

*This opinion is nonprecedential except as provided by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
A24-1646**

Jayce Evan Hernandez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 21, 2025
Affirmed
Jesson, Judge***

Renville County District Court
File No. 65-CR-21-257

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

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

Kelsie Kingstrom, Renville County Attorney, Olivia, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Wheelock, Judge; and Jesson,
Judge.

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

NONPRECEDENTIAL OPINION

JESSON, Judge

In this criminal sexual conduct case, a jury convicted appellant Jayce Evan Hernandez following allegations that he engaged in sexual acts with his minor step-sister, K.R. Several of the acts occurred in the victim's home, where Hernandez periodically lived. In a postconviction petition, Hernandez contended that the district court erred at trial by allowing the state, after the step-sister testified, to repeatedly introduce her out-of-court statements accusing him of sexual abuse. The postconviction court denied the petition in relevant part, concluding that while admission of the statements constituted error, the error was harmless. Because the court's denial of the petition was not an abuse of discretion, particularly given Hernandez's admissions about his conduct to his parents, we affirm.

FACTS

In summer 2021, K.R. and her cousin told K.R.'s mother that Hernandez had been texting K.R., trying to convince her to have a secret relationship with him. K.R. also told her mother that Hernandez had pulled her into one of the bathrooms in their home, bent her over the sink, pulled her pants down, and tried to have sex with her. K.R.'s mother immediately contacted Hernandez's father so that they could address the situation.¹ After being confronted about K.R.'s allegations and the text messages, Hernandez admitted to

¹ At the time the incidents between Hernandez and K.R. occurred, Hernandez's father was married to K.R.'s mother. The couple had lived together since K.R. was three years old. K.R. testified that Hernandez's father was "like a dad" to her.

his parents that K.R. had performed oral sex on him. Several months later, Renville County Human Services began investigating a report of child maltreatment of K.R.

Following an investigation, respondent State of Minnesota charged Hernandez with six counts of criminal sexual conduct consisting of: two counts of first-degree criminal sexual conduct involving penetration of victim under 16; two counts of second-degree criminal sexual conduct—significant relationship—victim under 16; and one count of third-degree criminal sexual conduct—victim 13-15—actor 24 months older.²

At trial, K.R. testified that Hernandez forced her to perform oral sex on him during a game of hide-and-seek. And she stated that Hernandez would frequently grab her buttocks and rub her inner thighs, her chest, and her vaginal area over her clothing. She described a particular instance in which Hernandez pulled her into a bathroom, held her over a sink, pushed her pants down and attempted to rape her, but she pulled her pants up and stopped him. K.R. further recalled for the jury that on one occasion when she declined to perform oral sex on Hernandez, and he called her a “little p***y.” After that, Hernandez texted her stating he missed her. In the text exchange he stated, “Hey just give me one chance. You know I love you and I know you love me lets just try to make it work.” In response, K.R. stated: “hmm,” to which Hernandez responded “Cmon please I love you” and later texted “Just please say yes[.] Let[’s] secretly date.” At the time of the incidents, K.R. was thirteen and Hernandez was eighteen.

² Hernandez’s charges were in violation of Minn. Stat. § 609.343 subd. 1(g)(h)(iii) (2020), Minn. Stat. § 609.343 subd. 1 (g) (2020), and Minn. Stat. § 609.344 subd. 1(b) (2020).

The state then called K.R.'s cousin to the stand. The cousin testified that K.R. told her that (1) she and Hernandez were "having an affair," (2) K.R. had performed oral sex on him, and (3) Hernandez had sent K.R. pictures of his penis. Defense counsel objected to the admission of this testimony as hearsay because there had been no attack on K.R.'s credibility. The district court stated that K.R.'s credibility had not been challenged but still overruled Hernandez's objection.

