

*This opinion is nonprecedential except as provided by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
A20-0673**

State of Minnesota,
Respondent,

vs.

Linden Gene McKinney,
Appellant.

**Filed April 26, 2021
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-CR-19-3335

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Jeffrey A. Wald, Assistant
County Attorneys, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Larkin, Judge; and Cochran,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct,
assigning error to the district court's admission of relationship evidence under Minn. Stat.

§ 634.20 (2018), allowance of expert testimony, and exclusion of evidence supporting his theory of the case. He also argues that the jury pool did not reflect a fair cross-section of the community. We affirm.

FACTS

Respondent State of Minnesota charged appellant Linden McKinney with one count of first-degree criminal sexual conduct and one count of third-degree criminal sexual conduct. The complaint alleged that after C.L. ended her six-year relationship with McKinney, McKinney sexually assaulted her when he came to her home to pick up his belongings.

The state presented evidence at trial that C.L. began dating McKinney in 2012. In February 2018, the couple had a child together. C.L. testified that the relationship was “rocky,” that McKinney was verbally and physically abusive, and that the abuse increased over time. She described several incidents in which McKinney punched, strangled, kicked, and stomped on her. C.L. also testified McKinney pushed her through a window in April 2019.

C.L. testified that she broke up with McKinney in April 2019, but she told him that “he could basically stay [with her] to watch the baby and get on his feet.” On May 4, 2019, C.L. and McKinney argued and then engaged in consensual sexual activity. The next morning, the two argued again. According to C.L., McKinney choked her until she “felt [her] body just go limp.”

C.L. claimed that the fighting woke up the baby, prompting McKinney to “allow[]” her to change the baby and make the baby breakfast. According to C.L., McKinney told

her that he was “going to hold [her] hostage all day” and make her take three ecstasy pills. C.L. testified that as she was making the baby breakfast, McKinney spit on her “two to three times . . . in the face,” and tried to break her cell phone.

C.L. testified that after she changed and fed the baby, she called her sister “to get her to the house because I knew if I could get her to the house, I could let her know that something was going on and get us out.” C.L. also testified that, after she called her sister, McKinney “basically lets me know that we’re about to have sex and asks if I’m going to cooperate or if he needs to drug me.” According to C.L., McKinney then straddled her, put his penis in her mouth, and eventually ejaculated in her mouth. C.L. stated that McKinney then had vaginal sex with her and, after she started crying, he put a pillow over her head and threatened to drug her. C.L. further testified that she did not want to have sex with McKinney and that “[h]e knew that.” C.L. denied consensually engaging in rough sexual activity with McKinney.

After McKinney finished, he put a Taser on the bed between them so that C.L. would not leave. When McKinney fell asleep, C.L. took the baby and ran down the street towards her mother’s house. C.L. called her sister on the way and told her that she needed to be picked up before McKinney caught her and killed her. Around this time, C.L.’s mother called C.L., and C.L. told her mother that McKinney “raped me and tried to kill me.”

C.L.’s sister found C.L. and the baby and drove them to their parents’ house. C.L. then called 911 and reported that McKinney had raped and strangled her. Officer Ilya Tereshko responded to the call. C.L. told the officer that she and McKinney had an

argument that culminated in McKinney choking her, threatening to drug her, and then making her have oral and vaginal sex with him. As C.L. spoke with Officer Tereshko, McKinney sent C.L. a message stating: “Dam U got away.”

Police went to C.L.’s residence, where they found McKinney hiding under the bed. McKinney was arrested and, as he was transported to jail, he told Officer Tereshko that he had argued with C.L. the night before and that he choked C.L. while having “rough” make-up sex that morning. McKinney told the officer that it was “not unusual” for them to have “rough sexual intercourse” and that C.L. “frequently” requests to be choked during sex. During an interview with investigators the next day, McKinney reasserted that he and C.L. had consensual “rough make-up sex” on May 5.

