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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0928, A23-0930**

State of Minnesota,
Respondent,

vs.

Jeremy Scott Jenkins,
Appellant.

**Filed April 28, 2025
Reversed
Worke, Judge**

Beltrami County District Court
File Nos. 04-CR-21-893; 04-CR-21-1723

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

David L. Hanson, Beltrami County Attorney, Wesley Van Ert, Assistant County Attorney,
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Considered and decided by Worke, Presiding Judge; Connolly, Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In these consolidated appeals, appellant challenges his criminal-sexual-conduct conviction, arguing that the district court abused its discretion by admitting hearsay

evidence. Because we conclude that the district court erred in admitting that evidence, and because we conclude that the error was not harmless, we reverse appellant's conviction.

FACTS

In July 2021, respondent State of Minnesota charged appellant Jeremy Scott Jenkins with first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(b) (2018). Jenkins was charged after a minor victim, E.J., alleged that he sexually abused her in the family home when she was around 13-14 years old. E.J. reported the abuse to law enforcement and detailed her allegations in a recorded forensic interview. The following evidence was introduced at trial.

The forensic interview was approximately 75 minutes in length and was followed by a medical examination. In a pretrial hearing, the state moved the district court to admit the video interview under the medical-treatment exception to the hearsay rules. The district court declined to rule on the motion before E.J. testified but told the state that “[t]he video is coming in, if you lay the foundation and it’s relevant.”

After E.J. testified, the state sought to introduce the interview and play the video for the jury. Jenkins objected on hearsay grounds and argued that the interview was not admissible as a prior consistent statement because it contained specific descriptions of sexual acts and circumstances that E.J. did not include in her testimony. The district court stated: “I haven’t seen the video. . . . But I’ve noted [your objection] and I’m ruling against—the video will be coming in.” The state played the video of the interview in its entirety for the jury.

The jury found Jenkins guilty of first-degree criminal sexual conduct. Following that conviction, Jenkins pled guilty to a third-degree assault charge in an unrelated case. The district court sentenced Jenkins to concurrent sentences of 144-months for the criminal-sexual-conduct conviction, and 18-months for the assault conviction. Jenkins appealed both convictions. We granted his motions to consolidate the appeals and to stay the consolidated appeals to allow him to seek postconviction relief. The district court denied Jenkins's postconviction petition, and we dissolved the stay and reinstated his appeals. Although his appeals are consolidated, Jenkins does not raise any issues in this appeal related to his assault conviction.

DECISION

Jenkins challenges the district court's admission of E.J.'s forensic interview, arguing that it was not admissible as a prior consistent statement or under the medical-treatment exception to the hearsay rules. We agree.

"We review a district court's evidentiary rulings for an abuse of discretion." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). "A defendant claiming error in the district court's reception of evidence has the burden of showing both the error and the prejudice resulting from the error." *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009) (quotation omitted). If a district court admits evidence in error, we determine whether the error requires reversal under the harmless-error standard. *State v. Smith*, 940 N.W.2d 497, 505 (Minn. 2020). "An error is not harmless if a reasonable possibility exists that the error significantly affected the jury's verdict." *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024).

Hearsay is an out-of-court statement offered “to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is generally not admissible at trial. Minn. R. Evid. 802. But an out-of-court statement offered to prove the truth of the matter asserted may be admissible if it falls within a recognized exception to the hearsay rule or it is categorically exempt from the definition of hearsay. *State v. Robinson*, 699 N.W.2d 790, 794 (Minn. App. 2005), *aff’d*, 718 N.W.2d 400 (Minn. 2006); *see* Minn. R. Evid. 801(d) (defining certain statements as not hearsay), Minn. R. Evid. 803-804 (listing exceptions to hearsay rule).

We note that it is unclear whether the district court admitted the interview as a prior consistent statement or under the medical-treatment exception. At pretrial, the district court informed the parties that it intended to admit the interview, but it did not state the grounds for admission. At trial, Jenkins objected to the admission of the interview on grounds that it was inconsistent with E.J.’s testimony, and the district court overruled the objection despite not having seen the video. *See State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000) (noting that before a statement can be admitted as a prior consistent statement, a district court must determine “whether the prior statement and the trial testimony are consistent with each other”), *rev. denied* (Minn. Feb. 24, 2000).

