STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2024

State of Minnesota,
Respondent,

vs.

Michael Bryce Martin,
Appellant.

Filed November 20, 2017
Affirmed
Ross, Judge

Lake County District Court
File No. 38-CR-14-272

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Russell H. Conrow, Lake County Attorney, Lara R.M. Nygaard, Assistant County Attorney, Two Harbors, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

Police alleged that Michael Martin sexually abused his six-year-old stepsister over a span of almost three years, and the state charged him with two counts of criminal sexual

conduct in the first degree and two counts in the second degree. Appealing his conviction, Martin argues that the district court improperly allowed the prosecutor to present expert testimony explaining that sexually abused children often delay disclosing their abuse and to cross-examine Martin's mother using her violent argument with her husband to impeach her credibility. Because the district court did not abuse its discretion by permitting the expert's testimony or allowing the impeachment, we affirm.

FACTS

According to a Lake County criminal complaint and later trial testimony, 15-year-old F.S. reported to a Two Harbors police officer that Michael Martin, F.S.'s 26-year-old stepbrother, began touching her sexually when she was 7 or 8 years old and Martin was about 18 or 19 years old. F.S. reported that Martin digitally penetrated her vagina, touched her there with his penis, and made her touch his penis with her hand. The alleged repeated assaults occurred in the shared home of M.S. (who is F.S.'s father) and P.S. (who was M.S.'s wife and is Martin's mother). The state charged Martin with two counts of first-degree and two counts of second-degree criminal sexual conduct.

Before his jury trial, Martin moved the district court to bar the prosecutor from presenting expert testimony about the common characteristics and tendencies of children who have been sexually abused. He argued that the expert's testimony would serve only to impermissibly vouch for F.S.'s credibility. Martin also asked the district court to preclude the prosecutor from introducing evidence of a domestic dispute that occurred between P.S. and M.S. about F.S.'s allegations. The district court rejected Martin's motions.

The state's expert testified that she never met with F.S. She opined about the common characteristics and tendencies of sexually assaulted children and explained that these children tend not to immediately disclose assaults to authorities.

P.S. testified in Martin's defense that her bedroom was connected to F.S.'s—where the alleged assaults took place—and that she never heard any commotion. She also emphasized that F.S. never appeared to be nervous or fearful around Martin. The prosecutor cross-examined P.S. about her marriage with F.S.'s father. The cross-examination focused on how the marriage began to deteriorate after F.S. told them that Martin had sexually abused her. P.S. acknowledged that, after F.S. made her allegations, P.S. did not want F.S. near her, her home, or her children. The prosecutor asked P.S. to recall an argument she had with M.S. about F.S.'s allegations, which culminated in P.S. breaking a beer bottle over M.S.'s head.

The jury found Martin guilty of two counts of criminal sexual conduct in the first degree and one count in the second degree. Martin appeals.

D E C I S I O N

Martin offers two reasons to reverse his conviction. He argues first that the district court improperly allowed the prosecutor to present expert testimony about the characteristics and tendencies of sexually abused children. He argues second that the district court should have prevented the prosecutor from questioning P.S. about breaking a bottle over M.S.'s head to punctuate her disagreement with him over P.S.'s allegations against Martin. We find neither argument convincing.

I

Martin contends that the district court improperly allowed the state's expert to testify about the common reporting tendencies of sexually abused children and how these children might not immediately disclose their abuse. A district court has broad discretion whether to admit expert testimony, and we will reverse only on a clear abuse of that discretion. *State v. Hall*, 406 N.W.2d 503, 505 (Minn. 1987). A witness may testify to nonscientific information, like the abuse-reporting tendencies discussed by the state's witness here, if "(1) the witness is qualified as an expert; (2) the expert's opinion has foundational reliability; [and] (3) the expert testimony is helpful." *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011) (describing Minn. R. Evid. 702). Martin takes issue only with the helpfulness element.

