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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0335**

State of Minnesota,
Respondent,

vs.

Norberto De Jesus Zelada Perez,
Appellant.

**Filed February 3, 2025
Affirmed in part, reversed in part, and remanded
Kirk, Judge***

Washington County District Court
File No. 82-CR-22-1610

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

Kevin M. Magnuson, Washington County Attorney, Andrew T. Jackola, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Wheelock, Judge; and Kirk,
Judge.

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

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant challenges his conviction for two counts of first-degree criminal sexual conduct, arguing that the district court abused its discretion by (1) admitting the complainants' forensic interviews as prior consistent statements and pursuant to the residual hearsay exception, and (2) permitting the state to cross-examine a defense witness about inappropriate photographs of a minor found on appellant's phone. Appellant also challenges the district court's imposition of lifetime conditional release on count 1. We affirm in part, reverse in part, and remand.

FACTS

Respondent State of Minnesota charged appellant Norberto De Jesus Zelada Perez with four counts of criminal sexual conduct stemming from allegations made by two complainants: I.F.P., aged 9, and G.R.V., aged 11. The charges included (1) first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a) (2018), for engaging in sexual penetration with I.F.P.; (2) first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a) (2020), for engaging in sexual penetration with G.R.V.; second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(a) (2018), for engaging in sexual contact with I.F.P.; and second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(a) (2020), for engaging in sexual contact with G.R.V.

Beginning in May 2020, Perez's wife provided childcare services to I.F.P. at their home in Woodbury. Approximately one year later, Perez's wife also began caring for

G.R.V. Perez was occasionally present at the home while his wife cared for the girls but did not care for the children himself.

In May 2022, I.F.P. told her mother that she did not want to go to daycare because Perez did “things” to her and G.R.V. I.F.P. said that Perez “sucks at” her vagina. I.F.P.’s mother then told her sister and I.F.P.’s father what I.F.P. had said. That night, I.F.P.’s mother and father went to G.R.V.’s mother’s home to discuss what I.F.P. said. G.R.V.’s family contacted a family friend who is a police officer in a different city. The family friend went to G.R.V.’s home and spoke with the families. The family friend then called Woodbury police officers to report the allegations.

I.F.P. and G.R.V. were later examined and interviewed by nurses at Midwest Children’s Resource Center (MCRC). The forensic interviews were video recorded.

At a pretrial hearing, Perez moved to exclude the MCRC recorded interviews from evidence. The district court denied Perez’s motion, reasoning that the interviews may be admissible under a hearsay exception as a statement for purposes of a medical diagnosis and treatment, prior inconsistent statement, prior consistent statement, or an excited utterance. At trial, Perez renewed his objection to the recordings arguing that they were cumulative, prejudicial, and were inconsistent with the complainants’ testimony. The district court overruled Perez’s objection and determined that the recordings were admissible as “prior consistent statements . . . [and] under the residual hearsay exception, as being inherently reliable.”

At trial, I.F.P. testified that Perez would tell her “to go downstairs” and he would do “random stuff.” She explained the “random stuff” happened when Perez would “touch

[her] private” with his tongue. When asked if Perez would touch her with “anything else,” she responded, “[n]o.”

The jury was shown portions of I.F.P.’s forensic interview. In the interview, she said that Perez touched her over her clothes and “underneath clothes.” She also said Perez would put his tongue in her. She explained that, at times, G.R.V. was present during these incidents, and Perez touched G.R.V., too. She explained that the incidents occurred in the hallway and in Perez’s son’s bedroom, and Perez would pull her by the hand to the hallway.

G.R.V. testified that Perez “abused” her, meaning “[h]e touched [her] and [her] cousin.” She said that Perez touched her with his hand and “put it inside [her] clothing” and “[i]n [her] private parts.” She later testified that she did not remember if “his hand went underneath” her clothes. She affirmed that she saw Perez touch I.F.P., too. She explained that these incidents occurred in the living room, basement hallway, and the son’s bedroom.

The jury was shown G.R.V.’s forensic interview. During G.R.V.’s interview, she said that Perez would touch her underneath and over her clothes and that he would “stick his hands into [her] private parts.” She stated that I.F.P. was present during these incidents. G.R.V. explained these incidents occurred in the living room, hallway, and the son’s bedroom. She also said that Perez hurt her, and she bled in the days after one of the incidents. Finally, G.R.V. said that I.F.P. told her that Perez engaged in oral sex on I.F.P.

