STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0722

State of Minnesota,
Respondent,

vs.

Gilberto Dominguez-Solis,
Appellant.

Filed July 1, 2024
Affirmed
Gaïtas, Judge

Hennepin County District Court
File No. 27-CR-20-17581

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

Mary F. Moriarty, Hennepin County Attorney, Britta Nicholson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Gaïtas, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Gilberto Dominguez-Solis appeals his convictions, following a jury trial, for first-degree, second-degree, and third-degree criminal sexual conduct committed against two of his stepdaughters. He argues that the district court abused its discretion at

trial by allowing relationship evidence that was outside the scope of its pretrial ruling and by denying his motion to introduce testimony regarding one stepdaughter's alleged sexual history. Because we discern no abuse of discretion in the district court's evidentiary rulings, we affirm.

FACTS

In August 2020, one of Dominguez-Solis's stepdaughters, A.S.G., reported to the police that Dominguez-Solis had been sexually assaulting her since she was about 13 years old. Based on A.S.G.'s allegations, respondent State of Minnesota charged Dominguez-Solis with one count of first-degree criminal sexual conduct, *see* Minn. Stat. § 609.342, subd. 1(b) (2020) (penetration of a 13- to 15-year-old victim, perpetrator in a position of authority), and one count of third-degree criminal sexual conduct, *see* Minn. Stat. § 609.344, subd. 1(g)(iii) (2020) (multiple acts of penetration of a victim between 16 and 18 years of age). A second stepdaughter, A.D.G., then reported similar conduct. Based on A.D.G.'s allegations, the state charged Dominguez-Solis with one count of second-degree criminal sexual conduct, *see* Minn. Stat. § 609.343, subd. 1(a) (2020) (sexual contact with a victim under the age of 13 years old by a perpetrator at least 36 months older). Dominguez-Solis pleaded not guilty to these charges and requested a jury trial.

Before trial, Dominguez-Solis filed several evidentiary motions, which the district court addressed at the outset of the trial. First, Dominguez-Solis moved to exclude any trial testimony that he was physically violent toward A.S.G., A.D.G., and other family members. He argued that testimony about any alleged physical acts of aggression against family members was not probative of whether he committed the charged offenses and

would unfairly prejudice him. Second, Dominguez-Solis moved to elicit testimony from A.S.G.'s mother about two alleged events in A.S.G.'s sexual history—alleged sexual abuse perpetrated against A.S.G. by her biological father and A.S.G.'s alleged sexual relations with her boyfriend shortly before she reported Dominguez-Solis's sexual abuse. According to Dominguez-Solis, the testimony about A.S.G.'s alleged sexual history would show her source of knowledge about sexual behavior. Additionally, he argued that prior sexual abuse by A.S.G.'s biological father would "explain why [A.S.G.] . . . might either confuse prior acts committed against her with those she alleged against [Dominguez-Solis], or use [those] prior acts . . . as a template if she wished to make false allegations." And Dominguez-Solis claimed that the testimony about A.S.G.'s alleged sexual relations with her boyfriend would show that A.S.G. was struggling with the strict rules of her household and had a motive to fabricate her allegations about Dominguez-Solis.

The district court denied Dominguez-Solis's motion to exclude evidence of his past physical abuse of family members, ruling that such evidence was admissible "relationship evidence" under Minnesota Statutes section 634.20 (2020). But the district court instructed the prosecutor that any evidence of physical violence could only be used to explain why the stepdaughters delayed reporting Dominguez-Solis's sexual abuse. The district court also denied Dominguez-Solis's motions to admit testimony concerning A.S.G.'s alleged sexual history, relying on Minnesota Rule of Evidence 412, which restricts evidence of a sexual-assault complainant's prior sexual conduct.

At trial, A.S.G.—who was then 21 years old—testified that Dominguez-Solis began sexually assaulting her when she was 13 years old. She explained that, while he would

usually bring her into his bedroom, lock the bedroom door, and "[h]av[e] intercourse with [her]," he also would occasionally sexually assault her in his van when they went to the laundromat and grope her during their family prayer time.

