STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1281

State of Minnesota,
Respondent,

vs.

Anthony N. Poyirier,
Appellant.

Filed September 3, 2024
Affirmed in part, reversed in part, and remanded
Cochran, Judge

Cook County District Court
File No. 16-CR-21-14

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Molly Hicken, Cook County Attorney, Grand Marais, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ede, Presiding Judge; Segal, Chief Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal, appellant challenges his convictions of two counts of second-degree criminal sexual conduct. Appellant argues that the district court abused its discretion by permitting the state to amend the complaint shortly before the jury was

selected and by denying his motion for a mistrial based on unnoticed testimony about a prior bad act by appellant. He contends that he is entitled to a new trial on either basis. Alternatively, appellant argues that the district court erred at sentencing by imposing a lifetime-conditional-release term on each of his two criminal-sexual-conduct convictions. Because appellant's arguments for a new trial are unavailing, we affirm his convictions. But because we agree that the district court erred when it imposed a lifetime conditional-release term rather than a ten-year conditional-release period on each of his convictions, we reverse and remand for resentencing.

FACTS

In January 2021, respondent State of Minnesota charged appellant Anthony N. Poyirier with two counts of second-degree criminal sexual conduct for sexual contact with an individual under the age of 13 and more than 36 months younger than Poyirier. *See* Minn. Stat. § 609.343, subd. 1(a) (2014). The complaint alleged that, when Poyirier was 30 years old, he twice forced a 12-year-old girl to touch his penis. The alleged victim knew Poyirier because one of her relatives was Poyirier's romantic partner. According to the complaint, both offenses occurred between the following date range: on or about June 1, 2016, to August 31, 2016.

The Amended Complaint

The case did not go to trial until April 2023. Before jury selection was complete, the state filed an amended complaint. The amended complaint modified the date range for the offenses to between the following dates: on or about September 21, 2015, to September 20, 2016. The change resulted in expanding the date range by approximately nine months.

The court heard from the parties regarding the amended complaint. The state explained that it amended the complaint after meeting with the alleged victim, C.M., in preparation for trial. At the meeting, C.M. provided the state with information regarding the timeline of the alleged offenses that "somewhat varied" from her original allegations in 2021. But, according to the state, C.M. was still certain that the incidents occurred when she was 12 years old. As a result, the state amended the complaint to reflect the time period when C.M. was 12 years old.

Defense counsel objected, arguing the amendment was untimely. Defense counsel also argued that his "entire preparation for this case," including numerous cross-examination questions for C.M., was based on his understanding that the alleged offenses occurred "on or about June 1, 2016."[1]

The district court overruled the objection and permitted the amendment of the complaint to add the expanded date range. The district court then asked defense counsel if he needed extra time to revise his questioning based on the amendment. Defense counsel replied that he would need to "modify the questioning on all witnesses" and "the potential closing argument." He stated that the additional work would take "most of" a day. The district court decided to proceed with voir dire of the jury pool that day but noted that it would "consider providing a break" once the jury was selected to give defense counsel

[1] Despite defense counsel's emphasis on the importance of June 1, 2016, in terms of his trial preparation, he did acknowledge that the original complaint reflected that the "second offense might have been one to two months away from the first."

extra time to prepare. After the jury was seated, defense counsel did not request a continuance and the parties gave their opening statements.

Trial Testimony

A total of nine witnesses testified over three days of trial: C.M., C.M.'s sister, the sister's boyfriend, a forensic interviewer, two deputies, an expert on child-victim forensic interviews, a social worker, C.M.'s older cousin (who was Poyirier's romantic partner and lived with Poyirier at the time of the alleged abuse), and two of Poyirier's children. Poyirier did not testify.

The victim, C.M., testified as follows. When C.M. was between the ages of 11 and 14 years old, she regularly spent time at the home where Poyirier and her older cousin lived. C.M. was "best friends" with Poyirier's children and considered them to be family. She would often spend the night at the house, where she typically slept on a couch in the living room.

