

*This opinion is nonprecedential except as provided by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
A23-1115**

State of Minnesota,
Respondent,

vs.

Benjamin Herman Bobo,
Appellant.

**Filed September 9, 2024
Affirmed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CR-21-7440

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Mark D. Nyvold, Special Assistant Public Defender, Fridley, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from a conviction for first-degree criminal sexual conduct, appellant argues that the district court erred by admitting the victim's out-of-court statements about

the sexual assault and by admitting the testimony of another sexual-assault victim. We conclude that the district court did not abuse its discretion by admitting the victim's out-of-court statements under two hearsay exceptions—statements made for medical diagnosis or treatment and the residual exception. We also conclude that the district court did not abuse its discretion by admitting testimony of another sexual-assault victim as relationship evidence under a Minnesota statute. Therefore, we affirm.

FACTS

In April 2021, respondent State of Minnesota charged appellant Benjamin Herman Bobo with one count of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1 (Supp. 2019)—penetration or sexual contact with a person under 13 years old. The complaint alleged that Bobo's granddaughter (granddaughter) reported to another family member that Bobo put his “you know what” inside her “you know what.” Granddaughter was seven years old at the time of the offense.

Almost two years after the complaint was filed, in February 2023, the state tried its case against Bobo to a jury. The state offered testimony from witnesses including granddaughter, her father, a Minneapolis police officer, a doctor, a forensic interviewer, and D.T., Bobo's former stepdaughter.

The following summarizes the evidence presented at trial. Granddaughter lived with her father in a Minneapolis apartment. Bobo lived with granddaughter and her father in their apartment from August to December 2019. While father was working, Bobo was sometimes alone with granddaughter. In December 2019, father was incarcerated. Granddaughter then lived with other family members for about six months and, as of July

2020, moved in with her mother's cousin, who later became her foster mother. Foster mother testified that granddaughter had nightmares and wet the bed after moving in with her.

About six months after moving in with foster mother, in early 2021, granddaughter told foster mother that her "grandpa put his you-know-what in [her] you-know-what." Foster mother asked granddaughter what she meant when she referred to Bobo's "you-know-what." Granddaughter told her that she meant "his penis." Granddaughter said that she had not told anyone because "she was scared to make her dad sad." Granddaughter also stated that Bobo told her that "if she ever told anyone, then he would hurt her." She said that Bobo "rubbed it all over her to the point where it hurt her, and sometimes she had to suck it." Foster mother understood that "it" referred to penis. Foster mother reported the conversation to a social worker who was already working with granddaughter and to child-protective services (CPS). The Minneapolis Police Department scheduled an interview at CornerHouse.¹

On February 23, 2021, granddaughter told the forensic interviewer at CornerHouse that "[her] grandpa raped [her]." She said that the assaults happened "more than one time" while Bobo lived with her, and she described one incident that began when she was playing video games and Bobo entered the room. She stated that Bobo "[took] off his pants" then "took off [her] clothes." She stated that Bobo "put his you know in [her] private" and that

¹ As explained during trial testimony, CornerHouse is "a place that specializes in interviewing children and vulnerable adults about traumatic events"; Cornerhouse is a neutral party in investigations and follows an interview protocol recognized in Minnesota, nationally, and internationally.

it “hurt.” The interviewer asked granddaughter if she saw “his you know what” and to “tell [her] about that, his you know what.” Granddaughter asked to “skip this part,” and the interviewer moved on. When the forensic interviewer provided anatomical drawings of people and asked granddaughter to circle what she meant by “private” or “you know what,” she circled the male and female genitals on the drawings. Granddaughter also described an incident in which Bobo showed her a video “of a grandpa raping his daughter” and told her, “Me and you might do that.”

CornerHouse referred granddaughter to a doctor for an assessment. On March 9, 2021, granddaughter told the doctor that “[her] grandpa raped [her].” The doctor testified that, when she asked granddaughter what she meant by “raped,” granddaughter “wasn’t able to give [the doctor] an explanation of what that word meant.” The doctor asked granddaughter what happened, and granddaughter stated that “her genital area was touched by [Bobo’s] genitals.” Granddaughter told the doctor that Bobo “put his penis in her vagina two times.” The doctor testified that, “at this age, it is really hard to fully understand what [granddaughter] is talking about” when she refers to “private parts” and that “her term for her private part area might be vagina.” The doctor performed a genital exam and tested for sexually transmitted diseases (STDs). The doctor did not observe any injuries, and the results were negative for STDs.

