STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0619

State of Minnesota,
Respondent,

vs.

Oscar Elias Padilla Jovel,
Appellant.

Filed April 14, 2025
Affirmed
Connolly, Judge

Dakota County District Court
File No. 19HA-CR-21-1176

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

Kathryn M. Keena, Dakota County Attorney, Todd Zettler, Assistant County Attorney, Hastings, Minnesota (for respondent)

Alyssa Nguyen-Schmitz, Nguyen Firm, LLC, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a) (2010), arguing that the district court (1) abused its discretion by permitting respondent to amend the complaint, (2) erred by denying his

motion for judgment of acquittal, and (3) abused its discretion by denying his motion for a new trial. We affirm.

FACTS

This appeal stems from appellant Oscar Elias Padilla Jovel's conviction of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a). In May 2021, respondent State of Minnesota filed the original complaint charging first-degree criminal sexual conduct for sexual contact with a person under 13. The complaint alleged that "on or about January 1, 2011 – December 31, 2013," appellant made a juvenile complainant, A.S., perform oral sex when A.S. was "approximately" eight years old. In August 2023, the complaint was amended to reflect that the charge was for first-degree criminal sexual conduct for penetration.

The case proceeded to a jury trial in October 2023. Respondent presented testimony from five witnesses: A.S.; A.S.'s sister, J.S.; the police officer who took A.S.'s statement; the police detective who interviewed appellant; and respondent's victim advocate. Appellant presented testimony from seven witnesses: two members of A.S.'s family's church; A.S.'s mother; two of A.S.'s therapists; appellant; and appellant's father.

A.S. was born in January 2005. Between 2011 and 2013, A.S. and his family participated in "church gatherings" at a pastor's home in Burnsville. Appellant's father was the pastor of the church. A.S. testified that, once when he was seven or eight years old, he was at the home for a church gathering. At some point, he fell asleep and was brought to a room. While he was lying on the ground, he felt "somebody's leg" in the back of his pants. Then, his pants were pulled down, appellant "grabbed [his] penis and started

sucking it," and appellant made him perform oral sex. A.S. explained that, after the assault occurred, appellant went to another room, and he could see appellant masturbating through a crack in the door.

In approximately October 2020, A.S. told his sister, J.S., about the assault. J.S. eventually called police to report the allegation. During trial, J.S. described A.S. as "crying and shaking" when he disclosed this information. J.S. further testified that when A.S. was approximately seven or eight years old, she noticed changes in his behavior, including that A.S. did not like sleeping with the lights off, slept holding his mom's hand, and cried "a lot."

During a recorded interview that was played for the jury, A.S. told the responding police officer that when he was "around eight" years old he fell asleep at a "church thing" at night. He said he felt a leg in his pants. A.S. explained that appellant put his mouth over A.S.'s penis and made A.S. do the same to him. A.S. also said that appellant told him to get on the bed and then he started doing "stuff" to A.S. He said appellant went to another room and he saw appellant masturbate. A police detective later interviewed appellant about the allegation. He testified accurately as to appellant's date of birth.

Two church members, including J.G.E., testified for the defense. Both members testified that they attended church services and knew A.S. and A.S.'s family. J.G.E. and his wife met with A.S. and A.S.'s family after A.S. had disclosed the assault. J.G.E. testified that he said to A.S.: "Look at me. Don't look at your father; do not look at your father. Look at me. [Appellant] abused you?" A.S. responded "no."

Appellant denied performing oral sex on A.S. or making A.S. perform oral sex. He explained the church services were initially hosted at his parents' home. Appellant's father testified that when he started the church in 2010, he held nighttime vigils at his home. In December 2010, he leased rental space for the church and stopped holding the vigils at the home. Appellant's father denied that A.S. and his parents attended vigil at the house. On cross-examination, the father indicated that A.S.'s parents were at the home for bible studies and for his wife's birthday party in December 2011.

