

*This opinion is nonprecedential except as provided by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
A25-0554**

State of Minnesota,
Respondent,

vs.

Jerson Manuel Montes Banegas,
Appellant.

**Filed May 26, 2026
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Chisago County District Court
File No. 13-CR-21-445

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

Janet Reiter, Chisago County Attorney, David Hemming, Assistant County Attorney,
Center City, Minnesota (for respondent)

Anders J. Erickson, Johnson Erickson Criminal Defense, Minneapolis, Minnesota (for
appellant)

Considered and decided by Ede, Presiding Judge; Ross, Judge; and Jesson, Judge.*

NONPRECEDENTIAL OPINION

ROSS, Judge

A jury found Jerson Montes Banegas guilty of first-, second-, and third-degree
criminal sexual conduct based on evidence that he abused his stepdaughter almost daily

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

throughout most of her childhood, including incidents in Wisconsin and Florida. On appeal, Montes Banegas argues that the district court plainly erred by failing to issue a unanimity instruction on various elements of these charges, admitting evidence of incidents outside Minnesota over which it lacked jurisdiction, and failing to instruct the jury that the state must prove that any sexual contact occurred when his stepdaughter was younger than 13 as it related to the first-degree charge. He argues that each of these errors individually and cumulatively resulted in prejudice that warrants a new trial. He also maintains that the district court erroneously both executed his sentence and imposed probationary terms. Because we conclude that only his sentencing challenge identifies an error, we affirm the convictions but reverse and remand for resentencing.

FACTS

This case concerns the criminal sexual conduct of Jerson Montes Banegas against his stepdaughter, born in January 2005. We will refer to his stepdaughter as “Ruth,” a name we have randomly chosen in the interest of protecting her privacy.

When Ruth was 16, she reported that Montes Banegas had sexually abused her almost daily. The state charged him in 2021 with one count of third-degree criminal sexual conduct but, before the end of his 2024 trial, amended the complaint to add charges. The complaint ultimately included four counts: count one, first-degree criminal sexual conduct for the penetration of a person under 16 in violation of Minnesota Statutes section 609.342, subdivision 1(h)(iii) (2012); count two, first-degree criminal sexual conduct for the penetration of a person under 13 in violation of Minnesota Statutes section 609.342, subdivision 1 (2012); count three, second-degree criminal sexual conduct for sexual

contact with a person under 16 in violation of Minnesota Statutes section 609.343, subdivision 1(h)(iii) (2012); and count four, third-degree criminal sexual conduct for the penetration of a person between 16 and 18 in violation of Minnesota Statutes section 609.344, subdivision 1(f) (2020).

The state's witnesses and Montes Banegas gave competing trial testimony. Ruth's mother testified that she married Montes Banegas in 2009, when Ruth was four. He lived with them but would occasionally move out and live elsewhere for two-or-three-month periods. They lived in various places in the Twin Cities until moving to North Branch in July 2017 when Ruth was 13. Ruth testified that Montes Banegas sexually abused her nearly every day beginning at an uncertain age when she was very young but no longer in diapers. She said that the abuse continued until she was 16 years old. She described Montes Banegas's abuse during the early period as mostly sexual touching. She said that he began penetrating her vagina with his fingers and penis during her freshman year of high school after the family moved to North Branch. Ruth testified that he also abused her during family vacations, including in a Wisconsin hotel room when he penetrated her vagina with his penis and in a Florida hotel room when he at least touched her sexually.

Ruth told the jury that the last time he sexually penetrated her was on February 28, 2021, in her North Branch home after one of his absences. She told her mother about the abuse after her mother said that she planned to invite Montes Banegas to move back in. The state introduced transcripts of an interview between Ruth and a forensic investigator consistent with her trial testimony. And two of Ruth's younger siblings testified to having witnessed incidents of Montes Banegas's abuse against Ruth. The state overall introduced

evidence of roughly eight specific episodes of sexual abuse involving either contact or penetration, including the Wisconsin and Florida incidents.

Montes Banegas testified in his own defense. He broadly denied having ever physically or sexually abused Ruth.