According to A.S.G., she disclosed the sexual abuse on two occasions before she reported it to the police in August 2020. She told her mother about the sexual abuse when she was 13 years old, but her mother did not believe her. And in 2014, she disclosed it to a teacher, which triggered a child-protection investigation that was closed when she later recanted. A.S.G. testified that she recanted her allegations because she feared Dominguez-Solis would be forced to leave and he was her family's only source of income. She also told the jury that she worried that Dominguez-Solis "was going to do something" if she reported the sexual abuse. A.S.G. explained that Dominguez-Solis used physical discipline. Additionally, A.S.G. testified that he once slapped her for talking to some boys and that she observed him throw a children's bicycle at her mother when he was drunk.

A.S.G.'s boyfriend testified that A.S.G. confided in August 2020 that Dominguez-Solis had "raped" her on multiple occasions "over a period of years." On the night of A.S.G.'s nineteenth birthday, the boyfriend confronted Dominguez-Solis about his sexual abuse of A.S.G. Dominguez-Solis denied any abuse.

The following day, A.S.G. reported the abuse to the police. An officer who met with A.S.G. testified that she reported that Dominguez-Solis had "touched her" and had "intercourse" with her more than 40 times, beginning when she was around 12 years old.

A.S.G.'s younger sister, A.D.G.—who was 14 years old at the time of the trial—testified that Dominguez-Solis had also sexually assaulted her. A.D.G. testified that

Dominguez-Solis grabbed her breasts and touched her "private parts" on one occasion when she was in his bedroom. According to A.D.G., she disclosed this incident to a teacher in 2019 and a child-protection report was made. But A.D.G. soon recanted because she was "embarrassed" and "scared." She testified that she was afraid of Dominguez-Solis "[m]any times" and that he was "really mean." A.D.G. explained to the jury that she decided to report the incident again after learning of A.S.G.'s police report because she did not want her younger sisters "to go through the same thing that [she] and [A.S.G.] went through."

As part of the police investigation, a forensic interviewer met with A.S.G. and A.D.G. separately. Their recorded interviews were played for the jury. During A.D.G.'s forensic interview, she stated that she had observed Dominguez-Solis hit her sisters. She stated that she did not report his sexual abuse because she knew she "would get hit."

The forensic interviewer explained to the jury that child victims of sexual abuse often delay reporting their abuse because they worry "what might happen to them or people that they care about if they report." Additionally, the interviewer testified that "children who've reported and aren't supported are less likely to report in the future."

Dominguez-Solis's wife—and mother of A.S.G. and A.D.G.—testified on behalf of Dominguez-Solis. She denied that Dominguez-Solis was physically violent, and she told the jury that he had always been "a good father and a good husband." According to the mother, Dominguez-Solis "[t]ook care of everybody" and was "the only one . . . working to support the family." The mother testified that she did not believe her daughters'

allegations against Dominguez-Solis. She explained that if she had witnessed any sexual abuse, she "would have called the police."

The mother also testified that when A.S.G. was 14 or 15 years old, she started skipping school, staying out past curfew, disobeying the house rules, and refusing to do her chores. She described A.S.G. as "rebellious," and "disrespectful." According to the mother, A.S.G. would often stay out late with her boyfriend, which was against the house rules. On her nineteenth birthday, A.S.G. came home "really late." After this incident, the mother told A.S.G. that "she had to leave the house because she was not being a good example" to her younger sisters. The mother testified that A.S.G. made her police report the next day.

The jury found Dominguez-Solis guilty of each of the charged offenses. At sentencing, the district court imposed concurrent prison terms of 172 months, 90 months, and 119 months.

Dominguez-Solis appeals.

DECISION

I. The district court did not abuse its discretion by allowing limited testimony about Dominguez-Solis's physical acts of aggression against family members because the testimony was within the scope of the district court's pretrial ruling, which Dominguez-Solis does not challenge on appeal.

Dominguez-Solis argues that the district court abused its discretion by allowing A.S.G. and A.D.G. to testify about Dominguez-Solis's acts of physical violence against family members. He acknowledges that the district court ruled before trial that evidence of his violent behavior would be admissible to explain why A.S.G. and A.D.G. delayed

reporting the sexual abuse, and he does not challenge that pretrial ruling on appeal. But he contends that the evidence allowed at trial went beyond the scope of the district court's pretrial order and that it was more prejudicial than probative.

