

APPENDIX A

THE DECISION OF THE STATE OF MINNESOTA SUPREME COURT

FILED

STATE OF MINNESOTA

September 20, 2022

IN SUPREME COURT

**OFFICE OF
APPELLATE COURTS**

A21-1171

State of Minnesota,

Respondent,

vs.

Malachi Henessey Rodriguez,

Petitioner.

O R D E R

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Malachi Henessey Rodriguez for further review be, and the same is, denied.

Dated: September 20, 2022

BY THE COURT:



Lorie S. Gildea
Chief Justice

APPENDIX B

THE DECISION OF THE COURT OF APPEALS

*This opinion is nonprecedential except as provided by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
A21-1171**

State of Minnesota,
Respondent,

vs.

Malachi Hennessey Rodriguez,
Appellant.

**Filed July 25, 2022
Affirmed
Reilly, Judge**

Brown County District Court
File No. 08-CR-20-665

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

Charles W. Hanson, Brown County Attorney, Paul J. Gunderson, Assistant County Attorney, New Ulm, Minnesota (for respondent)

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

Considered and decided by Reilly, Presiding Judge; Slieter, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges his convictions for third- and fourth-degree criminal sexual conduct, arguing that: (1) the evidence was insufficient to prove beyond a reasonable doubt that he used coercion to accomplish the crime; (2) the district court's evidentiary rulings

constitute an abuse of discretion; and (3) the district court improperly admitted character evidence. We affirm.

FACTS

In August 2020, respondent State of Minnesota charged appellant Malachi Hennessey Rodriguez with (1) third-degree criminal sexual conduct—force or coercion; (2) fourth-degree criminal sexual conduct—force or coercion; and (3) fifth-degree criminal sexual conduct—nonconsensual sexual contact. The state alleged that Rodriguez sexually penetrated the victim without her consent in a hotel room the night before a family wedding. Following a three-day trial, the jury found Rodriguez guilty of all three crimes. The jury also returned a special verdict form finding that Rodriguez used coercion to accomplish the sexual penetration. The district court sentenced Rodriguez to 48 months in prison. Rodriguez now appeals.

DECISION

I. Sufficient evidence supports the jury's finding that Rodriguez used coercion to accomplish the sexual penetration.

Rodriguez asserts that his convictions for third- and fourth-degree criminal sexual conduct must be reversed because the state failed to prove beyond a reasonable doubt that he used coercion to sexually penetrate the victim.¹ To evaluate the sufficiency of the evidence, appellate courts “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

¹ Rodriguez does not challenge his conviction for fifth-degree criminal sexual conduct.

he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). Appellate courts review the evidence “in the light most favorable to the conviction” and “assume the jury believed the State’s witnesses and disbelieved any evidence to the contrary.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We “will not disturb the verdict if the jury, 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 guilty of the charged offense.” *Id.*

The jury found Rodriguez guilty of third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(c) (2020), which required the state to prove that Rodriguez penetrated the victim without her consent and used force or coercion to accomplish the penetration. The jury also found him guilty of fourth-degree criminal sexual conduct under Minn. Stat. § 609.345, subd. 1(c) (2020), which required the state to prove that the defendant used force or coercion to accomplish the sexual contact. Coercion is

the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant’s will. Proof of coercion does not require proof of a specific act or threat.

Minn. Stat. § 609.341, subd. 14 (2020).

The jury returned a special verdict form finding that Rodriguez used coercion to accomplish the sexual act. Ample evidence supports the jury’s determination. The victim testified that the night before a family wedding, Rodriguez spent the night in a hotel room with three female relatives, including the victim, the victim’s sister, and the victim’s

cousin. Rodriguez shared a bed with the victim, while the other two women slept in the other bed. The victim was uncomfortable sleeping in the same bed with Rodriguez and slept “[c]lose to the edge” of the bed, facing away from him. Rodriguez was lying “right behind” the victim. The victim tried to “scoot” away from Rodriguez, but he remained close behind her. The victim woke up in the middle of the night when she felt Rodriguez trying to move her shorts. Rodriguez put his fingers inside the victim’s vagina and held his hands on her waist. The victim “froze” and became scared and upset. Rodriguez then put his penis into the victim’s vagina. The victim testified she did not fight Rodriguez or call out to her sister or cousin because she “froze,” “felt scared,” and “felt dead.” The victim was also scared because she “[didn’t] know what could have happened if [she] screamed out loud and everybody was in the hotel.” The victim stated she was scared because Rodriguez had “anger issues” and “could have done anything” to her. The victim estimated that the penetration lasted for about one minute. The victim went into the bathroom to take a shower, then left the bathroom and sat in a chair by the other bed until the following morning.

