STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1151

State of Minnesota,
Respondent,

vs.

Daniel Salvador Niola Agudo,
Appellant.

Filed June 26, 2023
Affirmed
Hooten, Judge[*]

Hennepin County District Court
File No. 27-CR-21-14263

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

Mary F. Moriarty, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Jesson, Presiding Judge; Smith, Tracy M., Judge; and

Hooten, Judge.

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

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this appeal from the final judgment of conviction for first-degree criminal sexual conduct, appellant argues that the district court violated his constitutional rights to confrontation and to present a complete defense by denying his motion to introduce evidence of the immigration status of the victim and her mother as a motive for fabricating allegations against him. Because the district court did not abuse its discretion by excluding the immigration-status evidence, we affirm.

FACTS

On July 30, 2021, respondent State of Minnesota charged appellant Daniel Salvador Niola Agudo[1] with one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(g) (2020). The complaint alleged that the thirty-four-year-old Niola had engaged in sexual penetration and sexual contact with a person (the child) who was under sixteen years old at the time of the offense and that Niola had a significant relationship to the child.

Before trial, Niola gave notice of his intent to rely on a defense of bias by the child and her mother. Specifically, Niola alleged that the child and her mother made false allegations against Niola so that the child could qualify for U nonimmigrant status (also known as a U visa). *See generally* 8 C.F.R. § 214.14 (2022) (providing for different types

[1] Appellant's last name is stated multiple ways in the district court record. Because appellant used Niola in his pro se supplemental brief, and because the record indicates that he often goes only by Niola, we refer to him as Niola in this opinion.

of U visas). Niola alleged that the child's mother was "present in the US illegally," and explained that a U visa can confer legal status upon victims of certain crimes and their family members. When asked on the first day of trial for an offer of proof, Niola's counsel also alleged the following: that (1) Niola had been in the process of applying for a U visa for himself when the child made the allegations against him; (2) Niola had discussed the U visa application process with the child and her mother days before the allegations; and (3) one of the owners of the house where Niola, the child, and her mother all lived was a U visa holder.

Niola also provided notice that he intended to call a private investigator and former police officer to testify as an expert witness. Niola stated that the investigator would testify, among other things, about "U visas, including how they work, the application process, and derivative U visas for parents of minor victims." According to Niola, the investigator would also testify that "the benefits of obtaining a U visa can incentivize undocumented immigrants to make false allegations of crime." Niola argued that this evidence was relevant because the U visa application process was not "within the average juror's experience."

The state sought to exclude evidence of any witness's immigration status as well as expert testimony about the U visa process. It argued that the immigration evidence was highly prejudicial and minimally relevant because there was no evidence that the child intended to apply for a U visa or was motivated to fabricate allegations against Niola in order to do so.

The district court agreed with the state and ruled that Niola could not "delve into any possible witnesses' immigration status" or offer "evidence regarding the U visa process." The district court reasoned that while the immigration evidence is "arguably . . . relevant, given a broad interpretation . . . of the rule," in this case "[t]here's nothing in the offer of proof that was made . . . that leads this [c]ourt to believe that such evidence is relevant." In particular, the district court observed that while "the witnesses in this case had a discussion about U visas days before these allegations were made," there was "no other connection made as to the allegations and the U visa status or that process." The district court determined that "[w]ithout a more specific connection, . . . there's no relevance to this evidence or . . . the jury hearing this evidence could lead to unfair prejudice or misleading of the jury."[2]

The district court then held a four-day jury trial. At trial, the child testified that she moved to Minnesota from Ecuador in March 2021 and initially lived in an apartment with Niola and three other people. According to the child, fifteen days after she arrived in

