

*This opinion is nonprecedential except as provided by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
A24-0710**

State of Minnesota,
Respondent,

vs.

Bruce Edward Frye,
Appellant.

**Filed September 2, 2025
Affirmed
Smith, Tracy M., Judge**

Ramsey County District Court
File No. 62-CR-21-1641

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Johnson, Judge; and Kirk, Judge.*

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from the judgment of conviction for four counts of first-degree criminal sexual conduct against two minor children, appellant Bruce Edward Frye argues that the district court erred by not allowing him to admit evidence of the minors' previous sexual conduct. Frye contends that the exclusion of the evidence deprived him of his constitutional right to offer evidence in his own defense, entitling him to a new trial. Because we discern no error in the district court's evidentiary ruling, we affirm.

FACTS

On March 25, 2021, Frye was charged with five counts of first-degree criminal sexual conduct against Child 1 and Child 2—the granddaughter and great-granddaughter of his long-term girlfriend—for conduct that was alleged to have occurred over approximately the previous five years. Frye waived his right to a jury trial and agreed to submit the case to the district court on stipulated evidence pursuant to Minnesota Rule of Criminal Procedure 26.01, subdivision 3.¹ The following summarizes the stipulated evidence.

On March 22, three days before the state brought its charges, the children reported to the police that Frye had sexually assaulted them. At the time of their reports, Child 1 was age ten and Child 2 was age seven. After making their reports to the police, the children

¹ Under this rule, if the district court finds the defendant guilty based on stipulated evidence, “the defendant may appeal from the judgment of conviction and raise issues on appeal as from any trial to the court.” *Id.*, subd. 3(f).

underwent medical examinations at a children's resource center. During these examinations, each child was interviewed separately by a nurse practitioner. During Child 1's interview, Child 1 reported being sexually abused by Frye over the course of about five years. During Child 2's interview, Child 2 told the nurse practitioner that Child 2 knew that Child 1 had been sexually abused by Frye for about four years. Child 2 also reported that Frye had touched Child 2's genitals with his hands and put his genitals and mouth on Child 2's genitals. Both children reported that Frye had forced them to fellate him.

During these interviews, both children described an incident that had taken place two days before their reports to the police. On that day, the children were alone with Frye watching a movie. Frye went into a bedroom and called for Child 2 to join him, but Child 2 ignored him at first. Frye became angry, and Child 2 eventually joined him in the bedroom, where Frye had Child 2 lie on a bed. Shortly thereafter, Child 1 walked into the bedroom, where Child 1 saw Frye standing near the bed with his penis out as Child 2 lay on the bed. Child 1 asked Frye what he was doing and told him to stop. Frye approached Child 1, acting as though he was going to strike the child. Child 1 threw a cup at him, which broke. After the incident, the children decided to tell their parents about what Frye was doing to them. They told their parents the next day and made their reports to the police the day after that.

Shortly after the children’s reports, the police conducted a Mirandized² interview of Frye. During the interview, Frye told the police that he had slept in the same bed as the children but denied that he had ever touched them sexually. He said that he “might[]” have touched the children’s genitals when “wrestl[ing]” or “tussl[ing]” with them. Frye made other statements that the interviewing officer interpreted as potentially admitting to sexual misconduct, but Frye also recanted several times. The interview ended when Frye stated that he needed to speak with a lawyer.

Respondent State of Minnesota charged Frye with three counts of first-degree criminal sexual conduct—penetration or contact with a person under 13 and an actor more than 36 months older, in violation of Minnesota Statutes section 609.342, subdivision 1(a) (2020), and two counts of first-degree criminal sexual conduct—penetration or contact with a victim under 16 occurring as multiple acts over an extended period of time, in violation of Minnesota Statutes section 609.342, subdivision 1(h)(iii) (2014). The charged offenses were alleged to have occurred over a period ranging from June 2016 to March 2021, with two of the charges alleging conduct against Child 1 and three alleging conduct against Child 2.

