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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0441**

State of Minnesota,
Respondent,

vs.

Ronald John Miller,
Appellant.

**Filed April 12, 2021
Affirmed
Bratvold, Judge**

Dakota County District Court
File No. 19HA-CR-18-3104

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

Kathryn M. Keena, Acting Dakota County Attorney, Heather Pipenhagen, Assistant
County Attorney, Hastings, Minnesota (for respondent)

Christina Zauhar, Halberg Criminal Defense, Bloomington, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this direct appeal, appellant challenges his conviction for fourth-degree criminal sexual conduct, arguing that the district court abused its discretion by excluding some of the DNA analysis of evidence found on the victim, his daughter. Appellant also argues that

the district court failed to consider his constitutional rights. We conclude that the district court did not abuse its discretion by excluding the challenged evidence under Minnesota Rule of Evidence 412 and that the district court duly considered appellant's constitutional rights. Alternatively, even if we assume that the district court erred by excluding the DNA evidence, any error was harmless beyond a reasonable doubt. Thus, we affirm appellant's conviction.

FACTS

Respondent State of Minnesota charged appellant Ronald John Miller with third-degree criminal sexual conduct, Minn. Stat. § 609.344, subd. 1(e) (2016) (sexual penetration), and amended the complaint to add fourth-degree criminal sexual conduct, Minn. Stat. § 609.345, subd. 1(f) (2016) (sexual contact), just before trial. The following summarizes the record presented to the district court before its pretrial ruling on the DNA evidence, and is supplemented by evidence received during the jury trial.

J.M. is Miller's daughter. Miller and J.M.'s mother lived separately for most of J.M.'s life; J.M. lived with her mother in Minnesota, while Miller lived in California and Montana. In February 2018, when J.M. was 16 years old, Miller returned to Minnesota, and J.M. moved in with him after J.M.'s mother assaulted her.

On April 30, 2018, a district court granted Miller full custody of J.M. After the custody hearing, Miller and J.M. returned to their home in Castle Rock. Later that night, Miller was sitting on a futon when J.M. approached him to say goodnight. J.M. later testified that, as she hugged Miller, Miller laid down with her on the futon and used one

hand to touch and penetrate J.M.'s vagina. She also testified that Miller touched her chest with his mouth and hands.

J.M. retreated to the bathroom, where she sent a text message to a friend saying, "Something very bad just happened." J.M. also texted: "I don't know what to do or where to go"; "My dad raped me"; and "I'm in the bathroom he keeps like grabbing my boobs and stuff and I'm saying no." J.M. testified that she left the house and "just started running towards where my friend's house was." The friend picked up J.M., and someone called 911. That night, J.M. gave a partially recorded statement to law enforcement, and had a sexual-assault examination.

During her recorded interview, J.M. agreed that Miller had "lick[ed] [her] chest area . . . and there was nothing in-between his mouth and [her] skin." She also agreed that nobody else had "done that to [her] recently," and that she had "showered since [her] boyfriend last . . . did something like that." J.M. agreed that "the only saliva that should be in [her] chest area would be [her] Dad's." The detective testified that J.M. was "emotional and crying loudly while recounting her experience."

The forensic nurse who conducted the sexual-assault examination testified that J.M. was sobbing, tearful, and trembling during the examination. J.M. told the nurse that Miller had licked her breast and digitally penetrated her. The nurse took swabs of J.M.'s breasts and her mons pubis area.¹ Additionally, law enforcement took swabs of Miller's hands, as

¹ A forensic scientist testified at trial that the "mons pubis" refers to "the area kind of where your pubic bones come together in the front like where your pubic hair essentially would be." The nurse also took other swabs, not at issue in this appeal.

well as known DNA samples from J.M., Miller, and J.M.'s boyfriend. J.M. identified her boyfriend and another male as sexual partners to law enforcement. While J.M.'s boyfriend and Miller provided DNA samples, the other male did not provide a sample. The Minnesota Bureau of Criminal Apprehension (BCA) analyzed the swabs and DNA samples and prepared four reports, detailed below.