Martin maintains that the expert's testimony was not helpful to the jury. If the content of an expert's testimony pertains to a subject that is already within the knowledge and experience of a lay jury and fails to aid the jury to reach conclusions on that subject, the testimony is not helpful and should be excluded. Minn. R. Evid. 702 (2016); *State v. Helterbridle*, 301 N.W.2d 545, 547 (Minn. 1980). The state's expert testified that between 25 and 33 percent of sexually abused children will disclose their abuse within six months, that "a much smaller number . . . discloses within . . . five years," and that "about 48 percent do not disclose until adulthood, if they disclose at all." She opined that the average delay between the abuse and report is 11 to 14 years. She also stated that a victim's familial relationship with the abuser is one of several factors that can contribute to a delay. And she opined that the younger the victim, the more likely a delay. She added that children are

more likely to disclose abuse to their peers. We are satisfied that this information is beyond the knowledge and experience of a typical juror.

Martin's argument against this testimony faces strong opposition in the caselaw. For example, in *Hall* the supreme court announced, "It is within the [district] court's discretion to admit expert testimony concerning the behavioral characteristics typically displayed by adolescent sexual assault victims." 406 N.W.2d at 503. And in *State v. Reyes*, we affirmed the district court's decision to allow expert testimony on common characteristics of sexual-abuse victims. 890 N.W.2d 406, 412–413 (Minn. App. 2017). Martin would have us rely instead on our reasoning in *State v. Danielski*, where we reversed a district court's decision to admit expert testimony about post-familial sexual abuse. 350 N.W.2d 395, 398 (Minn. App. 1984). Martin's argument fails for two reasons.

First, *Danielski* relied heavily on the supreme court's decision in *State v. Saldana*. *Id*. In *Saldana*, the supreme court held that "it was reversible error for an expert to testify concerning typical post-rape symptoms and behavior of rape victims and give opinions that the complainant was a victim of rape and had not fantasized the rape." 324 N.W.2d 227, 232 (Minn. 1982). The supreme court later curtailed *Saldana*'s breadth. *See e.g.*, *Obeta*, 796 N.W.2d at 290 (noting courts have mistakenly "interpreted *Saldana* as creating a blanket prohibition against all expert testimony of typical rape-victim behaviors as not helpful to the jury"). Although *Saldana* still stands, it "focused solely on rape trauma syndrome" and "did not specifically address . . . delayed reporting," which is one of multiple "counterintuitive rape-victim behaviors" about which "expert testimony . . . could aid jurors in their fact-finding." *Obeta*, 796 N.W.2d at 290–92 (citing *Hall*, 406 N.W.2d at

505). To the extent *Danielski* relies on the now-abandoned interpretation of *Saldana*, it cannot guide our decision today.

Second, and more fundamental to Martin's argument, *Danielski* is better understood as simply extending *Saldana*'s prohibition against an expert testifying, in effect, that the complainant must have been sexually assaulted because she shares symptoms or characteristics commonly found in sexual-assault victims. *See Danielski*, 350 N.W.2d at 397. This type of vouching testimony unfairly prejudices the defendant. But that is not the kind of testimony disputed here. The expert here clarified that she was not expressing any opinion on the question of whether F.S. was in fact sexually assaulted. The testimony is instead consistent with the admissible testimony in *Hall* and *Obeta*.

Martin urges us to recognize that, by the time he stood trial, F.S. "was a mature articulate adult who was able to explain her actions in a manner that was rational to the jury." Based on this, he maintains that the expert testimony "improperly bolstered F.S.'s credibility." He seems to suggest that, because F.S. was capable of expressing why she delayed reporting, the expert's testimony spoke only to F.S.'s credibility. This is not so. This type of expert testimony helps jurors understand that some sexual assault victims engage in conduct that might otherwise be misperceived by laypersons as unreasonable, as irresponsible, or as proof that the victim is lying. *See Obeta*, 796 N.W.2d at 291. The expert testimony is useful not to endorse the victim's testimony as truthful, but to prevent jurors from rejecting that testimony simply because the victim's report was delayed. So the *Obeta* court concluded that even "the mental and physical reactions of an *adult* sexual-assault victim may lie outside the common understanding of an average juror." *Id.* at 293

(emphasis added). That this type of relevant testimony might also indirectly affect the jury's evaluation of the complainant's credibility does not itself render the testimony inadmissible. *See State v. Myers*, 359 N.W.2d 604, 610 (Minn. 1984). We conclude that the district court acted within its discretion by permitting the expert testimony.

