

*This opinion is nonprecedential except as provided by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
A24-1374**

State of Minnesota,
Respondent,

vs.

Lorenzo Devon Doby,
Appellant.

**Filed August 18, 2025
Affirmed
Cochran, Judge**

Dakota County District Court
File No. 19HA-CR-23-2052

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

Kathryn M. Keena, Dakota County Attorney, Todd P. Zettler, Assistant Dakota County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Reyes, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges his conviction of third-degree criminal sexual conduct, arguing that the district court (1) abused its discretion by limiting the scope of his cross-examination of the victim, (2) deprived him of due process by permitting the victim to

identify him for the first time during the trial under suggestive circumstances, and (3) abused its discretion by permitting one of the state's lay witnesses to testify to an expert opinion. We affirm.

FACTS

In September 2023, respondent State of Minnesota charged appellant Lorenzo Devon Doby with one count of third-degree criminal sexual conduct in violation of Minnesota Statutes section 609.344, subdivision 1a(b) (2022). The complaint contained allegations that Doby engaged in sexual conduct with a 15-year-old victim (the teenager) in May 2023 and that Doby was 42 years old at the time of the alleged conduct. Doby pleaded not guilty, and the case proceeded to a jury trial.

At trial, the state called five witnesses: the teenager, the teenager's mother, a patrol officer, an investigator, and a pediatric nurse practitioner. Doby did not testify. The evidence established the following facts.

The Teenager's Testimony

The teenager started sneaking out of her home in May 2023, when she was 15 years old. After sneaking out one night, the teenager encountered two men outside of a bar. One of them said his name was "Desmond," but later told her that his real name was "Lorenzo." The teenager talked with Lorenzo and the other man for 10 to 15 minutes. During that time, Lorenzo gave her a "Black & Mild," which she described as "a cigar but mixed with a cigarette." Lorenzo then told the teenager that she was too young to be at a bar and offered to walk her home.

While walking away from the bar with Lorenzo, the teenager's conversation with Lorenzo turned "to more sexual stuff." Lorenzo told the teenager that they had a "sexual connection." Lorenzo then kissed the teenager and asked her if she wanted to have sex with him at his house.

Upon arriving at his house, Lorenzo led the teenager into the basement. Lorenzo sat on a couch in the basement, took his pants off, and penetrated the teenager's mouth with his penis. Lorenzo became worried that someone else was in the house, and so he took the teenager into a storage room connected to the basement. Eventually, Lorenzo led the teenager outside to a white minivan parked in front of his house, where they both took their clothes off. Lorenzo tried to insert his penis into her vagina while they were in the minivan. His penis touched the outside of her vagina, but he was unable to insert his penis any further. Lorenzo then asked the teenager "to suck his penis," which she did. Afterward, the teenager talked with Lorenzo in the van for a while before Lorenzo drove her home. The teenager saw Lorenzo near his house on two more occasions in the following weeks, but she had no further sexual contact with him.

The teenager testified that she saw Lorenzo "pretty well" on the night he took her to his house. On direct examination, the prosecutor asked the teenager if she saw Lorenzo in the courtroom. The teenager identified the defendant, Lorenzo Doby, who was sitting next to defense counsel.

Investigation and Charging

Later in May 2023, the teenager disclosed to her mother that she had been sneaking out of her bedroom window and that "she had met somebody." The teenager then told her

mother about Lorenzo's sexual acts. According to her mother, the teenager disclosed that the sexual acts occurred in a basement, a "back room," and a car outside the residence. After the teenager's mother contacted law enforcement, a patrol officer responded to the family's home and took the teenager's statement. The teenager then led the officer to Lorenzo's residence.

The next day, local law enforcement assigned an investigator to the case. The investigator identified Doby as the primary suspect based on the teenager's allegations. The investigator acquired a search warrant for Doby's residence, which was executed in July 2023. While executing the warrant, the investigator found "a lot of cigarillo^[1] type of cigars," especially on the floor of a white minivan parked outside the home. The investigator did not attempt to collect any DNA evidence from the minivan or the cigarillos "because of the time delay." According to the investigator, "[t]he likelihood that DNA would not break down in a two-month period is unlikely." Inside the house, the investigator found mail addressed to Doby. The investigator also took pictures of the home's basement and a storage room adjoining the basement, which were admitted into evidence.