Perez’s wife testified at trial as a defense witness. On direct examination, she testified that Perez is an “excellent father,” that he “behaved normally” around the girls,

and that she “never saw something that was inappropriate.” Over Perez’s objection, the state’s cross-examination of Perez’s wife included the following inquiry:

Q: Who is [K.G.J.]?

A: My niece.

Q: How old is [K.G.J.]?

A: 16 years old.

Q: Two years ago, she would have been like 14, correct?

A: Yes.

Q: Are you aware that law enforcement officers discovered naked pictures of your niece on Mr. Perez’s phone during their investigation?

A: No.

Q: You weren’t aware of that at all?

A: No.

At the conclusion of trial, the jury returned a guilty verdict on all four counts. At the sentencing hearing, the district court adjudicated Perez guilty on two counts of first-degree criminal sexual conduct and imposed concurrent sentences. On both counts, the district court imposed a lifetime conditional-release term.

DECISION

The first two issues raised on appeal are evidentiary and are therefore governed by the same standard of review. A district court’s evidentiary rulings are reviewed for an abuse of discretion. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). “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.” *Id.* “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 the district court erred in admitting evidence, “the reviewing court determines whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Zulu*, 706 N.W.2d 919, 924 (Minn. App. 2005) (quotation omitted).

I. The district court did not abuse its discretion by admitting video recordings of complainants’ forensic interviews as prior consistent statements and pursuant to the residual hearsay exception.

Perez first argues that the district court abused its discretion by admitting into evidence video recordings of the complainants’ forensic interviews as prior consistent statements and under the residual hearsay exception. 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). A hearsay statement “is not admissible except as provided” in the Minnesota Rules of Evidence or any other rules prescribed by the supreme court or the legislature. Minn. R. Evid. 802.

Prior Consistent Statements

The district court held that the interview statements were prior consistent statements under Minn. R. Evid. 801(d)(1). A prior consistent statement by a witness is not hearsay if (1) the declarant testifies at the trial, (2) is subject to cross-examination concerning the statement, (3) the statement is “consistent with the declarant’s testimony,” and (4) “helpful to the trier of fact in evaluating the declarant’s credibility as a witness.” Minn. R. Evid. 801(d)(1). The prior consistent statement under this rule is admissible as substantive evidence. Minn. R. Evid. 801(d)(1) 1989 comm. cmt.

Before a prior consistent statement can be admitted, the district court “must make a threshold determination of whether there has been a challenge to the witness’s credibility.” *State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000), *rev. denied* (Minn. Feb. 24, 2000). Next, the district court determines “whether the prior consistent statement would be helpful to the trier of fact in evaluating the witness’s credibility.” *Id.* The statement is helpful to evaluate witness credibility if it “bolster[s] the witness’ credibility.” *Id.* A “prior consistent statement might bolster credibility by showing a fresh complaint, obviating an improper influence or motive, providing a meaningful context, or demonstrating accuracy of memory.” *Id.* Finally, the district court determines if the trial testimony and the prior statement are consistent. *Id.* The testimony and the prior statement “need not be identical to be consistent.” *Zulu*, 706 N.W.2d at 924. And even if there are inconsistencies, if such inconsistencies were not “substantial,” the district court does not abuse its discretion by admitting the statement. *Id.* at 925.

The parties do not dispute that Perez challenged the credibility of both complainants. Instead, the argument focuses on the last step in the analysis—whether the prior statement and testimony were consistent. Perez contends that the complainants’ forensic interviews were inconsistent with their testimony at trial in two ways: (1) regarding whether penetration occurred, and (2) regarding whether bodily injury occurred.

Perez first argues that because inconsistencies between I.F.P.’s interview statements and trial testimony about penetration affect the elements of the criminal charges, the statements were inadmissible under rule 801(d)(1)(B). He cites *Bakken* as support for his contention.