II

Martin next challenges the district court's decision to allow the state to question P.S., Martin's mother, about her breaking a beer bottle over M.S.'s head as they argued over F.S.'s allegations. The district court allowed the prosecutor to explore this incident to show P.S.'s bias favoring her son. Again, the district court's evidentiary decisions are reviewed for abuse of discretion. *State v. Gutierrez*, 667 N.W.2d 426, 436 (Minn. 2003).

The disputed cross-examination tends to reveal P.S.'s bias, and witness bias is always relevant because it bears on the credibility and the weight of the witness's testimony. *See* Minn. R. Evid. 616 (2016); *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995). Bias may be proved through extrinsic evidence, such as proof of a witness's favoritism toward a party. *See State v. Garceau*, 370 N.W.2d 34, 40 (Minn. App. 1985). But if the evidence's link to bias is tenuous and unconvincing, the district court should exclude it as prejudicial. *See* Minn. R. Evid. 403 (2016); *Lanz-Terry*, 535 N.W.2d at 640. We will therefore consider the challenged evidence here in light of its probative value in relation to its alleged prejudicial harm.

The prosecutor relied in part on the bottle-over-the-head incident to demonstrate that P.S. did not objectively perceive F.S.'s abuse allegations. On cross-examination, the prosecutor attempted to prove P.S.'s bias by questioning her about her insulting F.S., her

having negative feelings toward F.S., and her creating strife with M.S. about F.S.'s allegations. That P.S. clubbed M.S. with a beer bottle as they argued about F.S.'s allegation reveals how intensely P.S. rejected F.S.'s claims. A juror could conclude that P.S. lacked reason or objectivity, inferring from P.S.'s violent hostility against F.S.'s allegations that P.S. might have shaded her trial testimony to protect Martin from those allegations. The district court did not improperly allow the questioning, and even if the district court's decision was improper, Martin offers no argument explaining how his mother's beer-bottle attack unfairly prejudiced his defense.

Martin attempts to characterize this testimony as *Spreigl* evidence. Whether a district court's application of one legal standard over another is correct is a question of law that we review de novo. *See State v. MacLennan*, 702 N.W.2d 219, 230 (Minn. 2005). This evidence was offered under Minnesota Rule of Evidence 616 (2016). It is not *Spreigl* evidence. *Spreigl* evidence most commonly takes the form of the defendant's other crimes, wrongs, or acts that are submitted as proof of various things, like proof of the identity of the offender based on the strikingly similar manner in which the charged crime resembles the defendant's previous bad acts. *State v. Spreigl*, 272 Minn. 488, 492–94, 139 N.W.2d 167 at 170–71 (1965). In contrast, rule 616 states generally that, "[f]or the purpose of attacking the credibility of a witness, evidence of bias . . . of the witness for or against any party to the case is admissible." The challenged evidence here involves a prior act by P.S., not by Martin. And it was not offered to show that P.S. acted on some other occasion similarly to how she acted when she struck M.S. with the bottle, but to show the extreme degree to which P.S. would defend Martin against the abuse allegation. The district court

accurately treated this evidence under rule 616 rather than as *Spreigl* evidence under Minnesota Rule of Evidence 404(b) (2016).

Martin also wrongly analyzes the evidence as evidence of a prior conviction under Minnesota Rule of Evidence 609 (2016). Rule 609 prohibits the admission of evidence that the witness was convicted of a crime for impeachment unless certain exceptions are met. Although P.S.'s striking of M.S. resulted in her own assault conviction, the conviction itself was never offered into evidence. We therefore reject the rule-609 argument.

Affirmed.