At the conclusion of trial, the jury found appellant guilty of first-degree criminal sexual conduct. After the verdict, appellant moved the district court for a judgment of acquittal, or in the alternative, a new trial. The district court denied those motions and entered a judgment of conviction for one count of first-degree criminal sexual conduct for penetration. Appellant received a stayed sentence of 144 months in prison.

DECISION

I. The district court did not abuse its discretion by granting respondent's motion 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).

The rules of criminal procedure provide:

> Pre-trial proceedings may be continued to permit a new complaint to be filed and a new warrant or summons issued if

> the prosecutor promptly moves for a continuance on the ground that:
>
> (a) the initial complaint does not properly name or describe the defendant or the offense charged . . . .

Minn. R. Crim. P. 3.04, subd. 2. The Minnesota Supreme Court interpreted rule 3.04, subdivision 2, 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).

As noted above, appellant was charged by complaint with one count of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a). The initial complaint listed the charge as: Criminal Sexual Conduct in the 1st Degree *(Contact)* (Victim Under 13) (Actor More Than 36 Months Older). (Emphasis added.) And the charge was described as:

> On or about January 1, 2011 - December 31, 2013, in the County of Dakota, Minnesota, OSCAR ELIAS PADILLA JOVEL, did engage in sexual *contact* with a person under 13 years of age as defined in M.S. 609.341, subd. 11(c), and the actor is more than 36 months older than the complainant.

(Emphasis added.)

The probable-cause section of the complaint alleged that A.S. "told law enforcement that he had been awoken by [appellant] and made to perform oral sex on him. He further described how [appellant] then masturbated in front of him while smirking."

On July 31, 2023, respondent filed a motion to amend the complaint, requesting that the word "contact" be changed to "penetration" in the charge and its description. On

August 1, 2023, the parties appeared in court to begin jury selection and respondent argued its motion. The district court granted the motion and filed an order amending the complaint. The amended charge read: Criminal Sexual Conduct in the 1st Degree (PENETRATION). And the amended description of the charge read:

> On or about January 1, 2011 – December 31, 2013, in the County of Dakota, Minnesota, OSCAR ELIAS PADILLA JOVEL did engage in sexual penetration with a person under 13 years of age, and the actor is more than 36 months older than the complainant.

Appellant argues the district court abused its discretion by permitting respondent to amend the complaint because the motion was not "prompt" or "timely." We are not persuaded. Rule 3.04 "does not make timeliness [of the amendment] paramount," but "recognizes the importance of timeliness by stating that proceedings may be continued to permit the issuance of a new complaint, provided the prosecution 'promptly' moves for a continuance." *Baxter*, 686 N.W.2d at 853.

Since respondent filed its motion the day before jury selection was to begin, the amendment was made before a jury was empaneled and the district court was within its discretion when it granted the motion. And after the parties argued the motion, the district court granted appellant's request to continue the trial. In granting the motion to amend, the district court relied on *Baxter* and concluded the facts of this case are distinguishable from *Baxter*. In *Baxter*, the defendant was originally charged with three counts of third-degree criminal sexual conduct. *Id.* 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 for untimeliness. *Id.* at 852. On appeal, this court affirmed the district court's denial and noted that the defendant made a speedy trial demand, the case had been continued several times, and the delay in requesting to amend the complaint was due to the state's failure to interview the victim until a month after the victim was located. *Id.* at 853. In addition, the proposed amendment to charge first-degree criminal sexual conduct "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.*

We agree that *Baxter* is distinguishable. Appellant did not make a speedy trial demand before respondent's motion was filed, and although the trial appears to have been continued twice, appellant requested a continuance at the August 2023 trial date.

More importantly, respondent's amendment did not add additional charges, instead it amended the charge consistent with the facts that were alleged. First-degree criminal sexual conduct requires that sexual penetration or sexual contact with a person under 13 years old occurred. Minn. Stat. § 609.342, subd. 1. The statutory definition of sexual penetration includes "fellatio." Minn. Stat. § 609.341, subd. 12(1) (2010). Sexual contact of a person under 13 years old involves the "intentional touching of the complainant's bare genitals or anal opening by the actor's bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant's bare genitals or anal opening of the actor's or another's bare genitals or anal opening with sexual or aggressive intent." Minn. Stat. §§ 609.342, subd. 1, .341, subd. 11(c) (2010). Because the allegation in the probable-cause section of the original complaint was that appellant made the victim perform "oral

sex," the only applicable provision of the statute was sexual penetration. Moreover, the degree of the charge and the potential punishment did not change.