In *Bakken*, the defendant was charged with two counts of first-degree criminal sexual conduct and one count of third-degree criminal sexual conduct. 604 N.W.2d at 107–08. The court noted that the victim’s “trial testimony and his videotaped interview were sufficiently consistent as to the general location of the assault, the identity of the perpetrator, and the nature of the acts of penetration.” *Id.* at 110. However, the defendant’s “alleged threat, use of a knife, cutting of [the victim’s] arm, and ripping off of [the victim’s] clothes” was included in the videotaped interview and was inconsistent with testimony at trial, where the victim made no such allegations. *Id.* We found the discrepancies to be “significant because, if the jury believed the inconsistent videotaped statements, the criminal conduct would legally escalate from third-degree to first-degree.” *Id.* We concluded that “where inconsistencies directly affect the elements of the criminal charge, the [r]ule 801(d)(1)(B) requirement of consistency is not satisfied and the prior inconsistent statements may not be received as substantive evidence under that rule.” *Id.* But the court determined that the district court’s error in admitting the inconsistent statements did not substantially affect the jury’s verdict, because the jury did not find the defendant guilty of first-degree criminal sexual conduct. *Id.*

Perez argues that I.F.P.’s interview statements that Perez touched her “private part” with his hand are inconsistent statements because I.F.P. did not testify about such sexual contact at trial. Our review of the record establishes that I.F.P.’s interview statements and trial testimony were inconsistent in regard to sexual contact. But Perez cannot establish prejudice from the district court’s error in admitting this portion of the interview. *See Holt*,

772 N.W.2d at 483 (stating a defendant claiming error must establish both error and prejudice from the error).

Unlike *Bakken*, where the only evidence supporting the first-degree sexual conduct charge was in the victim's recorded statement, here I.F.P. consistently testified that Perez engaged in oral sex with her and stated the same during her interview. To prove first-degree criminal sexual conduct for penetration, the state was required to show that (1) the complainant was under 13 years of age, (2) the defendant was more than 36 months older than the complainant, and (3) the defendant engaged in sexual penetration with the complainant. Minn. Stat. § 609.342, subd. 1(a). And "sexual intercourse, cunnilingus, fellatio, or anal intercourse" constitutes "sexual penetration." Minn. Stat. § 609.341, subd. 12 (2018 & 2020). Therefore, I.F.P.'s consistent testimony and interview statements that Perez—aged 42 at the time of the offenses—engaged in oral sex with her constitutes first-degree criminal sexual conduct. The jury ultimately found Perez guilty of first-degree and second-degree criminal sexual conduct with respect to I.F.P. But the district court only sentenced Perez on the first-degree criminal sexual conduct counts because it determined that second-degree criminal sexual conduct is a lesser included charge. *See State v. Ashland*, 287 N.W.2d 649, 650 (Minn. 1979) (declining to consider the sufficiency of evidence supporting convictions when the district court did not sentence defendant on the other charges). Therefore, any error that the district court made in admitting I.F.P.'s inconsistent interview statements did not substantially affect the verdict because the jury could have found Perez guilty based on I.F.P.'s testimony that he engaged in oral sex.

Next, Perez argues that G.R.V.'s testimony and interview statements were inconsistent because G.R.V. stated in her interview that after one incident, she bled several days later. G.R.V. did not testify to any injury at trial. But G.R.V. said during her interview that Perez stuck his hand "into [her] private parts," which was consistent with her trial testimony that Perez "touched [her] inside of [her] clothing" and "[i]n [her] private parts." Although Perez argues that these inconsistencies "affected the penetration and sexual contact elements of first- and second-degree criminal sexual conduct," the jury apparently believed that Perez penetrated G.R.V. based on her interview statements and trial testimony that Perez put his hand "[i]n [her] private parts," to find Perez guilty of first-degree criminal sexual conduct.¹

Residual Hearsay Exception

The district court also determined that the recorded interviews were admissible under the "residual hearsay exception" in Minn. R. Evid. 807. The rule states:

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.

¹ Perez also contends that "I.F.P.'s interview introduced significantly prejudicial information that she did not testify to at trial." This prejudicial information was I.F.P.'s interview statement that Perez told her he would touch another daycare girl once the girl was older. But as the state points out, the record reflects that the state did not play this portion of the interview for the jury during trial. We do not review arguments when appellant fails to provide citations to the record or relies on extra-record assertions. *Cole v. Star Trib.*, 581 N.W.2d 364, 372 (Minn. App. 1998).

Minn. R. Evid. 807.

