

*This opinion is nonprecedential except as provided by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
A20-0955**

State of Minnesota,
Respondent,

vs.

Manuel Jesus Pomavilla,
Appellant.

**Filed June 7, 2021
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CR-19-18832

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

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

Kirk M. Anderson, Anderson Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Hooten, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal from final judgment of conviction on two counts of first-degree criminal sexual conduct, appellant argues that the district court erred by declining to conduct an *in camera* review of certain documents related to the victim and in admitting

recorded hearsay statements made by the victim in an investigatory interview. Because the district court properly exercised its discretion in declining to conduct *in camera* review and the recorded investigatory statements are nonhearsay and therefore appropriately admitted, we affirm.

FACTS

Appellant Manuel Jesus Pomavilla was found guilty of three counts of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1 (2008), after the victim reported being sexually abused by appellant. The victim alleged that appellant, who had at one time been the victim's babysitter and at a later time lived with the victim and the victim's mother in their apartment, had abused her numerous times over the course of several years since she was six years old.

Appellant filed a pretrial motion for an *in camera* review of certain records relating to the victim. Specifically, appellant requested review of child protection records relating to an alleged assault of the victim by a separate perpetrator in 2017, as well as records from the victim's counselor, psychiatrist, and school. Following appellant's arguments that the child protection reports could assist in an alternative-perpetrator defense and the other records could assist in undermining the victim's credibility as a witness, the district court denied appellant's motion to conduct an *in camera* review of the requested records.

During the jury trial and following the testimony of the victim, the district court allowed the playing of a recorded interview of the victim taken during the investigation into this matter at CornerHouse, during which the victim detailed her accusations of assault by appellant. Appellant objected to the admission of this recording as hearsay. The district

court found it to be admissible under numerous evidentiary rules, primarily as nonhearsay prior consistent statements, pursuant to Minn. R. Evid. 801(d)(1)(B).

The jury found appellant guilty on all three counts of first-degree criminal sexual conduct. The district court sentenced appellant to confinement of 216 months on count 1 and 144 months on count 2. Count 3 was dismissed as a lesser-included offense. This appeal follows.

DECISION

I. The district court properly exercised its discretion by declining to conduct an *in camera* review of the requested documents.

When a defendant requests confidential records, the district court may review such records *in camera* to balance the defendant's right to defend himself against the victim's right to privacy. *State v. Hokanson*, 821 N.W.2d 340, 349 (Minn. 2012); *see also State v. Paradee*, 403 N.W.2d 640 (Minn. 1987).¹ However, "*in camera* review is not a right." *Hokanson*, 821 N.W.2d at 349. To secure review "the defendant must first establish a plausible showing that the information would be both material and favorable to his defense." *Id.* (quotation omitted). A district court's denial of a motion for *in camera* review is reviewed for an abuse of discretion. *Id.* We review each set of records requested in turn.

A. Materials Relating to Prior Allegation of Sexual Abuse

Appellant sought records relating to an unrelated sexual assault incident alleged by the victim to have been committed by a separate individual in 2017. Appellant argues that

¹ That the records sought by appellant were confidential is not disputed.

these documents should have been reviewed because the victim “could be confusing her prior allegation of sexual abuse with her accusations against appellant,” supporting an “alternative perpetrator” defense. The district court declined to review any documents relating to this alleged incident, concluding that a separate instance of sexual assault would not support an alternate-perpetrator defense where, as here, “the alleged sexual abuse began in approximately 2010 and occurred repeatedly.”

The district court did not abuse its discretion by denying *in camera* review. The record belies appellant’s claim that the victim confused the prior perpetrator and abuse with appellant and the incidents of abuse by appellant. The victim testified regarding numerous incidents of abuse specifically committed by appellant, including assaults prior to and after appellant was residing with the victim and her mother. The victim’s testimony provided specific details establishing that appellant had, in situations and circumstances unique to appellant, sexually assaulted her over the course of a number of years and on multiple occasions. The specificity of the victim’s testimony, combined with the victim’s familiarity with appellant, as well as the fact that the assaults took place over many years—both before and after the other alleged assault—justifies the district court’s decision to decline *in camera* review. Given this, appellant failed to establish a “plausible showing” that the records requested would in fact contain evidence that the victim confused the two perpetrators. *See Hokanson*, 821 N.W.2d at 349.

B. Victim’s School, Counseling, and Psychiatric Records

Appellant sought records relating to the victim’s school, counseling, and psychiatric records. Appellant argues that any evidence relating to potential mental health or

emotional issues could relate to the victim's credibility or competency as a witness. The district court declined to review these records, concluding that appellant's request was "overbroad" and had "fail[ed]" to draw a specific nexus between this case and the conversations victim may have had with her psychiatrist or counselor."

Though a defendant need not provide conclusive proof that the confidential materials in question would certainly contain material and favorable evidence, the defendant must nevertheless establish a "plausible showing" that such evidence would exist. *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992) (quotation omitted). Appellant has provided *no* evidence that counseling or psychiatric records exist which would undermine the victim's credibility or competency. Appellant failed to meet his burden, and the district court did not abuse its discretion in denying *in camera* review.