According to C.M.'s trial testimony, Poyirier first sexually assaulted her sometime between the winter and summer of 2015, when C.M. was 12 years old. While C.M. was sleeping on the couch, Poyirier entered the living room, laid next to C.M., and forced C.M. to touch his exposed penis with her hand. Between two weeks and two months after the first incident, Poyirier again laid next to C.M. while she was sleeping on the couch and forced her to touch his penis.

C.M.'s older sister, L.M., also testified at the trial.[2] L.M. is approximately two years older than C.M. L.M. frequently slept over at Poyirier's house when she was between the ages of 9 and 13 years old. On one of those nights, when L.M. was 11 or 12 years old, Poyirier laid down next to L.M. on the couch that she was sleeping on. L.M. quickly became agitated and went to the bathroom. A second incident occurred when L.M. was "13 going on 14." Again, Poyirier laid down on the couch next to L.M. in the middle of the night. L.M. immediately got off the couch and went to find another room to sleep in. L.M. did not tell anyone about what happened at the time. But, after the second incident, she did not "hang out" at the house with Poyirier's children anymore.

The state also called L.M.'s boyfriend, K.B., to testify about when C.M. initially disclosed Poyirier's sexual abuse. According to K.B., C.M. disclosed Poyirier's abuse to L.M. and K.B. in 2021, when L.M. and K.B. were living together at K.B.'s house. During the state's questioning of K.B., the following transpired:

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[2] Before trial, the state moved to admit L.M.'s testimony as *Spreigl* evidence to corroborate C.M.'s allegations.

> *Spreigl* evidence is "[e]vidence of another crime, wrong, or act [that] is not admissible to prove the character of a person in order to show action in conformity therewith[, but which] may . . . be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

State v. McLeod, 705 N.W.2d 776, 780 n.1 (Minn. 2005) (quoting Minn. R. Evid. 404(b)). Poyirier did not oppose the state's motion and the district court granted the request. Before L.M. testified, the district court cautioned the jury to use her testimony for "the limited purpose of assisting . . . in determining whether Mr. Poyirier committed those acts with which he has been charged."

> Q: Okay. Have you ever heard [C.M.] talk about Anthony Poyirier touching her inappropriately?
> A: Yes, I have.
>
> Q: And when did she talk about that?
> A: Um, about maybe, um, 2 years ago. It probably was about November-ish.
>
> Q: Okay.
> A: Um, she was staying the night at my house, hanging out with, um, [L.M.]. And, um, I was playing video games, doing my own thing. And they came out into the living room and, um, they were just talking about things that happened when they were kids, and talking about the times they had stayed the night in Portage.
>
> And, um, she then went into, um, talking about a situation where [Poyirier] was possibly under the influence of drugs and, um, hung them out of a window, thinking it was a funny game.

Defense counsel objected at that point, arguing that K.B.'s testimony about Poyirier and the window incident was unnoticed *Spreigl* evidence. The district court sustained the objection. The state moved on to question K.B. specifically about C.M.'s disclosure of Poyirier's inappropriate touching. K.B. testified that C.M. described Poyirier acting "creepy with her late at night while she slept on the couch." According to K.B., C.M. said that Poyirier "would lay behind [C.M.] and press himself against her." K.B. further testified that, when he was at a family party, he told C.M.'s mother about C.M.'s and L.M.'s allegations regarding Poyirier.

At the next break after the jury exited the court room, Poyirier moved for a mistrial based on K.B.'s "improper" testimony about Poyirier's window incident with C.M. and L.M. when they were girls. Defense counsel argued that it was impossible to "come back" from K.B.'s allegation that Poyirier hung C.M. and L.M. out of a window while he was

possibly under the influence of drugs, and that any attempt to mitigate the testimony would only "raise more attention to it." In response, the prosecutor asserted that she had not intended to elicit such testimony from K.B. She added that the testimony was "brief." She also emphasized that the jury had already been instructed, and would be again instructed, that it should "consider only the crimes against which [Poyirier was] charged with."

