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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1668**

State of Minnesota,
Respondent,

vs.

Salanius Ortiz Dixon,
Appellant.

**Filed October 22, 2018
Affirmed
Connolly, Judge**

Dakota County District Court
File No. 19HA-CR-16-2870

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Connolly, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

In this appeal from convictions of first- and second-degree criminal sexual conduct, appellant argues that (1) the district court deprived him of his right to present a complete defense by excluding evidence that the victim had a tendency to fabricate and may have been exposed to pornographic videos and conversations about sexual abuse; (2) the district court erred in permitting appellant's impeachment with a 2014 felony theft conviction; and (3) this court should independently review the materials reviewed in camera by the district court to determine whether any material relevant to the defense was not disclosed. Because we see no error and our review of the materials indicates that all relevant documents were disclosed, we affirm.

FACTS

Appellant Salanius Ortiz Dixon was convicted of first- and second-degree criminal sexual conduct for repeatedly engaging in sexual activity with a minor girl, A.H. In 2014, A.H.'s parents divorced. Appellant, the ex-husband of A.H.'s aunt, moved into A.H.'s father's house to help him care for A.H. and her younger brother. He lived with the family from late summer of 2014, when A.H. was eight years old, until late summer of 2015. A.H. reported that during this time, appellant touched A.H.'s "girl part" four times, which included licking and touching with appellant's fingers and mouth, and rubbing his "boy part" outside and inside her "girl part." A.H.'s mother called child protection services. Appellant adamantly denies inappropriately touching A.H.

Prior to trial, the parties stipulated to in camera review of A.H.'s child-protection records. The district court then ordered disclosure to the defense of the child-protection records that contained relevant information. Following trial, appellant filed a petition for access to the sealed records, which the district court granted.

At trial, the district court allowed the state to impeach appellant using evidence of his 2014 felony theft conviction, but refused to admit two felony controlled-substance convictions. Appellant sought to introduce evidence of A.H.'s predisposition to fabricate by showing that she lies about minor things such as doing her homework or hitting her brother. The district court found this evidence to be inadmissible because "it is highly typical of a child" and "wholly irrelevant to predisposition to a character trait."

Appellant sought to introduce statements from his girlfriend regarding her conversation with A.H.'s mother about sexual abuse, at which A.H. was supposedly present. The district court ruled the testimony on that matter was inadmissible because it was irrelevant, more prejudicial than probative, and would confuse the jury. Appellant also sought to introduce statements from his girlfriend concerning how, in her presence, A.H.'s father told appellant he found pornography on A.H.'s computer tablet. The district court did not allow A.H.'s girlfriend to testify on this issue because she did not see the pornography and her testimony regarding the conversation "goes to an extraneous matter."

The jury found appellant guilty of first- and second-degree criminal sexual conduct. The district court denied appellant's motion for a downward dispositional departure and sentenced him to a presumptive term of 168 months in prison. This appeal follows.

DECISION

I.

Appellant argues that the district court deprived him of his right to present a complete defense by excluding evidence that the victim had a tendency to fabricate and may have been exposed to conversations about sexual abuse and pornographic videos. “Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). This standard of review applies even when “the defendant claims that the exclusion of evidence deprived him of his constitutional right to a meaningful opportunity to present a complete defense.” *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). If a district court’s evidentiary ruling is determined to be erroneous, and the error reaches the level of a constitutional error such as denying the defendant the right to present a defense, our standard of review is whether the exclusion of evidence was harmless beyond a reasonable doubt. *State v. Smith*, 876 N.W.2d 310, 331 (Minn. 2016). In applying this harmless-error test, this court must look at the basis for the jury’s verdict and determine what effect the error had on the actual verdict. *State v. Blom*, 682 N.W.2d 578, 622 (Minn. 2004). “If the verdict actually rendered was surely unattributable to the error, the error is harmless beyond a reasonable doubt.” *Id.* “On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.” *Amos*, 658 N.W.2d at 203.

