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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2199**

State of Minnesota,
Respondent,

vs.

Edward D. Blevins,
Appellant.

**Filed April 8, 2008
Affirmed
Lansing, Judge**

Hennepin County District Court
File No. 06021512

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Donna J. Wolfson, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

John Stuart, State Public Defender, Theodora Gaïtas, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Lansing, Presiding Judge; Ross, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

LANSING, Judge

The district court found Edward Blevins guilty of two counts of first-degree criminal sexual conduct. In this appeal from conviction, Blevins challenges the sufficiency of the evidence to prove the elements of penetration and personal injury for each count and also contends that the district court erred by failing to issue written findings. Because the district court's on-the-record oral findings thoroughly address each element and because the factual record provides support for the determinations on the contested elements, we affirm.

F A C T S

The criminal-sexual-conduct charges against Edward Blevins arose from an incident in CMJ's Minneapolis apartment. In her testimony at the July 2006 court trial, CMJ reported that Blevins, who was her brother's friend, telephoned her, and she invited him to her apartment to watch television. After Blevins arrived, they sat next to each other on a couch across from the television. While they were seated on the couch, Blevins began touching and rubbing CMJ's arms and legs. She told him "no" and then told him "to stop." She told Blevins that she wanted only to be friends. When Blevins continued the touching and rubbing, CMJ told him to leave, but Blevins refused.

As CMJ attempted to guide Blevins to the door, he began choking her, and the two struggled. During the struggle he placed his hand over CMJ's mouth and forcefully pushed her onto the couch. When CMJ began to cry, Blevins threatened to hurt her if she continued to cry or if she screamed. After CMJ refused Blevins's request for sex,

Blevins ordered her to remove her pants and underwear. Blevins touched CMJ's breasts and legs and rubbed her vagina with his finger. Blevins then told CMJ to put her underwear back on, and Blevins steered CMJ into the bedroom. He again told her to remove her underwear, forced her onto the bed, and despite her continuing protests "to stop," again rubbed her vagina. CMJ attempted to stave off further sexual acts by telling Blevins that she had gonorrhea. Blevins closely examined CMJ's vagina, told her he saw no signs of gonorrhea, and began licking her. CMJ testified that during the time Blevins was licking her vaginal area, his tongue made contact with her vagina.

Blevins then told CMJ to "[h]old on while I get the gun." CMJ thought that Blevins might have a gun because he had asked her, shortly after he arrived, whether he could "leave his gun" at her apartment. Blevins reached behind his back and then made motions that caused CMJ to believe that he had taken a gun from behind him and placed it between the pillows on the bed. CMJ told Blevins that she needed to use the bathroom. Blevins allowed her to use the bathroom but followed her, ordered her to keep her hands at her sides, and stayed with her the entire time. Blevins directed CMJ back to the bed and continued to rub her breasts, legs, and vagina.

CMJ began to doubt whether Blevins had a gun and decided to take physical action to try to stop the assault. After a struggle in which each attempted to choke the other, CMJ again ordered Blevins to leave her apartment. Blevins began apologizing, begged CMJ not to tell anyone, and offered to pay her \$1,000 for her silence. When Blevins did not immediately depart, CMJ called 911. He left the apartment when she began describing his physical appearance to the operator.

Officers from the Minneapolis Police Department responded to the call and transported CMJ to the Hennepin County Medical Center. The nurse at the sexual-assault-resource unit testified at the court trial that CMJ had several scratches on her neck and that CMJ reported that her neck was stiff. The nurse also testified that, during the pelvic exam, she noted redness and tenderness in CMJ's vaginal area. The district court admitted into evidence the sexual-assault-examination report and photographs of scratches and bruises on CMJ's body. CMJ's friend testified that she had observed bruises and scratches on CMJ's neck and face. CMJ's friend also testified, along with the investigating police officer, that CMJ's report to them of what happened was consistent with her in-court testimony.

Blevins testified in his own defense. He stated that he had once had an argument with CMJ but had never had any sexual interaction with her. He acknowledged that he had made a statement to a police officer in which he admitted that he had forced sexual contact with CMJ but that his admission was not accurate because he believed that the police were asking him about a former girlfriend who has a similar name.

