

*This opinion is nonprecedential except as provided by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
A23-1145**

State of Minnesota,
Respondent,

vs.

David Lee Hosea,
Appellant.

**Filed July 29, 2024
Affirmed
Smith, John, Judge***

Ramsey County District Court
File No. 62-CR-19-2585

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

John Choi, Ramsey County Attorney, Anna R. Light, Assistant County Attorney, St. Paul,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Connolly, Judge; and Smith,
John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm because the district court did not abuse its discretion by excluding appellant's proffered evidence on fabrication and appellant was not deprived of a fair trial.

FACTS

On November 10, 2018, A.H. disclosed to his mother, K.J., that his father, appellant David Lee Hosea, had sexually assaulted him. K.J. reported the sexual assault to child protection services (CPS) and the police, and Hosea was subsequently arrested and charged with one count of first-degree criminal sexual conduct (penetration of a victim 13 to 15 years old by a person in a position of authority) in violation of Minn. Stat. § 609.342, subd. 1(b) (2018). In preparation for his jury trial, Hosea moved to admit various documents and reports into evidence, which he claimed would show that K.J. had a history of involvement with CPS. According to Hosea, K.J. manipulated A.H. into falsely accusing him of sexual abuse so that she could gain custody of him, and Hosea claimed that the proffered evidence would aid him in asserting a fabrication defense. He asserted that the evidence established that K.J. was familiar with CPS's policies and procedures and that she had previously coached her younger children, whom she did not share with Hosea, to lie to CPS investigators.

The district court denied in part and granted in part Hosea's pretrial motion. The court denied Hosea's request to admit the records and documents detailing K.J.'s past experiences with CPS. However, the court determined that "[t]here is relevance in the fact that the children had been placed with [Hosea] prior to these allegations and that based on

these allegations custody of the children was transferred to K.J. So, limited testimony regarding those facts is admissible to allow [Hosea] to show a motive for fabrication.” Subsequently, a jury trial was held, and the following evidence was presented.

A.H. first testified about his relationship with his parents, Hosea and K.J. A.H. had lived with his father and stepmother for most of his life, and Hosea had primary custody of A.H. prior to Hosea’s arrest. Despite having limited contact with her for most of his childhood, A.H.’s mother was the most important person in his life. For most of his life, his communications with K.J. had been limited. However, her presence in A.H.’s life had increased during the few years prior to the incident at issue here as she attempted to gain custody of him and his older brother, D.H.

A.H. then described the events that led to Hosea’s arrest. On November 9, 2018, A.H. fell asleep on the living room couch. In the early morning hours of November 10, he woke up to the feeling of Hosea pulling A.H.’s pants off. Hosea then put his mouth on A.H.’s genitals and proceeded to sexually assault him. A.H. knew it was his father assaulting him that night because “it [had] happened before.” According to A.H., the sexual abuse had been happening for about two years, the first time being when he was 12 years old. While most of those assaults occurred in A.H.’s bedroom, “on the off occasions, it would happen . . . in the bathroom of the downstairs area.” During those two years, A.H. tried to stop the abuse from happening by locking his bedroom door at night and by writing Hosea letters that asked him to stop.

At around 6:30 p.m. on November 10, A.H. texted K.J the following: “Last night I was tired then I fell asleep down in the living room around 12 then when I woke up around

12:45 and [I] felt dad taking off my pants and underwear and he u know sucked away not the first time either . . .” K.J. called A.H. in response to his message but he did not answer. The next day, A.H. texted K.J. and asked if she thought he “should tell the police.” K.J. said yes and then told A.H. that she had already called CPS. A.H. questioned why K.J. had called CPS. She explained that she was initially hesitant to call the police because she “didn’t want [the report to] come back on [A.H.]” and cause problems with Hosea, but that she felt she had to “get [him] outta there” somehow and believed calling CPS could make that happen. A little while later, A.H. asked K.J. to call the police on his behalf and she did. When asked at trial if he disclosed the abuse so that he could go live with K.J., A.H. said “no,” and he explained that he wanted the abuse to stop and he did not want one of his younger siblings, who were also living in Hosea’s house at that time, to have to go through the same thing he did.

CPS and the police showed up at Hosea’s house on November 11. After a brief investigation, CPS determined the best course of action at that time was to temporarily place A.H. in the custody of his stepmother’s cousin. A.H. was taken to the Midwest Children’s Resource Center (MCRC) on November 12. At MCRC, he was interviewed by a provider trained in speaking with children who had been victims of sexual abuse. At trial, A.H. was questioned about inconsistencies that existed between the answers he gave to the police and his responses to some of the MCRC interview questions. In both situations, A.H. stated that the abuse started when he was 12 years old. But A.H. had told the police that Hosea had abused him “four times.” And in his MCRC interview, he disclosed that the abuse occurred “several times,” which he interpreted to mean “10ish” times. A.H.

explained to the jury that when he was speaking to the police, he had wanted to “minimize” the abuse and “make it seem like it wasn’t that big of a deal,” which accounted for the discrepancies.

