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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0958**

State of Minnesota,
Respondent,

vs.

Jeremy Scott Archambault, Sr.,
Appellant.

**Filed April 13, 2020
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-18-22001

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court erred by admitting recordings of the two victims' interviews into evidence as nonhearsay prior consistent statements pursuant to Minn. R. Evid. 801(d)(1)(B). We affirm.

FACTS

Appellant Jeremy Scott Archambault Sr. is the father of D.M. and S.M. Sometime in February 2014, M.L.W., D.M. and S.M.'s maternal grandmother and legal guardian, learned from a relative that S.M., the older of the two children, had been sexually abused by Archambault. After learning of the sexual abuse, M.L.W. called D.M., who was away at boarding school. D.M. confirmed that she was aware of Archambault's abuse of S.M., and began crying when M.L.W. asked if she too had been abused. D.M. then informed a school counselor of the abuse. When M.L.W. came to pick D.M. up from boarding school, D.M. relayed the details of her own abuse by Archambault to M.L.W.

D.M. decided in November 2016, when she was 15 years old, that she wanted to report the abuse to the police. The police then referred D.M. to CornerHouse, where a forensic interviewer conducted a recorded interview of D.M. She told the interviewer that Archambault sexually assaulted her in his basement bedroom in her paternal grandmother's house, and that it happened more than five times. She stated that the abuse began when she was five or six years old and lasted until 2010 or 2011—when she would have been between nine and eleven years old. D.M. told the interviewer that Archambault touched

her with his hand more than one time, and also penetrated her with his penis more than one time. She specifically recounted the details of two incidents.

During one incident, D.M. was playing with her cousin when Archambault told her to go downstairs, where he proceeded to shut the door, hug and kiss her, and eventually sexually penetrated her. When Archambault was finished, D.M.'s brother opened the door, but D.M. did not know if he saw anything. Archambault then told D.M.'s brother to run her a bath. D.M. told the interviewer that Archambault always bathed her after his assaults.

During an incident that occurred in either 2010 or 2011, D.M. stated that early in the morning Archambault tried to sexually assault both her and S.M. in his basement bedroom. D.M. told the interviewer that Archambault tried to touch her under her underwear, but she continued to push his hand away and started crying. She then saw Archambault try and do the same thing to S.M., but S.M. also resisted him, and Archambault eventually pushed both sisters off the bed.

In May 2017, S.M. was interviewed by an investigator with the Hennepin County Attorney's Office and provided a recorded witness statement. S.M. told the investigator that, when she was eleven or twelve years old, and D.M. was approximately seven or eight years old, Archambault sexually abused them in the basement of the girls' paternal grandmother's home. S.M. told the investigator that she awoke to find Archambault inserting his finger into her vagina, kissing her, trying to pull her underwear down, and rubbing her legs. S.M. resisted Archambault, switched spots on the bed with her sister, and cried herself to sleep. S.M. later awoke to find D.M. crying and asking for help, and saw Archambault assaulting D.M. in the same manner that he had just done to her. S.M.

stated that the only person she told about the incident prior to speaking with the investigator was a friend, S.

The state charged Archambault with three counts of first-degree criminal sexual conduct. Two counts pertained to D.M., and the other count pertained to S.M.

Both D.M. and S.M. testified at trial. The state sought to introduce D.M.'s CornerHouse interview and S.M.'s recorded witness statement into evidence. Archambault objected, asserting that both recordings were inadmissible hearsay.¹ The district court overruled Archambault's objections and admitted the recordings as prior consistent statements. The jury found Archambault guilty on all counts of first-degree criminal sexual conduct. The district court sentenced Archambault to 144 months in prison on count one, to be served concurrently with 360 months in prison on count three. This appeal followed.

DECISION

Archambault argues that the district court erred by admitting the recordings of D.M.'s CornerHouse interview and S.M.'s witness statement into evidence as nonhearsay prior consistent statements pursuant to Minn. R. Evid. 801(d)(1)(B). "Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014).