The victim’s sister and cousin also testified about the victim’s behavior. The victim’s sister testified that she woke up in the middle of the night when she heard the shower running. The next morning, the victim told them that Rodriguez “was touching her in her sleep and raped her.” The victim’s cousin testified that she woke up in the middle of the night and noticed the victim was awake and sitting in a chair by her bed, “staring . . . directly in [cousin’s] face.” Cousin believed the victim was acting “weird,” “was acting

different than her normal self,” and appeared “nervous.” Cousin testified that the victim later told her that Rodriguez raped her, and she appeared to be “in shock.”

“Corroboration is not required in criminal sexual conduct cases.” *State v. Wright*, 679 N.W.2d 186, 190 (Minn. App. 2004), *rev. denied* (Minn. June 29, 2004). Indeed, a guilty verdict may be based on the testimony of a single witness. *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004). Here, the victim’s testimony was corroborated by her demeanor following the sexual penetration and by the changes in her behavior observed by the other two women in the room. *See State v. Mosby*, 450 N.W.2d 629, 635 (Minn. App. 1990) (stating that victim’s demeanor after sexual assault corroborated her testimony), *rev. denied* (Minn. Mar. 16, 1990).

Rodriguez claims the state did not offer any evidence that he coerced the victim because he did not threaten or physically harm her and did not prevent her from getting out of the bed or calling out for help. A defendant’s “use of his overwhelming physical size and strength to cause the victim to submit to penetration against her will fits squarely within the statute’s prohibition of sexual assault by coercion.” *State v. Solberg*, 882 N.W.2d 618, 627 (Minn. 2016). Further, conduct that contributes to an “atmosphere of fear” suggests coercive influence. *State v. Gamez*, 494 N.W.2d 84, 87 (Minn. App. 1992), *rev. denied* (Minn. Feb. 23, 1993); *see also State v. Meech*, 400 N.W.2d 166, 168 (Minn. App. 1987) (determining defendant used coercion to complete sexual contact where victim was “fearful and overpowered” when defendant pushed up victim’s nightgown and restrained her hands).

The victim testified she was not comfortable sleeping in the same bed as Rodriguez and slept at the edge of the bed. She woke up when Rodriguez tried to push her shorts aside, held his hands on her waist, and put his fingers into her vagina. The victim testified she was afraid of Rodriguez because he “could have done anything.” Rodriguez’s coercive conduct, and the fear this caused the victim, happened concurrently with the sexual contact. *See State v. Middleton*, 386 N.W.2d 226, 230 (Minn. 1986) (“It is enough that the coercive words or conduct . . . happen concurrently with[] the sexual contact.”).

Based on the record, we conclude there is sufficient evidence of coercion to sustain the jury’s finding beyond a reasonable doubt.

II. The district court did not abuse its discretion by admitting the witnesses’ out-of-court statements into evidence.

A. Standard of Review

Rodriguez challenges the district court’s evidentiary rulings. “When the admissibility of evidence is challenged on appeal, [appellate courts] defer to the district court’s exercise of discretion in the conduct of the trial, and we will not lightly overturn a district court’s evidentiary ruling.” *State v. MacLennan*, 702 N.W.2d 219, 235 (Minn. 2005).

Our standard of review depends on whether Rodriguez objected to the district court’s evidentiary ruling during trial. If an appellant objects to the admission of evidence, we apply the harmless-error standard. *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009). Under this standard, the appellant bears the burden of showing that the admission of evidence was erroneous and that he was prejudiced as a result. *Id.* If the appellant did

not object, we review for plain error. *State v. Vasquez*, 912 N.W.2d 642, 650 (Minn. 2018).

Plain error requires the appellant to show an error, that was plain, and that affected the appellant's substantial rights. *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). “[T]he third prong of the plain error test is the equivalent of a harmless error analysis.” *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011).

Rodriguez objected to only some of the witnesses' out-of-court statements challenged on appeal. For the reasons below, we conclude that Rodriguez has not satisfied his burden of proving that any error occurred regardless of which standard of review applies. Based on this determination, we need not consider whether Rodriguez was prejudiced. *See Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011) (noting that if any requirement of the test is not satisfied, we need not address the remaining elements).

B. Witness Statements

Rodriguez argues the district court improperly admitted (1) the victim's out-of-court statements to the police investigator; (2) the victim's out-of-court statements to her cousin; and (3) the victim's out-of-court statements to her sister. Rodriguez claims these statements conflicted with the victim's trial testimony and should have been excluded. The district court held that the witnesses' statements were admissible as prior consistent statements. A witness's prior statement may be admissible if “[t]he declarant testifies at the trial . . . and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant's testimony and helpful to the trier of fact in evaluating the declarant's credibility as a witness.” Minn. R. Evid. 801(d)(1)(B) (defining out-of-court statements that may be admitted as non-hearsay). The admission of an out-of-court

statement is proper so long as it is “reasonably consistent” with the witness’s trial testimony. *State v. Zulu*, 706 N.W.2d 919, 924 (Minn. App. 2005) (noting that “trial testimony and the prior statement need not be identical to be consistent”).

