**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A23-1911**

State of Minnesota,
Respondent,

vs.

Anthony Dimitri Limogianni,
Appellant.

**Filed January 13, 2025**
**Affirmed in part, reversed in part, and remanded**
**Reyes, Judge**

Crow Wing County District Court
File No. 18-CR-22-1670

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

Donald F. Ryan, Crow Wing County Attorney, Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Anthony M. Bussa, CJB Law, PLLC, Fergus Falls, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Frisch, Chief Judge; and Florey, Judge.*

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

## NONPRECEDENTIAL OPINION

**REYES**, Judge

Appellant challenges his convictions of two counts of first-degree criminal sexual conduct, arguing that the district court (1) abused its discretion by admitting cumulative relationship evidence of appellant's prior conviction of criminal sexual conduct; (2) abused its discretion by preventing appellant from admitting into evidence his negative sexually transmitted-infection (STI) test; and (3) erred by not making the necessary findings to support closing the courtroom to the public during the testimony of the minor victim, in violation of appellant's constitutional right to a public trial. We affirm on the first two issues, reverse on the third issue, and remand to the district court for an evidentiary hearing and findings.

## FACTS

Between August 2020 and January 2022, appellant sexually abused his son on multiple occasions when son was between ages six and eight. Appellant and his ex-wife, the mother of son, separated in November 2019. Mother testified that the couple shared joint physical and legal custody of son. From November 2019 to January 2022, son spent approximately half his time living in appellant's home.

In November 2021, son experienced a fever of at least 103 degrees Fahrenheit. According to son, appellant had a similar fever around that time. On December 21, 2021, shortly after mother picked up son from appellant's home during a parenting exchange, son told mother that his penis hurt and that he could not urinate. Mother, who is a registered nurse, examined son and observed redness and inflammation of his genitals. Mother took

son to urgent care, where a doctor prescribed him antibiotics and diagnosed him with a urinary-tract infection.

Son's symptoms persisted until at least January 3, 2022, when mother brought him back to urgent care. A physician's assistant ordered an STI test for son, and the result was positive for gonorrhea.

After mother received the test result, she called the Crow Wing County Sheriff's Department and reported that she suspected appellant had transmitted gonorrhea to son through sexual contact. On January 6, 2022, an investigator from the Crow Wing County Sheriff's Department interviewed appellant. Appellant told the investigator that son had a fever of 104 degrees Fahrenheit in late November or early December 2021.

Shortly thereafter, son began attending therapy to "process the experience of having possibly been sexually assaulted." On April 17, 2022, son told mother that he and appellant had "sex" more than one time and that he wanted to tell appellant that he did not want to play those "games" with him anymore. Mother recorded the conversation and sent the recording to the investigator who had interviewed appellant in January 2022.

On April 25, 2022, son underwent a forensic interview with a nurse practitioner. Son told the nurse practitioner through words and drawing on anatomical diagrams that appellant had penetrated son's anus with his penis. Son also told the nurse practitioner that appellant "bribed" him by telling him that he would receive a Nintendo Switch and a gaming headset if he let appellant penetrate him.

On May 3, 2022, respondent State of Minnesota charged appellant with eight counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342 (2020) and

with four counts of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343 (2020). Appellant pleaded not guilty to all charges. The district court held a jury trial from July 18 to 21, 2023.

In a pretrial motion, the state requested that the district court close the courtroom to the public during son's testimony "on the grounds that closure is necessary to protect the child victim and ensure fairness in the trial." At a pretrial-motion hearing, appellant objected to the courtroom-closure motion, citing his constitutional right to a public trial. The district court took the matter under advisement. Weeks later, at the close of voir dire, the district court orally granted the motion from the bench, determining that courtroom closure was "a very reasonable request" and that appellant did not have an objection at that time. The district court closed the courtroom to the public during son's testimony, stating the exclusion was necessary to protect son's "legitimate privacy concerns."

After reopening the courtroom to the public, two witnesses testified regarding events underlying appellant's prior criminal-sexual-conduct conviction. The district court provided the jury with limiting instructions before the testimony of each witness, noting that the testimony was being introduced as relationship evidence under Minn. Stat. § 634.20 (2020).

Appellant moved to submit evidence of his negative STI test from January 11, 2022. The district court denied the motion, determining that it would only prove whether appellant had an STI on the date of the test, and so it would "not have any tendency to prove any material fact of relevance" in the case.

