

*This opinion is nonprecedential except as provided by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
A22-0187**

State of Minnesota,
Respondent,

vs.

Anthony Robinson,
Appellant.

**Filed January 9, 2023
Affirmed
Reilly, Judge**

Ramsey County District Court
File No. 62-CR-20-4521

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

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

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

Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges his convictions for first-degree criminal sexual conduct and fleeing police, arguing that the district court abused its discretion by admitting (1) the victim's forensic interview with the nurse examiner, (2) a prior incident of domestic abuse

as relationship evidence, and (3) expert testimony from a nurse examiner. Appellant also argues that the cumulative effect of these errors deprived him of a fair trial. We affirm.

FACTS

This appeal arises out of appellant Anthony Robinson's conviction for sexually abusing the victim, his daughter, between November 2017 and July 2020. Robinson sexually abused the victim over several years, beginning when she was 10 or 11 years old. He made the victim touch his penis, "would make [her] suck it," and touched the victim's breasts and vagina. The victim testified during the hearing that this happened "[t]wo to three times a week." Robinson once put the tip of his penis into the victim's vagina, but "it would not go in." The victim testified that she did not tell other family members about the abuse because she was scared to do so.

In July 2020, the victim and her mother went to Chicago to visit family. The victim told one of her family members that Robinson had sexually abused her, and that family member told the victim's mother. The victim told her mother she had not talked about the abuse because she was scared. The victim and her mother returned to Minnesota.

On the way home from Chicago, the victim's mother called 911 to report the abuse. The police met her at the family home. According to the trial testimony, the victim's mother told the officers that Robinson had "been raping [her] daughter for two years," and the victim told the officers that Robinson had been touching her and made her suck his penis. Officers asked Robinson to step outside to speak with them. Robinson ran away on foot, but officers apprehended him and transported him to the police department. The

officers also contacted the Midwest Children’s Resource Center (MCRC)¹ at Children’s Hospital and arranged for a nurse examiner to interview and examine the victim.

The victim spoke with the nurse at MCRC. The nurse testified at trial about what the victim said during that interview. The victim said that Robinson forced her to perform oral sex on him and “talked about his penis touching on her vagina and her butt.” The victim also told the nurse about “having to touch his penis with her hands and him touching her on her chest area and her vaginal area with his hand.” The nurse testified that she believed the abuse was “frequent” and “happened a lot.” The nurse testified that the victim provided “good details” to describe the abuse. The nurse also testified about the concept of delayed reporting and described how children often disclose sexual abuse in a way that can be “gradual and very confusing.” The nurse stated this gradual reporting may be because of a child’s age, or level of maturity, or out of fear.

Respondent State of Minnesota charged Robinson with one count of first-degree criminal sexual conduct—penetration or contact with a person under the age of 16, significant relationship, and multiple acts over time; and one count of fleeing a police officer. Following a three-day jury trial, the jury found Robinson guilty of both crimes. The district court sentenced Robinson to prison for 201 months for the criminal-sexual-conduct offense and ordered him to serve 88 days in jail for the fleeing offense.

Robinson appeals.

¹ MCRC is a medical-based child advocacy center for children who have disclosed sexual or physical abuse. Practitioners begin by asking about the child’s history and medical history. Practitioners then conduct a forensic interview and finish with a physical examination.

DECISION

I. The district court did not abuse its discretion by admitting the victim's statement from her forensic interview with a nurse examiner.

Robinson argues the district court abused its discretion by admitting the victim's statement to the nurse. We review the district court's evidentiary rulings for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Even if the district court abuses its discretion, an appellant is not entitled to a new trial if the error was harmless. *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009). The appellant bears "the burden of establishing that the [district] court abused its discretion, and that appellant was thereby prejudiced." *Amos*, 658 N.W.2d at 203.

a. The victim's trial testimony was consistent with her prior statements to the nurse examiner.

Robinson argues that the district court abused its discretion by admitting the victim's statements to the nurse examiner because the statements were inconsistent with her trial testimony. A prior out-of-court statement is not considered hearsay if "[t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant's testimony and helpful to the trier of fact in evaluating the declarant's credibility." Minn. R. Evid. 801(d)(1)(B).

Robinson claims there were several inconsistencies between the victim's trial testimony and her statements to the nurse. For example, Robinson claims the victim told the nurse that Robinson touched her anus with his penis, but then testified at trial that he only touched her vagina with his penis and did not try to put his penis into any other part of the victim's body. Robinson also claims the victim told the nurse that Robinson

ejaculated into a paper towel on one occasion but testified at trial that he ejaculated into a cloth towel. And the victim also told the nurse that she once saw Robinson watching pornography, although she did not testify about this incident at trial.