The victim’s statements to the investigator and the trial testimony. Rodriguez claims that three of the victim’s statements to the police investigator during the forensic interview contained “important inconsistencies from her trial testimony.” Rodriguez’s objections relate to the following conversation between the victim and the investigator:

INVESTIGATOR: So did [Rodriguez] try to touch you anywhere else on your body when this [sexual contact] was going on?

....

VICTIM: Yes.

INVESTIGATOR: Alright and did it start by him like trying to hug you or trying to come closer to you?

VICTIM: Yea.

....

VICTIM: He would try to move my hands to put it on him, but I like put my fists like I moved.

INVESTIGATOR: Mmm-hmm.

VICTIM: And I crossed my arms so it wasn’t able to move.

INVESTIGATOR: Okay.

VICTIM: My hands.

INVESTIGATOR: So was he like rubbing you or caressing you or anything like that?

VICTIM: Yes.

INVESTIGATOR: And where would that have been?

VICTIM: Been pretty much everywhere.

INVESTIGATOR: Okay. Does he touch your breast?

VICTIM: Mmm—hmm.

INVESTIGATOR: And does he at any time remove your, your underwear?

VICTIM: He tried to.

INVESTIGATOR: Okay.

VICTIM: That's when I woke up.

....

INVESTIGATOR: Okay so, so he tried to move, remove your underwear and you wouldn't let him [remove your underwear]. So then he, he gets closer to you and at some point he basically pulls your shorts and underwear aside.

VICTIM: Yea.

First, Rodriguez claims the victim told the investigator that Rodriguez moved her hands but did not specifically testify at trial that Rodriguez moved her hands. At trial, the victim testified that Rodriguez put his hands on her waist and held her. Counsel asked the victim if Rodriguez "tr[ied] to use [her] hands to touch his body at all." The victim responded, "No." The victim's trial testimony is sufficiently consistent with her statements to the investigator. The conversation between the victim and the investigator concerned how the sexual contact started. Her trial testimony that Rodriguez did not use her hands to touch his body occurred at a different point during the assault, when Rodriguez put his fingers into her vagina. These statements, relating to different points in time, are not inconsistent.

Second, Rodriguez notes that the victim told the investigator that Rodriguez touched her "pretty much everywhere." At trial, however, the victim testified that Rodriguez put his hands on her waist. Again, these comments relate to different points in time. The investigator asked the victim about how the assault began, while counsel asked the victim if Rodriguez touched her when he was inserting his fingers and his penis into her vagina. These statements are not inconsistent.

Third, Rodriguez notes that the victim told the investigator he tried to remove her shorts and underwear, but only claimed at trial that he tried to move her shorts and underwear to the side. These statements are reasonably consistent. The victim told the investigator that Rodriguez “tried” to remove her underwear, causing her to wake up. The investigator asked if Rodriguez pulled her shorts and underwear “aside,” and the victim agreed with this statement. During trial, the victim testified that she woke up because she “noticed that [Rodriguez] kept on trying to move [her] shorts.” The victim also testified that Rodriguez tried to move her shorts “to the side.” The victim’s statements to the investigator are consistent with her trial testimony.

The victim’s statements to her cousin and the trial testimony. Rodriguez claims the victim made a statement to her cousin that was inconsistent with the victim’s trial testimony. Cousin testified that the victim told her she had been raped. Cousin testified that during this conversation, the victim told her that Rodriguez “kept, like, scooting closer and closer to her, and she kept scooting away . . . and he would just keep getting closer and closer.” The investigator later interviewed cousin and asked about this conversation. Cousin told the investigator that

[the victim] said that at night when she was sleeping he started like scooting closer to her and so she would scoot away and he just kept like getting closer and closer and she didn’t know what to do and so I guess he was just trying like to do whatever and she said when he kept trying she just like eventually just gave up because she didn’t know what to do

Rodriguez claims these statements are inconsistent because the victim did not claim at trial that she tried to move away from Rodriguez. The record does not support this

argument. During cross-examination, defense counsel asked the victim, “And when [Rodriguez] was getting close, you didn’t leave the bed, just scooted over, correct?” The victim replied, “Correct.” Cousin’s statements to the investigator and at trial that the victim tried to move away from Rodriguez are consistent with the victim’s trial testimony.

