

*This opinion is nonprecedential except as provided by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
A24-0232**

State of Minnesota,
Respondent,

vs.

Scott Solon Schaefer-Bonovsky,
Appellant.

**Filed February 3, 2025
Affirmed
Smith, Tracy M., Judge**

Stearns County District Court
File No. 73-CR-21-695

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Chief Judge; Smith, Tracy M., Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from a judgment of conviction for second-degree criminal sexual conduct, appellant Scott Solon Schaefer-Bonovsky argues that the district court abused its discretion by admitting expert testimony over his objection. In a self-represented

brief, Schaefer-Bonovsky argues that he received ineffective assistance from his trial and appellate counsel. We conclude that the district court did not abuse its discretion by admitting the challenged expert testimony, but we decline to reach the merits of Schaefer-Bonovsky's ineffective-assistance-of-counsel claims and preserve them for review in a postconviction proceeding. Accordingly, we affirm.

FACTS

The following facts are drawn from the district court's findings following a court trial and from other relevant parts of the district court record.

Schaefer-Bonovsky's conviction stems from his sexual abuse of his girlfriend's minor daughter. At the time of the abuse, Schaefer-Bonovsky lived with the child's mother, the child, and the child's three other siblings. The abuse began in mid-March 2017, when the child was 5 years old and Schaefer-Bonovsky was between 30 and 31 years old.

According to the child, who testified at trial, Schaefer-Bonovsky used his hand to touch and rub her chest and pubic region on multiple occasions while she was bathing. The child also testified that Schaefer-Bonovsky squeezed and grabbed her "butt" and rubbed her chest while she was clothed in the living room. The child additionally stated that her mother and siblings did not witness the abuse. Schaefer-Bonovsky stopped living at the apartment in August 2017.

In September 2017, after their mother entered substance-abuse treatment, the child and her siblings entered foster care and were eventually placed with relatives.¹ Their foster

¹ The children left foster care to live with their mother between June 2018 and July 2019 but, in July 2019, returned, along with their mother, to live with the foster parents.

father was the child's mother's cousin. Their foster mother had worked with children in educational settings for several years and in child protection for approximately 20 years.

While the child was in foster care, the foster mother and others observed the child exhibiting concerning and unusual behaviors. These behaviors included the child frequently wetting the bed at night and soiling herself during the day. The child also showed strong reactions toward men, showing fear around some men and a desire for physical contact and attention around others. Further, the child wore revealing clothing and masturbated or rubbed against objects sexually. She also needed to sleep with multiple lights on and with either her foster mother or siblings nearby.

In the summer of 2019, the foster mother, concerned by these behaviors, encouraged the child to disclose if anything had happened to her. The child told the foster mother that Schaefer-Bonovsky had touched her inappropriately. The foster mother reported this information to Kandiyohi County Social Services. A police investigator with specialized training in sexual-abuse forensic interviewing interviewed the child and twice interviewed Schaefer-Bonovsky.

Following the police investigation, respondent State of Minnesota charged Schaefer-Bonovsky with two counts of second-degree criminal sexual conduct under Minnesota Statutes section 609.343, subdivision 1(a) and (h)(iii) (2016). The matter was scheduled for a jury trial.

Before trial, the state filed a motion in limine, seeking to present expert testimony addressing "the nature of child sexual abuse disclosures, an abuser's methods of maintaining a child's silence, the phenomenon of bed wetting and other behaviors and their

association with sexual trauma.” Schaefer-Bonovsky objected, asserting that the testimony would be improper opinion testimony. The district court granted the state’s motion over Schaefer-Bonovsky’s objection, allowing the state to present expert testimony on this topic.

Immediately before trial, Schaefer-Bonovsky waived his right to a jury trial. At the bench trial that followed, Schaefer-Bonovsky moved the district court to reconsider the admissibility of the expert testimony. He argued that, because the case was going to be tried to the court rather than to a jury, the testimony would no longer be helpful to the trier of fact. The district court denied the motion. At trial, the state presented the expert testimony through Mindy Mitnick, who provided general testimony about delays by child sexual-abuse victims in disclosing abuse and common behaviors of child sexual-abuse victims. Mitnick did not review materials related to this case nor did she testify about this child’s specific behavior.

The district court found Schaefer-Bonovsky guilty of both counts, entered a judgment of conviction for only one of the offenses, and sentenced Schaefer-Bonovsky to 300 months in prison.

This appeal follows.

DECISION

I. The district court did not abuse its discretion by admitting Mitnick’s expert testimony.

Schaefer-Bonovsky argues that the district court abused its discretion by allowing Mitnick’s expert testimony because the testimony did not meet the requirements for admissibility under Minnesota Rule of Evidence 702.²

Appellate courts will not reverse a district court’s evidentiary ruling on the admissibility of expert testimony “unless it is based on an erroneous view of the law or it is an abuse of discretion.” *Gross v. Victoria Station Farms, Inc.*, 578 N.W.2d 757, 760 (Minn. 1998). Rule 702 allows expert testimony “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue,” provided that the witness is appropriately qualified and the opinion has foundational reliability. *See also State v. Mosley*, 853 N.W.2d 789, 799 (Minn. 2014) (describing rule 702).