On appeal, the state asserts that the district court admitted the interview as a prior consistent statement and argues in the alternative that although the district court “did not evaluate the medical exception,” the interview is admissible under that exception because the interview and medical examination were “all part of one medical purpose and aim.”

Given the lack of clarity in the record, and in the interest of thoroughness, we address both bases for admission.

Prior consistent statement

A prior out-of-court statement is not hearsay if (1) “[t]he declarant testifies at the trial . . . and is subject to cross-examination concerning the statement”; (2) the statement is “consistent with the declarant’s testimony”; and (3) the statement is “helpful to the trier of fact in evaluating the declarant’s credibility as a witness.” Minn. R. Evid. 801(d)(1)(B). But such a statement is not admissible unless the witness’s credibility has been challenged and the statement will “bolster the witness’[s] credibility with respect to that aspect of the witness’[s] credibility that was challenged.” *State v. Nunn*, 561 N.W.2d 902, 909 (Minn. 1997).

Jenkins argues that the interview was not admissible as a prior consistent statement because he did not challenge E.J.’s credibility. But in his opening statement, Jenkins put E.J.’s credibility at issue by asserting that the case was about “an allegation [without] corroborating evidence.” Jenkins stated that there was “no physical evidence” and no witness other than E.J. He also told the jury that the evidence against Jenkins consisted of “a statement by [E.J.] and nothing more.” Jenkins asked the jury to pay attention to E.J.’s responses in the interview, noting that “she frequently answer[ed] questions with, ‘I don’t know or I don’t remember.’” Then, he told the jury that “[t]here was no sexual assault.” Though Jenkins did not expressly state that E.J. was not credible, he emphasized that her allegations were unsupported and questioned her ability to recall events. This constitutes a challenge to her credibility.

Jenkins next argues that, because the interview included allegations of additional criminal sexual conduct that were not included in E.J.'s testimony, the interview was inconsistent with her testimony and therefore inadmissible.

To be admissible under rule 801(d)(1)(B), a witness's "trial testimony and the prior statement need not be verbatim," *Bakken*, 604 N.W.2d at 109, so long as they are "reasonably consistent." *In re Welfare of K.A.S.*, 585 N.W.2d 71, 76 (Minn. App. 1998). But when a witness's prior statement "contains assertions about events that have not been described by the witness in trial testimony, those assertions are not helpful in supporting the credibility of the witness and *are not admissible*" as a prior consistent statement. *State v. Farrah*, 735 N.W.2d 336, 344 (Minn. 2007) (emphasis added). A prior consistent statement "should not be the means to prove new points not covered in the testimony of the speaker." *Id.* (quotation omitted). Otherwise, "a few consistent statements in a multi-statement interview may be used to bootstrap into evidence inconsistent statements that do not qualify under the rule." *Bakken*, 604 N.W.2d at 109.

After carefully comparing E.J.'s trial testimony and interview, we cannot conclude that all of her statements in the interview met the requirements of a prior consistent statement. E.J.'s testimony was brief, her descriptions of sexual abuse were vague, and her statements describing abuse span less than three pages of transcript. By contrast, E.J.'s description of abuse in the interview lasted approximately 38 minutes and spans 23 pages of transcript. It included substantial detail and graphic descriptions of criminal sexual conduct and additional instances of abuse that were not included in her trial testimony.

In the interview, E.J. was asked to describe the first time that Jenkins abused her. She said that he came in through her locked bedroom door while she was asleep and that she woke up with him on top of her. She said that he was holding her hands behind her back so that she could not move, that he put his fingers and his penis in her vagina, that his body was moving up and down, and that he covered her mouth with his hand so that she could not say anything. But when asked at trial to describe her first memory of abuse, E.J. provided a general, non-specific description, stating that Jenkins abused her with his fingers and penis on separate occasions.

In the interview, E.J. described in graphic detail being abused while folding laundry. But at trial, E.J.'s description was limited. She testified that she was abused while "folding clothes" in Jenkins's room and that she was "turned away" from him while he abused her.

