

*This opinion is nonprecedential except as provided by  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  
A25-1997**

State of Minnesota,  
Respondent,

vs.

Miguel Angel Garcia Ortiz,  
Appellant.

**Filed October 12, 2026  
Affirmed  
Wheelock, Judge**

Mower County District Court  
File No. 50-CR-24-923

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

**NONPRECEDENTIAL OPINION**

**WHEELOCK**, Judge

In this direct appeal from his criminal-sexual-conduct conviction, appellant argues that the evidence was insufficient to convict him and that he received ineffective assistance of counsel. We affirm.

## FACTS

In May 2024, respondent State of Minnesota charged appellant Miguel Angel Garcia Ortiz with one count of first-degree criminal sexual conduct for penetration of a minor under the age of 14 while being more than 36 months older than the minor in violation of Minnesota Statutes section 609.342, subdivision 1a(e) (Supp. 2021). In an amended complaint, the state alleged that the offense date was between September 2021 and December 2022 and that Garcia Ortiz sexually abused L.H., a ten-year-old girl, while she was at his home under his wife's care. L.H. had reported the abuse to her parents, and she positively identified Garcia Ortiz as the perpetrator in a photo-array lineup, during which she appeared to react strongly when shown Garcia Ortiz's photograph. She also underwent a forensic interview.

Garcia Ortiz waived his right to a jury trial, and the district court held a bench trial. The following statement of facts is drawn from the trial evidence and the district court's findings and is supplemented by the trial record where important for an understanding of the procedural history. At trial, Garcia Ortiz's counsel informed the district court that he would be raising an alibi defense, arguing that he was at work when the offense was alleged to have taken place. L.H., who was 11 years old at the time of trial, testified about the offense. She testified that, when she and her siblings were dropped off at Garcia Ortiz's house for childcare, Garcia Ortiz's wife would leave to take her children to school while L.H. and her younger siblings would stay at the house and that, during this time, Garcia Ortiz abused L.H. while her younger siblings were sleeping or watching TV. She stated that Garcia Ortiz pulled her upstairs to his bedroom by her hand, removed her clothes, and

tied her to the bed, after which he penetrated her anally and vaginally with his penis—L.H. described these as “private parts.” She described his use of a condom, stating that he would “open a little yellow or sometimes black little bag and put it on his private parts.” She said that he sometimes blindfolded her as well. She recounted that he would check to see when his wife was returning and then throw her clothes into the bathroom for her to get dressed and wash her face because she would cry. She testified that the penetration hurt her and that Garcia Ortiz threatened her by saying that, if she told anyone, he would kill her and her family. She said that she did not know how many times it happened, but it was more than three times. She described having nightmares after these incidents. She eventually reported the abuse to her father, and her father notified the police.

On cross-examination, L.H. testified that she thought she went to Garcia Ortiz’s house for about four weeks during a period of time when she could not go to school because her vaccines were not up to date. She stated that she saw Garcia Ortiz leave for work in the afternoons but that he was there in the mornings when she was dropped off in his wife’s care.

L.H.’s father testified as well. As relevant to this appeal, he testified that he and Garcia Ortiz worked at the same pork-processing plant. He said that he worked the first shift and did not see Garcia Ortiz there in the mornings but sometimes observed him arriving in the afternoons and that Garcia Ortiz’s wife had said that he worked the second shift.

L.H.'s mother testified that Garcia Ortiz's wife cared for L.H. in Garcia Ortiz's home 20 or 25 times between September 2021 and November 2022.<sup>1</sup> Although she did not remember specific dates, she stated that she confirmed the date range that she provided to the state by reviewing text messages with Garcia Ortiz's wife. She said that she took L.H. to that house on days when both parents had to work but L.H. was home from school, including when L.H. was behind on her vaccinations. She testified that, like L.H.'s father, she worked at the plant during the first shift and sometimes observed Garcia Ortiz arriving for the second shift as she was leaving. She stated that Garcia Ortiz's wife had told her that he worked the second shift. On cross-examination, Garcia Ortiz's counsel inquired as to what dates L.H. was out of school. L.H.'s mother responded that she did not remember exactly when.