On July 21, 2023, the jury found appellant guilty of ten of the 12 counts charged, two of which had been withdrawn. The district court adjudicated appellant guilty of the ten counts. The jury found two aggravating factors: (1) appellant violated his position of trust and authority as son's father and (2) appellant transmitted gonorrhea to son. The district court sentenced appellant to 172 months in prison on count one for first-degree criminal sexual conduct, sexual penetration or sexual conduct with a victim under 13, and 432 months in prison on count five for first-degree criminal sexual conduct, sexual penetration or sexual conduct with a victim under 14 and actor greater than 36 months older, to run concurrently. The district court's sentencing order vacated the judgments of conviction for the other eight counts. This appeal follows.

## DECISION

### I. The district court did not abuse its discretion by allowing the state to present relationship evidence from the victim of his past criminal-sexual-conduct conviction and appellant's former probation agent.

Appellant argues that the state presented cumulative relationship evidence and that the evidence's risk of unfair prejudice substantially outweighed its probative value. We are not convinced.

Appellate courts review the district court's evidentiary rulings on relationship evidence admitted under section 634.20 for an abuse of discretion. *State v. Andersen*, 900 N.W.2d 438, 441 (Minn. App. 2017). The "[a]ppellant has the burden to establish that the district court abused its discretion," which resulted in prejudice. *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008), *rev. denied* (Minn. Oct. 29, 2008).

Evidence of a defendant's prior unrelated criminal offense is generally inadmissible. *See State v. Spreigl*, 139 N.W.2d 167, 169-70 (Minn. 1965); *see also* Minn. R. Evid. 404(b). Section 634.20, however, provides an exception: "Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other . . . household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice . . . or needless presentation of cumulative evidence."

As an initial matter, we note that appellant appears to conflate the standard governing section 634.20 relationship evidence with the standard governing *Spreigl* evidence of prior bad acts by citing three cases that pertain to *Spreigl* evidence. While "[r]elationship evidence and *Spreigl* evidence are analogous" for some purposes, due to the risks that each presents for unfair prejudice, they are nonetheless distinct forms of evidence. *See State v. Meldrum*, 724 N.W.2d 15, 20-21 (Minn. App. 2006), *rev. denied* (Minn. Jan. 24, 2007); *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004). For example, relationship evidence under section 634.20 need not meet the clear-and-convincing standard that is required for the admission of *Spreigl* evidence, but instead need only be more probative than prejudicial. *McCoy*, 682 N.W.2d at 155. Moreover, relationship evidence is presumed admissible unless "its danger for unfair prejudice substantially outweighs its probative value." *Andersen*, 900 N.W.2d at 442 (emphasis omitted). Because there is no dispute that the prior offense involved a former household member, we apply the standard of review applicable to relationship evidence.

The challenged evidence includes the testimony of two individuals: appellant's nephew H.M., who was the minor victim of the abuse underlying appellant's prior

conviction, and appellant's former probation agent, who supervised appellant following that conviction. H.M. testified that he lived in appellant's household during the summers of 2010 and 2011 when H.M. was approximately age ten or 11. While living there, on several occasions appellant put on pornography to watch with H.M., then he and appellant masturbated together. The probation agent testified that appellant admitted to him that appellant had viewed pornography and masturbated with H.M. and performed oral sex on H.M.

This relationship evidence is, by its nature, prejudicial to appellant's defense. But it is also highly probative, because "evidence showing how a defendant treats his family or household members" is probative to "shed[] light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim." *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *rev. denied* (Minn. Nov. 16, 2010). The district court reasoned that the evidence was also relevant because "it provides insight into the delayed nature" of both son and H.M.'s reports of appellant's sexual abuse. Additionally, the district court took measures to reduce the risk of unfair prejudice, including by providing limiting instructions to the jury and limiting the duration of testimony. *See State v. Benton*, 858 N.W.2d 535, 542 (Minn. 2015) (stating that providing "numerous cautionary instructions" before introducing relationship evidence lessened likelihood of jury's unfair prejudice).

We conclude that the district court did not abuse its discretion by allowing the testimony of H.M. and the probation agent based on its determination that the danger for

unfair prejudice did not substantially outweigh the probative value of that relationship evidence. *See Anderson*, 900 N.W.2d at 442.