“The [district court’s] decision to admit hearsay statements under [r]ule 807 has two steps.” *Hallmark*, 927 N.W.2d at 292. “First, the district court must look at the totality of the circumstances to determine whether the hearsay statement has circumstantial guarantees of trustworthiness.” *Id.* (quotations omitted). Second, the district court must “determine whether the three enumerated requirements of [r]ule 807 are met.” *Id.* at 293. The district court’s failure to conduct the two-step analysis does not automatically constitute an abuse of discretion, and this court may independently evaluate whether the recorded interviews are admissible under rule 807. *See id.* at 294-95.

The district court did not conduct its analysis of the residual hearsay exception on the record, so an analysis of the residual hearsay exception follows. Under the first step of the residual hearsay analysis, we evaluate the totality of the circumstances to determine if the statements possessed “circumstantial guarantees of trustworthiness.” *Id.* at 292 (quotations omitted). In cases concerning child abuse, such as here, these circumstances include

whether the statement was spontaneous, whether the questioner had a preconceived idea of what the child should say, whether the statement was in response to leading questions, whether the child had any apparent motive to fabricate, whether the statements are of the type one would expect a child of that age to fabricate, whether the statement remained consistent over time, and the mental state of the child at the time of the statements.

State v. Ahmed, 782 N.W.2d 253, 260 (Minn. App. 2010).

Perez contends the complainants' interview statements lacked circumstantial guarantees of trustworthiness because there was a gap in time between the conduct and the interviews, there was no corroborating physical evidence, the complainants had an opportunity to modify their stories prior to the interviews, and the complainants had a motive to lie. Upon review of the record, the totality of the circumstances provides an adequate guarantee of trustworthiness. The complainants made their statements to trained nurses at MCRC, who asked open-ended questions to ensure the information obtained during the interview is "in the child's own words." *See State v. Hollander*, 590 N.W.2d 341, 346 (Minn. App. 1999) (stating that a child's forensic interview with CornerHouse has "guarantees of reliability . . . sufficient to satisfy the trustworthiness requirement"). And the interviews were conducted outside the presence of the family members the complainants previously spoke to about the allegations, so the complainants' opportunity to modify their stories during the interview was mitigated. Although the defense presented evidence of the complainants' motive to fabricate—that they did not want to attend daycare because they were prohibited from certain areas of the house—the statements are not the type one would expect 9- and 11-year-old girls to make to avoid attending daycare. Finally, the interviews were recorded, "removing any real dispute" over what the complainants said. *Hallmark*, 927 N.W.2d at 293 (stating a factor to consider when evaluating trustworthiness of a statement under the residual hearsay exception includes if the statement was recorded).

Under the second step of the residual hearsay analysis, we consider whether the enumerated requirements of rule 807 are met. *Id.* Here, the statements were offered to

prove a material fact—that Perez sexually abused the complainants. The statements were more probative than other evidence presented, such as the complainants’ own testimony and the testimony of their families, because the interviews were conducted in the days immediately after the complainants disclosed the abuse to their parents, whereas the trial took place over one year after the allegations came to light. Finally, the interviews served the interests of justice when they were admitted into evidence, because the complainants made their statements voluntarily to the MCRC nurses and the interviews corroborated the testimony that the complainants gave at trial.

In sum, the district court did not abuse its discretion in admitting the interview statements as either prior consistent statements or under the residual hearsay exception. And any error by the district court in admitting inconsistent statements did not substantially affect the verdict, because the complainants’ testimony at trial was sufficient evidence of first-degree criminal sexual conduct.

II. The district court did not abuse its discretion by permitting the state to cross-examine a defense witness about inappropriate photographs of a minor found on Perez’s phone.

Perez next contends that the district court abused its discretion by permitting the state to cross-examine a defense witness about “inappropriate photographs of a minor” that police found on his phone, because the district court determined that Perez “opened the door to a character trait.” Perez also argues that the state’s inquiry did not comply with the procedural-notice requirements of Minn. R. Evid. 608(c). The district court determined that Perez’s character evidence was in the form of his wife’s testimony that he was an

“excellent father” and he “behaved normally” around the complainants and therefore permitted the state to cross-examine the wife about a specific instance of Perez’s conduct.