C.L. was examined by a sexual assault nurse examiner (SANE). The SANE testified that during the examination, C.L. described prior incidents of domestic abuse that culminated with the events that occurred on May 5. The SANE further testified that C.L. described the events on May 5, which include McKinney strangling C.L. and later forcing her to engage in oral and vaginal sex.

The state presented evidence that, after McKinney was charged with criminal sexual conduct, the district court issued a no-contact order prohibiting him from contacting C.L. The state also introduced evidence that, despite the existence of the no-contact order, McKinney repeatedly called and exchanged electronic messages with C.L. During those exchanges, McKinney admitted that he “made a mistake” and stated that he was “probably going to get hung.” He begged for C.L.’s forgiveness, asked C.L. to change her story, and threatened C.L. if she were to testify against him. Moreover, in one of the phone calls,

McKinney told C.L.: “I am asking you to straight flat out lie, let’s be honest because what I did was straight out rape. What I did, abuse. What I did was disrespectful and so many other things.” In another call with C.L., McKinney stated: “Linden Gene McKinney raped you,” and “I raped [C.L.] in front of our son.” During the same call, McKinney stated: “I’m going to say it again out loud . . . so I can help incriminate myself. Linden Gene McKinney . . . raped [C.L.] on May 5, 2019, which is, and he spit on her, he did all the things that those two investigators, he did everything that they said he did.”

McKinney testified that he had a “rocky” relationship with C.L. and acknowledged being “physical” with C.L. in the past, but he denied that he had ever abused her. McKinney also testified that he and C.L. engaged in consensual, rough sex that involved hair pulling, biting, and choking. He claimed that C.L. would pretend to be his “sex slave.” McKinney denied ever choking C.L. “outside of a sexual encounter.”

McKinney testified that on the night of May 4, he and C.L. engaged in consensual sex that was “on the rougher end” and that the two engaged in sex again the next morning. According to McKinney, C.L. later “flip[ped] out” after he told her that he had received a “blow job at work” from a coworker. McKinney testified that he told C.L. that he was joking and that the two had consensual, rough “make-up sex,” which included both oral and vaginal sex. McKinney stated that when they were done, he fell asleep, and woke up to find C.L. gone.

McKinney denied spitting on C.L., threatening to drug her, or putting a Taser on the bed. But he admitted that he lied to police about sending the message: “Dam U got away.” He claimed that the message was an “insider joke” referencing their “role-playing.”

McKinney also admitted that he tried to persuade and frighten C.L. into retracting what he claimed were false allegations of sexual assault. Evidence was presented that C.L. told McKinney that she would do what she could to help him avoid going to prison.

The jury found McKinney guilty as charged. The district court sentenced McKinney to 208 months in prison and ten years of conditional release for the first-degree criminal-sexual-conduct offense. McKinney appeals.

DECISION

I.

McKinney contends that the district court erred by admitting, under Minn. Stat. § 634.20, evidence regarding McKinney and C.L.’s six-year relationship. A district court’s evidentiary ruling is reviewed for an abuse of discretion. *State v. Nunn*, 561 N.W.2d 902, 906-07 (Minn. 1997).

Prior to trial, the state moved to introduce evidence “regarding the history of the relationship” between C.L. and McKinney to provide “context” regarding why the charged incident occurred. The district court, over McKinney’s objection, ruled that the relationship evidence was admissible under Minn. Stat. § 634.20, because it was “relevant to provide a context of their relationship.” The district court repeatedly instructed the jury regarding the proper use of the relationship evidence. The court provided those instructions three times during C.L.’s testimony, prior to her testimony describing specific incidents of abuse, and again before closing arguments.

Minn. Stat. § 634.20 is a rule of evidence that allows for the admission of evidence of domestic conduct by the defendant against the victim or other family or household

members. *State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015). The statute provides that “[e]vidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice.” Minn. Stat. § 634.20. “Domestic conduct” includes, among other things, “evidence of domestic abuse.” *Id.* “Domestic abuse” includes “physical harm, bodily injury, or assault,” if committed against a family or household member. Minn. Stat. § 518B.01, subd. 2(a)(1) (2018); *see also* Minn. Stat. § 634.20 (incorporating that definition of domestic abuse).