Garcia Ortiz's counsel elicited testimony about Garcia Ortiz's arrest from one of the detectives who had investigated the case. The detective testified that, when law enforcement arrested Garcia Ortiz at the plant, he had in his possession an identification card that had his photograph but a different name, which led the detective to believe that Garcia Ortiz was using an alias at work. The detective testified that the plant had records that matched the alias but had no records for Garcia Ortiz. Garcia Ortiz's counsel offered as evidence the work-attendance record for the alias, but the state's counsel objected on the bases of hearsay and lack of foundation because the detective was not a records custodian

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<sup>1</sup> L.H.'s mother did not specify this in her testimony, but other trial testimony indicates that she told law enforcement that she dropped off L.H. at Garcia Ortiz's house during one period from late September 2021 until early November 2021 and then on one more occasion in 2022.

for the plant and the proffered evidence therefore could not be admitted under the business-records hearsay exception. The district court sustained the objection, and the work-attendance record was not received in evidence.<sup>2</sup> The district court also sustained the prosecutor's objection to the detective's testimony that the plant's attendance record indicated that Garcia Ortiz had worked the second shift for only one week during the offense-date range. The detective testified that, when he arrested Garcia Ortiz, Garcia Ortiz was working the first shift at the plant. The detective also testified that, when law enforcement investigated Garcia Ortiz's house, they did not find ropes or condoms, but the interior and exterior of the house matched L.H.'s description.

Garcia Ortiz's wife testified that L.H. had been left in her care on only one occasion and that she had never left L.H. alone with Garcia Ortiz. She testified that her husband generally worked the first shift at the plant and, in 2019, only worked the second shift. She stated that her husband used the alias on his identification card to work at the plant. She also testified that she had found a condom in their house on one occasion, even though she and Garcia Ortiz did not use condoms. In his closing argument, Garcia Ortiz's counsel referred to Garcia Ortiz's wife's testimony, but did not refer to the detective's testimony that Garcia Ortiz worked the second shift for only one week during the offense-date range identified in the amended complaint.

The district court found Garcia Ortiz guilty. The district court found L.H.'s testimony credible "in all material respects" despite noting some inconsistencies between

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<sup>2</sup> The district court reconsidered its ruling sustaining the objection, but upon consulting the business-records rule, concluded that the "ruling still stands."

her trial testimony and the statements she made in her forensic interview, including that, in the interview, she had said that Garcia Ortiz assaulted her after he came home from work, not before. The district court found that this did not detract from L.H.'s overall credibility, given her positive identification of Garcia Ortiz in the photo lineup and detailed testimony describing the abuse, including her description of the house, Garcia Ortiz's use of a condom, and his checking to see when his wife would return. The district court concluded:

There is no evidence conclusively proving when Defendant was working at the time of the assaults, the Court would not expect a child of L.[H.]'s age at that time to know what shift Defendant was working or from where he was coming and going, and the overriding conclusion of the Court is that L.[H.]'s identification of Defendant as her assaulter is wholly credible.

In addition, the district court found L.H.'s parents' testimony credible and Garcia Ortiz's wife's testimony not credible. It sentenced Garcia Ortiz to 172 months in prison.

Garcia Ortiz appeals.

## **DECISION**

In a counseled brief, Garcia Ortiz challenges the sufficiency of the evidence because L.H.'s testimony was not corroborated and contained inconsistencies and asserts that he received ineffective assistance of counsel because his counsel did not properly present his alibi defense.<sup>3</sup> We address each argument in turn.

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<sup>3</sup> Garcia Ortiz also submitted a pro se supplemental brief that does not contain legal argument or citation to authority. We therefore decline to address it further. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) ("We will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority."); *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) ("An assignment of error based on mere assertion and not supported by any argument or authorities in

**I. The evidence is sufficient to support Garcia Ortiz’s conviction.**

We apply the same standard to review the sufficiency of evidence in bench trials as in jury trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). Direct 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). “Testimony provided by a witness, concerning what the witness saw or heard, is considered direct evidence.” *State v. Brazil*, 906 N.W.2d 274, 278 (Minn. App. 2017), *rev. denied* (Minn. Mar. 20, 2018). When reviewing a sufficiency challenge to a finding of guilt based entirely on direct evidence, we “carefully analyze[] the record to determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to permit the fact-finder to reach its [finding].” *State v. Olson*, 982 N.W.2d 491, 495 (Minn. App. 2022). This court “assumes that the fact-finder believed the state’s witnesses and disbelieved any contrary evidence,” “defers to the fact-finder’s credibility determinations,” and does not reweigh evidence on appeal. *Id.* And we “will not disturb a [finding of guilt] if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could have reasonably concluded that the state proved the defendant’s guilt.” *Id.*

Here, the conviction rests on L.H.’s testimony, which the district court explicitly found to be “wholly credible.” Notwithstanding Garcia Ortiz’s assertions that L.H.’s testimony was uncorroborated, “a conviction can rest on the uncorroborated testimony of

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appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.”).

a single credible witness.” *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted). And particularly regarding criminal-sexual-conduct cases, “the testimony of a victim need not be corroborated.” Minn. Stat. § 609.347, subd. 1 (2024). A lack of corroboration therefore provides no basis to reverse.

