FILED
United States Court of Appeals
Tenth Circuit

October 24, 2023

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDWARD JOSEPH PARSON,

Defendant - Appellant.

No. 22-5056

Appeal from the United States District Court
for the Northern District of Oklahoma
(D.C. No. 4:21-CR-00112-CVE-1)

Jared T. Guemmer, Assistant Federal Public Defender (Julia L. O'Connell, Federal Public Defender, and Robert A. Ridenour, Assistant Federal Public Defender, with him on the briefs), Northern District of Oklahoma, Tulsa, Oklahoma, for Defendant – Appellant.

Thomas Duncombe, Assistant United States Attorney (Clinton J. Johnson, United States Attorney, and Shelley K.G. Clemens, Assistant United States Attorney, on the brief), Northern District of Oklahoma, Tulsa, Oklahoma, for Plaintiff – Appellee.

Before **MORITZ**, **BALDOCK**, and **MURPHY**, Circuit Judges.

MURPHY, Circuit Judge.

I. INTRODUCTION

A jury found Edward Parson guilty of aggravated sexual abuse of a child, in violation of 18 U.S.C. §§ 1151, 1153, 2241(c). Parson raises on appeal two challenges to his conviction. He first claims the district court erred in admitting expert testimony about the process of child-sexual-abuse disclosures and the characteristics and behaviors of children who make such disclosures. The district court did not abuse its discretion in admitting this testimony. Parson further claims the district court erred in admitting specific testimony of the expert that children are four times more likely to omit facts than to make up facts in the process of disclosing abuse. This claim of error is unpreserved and Parson has failed to demonstrate an entitlement to relief under the difficult-to-satisfy plain error standard. Thus, exercising jurisdiction pursuant to 28 U.S.C § 1291, we **affirm** the district court's judgment of conviction.

II. BACKGROUND

A. S.S. Alleges Parson Sexually Abused Her

Parson began living with K.S. and her daughters, S.S. and W.S., in late 2016. At the time, S.S. was five-years-old. In 2018, S.S. told K.S. Parson was sexually abusing her. K.S. did not believe the allegation and told S.S. not to tell anybody else. At Parson's urging, K.S. kept S.S. out of school for fear S.S. would disclose the alleged abuse. Later, S.S. disclosed the abuse to Parson's mother and sister. Judy Nelson, the mother of Parson's sister's boyfriend, reported the allegation to authorities. The authorities assigned Martyn Widdoes to investigate. Widdoes talked

to both S.S. and K.S. and, thereafter, arranged for S.S. and W.S. to live with their maternal grandmother, L.W. Widdoes also scheduled a forensic interview. S.S. did not disclose any sexual abuse at that interview. After S.S. eventually told L.W. about the abuse, two more forensic interviews took place. During these interviews, S.S. described how Parson sexually assaulted her. A federal grand jury charged Parson with aggravated sexual abuse of a minor.

B. Pretrial Notices

Prior to trial, the government gave Parson notice of its intent to call Rachel Murdock, a Federal Bureau of Investigation Child/Adolescent Forensic Interviewer, as an expert witness. The government expected Murdock would testify about: (1) "disclosure of child sexual abuse, with specific references to delays in disclosing, non-disclosure, and partial disclosures"; (2) factors that may cause delays in disclosure or partial disclosures, including "child characteristics, family environment, community influences, and societal attitudes"; and (3) the significance of a child's ability to describe events like an erection or ejaculation. There is no indication in the government's disclosure that Murdock would provide any kind of statistical evidence. Parson provided the government with his own expert notice, indicating he intended to call Dr. Susan Cave, Ph.D., an expert in clinical and forensic psychology, to testify about the reliability of child sexual abuse reports. Cave would comment directly on S.S.'s allegations by testifying that the techniques used by the forensic

interviewers, together with "outside and familial influences" on S.S., "increased the likelihood" her recollection was "inaccurate" and "enhanced."