In a pretrial motion, Miller asked the district court to admit "the complete DNA results of the Sexual Assault Examination of J.M." As an offer of proof, Miller filed court exhibits that included a transcript of J.M.'s recorded interview and the four BCA reports. At the pretrial hearing, Miller argued that the DNA evidence from J.M.'s breast swab was "highly relevant to [J.M.'s] credibility" because it showed she lied to law enforcement when she agreed the only saliva on her chest would belong to Miller. Miller also argued that the mons pubis swab analysis revealed that "a second unidentified male individual, whose semen was found in the report, could have just as well been the provider of that Y chromosome." The state opposed the motion.

Before ruling, the district court noted, "I understand that [Miller] has his due process and constitutional right[s]. What I'm not understanding is how this doesn't butt up against the rape shield law at this point." The district court then denied Miller's motion and explained its rulings in two steps:

[First,] [t]his is not a case where [J.M.] is saying, ["I've never had sex with anyone, and so there's no way there's any other chromosomes or DNA associated with me.[]"] It's not my understanding that she has said that.

Secondly, just because there is DNA evidence in the form of these chromosomes found on her person, doesn't mean

that [Miller] also did not sexually assault her by touching her breasts or—so there’s no conflict there. So as a result, under 412, it stays out.

In summary, the district court excluded the four BCA reports and any testimony about the breast swab, the DNA analysis of the mons pubis swab relating to other males, any reference to J.M.’s sexual partners, and J.M.’s recorded statement. The district court allowed testimony about the DNA analysis of Miller’s hand swabs and the Y-chromosome evidence from the mons pubis swab matching Miller’s Y-chromosome profile.

During the seven-day jury trial, the state called J.M., law-enforcement officers, a forensic nurse, and two BCA forensic scientists. The state’s evidence, summarized above, made two more points. First, a police officer testified to text messages sent from Miller’s phone to J.M. on the night she reported the assault. Second, during cross-examination, Miller’s counsel asked a forensic scientist who had prepared the related report if Miller’s DNA was “found on the bilateral breast swab in this case.” The scientist answered, “There was a major DNA profile that did not match Mr. Miller.” The state did not object to this question or answer, and the district court did not strike it from the record.

Miller testified in his own defense after waiving his right to remain silent. Miller denied “in any way touch[ing] [J.M.] inappropriately,” “lick[ing] her breasts,” or “put[ting] [his] hand in her—her vagina.” He testified that, after J.M. left that night, he texted her to come home, telling her, “I’m seriously really scared right now. . . . Please come home.” Miller also testified that he moved back to Montana after the incident because he was precluded from seeing J.M and did not have any other family in Minnesota.

The jury found Miller guilty of fourth-degree criminal sexual conduct but not guilty of third-degree criminal sexual conduct. The district court sentenced Miller to 18 months in prison and stayed execution for 10 years, with a jail sentence of 120 days to be served immediately. Miller appeals.

DECISION

Miller argues that the district court “removed relevant evidence from the jury’s consideration, misapplied Minnesota’s rape shield law, and failed to balance [Miller’s] constitutional rights to a complete defense and to confront adverse witnesses against the prohibitions of [the] rape shield [rule].” The state responds that “the district court did not abuse its discretion when it disallowed this evidence pursuant to the rape-shield laws” and that if this court determines otherwise, any error was harmless.

Generally, “[e]videntiary rulings rest within the sound discretion of the district court,” and on review, we “will not reverse an evidentiary ruling absent a clear abuse of discretion.” *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). We apply discretionary review “even when, as here, 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). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). If a district court abuses its discretion and excludes evidence in

violation of a defendant's constitutional rights, the verdict must be reversed unless the error was harmless beyond a reasonable doubt. *Zumberge*, 888 N.W.2d at 694.

A defendant has the right to present a complete defense and to confront his accuser under the United States and Minnesota Constitutions. U.S. Const. amend XIV, § 1; Minn. Const. art. I, § 7; *State v. Crims*, 540 N.W.2d 860, 866-67 (Minn. App. 1995), *review denied* (Minn. Jan. 23, 1996). These rights are subject to the rules of evidence. *State v. Hannon*, 703 N.W.2d 498, 506 (Minn. 2005).

