

*This opinion is nonprecedential except as provided by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
A23-0125**

State of Minnesota,
Respondent,

vs.

Jaundale Maurice Berry,
Appellant.

**Filed December 11, 2023
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-20-8405

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

Mary F. Moriarty, Hennepin County Attorney, Zachary Stephenson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct, arguing that the district court erred by excluding evidence of the victim's prior sexual conduct, which was offered to show the victim's motive to fabricate his sexual-assault allegation

against appellant. Because the district court did not abuse its discretion in excluding the evidence, we affirm.

FACTS

Respondent State of Minnesota charged appellant Jaundale Maurice Berry with first-degree criminal sexual conduct for sexually abusing his girlfriend's son, BJ, between 2013 and 2014, when BJ was around seven years old. BJ did not disclose the abuse until 2019.

Before trial, Berry moved the district court to allow him to introduce evidence that BJ first reported the abuse after BJ was caught sexually abusing his younger sister. Berry sought to use the evidence to show that BJ had a reason to fabricate his allegation against Berry, specifically, that BJ wanted to deflect attention from his own behavior. Berry's counsel indicated that BJ's mother would testify that BJ first reported that he had been a victim of sexual assault when she caught BJ "molesting his sister" and BJ allegedly said to her, "It's not my fault because it happened to me."

The district court denied Berry's motion, concluding that the rape-shield statute prevented the introduction of the evidence and that it was not "constitutionally necessary" for Berry to introduce the evidence. However, the defense did elicit testimony at trial, without objection, that BJ made his disclosure to his mother after he got in "serious trouble."

At trial, BJ, then 15 years old, testified that Berry sexually abused him when he lived at a "house in Northeast on Marshall." BJ acknowledged that he did not reveal the abuse until 2019. According to BJ, Berry told him not to tell anyone or "he would kill

them.” BJ testified that he did not tell his mother about the abuse because he “was scared.” BJ also testified that Berry was physically abusive to him and his mother. BJ eventually told his mother about the abuse when they were having an argument and it “slipped out.” BJ also later disclosed the abuse to his grandfather, who passed away, and to his aunt and a family friend, who both testified at trial.

BJ’s mother testified that she initially did not believe BJ’s allegations against Berry because of the way BJ “was acting and the way he told [her].” On cross-examination, she acknowledged that BJ told her about the abuse “after he got in serious trouble with [her].”

A recording of a social worker’s forensic interview of BJ was received as evidence at trial. During the forensic interview, BJ disclosed the abuse, and according to the social worker, his disclosure was “generally consistent” with what BJ had told his family and family friend, except for “some minor variations.”

Berry’s defense at trial was that BJ was a troubled child and fabricated the allegations. Berry testified and acknowledged living with BJ at various times in 2012 and 2013, but he denied sexually abusing him.

The jury found Berry guilty as charged, and the district court sentenced him to serve 156 months in prison.

Berry appeals.

DECISION

Berry contends that the district court violated his constitutional right to present a meaningful defense. Every criminal defendant has a right to fundamental fairness and “a meaningful opportunity to present a complete defense.” *State v. Richards*, 495 N.W.2d

187, 191 (Minn. 1992) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). That right is ensured by the due-process clauses of the United States and Minnesota constitutions. *Id.* The right includes the opportunity to develop the defendant’s version of the facts, so the jury ““may decide where the truth lies.”” *Id.* at 194 (quoting *Washington v. Texas*, 388 U.S. 14, 19 (1967)). Berry argues that the alleged constitutional violation resulted from the district court’s refusal to admit evidence that BJ accused Berry of sexual assault to deflect from BJ’s alleged abuse of his sister. Berry assigns error to that evidentiary ruling.

“Evidentiary rulings are reviewed for an abuse of discretion, even when a constitutional violation is alleged.” *State v. Wenthe*, 865 N.W.2d 293, 306 (Minn. 2015). 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.” *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

In prosecutions for acts of criminal sexual conduct, a victim’s sexual history is generally excluded by Minnesota Rule of Evidence 412 and Minnesota Statutes section 609.347 (2022), also known as the “rape-shield law.” *See Wenthe*, 865 N.W.2d at 305-06 (discussing the rape-shield law). Under the rape-shield law, evidence of a victim’s past sexual conduct “shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, unless one of the enumerated exceptions applies and the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial

nature.”¹ *Id.* at 306 (quotations omitted). “The rape-shield law serves to emphasize the general irrelevance of a victim’s sexual history, not to remove relevant evidence from the jury’s consideration.” *Id.* (quotation omitted).

