

*This opinion is nonprecedential except as provided by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
A21-0697**

State of Minnesota,
Respondent,

vs.

Lidio Roque Rodriguez,
Appellant.

**Filed March 7, 2022
Affirmed
Larkin, Judge**

Olmsted County District Court
File No. 55-CR-19-483

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct, arguing that the district court abused its discretion by excluding evidence that undermined the victim's credibility, including evidence that the victim had falsely accused other people of sexual abuse in the past. He also challenges his sentence, arguing that the district court abused its discretion in denying his motion for a downward dispositional departure. We affirm.

FACTS

Respondent State of Minnesota charged appellant Lidio Roque Rodriguez by amended complaint with first- and second-degree criminal sexual conduct. The state alleged that Rodriguez sexually abused his stepdaughter, D.S., beginning when she was nine years old. D.S. reported the abuse in January 2019, when she was 14 years old.

During the criminal proceedings, Rodriguez submitted documents that described numerous instances in which D.S. had allegedly been untruthful, misbehaved, and engaged in sexual conduct. Rodriguez argued that evidence of D.S.'s history of untruthfulness was relevant to show that D.S. "manufacture[s] allegations of abuse or exploitation when she gets caught in behaviors that are bad, specifically in order to seek attention and become a victim of circumstance in order to get around these misbehaviors again and again and again." His theory of the case was that D.S. was upset with her mother's recent attempts to discipline her, so she fabricated the sexual abuse in her successful effort to be placed out of the home.

The state moved to preclude Rodriguez from presenting evidence regarding D.S.'s alleged bad behaviors. The district court granted the state's motion and limited Rodriguez's ability to present evidence regarding D.S.'s past conduct.

The case proceeded to a jury trial. D.S. testified that she was four years old when her mother, C.R., married Rodriguez. She stated that Rodriguez began to sexually abuse her when she was eight or nine years old and that he abused her a couple times each month until December 2018, when she was 14 years old. The sexual abuse included touching her breasts and vaginal area, putting his fingers and sex toys inside her vagina, grabbing her hand and placing it on his penis, and placing his mouth on her vagina.

The jury found Rodriguez guilty as charged. At sentencing, Rodriguez moved for a downward dispositional departure, arguing that he was particularly amenable to probation. The district court denied that request, entered judgment of conviction for first-degree criminal sexual conduct, and sentenced Rodriguez to 172 months' imprisonment. Rodriguez appeals.

DECISION

I.

Rodriguez contends that the district court abused its discretion by excluding evidence that called D.S.'s credibility into question. Specifically, he challenges the exclusion of evidence that D.S. falsely accused other males of sexual abuse in the past, that D.S. had reacted to discipline from her mother by breaking electronic devices, and that D.S. had "stashed" her prescribed medication. We review a district court's rulings

regarding the admission of evidence for an abuse of discretion. *State v. Chavez-Nelson*, 882 N.W.2d 579, 588 (Minn. 2016).

Rodriguez argues that the district court's exclusion of the proffered evidence violated the rules of evidence and his constitutional rights to confront his accuser and present a complete defense. We apply the abuse-of-discretion standard to the district court's evidentiary rulings even when "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 defendant is entitled to reversal only if "the exclusion of evidence was not harmless beyond a reasonable doubt," that is, if "there is a reasonable possibility that the error . . . may have contributed to the conviction." *Id.* (quotation omitted). The abuse-of-discretion and harmless-error standards also apply to an alleged violation of the right to confront witnesses stemming from an evidentiary ruling. *State v. Yang*, 774 N.W.2d 539, 552-53 (Minn. 2009).

False Accusations of Sexual Abuse

Rodriguez argues that the district court abused its discretion by excluding evidence that D.S. had falsely accused other people of sexual abuse in the past. In a prosecution for criminal sexual conduct, evidence of the alleged victim's previous sexual conduct is generally inadmissible. Minn. R. Evid. 412(1); Minn. Stat. § 609.347, subd. 3 (2020). Evidence of previous sexual conduct includes allegations of sexual abuse. *State v. Kobow*, 466 N.W.2d 747, 750 (Minn. App. 1991), *rev. denied* (Minn. Apr. 18, 1991). However, prior false accusations of sexual abuse by an alleged victim are relevant to attack the alleged victim's credibility, but only "if there has been a determination that the prior

accusations were indeed fabricated.” *State v. Goldenstein*, 505 N.W.2d 332, 340 (Minn. App. 1993), *rev. denied* (Minn. Oct. 19, 1993). Thus, the district court must make a threshold determination that a “reasonable probability of falsity exists” before admitting evidence of prior false accusations. *Id.*

Rodriguez sought to admit evidence of D.S.’s prior allegations of sexual abuse through her mother, C.R., and he offered two documents as support. The first was an affidavit from C.R. stating that D.S. had “accused the following people of inappropriate sexual contact: 4-5 unidentified males, one acquaintance from [I]nstagram, an ex-boyfriend from middle school and recently a young male at church.” The second was a private detective’s report stating:

[C.R.] said [D.S.] has accused a number of different people (males) of sexual abuse, to include men who had lived at their house in the past. She said she made allegations against a boy from their church . . . , a 16 year old boy . . . who lived with their family for a short time, four or five other males who had lived at their home, [an] unknown male she knew from Instagram, and finally [C.R.] said [D.S.] told her that her boyfriend from 6th grade . . . had sexually assaulted her as well.

