

*This opinion is nonprecedential except as provided by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
A25-2112**

State of Minnesota,
Respondent,

vs.

Marcus Lashawn Davis,
Appellant.

**Filed August 31, 2026
Affirmed in part, reversed in part, and remanded
Reyes, Judge**

Dakota County District Court
File No. 19HA-CR-24-1057

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

Kathryn M. Keena, Dakota County Attorney, Evan W. Frazier, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and
Rasmusson, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this direct appeal from convictions of first-degree criminal sexual conduct and fifth-degree criminal sexual conduct, appellant argues that (1) the evidence presented at trial is insufficient to sustain his conviction of first-degree criminal sexual conduct and

(2) the district court erred by convicting appellant of the two offenses because fifth-degree criminal sexual conduct is an included offense of first-degree criminal sexual conduct. We affirm appellant’s conviction of first-degree criminal sexual conduct, but we reverse the district court’s entry of judgment of conviction of fifth-degree criminal sexual conduct and remand for the district court to vacate that conviction.

FACTS

In June 2024, respondent State of Minnesota charged appellant Marcus Lashawn Davis with first-degree criminal sexual conduct for sexual penetration causing personal injury and accomplished using coercion in violation of Minnesota Statutes section 609.342, subdivision 1(c)(i) (2022) (count I). At trial, the district court granted the state’s request to add a jury instruction for a lesser-included offense of fifth-degree criminal sexual conduct for nonconsensual sexual penetration in violation of Minnesota Statutes section 609.3451, subdivision 1 (2022) (count II).

The following facts are based on the evidence presented at a jury trial, including testimony from the victim of appellant’s offense, her neighbor, her medical providers, and a law-enforcement officer. Because appellant challenges the sufficiency of the evidence presented at trial, “we view the evidence in a light most favorable to the verdict” and assume that the jury “disbelieved any testimony conflicting with that verdict.” *State v. Jones*, 4 N.W.3d 495, 500 (Minn. 2024) (quotations omitted).

In early 2023, Dr. W. performed a total hysterectomy on victim, removing her uterus and cervix. Approximately two months later, victim contacted appellant on social media and mentioned that her child needed a haircut for an upcoming event. Because victim “was

still under doctor's orders" related to the hysterectomy, she was looking for someone who could perform the haircut at her home. Appellant said that he could, so the two arranged for him to perform the haircut that evening at victim's home.

Victim told appellant about her hysterectomy multiple times, including over the phone before he arrived at her home. She explained that, due to the surgery and a recent move, she had not yet found a hair stylist.

After arriving at victim's home, appellant interacted with victim's child while victim was in her bedroom doing household chores. After approximately 10 to 15 minutes, appellant appeared in victim's bedroom doorway. They "started talking," eventually sitting side-by-side on the edge of victim's bed. Appellant tried to touch victim and get her to sit on his lap. Victim "tr[ie]d to laugh it off" and told appellant that she was "not really a touchy-feely person" and that she was still sore from the hysterectomy. Appellant's behavior "came off" to victim "as if it wasn't normal that [she] wasn't reciprocating" his affection. Feeling intimidated by appellant "looking right at [her]" while asking to perform oral sex on victim, victim "told [appellant] just to go ahead." Victim allowed appellant to perform oral sex on her, but she "kept reiterating" that appellant could not penetrate her vagina due to her recent hysterectomy.

After several minutes, appellant "straddled [victim] on to his lap" so they were facing each other and appellant had "his arms around [victim]." When appellant put victim on his lap, appellant penetrated victim's vagina with his penis, injuring her. Appellant then penetrated victim multiple times. Victim told appellant that the penetration hurt and asked

him to stop, but appellant continued and said nothing in response. Victim testified that appellant saw that she was in pain because “he was staring at [her].”

Victim tried to get off appellant’s lap, but appellant was stronger than her, had his arms wrapped around her, and she was weakened by the pain. “[A]t some point [she] just stopped fighting, and [she] just fell to the floor.”

