

*This opinion is nonprecedential except as provided by  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  
A25-0972**

State of Minnesota,  
Respondent,

vs.

Michael Jay Honan,  
Appellant.

**Filed April 27, 2026  
Reversed and remanded  
Segal, Judge\***

Dakota County District Court  
File No. 19HA-CR-23-1218

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

Kathryn M. Keena, Dakota County Attorney, Beth A. Beaman, Assistant County Attorney,  
Hastings, Minnesota (for respondent)

Adrian S. LaFavor-Montez, Colich & Associates, Minneapolis, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Frisch, Chief Judge; and  
Segal, Judge.

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

## **NONPRECEDENTIAL OPINION**

**SEGAL, Judge**

Appellant challenges his conviction of first-degree criminal sexual conduct, arguing that the evidence was insufficient to prove his guilt. Alternatively, appellant argues that he is entitled to a new trial because the district court committed prejudicial error by admitting statements the complainant made during a forensic interview that were not consistent with the complainant's trial testimony. Finally, appellant argues that the district court abused its discretion in denying his motion for a downward dispositional departure. We conclude that the evidence was sufficient to support appellant's conviction, but because the district court erred in admitting the inconsistent statements from the forensic interview, and appellant has met his burden to show that he was prejudiced by this error, we reverse and remand for a new trial.

### **FACTS**

Respondent State of Minnesota charged appellant Michael Jay Honan with one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(h)(iii) (Supp. 2019) (penetration of a victim under the age of 16/significant relationship/multiple acts over time). The state alleged that Honan sexually abused his niece, E.H., from August 2019 to December 2021.

Prior to trial, Honan moved in limine to exclude hearsay statements E.H. made in a recorded forensic interview conducted by an investigating detective.<sup>1</sup> In the interview,

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<sup>1</sup> The detective had training provided by CornerHouse in conducting forensic interviews of minor sexual-abuse victims.

E.H. told the detective that Honan first sexually abused her at her grandmother's house when she was nine or ten years old. E.H. stated in the interview that Honan moved her shorts aside and touched her vagina with his hands while she was sitting on his lap on the living room couch.

In the interview, E.H. also described abuse that occurred at Honan's house. E.H. explained that, when she and Honan were in the basement playing pool or watching movies, he would "always like, try to play this game called Keep away the Pillow." E.H. alleged that, during the game, Honan would start "touching [her] right away and . . . the last two times he played the game, he actually put his fingers inside." E.H. also alleged that, when they played the pillow game, Honan would touch her "boobs" and "butt," and that Honan would put the pillow in front of his penis and make her try and grab the pillow. E.H. claimed that the last time the abuse occurred was "[l]ike December-ish."

The district court denied Honan's motion in limine to exclude the interview, and it was admitted as a prior consistent statement. At trial, E.H. testified that she would spend the weekend at Honan's house about every other month. According to E.H., she "would always go downstairs" and play pool with Honan, and when they were downstairs, Honan "would have [her] go on his lap facing him" and have her do sit-ups. E.H. testified that, during this activity, Honan would help "pull [her] up" and, in the process, "he would graze his thumbs over [her] breasts." E.H. alleged that Honan began touching her breasts when she was nine or ten years old, and that Honan touched her breasts between 10 and 20 times.

E.H.'s trial testimony also included discussion about the pillow game she played with Honan where he would try to take a pillow from her. E.H. explained that she "was in

like a bug formation” with a pillow under her, and Honan would “reach[] his hands like through [her] legs to grab the pillow, but instead of . . . just grabbing the pillow, he would . . . pretend he couldn’t get the pillow.” E.H. claimed that, instead of grabbing the pillow, Honan moved her “pajama shorts and [her] underwear to the side and he put his thumb inside” her vagina. According to E.H.’s trial testimony, Honan put his thumb in her vagina, “[j]ust once,” and that it happened around Christmas when she was 12. And E.H. testified that the abuse “normally” happened after everyone had gone to bed, but that it also happened at her grandmother’s house when there were people around. E.H. eventually mentioned the abuse to a school counselor, who reported it to law enforcement.

