

*This opinion is nonprecedential except as provided by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
A25-1141**

State of Minnesota,
Respondent,

vs.

Alex Brody Nettestad,
Appellant.

**Filed July 27, 2026
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Otter Tail County District Court
File No. 56-CR-23-558

Keith Ellison, Attorney General, Timothy C. Rank, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Eldien, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Worke, Judge; and Jesson, Judge.*

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

NONPRECEDENTIAL OPINION

ROSS, Judge

A jury found Alex Nettestad guilty on three counts of first-degree criminal sexual conduct for penile-vaginal penetration, penile-oral penetration, and sexual penetration of a minor based on his alleged repeated assaults on his seven-year-old half-sister. In this appeal, we must decide whether the district court acted within its discretion by redacting only Nettestad's name from portions of the victim's medical records in which medical personnel "confirmed" "[c]hild sexual abuse" and by excluding a witness whose testimony would have conflicted with the victim's statement about whether she had visited Nettestad in college after the abuse. We must also decide whether statements the prosecutor made during closing argument constituted reversible misconduct and whether the district court erred by sentencing Nettestad on two of the counts when one was an included offense of the other. We hold that the district court's improper failure to redact the prejudicial opinions from the victim's medical records did not affect the guilty verdict, and the other trial-error arguments fail. But we also hold that one of the assault offenses is an included offense of another. We therefore affirm in part, reverse in part, and remand for resentencing.

FACTS

The state charged Alex Nettestad with three counts of first-degree criminal sexual conduct in violation of Minnesota Statutes section 609.342, subdivisions 1(a) and 1(h)(iii) (2014). The complaint followed a report alleging that Nettestad had assaulted his half-sister in November 2015 when she was seven years old and that he committed multiple acts of

sexual penetration over an extended period. We will refer to his half-sister as “Lerna,” a name we have randomly chosen to protect her privacy.

Both the state and Nettestad sought to admit into evidence Lerna’s medical records from three appointments in December 2015 and January 2016. A sexual assault nurse evaluator (SANE) wrote the second report and indicated Lerna’s “Final Diagnoses” as “Child sexual abuse, confirmed, initial encounter.” The report includes a progress note from Dr. Scott Stephens stating that he “personally reviewed the case with the nurse who completed the exam” and “agree[s] with all of the findings as expressed in the [nurse’s] written note.” The final report states multiple times that another healthcare provider referred Lerna for further treatment over “concerns of sexual abuse.”

Nettestad moved the district court *in limine* to redact any “references to ‘sexual abuse,’ ‘sexual assault’ or other such sexual behavior” and prohibit any medical witnesses from testifying that Lerna “was sexually abused.” The district court denied Nettestad’s motion regarding the medical witnesses’ opinions.

Nettestad disclosed that he intended to call his ex-girlfriend as a witness to testify that Lerna visited him after he moved to Fargo, impeaching Lerna’s statements in a 2022 forensic interview that she feared Nettestad. The state successfully moved the district court *in limine* to prohibit this testimony on the ground that the witness lacked personal knowledge of Lerna’s relationship with Nettestad.

The state prosecuted the case at trial on the theory that Nettestad sexually assaulted Lerna, who was 16 years old at the time of trial, in an episode of penile-vaginal and penile-oral penetration first in late 2015 when she was seven years old. The state emphasized that

Lerna's medical records corroborated the assault. It maintained that the abuse continued until 2017 when Nettestad moved to attend college in Fargo. Nettestad defended on the theory that he never sexually assaulted Lerna and that her medical history explains her vaginal injuries.

Lerna testified that Nettestad sexually assaulted her at their grandparents' home in late 2015 by orally and vaginally penetrating her with his penis. She then told her mother that she was experiencing vaginal pain, and her mother took her to a series of medical appointments. Lerna testified that Nettestad continued assaulting her on weekends when she would visit her grandparents' home and that the assaults continued until he moved away to attend college. She said that she later told a friend about the abuse in Snapchat messages, which the state introduced into evidence. The state also introduced September 2022 text messages in which this friend told Lerna's mother about Lerna's allegations. Lerna testified that she then came forward with her allegations.

Lerna stated on cross-examination that, after the assault, she was "[s]ometimes" scared of Nettestad. But the district court sustained the state's objection to Nettestad's questioning her about visiting him after he moved away while she was still a young child unless he established that, at the time, Lerna was capable of traveling to Fargo by herself. The district court said that Nettestad could ask another witness, including Lerna's mother, to establish that foundation for this line of questioning.