The district court instructed the jury. Relevant to the issues in this appeal, the instructions did not specify the need for juror unanimity for any element of counts one, three, or four. And the instructions did not require the jury to find that any sexual contact establishing a pattern of abuse occurred before Ruth turned any particular age as it regarded count one. The instructions also did not require the jury to find that Montes Banegas's acts occurred in Chisago County in regard to counts one, two, and three; they instead directed that the jury must find only that Ruth resided "in Chisago County, Minnesota, either when the abuse occurred or when the abuse was discovered."

The parties gave contrasting closing arguments. The prosecutor argued that Ruth's testimony was more credible than Montes Banegas's testimony given its consistency with her forensic interview and the corroborating testimony of her siblings, including their account of the Florida incident. The prosecutor specified that count four "correspond[ed] to a specific instance," which was the assault on "February 28th of 2021." Montes Banegas argued that Ruth fabricated all her allegations as revenge against him for being a strict stepparent. He argued that the witnesses' descriptions of his body were inconsistent with details that he provided the jury, and that Ruth's trial testimony was inconsistent with her forensic interview as to the timing of the first alleged assault involving penetration.

The jury found Montes Banegas guilty on counts one, three, and four, and not guilty on count two. The district court sentenced him on count one to serve 172 months in prison and to a consecutive 36-month prison term on count four. It did not enter a conviction on count three, concluding that it was a lesser-included offense of count one. The district court executed Montes Banegas's prison sentence but also imposed a host of probationary terms.

Montes Banegas appeals.

DECISION

Montes Banegas contests his convictions and, alternatively, his sentence. He raises three principal arguments against his convictions. He argues first that the district court improperly failed to instruct the jury on counts one, three, and four that it must unanimously agree on which acts of sexual abuse satisfy the elements of each count. He argues second that the district court erroneously admitted evidence of criminal sexual conduct that occurred outside Minnesota. And he argues third that the district court erroneously failed to instruct the jury on count one that any sexual contact contributing to a pattern of abuse must have occurred while Ruth was younger than 13. Montes Banegas maintains that these errors separately or cumulatively resulted in prejudice requiring a new trial. He challenges his sentence on the premise that the district court erroneously both executed his prison sentence and imposed probationary terms. For the following reasons, we conclude that the convictions stand but that the district court must amend the sentence.

I

Montes Banegas argues that the district court plainly erred by failing to issue a unanimity instruction *sua sponte* on various elements of counts one, three, and four.

Although we generally review claims of improper jury instructions for an abuse of discretion, where, as here, no party objected to the instructions, we review only for plain error. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). To establish plain error, the appellant must demonstrate an error that was plain and affected his substantial rights. *Id.* If the appellant carries this burden, we will grant relief only if doing so is necessary to ensure fairness and judicial integrity. *Id.* Montes Banegas’s challenge fails under our plain-error review.

Montes Banegas correctly asserts that jury verdicts must be unanimous in criminal cases. Minn. R. Crim. P. 26.01, subd. 1(5); *State v. Bey*, 975 N.W.2d 511, 517 (Minn. 2022). This requires juries to unanimously find that the state proved each element of a crime to reach a guilty verdict. *State v. Pendleton*, 725 N.W.2d 717, 730–31 (Minn. 2007). Under this standard, if an element of a crime consists of an act and the state introduces evidence of multiple, separate acts that could satisfy the element, the jury must unanimously agree as to which act the defendant committed. *State v. Stempf*, 627 N.W.2d 352, 355 (Minn. App. 2001). If the state introduces evidence of multiple acts without specifying which one it relies on for a conviction, the district court errs by failing to issue a unanimity instruction. *Id.* at 358. We first address Montes Banegas’s arguments on count one before addressing his argument on count four. We do not address his related argument as to count three because the district court did not adjudicate this count. *See State v. Ashland*, 287 N.W.2d 649, 650 (Minn. 1979).

The district court did not plainly err by failing to issue a unanimity instruction on count one based on Minnesota Statutes section 609.342, subdivision 1(h)(iii).