The district court denied Poyirier's motion for a mistrial. The district court noted that K.B.'s testimony was "unfortunate," but did not warrant a mistrial. The district court found that K.B.'s testimony "all came out fairly quickly" and that "the objection was sustained quickly." The district court added that it would consider providing the jury with a cautionary instruction, should defense counsel request one. Defense counsel rejected the offer, stating that "there's no curative instruction that can be made, because it'll just bring more attention to the bad act." Thus, the trial proceeded with testimony from the remaining witnesses.

Verdict and Sentencing

The jury found Poyirier guilty of both counts of second-degree criminal sexual conduct. After the jury read its verdict, the district court explained: "based on the jury's verdict, convictions will be entered on both counts one and two in this matter." At sentencing, the district court imposed executed, concurrent sentences on both counts—48 months on count one and 70 months on count two. The district court also imposed a lifetime conditional-release term on each sentence.

Poyirier appeals.

DECISION

Poyirier argues that the district court committed two abuses of discretion that warrant a new trial. First, he asserts that the district court abused its discretion by permitting the state to amend the complaint. Second, he claims that the district court should have granted his motion for a mistrial after K.B. testified that Poyirier once hung C.M. and L.M. out of a window while possibly under the influence of drugs. Poyirier also argues—and the state agrees—that the district court erred in imposing a lifetime conditional-release term on each conviction rather than a ten-year conditional-release term. We address Poyirier's arguments in turn.

I. The district court did not abuse its discretion by permitting the state to amend the complaint.

"The district court has broad discretion to grant or deny leave to amend a complaint, and its ruling will not be reversed absent a clear abuse of that discretion." *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. App. 2004). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn. 2020) (quotation omitted).

Under Minnesota Rule of Criminal Procedure 3.04, subdivision 2, "[p]re-trial proceedings may be continued" to amend the complaint for various reasons, such as when the "initial complaint does not properly . . . describe the . . . offense charged." Although rule 3.04, subdivision 2, refers to "[p]re-trial proceedings," the supreme court has interpreted the rule to apply to amendments made before jeopardy attaches. *See State v. Bluhm*, 460 N.W.2d 22, 24 (Minn. 1990) (discussing rule 3.04 and holding that

"since jeopardy had not attached the [district] court was free to allow an amendment"). Jeopardy attaches once the jury is empaneled and sworn. *State v. Large*, 607 N.W.2d 774, 778 (Minn. 2000). Thus, a district court is "relatively free" to allow amendments to the complaint before the jury is sworn, "provided the [district] court allows continuances where needed." *See Bluhm*, 460 N.W.2d at 24.

Poyirier argues that the district court abused its discretion in permitting the amendment because it was untimely and unfairly forced defense counsel to adjust his trial strategy on the eve of trial. We are not persuaded. First, the amendment came before the jury had been selected and sworn. Second, the record reflects that the district court offered defense counsel the opportunity to request a continuance for more time to prepare in response to the amendment. Despite the offer, defense counsel never requested a continuance. On these facts, the district court was "relatively free" to permit an amendment, and we discern no abuse of the district court's broad discretion in deciding this issue. *See id.*

Poyirier argues that our decision in *Baxter* suggests otherwise. In *Baxter*, the defendant was originally charged with three counts of third-degree criminal sexual conduct. 686 N.W.2d at 850. On the morning of trial, the state moved to amend the complaint to charge three counts of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct. *Id.* The district court denied the state's motion. *Id.* The state appealed and we affirmed.