While the investigation was underway, the teenager participated in an interview with a pediatric nurse practitioner. During the interview, the teenager described her encounter with Doby. Her description during the interview was largely consistent with her trial testimony.

¹ A cigarillo is "[a] small narrow cigar." *The American Heritage Dictionary of the English Language* 335 (5th ed. 2018).

The teenager met with the investigator again in August 2023. The teenager described Doby's appearance and said that he had scars on his back and shoulders. The teenager mentioned no other scars, and she said that Doby did not have any tattoos. Soon after that discussion, the state filed its complaint against Doby.

Trial

Before trial, Doby moved for permission to cross-examine the teenager on her allegations of criminal sexual conduct involving other men. In support of the motion, Doby asserted that the teenager claimed to have had sexual interactions with two other men in the weeks following the alleged sexual interactions with Doby. Doby argued that the similarity of the teenager's allegations involving the three different men "strain[ed] credulity." Doby also asserted the evidence was admissible to support his theory that, all along, the teenager had been sneaking out of her home to see one of the other men, whom she viewed as a boyfriend, and that she fabricated her allegations against Doby to protect that other man. The district court denied Doby's motion to admit the evidence.

Following the district court's ruling, Doby focused his cross-examination of the teenager on her physical description of Doby and inconsistencies between her trial testimony and her prior disclosures. Specifically, on cross-examination, the teenager testified that the person who sexually penetrated her had scars exclusively on his back and shoulders and no tattoos. During his defense, Doby introduced three exhibits containing photographs of his face and torso. The photographs show that Doby has a noticeable scar across the front of his torso and tattoos on his face, neck, and torso. Doby used the photos to impeach the teenager's description of the man who sexually penetrated her.

Defense counsel also cross-examined the teenager on her varying descriptions of the bar at which she met Doby. The officer and investigator testified that the teenager disclosed meeting Doby at a bar called “Mike’s.”² But during pretrial discussions with the state, the teenager described meeting Doby at another bar, “Dave’s.” And during her direct examination, the teenager testified that she met Doby at Dave’s. On cross-examination, the teenager testified that she had never gone to Mike’s, despite her prior statements.

During closing arguments, defense counsel argued that the teenager was not credible, focusing on the inconsistencies in the teenager’s descriptions of Doby and the bar at which she met Doby. Defense counsel also argued that the “investigation was terrible” and asserted that the investigator should have “tried at least” to gather a DNA sample during the search of Doby’s residence and the white minivan.

Verdict and Sentencing

The jury found Doby guilty of third-degree criminal sexual conduct. The district court convicted Doby and sentenced him to the commissioner of corrections for 91 months.

Doby appeals.

DECISION

Doby argues that his conviction should be reversed because the district court abused its discretion by limiting his cross-examination of the teenager, deprived him of due process by permitting the teenager to identify him in court, and abused its discretion by

² To ensure confidentiality of the teenager and other nonparties, we use fictional names to refer to the bars.

overruling his objection to the investigator's testimony that any DNA in the minivan would have degraded by the time of the search. We address each issue in turn.

I. The district court did not abuse its discretion by limiting Doby's cross-examination of the teenager.

Doby first argues that the district court abused its discretion by preventing him from cross-examining the teenager about instances of alleged sexual misconduct involving other men, thereby violating constitutional rights to present a complete defense and confront the witnesses against him. "Evidentiary rulings are reviewed for an abuse of discretion, even when a constitutional violation is alleged." *State v. Wenthe*, 865 N.W.2d 293, 306 (Minn. 2015).

"[A] defendant has a constitutional right to due process in the form of a fair trial." *State v. Voorhees*, 596 N.W.2d 241, 249 (Minn. 1999). The due process clauses of the state and federal constitutions guarantee that "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) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)); U.S. Const. amend XIV, § 1; Minn. Const. art. I, § 7. "The right to present a defense includes the opportunity to develop the defendant's version of the facts, so the jury may decide where the truth lies." *State v. Crims*, 540 N.W.2d 860, 865 (Minn. App. 1995), *rev. denied* (Minn. Jan. 23, 1996). Under the confrontation clauses of the state and federal constitutions, criminal defendants also have the right to "a face-to-face meeting with witnesses appearing before the trier of fact." *State v. Trifiletti*, 6 N.W.3d 79, 87 (Minn. 2024) (quoting *Coy v. Iowa*, 487 U.S.