Montes Banegas argues that the district court plainly erred by failing to instruct the jury on count one, first-degree criminal sexual conduct, that it must unanimously agree that he committed a single, prerequisite act of sexual penetration and a second act of sexual abuse establishing a pattern. The state charged Montes Banegas under Minnesota Statutes section 609.342, subdivision 1(h)(iii), which states as follows:

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.

The Minnesota Supreme Court analyzed the statute and explained that, to secure a conviction, the “State must first prove that the defendant engaged in one of the two categories of prerequisite conduct: sexual penetration or bare genital-to-genital contact with a person under 13,” and “[i]f such proof is provided, then the State must further prove that . . . the sexual abuse involved multiple acts committed over an extended period of time.” *State v. Ortega-Rodriguez*, 920 N.W.2d 642, 645–46 (Minn. 2018) (quotation omitted). Montes Banegas argues that the district court should have issued a unanimity instruction on both of these elements—the prerequisite incident and the pattern of abuse.

Regarding the prerequisite act of sexual abuse, we hold that the district court did not plainly err by failing to issue a unanimity instruction. We so hold based on *State v. Rucker*,

752 N.W.2d 538 (Minn. App. 2008), *rev. denied* (Minn. Sept. 23, 2008). *Rucker* instructs that, when the state seeks to prove a single incident of sexual abuse by offering “examples” of that abuse over a reasonable period of time and the defense relies on denying the abuse allegations generally rather than specifically, the defendant is not entitled to a unanimity instruction. 752 N.W.2d at 546 n.1, 547–49. Montes Banegas argues that the state’s evidence here cannot be characterized as episodic because it was more detailed than the evidence offered in *Rucker*. We disagree because in *Rucker*, the state introduced evidence of the specific dates of most of the incidents, which the state did not do here, leaving them even less detailed.

We reject Montes Banegas’s attempt to distinguish *Rucker*. *Rucker*’s rationale applies here, where the state charged Montes Banegas with first-degree criminal sexual conduct for conduct occurring from January 1, 2014, to January 5, 2021. The state maintained that Montes Banegas abused Ruth daily throughout this seven-year period, offering evidence of roughly six exemplifying incidents. The *Rucker* witnesses recalled the dates of seven or eight specific instances of penetration, *id.* at 543, while here, the state could only approximate the year of one incident. As in *Rucker*, the state here did not in closing “encourage the jury to find certain incidents” more likely to have occurred, instead presenting them as a collective act of ongoing abuse. *Id.* at 548. Montes Banegas raised a specific defense against only one incident, and his defense mostly involved arguing that Ruth and the other witnesses wholly fabricated their allegations, as in *Rucker*. *Id.* In this context, *Rucker* controls our analysis and guides us to hold that the district court did not plainly err by not issuing a unanimity instruction on the elements of first-degree criminal

sexual conduct and requiring the state to prove a single, prerequisite instance of sexual abuse.

As to Montes Banegas's arguments on the pattern-of-abuse element of that offense, the district court also did not plainly err by failing to issue a unanimity instruction because this element requires the state to prove a pattern of acts rather than an individual act. *Compare State v. Crowsbreast*, 629 N.W.2d 433, 438–39 (Minn. 2001) (holding that a unanimity instruction is not required for an element of a crime consisting of a “grouping of past acts”), *with Stempf*, 627 N.W.2d at 355 (requiring unanimity when the “act itself” is an element of a crime). This element of first-degree criminal sexual conduct required the state to prove that Montes Banegas's sexual abuse “involved multiple acts committed over an extended period of time.” Minn. Stat. § 609.342, subd. 1(h)(iii). The jurors did not need to unanimously agree on which acts during the charging period the state proved beyond a reasonable doubt so long as “they agree[d] upon the bottom line” that the state proved a pattern of abuse. *See Crowsbreast*, 629 N.W.2d at 439 (quoting *Schad v. Arizona*, 501 U.S. 624, 631–32 (1991)). Montes Banegas's argument that *Crowsbreast* is specific to criminal statutes that require proof of a “pattern” of abuse is unavailing. It is true that this criminal-sexual-conduct statute does not use the word “pattern.” But we are satisfied that “pattern” and “multiple acts” of sexual abuse “committed over an extended period of time” carry the same general meaning in context. Minn. Stat. § 609.342, subd. 1(h)(iii). It does not appear to us that any error occurred here, but for our purposes we decide only that no plain error occurred. An error is plain only if it violates precedential caselaw, a rule, or a standard of conduct. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Because no authority requires

the jury to unanimously agree on which of Montes Banegas's acts established multiple acts of abuse, the district court did not plainly err by not issuing a unanimity instruction.