## II. The district court did not abuse its discretion by determining that appellant's STI-test-result evidence was irrelevant at trial.

Appellant argues that the district court's exclusion of his negative STI-test result at trial violated his due-process right to present a complete defense because the result was relevant to demonstrate that appellant did not have gonorrhea on the dates of son's sexual abuse and he therefore cannot be the individual who sexually assaulted son. We are not persuaded.

Appellate courts review a district court's evidentiary rulings for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). The district court abuses its discretion by basing its decision on an erroneous view of the law or by going against logic and the facts in the record. *State v. Tapper*, 993 N.W.2d 432, 437 (Minn. 2023). The abuse-of-discretion standard applies "even when it is claimed that the exclusion of evidence deprived the defendant of his constitutional right to present a complete defense." *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006). "[T]he appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *Amos*, 658 N.W.2d at 203.

A criminal defendant has a constitutional right to present a complete defense. *State v. Crims*, 540 N.W.2d 860, 865 (Minn. App. 1995), *rev. denied* (Minn. Jan. 23, 1996); *see* U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. That right "includes the opportunity to develop the defendant's version of the facts." *Crims*, 540 N.W.2d at 865. However,

this right is not absolute. *State v. Jenkins*, 782 N.W.2d 211, 224 (Minn. 2010). A defendant must still comply with the rules of evidence. *State v. Nissalke*, 801 N.W.2d 82, 102-03 (Minn. 2011). Evidence must be relevant to be admissible. Minn. R. Evid. 402. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. The district court may exclude otherwise relevant evidence if "its probative value is substantially outweighed by the danger of unfair prejudice." Minn. R. Evid. 403.

The district court determined that admission of the test result would require a limiting instruction to explain that the evidence would only be probative of whether appellant had gonorrhea on January 11, 2022, and not whether he had gonorrhea in November or December 2021, when son first displayed symptoms of gonorrhea and his sexual abuse occurred. The district court reasoned that the test-result evidence would "only be relevant if the jury could somehow extrapolate from it that [appellant] couldn't have been the one [who] transmitted" gonorrhea to son and that any limiting instruction would "pretty much gut[] the relevance" of the evidence due to the timeline issue. We discern no abuse of discretion by the district court.

Even if we were to assume that the district court abused its discretion by excluding the STI test-result evidence, the error would be harmless because the jury's verdict is "surely unattributable" to that error. *See State v. Davis*, 820 N.W.2d 525, 533 (Minn. 2012). Under harmless-error review of a decision to exclude evidence, "the reviewing court must be 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. Post*, 512 N.W.2d 99, 102 (Minn. 1994).

Under this review, appellate courts "may consider the strength of each party's evidence." *State v. Zumberge*, 888 N.W.2d 688, 697 (Minn. 2017). "[O]verwhelming evidence of guilt is a factor, often a very important one, in determining whether, beyond a reasonable doubt, the error has no impact on the verdict." *State v. Juarez*, 572 N.W.2d 286, 291 (Minn. 1997).

Although appellant characterizes son's positive STI-test result as the "linchpin" in the state's argument that appellant sexually assaulted son, the state provided other evidence against appellant that may be weighed under harmless-error review. *See Zumberge*, 888 N.W.2d at 697. The state presented testimony by son about instances when appellant made sexual contact with him, testimony that appellant bribed son to engage in sex in exchange for two video-game devices, and testimony by two witnesses regarding appellant's prior sexual abuse of a juvenile of similar age to son under similar circumstances. We conclude that a reasonable jury would have reached the same verdict even if the excluded evidence had been admitted. The decision to exclude appellant's STI-test result was therefore harmless.

## III. The district court erred by failing to make the findings required to support its determination of the necessity of courtroom closure during son's testimony.

Appellant argues that the district court structurally erred by closing the courtroom during son's testimony in violation of his right to a public trial because it failed to provide specific findings of the reasons for the need of closure to protect son or to ensure fairness

of the trial, therefore requiring a new trial. We agree with appellant except regarding the remedy.