a. Evidence of Tendency to Fabricate

Appellant sought to introduce evidence regarding A.H.'s predisposition to fabricate this charge of criminal sexual conduct. In general, "[e]vidence of a person's character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." Minn. R. Evid. 404(a). The accused may offer "[e]vidence of a pertinent trait of character of the victim." Minn. R. Evid. 404(a)(2). Appellant asserted that A.H. would lie "about a number of different things . . . such as whether or not she did her homework," what she ate, hitting her brother, doing chores, and cleaning her room. The district court held that A.H.'s dishonesty about "childish things" did not "show a predisposition to fabricate a charge of sexual conduct." Appellant argued that it was relevant under Rule 404(a)(2) "to go to the pertinent trait of character that [A.H.] has a tendency to kind of make things up." Concluding that these "specific instances of typical childhood conduct" were "highly typical of a child" and "wholly irrelevant to predisposition to a character trait," the district court properly excluded the testimony under Minn. R. Evid. 404(a)(2). *See State v. Sandberg*, 406 N.W.2d 506, 510 (Minn. 1987) (excluding testimony from witnesses regarding the credibility of a sexual-abuse victim based on her reputation and specific acts of dishonesty under Minn. R. Evid. 404(a)(2)).

The district court concluded that, although appellant could not admit specific instances of conduct, he could introduce evidence of A.H.'s character by reputation or opinion under Minn. R. Evid. 405(a). This rule permits inquiry into relevant specific instances of conduct on cross-examination. *Id.* As the district court concluded, the specific instances brought forward by appellant were "wholly irrelevant [of a] predisposition" to

fabricate child sexual abuse, appellant was not allowed to cross-examine witnesses regarding these specific instances of conduct. But the district court never held that appellant could not question any witnesses about A.H.’s general reputation for truthfulness. Appellant chose not to do so at trial.

“A conviction will stand despite erroneously excluded evidence when the error was harmless beyond a reasonable doubt.” *Troxel v. State*, 875 N.W.2d 302, 308 (Minn. 2016). The erroneous exclusion of evidence is harmless if the reviewing court is satisfied beyond a reasonable doubt that, if the evidence had been admitted and its damaging potential fully realized, a reasonable jury would have reached the same verdict. *Smith*, 876 N.W.2d at 331.

Even if the district court should have admitted evidence that A.H. lied about certain childhood activities, any error was harmless beyond a reasonable doubt; its admission would not have led a reasonable juror to believe A.H. fabricated allegations of sexual abuse and it would not have changed the verdict because A.H.’s testimony was credible and consistent with her previous statements made in 2015 to her cousin, her mother, and a social worker that appellant had touched her “in the wrong way.”

b. Conversations about Sexual Abuse

Appellant also asserts the district court abused its discretion in restricting appellant’s girlfriend from testifying regarding a conversation, at which A.H. was purportedly present for, when A.H.’s mother disclosed her own experience with childhood sexual abuse. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by

considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Minn. R. Evid. 403. The district court ruled the testimony on that matter was inadmissible because it was irrelevant, more prejudicial than probative, and would confuse the jury.

Appellant argues that the evidence provided “the idea of child sexual abuse independent of something actually happening to [A.H.]” The state maintained that the testimony on that issue was irrelevant and A.H.’s mother never spoke with appellant’s girlfriend about her childhood. The district court’s decision was not a clear abuse of discretion because introducing testimony about A.H.’s mother’s childhood sexual abuse is not probative of whether appellant sexually abused A.H. and could confuse the jury. Even if the district court should have admitted appellant’s girlfriend’s testimony on this issue, any error was harmless beyond a reasonable doubt because its admission would not lead a reasonable juror to believe A.H. fabricated allegations of sexual abuse. Assuming that appellant had been allowed to offer the evidence that A.H. had potentially been exposed to this conversation, it would not have changed the verdict because A.H.’s testimony was credible and consistent with her previous statements about the sexual abuse.