1012, 1016 (1988)); *see also* U.S. Const. amend. VI; Minn. Const. art I, § 6. Importantly, the right to confrontation protects a defendant’s “opportunity to reveal a prototypical form of bias on the part of [a] witness” through cross examination. *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995).

But a defendant’s rights to present a complete defense and confront the witnesses against him are not absolute. *State v. Hannon*, 703 N.W.2d 498, 506 (Minn. 2005); *State v. Tate*, 985 N.W.2d 291, 297 (Minn. 2023). Although a defendant enjoys a right to present evidence that is “material and favorable to their theory of the case,” they have “no right to introduce evidence that either is irrelevant, or whose prejudicial effect outweighs its probative value.” *Crims*, 540 N.W.2d at 866 (emphasis omitted). Likewise, the right to confrontation does not prohibit a district court from imposing reasonable limitations on cross-examination “based on concerns about, among other things, harassment, prejudice, confusion of the issues, . . . witness safety, or interrogation that is repetitive or only marginally relevant.” *State v. Brown*, 739 N.W.2d 716, 720 (Minn. 2007) (quotation omitted). Further, a defendant “must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.” *Richards*, 495 N.W.2d at 195 (quoting *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)).

Minnesota’s rape-shield law constitutes one such established rule of evidence. *See* Minn. Stat. § 609.347, subd. 3 (2022); Minn. R. Evid. 412. We have construed the rape-shield law to “strictly limit” the admissibility of a victim’s prior sexual conduct. *State v. Kobow*, 466 N.W.2d 747, 750 (Minn. App. 1991), *rev. denied* (Minn. Apr. 18,

1991). The rape-shield law provides that “evidence of the victim’s previous sexual conduct” is only admissible in cases involving consent or evidence of “semen, pregnancy or disease at the time of the incident.” Minn. Stat. § 609.347, subd. 3(a)-(b); Minn. R. Evid. 412(1)(A)-(B). The supreme court has recognized a third basis for admissibility under the rape-shield law—when “admission is constitutionally required by the defendant’s right to due process, his right to confront his accusers, or his right to offer evidence in his own defense.” *Wenthe*, 865 N.W.2d at 306 (quotation omitted). In other words, “[t]he rape-shield law serves to emphasize the general irrelevance of a victim’s sexual history, not to remove relevant evidence from the jury’s consideration.” *Id.* (quotation omitted).

But evidence of a victim’s prior sexual conduct can be admitted “only if the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature.” Minn. Stat. § 609.347, subd. 3; Minn. R. Evid. 412(1); *see also Wenthe*, 865 N.W.2d at 306 (observing that the probative-value balancing test applies when a defendant argues that the admission of a victim’s prior sexual conduct is constitutionally required). And a district court generally has the discretion to exclude relevant evidence whose “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.

Before the district court, Doby argued that evidence of the teenager’s sexual conduct was admissible for two reasons. First, the evidence would cast doubt on the teenager’s credibility. In support, Doby offered that the teenager made allegations against two other

men within a “couple of weeks” of her allegations against Doby. Doby asserted that these other allegations were similar to the allegations against Doby. Specifically, the teenager’s allegations against all three men involved (1) the perpetrator orally penetrating the teenager with his penis; (2) the perpetrator then unsuccessfully attempting to penetrate the teenager’s vagina with his penis; and (3) the perpetrator then again orally penetrating the teenager. Doby argued that this evidence would cast doubt on the teenager’s credibility because it is unlikely that she would experience remarkably similar sexual encounters with all three men over a short period of time. Second, he argued that the evidence would provide the motive for the teenager fabricating her claim against Doby. In support of this argument, Doby offered that there was stronger evidence tying the teenager to one of the other men, J.,³ than there was to Doby. Doby further offered that the teenager told police that J. was her boyfriend. Doby asserted that the jury could infer from this evidence that the teenager fabricated her allegations against Doby to protect J., whom she was in a relationship with, after being caught sneaking out of her house to see him. The district court considered Doby’s arguments and ultimately declined to admit the evidence. The district court determined that the “danger of unfair prejudice is significant and outweighs any probative value.”⁴

³ In the interest of confidentiality, we use the initial “J.” as a pseudonym for the other man—it does not reflect the actual initial of any individual involved in this case.