E.H.’s grandmother testified at trial about an incident when Honan and E.H. were at her house. According to the grandmother, she observed Honan “sitting on the edge of our recliner” and spreading E.H.’s legs “wide open” and looking “right down, not at her face, but he was looking at her crotch.”

An investigating law enforcement officer testified that, after E.H.’s counselor reported the abuse, he spoke with E.H. who stated that Honan put “her head down by his penis,” and put “his thumb . . . into her parts.” The investigating detective, who conducted the forensic interview with E.H., testified that, during the interview, E.H. shared that Honan touched her vagina at her grandmother’s house, and later, at Honan’s house, he put his thumb in her vagina when they were playing a game with a pillow.

Honan testified in his defense. Honan acknowledged that E.H. had stayed at his home several times and that they would play a pillow game, but denied sexually abusing E.H.

The jury found Honan guilty as charged. Honan subsequently moved for a downward dispositional departure, which was denied. The district court then sentenced Honan to the presumptive sentence of 144 months in prison.

## DECISION

### **I. The evidence is sufficient to support Honan’s conviction of first-degree criminal sexual conduct.**

Honan challenges the sufficiency of the evidence supporting his conviction of first-degree criminal sexual conduct. To determine whether evidence is sufficient to support a conviction, this court undertakes “a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient.” *State v. Jones*, 977 N.W.2d 177, 187 (Minn. 2022) (quotation omitted). “[W]e carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). “We assume that the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Friese*, 959 N.W.2d 205, 214 (Minn. 2021) (quotation omitted).

Honan was convicted of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(h)(iii). An individual is guilty of first-degree criminal sexual conduct under that subdivision if he “engages in sexual penetration with another person, or in sexual contact with a person under 13 years of age,” and the “actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of

the act, and . . . the sexual abuse involved multiple acts committed over an extended period of time.” Minn. Stat. § 609.342, subd. 1(h)(iii).

Honan argues that the evidence is insufficient to support his conviction because E.H.’s “testimony was inconsistent, not credible, and uncorroborated,” and law enforcement’s failure to investigate the scene of the alleged assaults, and interview Honan’s wife and his stepdaughter, further demonstrates the lack of corroboration of E.H.’s testimony. We are not persuaded. It is well settled that “the testimony of a victim need not be corroborated” in a prosecution for a criminal-sexual-conduct crime. Minn. Stat. § 609.347, subd. 1 (2024). Indeed, “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).

Here, E.H.’s trial testimony, by itself, contained the necessary elements to support the first-degree criminal-sexual-conduct charge under Minn. Stat. § 609.342, subd. 1(h)(iii). For the penetration element, E.H. testified that, around Christmas, when she was 12, Honan penetrated her vagina with his thumb. And for the multiple-acts-of-sexual-abuse element, E.H. testified that Honan began touching her breasts when she was 9 or 10 years old, and that Honan touched her breasts between 10 and 20 times. The statements in the forensic interview added support for the elements of the charge but were not necessary to make out the required elements.

As to E.H.’s credibility, even though corroboration was not required, we note that certain aspects of her testimony were generally corroborated by multiple witnesses, including Honan. For example, witness testimony corroborated that E.H. spent time with

Honan at both her grandmother's house and Honan's house. And E.H.'s grandmother testified that she observed Honan looking at E.H. in an inappropriate manner. Finally, Honan fails to identify the types of flaws and contradictions in the evidence necessary to demonstrate that E.H. was not a credible witness. *Compare State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002) (stating that appellate courts "defer to the fact-finder on determinations of credibility"), *with State v. Huss*, 506 N.W.2d 290, 292-93 (Minn. 1993) (concluding that, on the "unusual" facts of the case, the state failed to meet its burden of proof when the only direct evidence of abuse was the child-victim's testimony, the testimony was "contradictory as to whether any abuse occurred at all, and was inconsistent with her prior statements and other verifiable facts," and the court was concerned that the child's exposure to a "highly suggestive book" about sexual abuse may have influenced their testimony).

We therefore conclude that the evidence was sufficient to sustain Honan's conviction of first-degree criminal sexual conduct.