Both the United States and Minnesota Constitutions provide the right to a public trial in all criminal prosecutions. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Whether a criminal defendant's right to a public trial has been denied is a constitutional issue that appellate courts review de novo. *Benton*, 858 N.W.2d at 539-40. Denial of such a right is a structural error that is not subject to harmless-error analysis. *State v. Bobo*, 770 N.W.2d 129, 139 (Minn. 2009). A structural error may require automatic reversal of a conviction because it "call[s] into question the very accuracy and reliability of the trial process." *State v. Brown*, 732 N.W.2d 625, 630 (Minn. 2007) (quotation omitted). However, the remedy for a violation of the right to a public trial "should be appropriate to the violation," and a new trial is unnecessary if remand will remedy the violation. *Bobo*, 770 N.W.2d at 139; *State v. McRae*, 494 N.W.2d 252, 260 (Minn. 1992).

The purpose of the right to a public trial is to benefit the accused by ensuring that the public sees that defendants are "fairly dealt with and not unjustly condemned" and to keep the triers of cases "keenly alive to a sense of their responsibility and to the importance of their functions." *Waller v. Georgia*, 467 U.S. 39, 46 (1984) (quotation omitted); *State v. Taylor*, 869 N.W.2d 1, 10 (Minn. 2015) (quotation omitted).

The right to a public trial is not absolute. *State v. Fageroos*, 531 N.W.2d 199, 201 (Minn. 1995). For example, "the government's interest in inhibiting disclosure of sensitive information" may override a defendant's public-trial right. *Id.* (quotation omitted). "[S]afeguarding the physical and psychological well-being of a minor" is an "overriding

interest" that may support closing a courtroom to the public without violating the right to a public trial. *Id.* at 202. A district court may exclude the public from a courtroom during a minor victim's testimony "upon a showing that closure is necessary to protect a witness or ensure fairness in the trial." Minn. Stat. § 631.045 (2020). However, section 631.045 also requires a district court to (1) provide the state, the defendant, and members of the public with an opportunity to object to closure and (2) specify the reasons for closure in an order closing any portion of the trial. *Id.*

To comply with the constitutional right to a public trial, the Supreme Court enumerated four requirements to ensure that closure of a courtroom is justified: (1) the party seeking closure "must advance an overriding interest that is likely to be prejudiced" absent closure; (2) the closure must be narrowly tailored; (3) the district court "must consider reasonable alternatives" to closure; and (4) the district court must make findings that adequately support the closure. *Waller*, 467 U.S. at 48.

In *Fageroos*, the Minnesota Supreme Court adopted the *Waller* standard to guide determinations of whether courtroom closure is justified. 531 N.W.2d at 201-02. Nonetheless, the supreme court stated that, while "protection of minor victims of sexual offenses constitutes a compelling interest, it does not justify closure of the courtroom each and every time a minor testifies." *Id.* at 202. Instead, the closure determination must be made on a case-by-case basis while weighing several factors, including "the minor victim's age, psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of parents and relatives." *Id.* (quotation omitted).

Here, the district court erred by failing to make any findings to support its determination that courtroom closure was necessary, referring only generally to the fact that son's testimony "can be a sensitive inquiry" touching on "possibly deeply personal matters."

At the close of voir dire, the state requested the district court's ruling on its prior motion for courtroom closure during son's testimony. The district court did not recall the state's motion and replied that the motion for courtroom closure was "a very reasonable request." The district court asked appellant's counsel if there was any objection, to which counsel replied, "No, no." However, the transcript reflects that, during this exchange, the parties and the district court spoke simultaneously, cutting each other off mid-sentence. Because of the nature of this exchange, it is not clear from the transcript whether appellant's counsel's "No, no," statement refers to the state's motion for courtroom closure or another motion that the transcript reflects was referenced in passing during this portion of the proceedings. The following day at trial, the district court ordered closure of the courtroom during son's testimony, stating that it was "proceeding to a part of . . . trial involving the testimony of a minor child on sensitive matters."

We are not able to discern from this record, including the district court's order and the absence of findings on the need for courtroom closure, whether such closure was justified under the circumstances. We therefore reverse and remand to the district court for an evidentiary hearing, at which it may reopen the record to make findings sufficient for review on the necessity of courtroom closure. *See id.* at 201-02; *Waller*, 467 U.S. at 48.

We note that if the district court determines that closure of the courtroom during son's testimony was necessary, then it may sustain the verdict. If the district court instead determines that it should not have closed the courtroom, we then direct the district court to hold a new trial. Additionally, on remand we direct the district court to make express findings as to whether appellant's trial counsel waived any prior objection to courtroom closure.

**Affirmed in part, reversed in part, and remanded.**