While there may have been some differences in the victim's statements, they were not substantial enough to render them inconsistent. Trial testimony and prior statements need not be verbatim to be considered consistent. *State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000), *rev. denied* (Minn. Feb. 24, 2000). Rather, the prior statements must be "reasonably consistent" with the witness's trial testimony. *In re Welfare of K.A.S.*, 585 N.W.2d 71, 76 (Minn. App. 1998). Here, while the victim's prior statements were not identical to her trial testimony, they do not substantially differ. The victim stated, both in her trial testimony and in her forensic interview, that Robinson repeatedly sexually assaulted her over a period of two years, forced her to touch his penis, forced her to put his penis in her mouth, attempted to put his penis into her vagina, ejaculated into towels, and told her to keep the abuse secret. We are satisfied that the statements made during the forensic interview are reasonably consistent with the victim's trial testimony.

The victim was also subject to cross-examination and defense counsel had the opportunity to challenge her credibility. Defense counsel inquired:

COUNSEL: You said that the only place your dad touched your body with his penis was your vagina; is that right?

VICTIM: And my mouth.

COUNSEL: Right. Sorry. Mouth and vagina, right?

VICTIM: Yes.

COUNSEL: When you were talking with the nurse that you told us you spoke with, do you remember telling her that there was more places that he tried to do this with?

VICTIM: No.

Portions of the defense's closing argument were also dedicated to discrediting the victim based on these discrepancies. The defense counsel argued:

Now the State has told you that these details that are inconsistent, they don't matter. And they told you I was going to focus on that and basically you should just disregard that because the main points of the story have remained the same. But when we are evaluating whether something somebody has told us is true, details matter. That's how we determine if someone is being truthful.

...

The big one, that's the only time she ever makes any claim about anything happening to her anal region, and she only does that when the nurse specifically asks her what about your butt part, what happened, did anything happen there. Well you heard [the nurse] testify that she can't . . . talk about things that the child doesn't bring up. [The victim] never brought that up. But when she was asked about it, there it was. But when she was asked about it yesterday in her testimony, no, she never said that and it never happened anywhere near her butt. That's a pretty big thing. That's a pretty big allegation, if it were me, and if it had happened.

The defense focused its argument on discrediting the victim and highlighting the differences between her statements at trial and her prior statements to the nurse. The jury credited the victim's testimony, and "the jury is in a unique position to determine the credibility of the witnesses and weigh the evidence before it." *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017).

Upon review of the record, we conclude that the requirements of rule 801(d)(1)(B) have been satisfied. Thus, the district court did not abuse its discretion by admitting the victim's statements from her forensic interview.

b. Robinson was not prejudiced by the admission of the victim's statements.

We note, further, that even if the district court abused its discretion by admitting the challenged statements, any error was harmless. *See State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994) (noting that even if the district court erred in admitting evidence, the reviewing court determines “whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict”). The ultimate question is “whether the error substantially influenced the verdict.” *State v. Expose*, 872 N.W.2d 252, 260 (Minn. 2015). An error is harmless if the jury could have reached the same “verdict based on the other evidence . . . presented.” *State v. Blasus*, 445 N.W.2d 535, 540 (Minn. 1989). Here, the record contains ample evidence that Robinson sexually abused the victim multiple times over two years. The victim testified that the abuse began when she was 10 or 11 years old and occurred two to three times a week. Robinson forced the victim to touch his penis and put his penis in her mouth. Robinson also touched her breasts and her vagina, and once tried to insert his penis into her vagina. The jury credited this testimony. Robinson has not shown that the jury would have reached a different result if the nurse's testimony had been excluded. The district court did not abuse its discretion by admitting the nurse's testimony.

II. The district court did not abuse its discretion by admitting relationship evidence.

Robinson argues the district court abused its discretion by admitting a prior incident of violent domestic abuse as relationship evidence because the prejudicial effect outweighed the probative value of the evidence. We review a district court's ruling on the

admission of relationship evidence for an abuse of discretion. *State v. Andersen*, 900 N.W.2d 438, 441 (Minn. App. 2017). A defendant must show that the evidence was not harmless—that is, that it significantly affected the verdict—before we will reverse. *State v. Benton*, 858 N.W.2d 535, 541 (Minn. 2015).