The rules of evidence generally exclude as irrelevant a victim's past sexual conduct during the state's prosecution of a defendant for criminal sexual conduct. Minn. R. Evid. 412; *see also State v. Friend*, 493 N.W.2d 540, 545 (Minn. 1992). This rule is often called the "rape shield" rule. *Id.* The current version is found in Minnesota Rule of Evidence 412: "In a prosecution for acts of criminal sexual conduct . . . evidence of the victim's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury" unless "the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature." Minn. R. Evid. 412(1). Even then, it is admissible only when "consent of the victim is a defense in the case" or "the prosecution's case includes evidence of semen, pregnancy, or disease." Minn. R. Evid. 412(1)(A)-(B); *see also* Minn. Stat. § 609.347, subd. 3 (2016) (generally excluding evidence of a victim's previous sexual conduct when prosecuting charges of criminal sexual conduct).

"[T]he rape shield statute serves to emphasize the general irrelevance of a victim's sexual history, not to remove relevant evidence from the jury's consideration." *Crims*,

540 N.W.2d at 867. First, “[t]he rape-shield law applies equally to evidence offered by the prosecution and the defense.” *State v. Wenthe*, 865 N.W.2d 293, 306-07 (Minn. 2015). Second, the supreme court has “construed the rape-shield law as allowing sexual-history evidence . . . when ‘admission is constitutionally required.’” *Id.* at 306 (quoting *State v. Benedict*, 397 N.W.2d 337, 341 (Minn. 1986)); *see also Friend*, 493 N.W.2d at 545.

Although Miller raises one issue on appeal, he offers separate arguments based on the source of the excluded DNA evidence. Thus, we begin by summarizing the BCA reports as presented to the district court when it ruled before trial. Then, we address each of Miller’s arguments in turn, as well as his constitutional analysis, and finally consider whether any error was harmless beyond a reasonable doubt.

A. The BCA reports

The first report identified saliva on the breast swab and semen on the mons pubis swab. The second report analyzed the saliva on the breast swab and identified a mixture of DNA from three or more individuals. The second report excluded Miller and J.M.’s boyfriend as contributors to the DNA on the breast swab; the report estimated that 99.98% of the general population could also be excluded. The second report also analyzed the swabs of Miller’s hands. On the swab of Miller’s right hand, the second report identified a major DNA profile mixture of two or more individuals.² The BCA’s analysis of the right-hand swab could not exclude Miller and J.M. as contributors of the major mixture,

² A forensic scientist testified at trial that when there is “an indication that more than one individual is contributing to the sample, within that mixture there can be times where the majority of the DNA in that sample is being contributed by an individual or individuals. And we generally consider those major DNA profiles.”

although the analysis estimated that 99.99999998% of the general population could be excluded.³

The third report analyzed the sperm-cell fraction from the mons pubis swab and identified a mixture of DNA from three or more individuals. The analysis excluded Miller as a possible contributor, but could not exclude J.M. and her boyfriend. The report estimated that 99.9999998% of the general population could also be excluded.

The fourth report analyzed the non-sperm-cell fraction from the mons pubis swab. The forensic scientist who prepared the fourth report later testified that the sample contained an insufficient ratio of male DNA for conventional analysis, but the BCA collected a Y-chromosome major profile from the sample. The fourth report stated that the Y-chromosome major profile matched Miller's Y-chromosome profile, but did not match the boyfriend's profile. According to the report, "Neither Ronald John Miller nor any of his paternally related male relatives can be excluded as the contributor of this major DNA profile," and the profile has been observed in the general population at an "Upper Bound Frequency" of 0.040% of the Caucasian population, which equates to approximately "1 in 2488." The state did not offer the sperm-cell fraction evidence at trial, and Miller was precluded from offering the evidence by the district court's pretrial ruling. The district

³ On the swab of Miller's left hand, the second report identified a mixture of two or more individuals. Miller's DNA was consistent with the major profile, and J.M. could not be excluded as a contributor to the minor profile, though 99.98% of the general population could be excluded. At trial, the forensic scientist defined a minor profile as "the DNA types that are not part of that major profile but they are present within the profile itself."

court's ruling, however, allowed the state to offer the Y-chromosome analysis of the non-sperm-cell fraction as it related to Miller.