Parson moved to exclude Murdock's testimony, claiming it would amount to improper vouching. The district court denied the motion, ruling (1) the testimony met the requirements of Fed. R. Evid. 702 and 403 and (2) testimony about the disclosure process, forensic interviewing, and "psychology of child sexual abuse victims" would not amount to vouching. It noted Parson intended to call his own expert "to testify that the forensic interview process made S.S.'s testimony unreliable." It concluded "Murdock's anticipated testimony would add context and specialized knowledge regarding S.S.'s disclosure process" and "whatever prejudice, if any, . . . does not substantially outweigh the probative value of adding context and nuance to . . . S.S.'s testimony."

C. The Trial

1. Opening Statements

The government's opening statement acknowledged that only Parson and S.S. knew whether the alleged abuse occurred. It asked the jury to focus on S.S. and argued "[o]nly S.S. can tell you what the defendant did to her." It noted the jury would hear from Murdock, who "works with child victims nearly every day." It indicated Murdock would help the jury "understand childhood trauma," "how children may talk about and process sexual abuse," and "how children may disclose

after they've been abused," thereby giving the jury "a foundation to understand child sexual abuse victims."

Parson emphasized credibility as the central issue. He identified his previous abuse of K.S. as a motive on the part of L.W. to remove Parson from S.S.'s life. He highlighted S.S.'s denial of abuse in the first forensic interview and noted L.W. nevertheless placed S.S. in therapy in the hopes of obtaining a disclosure. Parson identified allegedly inappropriate interview techniques during the forensic interviews and said Cave would testify regarding the forensic interviewing process. He noted that Cave, who had worked in the field of child psychology for forty-five years, believed S.S.'s forensic interviews were tainted by leading and suggestive questions.

2. The Government's Case

a. Murdock's Expert Testimony

Murdock testified about her experience and training as a forensic interviewer. She explained the purpose of a forensic interview is to gather information "in a nonleading and child friendly manner." The job was "to provide a developmentally appropriate and child sensitive interview to allow the child to talk about what may or may not have happened."

Murdock testified there is no typical way children respond to sexual abuse. It is normal for a child to be around their abuser and act like nothing happened. Such conduct arises out of needs to pretend the abuse did not happen and for normalcy. These needs make delayed reporting of abuse common. When and how much a child discloses depends on the child's age, shyness, shame/embarrassment, and pressure

from the perpetrator or family. This is particularly true when the abuser holds a position of power over the victim. "[W]hen children experience a traumatic event, they may checkout or be focused on . . . a minor detail during an abuse incident and because of that they may not have . . . a lot of detailed information" adults might expect. Abused children often cannot recall specific dates and times of abuse, instead connecting the abuse to a specific event. If time has passed since the abuse occurred, children are more likely to remember only the core event, not the peripheral details. Disclosure is often "a process." A child may need multiple interviews before fully disclosing the abuse and disclosure is commonly piecemeal. A child who is punished or not believed upon disclosure is less likely to attempt to disclose again.

During Murdock's testimony, the government asked if there were statistics relating to the likelihood of a child omitting details during the process of disclosing abuse. She responded that "the research suggests . . . children are four times more likely to omit details about things that really did happen to them, so leave those out, versus an error of commission, which is an error where they would make up something that didn't happen." She continued, "[s]o, it's a four-to-one ratio more likely that they will not talk about something that happened versus [make up] something that didn't." Parson did not object to this line of questioning. Instead, on cross-examination, he revisited this testimony and asked follow-up questions. Murdock asserted the ratio referred to "errors of omission versus errors of commission[,] so its errors of leaving details out that did happen versus inserting

details that didn't happen." She agreed this meant that "80 percent of kids are honest but . . . 20 percent include details that didn't happen."

Murdock did not provide an opinion as to S.S.'s credibility, noting she never spoke to S.S. When defense counsel asked her about "this specific case" and case documents, she stated she had not reviewed any documents relating to S.S. Finally, she stated she did not know whether Parson molested S.S.

b. S.S.'s Testimony

S.S. gave detailed, age-appropriate testimony as to four specific instances of sexual abuse she suffered at Parson's hands. Importantly, she testified as to one such event that occurred when K.S. took W.S. to the emergency room and she was alone with Parson. Parson told S.S. not to tell anyone about the abuse. She did, however, tell K.S. K.S. did not believe S.S., held S.S. out of school, and told S.S. not to tell anyone else. K.S.'s reaction made S.S. "very sad" because school was S.S.'s "only way to escape the house." Despite K.S.'s instructions, S.S. told Parson's mother and sister about the abuse. K.S. convinced Parson's mother that S.S. was lying. K.S. then talked to S.S., making S.S. feel scared and alone.

