genital opening’ is satisfied by penetration of the vulva or labia.” (quotation omitted)), *rev. denied* (Minn. June 18, 2008).

Finally, as the state argues, the legislature did not define sexual penetration as an intrusion of the “vaginal canal,” but instead defined the phrase as “*any intrusion however slight into the genital . . . opening[]*.” Minn. Stat. § 609.341, subd. 12(2) (emphasis added). “This court cannot supply language that the legislature has purposefully omitted or overlooked.” *State v. Coonrod*, 652 N.W.2d 715, 723 (Minn. App. 2002), *rev. denied* (Minn. Jan. 21, 2003); *see Auringer v. State*, 695 N.W.2d 640, 645 (Minn. App. 2005) (“If the presence of clothing were a relevant factor justifying distinct treatment in cases of penetration, there is no question that the legislature would have so stated.”), *rev. denied* (Minn. July 19, 2005).

In sum, under *Shamp*, the facts found by the district court establish that Carranza engaged in sexual penetration within the meaning of Minn. Stat. § 609.341, subd. 12(2)(i), when he “caressed” DR’s vagina “in between the labia.”

II.

Carranza next argues that the evidence was insufficient because the court relied “solely” on DR’s testimony, “there were reasons to question her credibility,” and “the evidence was uncorroborated.”

“Assessing the credibility of a witness and the weight to be given a witness’s testimony is exclusively the province of the [fact-finder].” *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006). This court will not consider a witness’s credibility on appeal. *State v. Garrett*, 479 N.W.2d 745, 747 (Minn. App. 1992), *rev. denied* (Minn. Mar. 19, 1992). The fact-finder “is in the best position to evaluate the credibility of the evidence.” *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). “When the testimony of the defendant and

the victim differ sharply, the [fact-finder] is entitled to believe the victim's account." *State v. Folley*, 378 N.W.2d 21, 26 (Minn. App. 1985).

The district court determined that DR's testimony was "entirely credible." The court found that DR "was articulate and straightforward, and indicated when she did not know or did not remember an answer to a question from counsel," and the court observed that DR's "testimony was consistent with her prior out-of-court statements and with other evidence introduced at trial." This court defers to the district court's credibility determination. *Mems*, 708 N.W.2d at 531.

Moreover, "[i]t is well-settled that a conviction can rest on the uncorroborated testimony of a single credible witness." *State v. Hill*, 172 N.W.2d 406, 407 (Minn. 1969). Generally, in a prosecution for first-degree criminal sexual conduct, "the testimony of a victim need not be corroborated." See Minn. Stat. § 609.347, subd. 1 (2006). "Corroboration of an allegation of sexual abuse of a child is required only if the evidence otherwise adduced is insufficient to sustain conviction." *State v. Myers*, 359 N.W.2d 604, 608 (Minn. 1984). This court has held that "positive" and "consistent" testimony, even when not "particularly detailed," does not require corroboration. *State v. Wiskow*, 501 N.W.2d 657, 660 (Minn. App. 1993) (quotations omitted).

Carranza notes that the Minnesota Supreme Court has occasionally reversed convictions in cases in which there were "additional reasons to question the victim's credibility." *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004). Carranza relies on that caselaw in arguing that his convictions warrant reversal.

Carranza cites *State v. Huss*, a criminal-sexual-conduct case with “unusual facts.” 506 N.W.2d 290, 293 (Minn. 1993). In *Huss*, the supreme court reversed because the alleged victim, a three-year-old child, had been exposed to “repeated use of a highly suggestive book on sexual abuse.” *Id.* at 292. The child’s testimony was the only direct evidence of abuse but “was contradictory as to whether any abuse occurred at all,” and it “was inconsistent with her prior statements and other verifiable facts.” *Id.* Those are not the circumstances here. DR’s testimony was consistent with her prior out-of-court statements and with other evidence produced at trial, and there is no evidence that DR’s memory or testimony was influenced by “the repeated use of a highly suggestive book on sexual abuse.” *Id.* The other cases on which Carranza relies are similarly unpersuasive. See *State v. Langteau*, 268 N.W.2d 76, 77 (Minn. 1978) (reversing an aggravated robbery conviction because parts of the complaining witness’s version of events were “unexplained,” and “[t]he reason why defendant would have held up [the complaining witness], with whom he was well acquainted, [was] left a mystery”); *State v. Gluff*, 172 N.W.2d 63, 64-66 (Minn. 1969) (reversing aggravated-robbery conviction based on doubt regarding the accuracy of the complaining witness’s identification of the perpetrator).

Finally, Carranza cites *State v. Ani*, in which the supreme court stated that lack of corroboration “may well call for a holding that there is insufficient evidence.” 257 N.W.2d 699, 700 (Minn. 1977) (quotation omitted). However, the *Ani* court concluded that “even if there were a constitutional or statutory corroboration requirement it would have been amply met” because the “victim’s testimony was positive and not contradicted[] and was strongly corroborated by other evidence.” *Id.*

Like the circumstances in *Ani*, although corroboration was not necessary in this case, DR's testimony was corroborated. As the state argues, "multiple witnesses testified that [DR] appeared and behaved in a manner consistent with characteristics of children who have been sexually abused." The court heard testimony that, on several occasions during the period of abuse, DR told her mother that her private parts burned; that around the time of the abuse, DR touched her uncle MCO's genitals over his pants and said that Carranza "taught her that"; and that once DR started college, she "didn't want to see" Carranza and did not want to go to family reunions if he would be there. In addition, after DR touched MCO's genitals over his pants and implicated Carranza, MCO and DR's aunt informed DR's mother, who immediately moved DR out of Carranza's apartment. Finally, Carranza's daughter testified that when Carranza was left alone with his daughters and DR, he occasionally instructed his daughters that they could not be in the living room. That testimony is consistent with DR's testimony indicating that Carranza had the opportunity to abuse her in the living room.

In sum, there is no basis to reject the district court's finding that DR's testimony accusing Carranza of sexual abuse was credible. And although corroboration was not required, the evidence corroborated DR's testimony. Because the district court, sitting as the fact-finder and acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that Carranza was proved guilty of the offenses charged, we do not disturb the guilty verdicts.

Affirmed.