"Evidentiary rulings rest within the sound discretion of the district court, and [appellate courts] will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). A 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. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quoting *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017)). Even when the district court erroneously admitted evidence, the appellate court will not reverse a conviction if the error was harmless. *State v. Loving*, 775 N.W.2d 872, 879 (Minn. 2009). An error is harmless "[w]hen there is no reasonable possibility that it substantially influenced the jury's decision." *State v. Harvey*, 932 N.W.2d 792, 810 (Minn. 2019); *see also State v. Vang*, 774 N.W.2d 566, 576 (Minn. 2009) ("If no constitutional right was implicated, [a reviewing court] will reverse only if the district court's error substantially influence[d] the jury's decision." (quotation omitted)). To assess the impact of improperly admitted evidence, the reviewing court considers "the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether the defense effectively countered it." *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002).

Before trial, the district court ruled that the state could present testimony about Dominguez-Solis's physical abuse of family members so long as it was presented for the purpose of explaining A.S.G.'s and A.D.G.'s delay in reporting the sexual abuse. The

district court reasoned that the evidence was admissible relationship evidence. *See* Minn. Stat. § 634.20 (defining relationship evidence as "[e]vidence of domestic conduct" including evidence of domestic abuse, "by the accused against the victim of domestic conduct, or against other family or household members"); *see also State v. Lindsey*, 755 N.W.2d 752, 756 (Minn. App. 2008) (quotation omitted), *rev. denied* (Minn. Oct. 29, 2008) (stating that relationship evidence "helps to establish the relationship between the victim and the defendant or . . . places the event[s] in context); *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (holding that district court did not abuse its discretion in allowing relationship "evidence that, if believed by the jury, could have assisted the jury by providing a context with[in] which it could better judge the credibility of the principals in the relationship"). But the district court also clarified that the testimony could not be presented for the sole purpose of showing that "violence existed in the relationship" because, "without a specific connection to the facts of this case," the evidence of physical abuse would be "overly prejudicial." *See McCoy*, 682 N.W.2d at 159 (stating that relationship evidence is inadmissible if "the probative value of the evidence is substantially outweighed by the danger of unfair prejudice"). Thus, the district court limited the scope of the state's use of the evidence. The district court ruled that it could only be used to explain the stepdaughters' "long delay" in reporting the sexual abuse.

On appeal to this court, Dominguez-Solis does not challenge the district court's pretrial ruling allowing the state to present testimony about his physical abuse of family

members. Rather, Dominguez-Solis argues that the state's elicitation of the evidence at trial was outside of the scope of the district court's ruling.[1]

The record does not support this argument, however. During A.S.G.'s testimony, the prosecutor asked about Dominguez-Solis's physical violence immediately after A.S.G. testified that she had been scared to report the sexual abuse. A.S.G. explained that she feared "[Dominguez-Solis] was going to do something" to her—such as torturing or hitting her—if she "[told] anybody about what he was doing." The prosecutor then asked A.S.G. about "physical discipline" in the family. A.S.G. testified that Dominguez-Solis used physical punishment such as hitting and spanking, that he had once slapped her for talking to some boys, that she witnessed him throw a child's bicycle at her mother, and that he tended to be more physical when he was drunk. Because A.S.G.'s testimony about Dominguez-Solis's physical acts of violence was offered to explain her fear about reporting the sexual abuse, the testimony was consistent with the district court's ruling.

[1] Although Dominguez-Solis preserved this argument as to A.S.G.'s testimony, we question whether he properly preserved his argument as to A.D.G.'s testimony and forensic interview. Dominguez-Solis objected during A.S.G.'s trial testimony, arguing to the district court that "the State did not satisfy the obligation to enter relationship evidence under 634.20," and the district court overruled the objection. But Dominguez-Solis did not object to A.D.G.'s trial testimony or her forensic interview on this same ground. "Appellate review of an evidentiary issue is forfeited when a defendant fails to object to the admission of evidence." *State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018). Forfeited evidentiary issues are reviewed for plain error. *Id.* at 650. However, the state does not argue on appeal that Dominguez-Solis forfeited his challenge to A.D.G.'s statements about physical abuse. And it is possible, given the record, that the district court and the parties understood Dominguez-Solis's objection to A.S.G.'s trial testimony to be a standing objection that included A.D.G.'s statements. Thus, we do not apply plain-error review in considering A.D.G.'s testimony.

Likewise, the record reveals that A.D.G.'s limited statements regarding Dominguez-Solis's physical aggression were used to explain why she was afraid to report his sexual abuse. A.D.G. testified that she was afraid of Dominguez-Solis because he was "really mean." And during her forensic interview, she stated that she did not report the sexual abuse because she did not want to get "hit."