During the trial, granddaughter testified that Bobo touched her vagina, touched her with his penis, and “put [his penis] *on* [her vagina].” (Emphasis added.) She agreed that, when Bobo touched her “vagina with his penis,” his body was “moving.” Granddaughter also testified about a time when she was playing video games and Bobo entered the room,

asked to “play a game,” touched her vagina and chest, took off his pants and underwear, and touched her with his penis. After Bobo assaulted her, she would cry on her bed or in her closet “because it hurt.”

When asked whether she remembered telling her foster mother that Bobo “put his you know what inside [her] you know what,” granddaughter testified, “No, because he never did.” She also testified that she remembered speaking to a doctor and an interviewer at CornerHouse, but she could not remember what she said.

D.T., who was about 44 years old, testified that Bobo also assaulted her when she was a child. D.T.’s mother was married to Bobo, and they lived together. Around 1986 to 1988, when she was about eight years old, Bobo would “touch [her] inappropriately” on her legs, breasts, and vagina. She explained that he touched her with his penis in her vaginal and anus area and penetrated her vagina and anus.

The jury found Bobo guilty of first-degree criminal sexual conduct. The district court sentenced Bobo to 234 months’ imprisonment. Bobo appeals.

DECISION

Before considering the evidentiary issues on appeal, we observe that the state charged Bobo with one count of criminal sexual conduct under Minn. Stat. § 609.342, subd. 1:

A person who engages in sexual penetration with another person, or sexual contact with a person under 13 years of age as defined in section 609.341, subdivision 11, paragraph (c), is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists . . .

(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant.

Thus, the state was required to prove two elements beyond a reasonable doubt: (1) Bobo engaged in penetration or sexual contact with a person under 13 years old, and (2) Bobo was more than 36 months older than the person who was under 13 years old. Sexual penetration is defined as “any of the following acts committed without the complainant’s consent: . . . (1) sexual intercourse, cunnilingus, fellatio, or anal intercourse, or (2) any intrusion however slight into the genital or anal openings.” Minn. Stat. § 609.341, subd. 12 (Supp. 2019). Sexual contact with a person under the age of 13 years is defined as “the intentional touching of the complainant’s bare genitals or anal opening by the actor’s bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant’s bare genitals or anal opening of the actor’s or another’s bare genitals or anal opening with sexual or aggressive intent.” Minn. Stat. § 609.341, subd. 11(c) (Supp. 2019).

Our standard of review is the same for all issues raised in Bobo’s brief to this court. “Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion.” *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). “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.” *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

With the charging statute and our standard of review in mind, we consider the issues on appeal.

I. The district court did not abuse its discretion by admitting granddaughter's out-of-court statements under exceptions to the hearsay rule.

Before trial, the state moved to admit granddaughter's statements to the doctor, to her foster mother, and during the CornerHouse interview. Over Bobo's objection, the district court allowed the evidence. Bobo argues on appeal that the district court erred by admitting these three hearsay statements.

A. Granddaughter's Statements to the Doctor

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). Hearsay is inadmissible unless an exception applies. Minn. R. Evid. 802.

On appeal, Bobo argues that the district court abused its discretion by admitting granddaughter's statements to the doctor because "they were made too long after the alleged penetration to be relevant for diagnosis or treatment." The state contends that the district court properly admitted these statements under an exception to the hearsay rule, Minn. R. Evid. 803(4).

Hearsay statements are not excluded if they are "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); *see State v. Richards*, 552 N.W.2d 197, 209 (Minn. 1996) (applying Minn. R. Evid. 803(4) and concluding that the district court did not abuse its discretion by admitting a victim's statements to a treatment counselor about domestic abuse).

Bobo cites no legal authority to support his argument. We generally decline to address arguments made without legal authority. Still, the record suggests that granddaughter's statements to the doctor were made to determine medical diagnosis or treatment. After granddaughter made these statements, the doctor performed a genital exam to determine whether she had any physical injury and tested for STDs. Thus, the district court did not abuse its discretion by admitting granddaughter's hearsay statements to the doctor under Minn. R. Evid. 803(4).