In sum, the district court did not abuse its discretion by granting respondent's motion to amend the complaint.

II. The district court did not err by denying appellant's motion for judgment of acquittal.

"If the jury returns a verdict of guilty . . . a motion for a judgment of acquittal may be brought within 15 days after the jury is discharged." Minn. R. Crim. P. 26.03, subd. 18(3)(a). A motion for judgment of acquittal presents a question of law that we review de novo. *State v. McCormick*, 835 N.W.2d 498, 506 (Minn. App. 2013), *rev. denied* (Minn. Oct. 15, 2013). Such a motion "is properly denied where the evidence, viewed in the light most favorable to the state, is sufficient to sustain a conviction." *State v. DeLaCruz*, 884 N.W.2d 878, 890 (Minn. App. 2016).

The standard of review we apply when evaluating the sufficiency of the evidence depends on whether direct or circumstantial evidence supports the conviction. *See State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016) (stating that "when a disputed element is sufficiently proven by direct evidence alone, as it is here, it is the traditional standard, rather than the circumstantial-evidence standard, that governs"). Direct evidence "is based on personal knowledge or observation and . . . if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence is "evidence from which the [jury] can infer whether the facts in

dispute existed or did not exist" and thus, "always requires an inferential step to prove a fact that is not required with direct evidence." *Id.* (quotation omitted).

Appellant argues that respondent's evidence was circumstantial, and this court should use the two-step analysis to evaluate his claims. *See State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013) (stating that when an appellate court reviews the state's circumstantial evidence, an appellate court first identifies the circumstances proved and second, determines whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt) (quotations and citations omitted). We disagree. To prove its case, respondent presented testimony from the victim and his sister. Witness testimony is direct evidence when it is "based on personal knowledge or observation and that if true, proves a fact without inference or presumption." *State v. Epps*, 949 N.W.2d 474, 487 (Minn. App. 2020) (quoting *Harris*, 895 N.W.2d at 599), *aff'd* (Minn. Sept. 15, 2021). And in prosecutions for criminal sexual conduct, such as here, a victim's testimony generally "need not be corroborated." Minn. Stat. § 609.347, subd. 1 (2010); *see also State v. Cao*, 788 N.W.2d 710, 717 (Minn. 2010) (stating that "it is settled law that when we engage in appellate review for the sufficiency of the evidence, it *may* be sufficient to convict on the uncorroborated testimony of a complainant"). If corroboration is necessary, testimony about the victim's demeanor, emotional condition, and change in behavior after the sexual assault "is strong corroborative evidence." *State v. Wright*, 679 N.W.2d 186, 190 (Minn. App. 2004), *rev. denied* (Minn. June 29, 2004). Testimony about the victim's emotional condition at the time of the complaint also corroborates the victim's testimony. *State v. Reinke*, 343 N.W.2d 660, 662 (Minn. 1984).

Accordingly, we apply the direct-evidence standard. Under this standard, appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotations omitted).

To obtain a conviction for first-degree criminal sexual conduct for penetration, respondent was required to prove that appellant engaged in sexual penetration with a person under 13 years old and that appellant was more than 36 months older.[1] Minn. Stat. § 609.342, subd. 1(a).