S.S.'s first forensic interview took place in September 2018. S.S. did not disclose any sexual abuse at the first interview. She explained she "lied" (i.e., failed to disclose Parson was sexually abusing her) in this interview because K.S. told her not to tell and because she was afraid of what K.S. would do if she disregarded those instructions. In early 2019, while on vacation with L.W., S.S. "let loose" and

disclosed the sexual abuse. L.W. believed S.S.'s allegations. In two follow-up forensic interviews, S.S. disclosed that Parson physically and sexually abused her.

c. Other Prosecution Evidence

Jessica Stombaugh testified she conducted S.S.'s second and third forensic interviews. She described her education and experience, including having performed 1300 forensic interviews and having testified as an expert witness. The government moved, without objection, to qualify Stombaugh as an expert witness as to the process of conducting forensic interviews of children. Stombaugh testified, as had Murdock, that there were many reasons a child could be hesitant to disclose abuse. It is not unusual for a child to refuse to disclose abuse during an initial interview because "[m]ost people don't disclose abuse until they feel safe." She testified that studies show most children never disclose abuse but, instead, disclose only after they become adults. She indicated the goal of a forensic interview is to talk to children in a "non-leading," "non-suggestive," "child-led" manner. Stombaugh discussed some "rules" with S.S., including telling the truth, correcting any misstatements, and saying, "I don't know" if she did not know the answer to a question. Thereafter, S.S. disclosed Parson physically abused her. Parson would also choke S.S., leaving her "tired" and "weak." As to sexual abuse, S.S. told Stombaugh that Parson would "lick her teetee" and "make [her] lick his." S.S. reported Parson "would sometimes mostly like put his teetee in mine." In a third forensic interview, S.S. disclosed that Parson would do "kissing lips" on her body and lick her "private" parts. Stombaugh testified

S.S. was consistent between the two interviews and used terminology appropriate for her age.

Widdoes testified she removed S.S. and W.S. from K.S.'s home, placed them with L.W., and arranged the forensic interviews. She also testified it was the mother of Parson's sister's boyfriend, not L.W., who first reported the alleged abuse to the authorities.

K.S. testified about her relationship with Parson. She admitted they used methamphetamine almost daily, sometimes to the point of being incapacitated. She testified physical abuse made her relationship with Parson "rough." K.S. confirmed her daughters were often alone with Parson while she was at work and she left S.S. in Parson's custody when she took W.S. to the emergency room. Parson frequently choked K.S. and she once saw Parson place his hands around S.S.'s neck and lift her off the ground. She did not intervene because she "honestly lived in fear of [Parson] and [she] thought that they were playing. There wasn't hardly anything that I could do because of retaliation of what would happen." K.S. admitted S.S. told her Parson was sexually abusing her and confirmed Parson was nearby during this disclosure. K.S. refused to believe S.S. and told S.S. not to tell anyone. At Parson's urging, she kept S.S. out of school to prevent S.S. from repeating the allegations. Parson told K.S. that if S.S. repeated the allegations, S.S. could be taken away from her.

L.W. testified about how S.S. ended up in her care and about S.S.'s eventual disclosure of sexual abuse. L.W. said they were on vacation and watching a television show that prompted a discussion about "bad guys." L.W. said Parson was a

bad guy and S.S. agreed. S.S. "got really quiet" and went outside onto the balcony. After a short period of time, S.S. came back inside and asked to talk to L.W. S.S. told L.W. that Parson had made her kiss his "tee-tee" and then he kissed her "tee-tee."