Finally, A.H. testified that Hosea was not just sexually abusive, but that he was also physically abusive. According to A.H., he had been “choked,” “hit with some objects,” “punched[,] [and] slapped” by Hosea, which was one of the reasons he did not disclose the sexual abuse earlier. A.H. was not Hosea’s only target. Hosea had also been physically abusive to D.H., A.H.’s older brother. In fact, a few days before November 10, D.H.—who had been living part time with his maternal grandmother—went to Hosea’s house to grab some of his belongings. While D.H. was at the house, he and Hosea got into a physical fight. This incident led to a CPS report and investigation. A.H. was interviewed as a part of that investigation and denied that he had been physically or sexually abused by Hosea. A.H. explained at trial that he chose not to disclose the abuse at that time because he felt like CPS was “there for [his] brother,” not him.¹

K.J. testified next. K.J. stated she was first made aware of the abuse A.H. suffered when he texted her on November 10. She called CPS instead of the police because she wanted to get A.H. “out of the house” and she believed CPS “would be quicker to remove the children from the home with those types of allegations as opposed to the police having to do an investigation first.” The following day, K.J. reported the abuse to the police at the

¹ The CPS investigator who interviewed A.H. also testified. He confirmed that A.H. did not disclose any sexual abuse when he was interviewed as part of the investigation into Hosea and D.H.’s fight.

behest of A.H. After making the report, she went to Hosea's house because she wanted A.H. to be released into her custody pending the outcome of the police and CPS investigations. When A.H. was placed in the custody of his stepmother's cousin, K.J. messaged him and said that he was "supposed 2 be comin wit [her]." She told him to tell CPS and the police that he "don't feel safe with nobody on [Hosea's or his stepmother's] side" of the family. K.J. explained at trial that she said this because she did not want A.H. to be "influenced[] to recant his story [by] someone associated with [Hosea]." K.J. testified that she was eventually given custody of A.H.

A.H.'s maternal grandmother testified and told the jury that she had been present the day D.H. and Hosea got into a physical altercation. She stated that she saw Hosea repeatedly push D.H. "until he fell and tripped backwards down the stairs of the porch," and then saw Hosea hit D.H. before he could stand up.

A police officer and an MCRC nurse also appeared at trial and testified on behalf of respondent State of Minnesota. The officer stated that when he responded to K.J.'s call to police, CPS was already present and interviewing A.H. According to the officer, CPS arriving at a scene before the police was a "very rare" occurrence. The officer's body-camera footage was then played for the jury. The footage shows A.H. reporting to the officer and CPS that Hosea had sexually abused him "four times." It also showed K.J. asking the officer why A.H. was not immediately placed in her custody. The MCRC nurse then told the jury about her interview with A.H. She testified that during the interview, A.H. disclosed that "[the abuse] had happened a couple times before." He then explained to the nurse that the reason he finally told his mother about the abuse was because "he was

just sick of it.” The nurse stated that when she asked A.H. whose idea it was to report the abuse, A.H. told her it was his.

A mental-health coordinator for A.H.’s school district and a police deputy testified for the defense. The coordinator explained that she met with A.H. in May 2017 as a part of a routine mental-health screening. A.H. told her that he was doing well, that his biological mother was the person in his life he was closest to, and that he felt supported by Hosea and his stepmother. He did not disclose any ongoing sexual abuse. The deputy testified that she had observed and documented an interview between A.H. and prosecutors assigned to this case. During the interview, A.H. said Hosea sexually abused him almost every other night.

Hosea testified on his own behalf. He denied abusing A.H., sexually or otherwise. He told the jury that he had been out “at a bar with [his] friends” on the night of November 9 and the early morning of November 10. And when asked about the physical altercation he had with D.H. in early November, Hosea explained that D.H. arrived at the house agitated and then pulled a knife. Hosea stated that he grabbed D.H. and kicked him out.

The jury found Hosea guilty of criminal sexual conduct in the first degree and the district court sentenced him to 144 months in prison.

DECISION

Hosea argues that his right to present a complete defense was violated when the district court denied in part his motion to admit evidence of K.J.’s past experiences with CPS. “Under our system of jurisprudence, every criminal defendant has the right to be treated with fundamental fairness and afforded a meaningful opportunity to present a complete defense.” *State v. Richards*, 495 N.W.2d 187, 191 (Minn. 1992) (quotation

omitted). This right is articulated in both the United States and Minnesota Constitutions. See U.S. Const. amend. XIV; Minn. Const. art. I, § 7; *State v. Crims*, 540 N.W.2d 860, 865 (Minn. App. 1995), *rev. denied* (Minn. Jan. 23, 1996). It “includes the opportunity to develop the defendant’s version of the facts, so the jury may decide where the truth lies.” *Crims*, 540 N.W.2d at 865. But while courts are required to “allow defendants to present evidence that is material and favorable to their theory of the case[,]” a defendant does not have a right “to introduce evidence that either is irrelevant, or whose prejudicial effect outweighs its probative value.” *Id.* at 866; *see also State v. Mosley*, 853 N.W.2d 789, 798-99 (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 the rules of evidence.”). Evidence is “relevant” if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. And even if evidence is relevant, it still 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.