Rodriguez argues that the district court abused its discretion by not holding a hearing or making a threshold determination regarding whether a reasonable probability of falsity existed before it excluded the evidence. But Rodriguez’s proffered documents do not say that D.S.’s allegations of sexual abuse were false. And when the parties discussed D.S.’s allegedly false accusations at a pretrial hearing, Rodriguez did not request an evidentiary hearing on the issue of falsity. Indeed, defense counsel recognized, “The Court has to be

pretty convinced that those allegations were indeed false. I do not have those individuals before us. It doesn't appear that police reports were made on that."

In sum, C.R.'s averments were Rodriguez's only evidence that D.S. had made false accusations of sexual abuse in the past. But Rodriguez did not explain how C.R. would have been able to establish that the accusations were false. On this record, the district court did not abuse its discretion in excluding evidence that D.S. had previously accused other men of sexual abuse.

Electronic Devices and Medication

Rodriguez argues that the district court abused its discretion by excluding evidence that D.S. broke electronic devices in response to discipline by C.R. and that she "stashed" her medication in her bedroom.

C.R. testified about disputes that she had with D.S. in the months before D.S. accused Rodriguez of sexual abuse. She explained that D.S. had been dating their neighbor and that she did not approve of that relationship. C.R. discovered concerning communications between D.S. and the neighbor on social media. C.R. therefore denied D.S. access to social media in December 2018. C.R. testified, "There ended up being four iPads, two iPhones, and a Kindle broken so that I wouldn't be able to read what was on the screen."

The state objected to that testimony. The district court sustained the objection and struck the testimony from the record, reasoning that the testimony was improper character evidence under Minn. R. Evid. 404(b) and violated the court's pretrial ruling regarding evidence of D.S.'s past conduct. Under rule 404(b)(1), "Evidence of another crime, wrong,

or act is not admissible to prove the character of a person in order to show action in conformity therewith.” Rodriguez argues that the district court erred because the testimony was not offered to show that D.S. acted in conformity with a character trait, but rather to show “D.S.’s emotional reaction to C.R.’s discipline.”

As to evidence that D.S. “stashed” her medication, a report from the private detective indicated that D.S.’s previous foster parent searched D.S.’s room in the spring of 2020 and found approximately 40 days’ worth of medication that D.S. had failed to take and had stashed away. The district court never specifically addressed the medication in its pretrial rulings, but it appears to have excluded that evidence as a prior bad act under Minn. R. Evid. 404(b)(1). Rodriguez claims that the evidence was relevant to show D.S.’s untruthfulness because “stashing her medications made it more likely that D.S. was not properly medicated at the time of the accusations, more prone to the effects of her psychological conditions, and not credible.”

We need not decide whether the district court abused its discretion in excluding evidence that D.S. broke electronic devices and “stashed” her medication if the alleged errors were harmless beyond a reasonable doubt. *See State v. Vance*, 714 N.W.2d 428, 440 (Minn. 2006) (stating that it was unnecessary to decide whether the district court erred in excluding defense evidence because the alleged error was harmless beyond a reasonable doubt). We therefore consider whether there is a reasonable possibility that the alleged errors might have contributed to the conviction. *See Zumberge*, 888 N.W.2d at 694 (stating standard).

Rodriguez's theory at trial was that D.S. fabricated the allegations of sexual abuse because she was angry about C.R.'s discipline and wanted to be placed out of the home. After sustaining the state's objection to C.R.'s testimony about the electronic devices, the district court clarified that C.R. could testify that D.S. was upset about losing access to social media, but that she could not testify regarding any specific bad acts.

When C.R. resumed her testimony, she stated that D.S. was "[w]ithdrawn and very angry" after being deprived of social media, and that D.S. cried, screamed, and insulted C.R. For example, C.R. testified that D.S. called her "the worst mother on earth" and "the biggest b-tch in the world" and said that C.R. "shouldn't have been her mom because [C.R. takes] away everything she loves in her life."

C.R. also testified that, to prevent D.S. from seeing the neighbor, she met with school counselors to change D.S.'s school schedule before eventually deciding that D.S. would go to another school. D.S. was "[v]ery angry" about that change and "lash[ed] out for the next few weeks." The school change occurred approximately one and a half months before D.S. accused Rodriguez of sexual abuse, and D.S.'s emotional reactions continued during that time.

