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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-1789**

State of Minnesota,  
Respondent,

vs.

Wilber Vladimir Gonzalez Romero,  
Appellant.

**Filed December 14, 2020  
Affirmed  
Florey, Judge**

Anoka County District Court  
File No. 02-CR-18-7183

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

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County  
Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness,  
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Hooten, Judge; and Gäitas,  
Judge.

**UNPUBLISHED OPINION**

**FLOREY**, Judge

Appellant argues that his convictions for criminal sexual conduct must be reversed  
because the district court abused its discretion by excluding his expert witness, a

psychologist, whose testimony critiquing the CornerHouse interview of the complainant-child would have helped the jury in evaluating the shortcomings of that interview. We affirm.

## **FACTS**

On October 27, 2018, C.G. told her mother that her stepfather, appellant Wilbur Vladimir Gonzalez Romero, had been sexually touching her over the past six years. Detective Schoeberl conducted a forensic interview with C.G. based on the CornerHouse Protocol. The detective talked with C.G. twice. During the first interview, C.G. recalled multiple acts of digital penetration by appellant, including an incident the prior day. While the detective interviewed C.G.'s mother, C.G. talked with her aunt in another room. The aunt told C.G. that something similar had happened to her and encouraged C.G. to share everything that had happened with appellant; according to C.G. this conversation prompted her to remember details that she had left out of the earlier interview—most significantly that appellant had “put his penis inside of [her].” The detective was alerted that C.G. had additional information about what had happened and a second interview took place. In the second interview, C.G. told the detective that appellant's penis had penetrated her vagina.

Appellant was charged with two counts of first-degree criminal sexual conduct (penetration and contact with victim under 13) and one count of second-degree criminal sexual conduct. In preparation for trial, appellant filed a witness list that included psychologist Dr. Paul Reitman and a two-page report Dr. Reitman had prepared critiquing the CornerHouse interview. The state filed a motion in limine to exclude Dr. Reitman's

testimony. After an evidentiary hearing, the district court ordered additional briefing and a hearing to voir dire Dr. Reitman before ruling on whether to allow his testimony at trial.

On his voir dire, Dr. Reitman testified that he had observed at least 30 interviews, including approximately 15 reviews of CornerHouse interviews and 15 forensic interviews done by police officers, and that he had previously testified as an expert on interview protocol and techniques used by law enforcement. Dr. Reitman clarified that he was aware of CornerHouse protocol—a style of forensic interviewing for children—only from observing interviews that had used this technique and that he had no formal training on this specific protocol; yet from these prior interview videos, he felt well qualified to give an opinion on the detective’s forensic interview with C.G.

The district court initially issued an order permitting Dr. Reitman to give limited testimony on the issues of “protocols and techniques used to interview children in a structured forensic interview and whether the recognized protocols and techniques were followed in the structured forensic interview of the victim in this case.” Granting the state’s subsequent Minn. R. Crim. P. 9.02 motion for specific disclosures, the district court ordered appellant to produce the case names in which Dr. Reitman had observed CornerHouse videos, disclose how many cases in which Dr. Reitman himself had done forensic structured interviews of a child suspected of being sexually abused for specific purposes, and provide a list of cases where Dr. Reitman had testified for the state as well as a list of names where he testified for the defense.

Shortly thereafter, appellant informed the court that Dr. Reitman could not feasibly produce the requested information. Dr. Reitman was again questioned on his experience

reviewing CornerHouse interview tapes and asked to explain why he was unable to comply with the district court's order to produce information on the prior cases in which he had testified as an expert. Dr. Reitman testified that, over his 40-year clinical career, he had done approximately 30 to 40 reviews of different interview tapes but not all of those tapes were CornerHouse interviews, and he did not specifically mark files that had CornerHouse tapes. Further, he explained that he only kept files for seven years and did not have the time or personnel to review all existing files to identify the requested case information that was still available. Dr. Reitman estimated that he had reviewed ten CornerHouse interview tapes in the past seven years. He also clarified that he had been a court-appointed expert in family court cases and had also been retained privately in some criminal cases.

After this second voir dire, the district court reversed its prior determination and issued an order excluding Dr. Reitman's testimony from trial due to appellant's inability to qualify him as an expert and establish the requisite foundational reliability for his testimony on CornerHouse protocol and forensic interviews of children. Following a jury trial, appellant was found guilty of one count of first-degree criminal sexual conduct (penetration) and second-degree criminal sexual conduct. This appeal follows.