3. The Defense Case

Cave testified as an expert on the reliability of child witnesses and interviewing techniques. She reviewed each of S.S.'s three forensic interviews. Cave was concerned about the number of interviews because more interactions could contaminate S.S.'s statements. As to the first forensic interview, Cave said the questioning was suggestive and introduced topics S.S. had not brought up, possibly contaminating S.S.'s answers. Cave explained L.W. placed S.S. in a therapy program because L.W. suspected sexual abuse. Cave reviewed the therapy records, which indicated the therapist's job was "to try to get S.S. to talk about the purported sex abuse." Cave asserted (1) S.S.'s allegations kept "getting bigger and bigger with every telling" as she went through the forensic interviews and (2) the nature of the contact between S.S. and Parson changed between interviews. She testified S.S.'s claims about whether someone directed her not to talk about abuse changed: sometimes Parson told her not to talk about it, sometimes it was K.S., and sometimes she denied that anyone told her not to talk about the abuse. Cave identified an incident in which S.S. simply parroted an answer back to an interviewer after the interviewer asked a question. She believed the questions posed by the forensic

interviewers were suggestive and concluded, based on her professional experience, that S.S.'s statements were not reliable.

During his testimony, Parson denied physically or sexually abusing S.S., though he admitted choking her "in a playful manner." He blamed the allegations on L.W., asserting she was angry he was abusing K.S. He admitted he repeatedly beat and choked K.S.; he was often left alone with S.S. and W.S when K.S. was at work; he used drugs and was high most of the time; and S.S. reported the abuse to K.S., who told S.S. to "not say these kind of things."

Two of S.S.'s teachers testified they did not notice any indication of abuse. A victim liaison (1) testified about S.S.'s responses to questions from a state prosecutor and how those responses were possibly inconsistent with statements S.S. made in other interviews and (2) recounted how W.S. contradicted a statement made by L.W. K.S.'s attorney was subpoenaed and testified during the defense case. As to K.S.'s interactions with prosecutors, K.S.'s attorney categorically rejected any assertion the prosecutor coerced K.S. to give false testimony. A social services specialist testified that, during an interaction with S.S. before one of S.S.'s forensic interviews, she told S.S. she was "proud of her for getting all of the bad things off her chest." She also told S.S. "she just has to go [to the interview] and [make her disclosures] and she won't have to keep repeating it over and over again." A child welfare specialist testified about interactions she had with L.W. and S.S. on an occasion prior to the instant sexual abuse allegations. These interactions were prompted by reports Parson was physically abusing K.S. L.W. told the child welfare specialist at that time that

she did not have any concerns about K.S.'s drug use or about the safety of S.S. and W.S. in K.S.'s home. S.S. also indicated she felt safe in the home. A police officer testified that, during his interactions with L.W., she told him she wanted to "nail" Parson for sexually abusing S.S. Parson's niece testified she had lived with Parson, he had never been abusive to her, and she did not believe he abused S.S. She also testified S.S. admitted to lying about Parson abusing her.

4. Closing Arguments

At closing, the government told the jury that "if you believe S.S., the defendant is guilty." The government emphasized core details—where the abuse happened and the form it took—stayed the same throughout S.S.'s disclosures. Inconsistencies in peripheral details were as to be expected from a child sexually abused multiple times years earlier. In this regard, the government described Murdock's testimony as "corroborat[ing] S.S.'s process of disclosure."

Parson asserted Cave's testimony raised questions about the reliability of S.S.'s disclosures during the forensic interviews. He discussed how S.S.'s terminology changed over time. He also emphasized S.S. disclosed new abuse over time as she spent more time with L.W., an individual explicitly hostile toward

Parson. Parson asserted S.S.'s alleged physical abuse should have left physical signs visible to others, yet none of her teachers ever observed signs of abuse.

D. The Verdict

The jury found Parson guilty of aggravated sexual abuse of a minor. The district court sentenced Parson to life in prison.

III. DISCUSSION

Parson raises on appeal two distinct challenges to the district court's admission of Murdock's testimony. He first claims the district court erred in admitting expert testimony about the process of child-sexual-abuse disclosures and the characteristics and behaviors of children who make such disclosures. He further claims the district court erred in admitting Murdock's testimony that children are four times more likely to omit facts than to make up facts in the process of disclosing abuse. This court will consider each of these assertions.