⁴ The district court’s detailed reasoning is contained in an order filed as “confidential.” Doby filed that order with this court in a confidential addendum under Minnesota Rule of Civil Appellate Procedure 112.04, and the contents of that order remain confidential on appeal. Minn. R. Civ. App. P. 112.02, subd. 1. But we are not precluded from disclosing information contained in the parties’ publicly filed briefs. *Cook v. Trimble*, 22 N.W.3d

Doby asserts that the district court abused its discretion by excluding the evidence. He contends that admission of the teenager's allegations of sexual encounters with other men was constitutionally required. We are not persuaded.

As discussed above, a district court may properly exclude evidence of the victim's prior sexual conduct when the probative value is substantially outweighed by the danger of unfair prejudice, and that rule applies even when the defendant asserts that the evidence is constitutionally required. *See Wenthe*, 865 N.W.2d at 306; Minn. Stat. § 609.347, subd. 3. Accordingly, in analyzing whether the district court abused its discretion, we focus on the district court's determination that the danger of unfair prejudice outweighed any probative value.

We begin by considering the probative value of the evidence. Evidence has probative value “when it, in some degree, advances the inquiry.” *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005); *see also* Minn. R. Evid. 401 (defining “[r]elevant evidence” as “evidence having 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”). We agree with Doby that evidence of the teenager's other sexual

196, 201 n.1 (Minn. App. 2025) (citing Minn. R. Pub. Access to Recs. of Jud. Branch 4), *petition for rev. filed* (Minn. June 3, 2025). Our discussion of the district court's confidential order is therefore limited to the information disclosed in the parties' publicly filed briefs filed with this court. And our recitation of Doby's arguments during trial for the admission of evidence of the teenager's sexual conduct is limited to the publicly accessible transcripts of the trial. While we do not expressly discuss the district court's reasoning for excluding the evidence at issue, other than what is referenced in publicly filed briefs, we have thoroughly reviewed the district court's order and, for the reasons below, conclude that the district court did not abuse its discretion.

conduct carried some probative value because it has some tendency to establish a motive for the teenager to fabricate her allegations involving Doby. And the similarity of the teenager's allegations involving three different men might have had some tendency to make her allegations less credible.

While we acknowledge the excluded evidence had some probative value, that probative value was lessened by other evidence in the record. For instance, Doby's theory that the teenager fabricated the sexual encounter with Doby to protect J. was called into question by the fact that the teenager led police to Doby's house after the teenager's mother reported the sexual abuse. Additionally, the police search of Doby's home corroborated the teenager's description of the home. If the teenager's allegations about Doby were a cover story for her sexual conduct with J., it is unclear how she would know so much about Doby's residence. Consequently, to the extent that the evidence was probative of the teenager's motive to protect J., its probative value in that regard was minimal. And the similarities between the teenager's various allegations—oral penetration and failed vaginal penetration followed by ejaculation with three different men over a short time—are not particularly striking. Doby also offered nothing more than speculation that the teenager's allegations were false. *See State v. Gerring*, 378 N.W.2d 94, 96-97 (Minn. App. 1985) (affirming the exclusion of evidence of complainant's past allegations of rape when the evidence "did not prove that the complainant had made a prior false accusation of rape"). The evidence therefore had little probative value regarding whether the teenager fabricated her allegations against Doby or her motive for doing so.

Next, we consider the potential for unfair prejudice associated with introducing the evidence of the teenager's past sexual conduct. *See Crims*, 540 N.W.2d at 866 (“[A] defendant has no right to introduce evidence . . . whose prejudicial effect outweighs its probative value.” (emphasis omitted)); *see also* Minn. Stat. § 609.347, subd. 3. We agree with the district court that the evidence carried a significant risk of prejudice. We have observed that “the admission of evidence of a witness’s prior sexual conduct is highly prejudicial.” *State v. Olsen*, 824 N.W.2d 334, 340 (Minn. App. 2012), *rev. denied* (Minn. Feb. 27, 2013). And evidence of a fifteen-year-old’s sexual history with adult men could have been particularly inflammatory. We also note that Doby’s proffered use of the evidence could have misled or confused the jury by creating a trial within a trial. Doby intended to argue that the teenager’s allegations involving J. were supported by stronger evidence than her allegations involving Doby, thereby suggesting that only the allegations involving J. were true. To assess Doby’s theory, the jury would have also been tasked with assessing the veracity of the evidence against J., who was not on trial. This would have created a substantial risk of misleading or confusing the jury. *See State v. Smith*, 876 N.W.2d 310, 331-32 (Minn. 2016) (affirming exclusion of evidence that risked creating a “trial-within-a-trial” that “would misdirect the jury away from the key inquiry” (quotation marks omitted)). For these reasons, we conclude that evidence of the teenager’s prior sexual conduct was particularly inflammatory and prejudicial. *See* Minn. Stat. § 609.347, subd. 3; Minn. R. Evid. 412(1).