McKinney argues that the district court abused its discretion by admitting evidence regarding his prior abuse of C.L. because the probative value of that evidence was substantially outweighed by the danger of unfair prejudice. Specifically, he argues that the relationship evidence “had little probative value because the state did not need the evidence.” McKinney also argues that the evidence had little probative value because the “only disputed issue of consequence . . . was whether [C.L.] consented to having rough sex with McKinney” on the date of the alleged sexual assault, and the “extensive testimony detailing their six-year relationship” does not make it more likely that a sexual assault occurred.

“[T]he rationale for admitting relationship evidence under section 634.20 is to illuminate the relationship between the defendant and the alleged victim and to put the alleged crime in the context of that relationship.” *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010). Relationship evidence “is relevant because it illuminates the history of the relationship between the victim and

defendant and may also help prove motive or assist the jury in assessing witness credibility.” *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010) (quotation omitted). Relationship evidence under section 634.20 involving a family or household member has a high probative value because it demonstrates how the defendant interacts with people close to him. *State v. Ware*, 856 N.W.2d 719, 729-30 (Minn. App. 2014).

In this case, the relationship evidence provided context for the alleged offense. That context was relevant because the jury heard that even though C.L. had broken up with McKinney, she had consensual sex with him the night before the charged offense. The jury also heard that even though C.L. had accused McKinney of sexual assault, she continued to communicate with him. As McKinney acknowledges, this was a he-said-she-said case. Evidence regarding the nature of the parties’ relationship helped explain C.L.’s conduct before and after the sexual assault, which was relevant to an assessment of her credibility. Although McKinney asserts that the “state did not need the evidence” because its case against McKinney was strong, the relationship evidence was highly probative because it assisted the jury in evaluating the parties’ credibility.

McKinney argues that, in light of the “sheer quantity of relationship evidence,” any probative value of this evidence was substantially outweighed by the danger of unfair prejudice. But “unfair prejudice is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage.” *Id.* at 729 (quotation omitted). And the danger of unfair prejudice is low when the district court provides a limiting instruction to the jury. *Id.* at 730.

We acknowledge that the relationship evidence was prejudicial to McKinney's case; all damaging evidence is. But McKinney fails to establish that the evidence persuaded by illegitimate means or gave the state an unfair advantage. Moreover, the district court repeatedly instructed the jury regarding the limited use of the relationship evidence, which mitigated the danger of unfair prejudice. *See id.* Given the probative value of the relationship evidence and the district court's provision of limiting instructions regarding the proper use of that evidence, we conclude that the relationship evidence did not persuade by illegitimate means. In sum, the district court did not abuse its discretion by admitting the relationship evidence.

II.

McKinney contends that the district court erred by allowing the SANE to provide expert testimony about "the cycle of domestic abuse, the correlation between domestic abuse and sexual assault, and the 'Power and Control Wheel.'" A district court's decision to admit expert testimony is reviewed for an abuse of discretion. *State v. Garland*, 942 N.W.2d 732, 742 (Minn. 2020). A defendant challenging the admission of evidence must show that the district court abused its discretion and that he was prejudiced as a result. *Nunn*, 561 N.W.2d at 907.

Prior to trial, the state noticed its intent to elicit testimony from the SANE describing the cycle of domestic abuse, the correlation between domestic abuse and sexual assault, and the "Power and Control Wheel." The district court, over McKinney's objections, ruled that the SANE's testimony was admissible, with some limitations.

The SANE testified that domestic abuse involves a recurring cycle of violence that can overlap with sexual assault. She also testified about the “Power and Control Wheel” that therapists use to educate domestic-assault victims about how abusers use isolation, money, abuse, children, and guilt to control their victims. And the SANE described how the brain works when a person experiences a traumatic event.