A. Process of Disclosure and Characteristics of Abused Children

Parson makes a narrow argument in asserting the district court erred in admitting Murdock's expert testimony as to the process of child-sex-abuse disclosures and the characteristics of abused children. He asserts such testimony was not relevant because its sole purpose was to vouch for S.S.'s credibility. That is, Parson challenges the district court's determination that Murdock's testimony would "help the trier of fact," Fed. R. Evid. 702(a), not its determinations that Murdock qualified as an expert or that her testimony is reliable. *See Etherton v. Owners Ins. Co.*, 829 F.3d 1209, 1216–17 (10th Cir. 2016) (summarizing the gatekeeping

requirements for the admission of expert testimony mandated by the Supreme Court in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993) and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999)). "The 'help the trier of fact' language of Rule 702 is a relevance test for expert testimony." *Etherton*, 829 F.3d at 1217 (citing *Daubert*, 509 U.S. at 591).[1]

We review the district court's relevancy determination for abuse of discretion. *United States v. Chapman*, 839 F.3d 1232, 1238–39 (10th Cir. 2016). A district court abuses its discretion only if its decision "is arbitrary, capricious, whimsical or manifestly unreasonable, or [if] we are convinced that the district court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances." *Id.* at 1237 (quotation omitted). Relevant evidence is "that which 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

[1] This court has made clear expert testimony that vouches for the credibility of another witness lacks "relevance [under rule 401] and would not assist the trier of fact as required by Rule 702." *United States v. Adams*, 271 F.3d 1236, 1246 (10th Cir. 2001) (quotation omitted). This is the exclusive basis upon which Parson challenges the admission of Murdock's testimony and it is the exclusive issue this court considers in resolving this appeal. That is not to say, however, that expert testimony that vouches for the credibility of a witness does not potentially implicate other evidentiary rules. *See United States v. Charley*, 189 F.3d 1251, 1267 n.21 (10th Cir. 1999) (noting such testimony could potentially implicate Federal Rules of Evidence 403 and 608(a)(1)).

the evidence.'" *Daubert*, 509 U.S. at 587 (quoting Fed. R. Evid. 401). The relevancy standard set out in the Federal Rules of Evidence "is a liberal one." *Id.*

The district court did not abuse its discretion in ruling that Murdock's expert testimony would "help the trier of fact" and was, therefore, relevant. This court has made clear that testimony regarding the characteristics of sexually abused children does not, invariably, amount to vouching for the credibility of an alleged victim. *Charley*, 189 F.3d at 1264–65; *see also United States v. Koruh*, No. 99-2138, 210 F.3d 390 (table), at *2–3 (10th Cir. 2000) (unpublished disposition cited solely for its persuasive value). This is so because the average juror often lacks expertise on the characteristics of victims of child sex abuse, particularly in the process of disclosing such abuse. *United States v. Lukashov*, 694 F.3d 1107, 1116–17 (9th Cir. 2012); *United States v. St. Pierre*, 812 F.2d 417, 419–20 (8th Cir. 1987); *United States v. Baker,* No. CR-22-034-RAW, 2022 WL 16950492, at *2 (E.D. Okla. Nov. 15, 2022); *United States v. Heller*, No. 19-cr-00224-PAB, 2019 WL 5101472, at *2 (D. Colo. Oct. 11, 2019); *United States v. Perrault*, No. 17-02558-MV-1, 2019 WL 1318341, at *3 (D.N.M. Mar. 22, 2019); *Reyna v. Roberts*, No. 10-3254-SAC, 2011 WL 4809798, at *8 (D. Kan. Oct. 11, 2011). Thus, Parson is simply wrong in arguing that testimony like that given by Murdock is categorically inadmissible in criminal trials involving contested allegations of child sex abuse.