In sum, the record supports the district court’s determination that admission of evidence of the teenager’s alleged sexual encounters with other men presented a significant

danger of unfair prejudice that outweighed any probative value of the evidence. Because the probative value of the evidence was substantially outweighed by its inflammatory and prejudicial nature, we conclude that the admission of the evidence was not constitutionally required and the district court did not abuse its discretion by excluding it under the rape-shield law.

II. The district court properly admitted the teenager's identification testimony.

Doby next argues that the district court denied him due process by permitting the teenager to identify him in court during trial under suggestive circumstances. The federal and state constitutions guarantee a criminal defendant's right to due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. Due process requires that "every criminal defendant has the right to be treated with fundamental fairness." *Richards*, 495 N.W.2d at 191. "[A] defendant may be entitled to a reversal of his conviction and a new trial if the improper admission of evidence at trial so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Jackson v. State*, 817 N.W.2d 717, 723 (Minn. 2012) (quotation omitted). We review de novo whether an evidentiary decision violated a defendant's right to due process. *State v. Hooks*, 752 N.W.2d 79, 83 (Minn. App. 2008).

In the context of eyewitness-identification testimony, due process is implicated when the identification procedure is impermissibly suggestive. *State v. Ostrem*, 535 N.W.2d 916, 921 (Minn. 1995). But it is "well-established that an 'eyewitness identification . . . only implicates a defendant's due process rights when the identification of the defendant by the witness was *arranged by law enforcement*.'" *State v. Jones*,

977 N.W.2d 177, 189 (Minn. 2022) (quoting *State v. Mosley*, 853 N.W.2d 789, 796 (Minn. 2014)); see also *Perry v. New Hampshire*, 565 U.S. 228, 233 (2012) (holding that due process is not implicated by the admission of identification evidence when “no improper law enforcement activity is involved” in the identification procedure).

Doby contends that the teenager’s first-time, in-court identification triggered his right to due process because it was the result of questioning by the prosecution at trial under especially suggestive circumstances. The state disagrees. Relying on *Mosley* and *Jones*, the state argues that Doby’s due-process rights were not implicated by the in-court identification because the identification did not involve “law enforcement.” According to the state, “law enforcement” is limited to police officers and does not include prosecutors. But neither party has pointed us to binding authority, nor are we aware of any, establishing whether a prosecutor’s request of a witness to identify the defendant during trial constitutes an identification arranged by “law-enforcement” for purposes of *Mosley* and *Jones* and thereby implicates the defendant’s due-process rights.

Instead, Doby relies on *State v. Harris*, 405 N.W.2d 224 (Minn. 1987), to support his position that the teenager’s in-court identification implicates his due-process rights. In *Harris*, the appellant contended that an eyewitness’s in-court identification violated his right to due process. 405 N.W.2d at 229. The appellant alleged that the identification was impermissibly suggestive because the prosecutor and a victim-witness counselor made statements to the eyewitness, before his in-court identification of appellant, that implied the appellant was the offender whom the eyewitness observed. *Id.* at 227, 229. Although no police officers were involved in the identification procedure, the supreme court analyzed

the appellant's claim under a due-process-violation lens and concluded that the prosecutor's and victim-witness counselor's conduct did not make the eyewitness's in-court identification impermissibly suggestive. *See id.* at 229-30. Doby argues that the prosecutor's conduct of asking the teenager to identify him in court is like the affirmative conduct in *Harris*. He asserts that, under *Harris*, "in-court identifications arranged by prosecutors, like out-of-court identifications arranged by law enforcement, must comport with [due process]."