The district court may allow the state to present “[e]vidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members,” often called “relationship evidence.” Minn. Stat. § 634.20 (2022); *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010). “Domestic conduct” includes “domestic abuse,” which is defined as “physical harm, bodily injury, or assault,” the “infliction of fear of imminent physical harm,” or criminal sexual conduct. Minn. Stat. §§ 634.20, 518B.01, subd. 2 (2022).

Relationship evidence “illuminates the history of the relationship,” and “put[s] the crime charged in the context of the relationship between the two.” *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004). Relationship evidence is generally admissible, “unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury.” Minn. Stat. § 634.20; *McCoy*, 682 N.W.2d at 156 n.1. “When balancing the probative value against the potential prejudice, 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.” *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotation omitted). Persuasion by illegitimate means includes “leading the jury to improperly conclude that [the defendant] has a propensity to behave criminally and should now be convicted, and punished, for the

charged offenses.” *State v. Hormann*, 805 N.W.2d 883, 891 (Minn. App. 2011), *rev. denied* (Minn. Jan. 17, 2012).

Before trial, the state moved to admit as relationship evidence an incident where Robinson put his hands around the victim’s neck and threw her to the ground. The district court determined that the probative value of the incident outweighed the danger of unfair prejudice and admitted the evidence. At trial, the victim testified that in May 2020, Robinson “picked [her] up off [her] feet and choked [her].” The victim testified that it was painful and she “couldn’t breathe.” A police officer testified that the victim’s mother disclosed that the victim had been physically abused by Robinson. The officer stated that mother “detailed a choke slam that Mr. Robinson had assaulted [the victim] with because she had looked at him funny.” During the forensic interview, the nurse asked the victim to describe the “scariest thing” that ever happened to her. The victim responded, “[Robinson] choke slammed me on the floor.”

We discern no abuse of discretion in the district court’s decision to admit the relationship evidence. The evidence places the victim’s relationship with Robinson into context. And caselaw recognizes that relationship evidence clarifies a defendant’s treatment of family or household members. *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010). It can explain or provide context for a family member’s fear of a defendant as well as the defendant’s prior attempts to “manipulate, control, [or] restrain” that family member, and carries “obvious probative value.” *Andersen*, 900 N.W.2d at 441. It may provide context for a victim’s behavior, such as a delay in reporting abuse. *State v. Word*, 755 N.W.2d 776, 784 (Minn. App. 2008). Here, the victim testified that she was

scared to report the sexual abuse. The victim also told the nurse that Robinson told her to keep the abuse secret and take it “to the grave.” The relationship evidence helped explain how Robinson interacted with the victim.

The district court also reduced the risk of unfair prejudice by providing multiple cautionary instructions to the jury. The use of cautionary instructions on the proper use of relationship evidence under Minn. Stat. § 634.20 lessens the probability that the jury will give undue weight to the evidence. *Benton*, 858 N.W.2d at 542. The district court provided the following instruction before the victim’s testimony about the incident:

[Y]ou’re about to hear evidence of conduct by the defendant on a different date and time other than what we’re talking about in the charges here. This evidence is being offered for the limited purpose of demonstrating the nature and extent of the relationship between the defendant and his family members, particularly [the victim] here. It’s offered in order to assist you in determining whether the defendant committed the acts with which he’s charged in the complaint. He’s not being tried for and may not be convicted of behavior other than the charged offenses, so you’re not to convict him on the basis of the conduct you’re about to hear about. To do so might result in unjust double punishment.

The state called one of the police officers to testify about his discussion with the victim’s mother. The officer testified that the victim’s mother told the officer that Robinson had delivered a “choke slam” to the victim. The district court again cautioned the jury that this testimony was “provided to you solely to assist you in determining whether [Robinson] is guilty of the charges that have been brought here today. He may not be convicted here for or punished for incidents that are being described from this other time.” The district court repeated this instruction a third time during the nurse’s testimony.

The district court instructed, “[the evidence is] not to be used to convict him for that separate incident or rather you’re not to convict him here in light of that separate incident. It’s given . . . to help you understand the nature of the relationship between the two.” Lastly, the district court provided a fourth cautionary instruction in its final instructions to the jury and reminded the jury that it was “not to consider that [previous] conduct in finding Mr. Robinson guilty of that conduct in this offense. That conduct was admitted solely to help you understand the context of the relationship. To punish him for that conduct today would be unfair and you may not do so.” These instructions lessened the risk of unfair prejudice to Robinson on the use of relationship evidence. And “[w]e presume that the jury followed the [district] court’s instruction.” *State v. Taylor*, 650 N.W.2d 190, 207 (Minn. 2002).