Appellant argues the evidence is insufficient to sustain his conviction because the complainant "told many lies" and there was no corroborating evidence that the assault occurred. Specifically, appellant takes issue with A.S.'s testimony that the assault occurred at a church event held at appellant's home when A.S. was seven or eight years old between

[1] We note that the pattern jury instruction, as cited by respondent, indicates the elements of first-degree criminal sexual conduct for penetration includes that "the defendant *intentionally* sexually penetrated the victim." 10 *Minnesota Practice*, CRIMJIG 12.07 (2015) (emphasis added). Intent is generally proved circumstantially. *State v. Jones*, 4 N.W.3d 495, 501 (Minn. 2024). But pattern instructions are "not precedential or binding" legal authority, *State v. Gunderson*, 812 N.W.2d 156, 162 (Minn. App. 2012) (quotation omitted), and Minn. Stat. § 609.342, subd. 1(a) does not contain a separate intent requirement, making it a general intent crime, *State v. Hart*, 477 N.W.2d 732, 736 (Minn. App. 1991) (analyzing intent required for first-degree criminal sexual conduct in the context of erroneous jury instruction and concluding it is a general intent crime), *rev. denied* (Minn. Jan. 16, 1992). Thus, first-degree criminal sexual conduct requires the "general intent to sexually penetrate the victim." *State v. Bookwalter*, 541 N.W.2d 290, 296 (Minn. 1995). Accordingly, a victim's testimony, and the reasonable inferences that can be drawn from it, may provide sufficient evidence that the sexual conduct was intentional. *State v. Balsley*, 999 N.W.2d 880, 886 (Minn. App. Dec. 4, 2023), *aff'd*, 10 N.W.3d 671 (Minn. 2024).

the years 2012 and 2013. He contends that appellant's father proved that church vigils were no longer held in the home after December 2010. Appellant's argument is essentially a challenge to A.S.'s credibility. But the jury determines witness credibility and the weight to be given such testimony. *State v. Pendleton*, 706 N.W.2d 500, 512 (Minn. 2005).

Based on our careful review of the record, there was sufficient direct evidence for the jury to reasonably conclude that appellant was guilty beyond a reasonable doubt of first-degree criminal sexual conduct. As to the element of sexual penetration, A.S. repeatedly testified that appellant performed oral sex on him, and that appellant made him perform oral sex on appellant. As to the element of A.S. being under 13 years old when the assault occurred, A.S. testified that he was seven or eight years old when the events occurred. And as to the element of appellant being more than 36 months older than A.S., testimony established that appellant's date of birth is in 1996 and A.S. was born in 2005. Therefore, appellant is 36 months older than A.S.

We also conclude that, although A.S.'s testimony is sufficient on its own to support the jury's conviction, there is corroborating evidence here. A.S.'s sister's testimony about changes in A.S.'s behavior in the time after the assault occurred, including that A.S. did not like to sleep with the lights off and cried a lot, corroborates A.S.'s testimony. And his sister described how A.S. was "crying and shaking" when A.S. disclosed the assault to her.

In sum, the district court did not err in its denial of appellant's motion for judgment of acquittal because sufficient evidence supports the conviction.

III. The district court did not abuse its discretion by denying appellant's motion for a new trial.

Appellant next contends the district court abused its discretion when it denied appellant's motion for a new trial. "We review the denial of a motion for a new trial for an abuse of discretion." *State v. Green*, 747 N.W.2d 912, 917 (Minn. 2008). Minnesota Rule of Criminal Procedure 26.04, subdivision 1, provides that a district court may grant a new trial on the basis of the interests of justice, irregularity in the proceedings that deprived the defendant of a fair trial, prosecutorial misconduct, or errors of law.

Appellant argues four grounds for a new trial: (1) prosecutorial misconduct; (2) errors of law; (3) irregularity in the proceedings; and (4) the interests of justice required a new trial. We address each argument in turn.

Prosecutorial Misconduct

We review unobjected-to prosecutorial misconduct under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). The defendant bears the burden of establishing error that is plain, but upon doing so the burden shifts to the state to prove that there is no reasonable likelihood that the absence of the misconduct would have had a significant effect on the jury's verdict. *Id.*

Appellant contends the prosecutor committed misconduct in three ways: (1) misrepresenting facts and vouching for witness credibility during closing arguments, (2) offering false testimony, and (3) providing transcripts that were incorrectly transcribed.