When granting the state’s motion in limine to admit Mitnick’s expert testimony, the district court ruled that the evidence was admissible “regarding the nature of child sexual abuse disclosures, methods of obtaining silences, and other behaviors seen in cases of sexual trauma.” The district court found that Mitnick’s testimony “is outside the knowledge

² In the district court, Schaefer-Bonovsky also argued—unsuccessfully—that the expert testimony constituted vouching testimony. To the extent that Schaefer-Bonovsky raises this issue in his self-represented brief, and assuming that this issue is properly before us on the merits, we conclude that Mitnick did not present vouching testimony because her testimony, which provided insight into the conduct of child sexual-abuse victims, was within the scope of expert testimony permitted under *State v. Myers*, 359 N.W.2d 604, 610 (Minn. 1984).

of laypersons and would be helpful to the jury in evaluating the testimony of the alleged victim and others regarding the alleged victim's behaviors and the delayed reporting of sexual abuse." When Schaefer-Bonovsky renewed his objection after waiving his right to a jury trial, the district court rejected Schaefer-Bonovsky's objection, explaining:

I think I perhaps, just having presided over other cases, have more knowledge than a layperson who had never been exposed to that type of testimony before, but I am also sensitive to each party being able to make the record that they wish to make, and the Court being able to rely on what's in the record in this case and setting aside anything this Court might know from other cases, whether it be other crim sex cases or other cases involving this defendant.

I think I have to set aside everything that I know and focus only what's on the record before me in this case. I do think that I am not an expert in disclosure, delayed disclosure, or counter-intuitive victim behavior.

I've heard testimony before, but not from this expert. . . . I am not going to exclude Ms. Mitnick's testimony as being unhelpful to me because I am now the trier of fact. I haven't heard her testify before, and I would like to allow both parties to make whatever record that they would like to make. The Court will give her testimony the appropriate weight and consideration.

As Schaefer-Bonovsky recognizes, Minnesota courts have regularly upheld the admission of expert testimony to provide context to behaviors exhibited by minor victims of sexual abuse when the testimony is helpful to the trier of fact. In *Myers*, the supreme court held that "[b]ackground data providing a relevant insight into puzzling aspects of [a] child's conduct and demeanor which the jury could not otherwise bring to its evaluation of [the child's] credibility is helpful and appropriate in cases of sexual abuse of children." 359 N.W.2d at 610. Similarly, the supreme court in *State v. Hall* held that the district court did

not abuse its discretion by admitting expert testimony addressing the reporting conduct of adolescent children. 406 N.W.2d 503, 505 (Minn. 1987).

But Schaefer-Bonovsky argues that the district court abused its discretion in admitting the testimony in the court trial here because (1) the district court found only that the testimony was not “unhelpful” rather than finding that it was “helpful”; (2) Mitnick’s testimony could not be helpful to the district court because the district court, through experience, already had knowledge of the subject matter of the expert testimony; (3) the district court applied an incorrect standard under rule 702 when it stated that it was not an “expert” in the field of the expert’s testimony because the standard is not whether the trier of fact is an “expert”; and (4) the district court applied an improper standard under rule 702 when it noted that it had not previously heard Mitnick testify and that it wanted “to allow both parties to make whatever record that they would like to make.”

The arguments are unconvincing. First, we disagree that the district court failed to find that the testimony would be “helpful.” It is true that the district court, in rejecting Schaefer-Bonovsky’s renewed objection to the testimony, said that it was “not going to exclude Ms. Mitnick’s testimony as being unhelpful . . . because [the district court was] now the trier of fact.” But the district court had explicitly found that the expert testimony would be “helpful” to the jury when it ruled the testimony admissible in the first instance, and, by admitting the testimony over Schaefer-Bonovsky’s renewed objection, the district court implicitly found that the testimony would be helpful to the district court as the trier of fact as well. Second, we disagree that the district court abused its discretion by admitting the expert testimony even though it had experience in sexual-assault cases. Given Mitnick’s

extensive experience and training in the area, the district court could reasonably conclude that her testimony could provide it with helpful context in this case. Third, we disagree that the district court erroneously believed the standard under rule 702 to be whether the trier of fact is an “expert” rather than whether the testimony would assist the trier of fact. The issue of admissibility under rule 702 was thoroughly briefed and argued, and it is evident from the record that the district court fully understood the rule. Fourth, for the same reason, we reject the argument that the district court misunderstood rule 702 when it stated that it had not heard Mitnick testify and decided to let the parties create the record in this case. We discern no abuse of discretion in the district court deciding to admit helpful expert testimony rather than rely on expert testimony that it heard in other cases. In sum, the district court did not abuse its discretion by admitting Mitnick’s expert testimony.³