Murdock testified generally, and without regard to S.S., that it is not uncommon for child victims to delay disclosure; to disclose abuse in a piecemeal fashion; to underreport sexual abuse; and that several factors, both external and

internal, may cause delayed reporting and underreporting. This court has held that the admission of such evidence is not a per se violation of Rule 702. *Charley*, 189 F.3d at 1264. Other courts have similarly permitted testimony about characteristics common to child sex abuse victims, provided such testimony is limited to "a discussion of a class of victims generally." *United States v. Antone*, 981 F.2d 1059, 1062 (9th Cir. 1992) (holding that expert testimony about general behavioral characteristics of sexually abused children did not constitute improper vouching but instead assisted jury in understanding the evidence); *United States v. Whitted*, 11 F.3d 782, 785 (8th Cir. 1993) (holding that qualified experts can, inter alia, inform the jury of characteristics of sexually abused children).

Nor can it legitimately be argued that the district court acted unreasonably in concluding Murdock's testimony would be helpful to the jury in the context of this particular case. Parson's defense sought to discredit S.S.'s disclosures because of delayed reporting and inconsistencies between her later disclosures and earlier denial. The expert notice Parson's defense disclosed to the government specifically asserted that "[b]ased on her education and experience" and her review of the evidence, Cave would testify as follows: "Her opinion is that the interviewers and the interviewers' technique, multiple interviews, suggestive and leading questioning, and outside and familial influences have increased the likelihood of inaccurate and enhanced recollection by the child." Indeed, in denying Parson's in-limine request to exclude Murdock's testimony, the district court noted that Parson's defense involved "attacking the forensic interview process, including the credibility of . . . Stombaugh,

who interviewed S.S., and the alleged victim's credibility." This state of affairs undoubtedly bears on the reasonableness of the district court's decision to admit Murdock's expert testimony. *See United States v. Bighead*, 128 F.3d 1329, 1331 (9th Cir. 1997) (holding that an expert's testimony had "significant probative value in that it rehabilitated (without vouching for) the victim's credibility after she was cross-examined about the reasons she delayed reporting and about the inconsistencies in her testimony").

In arguing for a contrary result, Parson relies on this court's decisions in *Charley*, 189 F.3d at 1270, and *United States v. Hill*, 749 F.3d 1250, 1267 (10th Cir. 2014). Neither case helps Parson's cause. It is certainly true that *Charley* held inadmissible expert testimony by a pediatrician and mental health counselors crediting the victims' allegations of abuse. 189 F.3d at 1270 (noting that expert testimony the victims were truthful was "manifestly" outside the counselors' direct knowledge and "unquestionably prejudicial"). And *Hill* held that testimony of a law enforcement official who claimed to be "specially trained in ferreting out lies" and opined on the defendant's credibility was inadmissible because it invaded the province of the jury. 749 F.3d at 1267. Thus, in both *Hill* and *Charley*, the expert explicitly commented on the credibility of the witnesses. In contrast, Murdock did not opine about S.S.'s credibility or about whether a crime had been committed.

Murdock testified she never spoke with S.S., had not reviewed any documents relating to S.S., and did not know whether Parson molested S.S.

Murdock's testimony was limited to describing the general process of disclosure, the different types of disclosures, and the reasons why disclosures may vary depending on internal and external factors. Such expert opinions in child sex-abuse cases are appropriate and commonly accepted. *See Charley*, 189 F.3d at 1264–65; *Bighead*, 128 F.3d at 1331; *St. Pierre*, 812 F.2d at 419. In the end, "the jury was free to determine whether the victim delayed disclosure or simply fabricated the incidents." *Bighead*, 128 F.3d at 1331. Thus, the district court's decision to admit Murdock's testimony was not "arbitrary, capricious, whimsical or manifestly unreasonable" and must be affirmed.

B. Statistical Evidence

Parson asserts the district court erred when it allowed Murdock to give the following statistical evidence during the direct examination: "[T]he research suggests . . . children are four times more likely to omit details about things that really did happen to them . . . versus an error of commission, which is an error where they would make up something that didn't happen. . . . [S]o, it's a four-to-one ratio more likely that they will not talk about something that happened versus [make up] something that didn't." Parson admits he did not object to this testimony at trial. He

asserts, however, that he preserved the issue for appellate review by filing his pre-trial motion in limine. This court is not convinced by Parson's preservation argument.