B. The exclusion of DNA evidence from the breast swab

Miller argues that the district court abused its discretion by excluding evidence that “[t]he DNA found on J.M.’s chest belonged to at least one other male, but it could not be attributed to [Miller].” Miller asserts that this evidence is relevant when taken together with J.M.’s recorded statement when the detective asked, “[T]he only saliva that should be in your chest area would be your Dad’s?” The state counters that this evidence did not establish “whether or not [Miller] had sexual contact with [J.M.].” The state also adds that “the jury heard testimony from the BCA scientist that [Miller’s] DNA was not found on [J.M.’s] breast, but that someone else’s DNA was.”

The state is correct. Despite the district court’s pretrial ruling, Miller’s counsel asked the forensic scientist, “Was Mr. Miller’s DNA found on the bilateral breast swab in this case?” The forensic scientist answered that “there was a major DNA profile that did not match Mr. Miller.” Thus, as a result of this unobjected-to testimony, the jury learned that the DNA found on J.M.’s breast swab was not Miller’s and belonged to someone else.

Still, Miller argues that the forensic scientist’s testimony did not cure the district court’s error because he was prevented from challenging J.M.’s credibility. According to Miller, J.M. lied when she indicated that only Miller’s saliva would be found on her “chest area.” Miller claims that his attorneys should have been allowed to cross-examine J.M. about the breast-swab evidence and her recorded statement because the evidence tends to prove her propensity to fabricate the allegations against Miller. The state counters that

J.M.'s recorded statement only proves "when J.M. showered relative to sexual contact with someone else," or "how well she showered," but it does not show her propensity to make a false allegation.

Caselaw supports Miller's claims that "[a]ny evidence tending to establish a predisposition to fabricate a charge of rape should be admitted unless its potential for unfair prejudice outweighs its probative value." *State v. Kroshus*, 447 N.W.2d 203, 204 (Minn. App. 1989) (citing *State v. Caswell*, 320 N.W.2d 417, 419 (Minn. 1982)), *review denied* (Minn. Dec. 20, 1989). But Miller fails to articulate why J.M.'s consensual sexual contact with another male tends to prove that J.M. falsely accused Miller of criminal sexual conduct.

We agree with the state that J.M.'s recorded statement had no probative value on her propensity to fabricate the allegations. J.M.'s recorded statement tends to prove that she misjudged whose saliva would be found on her body. The detective's line of questioning specifically related to when J.M. had last showered and when she had recently engaged in consensual sexual contact. Thus, J.M.'s statement to the detective only tends to prove, at most, that she was incorrect about the timing of recent intimate contact with another male.⁴

More importantly, if Miller had been allowed to introduce J.M.'s recorded statement along with the breast-swab evidence, then the jury would have received evidence about

⁴ Moreover, the DNA evidence found on the breast swab excluded J.M.'s boyfriend as a possible contributor. The detective specifically asked J.M. whether she had "showered since [*her*] boyfriend last . . . did something like that." Thus, the DNA analysis of the breast swab tends to prove that J.M. accurately answered the detective in this regard.

J.M.'s consensual prior sexual contact, which is not only irrelevant under rule 412, but also highly prejudicial. Thus, even if we assume the excluded breast-swab evidence and J.M.'s police statement were probative to impeach J.M.'s credibility, the probative value of the excluded evidence was substantially outweighed by its prejudicial effect. *See State v. Dornack*, 329 N.W.2d 839, 840 (Minn. 1983). Thus, the district court did not abuse its discretion by excluding the DNA evidence from the breast swab, nor by excluding J.M.'s recorded statement.

C. The exclusion of some DNA evidence from the mons pubis swab

Based on the exclusion of some of the DNA analysis of the mon pubis swab, which showed that another male's DNA was present in the sperm-cell fraction, Miller argues that "there were at least two sources of Y chromosomes other than [Miller]—from at least two different DNA profiles—found on [J.M.'s] body. Yet, [Miller] was not permitted to make this argument, which would tend to make [J.M.'s] version of events less likely." The state responds that (1) the DNA evidence was "not relevant to whether or not [Miller] had sexual contact with J.M.," (2) "the probative value of the evidence is so minimal that it is clearly outweighed by its prejudicial effect," or (3) that any error in its exclusion was harmless.