The state also introduced a video recording between Lerna and a child-protection investigator in which Lerna described Nettestad's sexual abuse. And the case manager

testified to a January 2024 meeting during which Lerna alleged that Nettetstad assaulted her more than once.

The state introduced the medical records through Emily Kalina, the nurse practitioner who treated Lerna in December 2015. Kalina testified that she observed an abrasion and bruising on Lerna's labia minora and vulva and scratches on her back and neck. The state showed the jury photographs of Lerna's vagina that the SANE nurse took during two of the appointments, and Kalina testified that these photographs depicted the injuries that she observed. Kalina also testified that a "wet prep" showed the presence of clue cells indicating bacterial vaginosis, the greatest risk factor for which is sexual intercourse. On cross-examination, Kalina testified that Lerna's mother reported seeing Lerna scratch her vagina but that bruising to the labia minora "usually" results instead from force. She clarified that it is possible but highly unlikely that a prepubescent girl could contract bacterial vaginosis without sexual contact.

Nettestad testified and flatly denied having engaged in any sexual contact with Lerna. The defense introduced expert testimony of Dr. Kendra Thornton, a SANE nurse and nursing professor. Dr. Thornton testified that prepubescent females may experience bacterial vaginosis without sexual contact. She also testified that bruising outside the vagina in a young girl can be caused by itching or holding herself to avoid urinating. Dr. Thornton acknowledged on cross-examination that she is "a professional witness" who is paid \$325 hourly to testify or review case records. And she also acknowledged that she sought out literature on bacterial vaginosis that would support Nettetstad's trial theory.

The state's closing argument focused on witness credibility. The prosecutor argued that Lerna must be a credible witness because coming forward with her allegations was humiliating. The prosecutor emphasized that Lerna had to describe to investigators and the jury "[a] private matter involving private parts of her body. She had to come here, tell you what happened Her vagina, her seven-year-old vagina put on display." The prosecutor attacked Dr. Thornton's credibility as partial:

She's a professional witness. She's paid \$325 an hour to come in and testify, however you want For \$325 an hour, she will testify inconsistently with medical records that she provided her client \$325 an hour does magical things for people, even though they've got medical research and medical records that they provide in front of them.

The prosecutor made similar remarks in his rebuttal, reiterating that "the \$325 and a flight from Texas to Minnesota has [Dr. Thornton] saying different" from her literature and that Lerna's "vagina is now on display for the world. Her seven-year-old vagina."

The jury found Nettekstad guilty on all three counts. The district court sentenced him to serve 172 months in prison on count one and 180 months on count three, to be served concurrently. The district court did not adjudicate Nettekstad guilty on count two.

Nettekstad appeals.

DECISION

Nettekstad raises four arguments challenging his conviction. He maintains that the district court abused its discretion by admitting expert testimony opining that Lerna was sexually assaulted and denying him the right to present a complete defense by prohibiting a witness and cross-examination questions that may have impeached Lerna's statement

about fearing Nettestad. He also contends that the prosecutor's remarks about Lerna's "seven-year-old vagina" and his expert witness constituted misconduct. And he contends that the district court erred by convicting him of both counts one and three even though count three is a lesser-included offense of count one. We address each argument in turn.

I

Nettestad convincingly argues that the district court abused its discretion by refusing to redact from the medical records the SANE nurse and doctor's conclusions that Lerna was sexually abused. We review a district court's decision to admit expert testimony for an abuse of discretion, which occurs when its decision rested on an incorrect understanding of the law or was contrary to the record and logic. *State v. Garland*, 942 N.W.2d 732, 742 (Minn. 2020). The evidence should have been redacted.

We believe that, without redaction, the evidence speaks to the ultimate legal issue. Caselaw prohibits expert testimony on the ultimate legal issue of whether a sexual assault occurred and demonstrates an abuse of discretion in this case. *State v. Saldana*, 324 N.W.2d 227, 231 (Minn. 1982). The supreme court has held that the admission of an expert's opinion that "a rape in fact occurred" was erroneous because this "was a legal conclusion which was of no use to the jury." *Id.* at 230–31. And it has "reaffirm[ed] [the] decision in *Saldana* . . . that prohibits expert testimony about . . . the ultimate question of whether the complainant was sexually assaulted." *State v. Obeta*, 796 N.W.2d 282, 294 (Minn. 2011). The district court violated this holding by admitting the portions of Lerna's medical records that document medical experts' opinion that she was the victim of "[c]hild sexual abuse" or required certain forms of care because she was sexually abused.