Appellant “star[ed] down at [victim]” while she laid on the floor. Victim eventually called her neighbor, who came to victim’s home and called 911 when victim became unresponsive. Dr. W. examined victim the next day. Dr. W. testified that victim had a “full thickness [cuff] dehiscence, meaning that the entire incision [inside the vagina] ha[d] opened up.” Dr. W. surgically repaired the dehiscence that same day.

A jury found appellant guilty of both count I and count II, and the district court entered a judgment of conviction on each count. The district court sentenced appellant to 144 months on count I, with 135 days credited for time served, and did not sentence appellant on count II.

This appeal follows.

DECISION

Appellant argues that (1) the evidence presented at trial is insufficient to sustain his conviction of first-degree criminal sexual conduct and (2) the district court erred by entering judgments of conviction on both counts of criminal sexual conduct. We address each argument in turn.

I. The evidence presented at trial is sufficient to sustain appellant’s first-degree criminal-sexual-conduct conviction.

Appellant argues that the evidence presented at trial is not sufficient to prove the coercion element of his first-degree criminal-sexual-conduct conviction under Minnesota Statutes section 609.342, subdivision 1(c)(i). His argument is unavailing.

Section 609.342, subdivision 1(c)(i), criminalizes sexual penetration that causes personal injury to the victim and that is accomplished with the use of coercion. “Coercion” is defined as “the use by the actor of words or circumstances that cause the complainant reasonably to fear the infliction of bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant to accomplish the act.” Minn. Stat. § 609.341, subd. 14 (2022). The coercion element of section 609.342, subdivision 1(c)(i), may be proven by the uncorroborated testimony of the victim of the offense. *See* Minn. Stat. § 609.347, subd. 1 (2022) (providing that victim testimony “need not be corroborated” in prosecutions under section 609.342); *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (“[A] conviction can rest on the uncorroborated testimony of a single credible witness.” (quotation omitted)).

Appellate review of the sufficiency of the evidence supporting a conviction depends on whether the state relied on circumstantial or direct evidence at trial. *See Jones*, 4 N.W.3d at 500. Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed.” *Id.* at 501 (quotation omitted). Direct evidence, on the other hand, “is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* (quotation omitted). Witness

testimony “is direct evidence when it reflects a witness’s personal observations and allows the jury to find the defendant guilty without having to draw any inferences.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). Because victim’s testimony addressing the coercion element satisfies these criteria, we apply the traditional standard of review. *See Jones*, 4 N.W.3d at 500 (“[W]hen a disputed element is sufficiently prove[d] by direct evidence alone it is the traditional standard, rather than the circumstantial-evidence standard, that governs.” (quotation omitted)).

“In reviewing a claim of sufficiency of the evidence, this court views the evidence in the light most favorable to the verdict and assumes that the jury disbelieved any testimony conflicting with the result reached.” *State v. Waino*, 611 N.W.2d 575, 579 (Minn. App. 2000). “The verdict will not be overturned if, giving due regard to the presumption of innocence and to the prosecution’s burden of proving guilt beyond a reasonable doubt, the jury could reasonably have found the defendant guilty of the charged offense.” *State v. Vang*, 847 N.W.2d 248, 258 (Minn. 2014) (quotation omitted).

Here, victim testified that she “felt intimidated” by appellant before the penetration, leading her to allow him to perform oral sex on her. After, appellant grabbed victim and put her on his lap, penetrating her vagina with his penis. Victim’s attempts to end the penetration were unsuccessful:

STATE: Did you try to get off his lap?

VICTIM: Yeah, but he was a bit stronger than me. And by that time, the pain was -- kind of made me a little weak, and so I think at some point I just stopped fighting, and I just fell to the floor.

STATE: And when you say that you tried to . . . get up, can you tell me what you did to try and get up or away?

VICTIM: Well, I just tried to like, you know, up myself and move, (indicating,) but his arms -- both arms were around me, and he wasn't quite done, I guess, so he just kept going.

The district court then stated, "Record reflecting that, when the witness was answering that last question, she did engage in some nonverbals and was lifting herself up off of her chair with her arms." Later victim testified that, at the time of the assault, she weighed between 115 and 135 pounds. Appellant testified that he weighed approximately 255 pounds and is six and a half feet tall.