After K.R.'s cousin testified, the state called K.R.'s mother, who—without objection—testified that K.R. and her cousin told her that Hernandez tried to "force himself on [K.R.] in the restroom" and tried to "pull her pants down." K.R. also showed her mother a text from Hernandez to her, the mother testified, in which he stated he wanted to have a secret relationship with K.R. K.R.'s mother then told Hernandez's father about the disclosure. On cross-examination, mother admitted stating that she initially wanted K.R. to take a lie detector test "because she didn't know who was lying." On redirect, mother stated that she never had K.R. complete a lie detector test because Hernandez admitted to what K.R. described.

Hernandez's father testified that after learning about Hernandez's texts to K.R. he confronted Hernandez. Hernandez initially denied having any sexual encounters with K.R. and then later admitted to his father that K.R. "put his penis in her mouth" during hide-and-seek. After Hernandez admitted that K.R. had performed oral sex on him, K.R.'s mother and his father confronted him and asked him to explain exactly what happened. When confronted by K.R.'s mother and his father, Hernandez again admitted that K.R. performed oral sex on him twice.

The state also introduced a forensic interview into evidence, over defense counsel's objection, in which K.R. spoke with a social worker about her encounters with Hernandez. K.R.'s statements during the interview were largely consistent with her testimony, but more detailed in part. For example, she stated that Hernandez choked her several times and described another instance where Hernandez grabbed her thigh and touched her under a pillow at her parent's house while Hernandez's girlfriend was in the same room.

Hernandez testified in his defense. He denied both having any sexual contact with K.R. and sending the text messages telling her that they should secretly date. Hernandez also denied that he ever admitted to his parents that he had any sexual encounters with K.R.

During closing argument, Hernandez's counsel focused on the gaps in the state's evidence. Specifically, counsel highlighted that no additional interviews were conducted with Hernandez or any other person after investigators learned of K.R.'s complaints. Hernandez's counsel also reiterated K.R.'s mother's testimony, that she initially wanted K.R. to take a lie detector test.

In contrast, the state emphasized K.R.'s credibility, including the statement that K.R. told "the same thing four times without missing a beat," referring to the instances that K.R. told her parents, her cousin, and the social worker about her encounters with Hernandez. The state stressed the testimony of K.R.'s parents, in which they both testified that Hernandez admitted to them that K.R. had performed oral sex on him.

The jury found Hernandez guilty of all six counts of criminal sexual conduct. The district court sentenced Hernandez to 144 months in prison but stayed execution and placed

him on probation. Later, after probation violations and a conviction of misdemeanor assault, the district court revoked Hernandez's probation and executed his prison sentence.

Following his probation revocation, Hernandez sought postconviction relief arguing, in part, that the district court erroneously admitted K.R.'s out-of-court statements in which she alleged Hernandez had committed sexual misconduct.³ The state did not appear to oppose the petition. The postconviction court denied Hernandez's motion as it related to the hearsay admissions, determining that the district court erred by admitting K.R.'s hearsay statements but that the error was harmless.

This appeal follows.⁴

DECISION

Hernandez contends that the district court's admission of K.R.'s hearsay statements about her sexual encounters with Hernandez substantially influenced the jury's verdict and, as a result, he is entitled to a new trial. To address this claim, we first consider our standard of review before examining the rules of evidence governing hearsay. With that backdrop, we then proceed to determine whether the postconviction court abused its discretion by

³ Hernandez further argued that his convictions for counts two through six must be vacated because they were lesser-included offenses of count one. The postconviction court granted Hernandez's motion in part and vacated counts two through six because they were "lesser degrees of count 1." This appeal is limited to the district court's admission of the hearsay statements.

⁴ This court accepted Hernandez's late appeal pursuant to Minn. R. Crim. P. 28.02, subd. 4(3)(g), due to a miscalculation of the appeal deadline. The state did not file a respondent's brief and this court ordered that the case be determined on the merits. *See* Minn. R. Civ. App. P. 142.03.

concluding, first, that the challenged hearsay statements were admitted in error and, second, whether any such error was harmless.