Moreover, even if some of the evidence was beyond the scope of the district court's order, any error was harmless. *See Vang*, 774 N.W.2d at 576. Based on our review of the record, there is no reasonable possibility that the evidence regarding Dominguez-Solis's acts of physical violence influenced the jury's verdicts. The evidence that he sexually abused A.S.G. and A.D.G. was strong. The testimony about physical abuse was limited. And during the defense case, Dominguez-Solis countered the evidence with the mother's testimony that there was no physical abuse.

Dominguez-Solis argues that the evidence of his physical abuse was highly prejudicial because it "bolstered the state's case as propensity evidence of violence," "bolstered the complainants' credibility" by making them more sympathetic, and "confused the jury as to what acts were at issue." These arguments are not persuasive. First, Dominguez-Solis concedes that physical and sexual abuse are distinct concepts. Therefore, it is unlikely that the jury would have interpreted evidence of physical abuse to be evidence of Dominguez-Solis's propensity to commit sexual abuse. Second, the jury likely found A.S.G. and A.D.G. to be credible witnesses because they provided detailed accounts of the sexual abuse and their trial testimony was consistent with their forensic interviews. And third, the jury could not have been confused about "what acts were at

issue" because most of the trial evidence concerned Dominguez-Solis's sexual abuse and because the state focused exclusively on the sexual abuse in its closing argument. *See Townsend*, 646 N.W.2d at 223 (evaluating what effect erroneously admitted evidence had on the verdict by considering, among other things, "whether it was used in closing argument").

The district court did not abuse its discretion by allowing evidence of Dominguez-Solis's acts of physical aggression against family members in accordance with its unchallenged pretrial order, and even if it did, any error was harmless. Thus, we reject Dominguez-Solis's argument that he is entitled to a new trial based on relationship evidence that exceeded the scope of the district court's order allowing the evidence.

II. The district court did not abuse its discretion by denying Dominguez-Solis's motion to introduce evidence of A.S.G.'s sexual history because the evidence was inadmissible.

Dominguez-Solis argues that the district court abused its discretion by denying his motion to present evidence about A.S.G.'s alleged sexual history. And he contends that the exclusion of this evidence impaired his ability to present his defense.

A criminal defendant has a constitutional right to present a complete defense. *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009). This gives a defendant "the right to make all legitimate arguments on the evidence, to explain the evidence, and to 'present all proper inferences to be drawn therefrom.'" *Id.* (quoting *State v. Wahlberg*, 296 N.W.2d 408, 419 (Minn. 1980)). Yet, even when a constitutional right is implicated, "[e]videntiary rulings of the district court will not be overturned absent a clear abuse of discretion." *State v. Pendleton*, 706 N.W.2d 500, 510 (Minn. 2005). And "[e]ven if an objection was made and

a district court abused its discretion, [appellate courts] reverse only if the exclusion of evidence was not harmless beyond a reasonable doubt." *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). "An error in excluding [defense] evidence is harmless only if the reviewing court is 'satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, a [reasonable] jury would have reached the same verdict.'" *State v. Olsen*, 824 N.W.2d 334, 340 (Minn. App. 2012) (quoting *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994)), *rev. denied* (Minn. Feb. 27, 2013).

"In a prosecution for acts of criminal sexual conduct, . . . evidence of the victim's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order . . . . " Minn. R. Evid. 412(1); *see also* Minn. Stat. § 609.347, subd. 3 (2020) (barring the admission of a victim's past sexual conduct "except by court order"). Evidence of a complainant's prior sexual history is "highly prejudicial," *Olsen*, 824 N.W.2d at 340 (quotation omitted), and the proscriptions against such evidence "emphasize the general irrelevance of a victim's sexual history," *State v. Crims*, 540 N.W.2d 860, 867 (Minn. App. 1995), *rev. denied* (Minn. Jan. 23, 1996). Given these concerns, evidence of a victim's sexual history is only admissible if an exception to rule 412 applies and if "the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature." *Olsen*, 824 N.W.2d at 340; *see also State v. Kroshus*, 447 N.W.2d 203, 205 (Minn. App. 1989) (discussing evidence of a victim's sexual history and stating that "the trial court must balance the probative value of the evidence against its potential for unfair prejudice"), *rev. denied* (Minn. Dec. 20, 1989).