Minnesota Rule of Evidence 702 governs the admissibility of expert testimony. Under that rule, “expert testimony is admissible if: (1) the witness is qualified as an expert; (2) the expert’s opinion has foundational reliability; (3) the expert testimony is helpful to the jury; and (4) if the testimony involves a novel scientific theory, it satisfies the *Frye-Mack* standard.” *Garland*, 942 N.W.2d at 741-42 (quotation omitted).

McKinney argues that the state failed to show that the first three prongs are satisfied. He also contends that he was prejudiced by the erroneous admission of this evidence. We address each argument in turn.

The SANE’s Qualifications as an Expert

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. An expert’s qualifications are not required to stem solely from formal training, but the expert’s 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 expert testimony. *State v. Helterbride*, 301 N.W.2d 545, 547 (Minn. 1980).

McKinney acknowledges that the SANE’s “education and experience qualify her to testify about nursing and proper forensic interviewing techniques.” (Emphasis omitted.) But McKinney argues that, because she is not a doctor, psychologist, or psychology professor, the SANE’s testimony improperly “delved into social science theories about domestic abuse and domestic abusers, correlations between domestic abuse and sexual assault, and the workings of the brain.”¹

Although the SANE was not a doctor or psychologist, McKinney cites no case indicating that only doctors and psychologists are qualified to testify about the psychological aspects of domestic abuse. Indeed, the SANE testified that she received specialized training to become a SANE; that the training includes “trauma training,” involving how the trauma affects the brain; that the training is “ongoing”; and that she has performed over 400 sexual-assault examinations. The SANE also described how the trauma training applies to her work. Thus, the record supports the district court’s determination that the SANE was qualified to testify about the psychological aspects of domestic abuse.

¹ The state asserts that McKinney forfeited this argument by generally objecting to the SANE’s qualifications prior to trial and then failing to make specific challenges to the SANE’s qualifications at trial. *See State v. Tovar*, 605 N.W.2d 717, 726 (Minn. 2000) (stating that, in general, only “clear and specific objections raised before the district court” will preserve the issue of admissibility of evidence for appeal). Before trial, McKinney specifically challenged the SANE’s qualifications to testify about the psychological aspects of domestic abuse, arguing that the SANE was not a psychologist and did not have training in that area. At trial, McKinney repeatedly objected to the SANE’s testimony related to the psychological aspects of domestic abuse. We are satisfied that McKinney preserved the issue for appellate review.

Foundational Reliability

“When determining whether an opinion is foundationally reliable under Rule 702, the district court must analyze the proffered testimony in light of the purpose for which it is being offered and consider the underlying reliability, consistency, and accuracy of the subject about which the expert is testifying.” *Garland*, 942 N.W.2d at 742 (quotation omitted). The standard for foundational reliability “goes beyond a mere helpfulness standard.” *Id.* (quotation omitted). Rather, foundational reliability “is a concept that looks to the theories and methodologies used by an expert.” *Id.* (quotation omitted).

Here, the SANE testified that domestic abuse involves a recurring cycle of violence that can overlap with sexual assault. She also testified that sexual-assault victims describe their assaults inconstantly and in sensory terms because of the way the brain works when a person is experiencing trauma.

McKinney argues that this testimony lacked foundational reliability because the state presented no evidence from which the district court could independently assess the reliability of the SANE’s assertions.² We agree. The SANE did not cite support for her testimony that domestic abusers sexually assault their victims, and the state presented no evidence to support that theory. The SANE also did not cite scientific data to support her opinion related to the effects of domestic abuse on domestic-abuse victims’ brains. Given

² The state again asserts that such arguments are forfeited because McKinney’s objections at trial were not specific. But the record reflects that prior to trial, McKinney specifically challenged the foundational reliability of the SANE’s testimony as it pertained to the percentage of domestic abusers who sexually assault their victims. And McKinney repeatedly objected to the SANE’s testimony at trial on the basis of foundation. Once again, we are satisfied that McKinney preserved the issue for appellate review.

the lack of evidence regarding the theories and methodologies on which the SANE relied, the SANE's testimony that domestic abuse overlaps with sexual assault lacked foundational reliability.

