

*This opinion is nonprecedential except as provided by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
A20-0840**

State of Minnesota,
Respondent,

vs.

Roberto Limon,
Appellant.

**Filed May 17, 2021
Affirmed
Kalitowski, Judge***

Stearns County District Court
File No. 73-CR-18-6391

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

Janelle P. Kendall, Stearns County Attorney, Ole Tvedten, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Gäitas, Presiding Judge; Segal, Chief Judge; and
Kalitowski, Judge.

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KALITOWSKI, Judge

On appeal from his conviction of second-degree criminal sexual conduct, appellant argues that the district court abused its discretion by granting the state's motion to admit expert-witness testimony. Appellant made additional arguments in a pro se brief. We affirm.

DECISION

Appellant Roberto Limon argues that the district court abused its discretion by admitting expert testimony about common behaviors exhibited by adolescent victims of sexual assault. In a pro se supplemental brief, Limon asserts his innocence of the offense and claims that his attorney did not assist him properly.

I. The district court did not abuse its discretion by allowing the expert to testify about common behaviors of adolescent victims of sexual assault.

The admission of expert testimony “lies within the sound discretion of the [district] court.” *State v. Reyes*, 890 N.W.2d 406, 412 (Minn. App. 2017) (quoting *State v. Hall*, 406 N.W.2d 503, 505 (Minn. 1987)). The basic consideration in admitting expert testimony is whether it will be helpful to the jury. *Hall*, 406 N.W.2d at 505 (citing Minn. R. Evid. 702). But the probative value of even helpful expert testimony must be balanced against the danger of unfair prejudice, misleading the jury, or confusing the issues. Minn. R. Evid. 403. “The supreme court has held that some evidence of the reporting conduct of adolescent sexual-assault victims and their continued contact with the assailant may be

admissible, subject to the district court's discretion." *Reyes*, 890 N.W.2d at 412 (citing *Hall*, 406 N.W.2d at 506). Here, we conclude that this case is controlled by *Hall*.

In *Hall*, the defendant sexually assaulted a 14-year-old who was babysitting his children. 406 N.W.2d at 503-04. The complainant did not report the assault until one month after it happened, and she continued to babysit for the defendant during that time. *Id.* at 504. The state introduced testimony from an expert witness who testified that "one of the characteristics displayed by an adolescent sexual abuse victim is a delay in reporting," and "it is not uncommon for the victim to have continued contact with the assailant." *Id.* The supreme court concluded that "in cases where a sexual assault victim is an adolescent, expert testimony as to the reporting conduct of such victims and as to continued contact by the adolescent with the assailant is admissible in the proper exercise of discretion by the [district] court." *Id.* at 505.

Here, the state charged Limon with second-degree criminal sexual conduct involving multiple acts with his 13-year-old grandnephew in violation of Minn. Stat. § 609.343, subd. 1(h)(iii) (2016). Before trial, the state moved the district court to allow it to present expert testimony regarding "changes in adolescent victim behavior after a sexual assault, continued contact with a perpetrator, and delayed reporting." The district court heard from the parties and considered letter briefs on the admissibility of the proposed expert testimony. The district court granted the state's motion over the defense's objection.

At trial, the state called Mindy Mitnick to testify as an expert witness. She testified that she had never met Limon or the alleged victim, and that all she knew about the case was "the age of the alleged victim and the relationship with the alleged perpetrator."

Mitnick testified about the “counterintuitive behaviors” exhibited by adolescent victims of sexual assault, including continued contact with the perpetrator, a delay in reporting the assault, and not fighting back during the assault. With this background in mind, we turn to Limon’s specific arguments.

Limon argues that the district court abused its discretion by admitting the expert’s testimony because (1) the subject matter of her testimony concerned matters within the jury’s common understanding, and (2) her testimony improperly bolstered the credibility of the victim. We are not persuaded by either argument.

Expert testimony is governed by Minnesota Rule of Evidence 702, which provides in part:

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, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The opinion must have foundational reliability.

Under this 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 must satisfy the *Frye–Mack* standard.” *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). Limon challenges only the third prong—whether the testimony was helpful to the jury.