Doby also contends that *Mosley* and *Jones* are unhelpful to resolving this inquiry because neither case addresses whether a prosecutor is a member of "law enforcement." Instead, the holdings in those cases turn on the fact that the eyewitnesses' identifications of the defendants were spontaneous.⁵ We agree that *Mosley* and *Jones* do not resolve whether the prosecutor's question in this case implicated Doby's right to due process because the teenager's identification of Doby was not spontaneous. Further, in *Mosley*, the supreme court looked beyond the mere absence of police involvement, concluding that the appellant's due-process claim lacked merit "[b]ecause *the State* did not arrange the witness's identification." 853 N.W.2d at 796 (emphasis added); *see also Perry*, 565 U.S. at 232-33 (observing that the United States Supreme Court's line of decisions on identifications "turn on the presence of *state action*" (emphasis added)). A fair reading of

⁵ In *Mosley*, an eyewitness testified that she saw a man leave the scene of a murder. 853 N.W.2d at 796. During a break in the eyewitness's testimony, she told the witness advocate that she recognized the defendant as the person she saw leave the crime scene. *Id.* In *Jones*, an eyewitness to a shooting independently found pictures of the defendant on Facebook and told detectives that she recognized the defendant as the shooter. 977 N.W.2d at 183.

Harris and *Mosley* is that the involvement of any state action in arranging an identification implicates a defendant's right to due process. But we need not resolve this dispute, because even assuming without deciding that *Harris* and *Mosley* establish that the prosecutor's request that the teenager identify her assailant at trial constitutes a state-arranged identification of Doby subject to due-process protections, we conclude that the identification did not violate Doby's right to due process.

Appellate courts apply a two-step test to analyze the admissibility of identification evidence. *State v. Taylor*, 594 N.W.2d 158, 161 (Minn. 1999). First, we consider "whether the [identification] procedure was unnecessarily suggestive." *Id.* (quotation omitted). If it was, we then consider "whether the identification created a very substantial likelihood of irreparable misidentification." *Id.* (quotation omitted). But we need not reach the second step if we conclude at the first step that the identification procedure was not unnecessarily suggestive. *See id.* at 162 (ending analysis after determining that the identification procedure at issue was not unnecessarily suggestive).

Doby contends that, under step one of our analysis, the identification procedure was unnecessarily suggestive because, at trial, he was seated next to defense counsel and he was the only Black man in the courtroom other than one of the jurors. Doby asserts that the state did not need to wait until trial to have the teenager identify Doby. Doby notes that the state "had several months after it charged Doby to request that police conduct a formal lineup or photo array." We are not persuaded that the identification procedure at trial was unnecessarily suggestive.

We acknowledge that in-court identifications are inherently suggestive. *See Perry*, 565 U.S. at 244 (“Most eyewitness identifications involve some element of suggestion. Indeed, all in-court identifications do.”). But our inquiry does not end at mere suggestiveness—we must discern *unnecessary* suggestiveness to proceed to step two. *Taylor*, 594 N.W.2d at 161. This inquiry “turns on whether the defendant was unfairly singled out for identification.” *Ostrem*, 535 N.W.2d at 921.

In *Taylor*, the appellant argued that law enforcement’s use of a “one-person show-up” was unnecessarily suggestive. 594 N.W.2d at 160-61.⁶ The supreme court noted that a one-person show-up “is by its very nature suggestive.” *Id.* at 162. But the supreme court observed that law enforcement had not singled out the appellant “from the general population based on a description given to them by a victim, and then proceeded to present him to the victim, in handcuffs, for identification in a one-person show-up.” *Id.* Rather, the victim had been introduced to the defendant before the offense; had seen the defendant “around her apartment building and neighborhood at least ten times”; and, before the show-up, had twice “singled [the defendant] out by name as her assailant.” *Id.* The supreme court concluded that, given the victim’s familiarity with the appellant, the use of a one-person show-up to quickly identify the appellant as the perpetrator was not unnecessarily suggestive. *Id.*

⁶ Comparable to asking a testifying witness to identify a lone defendant in a courtroom, a “one-person show-up” is a “one-to-one confrontation between suspect and witness to crime.” *See Taylor*, 594 N.W.2d at 159 n.1 (quoting *Black’s Law Dictionary* 962 (6th ed. 1990)).