In addition, C.R. and another witness testified that D.S. overheard their conversation at a wedding on New Year's Eve 2018, in which the other witness said that her daughter had accused her father of sexual abuse and explained how those accusations made the family miserable. During his closing argument, Rodriguez emphasized that the conversation that D.S. allegedly overheard occurred when D.S. was upset with C.R. and was merely days before D.S. accused Rodriguez of sexual abuse.

Rodriguez argues that any error in excluding his proffered evidence was not harmless beyond a reasonable doubt. In doing so, he relies on caselaw in which defendants were prohibited from cross-examining complainants regarding their motives to fabricate sexual-assault allegations. For example, Rodriguez cites to *State v. Pride*, in which the Minnesota Supreme Court emphasized the importance of allowing a sexual-assault defendant to elicit reasons why the alleged victim would fabricate such allegations. 528 N.W.2d 862, 866-67 (Minn. 1995). The supreme court stated that “[j]urors, like anyone, are unlikely to believe a witness has testified falsely or otherwise colored her testimony unless they are aware of a reason for that person to do so.” *Id.*

Rodriguez argues that, like the circumstances in *Pride*, “preventing [him] from cross-examining D.S. and precluding his ability to elicit evidence from other witnesses about D.S.’s motive to lie meant that the jury did not have a complete picture of her reason to fabricate the charges.” He further argues that the district court’s rulings “made it unlikely that the jurors would believe D.S. testified falsely because the jurors were unaware of a compelling reason for her to do so.”

The record belies those arguments. D.S. testified that Rodriguez sexually abused her. Rodriguez cross-examined D.S. regarding her accusations and her motives to lie. And he elicited evidence from C.R. regarding D.S.’s anger toward her mother and D.S.’s motive to fabricate allegations against him. Additional evidence that D.S. broke her electronic devices and failed to take prescribed medication added little to Rodriguez’s theory that D.S. fabricated the allegations because she was extremely upset with her mother and wanted to be placed out of the home. On this record, we are satisfied that there is no

reasonable possibility that additional evidence regarding the electronic devices and medication would have changed the jury's verdict. Thus, Rodriguez is not entitled to reversal of his conviction based on the district court's alleged error in excluding that evidence.

II.

Rodriguez contends that the district court abused its discretion by denying his motion for a downward dispositional departure. He argues that he was particularly amenable to probation and that the district court relied solely upon offense-related factors to deny the dispositional departure.

The district court has great discretion when imposing sentences, and we review sentencing decisions for an abuse of that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). The Minnesota Sentencing Guidelines establish presumptive sentences for criminal offenses. Minn. Stat. § 244.09, subd. 5 (2020). The sentencing guidelines seek to “maintain uniformity, proportionality, rationality, and predictability in sentencing” of crimes. *Id.* “Consequently, departures from the guidelines are discouraged and are intended to apply to a small number of cases.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A district court may depart from the presumptive sentence only when there exist “identifiable, substantial, and compelling circumstances” to support a departure. Minn. Sent. Guidelines 2.D.1 (2014). We will not reverse the district court's refusal to depart “as long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination.” *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

“For a downward dispositional departure, a district court may consider both offender- and offense-related factors.” *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018). Nevertheless, the district court generally focuses “more on the defendant as an individual and on whether the presumptive sentence would be best for him and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). A defendant’s particular amenability to probation may justify a departure from a presumptive sentence. *Soto*, 855 N.W.2d at 308. The requirement of particular amenability ensures that “the defendant’s amenability to probation distinguishes the defendant from most others and truly presents the substantial and compelling circumstances that are necessary to justify a departure.” *Id.* at 309 (quotation omitted). Relevant factors for determining whether the defendant is particularly amenable to probation include the defendant’s age, prior criminal record, remorse, cooperation, attitude in court, and support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). But even if there are grounds to justify a departure, an appellate court ordinarily will not interfere with the district court’s decision to impose a presumptive sentence. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006).

To support his argument that he is particularly amenable to probation, Rodriguez points to his family’s support, the psychosexual assessment’s conclusion that he had a low risk of reoffending, and his lack of criminal history. But the presentence-investigation report opined that Rodriguez “poses a significant risk to public safety given his inability to engage in treatment” and that he therefore was not particularly amenable. And as the state observes, the letters submitted by Rodriguez’s friends and family members argue that he was innocent and do not focus on his amenability to probation.

As to Rodriguez's argument that the district court focused solely on offense-related factors, we note that although the district court is required to give reasons for granting a departure, an explanation is not required when the court considers reasons for departure but elects to impose a presumptive sentence. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). This court will affirm the imposition of a presumptive guidelines sentence so long as "the record shows [that] the sentencing court carefully evaluated all the testimony and information presented before making a determination." *Id.* at 81.

Although the district court in this case emphasized the seriousness of the offense when denying a dispositional departure, the record shows that it carefully evaluated all of the relevant information presented before it made its decision. There is no basis for this court to reverse the district court's imposition of a presumptive sentence.

Affirmed.