Miller's argument in support of the admission of the DNA evidence from the sperm-cell fraction relies on two cases, which bear little resemblance to his own case, but include some reasoning that Miller asks this court to follow. First, Miller relies on *Kroshus*, 447 N.W.2d at 205, where we stated, "[e]vidence tending to establish a source of knowledge of or familiarity with sexual matters may be admitted in cases where the jury might otherwise infer that the defendant was the source." Miller reasons:

Without allowing [Miller] to admit the full DNA analysis into evidence and use it to rebut the State's theory, the district court permitted the jury to "otherwise infer that the defendant was the source"—the only source—of the Y chromosome evidence found on the complainant's body and hobbled [Miller's] ability to challenge such inference.

Miller offers a strained analogy to *Kroshus*, where the other "source" is the "source of knowledge or familiarity with sexual matters," not the source of other physical evidence. 447 N.W.2d at 205 (emphasis added). In *Kroshus*, a jury found appellant guilty of criminal sexual conduct involving a victim with "the mental age of a 7-1/2 year old." *Id.* at 204. The jury heard the state's expert testify that the victim "was not capable of fabricating an intricate story of sexual abuse" and that she "was not educated about sexual matters." *Id.* at 205. The district court, however, excluded evidence that the victim had been previously sexually abused. *Id.* at 204. On appeal, this court determined that the district court erred because the excluded evidence "would tend to show that [the victim] had a source of sexual knowledge other than the incidents with" appellant. *Id.* at 205. But this court affirmed the conviction because the error was harmless beyond a reasonable doubt, given other strong evidence of appellant's guilt and the "detail and complexity" of the victim's testimony about appellant's conduct, which was "totally absent" from the earlier incident. *Id.*

Kroshus does not guide our analysis. J.M.'s knowledge of sexual matters was not in dispute, nor was J.M.'s consensual sexual conduct at issue. As the state notes, J.M. "did not testify, and the State did not argue, that [Miller] was the only person that she had any sexual contact with." The jury did not learn that J.M. was sexually active, nor did the state

suggest that she was not. Miller did not need to refute J.M.’s knowledge of sexual matters because it was never presented to the jury.

Miller also relies on *State v. Hagen*, which stated, “Where the defendant claims to have had no contact with the complainant, we do not think [the rape-shield rule] was intended to bar the admission of evidence which is directly relevant to negate the act with which the defendant is charged.”⁵ 391 N.W.2d 888, 891 (Minn. App. 1986), *review denied* (Minn. Oct. 17, 1986). Miller argues that because he testified that he had no sexual contact with J.M., “rape shield does not apply to bar admission of relevant evidence.”

In *Hagen*, the victim testified that shortly after her husband left for work, the appellant forced his way into her apartment and sexually assaulted her at knifepoint. *Id.* at 890. The victim “did not believe [the assailant] ejaculated because she was able to push him off.” *Id.* The victim reported the assault about two hours later. *Id.* During a sexual-assault examination, the victim stated that she had not had intercourse for twenty days, but a semen specimen was found. *Id.* BCA testing indicated that the appellant “was most probably not the depositor of the semen.” *Id.* After the victim told police that she had intercourse with her husband the night before the assault, “[f]urther testing revealed that her husband was also most probably not the depositor of the semen.” *Id.*

In response to charges of first-degree criminal sexual conduct, appellant moved to admit the results of the semen tests and the victim’s statements. *Id.* at 890-91. The trial court denied appellant’s motions. *Id.* at 891. When the state indicated it did not intend to

⁵ The rape-shield rule was then codified as Minn. R. Evid. 404(c)(1). The rule’s language did not differ in any material respect from Minn. R. Evid. 412.

offer the BCA tests, the district court ruled that “the jury should be informed” of the BCA test results, but precluded any cross-examination on the topic. *Id.* The prosecuting attorney called a BCA witness who testified that appellant was “most probably not the depositor of the semen.” *Id.* On appeal, we reversed the conviction and remanded for a new trial after determining that the excluded evidence was relevant to the fabrication defense. *Id.* at 891-92. Thus, we held that the district court erred because

under the facts of this case, the BCA tests, the complainant’s inconsistent statements, and proper cross-examination on the source of the semen limited to the morning during which the assault is alleged to have taken place is directly relevant to negate the act with which [appellant] is charged and that such evidence is not barred.

Id. at 892 (emphasis added).