The victim’s statements to her sister and the trial testimony. Rodriguez claims the victim made inconsistent statements to her sister concerning whether Rodriguez ran his hands up the victim’s legs. Sister spoke to the investigator about her conversation with the victim and stated,

[the victim] told me that [Rodriguez], when they were sleeping [she] was facing this way so he thought she was sleeping, . . . and he was like running his hands up her legs and trying to pull down her shorts and . . . move [her shorts] out of the way and . . . then so she just like froze and then it happened.

At trial, sister testified that the morning after the assault, the victim “said that, that [Rodriguez] slowly started pulling down her shorts, and she would raise them back up, and then . . . he pulled her shorts down, and then she kind of froze, and then it just happened.”

Rodriguez argues that sister’s statement to the investigator conflicts with the victim’s trial testimony because the victim never stated that Rodriguez touched her legs. We do not agree. The victim testified she woke up when she felt Rodriguez moving her shorts and underwear. The victim’s shorts necessarily touched her legs. While the victim did not specifically emphasize that Rodriguez touched her legs while he was moving her shorts, the statements are not inconsistent. Thus, the victim’s statements to her sister are reasonably consistent with the testimony presented at trial.

In sum, we determine that cousin's and sister's testimony, and their statements to the investigator, are reasonably consistent with the victim's trial testimony. The victim's statements to the investigator were also reasonably consistent with her trial testimony. Given the record, we determine that Rodriguez has not satisfied his burden of showing that an error occurred. Thus, the district court did not abuse its discretion by admitting the witnesses' statements.

C. The district court did not improperly admit character evidence.

Rodriguez claims the district court prejudicially erred by admitting character evidence related to his anger issues. We review the district court's evidentiary rulings for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Where, as here, the defendant objects to the testimony, we review for harmless error. *Sanders*, 775 N.W.2d at 887. An error is harmless if there is "no reasonable possibility that it substantially influence[d] the jury's decision." *State v. Taylor*, 869 N.W.2d 1, 14 (Minn. 2015) (quotation omitted). The appellant bears the burden of proving that he or she was prejudiced as a result of an error. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016).

The admissibility of character evidence is governed by Minn. R. Evid. 404. "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." Minn. R. Evid. 404(a). Character evidence is generally prohibited to ensure that the jury does not return a conviction to penalize a defendant for "past misdeeds or simply because [the defendant] is an undesirable person." *State v. Loebach*, 310 N.W.2d 58, 63 (Minn. 1981).

Rodriguez argues the district court improperly admitted evidence showing that he was an angry person. During redirect examination, the prosecutor asked the victim why she did not scream or yell in the hotel room during the sexual assault:

COUNSEL: At the point that you were being assaulted, at the point that the defendant had his penis in your vagina, . . . did you feel that you could leave?

VICTIM: No.

COUNSEL: Why not?

VICTIM: Because he has previous—like he has really bad anger issues that I've seen before.

Defense counsel objected to this testimony. The district court overruled the objection and permitted the victim to finish answering the question:

VICTIM: [Rodriguez] has previous stuff of being—having anger issues and stuff, so I was kind of scared. Well, you know, you shouldn't be scared of your cousin, but I was at that moment because I don't know what could have happened if I screamed out loud and everybody was in the hotel, and it could have caused a really big scene, and so I just didn't say anything.

COUNSEL: . . . [Y]ou said that you were scared; were you scared of the defendant?

VICTIM: Correct.

COUNSEL: What were you scared he would do to you?

VICTIM: He could have—he could have done anything. I'm not, like, specific on what he could have done, but—I was just scared.

Rodriguez argues the victim's testimony that he had "anger issues" allowed the prosecutor to use the evidence for the improper purpose of showing that he acted in conformity with his character as an angry person. We disagree. This line of questioning was intended to show the victim's state of mind, establish the nature of their relationship, and explain why the victim was scared to get out of bed or cry out for help. Rodriguez admitted during his own testimony that he sexually penetrated the victim but claimed that

the act was consensual. The victim testified during her direct examination that she “froze” and was fearful of Rodriguez. During cross-examination, the defense asked the victim if she yelled or tried to get out of the bed. The victim stated she did not yell or try to leave. On redirect, the state asked the victim to explain why she did not yell or try to leave. The victim explained that she believed Rodriguez had anger issues and she was afraid. The brief testimony related to Rodriguez’s anger issues was not presented to prove his bad character, but to help “illuminate” his relationship with the victim. *State v. Diamond*, 241 N.W.2d 95, 99 (Minn. 1976). Thus, the statement does not constitute improper character evidence under rule 404(a), and the district court did not err by admitting it. Because the district court’s decision to admit the evidence was not error, we need not consider whether the evidence affected the verdict.

Affirmed.

**Additional material
from this filing is
available in the
Clerk's Office.**