In arguing he preserved his appellate objection to Murdock's statistical evidence, Parson relies on this court's decision in *United States v. Mejia-Alarcon*, 995 F.2d 982, 986–88 (10th Cir. 1993). *Mejia-Alarcon* held that a "pretrial motion in limine to exclude evidence" "may preserve an objection when the issue (1) is fairly presented to the district court, (2) is the type of issue that can be finally decided in a pretrial hearing, and (3) is ruled upon without equivocation by the trial judge." *Id.* at 986. Parson's preservation argument falters at the first step of the *Mejia-Alarcon* test. He asserts that "[w]hile a statistical quantification concerning errors in disclosures was not explicitly part of the Government's Rule 16 expert notice, the testimony in question was nonetheless a subset of the anticipated testimony presented in the Government's notice." That is true, according to Parson, because the statistical evidence at issue on appeal fell within the general scope of Murdock's proposed testimony about delayed disclosures on the part of child victims of sexual abuse.

If this court were to accept Parson's appellate arguments—that a motion in limine objecting to the introduction of evidence regarding delayed disclosures preserves an objection to evidence regarding the relative proportion of false disclosures—we would stretch the rule in *Mejia-Alarcon* beyond any reasonable boundary. As *Mejia-Alarcon* made clear, preservation under the rule set out therein is the exception. 995 F.2d at 988 ("[M]ost objections will prove to be dependent on trial context and will be determined to be waived if not renewed at trial."). Adopting

Parson's test would defeat *Mejia-Alarcon*'s requirement that an issue be "fairly presented to the district court" before it is capable of preservation by a definitive and unequivocal district court ruling on admissibility. *Id.* at 986. Indeed, Parson recognized at trial that some of Murdock's testimony could potentially fall outside the limits of the district court's in-limine ruling by objecting repeatedly during Murdock's direct examination. Because Parson failed to adequately object to Murdock's statistical testimony, his appellate argument is unpreserved.

To obtain appellate relief on this unpreserved claim of error, Parson must demonstrate the district court committed plain error. *United States v. Rosales-Miranda*, 755 F.3d 1253, 1257–58 (10th Cir. 2014). To satisfy this "demanding" standard, Parson must "demonstrate: (1) an error, (2) that is plain, which means clear or obvious under current law, and (3) that affects substantial rights. If he satisfies these criteria, this Court may exercise discretion to correct the error if (4) it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* at 1258 (quotation omitted). "[R]elief on plain error review is difficult to get, as it should be." *Id.* (quotations omitted). "Accordingly, we will find plain error only when an error is particularly egregious and the failure to remand for correction would produce a miscarriage of justice." *Id.* (quotation omitted). Here, the government did not brief the question whether the district court erred in admitting Murdock's statistical testimony. Given the absence of such helpful briefing, this court concludes it is difficult to address whether any such error is "plain." Accordingly, we proceed directly to assess whether the alleged error, assuming it is plain, affected Parson's

substantial rights. *See United States v. Penn*, 601 F.3d 1007, 1012 (10th Cir. 2010) (assuming existence of an error that is plain and proceeding to a substantial-rights analysis). To prove the assumed plain error affected his substantial rights, Parson must "demonstrate a reasonable probability that but for the error claimed, the result of the proceeding would have been different." *Hill*, 749 F.3d at 1263 (quotations omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* (quotations omitted). "The reasonable-probability standard is not the same as, and should not be confused with, a requirement that a defendant prove by a preponderance of the evidence that but for error things would have been different." *Id.* at 1263–64 (quotations omitted).

Parson has not demonstrated a reasonable probability that, absent Murdock's statistical testimony, the result of his trial proceeding would have been different. In so holding, we begin by noting that the evidence of Parson's guilt was strong. *See Charley*, 189 F.3d at 1271–72. In arguing to the contrary, Parson notes that the trial represented a credibility contest between S.S.'s version of events and his denial that he abused S.S. That fact, however, does not mean the government's case was not strong. S.S described for the jury in detail four separate times that Parson sexually abused her. Her testimony was clear, direct, and forceful. She provided details about, and used terminology regarding, sexual acts that would be inconsistent with the knowledge of a six-to-eight-year-old child. Many aspects of S.S.'s testimony were corroborated by the testimony of other witnesses. K.S. corroborated numerous details about how S.S. first disclosed the abuse to her, including that Parson was initially