The admissibility of character evidence is governed by Minn. R. Evid. 404(a). For character evidence of the defendant to be admissible under rule 404(a)(1), the evidence must be of a “pertinent trait of character.” And “pertinent traits” are “those involved in the offense charged.” *State v. Miller*, 396 N.W.2d 903, 906 (Minn. App. 1986). Evidence of other crimes or prior bad acts is not admissible to prove the character of a person in order to show action in conformity with their character, but such evidence may be admissible for other purposes. Minn. R. Evid. 404; *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). If a criminal defendant offers evidence of his character, the prosecution may rebut that evidence by showing a contrary trait through specific instances of conduct. Minn. R. Evid. 404(a)(1) (governing character evidence of the accused); Minn. R. Evid. 405(b) (governing methods of proving character); *see also State v. Leutschafft*, 759 N.W.2d 414, 424 (Minn. App. 2009) (stating that the appellant’s testimony about his adherence to gun safety was character evidence that the prosecutor was permitted to rebut with relevant specific instances of conduct), *rev. denied* (Minn. Mar. 17, 2009). The state may not attack the character or reputation of the defendant unless he first introduces evidence of good character. *State v. Loebach*, 310 N.W.2d 58, 63 (Minn. 1981). In addition, prior misconduct, other than conviction of a crime, may be admissible for the purpose of attacking a defense witness’s credibility if the prior misconduct is probative of untruthfulness of another witness, such as the defendant. Minn. R. Evid. 608(b). The

prosecution generally must provide notice to the defense when it intends to cross-examine a witness concerning a specific instance of conduct. *See* Minn. R. Evid. 404(b)(2), 608(c).

Perez's wife, called as a defense witness, offered testimony that he is an "excellent father," which is evidence of Perez's character. Based on such testimony, the jury was free to infer that as an "excellent father" Perez would not engage in sexual conduct against minors. Wife then offered testimony that Perez "behaved normally" around the complainants. And in a case about criminal sexual conduct towards minors, a defendant's character with respect to children is pertinent. *See State v. Posten*, 302 N.W.2d 638, 642 (Minn. 1981) (stating that the district court should have permitted the defendant to introduce reputation or opinion evidence concerning his "good character with respect to the care of children" in a criminal sexual conduct case involving minors).

Relying on *State v. Sharich*, Perez asserts his wife's testimony that he "behaved normally" around the complainants is a general denial that does not constitute putting his character at issue. 209 N.W.2d at 911. In *Sharich*, the Minnesota Supreme Court determined that the defendant's "mere denial that she was a prostitute or had prostituted herself on this occasion did not put her character into issue." *Id.* The court concluded that "[a] general denial by the defendant that he did a particular kind of act is insufficient to put his character into issue." *Id.* But *Sharich* is distinguishable because the wife was not asked about a particular kind of act; rather, she was asked about how Perez acted around the complainants. The defense's questions are analogous to those in *State v. Willis*, 559 N.W.2d 693 (Minn. 1997). There, defense counsel asked whether committing a criminal act was "out of . . . character" for the defendant and the supreme court determined that

defense counsel opened the door to character evidence. *Id.* at 699. Here, defense counsel's question was "When [Perez] was around the girls, how did he act?" And the wife answered, "[h]e . . . behaved normally. I never saw something that was inappropriate. And I never would have allowed it." In the context of the trial, the wife's testimony appears to be a general denial that Perez committed the acts against the girls, like the testimony in *Willis*, rather than a general denial to a particular kind of act like the testimony and defense questions that were at issue in *Sharich*.

The state then inquired if wife knew about inappropriate photographs of her minor niece that were found on Perez's phone, which is a specific instance of conduct relevant to Perez's character for "behav[ing] normally" around minors and the inference that a father would not have inappropriate photographs of a minor relative on his phone. After a defendant in a criminal trial puts his character at issue, the state may rebut that character evidence with specific instances of conduct. *See* Minn. R. Evid. 405(a). That is what occurred in this case, and the district court did not err in permitting the state to rebut Perez's character evidence with a limited inquiry of a specific instance of conduct. *See State v. Eling*, 355 N.W.2d 286, 291 (Minn. 1984) (stating that "the determination of what constitutes proper rebuttal evidence rests almost wholly in the discretion of the [district] court").