The facts in *Hagen* are materially different from those in Miller’s case. Unlike the victim in *Hagen*, J.M.’s statements about the assault and her prior consensual sexual activity have been consistent throughout. J.M. informed police of her consensual sexual activity, including with her boyfriend and a second male. While J.M. consistently stated that Miller penetrated her digitally; she never stated that Miller ejaculated or deposited semen. Thus, while DNA analysis of the sperm-cell fraction proved that Miller was not a semen contributor, this evidence did not tend to prove any fact relevant to the alleged sexual conduct.

More fundamentally, Miller misapplies the court’s reasoning in *Hagen*, which stated that the rape-shield rule seeks “to limit evidence of the complainant’s unrelated prior sexual conduct.” *Id.* at 891. Miller essentially argues that whenever a defendant contends that a

victim's allegation of criminal sexual conduct is fabricated, rule 412 does not apply. This contradicts rule 412, which generally excludes evidence of a victim's prior sexual contact with others and allows the evidence for only limited purposes, such as when consent is a defense or the state offers evidence of semen, pregnancy, or disease. Minn. R. Evid. 412(1)(A), (B); *see also Crims*, 540 N.W.2d at 867. Here, Miller could not argue consent, and the state did not offer semen, pregnancy, or disease evidence. Thus, something more—such as the inconsistent statements of the victim in *Hagen*—is needed to overcome rule 412's general prohibition.

In sum, the district court did not abuse its discretion by excluding the DNA evidence from the mons pubis swab to prove an alternative source of the Y chromosome. Moreover, when the probative value of the excluded DNA evidence is weighed against the potential for unfair prejudice of disclosing to the jury that another male's DNA was found in J.M.'s mons pubis area, we conclude that the district court did not abuse its discretion by excluding this evidence.

D. Constitutional analysis

Miller also argues that “at no point did the district court consider [Miller's] constitutional rights and balance them against rules 403, 412, and Minn. Stat. § 609.347.” The record does not support Miller's position. The district court stated that it did “understand that [Miller] has his due process and constitutional right[s].” The district court then concluded that the disputed DNA evidence did not tend to prove any fact relevant to Miller's defense—it did not provide evidence of J.M.'s credibility because she told police about her sexual partners, and it did not offer an alternative explanation for the

Y-chromosome analysis. Based on this reasoning, the district court determined there was “no conflict” between rule 412 and Miller’s constitutional rights. Thus, the district court considered Miller’s constitutional rights before making its pretrial ruling. While a more detailed explanation would have helped our review, caselaw does not require it.

E. Prejudicial effect of any error

Even if we assume that the district court abused its discretion by excluding the DNA evidence, we must then determine whether the error was harmless beyond a reasonable doubt. “[T]he reviewing court must be satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, an average jury (*i.e.*, a reasonable jury) would have reached the same verdict.” *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994) (footnote omitted). When determining whether any error was harmless, we consider the strength of the state’s case. *State v. Larson*, 389 N.W.2d 872, 875 (Minn. 1986). We first discuss the breast-swab evidence and J.M.’s related statement to police, then the mons-pubis-swab evidence.

The district court’s exclusion of the breast-swab evidence and J.M.’s recorded statement was harmless beyond a reasonable doubt for three reasons. First, during testimony, the forensic expert testified that Miller’s DNA was not found on the breast swab. So the evidence came in despite the district court’s ruling.

Second, the state presented a strong case that J.M.’s allegations were genuine. J.M. reported the offense quickly and consistently relayed what happened. In contrast, Miller offered no evidence in support of his claim that J.M. fabricated the allegations apart from his own attorney’s argument that J.M. wanted “to move out of her father’s home.” In fact,

other evidence contradicted Miller's fabrication theory. Not only did Miller obtain a court order giving him full custody of J.M. on the same day as the assault, but also J.M. testified that she felt "good" about Miller having full custody, that they had a "good" relationship, and that she wanted Miller to have full custody over her.

Third, Miller was able to cross-examine the state's witnesses, and attacked J.M.'s credibility. We recognize that Miller had a right to challenge J.M.'s allegations and we conclude that his constitutional rights were vindicated through his attorney's cross-examination of the state's witnesses. For example, Miller challenged J.M.'s credibility during her cross-examination by questioning her about living with Miller and she agreed that Miller's rules were stricter than her mother's rules. When cross-examining the forensic scientist, Miller elicited, without objection, that DNA was found on the breast swab and the DNA did not match Miller. Yet the jury received other evidence in support of J.M.'s allegations and found Miller guilty of fourth-degree criminal sexual conduct. Thus, had the jury received additional DNA evidence from the breast swab, it would have reached the same result.