II. The district court properly exercised its discretion to admit the CornerHouse interview.

Prior out-of-court statements, though often inadmissible as hearsay, may nevertheless be admissible if they are either (1) not offered for the truth of the matter asserted (i.e. are not hearsay), or (2) fall under one or more exceptions to the hearsay rule. Minn. R. Evid. 801-804, 807. The district court concluded that a recording of the victim's CornerHouse interview was admissible as "the vast majority" of the interview satisfied the prior consistent statement rule, Minn. R. Evid. 801(d)(1), as it contained prior statements that were consistent with the testimony given by the victim at trial.

"A defendant claiming error in the district court's reception of evidence has the burden of showing both the error and the prejudice resulting from the error." *Holt v. State*,

772 N.W.2d 470, 483 (Minn. 2009) (quotation omitted). “A determination that a statement meets the foundational requirements of a hearsay exception is reviewed for an abuse of discretion.” *Id.*

A prior out-of-court statement by a witness is not hearsay if:

- (1) The declarant testifies at trial and gives testimony consistent with a prior statement;
- (2) The declarant is subject to cross-examination regarding the prior statement;
- (3) The declarant’s credibility must have been challenged; and
- (4) The declarant’s prior statement is helpful to the trier of fact in evaluating credibility with regard to the challenged aspect.

State v. Farrah, 735 N.W.2d 336, 344 (Minn. 2007); Minn. R. Evid. 801(d)(1)(B). In effect, this rule allows for the introduction of prior statements in order to enhance the credibility of a witness whose credibility has been challenged. *Id.* Each requirement is analyzed below in turn.

1. Consistency of Prior Statements

Following the victim’s testimony and prior to its submission to the jury, the district court conducted a thorough examination of the contents of the CornerHouse interview, compared it to the testimony already given by the victim, and concluded that “the vast majority” of the statements in the recorded interview were prior consistent statements, as required by rule 801(d)(1)(B). Appellant argues that “the CornerHouse video was not entirely consistent with her trial testimony,” and, therefore, the evidentiary rule does not apply to allow its admission.

Though the recorded interview is not *identical* to the victim’s testimony at trial, it is clear that the victim’s testimony and the CornerHouse interview are “reasonably consistent,” and summarize and describe the same general sequence of events. *State v. Zulu*, 706 N.W.2d 919, 924 (Minn. App. 2005) (“The trial testimony and the prior statement need not be identical to be consistent, and admission of a videotaped statement that is reasonably consistent with the trial testimony is not reversible error.”) (citation and quotation omitted). These consistencies include repeated identification of appellant as the individual who sexually abused her on multiple occasions, her identification of specific incidents of sexual assault (including where and when the incidents occurred), and the victim’s general recitation of her relationship with appellant. Any inconsistencies, such as the victim describing her school life and hobbies, or providing slightly more or less detail when recounting certain events, are minor. The record supports the district court’s conclusion that “the vast majority” of the recorded interview contained prior consistent statements—this is sufficient under the prior-consistent-statement rule. *Id.*

2. Subject to Cross-Examination

The next requirement for admissibility of a prior consistent statement is that the declarant (i.e. the victim) was cross-examined regarding the statement in question. Minn. R. Evid. 801(d)(1)(B). Appellant does not contest, and it is clear from the record, that the victim was subject to extensive cross-examination regarding her statements.

3. Challenging of Victim's Credibility

The credibility of the declarant must also have been challenged in some way. *State v. Manley*, 664 N.W.2d 275, 288 (Minn. 2003). Appellant argues that this did not occur during his cross-examination. However, the record suggests otherwise.

In an attempt to attack her credibility, defense counsel asked the victim questions regarding other people who lived in the home with the victim, the victim's mother, and appellant, and whether she had informed them of the assaults. The victim confirmed that there were other people who lived with them, and defense counsel asked whether it was true that some of those people were "kind of close to [her] age living there." Defense counsel asked whether the victim "knew who those kids were" and asked if it was correct that "[the victim] never told any of the kids what was going on." The victim responded that she had "never" done so. Defense counsel then confirmed with the victim that she had not told her social worker for about a full year though she "felt close to [her social worker]" and "told her about other issues."

Defense counsel, referencing this testimony, again attacked the credibility of the victim during closing arguments. Defense counsel stated:

I would submit to you that it's odd that [the victim] never told her friends at school, never told her volleyball coaches, never told anybody in the house—her uncles, cousins, nieces, nephews—nobody. She told nobody about these allegations.

. . . .

I know—I think we all know that kids can become confused. They can lie. We don't have any specific psychiatric workup on [the victim]. But this case hinges on her testimony.

This was another clear challenge to the victim's credibility and connected directly to the line of questioning pursued on cross-examination.

In sum, it is clear from the record that defense counsel challenged the victim's credibility, attempting to cast doubt on the victim's allegations by highlighting the victim's failure to report the assaults immediately and the length of time it took victim to report the abuse despite other individuals being present who she could have told. This requirement of the rule is fulfilled.

4. Helpfulness to Trier of Fact

Finally, the prior statements must be "helpful to the trier of fact in evaluating the credibility of the witness." *Id.* Because the CornerHouse video clearly "corroborated [the victim's] in-court testimony with respect to those events" the video was helpful to the jury in judging the victim's credibility. *State v. Nunn*, 561 N.W.2d 902, 909 (Minn. 1997).

In sum, the record demonstrates that the statements in the interview were "reasonably consistent" with the victim's trial testimony, the victim was subject to cross-examination, the victim's credibility was challenged, and her prior statements were helpful to the trier of fact in evaluating her credibility. The district court did not abuse its discretion in concluding that the recorded interview was not hearsay.

Affirmed.