We are unpersuaded by the state’s counterargument that *Saldana* stands only for the narrow proposition that experts are prohibited only from testifying about “rape trauma syndrome.” It is true that *Saldana* held that testimony on this “syndrome” is unreliable and therefore inadmissible, but it additionally held that expert testimony on whether an assault occurred concerns “a legal conclusion” that is therefore inadmissible. 324 N.W.2d at 229–31. It is also true that the *Obeta* court cautioned that *Saldana*’s first holding had been “misapplied” to exclude expert testimony on the behaviors typical of sexual-assault survivors that, in contrast to “rape trauma syndrome,” would assist the jury by dispelling misconceptions about sexual assault. 796 N.W.2d at 287, 290–91. It is clear to us that *Obeta* endorsed *Saldana*’s alternative holding prohibiting expert testimony on “the ultimate question of whether the complainant was sexually assaulted.” *Id.* at 294. The district court improperly failed to redact the evidence to comport with this prohibition.

But in this case, the district court’s abuse of discretion by admitting the evidence does not result in reversal. We will not reverse a conviction over erroneously admitted evidence unless there is a “reasonable possibility” that this evidence “significantly affected the verdict.” *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011) (quotation omitted). Four factors guide our analysis: (1) the state’s manner of presenting the evidence; (2) whether the state used it in closing; (3) whether the defendant effectively countered it; and (4) whether it was highly persuasive. *State v. Ferguson*, 581 N.W.2d 824, 833 (Minn. 1998). Strong evidence of the defendant’s guilt can also undermine the offending evidence’s persuasiveness. *State v. Bigbear*, 10 N.W.3d 48, 54–55, 59 (Minn. 2024). Based on these factors, we conclude that admitting the evidence does not require reversing.

The first factor favors upholding the conviction because the state made only passing references to the opinions in its case in chief: once in its opening statement, twice in its closing argument, and once in its examination of Kalina. The second factor similarly weighs against reversing given these limited references and the state's focus on Lerna's testimony and credibility. *See id.* at 59 (explaining that this factor weighs against reversing when the state makes only brief references to the offending evidence in closing and focuses on other elements of its case). And the third factor also weighs against reversing because Nettestad successfully relied on his own expert, who offered a reasoned, opposing medical opinion to the jury. And for reasons we discuss below, we are not convinced to reach a different conclusion based on Nettestad's contention that his expert's testimony was rendered ineffective because the state improperly disparaged it during its closing argument.

The fourth factor favors reversing because the medical stature of these witnesses tends to gloss their legal opinions with legitimacy. *See Saldana*, 324 N.W.2d at 231. But this was counterbalanced with the state's strong evidence of Nettestad's guilt, including Lerna's testimony, the corroborating Snapchat messages, the forensic interview, and the other, properly admitted information in the medical records. *See State v. Juarez*, 572 N.W.2d 286, 292–93 (Minn. 1997) (explaining that the persuasive value of erroneously admitted evidence was undermined in a child-sexual-assault case where the child-victims testified consistently at trial with their earlier statements to investigators and other adults). And the impact of erroneously admitted testimony can be undermined when properly admitted testimony establishes the same facts. *State v. Smith*, 940 N.W.2d 497, 506 (Minn. 2020). Kalina's testimony provided independent and persuasive evidence that Lerna's

injuries resulted from a sexual assault rather than the causes proffered by Nettekstad's expert witness. On balance, we conclude that no reasonable probability exists that the improper expert testimony substantially affected the jury's verdict. We therefore decline to reverse on this ground.

II

Nettekstad less persuasively argues that the district court denied him his right to present a complete defense by barring witness testimony and a line of cross-examination that would have impeached Lerna's statements that she was afraid of Nettekstad after the assault. The Due Process Clause of the United States Constitution and article I, section 7 of the Minnesota Constitution guarantee every criminal defendant the right to present a complete defense. *State v. Richards*, 495 N.W.2d 187, 191 (Minn. 1992). This includes the "rights to confront and cross-examine witnesses and to call witnesses in one's own behalf." *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). And these rights generally entitle defendants to impeach the credibility of the state's witnesses. *See State v. Crims*, 540 N.W.2d 860, 865 (Minn. App. 1995), *rev. denied* (Minn. Jan. 23, 1996). We have carefully considered Nettekstad's argument and hold that the district court did not violate his rights.