The district court did not err by failing to issue a specific unanimity instruction on count four because only one alleged instance of criminal sexual conduct could have sustained the charge and the state argued as much at trial.

We turn to Montes Banegas's argument that the district court erred by failing to issue a unanimity instruction on count four because the first element of the crime required the state to prove an act of sexual penetration. The state charged Montes Banegas with violating Minnesota Statutes section 609.344, subdivision 1(f), between January 1, 2021, and March 1, 2021. This charge required the state to prove that Montes Banegas sexually penetrated Ruth during this period while she was at least 16 but younger than 18 years old. Minn. Stat. § 609.344, subd. 1(f). Montes Banegas was not entitled to a unanimity instruction on this offense because the state introduced evidence of only one penetrative incident that could sustain it—the February 28, 2021 incident. *See Stempf*, 627 N.W.2d at 355–56 (explaining that a district court must issue a unanimity instruction when the state introduces two factual scenarios that could satisfy the same element of an offense). And the state was clear in its closing argument that this charge was specific to the February 28, 2021 incident. *See id.* at 358 (explaining that the district court erred in failing to issue a unanimity instruction “[b]ecause the state did not elect which act . . . it was relying on for conviction”). Because the state introduced evidence of only one act that could satisfy count four and so advised the jury, no unanimity instruction was necessary.

II

Montes Banegas argues that the district court plainly erred by receiving the state's evidence of non-Minnesota sexual-abuse incidents because Minnesota courts lack jurisdiction to punish him for out-of-state conduct. Although he also argues that offering the evidence constituted prosecutorial misconduct, we resolve both arguments on the same legal basis. We review the argument for plain error. *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002); *Griller*, 583 N.W.2d at 740. It is true that Minnesota has jurisdiction only over offenses committed “in whole or in part within this state.” Minn. Stat. § 609.025(1) (2012); *see also State v. Smith*, 421 N.W.2d 315, 318 (Minn. 1988). Courts apply the “operative event test” to analyze jurisdiction by asking whether some “triggering event” occurred in Minnesota or if the crime was completed in another state. *State v. Simion*, 745 N.W.2d 830, 838–40 (Minn. 2008). We review jurisdictional issues *de novo*. *Id.* at 837. Montes Banegas's jurisdiction-related plain-error challenge fails.

We are unconvinced by Montes Banegas's argument. Minnesota had jurisdiction over the non-Minnesota incidents because, related to count one, Montes Banegas's formation of his “significant relationship” with Ruth in Minnesota serves as a triggering event for these criminal-sexual-conduct offenses. Minn. Stat. § 609.342, subd. 1(h)(iii). Ruth testified, and the jury's verdict indicates that it accepted as true, that Montes Banegas sexually abused her on an ongoing basis in Minnesota, with possibly only two occasions in other states. To prove Montes Banegas guilty of first- or third-degree criminal sexual conduct, the state had to prove that he had a “significant relationship” with Ruth as a necessary element. *See Ortega-Rodriguez*, 920 N.W.2d at 645–46 (analyzing the first-

degree criminal-sexual-conduct statute). The only evidence the state introduced on this element suggested that Montes Banegas formed this relationship with Ruth by becoming her stepfather and moving in with her in Minnesota. *See* Minn. Stat. § 609.341, subd. 15(1) (2012) (defining “significant relationship” to include stepparents). This suffices as a triggering event for these offenses, as Minnesota could not charge Montes Banegas with either offense, regardless of where the sexual abuse occurred, if he lacked a significant relationship with her. *See Simion*, 745 N.W.2d at 838–39. Because the state had jurisdiction over Montes Banegas’s abusive acts in Florida and Wisconsin as part of two offenses with their Minnesota origin, the district court did not err by allowing evidence of these acts.