The supreme court has “construed the rape-shield law as allowing sexual-history evidence . . . when admission is constitutionally required by the defendant’s right to due process, his right to confront his accusers, or his right to offer evidence in his own defense.” *Id.* (quotation omitted). Thus, a defendant’s constitutional right to present a complete defense may constitute an exception to the rape-shield law. *See State v. Caswell*, 320 N.W.2d 417, 419 (Minn. 1982) (holding that a victim’s past sexual conduct is admissible when constitutionally required); *Wenthe*, 865 N.W.2d at 306 (explaining that sexual-history evidence is admissible when “constitutionally required by the defendant’s right to due process, his right to confront his accusers, or his right to offer evidence in his own defense” (quotation omitted)).

Before such evidence is admitted, the district court must weigh the probative value of the evidence against its prejudicial effect. *See Wenthe*, 865 N.W.2d at 307 (concluding that the district court did not abuse its discretion because “[t]he limited relevance and probative value of that evidence does not substantially outweigh its prejudicial and harmful effect”). In *State v. Benedict*, the supreme court stated that “as in ruling on the admission

¹ The listed exceptions are (1) “[w]hen consent of the victim is a defense in the case” and (2) “[w]hen the prosecution’s case includes evidence of semen, pregnancy or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial.” Minn. Stat. § 609.347, subd. 3; Minn. R. Evid. 412(1). Neither exception applies in this case.

of other kinds of evidence, the [district] court ought to balance the probative value of the evidence against its potential for causing unfair prejudice.” 397 N.W.2d 337, 341 (Minn. 1986). The supreme court held that the district court had properly engaged in a balancing approach in *Benedict*, explaining:

On the one hand, the [district] court gave defendant some leeway in questioning the victim and others in an attempt to show that someone else, not defendant, was the source of the victim’s knowledge of sexual matters. On the other hand, the [district] court did not allow defense counsel to cross-examine the victim’s mother about sexual abuse in her family when she was growing up and about her brother’s sexual assault conviction [G]iven the weak probative value of the evidence and the potential of the evidence for causing unfair prejudice, we are satisfied that the [district] court did not abuse its discretion in ruling as it did.

Id.

Here, the district court determined that evidence regarding BJ’s sexual conduct with his sister was inadmissible under the rape-shield statute and that it was not “constitutionally necessary” for Berry to introduce the evidence. In reaching this conclusion, the district court did not expressly weigh the probative value and prejudicial effect of the evidence. But like the circumstances in *Benedict*, Berry had some leeway on this issue. Berry presented the relevant aspect of the evidence—the victim’s motive to lie—even though the district court did not allow Berry to present the prohibited evidence regarding the victim’s prior sexual conduct. Specifically, the defense elicited testimony that BJ disclosed the sexual assault to his mother after he got in “serious trouble.” Only the impermissible sexual context of the evidence was restricted.

Thus, the defense was able to argue to the jury that “when [BJ’s] mom caught him in serious trouble, he blurted [out] this lie, that Mr. Berry had molested him, and now he’s stuck with it, so he kept telling it, a little bit differently each time.” And Berry was able to pursue his defense that BJ had a motive to fabricate his accusation against Berry; he just was unable to present evidence regarding BJ’s prior sexual conduct. That approach reflects a reasonable balance of the probative value of the evidence, its potential prejudicial effect, and Berry’s right to present a complete defense.

Berry also suggests that the evidence was not barred by the rape-shield law because BJ’s alleged abuse of his sister happened after Berry’s abuse of BJ. He cites Minn. Stat. § 609.347, subd. 3, which states that in a “prosecution” for criminal sexual conduct, “evidence of the victim’s *previous* sexual conduct shall not be admitted.” (Emphasis added.) But Berry offers no further legal argument to support his suggestion that “previous” means previous to the date of the charged offense. Mere assertions of error without supporting legal authority or argument are waived unless prejudicial error is obvious on mere inspection. *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015). Here, we discern no obvious error.

In sum, Berry has not shown that the district court abused its discretion by refusing to allow evidence of BJ’s alleged prior sexual conduct. *See State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997) (stating that a defendant has the burden of proving that the district court abused its discretion when ruling on an evidentiary issue).

Affirmed.