We reason similarly about the excluded mons-pubis-swab evidence. Miller argues that given his acquittal for third-degree criminal sexual conduct, he would have also been acquitted of fourth-degree criminal sexual conduct had the district court admitted the full DNA evidence from the mons pubis swab. We disagree based on the state's strong case for Miller's guilt.

First, J.M.'s report of Miller's criminal sexual conduct was immediate and consistent. Shortly after the assault, J.M. escaped to a bathroom, disclosed the assault to a

friend in detailed text messages, and then fled the home. J.M.'s account of the assault did not vary in response to repeated questioning by the police, the forensic nurse, or during trial.

Second, J.M.'s demeanor corroborated her account of the assault. Both the forensic nurse and detective who interviewed J.M. testified that J.M. was visibly distraught as she recounted what happened. J.M.'s trial testimony, which was also emotional even though it occurred more than a year after the assault, offered the jury an opportunity to assess the genuineness of J.M.'s reaction.

Third, the record includes Miller's text exchanges with J.M. on the night of the incident, and this evidence contradicts his statements to law enforcement. Miller initially told investigators that he woke up in the middle of the night, discovered J.M. was gone, texted her that she "can't just leave whenever [she] want[s]," and went back to bed. The actual text messages from Miller's cell phone, however, do not support his statement to police. Rather, Miller sent J.M. a series of texts beginning about 11:12 p.m., asking her to "come inside," stating he was "really freaking out" and "feeling pretty f--king terrible," and asking J.M. to "please come home."

Fourth, the DNA evidence from the mons pubis swab corroborates J.M.'s testimony. The forensic scientist's direct testimony establishes that the Y-chromosome profile found on the mons pubis swab would occur in a small portion of the Caucasian population—four percent. Miller testified that he did not have any family in Minnesota, thus, no male relative sharing his Y-chromosome profile lived in the area. Simply put, the Y-chromosome match

is very close, particularly given the record discloses that J.M.’s other sexual partners were not Miller’s relatives.

Fifth, the forensic scientist testified that J.M.’s DNA was found on both of Miller’s hands, with a major profile found on his right hand. While “the testimony of a victim need not be corroborated,” Minn. Stat. § 609.347, subd. 1, J.M.’s testimony was well supported by the record evidence. Thus, even if we assume that the district court abused its discretion by excluding the DNA evidence from the mons pubis swab, the jury would have reached the same result and the exclusion was harmless beyond a reasonable doubt.

We also note that the state did not unfairly present the DNA evidence that was received. Both parties highlighted the general limitations of Y-chromosome analysis—namely that “it’s not unique to one person but to a parental line.” Also, the forensic scientist, presumably unintentionally, diluted the weight of the Y-chromosome evidence. The scientist testified that the Y-chromosome profile was present in approximately four percent (one in 25) of the Caucasian population; but, according to the BCA report, the Y-chromosome profile was present in 0.040 percent (one in 2,488) of the Caucasian population. Importantly, in the state’s closing argument, the prosecuting attorney did not emphasize the DNA evidence, only discussing the Y-chromosome evidence in three paragraphs out of 22 total transcript pages of closing argument.⁶

⁶ Miller implies in a footnote that, during closing arguments, the state “arguably” violated the district court’s order by stating “[J.M.] was not living with other members of her family of the male line. . . . No one in that household is gonna have a Y chromosome.” Miller did not object to this statement, and does not claim prosecutorial misconduct. He also cites no legal authority. But from our review of the context of the state’s closing, it appears the

Thus, based on the strength of the state's case against Miller and the fairness with which the state presented the DNA evidence, we conclude that, even if the district court erroneously excluded a potential alternative source of the Y-chromosome profile, any error was harmless beyond a reasonable doubt.

Affirmed.

statement references only that J.M.'s brothers did not live with her and Miller. Thus, the prosecuting attorney did not assert that J.M. lacked prior sexual experience.