B. Granddaughter's Statements to Foster Mother and During the CornerHouse Interview

The district court admitted granddaughter's statements to her foster mother and during the CornerHouse interview under the residual hearsay exception in Minn. R. Evid. 807. Rule 807 provides:

A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Accordingly, the “decision to admit hearsay statements under Rule 807 has two steps.” *State v. Hallmark*, 927 N.W.2d 281, 292 (Minn. 2019). First, the statements must have circumstantial guarantees of trustworthiness, and second, the statements must meet the three enumerated requirements under Rule 807. *Id.* We discuss both steps in turn for the challenged statements.

First, a district court looks “at the totality of the circumstances to determine whether the hearsay statement has circumstantial guarantees of trustworthiness.” *Id.* (quotations omitted). “Specifically, the district court must examine the circumstances actually surrounding the making of the statements,” which can include

whether the statement was given voluntarily, under oath, and subject to cross-examination and penalty of perjury; the declarant’s relationship to the parties; the declarant’s motivation to make the statement; the declarant’s personal knowledge; whether the declarant ever recanted the statement; the existence of corroborating evidence; and the character of the declarant for truthfulness and honesty.

Id. (quoting *State v. Griffin*, 834 N.W.2d 688, 693 (Minn. 2013)). This is known as the “totality of the circumstances test” and “requires a careful balancing of all relevant circumstances surrounding the making of the statement.” *Id.*

Bobo argues in his brief to this court that “the circumstances do not come close to making it particularly likely that [granddaughter] was truthful,” given that granddaughter’s testimony conflicted with her statements to foster mother and during the CornerHouse interview. The state urges us to conclude that granddaughter’s hearsay statements have circumstantial guaranties of trustworthiness, relying on caselaw.

The conflict between granddaughter’s testimony and her statements to foster mother and the forensic interviewer, alone, does not undermine the trustworthiness of the statements. In *Hallmark*, the supreme court upheld the district court’s admission of recorded statements that conflicted with the witness’s trial testimony. *Id.* at 297. The supreme court reasoned that the witness’s “trial recantation [did] little to undermine the trustworthiness of her recorded statement” and that, “[if] anything, her recantation is itself

suspect.” *Id.* The supreme court noted that, “while recantation of a prior statement may detract from trustworthiness, a recanted statement may nevertheless possess sufficient circumstantial guarantees of trustworthiness under the residual hearsay exception” if “(1) other uncontradicted evidence discredits the declarant’s recantation; (2) the declarant possesses a motive to falsely recant; (3) the declarant’s recantation is itself inconsistent; and (4) the prior hearsay statements are strongly corroborated by evidence admitted at trial.” *Id.* at 293 (quotation omitted).

Thus, we consider more than the inconsistency between granddaughter’s hearsay statements and her trial testimony. Rule 807 imposes a “totality of the circumstances” test. *Id.* at 292. Granddaughter’s testimony conflicted with the hearsay statements, which weighs against trustworthiness, but other factors point to trustworthiness. For example, granddaughter’s statements to foster mother were voluntary, neither granddaughter nor foster mother had any motive to accuse Bobo falsely, and granddaughter’s statements to foster mother and CornerHouse were corroborated by granddaughter’s statements to the doctor. All three hearsay statements were consistent. And we have determined that a forensic interview with CornerHouse has “guaranties of reliability . . . sufficient to satisfy the trustworthiness requirement” of the residual hearsay exception. *State v. Hollander*, 590 N.W.2d 341, 346 (Minn. App. 1999).²

² At the time *Hollander* was decided, the residual exception was expressed in Minn. R. Evid. 803(24). *Id.*

The second step under *Hallmark* directs that a district court must determine whether the “three enumerated requirements of Rule 807 are met.” 927 N.W.2d at 293. Rule 807 requires that

- (1) the statement is offered as evidence of a material fact;
- (2) the statement is more probative on the point for which it [is] offered than any other evidence procurable through reasonable efforts by the proponent; and (3) the general purpose behind the Minnesota Rules of Evidence and the interests of justice are served by the admission of the statement into evidence.