First, appellant contends the prosecutor committed misconduct during closing argument by (1) inferring the assault may have happened at a birthday party, rather than at

a church vigil; (2) misstating testimony about how many people were present at the birthday party, how long the church vigils lasted, and how A.S. got to the bedroom where the assault occurred; (3) describing a witness as "aggressive" and "huge and burly"; and (4) vouching for the credibility of the state's witnesses by prefacing a comment about witnesses clarifying questions with "I submit to you—or the state submits to you."

When analyzing a claim of prosecutorial misconduct during closing argument, we review the argument "as a whole," not "selected phrases and remarks." *State v. Smith*, 876 N.W.2d 310, 335 (Minn. 2016) (quotation omitted). The argument must be "based on the evidence or reasonable inferences from that evidence." *State v. Jones*, 753 N.W.2d 677, 691-92 (Minn. 2008). Based on our careful review of the prosecutor's entire closing argument, we conclude that none of the challenged remarks amount to plain error. The prosecutor accurately described the evidence, proposed inferences the jury could draw from it, and suggested reasons to credit or discredit witness testimony.

Second, appellant contends respondent offered false testimony when a police officer testified about speaking with prosecutors and when A.S.'s sister testified that she noticed changes in A.S.'s behavior after the assault occurred. Appellant has not met his burden to show plain error on these issues, because he does not demonstrate any basis for concluding that the witnesses testified falsely at trial. For example, appellant argues the sister's testimony was false because the sister was in Mexico when the assault occurred. But the sister testified that she "wasn't there at that time where [the assault] happened," and that she "used to come in and out from Mexico." Moreover, she did testify as to her observations of A.S.'s behavior in the relevant time period. Assessing this testimony

constitutes a jury determination of her credibility, which we defer to. *Pendleton*, 706 N.W.2d at 512.

Third, appellant argues respondent "knew [] transcripts were translated wrong" and this misconduct deprived him of a fair trial. Based on the record, the parties agreed during pretrial proceedings that there were translation issues with certain transcribed witness statements that were disclosed to defense. Respondent "bears responsibility for . . . inaccurate transcription" of interviews and for the "failure to discover" inaccuracies before they are provided to defense counsel. *Green*, 747 N.W.2d at 919. But these transcribed statements were not used during trial. In fact, the only transcribed statement used during trial was offered by appellant while the jury watched the body-camera footage of A.S.'s interview with a police officer. And that document was a "revised" transcription of the body-camera footage. On this record, any errors in transcription did not impact the verdict.

Errors of Law

Appellant next contends the district court made errors of law in its evidentiary rulings and motion-in-limine ruling.

Appellant contends respondent violated discovery rules and, as a result, the district court should have excluded respondent's exhibits and witness testimony. Appellant argues respondent failed to disclose, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), its conversations with witnesses and appellant's own driver's license. Respondent's intentional or unintentional suppression of "material evidence favorable to the defendant violates the constitutional guarantee of due process." *Zornes v. State*, 903 N.W.2d 411, 417 (Minn. 2017). For a *Brady* violation to exist, three elements must be present:

> (1) the evidence must be favorable to the defendant because it would have been either exculpatory or impeaching; (2) the evidence must have been suppressed by the prosecution, intentionally or otherwise; and (3) the evidence must be material—in other words, the absence of the evidence must have caused prejudice to the defendant.

Walen v. State, 777 N.W.2d 213, 216 (Minn. 2010). Evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Zornes*, 903 N.W.2d at 418 (quotations omitted). And a "reasonable probability is one that is sufficient to undermine confidence in the outcome" of trial. *Id.* "Because a *Brady* materiality analysis involves a mixed issue of fact and law, we review a district court's materiality determination de novo." *Walen*, 777 N.W.2d at 216.