The facts in *Taylor* resemble the facts underlying the teenager's in-court identification of Doby, and we similarly conclude that the state's identification procedure in this case was not unnecessarily suggestive. Just as in *Taylor*, there is no evidence that the state unfairly singled Doby out for identification. See 594 N.W.2d at 162. The state did not identify him from the general population based on the teenager's description and then proceed to place him in the courtroom for the teenager to identify during her testimony. See *id.* Instead, prior to trial, the teenager identified Doby by his first name, Lorenzo, to at least four individuals: her mother, the officer, the investigator, and the pediatric nurse-practitioner. The teenager also testified that she saw Doby "pretty well" the night she went home with him. The teenager added that she saw Doby on two other occasions near his house before she came forward with her allegations. And the teenager led an officer directly to Doby's house, where the investigator later found mail belonging to him. Given the teenager's familiarity with Doby, he was not "unfairly singled out" for identification at trial. *Ostrem*, 535 N.W.2d at 916. Because the state's identification procedure was not unnecessarily suggestive, we need not proceed to step two.

In sum, assuming without deciding that due-process protections applied to the teenager's in-court identification of Doby, the identification procedure at issue was not unnecessarily suggestive. Therefore, the district court properly admitted the teenager's identification of Doby.

III. The district court's erroneous admission of the investigator's scientific opinion on DNA was harmless.

Lastly, Doby argues that the district court abused its discretion by permitting the investigator to testify about a scientific matter without qualifying the investigator as an expert. The state responds that the district court did not abuse its discretion because the investigator's testimony was not an expert opinion.

"We review evidentiary rulings, including those related to the admissibility of expert testimony, for an abuse of discretion." *State v. Thao*, 875 N.W.2d 834, 840 (Minn. 2016). The admission of expert testimony is an abuse of discretion when the district court's ruling is "based on an erroneous view of the law or is against logic and the facts in the record." *State v. Heller*, 12 N.W.3d 452, 466 (Minn. 2024) (quotation omitted). "Even if the district court's admission of evidence was in error, such admission is harmless if it did not significantly impact the verdict." *Id.*

Under the rules of evidence, a witness may not testify in the form of an opinion based on "scientific, technical, or other specialized knowledge" unless the witness is "qualified as an expert by knowledge, skill, experience, training, or education." Minn. R. Evid. 701-02. Such expert testimony must also have "foundational reliability." Minn. R. Evid. 702.

Here, the prosecutor asked the investigator whether he attempted to collect DNA evidence when searching the white minivan. The investigator testified that he did not and explained that there was a two-month delay between when law enforcement received the report of the alleged sexual abuse by Doby and when he executed the search warrant for

the van. The investigator added that “[t]he likelihood that DNA would not break down in a two-month period is unlikely.” At that point, defense counsel objected and the district court overruled the objection.

We conclude that the district court abused its discretion by overruling Doby’s objection because the investigator was not qualified as an expert to provide testimony about DNA. Under rules 701 and 702, the rate at which DNA degrades is a matter of “scientific, technical, or other specialized knowledge.” *See State v. Garland*, 942 N.W.2d 732, 746 (Minn. 2020) (observing that “[a]n understanding of complex DNA analysis is not within the knowledge and expertise of a lay jury”). Accordingly, the investigator’s opinion on the matter was expert testimony, thereby requiring the state to establish the investigator’s qualifications and lay foundation for that expert testimony. *See* Minn. R. Evid. 702.

The record reflects that the state did not meet its burden to do so. Nothing in the trial transcript suggests that the investigator was qualified to testify on the matter based on his “knowledge, skill, experience, training, or education.” *See* Minn. R. Evid. 702. In fact, the state produced no evidence that the investigator had any specialized training or education that qualified him to opine on the rate at which DNA degrades. Accordingly, the state failed to establish both the investigator’s qualifications to provide such an expert opinion and the foundational reliability of his opinion. *See id.* The district court therefore abused its discretion by admitting the evidence.

Having determined that the district court abused its discretion by admitting the investigator’s expert opinion on the degradation rate of DNA, we turn to whether the erroneous evidentiary ruling was harmless. The erroneous admission of evidence is

grounds for reversal only when the appellant shows “there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024) (quotation omitted). When assessing the likelihood that wrongfully admitted evidence significantly affected the verdict, we consider the following nonexclusive factors: “(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.* In addition, “strong evidence of guilt” is a factor to consider because it “undermines the persuasive value of wrongly admitted evidence.” *Id.* at 54, 59 (quotation omitted).