Frye filed a series of motions with the district court, including a discovery demand for records related to events in Plano, Texas, involving the children. Frye asserted that the Plano records contained allegations by the children against someone other than Frye that

² “A police officer must give an individual in custody a *Miranda* warning before interrogating that individual.” *State v. Flowers*, 788 N.W.2d 120, 128 (Minn. 2010) (citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)).

involved similar conduct to what the children had accused Frye of and that those events took place in summer 2020, less than a year before the children's reports about Frye. The parties agreed to the district court conducting in camera review of the records from Plano because the events discussed in those records had occurred in close temporal proximity to the alleged events that led to Frye's charges and because of the age of the children.

As trial approached, the parties filed motions in limine. Frye requested an order allowing him to elicit testimony about the children's "sexualized behavior and sexual knowledge prior to the offense date," regardless of the application of any rape-shield law or rule. The state, in turn, sought to exclude evidence of and reference to the Plano events, arguing that the evidence was "irrelevant, more prejudicial than probative, and will confuse the issues." The state also sought to generally exclude any evidence of the children's "prior sexual knowledge."

Following a hearing, the district court ruled on the parties' motions in a written order. The district court denied Frye's motion to admit evidence related to the Plano events or any other previous sexual conduct involving the children, determining that the evidence was barred by Minnesota Rule of Evidence 412. The district court recognized that, in some cases, sexual-history evidence may be admissible when constitutionally required by a defendant's due-process rights. But it determined that, in the circumstances of this case, any probative value of the evidence of previous sexual conduct was outweighed by its potential for unfair prejudice.

The case proceeded to trial. Frye waived his right to a jury trial and elected to proceed on stipulated evidence. Pursuant to the parties' stipulations, the district court

received eight exhibits, which included police records related to the children’s March 2021 reports and records from the children’s resource center, including video recordings and transcripts of the interviews with the children. The district court did not hear any testimony.

The district court issued its findings of fact, conclusions of law, and order, finding Frye guilty of four of the five offenses charged. At a sentencing hearing, the district court sentenced Frye to consecutive prison terms of 172 months for one count of first-degree criminal sexual conduct against Child 2 and 172 months for one count of first-degree criminal sexual conduct against Child 1.

Frye appeals.

DECISION

Frye argues that the district court prejudicially erred by excluding evidence of the children’s previous sexual conduct. He contends that the ruling deprived him of his constitutional right to present a complete defense.

“A [criminal] defendant has the constitutional right to present a complete defense.” *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009). This right is guaranteed by the Due Process Clauses of the Fourteenth Amendment to the United States Constitution and article I, section 7 of the Minnesota Constitution. *State v. Richards*, 495 N.W.2d 187, 191 (Minn. 1992). But even when a constitutional right is implicated, appellate courts “review the evidentiary rulings of the district court for an abuse of discretion.” *State v. Carbo*, 6 N.W.3d 114, 123 (Minn. 2024). And, even if a district court abused its discretion by excluding evidence, appellate courts will reverse only if the exclusion was not harmless beyond a reasonable doubt. *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017).

In prosecutions for criminal sexual conduct, evidence of a victim’s previous sexual conduct is generally prohibited. Minn. R. Evid. 412; Minn. Stat. § 609.347, subd. 3 (2024). For purposes of this rule, “previous sexual conduct” includes an alleged victim’s prior allegations of sexual abuse. *State v. Kobow*, 466 N.W.2d 747, 750 (Minn. App. 1991), *rev. denied* (Minn. Apr. 18, 1991). Minnesota Rule of Evidence 412 contains exceptions for cases when consent is a defense or when the evidence presented by the prosecution includes, under certain circumstances, semen, pregnancy, or disease. Minn. R. Evid. 412(1). It is undisputed that none of these exceptions applies here.

But even if the previous-sexual-conduct evidence does not fit a rule 412 exception, a district court may admit the evidence if admission is constitutionally required by the defendant’s right to offer evidence in his own defense. *State v. Benedict*, 397 N.W.2d 337, 341 (Minn. 1986). In ruling whether to admit evidence of an alleged victim’s previous sexual conduct under this principle, district courts “balance the probative value of the evidence against its potential for causing unfair prejudice.” *Id.*

Frye sought to elicit testimony regarding the events in Plano. He argues that the evidence was relevant to show that the children had a prior source of knowledge or familiarity with sexual matters. The district court concluded that any probative value of the evidence concerning the Plano events was outweighed by its prejudicial effect. For the reasons that follow, we discern no abuse of discretion in that determination.