This court reviews a postconviction court's denial of a petition for postconviction relief for an abuse of discretion. *Caldwell v. State*, 976 N.W.2d 131, 137 (Minn. 2022). To determine whether the postconviction court abused its discretion, we review the postconviction court's factual findings for clear error and its legal conclusions de novo. *Id.* With regard to the underlying evidentiary rulings, appellate courts review these evidentiary rulings for an abuse of discretion. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). If a district court admits evidence in error, we determine whether the error requires reversal under the harmless-error standard. *State v. Smith*, 940 N.W.2d 497, 505 (Minn. 2020). But “an error is not harmless if a reasonable possibility exists that the error significantly affected the jury’s verdict.” *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024).

The alleged evidentiary errors here involve what the law terms “hearsay.” Hearsay “is a statement, other than one made by the declarant while testifying at the trial or hearing, offered to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is generally *not* admissible at trial. Minn. R. Evid. 802. But an out-of-court statement offered to prove the truth of the matter asserted (i.e., hearsay) may be admissible if it satisfies an enumerated exception or is otherwise not considered hearsay under the rules. *State v. Robinson*, 699 N.W.2d 790, 794 (Minn. App. 2005), *aff’d*, 718 N.W.2d 400 (Minn. 2006); *see* Minn. R. Evid. 801(d) (defining certain statements as not hearsay); Minn. R. Evid. 803-804 (listing exceptions to hearsay rule). As relevant here, “a witness’s prior statement that is *consistent with his trial testimony* is admissible as non-hearsay evidence

if the statement *is helpful to the trier of fact in evaluating the witness's credibility*, and if the witness testifies at trial and is subject to cross-examination about the statement.” *State v. Bakken*, 604 N.W.2d 106, 108-110 (Minn. App. 2000) (emphasis added); *see* Minn. 801(d)(1)(B). However, before a prior consistent statement can be admitted under this rule, the district court must make a *threshold determination* of whether there has been a challenge to the witness's credibility. *Bakken*, 604 N.W.2d at 109.

Hernandez contends that the district court abused its discretion when it admitted the following which it describes—without challenge from the state—as hearsay:

(1) the testimony of K.R.'s mother that K.R. told her Hernandez tried to force himself on her in the bathroom and pull her pants down;

(2) portions of the forensic interview in which K.R. states that she agreed to give Hernandez oral sex in exchange for nicotine and describes the incident in which Hernandez forced her into the bathroom and pushed her head down to “suck his thing,” in addition to the other incidents she described where Hernandez touched or attempted to kiss her;

(3) the cousin's testimony concerning K.R.'s statements that Hernandez kissed her and that she had given him oral sex; and

(4) the testimony of two social workers who recounted K.R.'s allegations of sexual assault.

To determine whether K.R.'s hearsay statements are admissible as prior consistent statements under Minnesota Rule of Evidence 801(d)(1)(b), we first consider whether K.R.'s credibility was challenged during cross-examination. Recall that a threshold determination concerning a credibility challenge must precede admission of a prior

consistent statement. At trial here, the only threshold finding of credibility by the district court was that K.R.'s credibility had *not* been challenged. During a bench conference regarding the objection during the cousin's testimony, the court stated that while another hearsay exception might be available to permit the testimony, "there's no showing that . . . [K.R.] is being shown as dishonest or not credible." Given this finding by the district court, we discern no abuse of discretion when the postconviction court determined that the four categories of testimony described above were admitted in error.

Having concluded that the prior consistent statements were erroneously admitted, we turn to whether that admission constitutes harmless error. To do so, we first analyze the manner in which the evidence was presented. *See State v. Al-Naseer*, 690 N.W.2d 744, 748 (Minn. 2005). We then assess whether the erroneously admitted evidence is "highly persuasive." *Id.* The third consideration is whether the erroneously admitted evidence was used in the state's closing argument. *Id.* Fourth, we review whether the defendant was able to "effectively counter the questioned evidence." *State v. Caulfield*, 722 N.W.2d 304, 315 (Minn. 2006). Finally, we consider whether there was overwhelming evidence of guilt. *Al-Naseer*, 690 N.W.2d at 748.

