

*This opinion is nonprecedential except as provided by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
A23-0493**

State of Minnesota,
Respondent,

vs.

Jose Alipio Sarmiento Gonzalez,
Appellant.

**Filed February 12, 2024
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-21-9052

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

Mary F. Moriarty, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Frisch, Judge; and Klaphake,
Judge.*

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

NONPRECEDENTIAL OPINION

FRISCH, Judge

In this appeal following a conviction for second-degree criminal sexual conduct, appellant argues that the district court abused its discretion by admitting expert testimony relating to delayed reporting by child victims of sexual abuse. We affirm.

FACTS

In May 2021, respondent State of Minnesota charged appellant, 44-year-old Jose Alipio Sarmiento Gonzalez, with second-degree criminal sexual conduct based on a report that he sexually abused his girlfriend's 12-year-old granddaughter, A.O. The following facts were established at trial.

In about 2015, Gonzalez lived with A.O. and her grandmother, mother, and brothers. A.O. was about seven years old when Gonzalez moved into the home. When A.O. was around 11 years old, Gonzalez began touching her inappropriately and did so on five separate occasions.

The first incident occurred when A.O. was sleeping in her bedroom and awoke to Gonzalez touching her leg and attempting to lift up her shorts. After she awoke and looked at Gonzalez, Gonzalez exited her bedroom. A.O. told her grandmother the next day, and her grandmother told A.O. that she would talk to Gonzalez. Grandmother also told A.O. not to tell her mother. A.O. nonetheless told her mother, who responded by telling A.O. to try to stay as far away as possible from Gonzalez. The second incident occurred when Gonzalez entered A.O.'s bedroom while she slept and began kissing A.O.'s cheek. A.O. woke up and moved away from Gonzalez, worried that he was "trying to rape" her. The

next morning, A.O. told her mother about Gonzalez trying to kiss her while she slept. In a third incident, Gonzalez sat next to A.O. on the couch and was showing her something on his phone. He then reached his hand down A.O.'s shirt, touching her bare chest. A fourth incident occurred in Texas, when Gonzalez tried to kiss A.O. and later touched her leg. During the fifth incident, Gonzalez sat by A.O. at A.O.'s aunt's home and repeatedly attempted to put his hand in A.O.'s pants.

A.O.'s mother arranged for A.O. to meet with a therapist to discuss a separate family conflict. During a session between A.O., the therapist, and mother, the therapist asked A.O.'s mother whether A.O. had any trauma. A.O. began crying. A.O. told her mother that Gonzalez had touched her inappropriately on several occasions and described previously undisclosed instances of abuse. Mother reported the abuse to Hennepin County Child Protection. In December 2020, a child-protection investigator met with A.O. and then arranged for A.O. to undergo a forensic interview at CornerHouse. The interview was conducted in February 2021 by CornerHouse forensic interviewer and employee, Bill Koncar.

Before trial, the state moved to admit testimony from Koncar regarding "the timing and manner of disclosure, the regularity of delayed and incremental disclosure, [and] factors impacting delayed and incremental disclosure." Over Gonzalez's objection, the district court admitted the evidence but instructed the state to notify Koncar that he may not comment on the instant case or vouch for the credibility of A.O.

Koncar generally testified within those parameters. He provided general testimony regarding the many ways in which children might disclose abuse. Koncar testified that

while some children do immediately disclose instances of abuse, immediate disclosure is atypical. He further testified that many children delay disclosure of abuse or engage in incremental disclosure, revealing pieces of information about the abuse over a period of time. Koncar also testified about the reasons why a child might delay disclosure.

At the close of the evidence, the district court instructed the jury on the appropriate use of expert testimony. The district court stated that an expert's opinion testimony "is entitled to neither more nor less consideration by you than any other evidence." The jury found Gonzalez guilty of second-degree criminal sexual conduct. The district court convicted Gonzalez, sentenced him to 36 months' imprisonment, stayed the sentence for 5 years, and imposed a 10-year period of conditional release.

Gonzalez appeals his conviction.

DECISION

Gonzalez argues on appeal that the district court abused its discretion by permitting the state's expert to testify about "delayed reporting of sexual abuse by children" because the testimony was irrelevant, prejudicial, and unhelpful to the jury. We review a district court's decision to admit expert testimony for an abuse of discretion. *State v. Garland*, 942 N.W.2d 732, 742 (Minn. 2020). The district court did not abuse its discretion in admitting Koncar's testimony.

The Minnesota Rules of Evidence provide that a qualified expert's testimony "in the form of an opinion" is admissible if such testimony will "assist the trier of fact to understand the evidence or to determine a fact issue." Minn. R. Evid. 702. The primary inquiry is whether "the expert's testimony will help the trier of fact in evaluating evidence

or resolving factual issues.” *State v. DeShay*, 669 N.W.2d 878, 884 (Minn. 2003). Even helpful expert testimony “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403; *see also DeShay*, 669 N.W.2d at 888 (citing Minn. R. Evid. 403) (“Even if acceptable under Rule 702, expert testimony should be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.”).

Our caselaw has consistently recognized the value of expert testimony in aiding a jury in understanding counterintuitive victim behaviors, including why a victim may not immediately and fully disclose incidents of abuse. In *State v. Myers*, the supreme court rejected the notion that jurors would be familiar enough with the behavior of young child victims of sexual abuse to assess the credibility of a seven-year-old victim. 359 N.W.2d 604, 610 (Minn. 1984). It recognized that “[t]he nature . . . of the sexual abuse of children places lay jurors at a disadvantage. . . . [T]he common experience of the jury may represent a less than adequate foundation for assessing the credibility of a young child who complains of sexual abuse.” *Id.* We applied this rule to a case involving a 12-year-old abuse victim. *State v. Garden*, 404 N.W.2d 912, 915 (Minn. App. 1987), *rev. denied* (Minn. June 25, 1987). And the supreme court has extended the *Myers* rule to cases where the victim is an adult and consent is a disputed issue. *State v. Obeta*, 796 N.W.2d 282, 293 (Minn. 2011).

We apply the same rule here. Although Gonzalez maintains that A.O. engaged in no counterintuitive behaviors, the record reflects the opposite. A.O. testified that she immediately disclosed two of the five separate incidents of abuse to her mother. And A.O. did not tell her mother about three of the five incidents until she was prompted by her therapist's question to her mother. Stated differently, A.O. delayed reporting of the abuse and only incrementally disclosed incidents of abuse. Because Koncar's testimony about delayed reporting and incremental disclosure was helpful to the jury to assess A.O.'s credibility, we see no abuse of discretion by the district court in its evidentiary ruling.

Affirmed.