In our decision, we noted that the "district court retains broad discretion over how a case proceeds once it is filed" and "[t]his includes the power to grant or deny a prosecutor's

request to amend the complaint." *Id.* at 852. We also emphasized that the "inquiry into whether a court should grant or deny such a motion [to amend the complaint] is factual and case specific." *Id.* Regarding the specific facts in *Baxter*, we observed that the proposed amendment was far more than a "housekeeping amendment," adding new charges that would "require that additional elements of a crime be proven, would permit the presentation of additional defenses, and would allow for a greater penalty." *Id.* at 853 (quotation omitted). We also observed that the state's delay in amending the complaint was due to its failure to interview the victim until "more than a month after she had been located," which was compounded by the state waiting five more days until the morning of trial to move for an amendment. *Id.* For these reasons, we held that the district court acted within its discretion when it denied the state's motion to amend the complaint. *Id.*

Poyirier asserts that the amendment in *Baxter* is analogous to the amendment in this case, and therefore the district court abused its discretion when it did not deny the amendment as untimely and unfair. We disagree. *Baxter* is distinguishable for at least two reasons. First, in *Baxter* we affirmed the district court's *denial* of the state's motion to amend the complaint. *Id.* We did not consider whether the district court would have abused its discretion had it *granted* the motion to amend. *Id.*

Second, *Baxter* involved an amendment that went well beyond "housekeeping" because the amendment introduced entirely new charges. Here, the amendment only modified the dates of the charged offenses. Caselaw makes clear that such an amendment in criminal-sexual-conduct cases does not equate to charging a new offense or modifying an already-charged offense's elements. "The complaint must state the essential facts

constituting the offense charged." *State v. Becker*, 351 N.W.2d 923, 926 (Minn. 1984). "[T]he precise date is an essential element of the crime only where the act done is unlawful during certain seasons, on certain days[,] or at certain hours of the day . . . ." *Id.* at 927. Otherwise, the date must be "as specific as possible," especially in criminal-sexual-conduct cases involving minor victims and delayed reporting. *Id.* at 926 (quotation omitted). As such, "specific dates need not be proved in cases charging criminal sexual conduct over an extended period of time." *State v. Rucker*, 752 N.W.2d 538, 547 (Minn. App. 2008), *rev. denied* (Minn. Sept. 23, 2008). So, amending the alleged date of a criminal-sexual-conduct crime in a complaint does not constitute charging a different offense. *Ruberg v. State*, 428 N.W.2d 488, 490-91 (Minn. App. 1988), *rev. denied* (Minn. Oct. 26, 1988). Here, the amendment at issue only extended the alleged date range of the offense, making it much closer to "housekeeping" than it is to the substantive amendment in *Baxter*. We therefore reject Poyirier's reliance on *Baxter* and conclude that the district court did not abuse its discretion when it permitted the state to amend the complaint.[3]

[3] While we are sympathetic to Poyirier's concerns over the timeliness of the amendment, timeliness is not "paramount" under rule 3.04. *Baxter*, 686 N.W.2d at 853. Here, the prosecutor filed the amended complaint just before jury selection, which was approximately two weeks after the prosecutor met with C.M. and learned that C.M.'s account of the abuse "somewhat varied" from her first statement. We believe that the better practice would have been for the prosecutor to amend the complaint sooner. Nonetheless, under rule 3.04's "relatively free" standard for pretrial amendments, we are not convinced that the district court abused its broad discretion by permitting the state to make this "housekeeping" amendment prior to selection of the jury. *See State v. Smith*, 313 N.W.2d 429, 430 (Minn. 1981) (affirming grant of motion to amend made "shortly before the jury was selected" where amendment "did not charge any additional or different offense").