[2] After the district court's evidentiary rulings, Niola supplemented his offer of proof to include the following: (1) evidence that a police officer turned off his body camera during a conversation with the child and her mother where a U visa could have been discussed; and (2) general assertions that the child was employed and therefore may have lied about her age or used fake identification. Niola also suggested giving the jury a limiting instruction stating that "a person's immigration status is not, in and of itself, a basis for not believing their testimony." The district court stated that "if you have information regarding [the child's] age . . . or the use of a false ID . . . [t]hat's totally relevant to delve into. But I think my ruling is pretty clear regarding immigration status or the U visa process." Niola also asserted that his own immigration status could be relevant to explain why certain text messages on his phone had been deleted. The district court clarified that Niola could talk about his own immigration status if he chose to testify, and that the district court's ruling only prevented Niola from "delving into the immigration status of the [s]tate's witnesses."

Minnesota, Niola sat down next to her on the couch when she got home from school, began touching her body, and told her, "when you're with me, you will have it all." When the child tried to resist, Niola grabbed her wrists, took off her clothes, and forced her to have vaginal intercourse. The child testified that, after this first incident, "[i]t was almost every day that he would abuse [her]" during April and May of 2021—generally when she got home from school and no one else was home.

The child's mother arrived from Ecuador in May 2021 and also moved into the apartment. In June 2021, the same group of people moved to a house in Richfield and continued living together. The child testified that, after her mother moved in, Niola began a romantic relationship with her mother and stopped abusing her every day. But she testified that the abuse continued, and that "when my mom wouldn't pay attention to him, then he would go back to me." The child stated that the last time Niola assaulted her occurred in his car after he had driven her and his son home from a family party. She stated, however, that Niola continued to send her numerous text messages.

The child testified that in late July 2021 she was at home watching videos with her mother when she began receiving text messages from Niola saying that he wanted to be with her, that she was "the woman of his life," and that age should not matter.[3] The child showed her mother the texts and told her about the abuse. They called the police and officers came to the house, interviewed the child, and arrested Niola. The child told the interviewing officer about three incidents of abuse. She explained that she was afraid to

[3] The original text messages are in Spanish; the descriptions in this opinion are taken from the child's testimony regarding the text messages during cross-examination.

tell the officer about more times because the others who lived in house were present for the interview. On cross-examination, Niola's counsel questioned the consistency of the child's accounts but did not ask if she had fabricated the allegations or had been told to lie.

The state also called several other witnesses. The child's mother confirmed that she had been in a relationship with Niola and that she called the police when she saw the texts from Niola on the child's phone. A pediatric nurse practitioner who examined the child in September 2021 testified that she observed the child to be "experiencing severe symptom[s] of post-traumatic stress" and that the child reported being "raped several times" and experiencing vaginal pain and bleeding afterward. A forensic nurse testified as an expert about protocols for interviewing children about sexual abuse and explained that children often delay or minimize their disclosures of sexual abuse. Three officers involved with the investigation also testified, including the officer who interviewed the child and her mother.

Niola called several family members as witnesses. Niola's son testified that he never saw Niola alone with the child in the car, while Niola's stepmother's son testified that he once saw Niola, Niola's son, the child, and the child's mother leave a party together. Three other family members testified generally that Niola treated young women and children with respect. Niola also called the same investigator who would have testified about U visas to testify about protocols for forensic interviews with children. The investigator testified regarding the issues involved with using leading questions and having others in the room when conducting interviews.

Finally, Niola testified on his own behalf. He acknowledged that he had been in a relationship with the child's mother but asserted that he never touched or had sex with the child, had treated the child like a daughter, had "been a good person to" the child and her mother, and "[did] not know why they're doing this or for what." He also admitted that he had sent the texts that the child discussed but asserted that he had sent them to the child's mother rather than the child.

The jury found Niola guilty of the charged offense. The district court imposed a 150-month prison sentence followed by ten years of conditional release. Niola appeals.