II. We decline to address Schaefer-Bonovsky’s ineffective-assistance-of-counsel claims.

A. Ineffective Assistance of Trial Counsel

In his self-represented brief, Schaefer-Bonovsky claims that he received ineffective assistance from his trial counsel because his trial counsel (1) did not give an opening

³ In his self-represented brief, Schaefer-Bonovsky argues that it was improper to admit the expert testimony because the testimony confused the trier of fact, the expert was not qualified, and the expert relied on unreliable studies involving mere allegations of abuse. Assuming that Schaefer-Bonovsky properly preserved these issues, these arguments fail on the merits. First, Schaefer-Bonovsky’s argument that the expert testimony confused the trier of fact fails because, by explaining behaviors of child sexual-abuse victims, the expert testimony assisted rather than confused the trier of fact. Second, Schaefer-Bonovsky’s argument that Mitnick is unqualified is without merit given Mitnick’s extensive experience. Third, nothing in the record suggests that the district court improperly determined that Mitnick used reliable methods.

statement; (2) failed to call witnesses; (3) did not properly develop the record in light of his alternative theory of the case; (4) failed to appropriately investigate the case; (5) made arguments in his closing statement that the evidence did not support; (6) told him that he had a good chance at trial, causing him to take the case to trial rather than accept a plea deal; (7) neglected to present his theory that the some of the state’s witnesses, who disliked him, had a motive to lie about the abuse to keep him out of their lives; and (8) failed to question witnesses about the child’s behaviors before the alleged abuse occurred. Schaefer-Bonovsky appears to request an evidentiary hearing to further develop these claims.

A criminal defendant raising an ineffective-assistance-of-counsel claim must show that “(1) his trial counsel’s representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for the counsel’s unprofessional errors, the result of the proceeding would have been different.” *State v. Jones*, 977 N.W.2d 177, 193 (Minn. 2022) (quotation omitted); *see also Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984). “[T]here is a strong presumption that counsel’s performance was reasonable.” *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).

“When a claim of ineffective assistance of trial counsel can be determined on the basis of the trial record, the claim must be brought on direct appeal or it is *Knaffla*-barred.” *Id.*⁴ However, the claim is better brought in a postconviction proceeding when the claim

⁴ Under *State v. Knaffla*, all claims that are known but not raised when a direct appeal is taken “will not be considered upon a subsequent petition for postconviction relief.” 243 N.W.2d 737, 741 (Minn. 1976).

requires examination of evidence outside of the record or additional fact-finding. *See Andersen*, 830 N.W.2d at 10.

Because it is unclear from the record whether Schaefer-Bonovsky's ineffective-assistance-of-trial-counsel claim succeeds or fails, especially given the interrelatedness of the arguments that Schaefer-Bonovsky raises in support of this claim, we decline to address this claim on direct appeal. Ineffective-assistance-of-counsel claims are not *Knaffla*-barred when the claim "requires examination of evidence outside the trial record or additional fact-finding by the postconviction court." *Id.* Therefore, we preserve Schaefer-Bonovsky's right to pursue this claim in a separate postconviction proceeding. *See State v. Jackson*, 726 N.W.2d 454, 463 (Minn. 2007) ("[The defendant's] claims about his counsel's investigation and witness contacts require consideration of facts not in the trial record. Accordingly, we deny those claims without prejudice to [the defendant's] right to raise them in a postconviction proceeding.").

B. Ineffective Assistance of Appellate Counsel

In his self-represented brief, Schaefer-Bonovsky additionally argues that he received ineffective assistance from his appellate counsel because counsel failed to request a stay of his appeal to allow him to pursue a postconviction petition to address his ineffective-assistance-of-trial-counsel claim.

Appellate courts apply the same standards for reviewing claims of ineffective assistance of appellate counsel and trial counsel. *Jama v. State*, 756 N.W.2d 107, 113 n.2 (Minn. App. 2008). An ineffective-assistance-of-appellate-counsel claim based on appellate counsel's failure to pursue an ineffective-assistance-of-trial-counsel claim is

predicated on the success of the ineffective-assistance-of-trial-counsel claim. *Schneider v. State*, 725 N.W.2d 516, 521 (Minn. 2007). Accordingly, because we decline to address the ineffective-assistance-of-trial-counsel claim, we additionally decline to reach the merits of Schaefer-Bonovsky's ineffective-assistance-of-appellate-counsel claim. *See also Abdillahi v. State*, No. A12-1477, 2013 WL 2924900, at *8 (Minn. App. June 17, 2013) (holding that ineffective-assistance-of-appellate-counsel claims should be addressed in postconviction proceedings), *rev. denied* (Minn. Aug. 20, 2013).⁵ We again preserve Schaefer-Bonovsky's right to pursue this claim in a separate postconviction proceeding. *See Jackson*, 726 N.W.2d at 463.

Affirmed.

⁵ We cite to this nonprecedential opinion for its persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).