Garcia Ortiz also points to inconsistencies between L.H.’s testimony and some of the statements in her forensic interview as well as the detective’s testimony<sup>4</sup> that Garcia Ortiz worked only the second shift. But “inconsistencies in testimony go to witness credibility, which is an issue for the factfinder, not this court.” *State v. Juarez*, 837 N.W.2d 473, 487 (Minn. 2013).

Garcia Ortiz points to *State v. Huss* to support the proposition that inconsistent testimony can provide a basis to reverse a criminal-sexual-conduct conviction. 506 N.W.2d 290 (Minn. 1993). In that case, the supreme court identified a number of issues with the child’s testimony, including that it “was contradictory as to whether any abuse occurred at all.” *Id.* at 292. The *Huss* court stated that, “even given this contradictory testimony, we might not be persuaded to reverse absent the repeated use of a highly suggestive book on sexual abuse” provided to the child by her therapist, and it reversed only on the basis of these “unusual facts.” *Id.* at 292-93. Garcia Ortiz’s reliance on *Huss* is misplaced because this case, in contrast, does not involve similar “unusual facts.”

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<sup>4</sup> We observe that the district court was not required to consider this testimony, given that the detective was testifying from the work-attendance record, which was determined to be inadmissible hearsay.

Garcia Ortiz also cites *State v. Butenhoff*, an opinion from 1968 in which the supreme court reversed a sexual-assault conviction because the minor victim’s testimony was uncorroborated. 155 N.W.2d 894 (Minn. 1968). We have since observed in a nonprecedential opinion that *Butenhoff* is superseded by Minn. Stat. § 609.347, subd. 1, which “allow[s] for convictions of criminal sexual conduct based on a victim’s uncorroborated testimony.” *State v. Everson*, No. A25-0835, 2026 WL 1065044, at \*3, \*5 (Minn. App. Apr. 20, 2026).<sup>5</sup> And we have also observed that some of the cases upon which Garcia Ortiz relies “are inconsistent with our current sufficiency analysis” and that, “in recent decades, the supreme court consistently has applied a form of review that is more deferential to the fact-finder’s evaluation of the evidence.” *State v. Carter*, No. A23-0880, 2024 WL 3755935, at \*2 n.1 (Minn. App. Aug. 12, 2024) (quotation omitted), *rev. denied* (Minn. Oct. 15, 2024).

Ultimately, we defer to the fact-finder’s credibility determinations and do not reweigh the evidence. *Olson*, 982 N.W.2d at 495. L.H.’s testimony, which the district court deemed to be credible, is sufficient for the district court to have “reasonably concluded that the state proved the defendant’s guilt.” *Id.*

## **II. Garcia Ortiz was not prejudiced by his counsel’s performance.**

Garcia Ortiz next asserts that he received ineffective assistance of counsel because his counsel failed to properly pursue Garcia Ortiz’s alibi defense in three ways: his counsel failed to (1) comprehensively cross-examine L.H.’s mother about the dates on which she

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<sup>5</sup> We may cite nonprecedential opinions of this court for their persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).

dropped L.H. off at Garcia Ortiz's home; (2) reference at closing argument the detective's testimony that Garcia Ortiz worked the second shift for only one week; and (3) call an appropriate witness to lay foundation for the work-attendance record. We conclude that, even if Garcia Ortiz's counsel's performance fell below an objective standard of reasonableness, Garcia Ortiz's ineffective-assistance claim fails because he was not prejudiced by it.

“An ineffective assistance of counsel claim is an alleged violation of the right to reasonably effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution.” *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). “When a claim of ineffective assistance of trial counsel can be determined on the basis of the trial record, the claim must be brought on direct appeal . . . .” *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).