Moreover, even if the district court abused its discretion by admitting the evidence, Robinson must also show prejudice. *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008), *rev. denied* (Minn. Oct. 29, 2008). Erroneously admitted evidence is prejudicial if “the error substantially influenced the jury’s decision.” *State v. Loving*, 775 N.W.2d 872, 879 (Minn. 2009). We examine the record as a whole and “consider the manner in which the evidence was presented, whether the evidence was highly persuasive, whether it was used in closing argument, and whether it was effectively countered by the defense.” *State v. Courtney*, 696 N.W.2d 73, 80 (Minn. 2005).

While we do not conclude that the district court erred, any error was harmless. The evidence was not presented unfairly because the district court gave limiting instructions before the evidence was admitted, and again before jury deliberations. Additionally, the

victim's testimony about this incident was brief. The prosecutor also used the victim's testimony appropriately during closing arguments. During closing, the prosecutor made two brief statements about the choking incident in a 15-page closing argument. Lastly, the defense countered the victim's testimony by arguing in closing, at length, that the victim was not credible. For these reasons, we conclude that any error was harmless and the district court did not abuse its discretion by admitting the relationship evidence.

III. The district court did not abuse its discretion by admitting expert testimony.

Robinson contends the district court abused its discretion by permitting the nurse to provide expert testimony about inconsistencies in a child's report of sexual abuse.² We review a district court's evidentiary rulings, including the decision to admit expert testimony, for an abuse of discretion. *State v. Garland*, 942 N.W.2d 732, 742 (Minn. 2020). "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." *Id.* (quotation omitted). Robinson "bears the burden of showing that an abuse of discretion occurred and that he was prejudiced by it." *Dolo v. State*, 942 N.W.2d 357, 362-63 (Minn. 2020). But "[w]hether a discovery violation occurred is an issue of law which [an appellate] court reviews de novo." *State v. Palubicki*, 700 N.W.2d 476, 489 (Minn. 2005).

² Robinson claims the state failed to comply with its discovery obligation related to the nurse's testimony. A prosecutor must disclose "all matters within the prosecutor's possession or control that relate to the case." Minn. R. Crim. P. 9.01, subd. 1. This material "must be disclosed in time to afford counsel the opportunity to make beneficial use of it." Minn. R. Crim. P. 9.03, subd. 2(a). Here, the state provided notice that it intended to call the nurse as an expert witness to explain child sexual abuse disclosure, including delayed reporting and disclosing in stages. We conclude that the state complied with its discovery obligation and that expert testimony was appropriate in this case.

When considering whether to admit expert testimony, a district court determines whether the testimony will help the jury resolve relevant factual questions presented at trial. Minn. R. Evid. 702; *State v. Greninger*, 569 N.W.2d 189, 195 (Minn. 1997). A district court considers whether the testimony “will assist the trier of fact to understand the evidence or determine a fact in issue,” Minn. R. Evid. 702, and whether the subject “is within the knowledge and experience of a lay jury,” *State v. Helterbride*, 301 N.W.2d 545, 547 (Minn. 1980).

Here, the district court limited the nurse’s testimony to a discussion of the dynamics of delayed reporting and disclosing in stages. The district court reasoned that this testimony would be helpful to the jury. At trial, the nurse testified that child sexual abuse victims often delay reporting sexual abuse and that there can be a “huge range of a disclosure.” The nurse agreed that fear can sometimes impact delayed reporting. She also explained that child abuse victims often disclose the abuse in stages and may provide different pieces of information to different people depending on how questions are phrased. The prosecutor asked, “Do children reporting abuse sometimes have inconsistencies?” The nurse responded, “Yes.” She did not testify that the victim in this case, personally, had inconsistencies in her reporting. Instead, she made only a general statement about child-sexual-abuse victims and delayed reporting. Because the victim’s credibility was a central issue at trial, the nurse’s testimony was helpful to the jury in explaining the two-year delay in reporting. The district court did not abuse its discretion in admitting the nurse’s testimony.

IV. Appellant is not entitled to a new trial based on cumulative error.

Appellant claims the cumulative effect of the district court's errors deprived him of a fair trial. In rare cases, "the cumulative effect of trial errors can deprive a defendant of his constitutional right to a fair trial when the errors and indiscretions, none of which alone might have been enough to tip the scales, operate to the defendant's prejudice by producing a biased jury." *State v. Davis*, 820 N.W.2d 525, 538 (Minn. 2012) (quotation omitted). Because the district court did not err, we conclude that Robinson is not entitled to a new trial based on cumulative error.

Affirmed.