¹ Archambault objected to the admission of D.M.'s CornerHouse interview during a conference outside the presence of the jury regarding the admissibility of S.M.'s prior recorded statement. However, Archambault did not actually object when the state offered D.M.'s interview into evidence. Because Archambault objected to the admission of D.M.'s prior statement, the objection was preserved, and we treat the district court's denial of Archambault's hearsay objection as pertaining to the admissibility of both statements.

“A defendant claiming error in the district court’s reception of evidence has the burden of showing both the error and the prejudice resulting from the error.” *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009) (quotation omitted). This court reviews a district court’s determination that two statements are substantially similar for an abuse of discretion. See *State v. Zulu*, 706 N.W.2d 919, 924-25 (Minn. App. 2005).

Archambault asserts that the recorded interviews should not have been admitted because they contained statements that were inconsistent with D.M.’s and S.M.’s trial testimony and were outside the scope of the trial testimony. Archambault did not ask the district court for a limiting instruction, nor did he request to redact the portions of the recordings that he claimed were inconsistent with the witnesses’ trial testimony. Further, Archambault acknowledged that the recordings “contained many statements; some consistent, some not consistent[,]” but did not highlight any specific inconsistencies in his objection.

A prior consistent statement does not need to be verbatim to the declarant’s trial testimony to be admissible under rule 801(d)(1)(B). *State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000), *review denied* (Minn. Feb. 24, 2000). “[A]dmission of a videotaped statement that is reasonably consistent with the trial testimony is not reversible error.” *Zulu*, 706 N.W.2d at 924 (quotation omitted). While in *Bakken* this court stated that it is necessary for the district court to analyze the consistency of the individual statements at issue, 604 N.W.2d at 109, in *Zulu* this court upheld a district court’s admission of a CornerHouse interview without specifically addressing any of the alleged inconsistencies

when the district court found the interview to be “substantially consistent” with the declarant’s testimony. 706 N.W.2d at 924.

S.M.’s detective interview

On appeal, Archambault identifies the following alleged inconsistencies between S.M.’s recorded witness statement and her trial testimony:

- (1) In her recorded statement S.M. stated that the only person she told about Archambault’s abuse was a friend, S., but she testified that she told a cousin, M.C., and her girlfriend, T.;
- (2) In her statement S.M. told the interviewer that Archambault rubbed her legs, while she testified that he rubbed “on my body” and that he touched her “kind of all over. So my upper body”;
- (3) S.M. told the interviewer that Archambault kissed her with his tongue, while she testified that “he would try to kiss me, and I would push away and tell him ‘no,’ and he kept doing it,” and also that he touched her skin with his mouth;
- (4) In her statement S.M. told the interviewer that Archambault inserted his finger into her vagina, while she testified in response to the question “[d]id he put his fingers inside of you?” that “[h]e started to”;
- (5) S.M. told the interviewer that during her attempts to resist Archambault “I was—you know, crying by then and telling him to stop and he wouldn’t stop . . . he started kissing me . . . I realized . . . he wasn’t gonna stop . . . so I just . . . cried,” while she testified that she “got scared and I pushed [his hand] away and told him ‘no’ . . . He would move to . . . a different spot. And he would try to kiss me, and I would push away and tell him ‘no,’ and he kept doing it” until he fell asleep;
- (6) S.M. testified that her brothers D. and G. were asleep in the bedroom when the assault occurred, and possibly her

cousin C. as well, but did not discuss this topic during her recorded interview.

With the exception of the slight discrepancy between S.M.'s recorded statement and trial testimony regarding Archambault's penetration of her with his finger, all of the alleged inconsistencies between the two statements are of the type previously held by this court to be insubstantial.

In *Zulu*, this court held that differences or omissions between the victim's statements regarding who was present when the abuse was reported, what potentially corroborating witnesses may have seen, and the specific location where an act of abuse occurred were all not substantial and thus did not constitute an abuse of discretion. 706 N.W.2d at 924-25. Here, the alleged inconsistencies relate to details regarding who S.M. told about the abuse, who else was present, and minor grammatical differences in her recounting of the assault, which, in its material details, was essentially consistent with her testimony.