The district court found Blevins guilty of one count of first-degree criminal sexual conduct by oral penetration and one count of first-degree criminal sexual conduct by digital penetration. Blevins challenges the sufficiency of evidence on the elements of penetration and personal injury and the district court's failure to make written findings.

DECISION

I

A person commits first-degree criminal sexual conduct if that person “engages in sexual penetration with another person” causing “personal injury to the complainant” and “the actor uses force or coercion to accomplish sexual penetration.” Minn. Stat. § 609.342, subd. 1(e)(i) (2000). CMJ disputes the sufficiency of the evidence to show sexual penetration either by cunnilingus or by digital penetration.

“Sexual penetration” includes an act of cunnilingus and also includes an act that constitutes an “intrusion, however slight, into the genital or anal openings.” Minn. Stat. § 609.341, subd. 12(1), (2) (2000). Penetration of the vagina is not required for the act of cunnilingus. *State v. Blom*, 358 N.W.2d 63, 64 (Minn. 1984). Cunnilingus constitutes sexual penetration if there is “contact between the female genital opening of one person and the mouth, tongue, or lips of another person, however slight.” *Id.* (quotation omitted). Digital intrusion of the genital opening constitutes sexual penetration under the statute if it is an intrusion of the complainant’s body by a part of the actor’s body. Minn. Stat. § 609.341, subd. 12(2)(i); *State v. Barber*, 494 N.W.2d 497, 503 (Minn. App. 1993), *review denied* (Minn. Feb. 25, 1993).

The district court could reasonably find that Blevins committed sexual penetration by cunnilingus based on CMJ’s testimony that Blevins licked her vaginal area and made contact with her vagina using his tongue. The evidence showed that CMJ’s testimony was consistent with her statements following the incident. CMJ told police officers that Blevins “had performed oral sex on her,” CMJ told the sexual-

assault-resource nurse that Blevins used his tongue to penetrate her vagina, and CMJ told her friend that Blevins “put his mouth on her private area.”

The district court could also reasonably find that Blevins digitally penetrated CMJ based on her testimony that Blevins “put his finger in [her] vagina.” Again, CMJ’s testimony was consistent with the testimony of the respondent police officer, the investigating police officer, and the nurse who each confirmed that CMJ had reported that Blevins had inserted his finger in her vagina. The district court’s findings of digital penetration are also supported by CMJ’s testimony that identifies three separate times at which Blevins rubbed her vagina. “Several state courts have specifically held, in the context of digital or object rape, that penetration of the ‘genital opening’ is satisfied by penetration of the vulva or labia.” *See United States v. Jahagirdar*, 466 F.3d 149, 152-53, n.2 (1st Cir. 2006) (listing cases). In *State v. Shamp*, we determined that touching the genital area and rubbing fingers between the folds of skin over the vagina, even when fingers were not inserted “all the way,” is an intrusion of a genital opening that constitutes sexual penetration. 422 N.W.2d 520, 526 (Minn. App. 1988), *review denied* (Minn. June 10, 1988).

Evidence is sufficient to support a conviction if, given the facts in the record and any legitimate inferences taken from these facts, a fact-finder could reasonably conclude beyond a reasonable doubt that the defendant committed the crime charged. *State v. Miles*, 585 N.W.2d 368, 372 (Minn. 1998). Viewing the evidence in a light most favorable to the verdict, the evidence was sufficient to support the district court’s finding

that Blevins sexually penetrated CMJ through the commission of cunnilingus and through digital penetration.

Blevins has also challenged the sufficiency of the evidence on the element of personal injury. Personal injury is defined as physical pain or injury, illness, or any impairment of physical condition, or severe mental anguish. Minn. Stat. § 609.341, subd. 8 (2000); Minn. Stat. § 609.02, subd. 7 (2000).