Moreover, even assuming the district court abused its discretion by allowing the amendment, Poyirier has not established any resulting prejudice that would warrant a new trial. *See Smith*, 313 N.W.2d at 430 (affirming a conviction based on an amended complaint when the amendment was made before jeopardy attached, did not charge additional offenses, and did not prejudice the defendant). The district court afforded defense counsel an opportunity to request more time to prepare for trial, but defense counsel never made such a request. *See id.* (concluding that defendant was not prejudiced by an amendment when "defense counsel rejected an offer of a 2-day continuance"). In addition, at the hearing where the district court considered whether to permit the amendment, Poyirier acknowledged that the state promptly disclosed the information from the prosecutor's recent meeting with C.M. to prepare for trial, which formed the basis for the amendment. Thus, contrary to the assertion in Poyirier's brief, the amendment was not a "sandbag." Poyirier has not met his burden to establish he is entitled to a new trial based on the amended complaint.

II. The district court did not abuse its discretion by denying Poyirier's motion for a mistrial.

Next, Poyirier argues that we should reverse the district court and order a new trial based on the district court's denial of his motion for a mistrial. We review the denial of a motion for a mistrial for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016). "A mistrial should be granted only if there is a reasonable probability, in light of the entirety of the trial including the mitigating effects of a curative instruction, that the outcome of the trial would have been different had the incident resulting in the

motion not occurred." *Id.* And "[t]he trial judge is in the best position to determine whether an error is sufficiently prejudicial to require a mistrial or whether another remedy is appropriate." *Id.*

Poyirier moved for a mistrial after K.B. testified that he heard L.M. and C.M. discussing a time when Poyirier hung them out of a window while Poyirier was "possibly" under the influence of drugs. On appeal, Poyirier argues that K.B.'s testimony about the window incident amounts to unnoticed *Spriegl* evidence, and the prejudicial effect of the testimony warrants a mistrial. Assuming without deciding that K.B.'s testimony about the window incident meets the standard for unnoticed *Spriegl* evidence, we conclude that there is no reasonable probability that the challenged testimony affected the outcome of the trial.

In determining whether there is a reasonable probability that challenged testimony affected the verdict, we examine the entire record. *State v. Jaros*, 932 N.W.2d 466, 474 (Minn. 2019). We focus our analysis on the extent of the testimony, whether the state relied on the challenged evidence to make its case, whether the district court issued a cautionary instruction, and the strength of the state's case. *See id.* at 474-75; *State v. Chavez-Nelson*, 882 N.W.2d 579, 590-91 (Minn. 2016).[4]

[4] Poyirier argues that we should also consider that the "state did not present other, admissible evidence of Poyirier's alleged prior bad acts regarding C.M. and L.M." When analyzing the effect of inadmissible *Spreigl* evidence, the supreme court has considered "whether the [s]tate presented other evidence on the issue for which the other crime evidence was offered." *State v. Riddley*, 776 N.W.2d 419, 428 (Minn. 2009). But that consideration is not relevant here, where the evidence in question was introduced inadvertently through witness testimony and the district court sustained the objection to the testimony. Simply put, there is no "issue for which" the window-incident evidence was offered. *Cf. id.* (assessing the prejudicial effect of *Spreigl* evidence that was admitted by district court on the issues of identity, motive, and possession of a gun).

Based on our review of the entire record, we conclude that Poyirier has not demonstrated a reasonable probability that the challenged testimony significantly affected the verdict. First, the record reflects that the challenged testimony was very brief. The testimony, which was not intentionally elicited by the prosecutor, consisted of only four lines of K.B.'s testimony. And K.B. was one of nine witnesses to testify during the three-day trial. Also, the record reflects that the prosecutor did not dwell on the testimony. After the district court sustained Poyirier's objection, the prosecutor quickly moved on to another topic. And the prosecutor did not mention the challenged testimony after the objection was made.

Next, while the district court did not provide a specific cautionary instruction regarding the challenged testimony (because Poyirier thought such an instruction would draw more attention to the testimony), the district court immediately sustained Poyirier's objection to K.B.'s testimony. And, at the beginning of trial, the district court instructed the jury that it should "ignore the question or answer" anytime the court sustained an objection during testimony. We presume a jury follows the court's instructions. *State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009).