This court also highlighted in *Zulu* that the victim was subject to cross-examination regarding the purported inconsistencies in her statements, and the defendant was allowed to argue all inconsistencies to the jury. *Id.* at 925. D.M. and S.M. were subject to cross-examination, and Archambault's attorney argued D.M.'s and S.M.'s credibility to the jury during his closing argument.

Unlike in *Zulu*, in *Bakken* this court held that an inconsistency was not a mere discrepancy when it "directly affect[s] the elements of the criminal charge" and therefore was inadmissible under rule 801(d)(1)(B). 604 N.W.2d at 110. While Archambault raises the discrepancy between S.M.'s affirmative answer to the question: "do you know if he put

his fingers in your vagina?” in her witness statement with her trial testimony that Archambault “started to” put his fingers inside her, this difference does not affect the elements of first-degree criminal sexual conduct.

For first-degree criminal sexual conduct, “sexual penetration” is defined as “any intrusion however slight into the genital or anal openings.” Minn. Stat. § 609.341, subd. 12(2) (2006). Both statements indicate that Archambault, at a minimum, briefly penetrated S.M.’s vagina with his finger. Therefore, the differences in S.M.’s account of the assault do not alter the elements of the charged offense, and thus do not render S.M.’s prior recorded statement inadmissible under rule 801(d)(1)(B).

The district court did not abuse its discretion by determining that S.M.’s recorded witness statement was “essentially similar” to her trial testimony, and thus did not abuse its discretion by admitting the recorded interview as a prior consistent statement.

D.M.’s CornerHouse interview

On appeal, Archambault identifies the following alleged inconsistencies between D.M.’s CornerHouse interview and her trial testimony:

- (1) D.M. told the interviewer that the abuse occurred when she was five or six years old, but testified that she was approximately seven to nine years old when the abuse began;
- (2) Regarding the incident that occurred in 2010 or 2011, D.M. told the interviewer that Archambault pushed both her and S.M. off the bed after they attempted to resist him, but at trial she testified that Archambault had only pushed her off the bed;
- (3) In the CornerHouse recording D.M. stated that she told her grandma, a counselor named P.B., her mother, hospital

personnel, and her best friend (S.) about Archambault's abuse, while she testified that she told her grandma, P.B., a counselor named C.R., hospital personnel, and an unidentified woman;

- (4) In her CornerHouse interview she described Archambault as a "pig[]" and stated that she did not meet him until she was five or six,² but she did not testify to these statements.

The analysis of these statements is the same under *Zulu* and *Bakken* as discussed above regarding the alleged inconsistencies in S.M.'s prior statement. All of the purported inconsistencies between the two statements relate to minor details—who D.M. told, how she felt about her father, who he pushed off the bed—that do not pertain to the charged offenses. See *Zulu*, 706 N.W.2d at 924-25.

While D.M.'s conflicting statements about how old she was when the abuse began could be substantial under *Bakken* if they affected the elements of the offenses, all that is required under the statutes is that D.M. was under 13 years old, Minn. Stat. § 609.342, subd. 1(a) (2004), and under 16 years old, Minn. Stat. § 609.342, subd. 1(h)(iii) (2004), when the abuse occurred. Therefore, her inconsistent statements that she was either between seven and nine years old, or five or six years old, when the abuse began do not alter the elements of the charged offenses, and thus do not render her prior statement inadmissible under *Bakken*. 604 N.W.2d at 110. Accordingly, the district court did not abuse its discretion by admitting D.M.'s CornerHouse interview as a prior consistent statement.

² Appellant's brief asserts that D.M. used the term "deadbeat" to describe him in her interview, but the record does not support this assertion.

Pro se arguments

In his pro se supplemental brief, Archambault challenges the credibility of certain witnesses and reiterates that the allegations against him were substantiated by hearsay. However, Archambault does not support his assertions with any legal argument or supporting authority, nor is prejudicial error obvious on mere inspection. Therefore, his arguments are forfeited. *State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008).

Affirmed.