Helpfulness of the SANE's Testimony

"Expert testimony is not helpful if the expert opinion is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury's ability to reach conclusions." *Id.* at 746 (quotation omitted). Stated differently, "if the jury can reach an informed conclusion just as easily as the expert, the expert's testimony is not helpful to the jury." *Id.*

McKinney argues that the SANE's testimony about the "Power and Control Wheel," the recurring "cycle of abuse," and the correlation between domestic abuse and sexual assault, was not helpful because it focuses on the characteristics of a domestic abuser and how domestic abusers behave. McKinney argues that this evidence is akin to improper character evidence because it suggests that domestic abusers are the type of people who are likely to commit sexual assault.

To support his position, McKinney relies on *State v. Williams*, 525 N.W.2d 538 (Minn. 1994). In that case, police officers testified regarding the typical behavior of drug couriers, including the manner in which they purchase tickets for travel, the cities from which they depart, and other typical travel behaviors. *Williams*, 525 N.W.2d at 548. The supreme court compared this profile evidence to evidence of typical characteristics of child abusers. *Id.* The supreme court observed that such evidence is similar to character evidence because it invites the jury to infer that, if the defendant's conduct fits the profile,

then it is probative evidence that he is a drug courier. *Id.* at 547-48. Thus, the supreme court concluded that police testimony regarding the typical behavior of “most drug couriers” was “clearly and plainly inadmissible.” *Id.* at 548.

Here, the SANE’s testimony about the correlation between domestic abuse and sexual assault is akin to the improper character evidence discussed in *Williams*. The SANE testified that “most often when it’s someone who is a victim of . . . domestic violence” there may “be an overlap of sexual assault as well.” That testimony effectively profiled domestic abusers as perpetrators of sexual assault and invited the jury to infer that, if McKinney fit the profile of a domestic abuser, he likely committed the sexual assault. Under *Williams*, such testimony constitutes improper character evidence.

However, the SANE’s testimony about the “Power and Control Wheel” and the reoccurring cycle of abuse was not character evidence. Instead, it focused on the characteristics of abusive relationships and helped explain C.L.’s conduct to the jury. Specifically, the SANE’s testimony about the “Power and Control Wheel” and the recurring cycle of abuse helped explain why C.L. continued in a relationship with McKinney despite his abuse, why she had consensual sex with McKinney the night before the sexual assault, and why she continued to communicate with McKinney after the sexual assault. Thus, the district court did not err by admitting the SANE’s testimony about the “Power and Control Wheel” and the reoccurring cycle of abuse.

Prejudice

Having concluded that the district court improperly admitted the SANE’s testimony about the correlation between domestic abuse and sexual assault, we consider the issue of

prejudice. McKinney argues that he is entitled to a new trial because there is a reasonable possibility that the SANE's "improper testimony substantially influenced the jury to convict." When an alleged error does not implicate a constitutional right, the defendant must prove "there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011) (quotations omitted). In determining whether the erroneously admitted evidence significantly affected the verdict, we consider whether the district court gave a limiting instruction, whether the state dwelled on the evidence in the closing argument, and whether the evidence of guilt was overwhelming. *State v. Benton*, 858 N.W.2d 535, 541 (Minn. 2015).