c. Exposure to Pornography

Appellant asserts that the district court abused its discretion in restricting appellant’s girlfriend from testifying that she was present during a conversation between appellant and A.H.’s father regarding pornography on A.H.’s computer tablet. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Minn. R. Evid. 602. Appellant testified that A.H.’s

father found pornographic material on the tablet, which he showed to appellant. A.H.'s father denied seeing videos of adults having sex on the tablet, but admitted to taking the tablet away after finding a "My Little Ponies having sex cartoon" on the tablet. The district court did not allow appellant's girlfriend to testify regarding the pornography or the conversation because she did not see the pornography on the tablet and her testimony about the conversation goes to an "extraneous matter . . . about monitoring the tablet use or enforcing tablet rules." Because appellant's girlfriend never personally saw the pornography on the tablet, she lacked personal knowledge to testify as to the content of the pornography. *See id.*

Appellant argues this testimony was important both to corroborate his account of the conversation and what type of pornography was found and to impeach A.H.'s father's testimony, which downplayed A.H.'s exposure to the pornographic material. A defendant has a constitutional right to present a meaningful defense. *State v. Greer*, 635 N.W.2d 82, 91 (Minn. 2001). That right, however, is not unlimited. *Id.* Evidence may be excluded if it is repetitive, marginally relevant, or poses an undue risk of confusion of the issues. *Id.* The district court's decision that appellant's girlfriend's testimony went to an extraneous matter was not a clear abuse of discretion because the evidence was repetitive and only marginally relevant. Despite limiting appellant's girlfriend's testimony, the district court allowed appellant to testify about the pornographic material and to cross-examine A.H.'s father about finding videos showing sex acts on A.H.'s tablet. Because appellant presented the essence of his argument through his own testimony and cross-examination of A.H.'s father, he was not deprived of his constitutional right to present a meaningful defense. *See*

Greer, 635 N.W.2d at 91-93 (finding that the court's limitations on the defendant's testimony did not deprive him of his constitutional right to present a meaningful defense because he was able to present other evidence regarding the circumstances of pretrial statements).

Even if the district court should have admitted appellant's girlfriend's testimony, any error was harmless beyond a reasonable doubt because there was no impact on the verdict where appellant was still able to present his account of the conversation and cross-examine A.H.'s father on the matter. If appellant's girlfriend had been allowed to testify on this issue, appellant's account might have been viewed as more credible. Nevertheless, even if the jury had been more inclined to believe appellant's version of events, the finding of human pornography on A.H.'s tablet would not lead a reasonable juror to believe A.H. fabricated a charge of appellant's criminal sexual conduct, given the other evidence of his guilt.

II.

Appellant claims that the district court erred in permitting his impeachment with a 2014 felony theft conviction. This court reviews a district court's ruling on the impeachment of a witness by prior conviction under a clear-abuse-of-discretion standard. *State v. Williams*, 771 N.W.2d 514, 518 (Minn. 2009). Appellant testified and was impeached with the felony conviction. He argues that the district court abused its discretion by admitting the 2014 felony theft conviction for impeachment because it was not a crime of dishonesty and the district court referred to the *Jones* factors only in a conclusory manner.

A witness may be impeached by evidence that the witness has been convicted of (1) a felony, if the probative value of the evidence outweighs its prejudicial effect; or (2) any crime involving dishonesty or false statement. Minn. R. Evid. 609(a). When determining whether the probative value of a prior conviction outweighs its prejudicial effect, a district court applies the five-factor balancing test set forth in *State v. Jones*. 271 N.W.2d 534, 537-38 (Minn. 1978). The factors to be balanced are as follows:

(1) the impeachment value of the prior crime, (2) the date of the conviction and the defendant's subsequent history, (3) the similarity of the past crime with the charged crime (the greater the similarity, the greater the reason for not permitting the use of the prior crime to impeach), (4) the importance of [the] defendant's testimony, and (5) the centrality of the credibility issue.