nearby; that she took S.S. out of school; that S.S. told Parson's mother and sister about the abuse; and that K.S. specifically ordered S.S. not to repeat the allegations against Parson. This latter fact, especially when coupled with the expert testimony of Stombaugh and Murdock, explained why it was not unusual S.S. did not disclose any abuse in her first forensic interview. Parson and K.S. both corroborated S.S.'s testimony that S.S. was often left alone with Parson, specifically including the night K.S. took W.S. to the hospital. Thus, S.S.'s testimony regarding an episode of sexual abuse was corroborated by a specific, real-world event. Parson and K.S. both corroborated S.S.'s statement that Parson had done something that S.S. could have perceived as being choked. Again, this corroboration weighs significantly on S.S.'s credibility.

Nor did the case rest solely on S.S.'s credibility. Because Parson testified in his own defense, his credibility was also at issue. Parson admitted he was using methamphetamine during this time, which caused him to make "poor decisions." He also admitted he lied to authorities about physically abusing K.S. and that he did so to avoid consequences for his conduct. Furthermore, even setting aside the proper aspects of Murdock's testimony discussed above in Section III.A., Stombaugh's testimony as an expert witness fully placed at issue any contrary testimony provided by Cave. Stombaugh had recent, extensive experience in the process of conducting forensic interviews of children and adolescents. She testified the path S.S. took to disclosure was typical, that S.S.'s forensic interviews were valid and non-leading, and that S.S.'s disclosures were consistent across her second and third interviews.

Although Cave testified to the contrary, her recent experience with child forensic interviews was significantly more limited than was Stombaugh's experience. In the end, after a full and conscientious review of the trial transcript, this court concludes the case against Parson was strong.

Equally important, Murdock's statistical testimony was minimal in the context of the entire record. *See Charley*, 189 F.3d at 1271 (noting that "only a small, albeit important, portion of the testimony admitted at trial was erroneously admitted"). It occupies approximately one page of an 850-page trial transcript. Furthermore, Murdock did not interview S.S. and did not provide an opinion about her credibility, which added "a further layer of removal from [S.S.'s] statements." *See United States v. Magnan*, 756 F. App'x 807, 815 (10th Cir. 2018) (unpublished disposition cited solely for its persuasive value). Cave, on the other hand, testified extensively about factors weighing against the reliability of S.S.'s statements. And Cave's testimony, entirely unlike Murdock's, was specific to S.S. Additionally, the government did not reference Murdock's statistical testimony again. Indeed, the government did not reference Murdock's testimony at all in its first closing. In its rebuttal closing, the government effectively minimized Murdock's role, telling the jury that "Murdock did not corroborate S.S." and that "[s]he was not here to say S.S. is telling the truth."

Finally, Parson's use of the now-challenged statistical testimony for his own purposes demonstrates that testimony was not unduly prejudicial. On cross-examination, Murdock agreed that her statistical testimony suggested that 20% of child abuse accusers fabricated details. She also admitted she had personally

encountered a false report, but that she did not know, or try to find out, whether a child's statement at the time of an interview turned out to be true or false. Thus, defense counsel was able to effectively limit or eliminate any prejudice from this small piece of evidence by effectively cross-examining Murdock.

Viewing the record as a whole, this court concludes Parson failed to carry his burden of demonstrating the district court's failure to sua sponte exclude Murdock's statistical testimony affected his substantial rights. *Magnan*, 756 F. App'x at 814–15 (holding that an error in admitting far-more-prejudicial statistical testimony did not affect the defendant-appellant's substantial rights when numerous witnesses testified consistently, expert's brief statement occupied a small portion of a large record, and prosecution did not reference statement in closing). Despite the case primarily revolving around the credibility of Parson and S.S., the evidence of guilt was strong. The statistical testimony was insignificant in the context of the entire record. And, finally, Parson was able to effectively use the unobjected-to testimony for his own purposes, eliminating or minimizing its prejudicial nature.

IV. CONCLUSION

For those reasons set out above, the judgment of guilt entered by the United States District Court for the District of Northern Oklahoma is hereby **AFFIRMED**.