Here, although the prosecutor referenced C.L.'s testimony in closing arguments, the evidence against McKinney was overwhelming. C.L. testified in detail regarding the events of May 5, including the alleged sexual assault. Moreover, testimony from several other witnesses, including C.L.'s mother, sister, and responding officers, showed that C.L.'s description of the offense never changed. Evidence was also admitted showing that McKinney repeatedly contacted C.L., asked her to lie about the events of May 5, and threatened her if she did not change her story. Additionally, in the recorded telephone conversations between McKinney and C.L., McKinney never denied raping her and repeatedly apologized for his actions. In fact, in one of the recorded phone calls, McKinney told C.L.: "I am asking you to straight flat out lie, let's be honest because *what I did was straight out rape*. What I did, abuse. What I did was disrespectful and so many other things." (Emphasis added.) And in another recorded phone conversation, McKinney

repeatedly admitted to C.L. that he raped her. Thus, even though the district court erred by allowing some of the SANE's testimony, McKinney fails to establish that the wrongfully admitted evidence significantly affected the verdict. He therefore is not entitled to a new trial based on the district court's error.

III.

McKinney contends that the district court violated his constitutional right to present a complete defense by excluding evidence that C.L. falsely accused another individual, K.J., of sexual assault and sent messages to a different individual, J.E., stating her desire to engage in rough oral sex. McKinney argues that because this error was prejudicial, he is entitled to a new trial.

A criminal defendant has a constitutional right to "a meaningful opportunity to present a complete defense." *California v. Trombetta*, 467 U.S. 479, 485, 104 S. Ct. 2528, 2532 (1984). That right encompasses, among other things, "the right to present the defendant's version of the facts . . . to the [fact-finder] so it may decide where the truth lies." *Washington v. Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 1923 (1967). But in presenting a defense, the defendant "must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S. Ct. 1038, 1049 (1973). Evidentiary rulings will not be reversed absent a clear abuse of discretion. *Nunn*, 561 N.W.2d at 906-07.

K.J.'s Testimony

In a criminal-sexual-conduct trial, admission of evidence of a victim's prior sexual conduct is governed by Minnesota Rule of Evidence 412, commonly known as the rape-shield rule. Under this rule, "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, except by court order" under the rule's procedure. Minn. R. Evid. 412(1). Prior sexual conduct includes making prior allegations of sexual abuse. *State v. Kobow*, 466 N.W.2d 747, 750 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991).

A defendant's constitutional right to present a complete defense creates an exception to the rape-shield rule. *See State v. Goldenstein*, 505 N.W.2d 332, 340 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993). As this court explained in *Goldenstein*, evidence of a prior *false* accusation by an alleged victim of sexual abuse is admissible both to attack the credibility of the complainant and as substantive evidence tending to prove that the current offense did not occur. *Id.* Nonetheless, the admission of a prior false accusation is predicated upon the district court's threshold determination that "a reasonable probability of falsity exists." *Id.* The district court also must determine whether the probative value of the evidence of a victim's sexual conduct is substantially outweighed by its inflammatory or prejudicial nature in order to be admitted. Minn. R. Evid. 412(2)(C).

The district court allowed K.J. to testify that C.L. had a reputation for untruthfulness, but the court did not allow him to testify that C.L. had falsely accused him of rape. In doing so, the district court reasoned that McKinney failed to show a reasonable probability that C.L. had falsely accused K.J. of sexual assault. The district court explained

that the proffered evidence presented a he-said-she-said situation because there was no evidence, other than K.J.'s assertion, that C.L. falsely accused K.J. of rape.

McKinney assigns error to that reasoning, arguing that the district court's use of a reasonable-probability-of-falsity standard was incorrect because in *State v. Caswell*, the supreme court only required a showing that the evidence "tend[ed] to establish" a predisposition to fabricate. 320 N.W.2d 417, 419 (Minn. 1982). However, in *Caswell*, the complainant admitted that she had falsely accused someone of sexual assault. *Id.* C.L. has not made such an admission here. Moreover, the district court's reasoning satisfied both standards: McKinney did not present evidence establishing a reasonable probability that C.L.'s sexual-assault accusation against K.J. was false or that C.L. was predisposed to fabricate such an accusation.