Victim's testimony is direct evidence that appellant used his arms to confine victim and leverage his superior strength against her to accomplish sexual penetration. *See* Minn. Stat. § 609.341, subd. 14 (including use of confinement and superior strength in definition of coercion). That testimony sufficiently proved the coercion element of appellant's first-degree criminal-sexual-conduct conviction. *See* Minn. Stat. § 609.342, subd. 1(c)(i) (providing as element of offense "the actor uses coercion to accomplish the act").

Appellant interprets section 609.342, subdivision 1(c)(i), as requiring the state to prove that appellant used coercion "to cause [victim] to submit to sexual penetration against her will." We disagree. In *State v. Middleton*, the supreme court declined to interpret the phrase "uses . . . coercion to accomplish the sexual contact" in a similar statute as requiring the state to prove "that the sexual contact was 'accomplished by,' that is, made possible by, the [defendant's] alleged coercion." 386 N.W.2d 226, 227 n.1, 229-30 (Minn. 1986) (referencing fourth-degree criminal-sexual-conduct statute, Minn. Stat. § 609.345, subd.

1(c) (1984)). The supreme court rejected that interpretation, holding that “it was not improper for the [district] court to instruct the jury that the meaning of sexual contact ‘accomplished by’ the use of coercion may be interpreted as including a sexual contact ‘accompanied by’ the use of coercion.” *Id.* at 230. We decline to diverge from *Middleton*’s interpretation of language nearly identical to the language at issue here. *Compare* Minn. Stat. 609.345, subd. 1(c) (using language of “uses . . . coercion to accomplish the sexual contact”), *with* Minn. Stat. § 609.342, subd. 1(c)(i) (using language of “uses coercion to accomplish the act”).

II. The district court erred by entering judgments of conviction on both counts of criminal sexual conduct.

Appellant argues, and the state agrees, that the district court violated Minnesota Statutes section 609.04, subdivision 1 (2024), by entering judgments of conviction on both count I and count II. We also agree.

Section 609.04, subdivision 1, “proscribes multiple convictions when those convictions are for the crime charged and an ‘included offense.’” *State v. Bradley*, 4 N.W.3d 105, 111 (Minn. 2024) (quoting Minn. Stat. § 609.04, subd. 1 (2022)).¹ “[A] lesser degree of the same crime” as the crime charged is an “included offense.” Minn. Stat. § 609.04, subd. 1(1) (2024). “Degree” refers “to offenses within an ordinal statutory scheme.” *Bradley*, 4 N.W.3d at 113. However, “the protections of section 609.04 will not apply if the offenses constitute separate criminal acts.” *State v. Bertsch*, 707 N.W.2d 660,

¹ The legislature has not amended the language of section 609.04 following *Bradley* or any of the other cases cited in this section.

664 (Minn. 2006). “Whether a conviction violates section 609.04 is a legal question that this court reviews de novo.” *State v. Bonkowske*, 957 N.W.2d 437, 443 (Minn. App. 2021).

The district court entered judgments of conviction on count I, for first-degree criminal sexual conduct under section 609.342, subdivision 1(c)(i), as well as count II, for fifth-degree criminal sexual conduct under section 609.3451, subdivision 1. One ordinal statutory scheme holds both offenses. The exception to section 609.04 (2024) is not applicable because appellant’s offenses occurred as part of the same criminal act. *See Bertsch*, 707 N.W.2d at 664. The state proved both offenses with evidence of one criminal act. We conclude that the district court erred by entering judgments of conviction on both counts. We therefore reverse and remand for the district court to vacate the judgment of conviction entered on count II but leave the finding of guilt intact. *See Bonkowske*, 957 N.W.2d at 446 (instructing district court to vacate “one of the convictions”); *see also State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984) (explaining “proper procedure to be followed by the [district] court when” defendant is found guilty of multiple offenses based on single criminal act).

Affirmed in part, reversed in part, and remanded.