Finally, the state's case against Poyirier was fairly strong. The state's case relied primarily on the testimony C.M. gave about Poyirier sexually abusing her. Her testimony was detailed, describing how on two occasions Poyirier had laid next to her on the couch where she was sleeping and forced her to touch his penis with her hand. C.M.'s credibility was bolstered by L.M.'s testimony, which helped to demonstrate that Poyirier had a common scheme or plan involving teenaged girls who stayed over at the house.

In balancing the foregoing factors, we conclude that the record demonstrates that there is no reasonable probability that the challenged testimony affected the verdict, especially given the very brief nature of the testimony and the fact that the state did not rely on the testimony to prove its case. The district court therefore did not abuse its discretion in denying Poyirier's motion for a mistrial based on the challenged testimony.

III. The district court erred by imposing a lifetime conditional-release term on each of the two criminal-sexual-conduct counts.

Lastly, Poyirier argues that the district court erred by imposing a lifetime-conditional-release term on each of his sentences for second-degree criminal sexual conduct. Poyirier asserts that the district court should have instead imposed a ten-year-conditional-release term on each count. The state agrees. Based on our independent review, we conclude that the parties are correct.

A person convicted of second-degree criminal sexual conduct is "subject to conditional release under [Minnesota Statutes section 609.3455 (2014)]." Minn. Stat. § 609.343, subd. 2(c) (2014). Pursuant to section 609.3455, when a district court sentences a defendant to prison for second-degree criminal sexual conduct, "the court shall provide that, after the offender has been released from prison, the commissioner shall place the offender on conditional release for ten years." Minn. Stat. § 609.3455, subd. 6. But when a district court sentences a defendant to prison for second-degree sexual conduct "and the offender has a previous or prior sex offense conviction, the court shall provide that, after the offender has been released from prison, the commissioner shall place the offender on conditional release for the remainder of the offender's life." *Id.*, subd. 7(b). A defendant

has a "prior sex offense conviction" if he was convicted of "a sex offense before [he] has been convicted of the present offense, regardless of whether [he] was convicted for the first offense before the commission of the present offense, and the convictions involved separate behavioral incidents." *Id.*, subd. 1(g).

Under section 609.3455, a "prior sex offense conviction" includes "a conviction for a separate behavioral incident entered before a second conviction, whether at different hearings or during the same hearing." *State v. Nodes*, 863 N.W.2d 77, 82 (Minn. 2015); *see also* Minn. Stat. § 609.3455, subd. 1(g) (defining "prior sex offense conviction"). In other words, one conviction entered at the same hearing as a subsequent conviction may nonetheless serve as a prior sex-offense conviction. *Nodes*, 863 N.W.2d at 81. But when a district court enters multiple criminal-sexual-conduct convictions *simultaneously* in the same hearing, one conviction cannot serve as a prior sex-offense conviction for another. *State v. Brown*, 937 N.W.2d 146, 157 (Minn. App. 2019), *rev. denied* (Minn. Feb. 18, 2020). Adjudication is simultaneous when there is "no temporal gap whatsoever between a district court's adjudication of offenses, [and] no conviction is entered 'before' the other." *Id.*

Here, the record reflects that Poyirier had no prior sex-offense convictions before this case. The record also reflects that the district court entered simultaneous convictions for both offenses in this case—in a single utterance, the district court entered convictions on "*both* counts one and two in this matter." (Emphasis added.) Because Poyirier had no prior sex-offense convictions and the two current convictions were entered simultaneously, the district court erred by imposing a lifetime conditional-release term on each conviction

and should have instead imposed a ten-year conditional-release term for each. *See* Minn. Stat. § 609.3455, subds. 6, 7(b).

We therefore reverse the district court's inclusion of the lifetime conditional-release term as part of Poyirier's sentence for each of the two counts of second-degree criminal-sexual-conduct and remand for resentencing consistent with this opinion.

Affirmed in part, reversed in part, and remanded.