The district court also reasoned that the admission of the evidence would prolong the trial and confuse the jury. See Minn. R. Evid. 403 (stating that 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"). The district court explained that a "mini-trial" within the trial would be necessary to determine whether C.L. had falsely accused K.J. of sexual assault. Given the lack of evidence supporting K.J.'s assertion that C.L. had falsely accused him of sexual assault, the district court's reasoning is sound. In sum, McKinney does not persuade us that the district court abused its discretion by excluding evidence that C.L. falsely accused K.J. of sexual assault.

Text Messages to J.E.

McKinney also challenges the district court's exclusion of text messages C.L. sent to J.E., in which she described her desire to engage in fellatio with J.E. The district court allowed McKinney to question C.L. about "the nature of th[e] communications" with J.E., but the court excluded the substance of the messages. The district court based its exclusion on Minn. R. Evid. 412.

Generally, in a prosecution for 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." Minn. R. Evid. 412(1). But when the victim's consent is a defense, evidence of the victim's prior sexual conduct "tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue" may be admissible. *Id.*, (1)(A)(i).

McKinney argues that rule 412 is inapplicable because he was not seeking to introduce evidence of C.L.'s "previous sexual conduct." He describes the proffered text messages as evidence of C.L.'s "desire to engage in a particular type of sexual conduct in the future." McKinney alternatively argues that if rule 412 applies, C.L.'s messages to J.E. fall within the rule's exception for evidence tending to establish a common scheme or plan. Specifically, McKinney argues that "C.L.'s messages . . . tend to establish a 'plan' on her part to engage in the very type of sexual conduct she claimed she had not, would not, and did not willingly partake in with McKinney." McKinney further argues that "[t]he messages undermined C.L.'s credibility because they demonstrate she was being untruthful and misleading the jury about the nature of her and McKinney's sexual relationship and

her interest in rough, submissive sex” and provided “substantive support for McKinney’s claim that C.L. willingly engaged in rough sex with him.”

We have reviewed the proffered text messages, and we are not persuaded that they describe the type of consensual “rough, submissive sex” that McKinney described, and C.L. denied, at trial. Although the text messages are graphic, they do not express a willingness to engage in the type of sexual activity that McKinney attributed to C.L. Specifically, C.L.’s text messages did not indicate a desire to engage in hair pulling, biting, and choking. Thus, the messages were not relevant for impeachment, and they do not fall within rule 412’s exception for evidence tending to establish a common scheme or plan. The district court therefore did not abuse its discretion by excluding the substance of the proffered text messages.

Moreover, even if the exclusion were error, McKinney would not be entitled to a new trial if the error was harmless beyond a reasonable doubt. *See State v. Johnson*, 915 N.W.2d 740, 745 (Minn. 2018) (stating that if an alleged error is constitutional in nature, the state must prove that the error was harmless beyond a reasonable doubt). “For an error to be harmless beyond a reasonable doubt, the State must show that the verdict was surely unattributable to the error.” *Id.* (quotations omitted). A new trial is not required if an appellate court is “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).

The state argues that the exclusion was harmless beyond a reasonable doubt, based on the “very strong” evidence of guilt. We agree. Given the evidence that McKinney repeatedly contacted C.L. after the sexual assault and made several statements acknowledging guilt—including his statement that “I am asking you to straight flat out lie, let’s be honest because what *I did was straight out rape*,”—we cannot say that the jury would have reached a different verdict if the damaging potential of the excluded evidence had been fully realized. (Emphasis added.)

IV.

McKinney contends that he is entitled to a new trial because the jury panel selected for his trial did not reflect a fair cross-section of the community. We review that claim de novo. *See State v. Griffin*, 846 N.W.2d 93, 99 (Minn. App. 2014), *review denied* (Minn. Aug. 5, 2014).