Appellant generally argues that respondent failed to disclose all the meetings it had with their witnesses because witness testimony concerning the number of meetings they had with the prosecutor was inconsistent. He specifically argues that respondent altered the date on a disclosure made in March 2023. Appellant's arguments fail on the materiality element. The record indicates that respondent did not immediately disclose a meeting its victim advocate had with A.S. five days before trial began, and the topic of the meeting concerned the upcoming trial, including confirming that A.S. received notice of the trial date. As to the March 2023 disclosure, the prosecutor's statements indicate there was a discrepancy in the victim-advocate's report that showed the report was generated on a different date than when the meeting was held. In its order denying the motion for a new trial, the district court concluded that no violation occurred and appellant "failed to provide

any evidence that [he] was prejudiced by [respondent] for not including records of these conversations with witnesses." The district court's conclusion is supported by the record, and we discern no error in its decision. Moreover, appellant has not identified how evidence of certain meetings respondent held with witnesses would have changed the result of the trial. Based on our careful review of the record, the district court did not err in its conclusion that no disclosure violation occurred.

Appellant also contends respondent failed to disclose his own driver's license. The record reflects that defense counsel argued at trial that she had not received the driver's license exhibit, but respondent indicated it was disclosed. The district court permitted respondent to enter appellant's driver's license into evidence. Appellant has not shown how he was prejudiced by the admission of his own driver's license, because testimony in the record also established his date of birth.[2] The district court did not err in its decision to admit the driver's license record.

Appellant next contends the district court abused its discretion by ruling he could not cross-examine A.S. about a memory deficit diagnosis that was identified in A.S.'s therapy records. Under Minnesota law, a person's therapy records are privileged, and disclosure is prohibited. *See* Minn. Stat. § 595.02, subd. 1(g) (2024); *see also In re State v. Ramirez*, 985 N.W.2d 581, 585-86 (Minn. 2023) (concluding that Minn. Stat. § 595.02,

[2] Appellant also notes that the state failed to disclose a drawing of appellant's home. He has not argued how the state failed to disclose the drawing or how he was prejudiced by this drawing. An inadequately briefed issue is not properly before an appellate court. *McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (applying the rule that arguments not briefed are waived in an appeal in which the appellant "allude[d] to" an issue but "fail[ed] to address them in the argument portion of his brief").

subd. 1(g) sets forth a statutory privilege prohibiting disclosure of records maintained by mental-health professionals unless an exception applies). Expert testimony is admissible if it "will assist the trier of fact to understand the evidence or to determine a fact in issue." Minn. R. Evid. 702. An expert's opinion "must have foundational reliability." *Id.* The decision to admit expert testimony is within the discretion of the district court. *State v. Obeta*, 796 N.W.2d 282, 294 (Minn. 2011).

Even though A.S.'s therapy records are privileged, appellant received the therapy records.[3] At trial, appellant wanted to cross-examine A.S. about the records and an alleged memory impairment, but the district court determined testimony of a medical expert would be required to offer evidence of a memory impairment. After A.S. testified, the district court ruled that it would allow appellant to offer the therapy records to show A.S. made inconsistent statements to his therapists compared to his testimony, but only if foundation was laid by the "appropriate [person] to authenticate the records." The district court also required any hearsay in the records to be redacted. Appellant subsequently called two

[3] Appellant also argues the district court abused its discretion by denying his *Paradee* motion, which is a motion that seeks in camera review of confidential records, such as medical records, to determine whether disclosure of the records is required. *State v. Paradee*, 403 N.W.2d 640, 641-42 (Minn. 1987). In-camera review of confidential records is a discovery option, not a right; thus, a defendant must make a "plausible showing" that the records sought will be both "material and favorable to his defense." *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992) (quotations omitted). Appellant requested that the district court order additional disclosure of A.S.'s mental health records. As noted above, respondent had already disclosed some records. The district court denied appellant's motion, reasoning in its order that appellant did not provide sufficient evidence to show that such records "exist and are material and favorable to his defense." The appellate record does not contain a transcript of the hearing at which appellant argued his motion. Based on the available record, we conclude the district court did not abuse its discretion in denying appellant's *Paradee* motion.

therapists to testify who had treated A.S., and the district court admitted heavily redacted portions of the records into evidence. While testifying, the first therapist confirmed that A.S.'s medical record indicated that A.S. reported his memory is impaired. And the second therapist confirmed that A.S.'s record stated A.S. "has a memory issue."