The state was not required to provide notice to the defense under Minn. R. Evid. 404(b), because the state was not offering the evidence of the inappropriate photograph to prove "conformity" with the character trait Perez offered. Rather, the state offered the evidence to rebut the character trait. *See Leutschafft*, 759 N.W.2d at 424 (stating that

appellant's testimony about his adherence to gun safety was character evidence and the prosecutor was permitted to rebut with relevant specific instances of conduct). Nor was the state required to provide notice to the defense under Minn. R. Evid. 608, because rule 608 governs character for truthfulness, and the character traits offered did not implicate Perez's or wife's character for truthfulness. *See* Minn. R. Evid. 608 (permitting the credibility of a witness to be attacked or supported with character evidence for truthfulness and requiring the prosecutor in criminal cases to provide notice of intent to cross-examine a defense witness about such character evidence).

Moreover, any error by the district court in admitting the evidence of the inappropriate photograph was harmless. If the district court erroneously admitted evidence, we “determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016). “The defendant bears the burden of making that showing.” *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024). When conducting this analysis, we “examine the entire record.” *Id.* (quotation omitted). We do not focus only on evidence of guilt but consider other factors including “(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).

As noted above, the state asked wife five questions concerning the inappropriate photograph, including “[a]re you aware that law enforcement officers discovered naked pictures of your niece on Mr. Perez's phone during their investigation?” The state's limited

questioning on this topic weighs in favor that the error was harmless. Further, the state did not offer the photograph into evidence. Although the evidence may have had a persuasive effect on the jury, the district court instructed the jury that the “evidence is to be considered only for the purpose of evaluating the testimony of [wife’s] opinion of the character of the defendant.” And “[w]e presume that juries follow instructions given by the district court.” *State v. Segura*, 2 N.W.3d 142, 167 (Minn. 2024). The state did not rely on this testimony in its closing arguments. And Perez’s attorney attempted to counter the evidence by questioning wife on this topic. Wife later confirmed that she did remember Perez told her he had received “stuff” from the niece. Thus, upon weighing the factors under the harmless-error standard of review, we conclude that any error in the district court’s decision to permit the state to cross-examine wife on this topic did not significantly affect the verdict.

III. The district court erred by imposing a lifetime term of conditional release on the first count.

Perez next challenges the district court’s imposition of a lifetime conditional-release term on the first count of first-degree criminal sexual conduct. Whether a sentence conforms to the requirements of a statute or the sentencing guidelines is a question of law reviewed de novo. *State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009).

Under Minnesota law, a district court must impose a mandatory ten-year conditional-release term when a defendant is convicted of first-degree criminal sexual conduct. Minn. Stat. § 609.3455, subd. 6. (2018 & 2020). If a defendant has a “prior sex offense conviction,” the district court must impose a mandatory lifetime conditional-

release term when committing an offender to the custody of the commissioner of corrections. *Id.* at subd. 7(b) (2018 & 2020). If one conviction is entered on the record before a second conviction, then the first conviction is a “prior conviction” for the purposes of Minn. Stat. § 609.3455 (2018 & 2020). *State v. Nodes*, 863 N.W.2d 77, 82 (Minn. 2015).

Here, Perez did not have any sex offense convictions before his sentencing hearing. At the sentencing hearing, the district court entered convictions on two counts of first-degree criminal sexual conduct sequentially on the record. First, the district court sentenced Perez to 172 months in prison for the first count of first-degree criminal sexual conduct and imposed a lifetime conditional-release term. Next, the district court sentenced him to 216 months in prison for the second count of first-degree criminal sexual conduct and imposed a lifetime conditional-release term. The district court stated that counts three and four were lesser-included offenses and it “would not be entering convictions or sentencing on those counts.” We also note that, contrary to the district court’s pronouncement at the sentencing hearing, the district court’s sentencing order indicates Perez was convicted for all four counts of criminal sexual conduct. The sentencing order also indicates Perez is subject to a ten-year conditional-release term on the first count, which is contrary to the term pronounced at the hearing. The “oral pronouncement of a sentence controls over the written sentencing order.” *State v. Staloch*, 643 N.W.2d 329, 332 (Minn. App. 2002).

Therefore, we conclude the district court erred by imposing a lifetime conditional-release term on the first count at the sentencing hearing. Under Minnesota law, the district court was required to impose a ten-year conditional-release term on the first count and a

lifetime conditional-release term on the second count. We reverse the district court's sentence and remand for resentencing consistent with this opinion.

Affirmed in part, reversed in part, and remanded.