DECISION

Niola argues that the district court violated his rights to confrontation and to present a complete defense by excluding evidence regarding a possible immigration motive for fabricating the child's allegations. We begin with a brief discussion of our standard of review and then address each piece of evidence in turn.[4]

The United States and Minnesota constitutions guarantee criminal defendants the right to confront the witnesses against them. *State v. Greer*, 635 N.W.2d 82, 89 (Minn. 2001); U.S. Const. amends. VI, XIV, § 1; Minn. Const. art. I, § 6. "The essence of confrontation is the opportunity to cross-examine opposing witnesses." *Greer*, 635 N.W.2d at 89. But district courts "have broad discretion to control the scope of cross-

[4] Niola also filed a one-page pro se supplemental brief in which he argues that the district court violated his federal due-process rights "[b]y not allowing evidence (immigration information) relevant/material to my criminal case that would influence the jury in my favor." Because Niola's pro se brief raises the same issue as the brief submitted by his counsel, we need not address it separately.

examination." *Id.* Although the Confrontation Clause protects the rights of defendants to reveal a witness's bias through cross-examination, "not everything tends to show bias, and courts may exclude evidence that is only marginally useful for this purpose." *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995); *see also Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986) (noting that district courts have "wide latitude" to reasonably limit cross-examination "based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant"); *State v. Ferguson*, 742 N.W.2d 651, 657 (Minn. 2007) (noting that cross-examination may be limited "so long as the jury is presented with sufficient information from which to appropriately draw inferences as to the witness's reliability").

Criminal defendants also have the "right to a meaningful opportunity to present a complete defense," which includes the right to present witness testimony. *Loving v. State*, 891 N.W.2d 638, 646 (Minn. 2017) (quotation omitted); *see also* U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. This right, however, "is subject to rules of procedure and evidence designed to assure fairness and reliability in the determination of guilt."[5] *State v. Hannon*, 703 N.W.2d 498, 506 (Minn. 2005); *see also State v. Mosley*, 853 N.W.2d 789, 798 (Minn. 2014*)* ("A criminal defendant has the constitutional due process right to call and examine witnesses, including expert witnesses, subject to the limitations imposed by

[5] The application of an evidentiary rule may violate the right to present a complete defense if "the rule infringes upon a weighty interest of the accused and is arbitrary or disproportionate to the purposes the rule is designed to serve." *State v. Pass*, 832 N.W.2d 836, 841-42 (Minn. 2013) (quotation omitted). But "evidentiary rules designed to permit the exclusion of unfairly prejudicial, confusing, or misleading evidence are unquestionably constitutional." *Id.* at 842 (quotation omitted).

the rules of evidence."). A defendant bears the burden of showing that objected-to evidence is relevant and admissible. *State v. Svoboda*, 331 N.W.2d 772, 775 (Minn. 1983).

Thus, even when an appellant argues that a district court's evidentiary ruling deprived them of a constitutional right, we review that evidentiary ruling for an abuse of discretion. *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017) (applying abuse-of-discretion standard to claim that evidentiary ruling deprived appellant of his right to present a complete defense); *State v. Tran*, 712 N.W.2d 540, 551 (Minn. 2006) (applying abuse-of-discretion standard to claim that evidentiary ruling limiting cross-examination violated appellant's right to confront witnesses). A district court abuses its discretion when its decision "is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). If we determine that the district court abused its discretion by excluding evidence, "and that error deprived the defendant of a constitutional right, we then review whether that exclusion of evidence was harmless beyond a reasonable doubt." *State v. Munt*, 831 N.W.2d 569, 583 (Minn. 2013).

I. The district court did not abuse its discretion by preventing Niola from cross-examining witnesses about their immigration status.

Niola first argues that the district court abused its discretion by preventing him from cross-examining the child and her mother about their alleged immigration motive for fabricating the allegations against him.

Generally, "[a]ll relevant evidence is admissible" unless otherwise provided by law. Minn. R. Evid. 402. Evidence is relevant if it tends to make the existence of any fact of consequence more or less probable than it would be without the evidence. Minn. R. Evid.