Ineffective-assistance-of-counsel claims are reviewed pursuant to the two-prong test established in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *Id.* The first prong requires the defendant to show that their counsel's performance fell below an objective standard of reasonableness, and the second prong requires the defendant to show that, but for counsel's deficient performance, there exists a reasonable probability that the outcome of the proceedings would have been different. *Id.*; *Rhodes*, 657 N.W.2d at 842. “A reasonable probability means a probability sufficient to undermine confidence in the outcome.” *Rhodes*, 657 N.W.2d at 842 (quotations omitted). A defendant's failure to satisfy either prong sufficiently disposes of an ineffective-assistance-of-counsel claim. *See id.* We will “generally not review an ineffective-assistance-of-counsel claim that is based

on trial strategy,” and we apply “a strong presumption that counsel’s performance was reasonable.” *Andersen*, 830 N.W.2d at 10. Garcia Ortiz’s claim fails partly on the first *Strickland* prong and completely on the second.

Here, Garcia Ortiz’s counsel’s decisions not to more comprehensively cross-examine L.H.’s mother as to the dates of the offense or reference the detective’s testimony in closing are both trial-strategy decisions that we will not review. *See id.* The decision not to inquire further is essentially a decision regarding “the selection of evidence presented to the [fact-finder]” and is therefore a matter of trial strategy. *Chavez-Nelson v. State*, 948 N.W.2d 665, 671 (Minn. 2020); *see Andersen*, 830 N.W.2d at 10 (stating that “[t]he extent of trial counsel’s investigation is considered part of trial strategy”); *Francis v. State*, 781 N.W.2d 892, 898 (Minn. 2010) (stating that counsel’s decision whether to cross-examine a witness constituted trial strategy); *State v. Bobo*, 770 N.W.2d 129, 139 (Minn. 2009) (stating that defense counsel’s decision about what testimony to elicit from a witness on cross-examination constituted a strategic decision). Moreover, Garcia Ortiz’s counsel asked L.H.’s mother about the dates L.H. was out of school on cross-examination, but she responded that she could not recall the exact dates. The decision not to reference during closing argument the detective’s testimony that Garcia Ortiz worked the second shift for only a week is also a trial-strategy matter. The detective’s testimony that there was at least one week during the offense period when Garcia Ortiz worked the second shift was contrary to Garcia Ortiz’s wife’s testimony—which his counsel referenced in closing—denying that he ever worked the second shift during the offense period. The decision to highlight specific testimony in closing is a trial-strategy decision. *See*

*Sanchez-Diaz v. State*, 758 N.W.2d 843, 848 (Minn. 2008) (stating that counsel's statements during closing argument were part of a reasonable trial strategy).

We need not consider whether Garcia Ortiz's counsel's unsuccessful attempt to admit his work-attendance record into evidence fell below the objective reasonableness standard because we conclude that his ineffective-assistance-of-counsel claim fails on the second *Strickland* prong, which requires a showing of prejudice. *See Andersen*, 830 N.W.2d at 10. To succeed, Garcia Ortiz must show that, but for his counsel's performance, there exists a reasonable probability that the result would have been different. *Rhodes*, 657 N.W.2d at 842. Garcia Ortiz has not established that, if his counsel had successfully admitted the work-attendance record into evidence, more comprehensively cross-examined L.H.'s mother, and chosen to emphasize the detective's testimony in closing argument, there is a reasonable probability that the outcome of the proceedings would have been different.

Under the second *Strickland* prong, "an analysis of prejudice must be made in the context of the totality of the evidence before the factfinder." *Gates v. State*, 398 N.W.2d 558, 563 (Minn. 1987). The district court made detailed findings and explained why it found L.H. "wholly credible," even recognizing certain inconsistencies in her testimony and specifically noting that it "would not expect a child of L.[H.]'s age at that time to know what shift Defendant was working or from where he was coming and going." The strength of the evidence supporting the conviction is relevant to determining whether the second *Strickland* prong is satisfied. *See id.* (concluding that no prejudice existed because the "evidence of defendant's guilt was very strong"); *Tichich v. State*, 989 N.W.2d 692, 702

(Minn. App. 2023) (concluding that there was no prejudice because “the evidentiary strength of the state’s case was such that there is no reasonable likelihood that the jury would have returned different verdicts”), *aff’d*, 4 N.W.3d 114 (Minn. 2024).

Thus, even if the work-attendance record had been admitted, the evidence established that there was a week during the charged offense period when Garcia Ortiz worked the second shift. Given the district court’s description of L.H.’s detailed testimony as to the offense and its reasoning supporting its credibility determination, there is not a reasonable probability that the outcome would have been different had Garcia Ortiz’s counsel pursued the alibi defense in the ways Garcia Ortiz suggests were necessary for an objectively reasonable performance.

**Affirmed.**