Dominguez-Solis moved the district court to present testimony from A.S.G.'s mother about two alleged aspects of A.S.G.'s sexual history—sexual abuse perpetrated by A.S.G.'s biological father during her early childhood and A.S.G.'s sexual relations with her boyfriend before she reported Dominguez-Solis's abuse to the police. The district court excluded the proffered evidence under rule 412 because it did not have "enough probative value."

Dominguez-Solis argues that this ruling was an abuse of discretion. He acknowledges that rule 412 applies to the evidence, but he asserts that the evidence was admissible under the source-of-knowledge exception.[2] He further contends that the evidence was more probative than prejudicial. Dominguez-Solis argues that the evidence was probative because it supported his theory of the case—that A.S.G. fabricated her allegations because she was going to be ejected from the family home due to her bad behavior. And he asserts that there "was minimal prejudice to the state."

Initially, we disagree with Dominguez-Solis that the evidence was admissible under the source-of-knowledge exception. Notwithstanding rule 412, "a [district] court has discretion to admit evidence tending to establish a source of knowledge of or familiarity with sexual matters in circumstances where the jury otherwise would likely infer that the defendant was the source of the knowledge." *State v. Benedict*, 397 N.W.2d 337, 341 (Minn. 1986); *see also Kroshus*, 447 N.W.2d at 205 ("[E]vidence tending to establish a source of knowledge of or familiarity with sexual matters may be admitted in cases where

[2] The district court did not address the "source of knowledge" exception even though Dominguez-Solis made the argument in his pretrial motion.

the jury might otherwise infer that the defendant was the source."); *State v. Wenthe*, 865 N.W.2d 293, 307 (Minn. 2015) (stating that in cases where a defendant asserts that the victim "fabricated the sexual conduct," aspects of a victim's sexual history may be introduced into evidence to establish "a source of knowledge or familiarity with sexual matters in circumstances in which lack of knowledge is the likely inference to be drawn by the fact finder"). This exception has been applied in circumstances where a jury could infer that the accused was the sole source of a victim's sexual knowledge. For example, in *Benedict*, where the victim was five years old, the supreme court reasoned that evidence that the victim was previously sexually abused could counter the inference that the defendant was the source of the victim's sexual knowledge. 397 N.W.2d at 340-41.[3] Likewise, in *Kroshus*, where the victim was an adult with a significant developmental disability, the supreme court determined that the source-of-knowledge exception to rule 412 applied. 447 N.W.2d at 205.

But here, the rationale underlying the source-of-knowledge exception did not fit. A.S.G. was 19 years old at the time of her forensic interview and 21 years old at trial. There was no evidence that she had any developmental impairments. The jury learned that A.S.G. and her boyfriend had a one-year-old child. And the language A.S.G. used in describing the sexual assaults—"rape," "intercourse," "penis," and "vagina"—is language that a reasonable jury would expect an adult to know. Based on these circumstances, the jury could infer that A.S.G. had an alternate source of sexual knowledge.

[3] However, the supreme court in *Benedict* determined that the district court did not abuse its discretion by excluding the evidence because it was more prejudicial than probative. *Id.*

For these same reasons, A.S.G.'s alleged sexual history was not probative evidence. The details of her prior sexual history would not have shed light on whether Dominguez-Solis sexually assaulted her. Furthermore, although A.S.G.'s credibility was certainly at issue, there was other evidence available to Dominguez-Solis in pursuing his fabrication theory. Aside from A.S.G.'s alleged sexual history, there was evidence that her conduct—being "rebellious" and "disrespectful," and staying out late—caused tension in the household. Thus, the district court did not abuse its discretion in determining that the sexual-history evidence was inadmissible because it was not probative.

Finally, because the proffered evidence concerning A.S.G.'s alleged sexual history was not probative, any error in excluding it was harmless. *See Olsen*, 824 N.W.2d at 340 (stating that an evidentiary ruling to exclude evidence is harmless if a reasonable jury would have reached the same verdict had the evidence been submitted). We are "satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, a [reasonable] jury would have reached the same verdict" here. *Olsen*, 824 N.W.2d at 340 (quotation omitted). Dominguez-Solis is therefore not entitled to a new trial based on the district court's exclusion of evidence of A.S.G.'s alleged sexual history.

Affirmed.