## **D E C I S I O N**

"The admissibility of expert testimony lies within the sound discretion of the [district] court." *State v. Hall*, 406 N.W.2d 503, 505 (Minn. 1987). Accordingly, we review a district court's admissibility determination for an abuse of discretion. *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999). "[A]ny error in excluding such testimony is

subject to the harmless-error analysis.” *State v. Hakala*, 763 N.W.2d 346, 350 (Minn. App. 2009), *review granted* (Minn. June 16, 2009) *and appeal dismissed* (Minn. June 1, 2010).

Minn. R. Evid. 702 governing the admissibility of expert testimony provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, expertise, training, or education, may testify thereto in the form of an opinion or otherwise.

Under this rule, expert testimony is admissible if: (1) the witness is qualified as an expert; (2) the opinion has foundational reliability; (3) the testimony is helpful to the jury. Minn. R. Evid. 702; *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011) (articulating this standard). Here, appellant challenges the district court’s ruling on Dr. Reitman’s qualifications as an expert and the foundational reliability of his opinion.

In its order excluding Dr. Reitman’s testimony, the district court stated that, while appellant was entitled to offer expert testimony on the protocol and techniques used in the structured forensic examination of C.G., appellant had failed to establish Dr. Reitman’s qualification to testify on CornerHouse-specific protocol and the requisite foundational reliability for his opinion on the interview. In coming to this determination, the district court noted:

Dr. Reitman’s Curriculum Vitae does not list any training, experience, skill or specialized knowledge that demonstrates he is qualified to provide an expert opinion on structured forensic interviews of alleged victims of child abuse. He also failed to provide testimony, or relevant disclosures as required by Minn. R. Crim. P. 9, that demonstrate any opinion he would offer has foundational reliability.

Appellant argues that, even without the information on past cases, the district court had “more than enough information at its disposal to find that Dr. Reitman qualified as an expert in forensic interviews” based on his “extensive education and experience in the field of forensic psychology” and his specific testimony that he had observed 30 relevant interviews—15 CornerHouse and 15 police interviews—over the course of his forty-year career. As to foundational reliability, appellant argues that Dr. Reitman’s testimony had a clear and valid purpose—critiquing the detective’s interview techniques—and that “his education, training, and experience established that his testimony was reliable.”

An expert witness is one who is qualified by “knowledge, skill, experience, training or education” to testify about and provide an opinion regarding “scientific, technical or other specialized knowledge.” Minn. R. Evid. 702. While an expert’s qualifications are not required to stem solely from formal training, their qualifications must be based on some “knowledge, skill, or experience that would provide the background necessary for a meaningful opinion on the subject.” Minn. R. Evid. 702 1977 comm. cmt. We afford district courts broad discretion in determining whether to admit or exclude the testimony of expert witnesses. *State v. Helterbride*, 301 N.W.2d 545, 547 (Minn. 1980).

Here the district court found, and the record supports, that Dr. Reitman was an experienced clinical psychologist but had limited experience with forensic interviews of child sexual-abuse victims. After reviewing Dr. Reitman’s credentials and having two separate opportunities to question him regarding his professional training and experience, as well as after considering additional briefing and oral argument on the issue from both parties, the district court continued to express discomfort in qualifying him as an expert on

structured-forensic-interview protocol for child victims, particularly after Dr. Reitman testified shortly before trial that he could not produce any additional information on cases where he had reviewed forensic interviews as an expert witness. The district court was also understandably troubled that appellant's noncompliance with the required disclosures would impede the prosecution's ability to effectively cross-examine Dr. Reitman at trial.

Dr. Reitman's own testimony established that he had never administered a CornerHouse interview. Observing prior interview tapes was the basis for his familiarity with CornerHouse protocol—the particular situation at issue in this case. Given Dr. Reitman's lack of formal training on this specific interview methodology and his adamant inability to provide any further information on similar cases where he had assessed CornerHouse interviews, the district court's concern as to his qualifications was warranted. As the district court correctly observed, it was not required to “just take Dr. Reitman's word for it that he is an expert witness in areas of forensic structured interviews and, in particular, in critiquing or criticizing CornerHouse interviews.” More foundation was reasonably necessary to qualify Dr. Reitman as an expert in the particular protocol at issue here. Thus, the district court's decision to exclude his testimony was not a clear abuse of discretion.

**Affirmed.**