During oral argument, appellant argued that evidence in the record indicates that A.S. fabricated the allegation. Our review of the record, including the redacted records that were shown to the jury, reveals no evidence of fabrication, a diagnosis of memory impairment, or an abuse of the district court's discretion. The district court appropriately considered appellant's request to cross-examine A.S. about his medical records, required appellant to redact hearsay from the records, and permitted appellant to offer the medical records containing inconsistent statements through the appropriate witnesses who could lay foundation to those records. Moreover, appellant has not established how he was prejudiced by being allowed to call A.S.'s therapists as witnesses after he was not permitted to cross-examine A.S. about records written by his therapists.

Appellant contends the district court abused its discretion by denying appellant's motion in limine to cross-examine A.S. about a U-Visa as a potential motive for fabricating the allegation of sexual misconduct. Generally, "[a]ll relevant evidence is admissible" unless otherwise provided by law. Minn. R. Evid. 402. Evidence is relevant if it tends to make the existence of any fact of consequence more or less probable than it would be without the evidence. Minn. R. Evid. 401. Evidence of bias is admissible "[f]or the purpose of attacking the credibility of a witness." Minn. R. Evid. 616. But relevant evidence, including evidence of bias, "may be excluded if its probative value is

substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Minn. R. Evid. 403. As with other evidentiary rulings, a district court has "discretion in balancing the probative value of evidence against its prejudicial effect." *State v. Gassler*, 505 N.W.2d 62, 70 (Minn. 1993).

During arguments on appellant's motion in limine, appellant argued that A.S. fabricated the allegation to obtain legal status for his father. The district court denied appellant's request, concluding that defense counsel's offer of proof as to a U-Visa motive was not sufficient to establish that the information was relevant. The district court reasoned that appellant did not offer "any evidence that the father was in the U.S. illegally, that he was interested in obtaining a U-Visa, that he had applied for a U-Visa or that his motivation to obtain a U-Visa caused him to induce his son to make a false allegation of abuse." The district court's reasoning is supported by the record, and it did not abuse its discretion in excluding evidence of immigration status based on bias when the proponent of the evidence failed to make an offer of proof that the witness was given consideration for their testimony. *See State v. Larson*, 787 N.W.2d 592, 599 (Minn. 2010) (concluding the district court did not abuse its discretion in excluding evidence of a witness's immigration status as bias evidence because the witness was not given consideration for his testimony); *see also State v. Agudo*, A22-1151, 2023 WL 4199168, at *6-7 (Minn. App. June 26, 2023) (concluding the district court did not abuse its discretion by limiting cross-examination

regarding witness's immigration status after the defendant offered proof that the witnesses knew about U-Visas), *rev. denied* (Minn. Oct. 17, 2023).[4]

Irregularities in Proceedings

Appellant next contends there were irregularities in the proceedings because A.S. and his sister attended a hearing on appellant's motion in limine. Appellant objected to their presence because defense counsel planned to offer proof of the U-Visa motive. However, the record reflects that the district court reserved the issue relating to the U-Visa and counsel did not make arguments that day. Accordingly, appellant has not established how the witnesses' presence during the hearing was prejudicial, and we discern no abuse of the district court's discretion to deny appellant's motion to dismiss on these grounds.

Interests of Justice

Appellant contends that based on the totality of the arguments above, he should be granted a new trial in the interest of justice. We may consider a number of factors when analyzing "the interests of justice," such as whether appellant suffered fundamental unfairness. *Green*, 747 N.W.2d at 918. Appellant's argument on this issue is based on the entirety of the issues addressed above. Because appellant has not identified error in the numerous issues he raises on appeal, we conclude he is not entitled to a new trial.

In sum, the district court did not abuse its discretion in its denial of appellant's motion for a new trial on any of the grounds asserted by appellant.

Affirmed.

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[4] We cite nonprecedential cases for persuasive authority only. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).