401. In particular, "[f]or the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against any party to the case is admissible." Minn. R. Evid. 616. But relevant evidence, including evidence of bias, "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Minn. R. Evid. 403. As with other evidentiary rulings, a district court has "discretion in balancing the probative value of evidence against its prejudicial effect." *State v. Gassler*, 505 N.W.2d 62, 70 (Minn. 1993).

The district court excluded evidence of the child's and her mother's immigration status as both irrelevant and unfairly prejudicial. Niola asserts that the evidence was relevant because if the child and her mother were eligible for a U visa and knew about their eligibility, "it would affect their credibility by revealing a motive to lie." He also argues that the evidence was not prejudicial because the jury already knew that the child and her mother were immigrants and spoke Spanish. We are not persuaded that the district court abused its discretion.

In *State v. Larson*, 787 N.W.2d 592, 598-99 (Minn. 2010), the supreme court examined a district court's decision to exclude evidence of a witness's "immigration status and deportation hearing." Like here, the defendant in *Larson* argued that the witness's immigration status was probative of bias. Noting that evidence of bias "must not be so attenuated as to be unconvincing," the supreme court affirmed the exclusion of the immigration evidence. *Id.* at 598-99 (quotation omitted). The supreme court reasoned that because it was "undisputed that [the witness] was not given any consideration for his

testimony," the district court did not abuse its discretion by determining that the evidence was not sufficiently probative of bias to overcome its potential for prejudice. *Id.* at 599.

We similarly conclude that the district court here did not abuse its discretion by limiting cross-examination regarding the child's and her mother's immigration status. The district court acknowledged Niola's offer of proof that the witnesses knew about U visas because they had discussed them recently, but it correctly noted that there was "no other connection made as to the allegations and the U visa status or that process." As in *Larson*, nothing in the record suggests that the witnesses received—or sought to receive—any consideration for their testimony. Niola did not allege, for example, that the child or her mother discussed fabricating the allegations, actually applied for a U visa, or intended to do so. Moreover, to the extent Niola showed that the immigration evidence had some minimal relevance, the district court also noted the danger for unfair prejudice or misleading of the jury. This analysis is consistent with *Larson* and reflects a proper balancing of probative value and prejudice as required by rule 403.[6]

[6] Although nonprecedential decisions of this court are not binding authority, Minn. R. Civ. App. P. 136.01, subd. 1(c), we note that our decision here is consistent with several recent nonprecedential decisions addressing similar evidentiary rulings. In four cases, this court has affirmed a district court's exclusion of immigration-related bias evidence under rule 403 because defendants failed to establish sufficient relevancy. *State v. Ontiveros-Silverio*, No. A22-0419, 2023 WL 2230351, at *3-4 (Minn. App. Feb. 27, 2023); *State v. Rodriguez*, No. A21-0875, 2022 WL 1617887, at *5-6 (Minn. App. May 23, 2022); *State v. Love*, No. A19-1153, 2020 WL 3957240, at *2-3 (Minn. App. July 13, 2020); *State v. Guzman-Diaz*, No. A17-1231, 2018 WL 3520535, at *2-4 (Minn. App. July 23, 2018), *rev. denied* (Minn. Oct. 16, 2018). In another case, where a defendant offered actual evidence that a victim had discussed reporting a crime to obtain a U visa, the district court allowed evidence regarding that victim's alleged bias but excluded evidence of the victim's mother's immigration status because the defendant had not shown that the mother was involved with