## **II. The erroneous admission of the full forensic interview as a prior consistent statement and the resulting prejudice warrants a new trial.**

Honan argues that the district court abused its discretion by admitting the full forensic interview of E.H. as a prior consistent statement. "Evidentiary rulings rest within the sound discretion of the district court" and will not be reversed "absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). Honan carries the burden to establish both an abuse of discretion and prejudice. *See State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is generally not admissible. Minn. R. Evid. 802. But Minnesota Rule of Evidence 801(d)(1)(B) provides that the prior statement of a witness-declarant is not hearsay if it is “consistent with the declarant’s testimony and helpful to the trier of fact in evaluating the declarant’s credibility as a witness.” For this rule to apply, the declarant must testify at trial and be subject to cross-examination about the prior statement. Minn. R. Evid. 801(d)(1). As long as the requirements of rule 801(d)(1)(B) are satisfied, appellate courts have routinely affirmed the admission of forensic interviews of child sexual-abuse victims. *See, e.g., State v. Zulu*, 706 N.W.2d 919, 925 (Minn. App. 2005) (affirming decision to admit forensic interview of child sexual-abuse victim where the requirements of rule 801(d)(1)(B) were satisfied and any discrepancy between the victim’s trial testimony and interview “was not substantial”); *In re Welfare of K.A.S.*, 585 N.W.2d 71, 76 (Minn. App. 1998) (concluding that forensic interview of child sexual-abuse victim was not erroneously admitted under rule 801(d)(1)(B)).

Honan argues that the district court abused its discretion in admitting the entire forensic interview as a prior consistent statement because certain “statements contained therein were not testified to at trial.” We agree. Trial testimony and the prior statement need not be identical to be consistent. *State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000), *rev. denied* (Minn. Feb. 24, 2000). Rather, the statements need only be “reasonably consistent.” *K.A.S.*, 585 N.W.2d at 76. But when a witness’s prior statement “contains assertions about events that have not been described by the witness in trial testimony, those



assertions are not helpful in supporting the credibility of the witness and are not admissible” as a prior consistent statement. *State v. Farrah*, 735 N.W.2d 336, 344 (Minn. 2007) (acknowledging that it is “important” that rule 801(d)(1)(B) “should not be the means to prove new points not covered in the testimony of the speaker” (quotation omitted)).

Here, consistent with her statement in the interview, E.H.’s testimony tracked the timeline of the abuse, the nature of the abuse, the locations of the abuse, and the identity of the perpetrator. But in the interview, E.H. claimed that Honan put his finger in her vagina on two separate occasions at Honan’s house and described an incident at her grandmother’s house when Honan touched her vagina with his hand when she was sitting on his lap at her grandmother’s house. E.H.’s trial testimony did not contain these details—E.H. testified at trial that appellant put his thumb in her vagina “[j]ust once” and her trial testimony did not reference that Honan touched her vagina with his hand when she was sitting on his lap. Because E.H.’s prior statements in the interview contain assertions about specific events that were not described in her trial testimony, these statements were not admissible as prior consistent statements. *See id.*

The state argues that, even if the district court abused its discretion by admitting the inconsistent statements, we should nevertheless affirm “because the evidence was admissible under the residual hearsay exception.” A hearsay statement that is not covered by the exceptions set out in Minnesota Rules of Evidence 803 and 804 may still be admitted under the residual hearsay exception contained in Minnesota Rule of Evidence 807. To be admissible under rule 807, the statement must have “equivalent circumstantial guarantees

of trustworthiness” as statements admitted under rule 803 and 804, and the district court must

determine[] that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Minn. R. Evid. 807. In addition, the proponent of the statement must make “known to the adverse party, sufficiently in advance of the trial . . . , the proponent’s intention to offer the statement.” *Id.* The state argues that all conditions for admissibility under rule 807 are satisfied here.

The state, however, never asserted rule 807 as a ground for admissibility of the inconsistent statements before the district court and is raising this argument for the first time on appeal. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that an appellate court generally will not decide issues that were not raised in the district court). Thus, the district court made no findings on the relevant factors, including the elements to be considered in determining whether there are “equivalent circumstantial guarantees of trustworthiness.” In addition, Honan was never put on notice that the state might assert admissibility under rule 807 and had no opportunity to make a record to challenge the elements before the district court.