Id. at 293-94 (quotation omitted).³

Bobo does not discuss the three requirements in his brief to this court. The state argues that the requirements are satisfied. We generally decline to reach issues that are forfeited or inadequately briefed. *Steward v. State*, 950 N.W.2d 750, 756 (Minn. 2020) (declining to address a forfeited issue); *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (declining to address an issue for which no argument was developed in the brief), *rev. denied* (Minn. Aug. 5, 1997).

Still, we conclude that the challenged hearsay statements meet the three requirements. First, the hearsay statements were offered to prove material facts—whether Bobo assaulted granddaughter and, if so, what type of sexual contact occurred. Second, the hearsay statements are more probative than other evidence because they occurred shortly after the sexual contact. Finally, the general purpose of the rules of evidence and the

³ The district court did not address the three enumerated prongs of rule 807. Yet “the court’s failure to explicitly consider all relevant circumstances under Rule 807 is not automatically an abuse of discretion.” *Id.* at 297.

interests of justice are served by admitting the statements because granddaughter's statements to foster mother were spontaneous, the statements were corroborated by granddaughter's later statement to the doctor, and CornerHouse is respected for the reliability of its interviews. We therefore conclude that the district court did not abuse its discretion by admitting granddaughter's statements to foster mother and during the CornerHouse interview under the residual hearsay exception.

Bobo also argues that admission of statements from the CornerHouse interview violated the Confrontation Clause of the U.S. Constitution. Under the Sixth Amendment of the U.S. Constitution, criminal defendants have the right "to be confronted with the witnesses against" them. "Sixth Amendment rights are satisfied," however, "by [an] ability to cross examine" a witness. *In re Welfare of L.E.P.*, 594 N.W.2d 163, 172 (Minn. 1999). Since Bobo had the opportunity to cross-examine granddaughter, foster mother, and the forensic interviewer at trial, we find no Confrontation Clause violation.

C. Any error did not substantially impact the verdict.

Even if we assume that the district court abused its discretion by admitting any or all of these three hearsay statements, reversal is not warranted.

"On appeal, the defendant has the burden of proving both that the trial court abused its discretion in admitting the evidence and that the defendant was thereby prejudiced." *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997). Appellate courts "will reverse a district court's evidentiary ruling only if the error substantially influenced the jury's decision." *State v. Anderson*, 763 N.W.2d 9, 15 (Minn. 2009). To determine whether an error substantially influenced the jury's decision, appellate courts "consider whether the State

presented other evidence on the issue, . . . whether the district court issued cautionary instructions,” and “whether the State relied on the inadmissible evidence to make its case during its closing argument.” *State v. Jaros*, 932 N.W.2d 466, 474 (Minn. 2019) (quotation omitted).

The state presented other evidence on the sexual assault—granddaughter’s direct testimony. And, more importantly, the state charged Bobo under a statute that criminalizes “penetration with another person” under certain circumstances “*or* sexual contact with a person under 13 years of age.” Minn. Stat. § 609.342, subd. 1 (emphasis added). Sexual contact, as defined in Minn. Stat. § 609.341, subd. 11(c), includes intentional touching of bare genitals or the anal opening. Accordingly, the state needed to prove *only* penetration *or* sexual contact. As the state correctly points out, “[w]hile much of the trial focused on whether or not there was penetration, this was simply unnecessary to convict.”

Although granddaughter did not testify that Bobo penetrated her vagina, she testified that Bobo touched her bare genitals with his penis and that it hurt. The evidence about sexual contact is strong, and Bobo does not allege on appeal that it did not occur. Accordingly, any error in admitting granddaughter’s hearsay statements about penetration was harmless because we are not persuaded that the challenged evidence substantially influenced the verdict.

II. The district court did not abuse its discretion by admitting D.T.’s testimony as relationship evidence.

Before trial, the state moved to admit “evidence of similar conduct” by Bobo with another child, his stepdaughter D.T., as relationship evidence under Minn. Stat. § 634.20

(2022) or, in the alternative, as *Spreigl* evidence to show “intent, absence of mistake or accident, common scheme or plan, and to rebut a claim of fabrication on behalf of the named victim.” The district court first concluded that “the [prior] criminal sexual conduct charges fall squarely within” the “statutory language” allowing relationship evidence and noted that “the prior acts evidence involves a family or household member and acts of criminal sexual conduct,” which “meets [the statutory] definition of domestic abuse.”