The district court could reasonably find that Blevins injured CMJ based on CMJ's physical injuries and her testimony that Blevins choked her during her struggle to stop the assault. CMJ's testimony on personal injury is confirmed by the sexual-assault-examination report that noted several scratches on CMJ's neck, her report to the examining nurse that her neck felt stiff, and the pelvic examination that revealed redness and tenderness of the labia. In addition, CMJ's friend testified that she noticed bruising on CMJ's face and neck which was "kind of marked up," and police officers photographed bruises on CMJ's arm and scratch marks on her neck.

Blevins challenges the district court's connection of CMJ's injuries to the sexual assault. Only a "minimal amount of physical pain or injury [is necessary] to satisfy the definition of 'bodily harm' under Minn. Stat. § 609.02, subd. 7." *State v. Jarvis*, 665 N.W.2d 518, 522 (Minn. 2003). A victim's injuries do not need to be coincidental with actual sexual penetration, but need only be sufficiently related to the act, to constitute "personal injury" within the meaning of section 609.341. *State v. Sollman*, 402 N.W.2d 634, 636 (Minn. App. 1987). Scratches, bruises, and redness and irritation in the vaginal area are considered "bodily harm" within the meaning of section 609.02, subdivision 7.

State v. Slaughter, 691 N.W.2d 70, 76 (Minn. 2005); *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985); *Powe v. State*, 389 N.W.2d 215, 219 (Minn. App. 1986), *review denied* (Minn. July 31, 1986).

The district court could reasonably connect CMJ's scratches, bruises, and stiff neck to her account of being choked and wrestling with Blevins to stop the assault; the redness and tenderness of CMJ's vaginal area to the sexual penetration of CMJ's vagina; and CMJ's "severe mental anguish" to being sexually assaulted while fearful of Blevins and while believing that Blevins had a gun. Although the evidence did not include proof of permanent or serious injury, on this record, the district court could find that CMJ suffered physical pain and severe mental anguish, which are two types of injury that satisfy the personal-injury element under the statute.

Viewing the evidence in a light most favorable to the verdict, the evidence was sufficient to support the finding that Blevins caused personal injury to CMJ.

II

Blevins argues that remand is necessary because the district court did not make written findings. The Minnesota Rules of Criminal Procedure require written findings:

In a case tried without a jury, . . . [t]he court, within 7 days after the general finding in felony and gross misdemeanor cases, shall in addition specifically find the essential facts in writing on the record . . . If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear therein.

Minn. R. Crim. P. 26.01, subd. 2. A primary reason for requiring written findings is "to aid the appellate court in its review of conviction resulting from a nonjury trial." *State v. Scarver*, 458 N.W.2d 167, 168 (Minn. App. 1990).

Following trial, the district court scheduled a hearing for the entry of findings and conclusions. The district court, on the record, orally recited the relevant facts on which it made its determination, reviewed each of the statutes that applied to Blevins's charges, and cited supporting caselaw as it analyzed each charge. The district court's oral findings exceeded sixteen pages of transcript and were reduced to writing in the preparation of the transcript.

We have, in some cases, remanded for compliance with the written-findings requirement when the district court has made oral findings but has not provided separate written findings. *E.g.*, *State v. Taylor*, 427 N.W.2d 1, 5 (Minn. App. 1988), *review denied* (Minn. Sept. 28, 1988). It is appropriate to remand when the oral findings are devoid of any facts on which this court can conduct review. *Scarver*, 458 N.W.2d at 168. And conclusory oral statements are not an adequate substitute for written findings. *Id.* But findings may be “gleaned from comments from the bench” so long as they “afford a basis for intelligent appellate review.” *Id.* (quotation omitted).

We conclude that it is not necessary to remand for written findings on this record. The district court's findings on each charge are detailed, deliberate, and thorough. The on-the-record findings permit a clear understanding of the reasons for the district court's decision and allow for intelligent appellate review. Although the district court's full compliance with the written-findings rule would, of course, be the preferred practice, a remand for written findings would serve no useful purpose in this case because the district court's extensive oral findings provide a clear understanding of the basis for its decision. *See Nyberg v. R.N. Cardozo & Brother, Inc.*, 243 Minn. 361, 366, 67 N.W.2d

821, 824 (1954) (declining to remand for written findings in court trial involving civil action).

Affirmed.