In the interview, E.J. described an incident in which Jenkins placed his tongue on her breasts and vagina. She also told the interviewer of other instances of abuse by Jenkins, including repeated assaults occurring in the shower. These allegations were not included in E.J.'s trial testimony.

Because the additional allegations of criminal sexual conduct were not included in E.J.'s trial testimony, they were not helpful in supporting her credibility. The district court therefore erred by admitting the allegations as prior consistent statements.

Medical-treatment exception

The medical-treatment exception applies to "[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external

source thereof insofar as reasonably pertinent to diagnosis or treatment.” Minn. R. Evid. 803(4). Statements are admissible under the exception only “if the evidence suggests that the child knew she was speaking to medical personnel and that it was important she tell the truth.” *State v. Salazar*, 504 N.W.2d 774, 777 (Minn. 1993). The rationale for this requirement is that, when a “declarant knows that a false statement may cause misdiagnosis or mistreatment,” the statement has “special guarantees of credibility.” *Id.* (quotation omitted).

Here, the record does not reflect that E.J. knew that it was important to tell the truth during the interview for a medical purpose. Although the interviewer introduced herself as a nurse, she did not discuss honesty or truth with E.J., and she testified that it was not protocol to discuss “the difference between truth and lies” when conducting a forensic interview with a child. Furthermore, E.J. stated that she understood the purpose of the interview was to discuss Jenkins “doing the nasty with [her],” and she gave no indication that she believed a false statement would result in a medical misdiagnosis or mistreatment.

Thus, if the district court admitted the interview under the medical-treatment exception, it did so in error.

Harmless-error analysis

Having concluded that the district court abused its discretion by admitting the interview, we must determine whether there is a “reasonable possibility” that the interview “significantly affected the verdict.” *Bigbear*, 10 N.W.3d at 54 (quotation omitted). In making that determination, we consider: “(1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who

offered the evidence used it in closing argument, and (4) whether the defense effectively countered the evidence.” *Id.* (quotation omitted). In addition, “[s]trong evidence of guilt undermines the persuasive value of wrongly admitted evidence.” *Id.* at 59 (quotation omitted).

We conclude that there is a reasonable possibility that the interview significantly affected the verdict.

First, the interview featured prominently in the state’s case. In the interview, E.J.’s description of abuse was expansive, detailed, and graphic. The additional allegations alone span more transcript pages than E.J.’s testimony describing the abuse. In addition, the state played the video immediately after E.J.’s testimony and contemporaneous with its direct examination of the interviewer. The state paused the video several times to ask the interviewer questions about E.J.’s statements, repeatedly drawing attention to the additional allegations of penetration. Finally, the state referenced the interview throughout trial, including in cross-examination of witnesses and closing argument.

Second, we conclude that the additional allegations were likely highly persuasive. The allegations were graphic, detailed descriptions of sexual assault and E.J.’s emotional state while the assault was occurring. *See State v. Wright*, 726 N.W.2d 464, 477 (Minn. 2007) (concluding on-scene statements eliciting details and victims’ states of mind during crime highly persuasive).

Third, although the state did not specifically address the additional allegations in closing, the prosecutor told the jury that the state relied “heavily” on the interview and

dedicated a substantial portion of its argument to justifying the discrepancies between E.J.'s interview and trial testimony.

Fourth, although Jenkins challenged E.J.'s inability to recall details when cross-examining the interviewer and again in closing, given the persuasive nature and manner of presentation of the additional allegations, we conclude that Jenkins did not effectively counter them.

Finally, we conclude that the evidence of guilt was not sufficient to render the error harmless. The state's case relied almost entirely on E.J.'s testimony, and while her testimony provided some evidence of guilt, it was insufficient to undermine the persuasive value of the inadmissible interview statements.

Because the district court abused its discretion by admitting the interview, and there is a reasonable possibility that the interview significantly affected the jury's verdict, we reverse Jenkins's conviction of criminal sexual conduct.¹

Reversed.

¹ Jenkins also argues that the district court denied him his right to present a complete defense by excluding impeachment evidence, and that the postconviction court abused its discretion by denying that a *Brady* violation occurred. Because we reverse on the hearsay issue, we do not reach these arguments.