We turn first to the manner in which the evidence was presented. Here, Hernandez challenges the testimony from K.R.'s cousin, K.R.'s mother, and the audio recording of K.R.'s forensic interview. But context is important. The state introduced these challenged hearsay statements *after* K.R. had testified. And they were largely consistent with her prior

testimony.⁵ Put another way, although the statements likely bolstered K.M.’s credibility, they were cumulative of her testimony, rather than introducing materially different allegations. In addition, where the audio recording contained testimony about more detailed instances of Hernandez’s sexual misconduct, the state did not conduct further inquiry into those incidents. Nor were they discussed at any other point during the trial. Accordingly, the manner in which the evidence was presented supports the postconviction court’s determination that any error in admitting the statements was harmless.

Next the inquiry shifts to whether the erroneously admitted evidence was highly persuasive. Here, the hearsay testimony was not particularly compelling, especially in light of the testimony from K.R.’s mother and Hernandez’s father that Hernandez admitted both to having K.R. perform oral sex on him and to sending her text messages in which he suggested they be in a secret relationship. In contrast, the hearsay statements were largely cumulative, as K.R. had already testified about the incidents in detail. The hearsay statements were not highly persuasive within the context of the trial.

Third, we consider whether the state used the erroneously admitted evidence in its closing argument. Here, the state did not specifically reference the hearsay statements that were admitted into evidence. Instead, the state made general references to the erroneously admitted testimony, including by stating that K.R. told the same story “four times” to

⁵ Hernandez points to portions of the forensic interview in which K.R. went further than her trial testimony, including statements that Hernandez had grabbed her butt and attempted to kiss her. But the statements he points to are largely consistent with her testimony. If anything, some of K.R.’s statements in the interview are more detailed descriptions of the same conduct to which she testified.

emphasize that K.R.'s testimony was credible. In light of the substantial evidence presented by K.R.'s parents, the state's reference to the consistency of K.R.'s statements likely did not significantly influence the verdict. As a result, this factor, only weighs slightly in favor of Hernandez.

Under the fourth factor, we consider whether Hernandez effectively countered the questioned evidence. Here, Hernandez directly countered the hearsay evidence by refuting the hearsay statements during his testimony denying that (1) he ever touched K.R. in a sexual manner; (2) she performed oral sex on him; and (3) he confessed to engaging in such conduct to either of their parents. Hernandez also attempted to counter the hearsay evidence by focusing on mother's testimony that she wanted to have K.R. complete a lie detector test. Despite his testimony refuting the allegations, the jury ultimately found Hernandez's testimony unconvincing and lacking credibility, as evidenced by the verdict. Given that Hernandez had an opportunity to counter the hearsay evidence, and the jury rejected his testimony, this factor also weighs against a finding of prejudice and supports the postconviction court's conclusion that the district court's error was harmless.

Finally, we consider whether there was overwhelming evidence of guilt. Here, the record indeed reflects such overwhelming evidence. This evidence includes: (1) the text messages sent from Hernandez's phone to K.R. asking her to be in a secret relationship with him; (2) K.R.'s detailed testimony of her encounters with Hernandez; and (3) the testimony of Hernandez's step-mother and father that he admitted to engaging with her sexually. Accordingly, after weighing all of the applicable factors, we conclude that the district court's erroneous admission of hearsay statements was harmless error.

In sum, the postconviction court did not abuse its discretion by concluding that the admission of the hearsay statements constituted harmless error. The statements were neither highly persuasive nor heavily emphasized by the state and were cumulative of other admissible evidence. And given the substantial evidence of Hernandez’s guilt, there is not “a reasonable possibility that the error significantly affected the jury’s verdict.” *Bigbear*, 10 N.W. 3d 48, 54 (Minn. 2024).

Affirmed.