The district court also addressed the risk of unfair prejudice in admitting the evidence of Bobo’s prior assault of D.T. It determined that Bobo’s prior conduct was very similar to the conduct alleged in this case: both victims were family members who lived with Bobo at the time of the offense, and the victims were a similar age at the time of the conduct. The district court concluded that the relationship evidence “is highly probative” and that there is not “substantial prejudice to . . . Bobo in allowing that evidence to come in.” The district court also reasoned that a “*Spreigl* analysis would be fairly similar” and that the evidence “would still qualify under *Spreigl* as well.” Appellate courts review a district court’s decision to admit relationship evidence for an abuse of discretion. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004).

Bobo argues on appeal that the district court abused its discretion by admitting D.T.’s testimony. He contends that the prejudicial effect of this evidence outweighed its probative value because the abuse happened in 1986 and the “main purpose” of this evidence “was to show bad character.” The state argues that the testimony was “highly probative” and that the risk of unfair prejudice was reduced through a limiting instruction.

Generally, evidence of previous crimes or other bad acts by a defendant is inadmissible. Minn. R. Evid. 404(b). Under Minn. Stat. § 634.20, however,

[e]vidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

“Domestic abuse” includes “criminal sexual conduct.” Minn. Stat. § 518B.01, subd. 2(a)(3) (2022). A “family or household member” includes “persons who are presently residing together or who have resided together in the past.” Minn. Stat. § 518B.01, subd. 2(b)(4) (2022).

Bobo does not dispute that D.T. resided with him at the time of the assault or that he was later convicted of criminal sexual conduct related to D.T. Thus, the central issue is whether the district court abused its discretion in weighing the probative value of D.T.’s testimony against the danger of unfair prejudice and in admitting D.T.’s testimony.

“[E]vidence showing how a defendant treats his family or household members” is probative to “shed[] light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim.” *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *rev. denied* (Minn. Nov. 16, 2010). 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). A

cautionary instruction can reduce “the probability of undue weight being given by the jury to the evidence.” *State v. Benton*, 858 N.W.2d 535, 542 (Minn. 2015) (quotation omitted).

We discern no abuse of discretion in the district court’s analysis of D.T.’s testimony as relationship evidence. First, as noted by the district court, the probative value is high because D.T. was about the same age as granddaughter at the time of the abuse and experienced similar kinds of sexual abuse by Bobo. D.T.’s testimony therefore shows how Bobo acts towards “those close to him” and how he may have acted with granddaughter. *Valentine*, 787 N.W.2d at 637.

Second, the district court gave limiting instructions before D.T. testified and before the jury deliberated. Before D.T. testified, the jury was charged:

Ladies and gentlemen, before the witness testifies, I just want to instruct you that you are about to hear evidence of other conduct by the Defendant. This evidence is being offered for the limited purpose of demonstrating the nature and extent of the relationship between the Defendant and [the victim] . . . to assist you in determining whether the Defendant committed those acts with which the Defendant is charged in the complaint.

The Defendant is not being tried for, and may not be convicted for, any behavior other than the charged offense. You are not to convict the Defendant on the basis of this other conduct that you are about to hear.

The district court gave a similar instruction just before the jury deliberated.

Third, the district court explicitly weighed the probative value of D.T.’s testimony against the danger of unfair prejudice and did not abuse its discretion by determining that the danger of unfair prejudice did not substantially outweigh the probative value of D.T.’s testimony. We are guided by *State v. Sanders*, in which we determined that the district

court did not abuse its discretion by “admitting evidence of appellant’s prior sexual misconduct” against the victim and her older sister under Minn. Stat. § 634.20. 743 N.W.2d 616, 620-21 (Minn. App. 2008), *aff’d*, 775 N.W.2d 883 (Minn. 2009). We reasoned that the district court “weighed the probative value of the evidence against its prejudicial effect” and gave “a limiting instruction during the investigating officer’s testimony.” *Id.* at 621. In short, “[b]ecause the prior domestic abuse evidence here meets both the requirements and purposes of Minn. Stat. § 634.20; the district court did not abuse its discretion by admitting this evidence.” *Id.*

Given that D.T.’s testimony is admissible under Minn. Stat. § 634.20, we need not address the state’s argument that D.T.’s testimony is also admissible as *Spreigl* evidence.

Affirmed.