STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0628

State of Minnesota,
Respondent,

vs.

Patricia Michelle Jones,
Appellant.

Filed February 18, 2025
Reversed and remanded
Smith, Tracy M., Judge

Cottonwood County District Court
File No. 17-CR-23-101

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

Deja Weber, Cottonwood County Attorney, Windom, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

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

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

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from a judgment of conviction for malicious punishment of a child, appellant Patricia Michelle Jones argues that the district court committed reversible error by (1) admitting as evidence a hearsay statement that the child made to his father, accusing Jones of abuse; (2) prohibiting Jones from introducing evidence of certain acts of domestic abuse allegedly committed by an alternative perpetrator; and (3) admitting recordings that allegedly capture Jones yelling at the child. Respondent State of Minnesota concedes that the district court committed reversible error by admitting the child's hearsay statement without making the reliability findings required by Minnesota Statutes section 595.02, subdivision 3 (2024). We, too, agree that the district court erred by admitting the child's hearsay statement and that this error requires reversal of Jones's conviction and remand for a new trial. We do not reach Jones's other assignments of error.

FACTS

Jones served as a foster parent to the child and his sister. The children lived with Jones at her apartment, and no other individuals resided at that apartment. The child was three years old at the time of the alleged abuse and four years old at the time of trial.

The child's father occasionally had unsupervised visits with the child. According to the father's testimony at trial, on January 6, 2023, he helped the child use the bathroom during an unsupervised visit. While doing so, he noticed bruising on the child's buttocks. The father additionally testified that, when he asked the child about the bruising, the child

stated that "[Jones] had spanked him with a stick." The father reported the child's statement to a caseworker and, along with the child, met with an investigator.

The state charged Jones with malicious punishment of a child under four years old under Minnesota Statutes section 609.377, subdivisions 1 and 4 (2022). Prior to trial, Jones moved the district court to allow her to present evidence of unrelated acts of domestic abuse allegedly committed by the child's father to support her theory that the child's father perpetrated the abuse of which she was accused. The district court denied Jones's motion with respect to the majority of the father's other alleged acts. Jones additionally moved to exclude as evidence audio recordings that allegedly capture her yelling at the child and his sister. The district court denied Jones's motion and allowed the state to play these recordings at trial.

Shortly before the jury trial, the district court found the then four-year-old child incompetent to testify at trial. The state then moved the district court under Minnesota Statutes section 595.02, subdivision 3, to allow evidence of the hearsay statement that the child allegedly made to his father accusing Jones of spanking him. The district court granted the state's motion over Jones's objection. The state presented evidence of the hearsay statement at trial through the father's testimony. Following the jury's guilty verdict, the district court convicted Jones, stayed imposition of the presumptive prison sentence of 12 months and 1 day, and ordered that Jones spend 60 days in jail. *See* Minn. Sent'g Guidelines 4.A, 5.A (2022).

This appeal follows.

DECISION

Jones argues, and the state concedes, that the district court committed reversible error by admitting the child's hearsay statement. We agree.

Appellate courts review a district court's evidentiary rulings, including a decision to admit a hearsay statement under section 595.02, subdivision 3, for an abuse of discretion. *State v. Sime*, 669 N.W.2d 922, 927 (Minn. App. 2003). "A district court abuses its discretion if it misapplies the law, makes findings unsupported by the record, or resolves discretionary questions in a manner that is contrary to logic and the facts on record." *State v. Johnson*, 979 N.W.2d 483, 502 (Minn. App. 2022), *aff'd*, 995 N.W.2d 155 (Minn. 2023). Appellate courts will reverse a verdict when there is a "reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Jaros*, 932 N.W.2d 466, 472 (Minn. 2019) (quotation omitted).

The child's out-of-court statement would ordinarily be excluded pursuant to the rule against hearsay. *See* Minn. R. Evid. 801, 802. However, Minnesota Statutes section 595.02, subdivision 3, under which the district court admitted this statement, allows for certain out-of-court statements made by young children regarding physical abuse to be admitted as substantive evidence. This section provides, in pertinent part:

> An out-of-court statement made by a child under the age of ten years . . . alleging, explaining, denying, or describing . . . any act of physical abuse of the child . . . , not otherwise admissible by statute or rule of evidence, is admissible as substantive evidence if:
>
> (a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the *time, content, and circumstances of the statement*

> *and the reliability of the person to whom the statement is made provide sufficient indicia of reliability*; and
>
> (b) the child . . .
>
> (ii) is unavailable as a witness and *there is corroborative evidence of the act*[.]