Niola also argues that by determining that more was needed for the witnesses' immigration status to be relevant, the district court treated evidence of bias "as if it were an affirmative defense by requiring [him] to make a showing beyond relevancy." This argument, however, misconstrues the district court's decision. The district court did not treat Niola's bias argument as an affirmative defense that carried a burden of production; the district court simply determined, based on Niola's offer of proof, that certain evidence of bias was minimally probative. This is consistent with the general principle that the proponent of objected-to evidence must establish its admissibility. *Svoboda*, 331 N.W.2d at 775; *see also State v. Brown*, 739 N.W.2d 716, 720 (Minn. 2007) (stating that proponent of evidence had not established relevance "either by extrinsic evidence or by offer of proof"); *Santiago v. State*, 644 N.W.2d 425, 442 (Minn. 2002) (noting that "[a]n offer of proof provides an evidentiary basis" for a district court's evidentiary ruling); Minn. R. Evid. 103 (explaining that an offer of proof occurs when "the substance of the evidence [is] made known to the court by offer or [is] apparent from the context within which questions were asked").

On this record, we cannot conclude that the district court ruled against logic and the facts in the record when it limited cross-examination regarding the child's and her mother's immigration status. Because we discern no error in the exclusion of the evidence, we need not address whether such exclusion was harmless beyond a reasonable doubt.[7]

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the alleged plan; this court affirmed. *State v. Velasquez-Lazo*, No. A20-0801, 2021 WL 318263, at *2-4 (Minn. App. Feb. 1, 2021).

[7] Although we do not address harmless error here, we note two instances in which this court declined to address whether it was error to exclude similar immigration evidence because,

II. The district court did not abuse its discretion by excluding expert testimony regarding the U visa process.

Niola also argues that the district court abused its discretion by excluding his proffered expert testimony from a private investigator regarding the U visa process.

Minnesota Rule of Evidence 702 provides that "[i]f 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 basic consideration in admitting expert testimony under [rule 702] is whether it will assist the jury in resolving the factual questions presented." *State v. Myers*, 359 N.W.2d 604, 609 (Minn. 1984). But rule 403 still applies to expert testimony, and "[e]ven helpful, relevant evidence may be excluded if the trial court concludes that its probative value is substantially outweighed by the danger of unfair prejudice or of misleading the jury." *Id.*; *see also State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011) (recognizing that "an expert with special knowledge has the potential to influence a jury unduly" (quotation omitted)).

According to Niola, the investigator would have testified about "U visas, including how they work, the application process, and derivative U visas for parents of minor victims," and would have opined that "the benefits of obtaining a U visa can incentivize undocumented immigrants to make false allegations of crime." Niola argues that this

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based on the entire record in those cases, any error was harmless beyond a reasonable doubt. *State v. Diaz*, No. A21-1543, 2022 WL 17748077, at *4 (Minn. App. Dec. 19, 2022); *State v. Roman-Vargas*, No. A17-0641, 2018 WL 1145863, at *2-3 (Minn. App. Mar. 5, 2018), *rev. denied* (Minn. May 15, 2018).

testimony would assist the jury because "immigration law and U visas are not within the common knowledge or experience of the average juror," and that it was relevant because it was probative of the child's alleged motive to falsely accuse Niola.[8]

For the same reasons discussed above, we conclude that the district court did not abuse its discretion by excluding expert testimony regarding the U visa process. As the district court observed, Niola failed to establish any connection between the U visa process and the child's allegations that would make immigration evidence more than minimally relevant to this case. Because the district court excluded evidence of the child's and her mother's immigration status, the investigator's testimony was not needed to help the jury understand Niola's bias argument. Additionally, the investigator's testimony about the U visa process—particularly his opinion that U visas can incentivize undocumented immigrants to falsely report crimes—would have been significantly prejudicial. Without a greater showing of relevancy, it was not against logic and the facts in the record to exclude the investigator's testimony. Because the district court did not err in excluding the evidence, we need not address whether the exclusion of the evidence was harmless.

Affirmed.

[8] Although Niola spends a portion of his brief arguing that the investigator was qualified as an expert and that his opinion had a reasonable basis, we note that the state does not contest those issues, nor did the district court conclude that the investigator was not qualified. We therefore need not address the investigator's qualifications.