The district court did not deny Nettekstad a defense because it gave him sufficient opportunity to present the impeachment evidence with proper foundation. Our reading of the district court's recounting the bench conference following the state's objection to the Fargo-visit issue convinces us that the district court did not foreclose Nettekstad's line of questioning. It instead required Nettekstad to make an offer of proof to establish that Lerna, who was only a young child at that time and unlikely to travel to Fargo on her own,

participated meaningfully in the decision to visit him. The district court even suggested that Nettestad could lay the foundation by examining Lerna's mother, who was also a witness in the trial. Nettestad did not avail himself of the opportunity. Because the district court did not restrict Nettestad from presenting the defense, his argument fails.

III

Nettestad argues that the prosecutor engaged in misconduct during his closing argument by capitalizing on juror sympathy for Lerna, punishing him for exercising his trial right, and disparaging his expert witness to prejudicial effect. We review unobjected-to prosecutorial error under a modified plain-error test. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). The defendant must prove that a prosecutor's conduct was erroneous and plain. *Id.* The state must then prove that this error did not affect the defendant's substantial rights. *Id.* If it cannot do so, a new trial is warranted only if necessary to preserve judicial integrity and fairness. *Id.* Neither of Nettestad's charges of misconduct supports reversing.

Nettestad argues that the state's repeated references to Lerna's "seven-year-old vagina" inappropriately capitalized on juror sympathy for a young sexual-assault victim and encouraged the jury to punish him for going to trial. Prosecutors may not persuade the jury using emotional appeals. *State v. Porter*, 526 N.W.2d 359, 363 (Minn. 1995). This is especially so in sexual-assault cases, where prejudice is most likely given the nature of the alleged offense. *State v. McNeil*, 658 N.W.2d 228, 234 (Minn. App. 2003). Nor can prosecutors encourage the jury to punish the defendant for demanding a trial. *Id.* at 235.

The prosecutor's remarks here came very close to the line and are saved, barely, only by the context.

We see little probative value in reminding the jury about the fact of the victim's "seven-year-old vagina." But prosecutors may argue for the credibility of witnesses so long as they do not personally endorse their credibility. *State v. Martin*, 773 N.W.2d 89, 106 (Minn. 2009). We believe that the prosecutor's comments were permissible in the context of his entire argument as support for Lerna's credibility. Lerna testified to Nettestad's sexual abuse, and the jury saw photographic records documenting the abuse. Emphasizing the youth of her genitalia both undermines the likelihood that vaginal injuries had some legitimate cause and emphasizes that Lerna was willing to be subjected to potentially humiliating, invasive inspection by reporting her pain. *See State v. Ture*, 353 N.W.2d 502, 516 (Minn. 1984) (explaining that a prosecutor may identify circumstances corroborating witness testimony when arguing for credibility). This distinguishes this case from *McNeil*, which Nettestad argues is apposite, because that prosecutor's inflammatory remarks that a jury could not give the witness "back her virginity" but could "give her justice" and attacks upon the defendant for putting her on the stand were unmoored from any legitimate argument arising from the facts of that case. 658 N.W.2d at 235–36. Nettestad's counsel referenced Lerna's vagina extensively in closing arguments, demonstrating its centrality and diluting any stirred passions. Again, this is a close call, but we conclude that the challenged remarks were not prosecutorial error.

Nor were the prosecutor's attacks on Dr. Thornton, which were grounded in her testimony, impermissible. Prosecutors may argue against a defense witness's credibility so

long as they do not disparage her character. *State v. Bailey*, 677 N.W.2d 380, 403–04 (Minn. 2004). They may argue that a witness is testifying for pay if the prosecutor has grounds for the argument. *State v. Schnagl*, 907 N.W.2d 188, 203 (Minn. App. 2017), *rev. denied* (Minn. Feb. 28, 2018). The statements that Nettestad’s expert is a “professional witness” who conducted confirmatory research for \$325 an hour and who would testify inconsistently with medical literature for payment are characterizations that, although harsh, are factually consistent with the witness’s cross-examination. Dr. Thornton agreed that she was a “professional witness,” admitted to accepting \$325 hourly, and acknowledged having sought out literature favorable to the defense. The prosecutor’s argumentative attacks are not misconduct.

IV

Nettestad argues that the district court erred by convicting him of both counts one and three because they encompass the same criminal sexual conduct in a single act. The state rightly concedes the point. *See* Minn. Stat. § 609.04, subd. 1 (2014) (permitting prosecution “of either the crime charged or an included offense, but not both”). Because the state explicitly incorporated the criminal act constituting count one into count three as its “first incident,” the district court should not have adjudicated (or, consequently, sentenced) Nettestad on it as a lesser-included offense. We remand for it to vacate the improper conviction and resentence Nettestad, leaving the guilty verdict intact.

Affirmed in part, reversed in part, and remanded.