Based on our consideration of the *Biggear* factors, we conclude that the admission of the investigator’s opinion on DNA degradation was harmless. First, the manner in which the state presented the investigator’s expert opinion indicates that it did not affect the verdict. In assessing this factor, the supreme court has considered the prominence of the challenged evidence by looking at “among other things, the relative number of transcript pages that the evidence occupies” and “whether the evidence was used throughout the [s]tate’s case.” *Id.* at 56. The investigator’s opinion testimony was brief, appearing on just one page of a 700-page trial transcript. It seems that the prosecutor elicited this testimony in anticipation of Doby’s argument that law enforcement’s investigation of Doby was underwhelming. Nothing shows that the state used the investigator’s opinion as substantive evidence of Doby’s guilt. Nor does Doby contend that the state used the investigator’s

opinion throughout its case. Consequently, the manner in which the state presented the investigator's expert opinion suggests harmless error.

Next, we consider the persuasiveness of the investigator's expert opinion. *Id.* at 54. Because the investigator is a member of law enforcement, the jury was more likely to trust his testimony about the degradation rate of DNA. *See State v. Hogetvedt*, 623 N.W.2d 909, 915 (Minn. App. 2001) (noting that a sergeant's status as a police officer may have increased the risk of the jury being unduly influenced by his inadmissible testimony), *rev. denied* (Minn. May 29, 2001). As a result, the jury was more likely to be persuaded by the state's insinuation that any effort to collect DNA from the minivan would have been futile. This factor suggests that the erroneous admission of the investigator's expert opinion was not harmless.

Third, we consider whether the prosecutor used the investigator's expert opinion during closing argument. *Bigbear*, 10 N.W.3d at 54. It is undisputed that the state did not mention the investigator's opinion on DNA degradation during closing argument. This factor therefore supports a conclusion that the error was harmless. Moreover, because the state did not rely on the investigator's testimony during closing argument, the persuasiveness of the investigator's expert opinion is less important, as the state did not attempt to persuade the jury of any facts based on that opinion.

Fourth, we consider Doby's opportunity to counter the erroneous admission of the investigator's expert opinion. *Id.* Doby asserts that he did not counter the investigator's testimony "and was in no position to do so given the state's failure to provide pretrial notice of its intent to elicit [the investigator's] expert opinion." But, during closing, defense

counsel argued that the “investigation was terrible” and noted that the investigator did not find any DNA. Defense counsel further argued that the investigator could have “tried at least” to gather DNA evidence. Therefore, Doby not only countered the expert opinion, but he also used the expert opinion to support his theory that the investigation was poor, resulting in no physical evidence implicating Doby. On the other hand, the investigator’s expert opinion undercut the strength of Doby’s argument that the investigation was poorly done. If the jury believed the investigator’s opinion that any DNA in the van would have already degraded when the search took place, the jury likely also discredited Doby’s defense based on the lack of physical evidence. We therefore determine that this factor is neutral.

Lastly, we consider the strength of the evidence of guilt. *Id.* The strength of the state’s evidence depended largely on the teenager’s credibility. In that regard, her testimony about Doby’s conduct was generally consistent with her prior disclosures to police, her mother, and a pediatric nurse practitioner. The teenager consistently described Doby bringing her to his house and then performing sexual acts on a couch in his basement and in a white minivan outside of his home. And her descriptions of Doby’s home and the white minivan were corroborated by the investigator’s testimony about the search of Doby’s home. The teenager also consistently described Doby offering her, in her words, a “cigar but mixed with a cigarette.” The investigator again corroborated the teenager’s account by testifying that he observed “cigarillo[s]” in the white minivan and around Doby’s home. And the teenager led law enforcement to Doby’s home, where law enforcement found mail addressed to Doby. Lastly, the teenager identified Doby in the

courtroom as the man who sexually penetrated her. We conclude that these facts testified to by the teenager are strong evidence of Doby's guilt, thereby "undermin[ing] the persuasive value of" the erroneously admitted expert opinion. *Id.* at 54 (quotation omitted).

Based on our application of the factors outlined in *Bigbear* and weighing of those factors, we conclude that there is no reasonable probability that the investigator's brief expert testimony significantly affected the verdict. While the investigator's opinion may have been persuasive, the state did not dwell on that opinion and the evidence of Doby's guilty was strong. As a result, the erroneous admission of the investigator's expert opinion was harmless, and Doby is not entitled to a new trial.

Affirmed.