Id. “[A] district court should demonstrate on the record that it has considered and weighed the *Jones* factors.” *State v. Swanson*, 707 N.W.2d 645, 654 (Minn. 2006). Whether the probative value of a prior conviction outweighs the prejudicial effect is a matter within the discretion of the district court. *State v. Graham*, 371 N.W.2d 204, 208 (Minn. 1985). As the district court is in “a unique position” to assess and weigh the *Jones* factors, “it must be accorded broad discretion.” *State v. Hochstein*, 623 N.W.2d 617, 625 (Minn. App. 2001).

Here, the district court listed the *Jones* factors and stated that the “conviction’s impeachment value is probative and goes toward the centrality of the credibility issue.” The district court did not abuse its discretion because appellant’s conviction is a felony that occurred in 2014, and the district court demonstrated on the record that it considered and weighed the *Jones* factors in its determination. Minn. R. Evid. 609.

But even if the district court's consideration of the *Jones* factors was not as thorough as it could have been, a district court's failure to expressly consider the *Jones* factors on the record is harmless error so long as this court's review of the factors as applied to the convictions indicates that the past convictions were admissible for impeachment purposes. *See, e.g., Swanson*, 707 N.W.2d at 655. After considering and weighing the *Jones* factors,¹ we conclude the 2014 felony theft conviction was admissible for impeachment purposes.

Appellant also argues that the district court erred by determining that the theft conviction was a crime of dishonesty. Because the felony conviction was properly admitted under Rule 609(a)(1), we do not reach this argument.

III.

Appellant asks this court to independently review the materials reviewed in camera by the district court to determine whether any material relevant to the defense was not

¹ The first factor weighs in favor of admission because the conviction is a felony, and a felony has impeachment value. *State v. Davis*, 735 N.W.2d 674, 680 (Minn. 2007) (noting that prior convictions have some impeachment value because they allow the jury to see the whole person and better judge the truth of the testimony). The second factor weighs in favor of admission because the date of conviction was 2014, which is recent and around the same time as the charged offense. *Id.* (holding that “recent convictions . . . have more probative value than older ones”). The third factor weighs in favor of admission because the similarity between the alleged offense, criminal sexual conduct, and the prior crime, theft, is minimal. *Jones*, 271 N.W.2d at 538 (noting that the greater the similarity, the greater the reason for not permitting use of the prior crime to impeach). The fourth factor weighs against admission because appellant's version of the facts was centrally important to the result reached by the jury. *See State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993) (holding that this factor weighed against admission if admitting impeachment evidence meant that appellant's account of events would not be heard). Nevertheless, appellant still chose to testify knowing this conviction would be used to impeach him. The fifth factor weighs in favor of admission because the credibility of appellant was central to the case, as the jury's decision was based largely on whether they believed appellant. *Id.*

disclosed. The district court has “wide discretion in its discovery and evidentiary rulings.” *State v. Wildenberg*, 573 N.W.2d 692, 696 (Minn. 1998). “On appeal, we review the limits placed by the district court on the release and use of protected records for an abuse of discretion.” *State v. Hokanson*, 821 N.W.2d 340, 349 (Minn. 2012).

“When a criminal defendant requests [protected] records . . . the district court may screen the confidential records in camera to balance the right of the defendant to prepare and present a defense against the rights of victims and witnesses to privacy.” *Id.* When conducting in camera review, the district court determines if any of the protected information in the record is relevant and may be helpful to the defendant’s defense. *See State v. Paradee*, 403 N.W.2d 640, 642 (Minn. 1987). Here, the district court reviewed “[a]ny and all child protection records, reports, files, and other documents, including audio and video files, relating to any allegations of abuse” made by A.H. from January 1, 2013, to the present. The district court conducted an in camera review and ordered disclosure of the records that contain information relevant to the defense. Following trial, appellant filed a petition for access to the sealed records and received a copy of the sealed records.

Appellant seems to assert that the district court erroneously withheld materials relevant to the defense, but appellant has the sealed records and fails to assert any specific error in the district court’s in camera review under *Paradee*. *See id.* Nevertheless, we conducted our own careful review of the documents and determined that the district court did not withhold any relevant documents.

Affirmed.