District courts are afforded “broad discretion when ruling on evidentiary matters.” *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). Appellate courts will not reverse a district court’s evidentiary ruling absent an abuse of discretion. *State v. Hanks*, 817 N.W.2d 663, 667 (Minn. 2012). Overturning a district court’s evidentiary ruling is not something a reviewing court does lightly. *Id.* However, if an appellate court “determines

that the district court's evidentiary ruling denied the defendant the right to present a complete defense, reversal is required unless the error is harmless beyond a reasonable doubt." *State v. Grigsby*, 806 N.W.2d 101, 112 (Minn. App. 2011), *aff'd*, 818 N.W.2d 511 (Minn. 2012).

Here, the district court denied Hosea's motion with respect to evidence about K.J.'s prior CPS experiences because it determined that such evidence was "not relevant." The court also reasoned that the evidence's "probative value [was] substantially outweighed by the danger of unfair prejudice and confusion of the issues" because the behaviors and events articulated in "the CPS records [were] disputed by the parties[,] which could "lead to a 'trial within a trial,' distracting the jury from the charged offense at the center of the case." We agree with the district court's reasoning.

Most of the CPS reports and documents that Hosea moved to admit are related to allegations from May 2018 that K.J. had been providing marijuana to, and smoking marijuana with, D.H. in front of her other children. Contained within those reports was the fact that K.J. wanted to gain custody of A.H. and D.H. Other proffered CPS reports address allegations that D.H. was violent towards his younger siblings and Hosea. Yet these reports either do not involve A.H. or involve A.H. as a witness to events that are not related to this case. Moreover, none of the proffered CPS reports involve allegations of sexual abuse. So, while Hosea is correct that K.J. has a history of involvement with CPS, the specifics of K.J.'s experiences are not relevant to a criminal-sexual-abuse charge.

Hosea contends that these CPS records are relevant because they establish that K.J. has a "history of convincing her children to lie to CPS to keep her from losing custody,"

which makes his defense—that K.J. manipulated A.H. into falsely reporting—more probable. This argument does not find much support in the record. There is only one mention of K.J.’s alleged coaching contained within the proffered evidence. K.J.’s three-year-old daughter was interviewed in May 2018 as part of the CPS investigation into K.J.’s marijuana usage. The investigator asked the child if K.J. had “told her what to say if asked about smoking.” The child responded, “yes.” In her report, the investigator wrote: “It appears [the child] was schooled by [K.J.] on what to say and what not to say.” We do not believe one incident of coaching establishes a pattern of behavior from K.J. Furthermore, the May 2018 incident and the allegations against Hosea are distinct. In May 2018, K.J. allegedly coached her three-year-old daughter to say no one in the house smoked so that she would not lose parenting time or custody. Whereas in this current case, Hosea is alleging that K.J. manipulated her teenage son into reporting a crime that could put his biological father in prison. Thus, we conclude that the proffered CPS records do not make Hosea’s fabrication defense more probable and are therefore irrelevant.

Even if the evidence of K.J.’s past with CPS was relevant, we agree with the district court that the probative value does not substantially outweigh its prejudicial effect. First, the probative value of the evidence is low. None of the CPS reports involve allegations of sexual abuse and, as discussed above, the reports do not establish that K.J. repeatedly and routinely coached her children to lie to CPS. Additionally, Hosea was permitted to question witnesses at trial about the fact that K.J. wanted custody of A.H. and in fact, he did just that. Thus, any evidence in the proffered CPS records regarding K.J.’s desire for custody would have been cumulative.

On the other hand, we agree with the district court that the evidence at issue would have confused the jury and likely distracted it from the issue in this case. The proffered CPS records contain disputed and unresolved allegations of child neglect and physical abuse on both K.J.'s and Hosea's parts. Introducing such evidence at trial would likely have turned a criminal trial into a custody battle, and the Minnesota Supreme Court previously affirmed a district court's decision to exclude certain disputed evidence because admitting the evidence would "misdirect the jury away from the key inquiry." *State v. Smith*, 876 N.W.2d 310, 332 (Minn. 2016) (quotation omitted). The supreme court determined the probative value of such evidence was substantially outweighed by the danger of unfair prejudice because it would create "a trial-within-a-trial." *Id.*; *see also State v. Jenkins*, 782 N.W.2d 211, 224 (Minn. 2010) (holding that a defendant's constitutional right to present a complete defense "is not absolute; courts may limit the defendant's evidence to ensure that the defendant does not confuse or mislead the jury"); *State v. Garland*, 942 N.W.2d 732, 748 (Minn. 2020) (affirming the exclusion of evidence that "was speculative and confusing").

In sum, we conclude that the district court did not abuse its discretion by excluding evidence about K.J.'s past experiences with CPS because the proffered evidence is not relevant, and its probative value was outweighed by its danger for unfair prejudice. Given this, we need not conduct a harmless error analysis, and we affirm Hosea's conviction.

Affirmed.