Caselaw instructs that “evaluating the admissibility of a statement under [r]ule 807 requires a district court to carefully balance all of the relevant circumstances surrounding the making of the statement at issue, while also considering each of the three prongs set

forth within the language of the rule.” *State v. Hallmark*, 927 N.W.2d 281, 294 (Minn. 2018). The supreme court has also advised that, when making rulings on admissibility under the residual exception, district courts “should make findings explicitly on the record unless there is a waiver, explicitly or by silence, or the basis of the ruling is obvious.” *State v. DeRosier*, 695 N.W.2d 97, 105 (Minn. 2005) (quotation omitted). And the supreme court has observed that “[t]he complexity and subtlety of the operation of the hearsay rule and its exceptions make it particularly important that a full discussion of admissibility be conducted at trial.” *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006).

Here, we have no findings and no discussion, full or otherwise, in the district court record concerning admissibility of the inconsistent statements under rule 807. The state argues that there have been occasions when Minnesota’s appellate courts have independently evaluated whether a statement is admissible under rule 807. This appears, however, to be only in cases in which the state has asserted rule 807 as a basis for admissibility in district court, but the district court did not consider all relevant factors. *See, e.g., Hallmark*, 927 N.W.2d at 294-95. The state has not cited, nor can we locate, any cases where this court or the supreme court has entertained an argument by the state under rule 807 for the first time on appeal.<sup>2</sup> And given the fact-intensive review necessary to admit evidence under rule 807, we conclude that the record before us is not sufficient to allow us to determine whether the inconsistent statements were admissible under that rule.

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<sup>2</sup> We were, however, able to locate a nonprecedential opinion of this court where we declined to review the state’s assertion that a hearsay statement was admissible under rule 807 because it was not asserted before the district court. *See State v. Rogahn*, No. A20-0861, 2021 WL 1604677, at \*5 n.4 (Minn. App. Apr. 26, 2021).

*See, e.g., Garza v. State*, 632 N.W.2d 633, 637 (Minn. 2001) (“Because the state failed to take advantage of its opportunity to build a factual record with respect to [a newly raised issue], we do not believe that resolution of the issue is necessary to the interests of justice.”). We therefore decline review of the state’s rule 807 argument.

Having concluded that the forensic interview was erroneously admitted, we turn to Honan’s argument that he is entitled to a new trial. Because Honan asserted an objection, at least generally, to the admission of the inconsistent statements as hearsay, we apply the harmless-error standard of review. *See State v. Vang*, 774 N.W.2d 566, 576 (Minn. 2009). Under that standard, we assess whether “a reasonable possibility exists that the error significantly affected the jury’s verdict.” *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024) (quotation omitted). In making that determination, the following nonexclusive factors are considered: “(1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who offered the evidence used it in closing argument, and (4) whether the defense effectively countered the evidence.” *Id.*

Here, along with E.H.’s testimony, the forensic interview was central to the state’s case. Moreover, the forensic interview was persuasive because it described serious incidents of criminal sexual conduct—E.H.’s description of a second act of penetration and an incident where Honan touched her vagina, neither of which were referenced in E.H.’s trial testimony. And the record reflects that the state referenced the interview extensively during closing arguments, telling the jury that the interview could be used as “substantive evidence just [like E.H.’s] testimony.” Finally, the record reflects that, during deliberations, the jury asked to rewatch the forensic interview and then returned its guilty

verdict shortly thereafter. Although we are mindful that a new trial would be difficult for E.H., we cannot conclude that, on this record, the erroneously admitted evidence did not significantly affect the verdict. Accordingly, we reverse Honan's conviction of first-degree criminal sexual conduct and remand for a new trial.<sup>3</sup>

**Reversed and remanded.**

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<sup>3</sup> Because judgment is reversed and the case is being remanded for a new trial, we need not address Honan's appeal of the denial of his motion for a downward dispositional departure.