First, we consider the probative value of the evidence that Frye sought to admit. Evidence of a person’s previous sexual conduct may be relevant “to establish a source of knowledge of or familiarity with sexual matters in circumstances where the [fact-finder]

otherwise would likely infer that the defendant was the source of the knowledge.” *Id.* In *State v. Kroshus*, for example, we concluded that it was error (albeit not reversible error) for the district court to exclude the defendant’s proffered evidence of the alleged victim’s previous report of sexual abuse as source-of-knowledge evidence. 447 N.W.2d 203, 205 (Minn. App. 1989), *rev. denied* (Minn. Dec. 20, 1989). In that case, the jury had heard testimony that the alleged victim “was not educated about sexual matters” and an expert witness had testified that, due to a developmental disability, the alleged victim was incapable of fabricating an “intricate story of sexual abuse” without having personally experienced it or viewed it in very explicit pornographic material. *Id.* at 204-05. And, in *Benedict*, the supreme court recognized the probative value of a victim’s previous sexual conduct when the victim was five or six years old at the time of reporting the abuse and the state’s expert had testified that the child had unusual knowledge of sexual matters for his age. 397 N.W.2d at 338, 340-41.

Here, however, unlike in *Kroshus* and *Benedict*, there was no expert testimony placing the children’s lack of sexual knowledge at issue. Moreover, the children were not developmentally disabled like the victim in *Kroshus* or five or six years old like the victim in *Benedict*. Child 1 was ten years old and Child 2 was seven years old at the time that they made their reports, and, while they were certainly young, the record does not suggest that they were so young or isolated as to have clearly lacked access to sexual knowledge independent of their abuser. In these circumstances, it is less likely that a fact-finder would infer that the sole source of the children’s knowledge of sexual matters was the defendant’s

conduct. *See Benedict*, 397 N.W.2d at 341. Thus, while the evidence may have had some probative value, that value was limited.

Second, we consider the potential for unfair prejudice presented by the evidence of the children's previous sexual conduct. The district court determined that there was a significant risk that the evidence would "create unfair prejudice" by "stigmatizing or sexualizing the [children]." The district court also observed that the evidence carried a high risk of causing the jury to confuse the issues.

Frye argues that presenting the evidence of the children's previous sexual conduct would not have stigmatized or sexualized them because, had the matter proceeded to a jury trial, the children would have testified about their sexual conduct anyway when testifying about the facts underlying the abuse allegations. Frye also argues that a jury instruction could have alleviated any risk of confusing the jury. Frye's arguments are not persuasive. The evidence of the children's previous sexual conduct bore a high risk of prejudice because it risked stigmatizing and sexualizing the children. And the relatively close timelines of the Plano events and Frye's abuse of the children created a high likelihood of confusing the jury.

We discern no abuse of the discretion in the district court's determination that the probative value of the evidence was outweighed by the potential for unfair prejudice. The district court therefore did not clearly abuse its discretion by excluding the evidence.

Because we find no error in the exclusion of the evidence, we need not address whether any error was harmless beyond a reasonable doubt.³

Affirmed.

³ In a pro se supplemental brief, Frye makes a series of factual assertions that are outside the record and that we interpret to be an attempt to challenge the district court's factual findings supporting his convictions. Frye does not cite any legal authority or make any legal arguments for why his factual assertions should be considered or how they can undermine the district court's findings. "An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Louden v. Louden*, 22 N.W.2d 164, 166 (Minn. 1946); *see also State v. Krosch*, 642 N.W.2d 713, 719-20 (Minn. 2002) (quoting *Louden*, 22 N.W.2d at 166). On our inspection of the record, we do not discern any prejudicial error based on his assertions. We therefore deem his argument forfeited.