The United States and Minnesota Constitutions guarantee a criminal defendant the right to a jury pool that reflects a fair cross-section of the community. *See Taylor v. Louisiana*, 419 U.S. 522, 530, 95 S. Ct. 692, 697-98 (1975); *Williams*, 525 N.W.2d at 544. To make a prima facie showing that the jury venire did not reflect a fair cross-section of the community, a defendant must show “that the group allegedly excluded is a ‘distinctive’ group in the community, that the group in question was not fairly represented in the venire, and that the underrepresentation was the result of a ‘systematic’ exclusion of the group in question from the jury selection process.” *Williams*, 525 N.W.2d at 542 (quoting *Duren v. Missouri*, 439 U.S. 357, 364-67, 99 S. Ct. 664, 668-70 (1979)).

After the jury panel was identified, McKinney objected to the panel and requested a hearing to establish that “there is a systematic process within the State of Minnesota that works to not allow a proper representation of African-Americans on the jury pool.” The district court granted McKinney’s request for a hearing and, after that hearing, denied McKinney’s challenge to the jury panel.

Here, only two people in McKinney’s 40-person jury panel identified as Black, accounting for five percent of the pool. McKinney, who is Black, argues that this percentage fails to represent a fair cross-section of the community because a 2010 census shows that the overall percentage of eligible jurors in Ramsey County who are Black represent 9.34% of the county’s population. But McKinney fails to establish a *prima facie* case for relief because *Williams* requires a showing that “over a significant period of time—panel after panel, month after month—the group of eligible jurors in question has been significantly underrepresented on the panels and that this results from . . . unfair or inadequate selection procedures used by the state.” *Id.* at 543 (describing this showing as “key”).

Recently, the Minnesota Supreme Court noted that it had previously held, in *State v. Roan*, “that a jury selection system that ‘use[d] registered voters, driver’s licenses, and registered Minnesota identification card holders’ did not systematically exclude people of color.” *Andersen v. State*, 940 N.W.2d 172, 182 (Minn. 2020) (quoting *State v. Roan*, 532 N.W.2d 563, 569 (Minn. 1995)). The supreme court concluded that because the jury selection system used in *Roan* was the “same type of jury selection system” used in *Andersen*, the defendant’s right to a fair trial was not violated. *Id.*; see *State v. Willis*, 559

N.W.2d 693, 700 (Minn. 1997) (concluding that “[e]ven if appellant were to show the necessary underrepresentation, as a matter of law, he could not demonstrate that the underrepresentation resulted from the state’s procedures because in *Roan*, this court upheld the same Hennepin County selection process at issue here against a Sixth Amendment challenge”).

At the hearing on McKinney’s challenge to the jury panel, the Ramsey County jury coordinator testified that the Ramsey County master jury list is comprised of records from the Department of Public Safety, which include driver’s license records and state identification cards, as well as records from the Secretary of State, which include voter registration records. The Minnesota General Rules of Practice require that those sources be used when creating a master jury list for each county. See Minn. R. Gen. Prac. 806(b) (stating that “voter registration and drivers’ license list[s] for the county must serve as the [venire] source list”). The supreme court has held that the use of those sources to select a venire panel does not systematically exclude people of color. See *Andersen*, 940 N.W.2d at 182. Thus, the Ramsey County jury selection procedure complied with Minnesota law and did not systematically exclude people of color.

McKinney also fails to establish that there was a significant underrepresentation of Black jurors in Ramsey County over a significant period of time. As the state points out, the county jury coordinator testified that he only had specific data available for the time period between October 2018, and October 2019, and that he could not “say for sure” whether the percentage of African Americans in the master jury list in any year met or exceeded their proportional representation in the community. Moreover, no evidence was

presented showing the absence of alternative explanations for any underrepresentation, such as voluntary “no shows” or ineligibility for jury service. *See Griffin*, 846 N.W.2d at 101 (stating “[s]ystematic exclusion means that the underrepresentation is attributable to the juror-selection process and not alternative reasons such as individuals failing to show up for jury service”). In sum, McKinney fails to establish that he was denied his constitutional right to a jury pool that reflects a fair cross-section of the community.

Affirmed.