Montes Banegas’s argument fails for lack of any error, *Griller*, 583 N.W.2d at 740, but we add that the asserted error would not have been plain. As clarified at oral argument, Montes Banegas’s objections here implicate the same structural concerns underpinning his unanimity-instruction arguments. On this point, he argues that the jury could have found that the state proved one prerequisite act of penetration or contact solely on evidence of the Wisconsin incident, and proved a second act of sexual abuse establishing a pattern solely upon evidence of the Florida incident. *See Ortega-Rodriguez*, 920 N.W.2d at 645–46. But accepting his argument requires resolving the tension between the reasoning of *Stempf* and *Rucker* as to whether the state must prove a single instance of sexual abuse by uniting the jury behind a specific allegation. *Compare* 627 N.W.2d at 355, *with* 752 N.W.2d at 547–49. As Montes Banegas’s arguments here turn on whether the state may do so by introducing “examples” of routine abuse, *Rucker*, 752 N.W.2d at 547–49, we do not think that this asserted error could have been plain to the district court.

III

Montes Banegas argues too that the district court erred in instructing the jury on Minnesota Statutes section 609.342, subdivision 1(h)(iii), by failing to specify that sexual contact comprising “the sexual abuse” referred to in paragraph (h)(iii) must have occurred when Ruth was under 13. *See generally State v. Shamp*, 422 N.W.2d 520, 524 (Minn. App. 1988) (explaining that “sexual abuse” includes both sexual penetration and contact), *rev. denied* (Minn. June 10, 1988). We review again for plain error. *Griller*, 583 N.W.2d at 740. The district court errs if its instructions incorrectly state the law or are incomprehensible to the jury. *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010). Determining what Minnesota Statutes section 609.342, subdivision 1(h)(iii), requires for a conviction is a question of statutory interpretation that we review *de novo*. *Ortega-Rodriguez*, 920 N.W.2d at 645. Our review supports affirming.

The district court’s instructions were not erroneous because Minnesota Statutes section 609.342 does not link the age requirement of sexual contact in subdivision 1 to the “sexual abuse” language in paragraph (h)(iii). Section 609.342 is a two-part statute first requiring proof of either sexual penetration of a person under 16 or sexual contact with a person under 13 and then separate proof of one of seven possible circumstances. *Id.* at 645–46. Under this structure, district courts are not to incorporate subdivision 1’s language, including its age requirements, into the statute’s following subparts. “[S]exual abuse” in paragraph (h)(iii) is independent of any modification of sexual contact in subpart 1. Montes Banegas argues that *State v. Struzyk*, 869 N.W.2d 280 (Minn. 2015), counsels that the use of “the,” as in the phrase “the sexual abuse,” demonstrates that the legislature

reincorporated the statute's earlier limitations. But *Struzyk* interpreted similar terms used in multiple sentences of the same subdivision of a statute, not different terms between a subdivision and an independent paragraph of a statute. 869 N.W.2d at 285–86 (interpreting Minn. Stat. § 609.2231, subd. 1 (2014)). We see no instructional error here.

IV

Montes Banegas argues that even if none of the individual errors warrant a new trial, their combined prejudice requires one under a cumulative-error theory. *See generally State v. Davis*, 820 N.W.2d 525, 538–39 (Minn. 2012). But his appeal issues have revealed no errors to cumulate. His cumulative-error argument therefore fails.

V

Montes Banegas convincingly argues that the district court exceeded its sentencing authority by both incarcerating him and issuing probationary terms that would regulate his conduct while he is incarcerated. The state correctly concedes this point. The commissioner of corrections, not the district court, has the authority to set the terms of a person's incarceration. Minn. Stat. § 609.105, subd. 2 (2024); *accord State v. Cook*, 617 N.W.2d 417, 420–21 (Minn. App. 2000), *rev. denied* (Minn. Nov. 21, 2000). By both executing Montes Banegas's prison sentence and imposing probationary terms during his incarceration, the district court sentenced beyond its reach. We reverse Montes Banegas's sentence and remand the case to the district court for resentencing without probationary terms.

Affirmed in part, reversed in part, and remanded.