Expert testimony is helpful to the jury where the opinion is outside the common knowledge of a lay jury and the testimony adds “precision or depth to the jury’s ability to reach conclusions.” *Id.* (quotations omitted). Limon contends that because the child was

a teenager, he was able to coherently explain why he did not immediately come forward with his accusations and thus the expert testimony did not add to the jury's ability to reach conclusions. But the supreme court has recognized that the nature of "the sexual abuse of children places lay jurors at a disadvantage." *State v. Myers*, 359 N.W.2d 604, 610 (Minn. 1984). And the supreme court has specifically approved expert testimony to explain delayed reporting and continued contact with the perpetrator in the context of an adolescent victim of sexual assault. *Hall*, 406 N.W.2d at 505.

Here, the state called Mitnick to explain that adolescent victims of sexual assault may delay reporting and have continued contact with the abuser, and she explained victim-abuser relationship dynamics generally. This testimony assisted the jury in evaluating the credibility of the child and his parents in light of the delay in reporting the assault and continued reluctance to provide details. Because the supreme court has approved expert testimony relating to these issues and in this context, *id.*, Limon has not shown that the district court abused its discretion by admitting Mitnick's testimony.

Second, Limon argues that Mitnick's testimony improperly bolstered the child's credibility. We considered a similar argument in *Reyes*. 890 N.W.2d at 411. In *Reyes*, the state called an expert witness to testify about the "general characteristics of minor victims of sexual abuse." *Id.* We recognized that while the expert's testimony "may have had an indirect effect on the jury's evaluation of [the child victim's] credibility, that does not render the testimony inadmissible." *Id.* at 412. The question was whether the expert testimony would help the jury to understand the evidence. *Id.* And in this context, "providing 'relevant insight into the puzzling aspects of [a] child's conduct and

demeanor . . . is helpful and appropriate in cases of sexual abuse of children.” *Id.* (quoting *Myers*, 359 N.W.2d at 610).

Limon argues that the state used Mitnick to vouch for the victim’s credibility, citing *State v. Morales-Mulato*, 744 N.W.2d 679, 689 (Minn. App. 2008), *review denied* (Minn. Apr. 29, 2008). But in *Morales-Mulato*, the expert opined that the victim had been abused. 744 N.W.2d at 690. Here, Mitnick confined her testimony to the general characteristics of adolescent victims of sexual assault. She did not interview the child victim or his family, and she expressed no opinion as to their truthfulness or credibility. “Because the opinion testimony was limited to whether certain characteristics were common in cases dealing with the sexual abuse of adolescents,” *Reyes*, 890 N.W.2d at 413, Limon has not shown that the district court abused its discretion by admitting Mitnick’s testimony.

II. Limon does not make a legal argument that would entitle him to relief in his pro se supplemental brief.

In his pro se supplemental brief, Limon argues that (1) he is innocent of the offense and that his family falsely accused him to obtain a favorable immigration status; (2) he had difficulty communicating with his public defender; and (3) his civil rights were violated. The state contends that Limon waived these arguments for failure to adequately brief them. We agree.

“We deem arguments waived on appeal if a pro se supplemental brief contains no argument or citation to legal authority in support of the allegations.” *State v. Taylor*, 869 N.W.2d 1, 22 (Minn. 2015) (quotation omitted). We may, however, consider an allegation

of error where “a prejudicial error is obvious on mere inspection.” *Id.* (quotation omitted). On mere inspection, we discern no obvious error in any of Limon’s claims.

To the extent that Limon is arguing that he is innocent, he has not made a legal argument because he relies on the same defense that he presented at trial and that the jury rejected in finding him guilty. To the extent that Limon is arguing that he received ineffective assistance of counsel, he has not made a legal argument because he has not shown that his attorney’s performance fell below an objective standard of reasonableness or that there is a reasonable probability that the outcome of the proceeding would have been different but for his counsel’s alleged unprofessional errors. *See Chavez-Nelson v. State*, 948 N.W.2d 665, 671 (Minn. 2020) (articulating the two-pronged test for ineffective-assistance-of-counsel claims under *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)). And Limon does not explain why his civil rights were violated. He merely reasserts his claim of innocence, which was rejected by the jury.

In sum, Limon has not shown that the district court abused its discretion by admitting Mitnick’s expert testimony explaining common characteristics of adolescent victims of sexual assault. And Limon has not shown in his pro se supplemental brief that he is entitled to relief.

Affirmed.