Minn. Stat. § 595.02, subd. 3 (emphases added). The district court recited most of these requirements before granting the state's motion to introduce the child's statement.

In granting the state's motion to introduce the child's hearsay statement, the district court reasoned:

> In regard to the statement to the father, there is a clear understanding and notice to the defense of what that statement of the child is. Although the defense is going to argue that the father has a motive and is an alternate perpetrator . . . , that has not been a determination that's been made by anyone at this time. The Court will allow that substantive statement to be discussed or—by the father as far as what the—that one sentence that the child said to him about how he received the bruises. Certainly, he is subject to cross-examination and questioning . . . by the defense as to motive for that or his reliability . . . .
>
> So, the Court finds that the witness is unavailable as identified by the statute. The witness—or the child is under 10 . . . . In regard to the statement to the father, the Court will allow that, and that will be permitted to be introduced as substantive evidence.[1]

A. Admitting the Statement Without the Required Findings

We agree with the parties that the district court erred by admitting the statement without making the reliability findings required by statute. The district court made no

[1] The state additionally moved to introduce a similar statement that the child allegedly made to his mother. The district court denied the state's motion with respect to this second statement due to a lack of notice about the contents and context of the statement.

findings addressing (1) the time, content, and circumstances of the statement or (2) the reliability of the person to whom the statement was made. *See id.*, subd. 3(a).

As to the first factor, in *Sime*—a case that also addressed the admissibility of an out-of-court statement under section 595.02, subdivision 3—we held that "the district court's ruling on the admissibility of the statements was premature without the testimony of the witnesses as to the context and circumstances of [the child's] statements." 669 N.W.2d at 927-28. We explained that such testimony allows a district court to consider factors including "the manner in which [the child] was questioned, whether leading questions were utilized to elicit [the child's] statements, whether there was consistent repetition of the events, [the child's] manner and emotional state when making the statements, and the degree of certainty with which [the] statement was made." *Id.* at 928. Here, although the district court asked the state about the circumstances of the statement and noted that there is information about the contents of the statement, it failed to find that the broader context of the statement shows sufficient indicators of reliability.

As to the second factor, the district court failed to consider whether there is information that supports the reliability of the child's father—the person to whom the statement was made. On this point, the district court's statement that the child's father has not been determined to be an alternative perpetrator falls short of finding sufficient indicators of his reliability.

Both parties also agree that the district court failed to consider whether there was "corroborative evidence of the act." Minn. Stat. § 595.02, subd. 3(b)(ii). Although the state concedes that the district court committed reversible error in admitting the statement, it

maintains that the record does contain corroborative evidence of the act because the child was bruised and Jones had an opportunity to commit the crime. We need not further address the question of corroborative evidence because the district court erred by not making all the necessary findings under subdivision 3(a).

Nor was the hearsay statement clearly admissible under the statute. *See State v. Carver*, 380 N.W.2d 821, 826 (Minn. App. 1986) (stating that a district court's failure to make the findings required by section 595.02, subdivision 3(a), was not reversible error because the admitted hearsay statement was "clearly admissible under the statute"), *rev. denied* (Minn. Mar. 27, 1986). We note that, at trial, a police officer testified that the victim's father reported the child's statement to her, a fact that might slightly bolster the credibility of the father's accusation. But this testimony does not add reliability to the context in which the child, the hearsay declarant, made the initial statement. Moreover, at the pretrial hearing, no witness testified about the context or circumstances of the child's statement or about the father's reliability. The scant record that was produced at the hearing does not provide a basis to determine that the hearsay evidence was clearly admissible.

B. Prejudicial Effect

We next consider whether there is a "reasonable possibility" that this evidence "significantly affected the verdict." *Jaros*, 932 N.W.2d at 472 (quotation omitted). Because the child's hearsay statement expressly linked Jones to the abuse at a time in which another person had unsupervised visitation with the child, we conclude that there is a reasonable possibility that this statement significantly affected the verdict.

We therefore reverse Jones's conviction and remand for a new trial. Because the admission of the hearsay statement alone establishes a basis for reversal, we do not address Jones's arguments that the district court erred by excluding evidence of domestic violence by an alleged alternative perpetrator and by admitting certain recordings.

Reversed and remanded.