

*This opinion is nonprecedential except as provided by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
A20-0323**

State of Minnesota,
Respondent,

vs.

John Chrystopher Murdock,
Appellant.

**Filed February 16, 2021
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CR-18-27946

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Florey, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

NONPRECEDENTIAL

ROSS, Judge

The state accused John Murdock of sexually assaulting an 11-year-old girl and charged him with first-degree criminal sexual conduct. The district court conducted a bench trial and, after the victim testified about the timing of the conduct, allowed the state to

amend the complaint's date of offense from "on or about" a specific date to "on or about" a range of three years that ended with a specific date. On appeal after conviction, Murdock argues that the district court abused its discretion by allowing the amendment and erred by then failing to renew his jury-trial waiver. He also contends that the district court abused its discretion by failing to disclose the victim's confidential therapy records and asks this court to conduct an independent *in camera* review. For the reasons that follow we are persuaded by none of Murdock's arguments after our document review, and we affirm.

FACTS

An 11-year-old girl told Minneapolis police that John Murdock sexually assaulted her many times during a period lasting about three or four years. The state charged Murdock with first-degree criminal sexual conduct with a person younger than 13 years old, alleging in its complaint that the offense occurred "on or about" October 3, 2018. The probable-cause statement of the complaint included facts indicating that Murdock first assaulted the girl in about 2015.

Murdock waived his right to a jury trial and proceeded with a bench trial in September 2019. Before trial he asked the district court to review the victim's school, hospital, and child-protection records *in camera* and disclose materials relevant to his defense. The district court declined to review the school records, but it reviewed the hospital and child-protection records and found them mostly irrelevant. It disclosed to Murdock some of the child-protection records.

The victim testified at trial, saying that Murdock repeatedly sexually assaulted her beginning in about 2015. Over Murdock's objection, the state moved to amend the

complaint to change the date of the offense from “on or about October 3rd, 2018” to “on or about October 15th of 2015, through October 3rd, 2018.” The district court overruled Murdock’s objection, concluding that the amendment conformed to the trial evidence. Murdock did not request, and the district court did not initiate, a proceeding to renew Murdock’s jury-trial waiver. The district court received other testimony, and it found Murdock guilty. It sentenced him to serve 168 months in prison. Murdock appeals.

DECISION

Murdock challenges his conviction on three theories. He first maintains that the district court improperly permitted the state to amend the complaint. He next contends that the district court compounded the error by failing to renew his jury-trial waiver. And he contends last that the district court improperly refused to disclose the victim’s confidential records and asks us to conduct an *in camera* review on appeal. The arguments fail.

I

Murdock argues that the district court wrongly permitted the state to amend the complaint and include a date range for the charged offense. A district court has broad discretion to grant or deny a motion to amend a complaint, and we will not reverse its ruling without a clear abuse of discretion. *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. App. 2004). The state may amend its complaint before the verdict to conform to evidence produced at trial if the amendment charges no additional or different offense and the defendant’s substantial rights are not prejudiced. Minn. R. Crim. P. 17.05; *Gerdes v. State*, 319 N.W.2d 710, 712 (Minn. 1982). An amendment charges a different offense if it affects an essential element of the originally charged offense. *State v. Guerra*, 562 N.W.2d 10, 13

(Minn. App. 1997). The amendment here merely extended the period during which the offense occurred. It did not charge a different offense.

Murdock argues that he was prejudiced by the amendment because he relied on the designated date when he prepared his defense. But the state may amend the offense date if it is not a material element of the offense, and it is an essential element only when the offense is prohibited “during certain seasons, on certain days or at certain hours.” *State v. Becker*, 351 N.W.2d 923, 927 (Minn. 1984). We have previously held that the offense date is not an element of the crime of first-degree criminal sexual conduct. *Ruberg v. State*, 428 N.W.2d 488, 490 (Minn. App. 1988), *review denied* (Minn. Oct. 26, 1988). And Murdock’s claim of prejudice rings hollow given the complaint’s description of the first sexual assault as allegedly having occurred in about 2015. The trial evidence was consistent with that allegation, and the amendment conformed to it. The district court acted within its discretion.

II

Murdock next asserts that allowing the amendment denied him his right to a jury trial on every element of the offense. The federal and state constitutions afford criminal defendants the right to a jury trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. The right applies to every element of the charged offense. *See State v. Kuhlmann*, 806 N.W.2d 844, 848 (Minn. 2011). Whether a defendant has been denied his constitutional right to a jury trial is a question of law that we review de novo. *Id.* at 848–49. If the defendant waives his right to a jury trial and the state amends its complaint after the waiver, the district court must renew the jury-trial waiver for the additional elements or charges. *Id.* at 850. But the

district court had no duty to renew Murdock's jury-trial waiver because, again, the amendment changed only the date of the offense rather than an element. It did not add a charge or increase Murdock's potential punishment. We see no error.

III

We are unpersuaded by Murdock's contention that the district court improperly refused to disclose the victim's confidential records after reviewing them *in camera*. We review the district court's application of a statutory privilege for an abuse of discretion. *See State v. Hokanson*, 821 N.W.2d 340, 349 (Minn. 2012). We independently review the confidential documents to determine whether they are relevant to the defense and whether the defendant was entitled to them. *State v. Goldenstein*, 505 N.W.2d 332, 344–45 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993). Although a defendant generally has the right to substantial discovery to prepare for trial, requests to discover confidential records require judicial screening to balance the defendant's right to prepare for trial against a victim's or witness's right to privacy. *State v. Paradee*, 403 N.W.2d 640, 642 (Minn. 1987). The district court should disclose confidential records only after the defendant has made a "plausible showing" that they are material to the defense and the district court has confirmed this based on its *in camera* review. *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992). We have carefully considered Murdock's challenge to the district court's failure to review the victim's school records and its failure to disclose the victim's hospital and child-protection records, and we discern no abuse of discretion in the district court's decisions concerning them. Some of the documents do discuss the victim's previous claims of sexual abuse, but nothing in the record indicates that she fabricated any prior claim.

IV

Murdock submitted a supplemental brief challenging the district court's finding that the victim reported pain during the sexual assaults and questioning the victim's credibility. We do not find facts or weigh credibility on appeal. We instead accept a district court's findings of fact when the record contains sufficient evidence supporting them. *Asfaha v. State*, 665 N.W.2d 523, 526 (Minn. 2003). And we defer to the district court's credibility determination because the fact-finder is in the best position to assess believability. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993). The record contains ample support for the victim's testimony and her claim of pain during Murdock's assaults. Murdock has identified no clear error in the district court's factual findings.

Affirmed.