

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1974**

State of Minnesota,
Respondent,

vs.

Derrick Deshawn Henderson,
Appellant.

Filed January 21, 2020
Affirmed in part, reversed in part, and remanded
Jesson, Judge
Concurring in part, dissenting in part, Worke, Judge

Hennepin County District Court
File No. 27-CR-16-16623

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

JESSON, Judge

A teenager reported to her therapist that she had been sexually assaulted by the father of her half siblings. During a hearing outside the presence of the jury, the teenager's mental-health case manager told the district court that the teenager previously admitted that she was untruthful when she accused another woman of sexually assaulting her. Appellant Derrick Deshawn Henderson argues that the district court erred by excluding this evidence of the teenager's prior false accusation at trial. We agree. As a result, we affirm in part, reverse in part, and remand.

FACTS

During a therapy session in May 2017, then 17-year-old A.R. reported that appellant Derrick Deshawn Henderson had sexually assaulted her in her family's Minneapolis home. A.R. is a young woman with developmental disabilities,¹ and Henderson is the father of her half siblings. A.R.'s therapist, in her role as a mandatory reporter, relayed those allegations to the proper authorities. Law enforcement officers then investigated A.R.'s allegations by interviewing Henderson and A.R.'s half-sister, mother, and therapist.

As part of their investigation, officers took A.R. to CornerHouse for a forensic interview.² A.R. told the interviewer that Henderson sexually assaulted her on two occasions when her family lived at their Minneapolis residence.

¹ A.R. was born with a diaphragmatic hernia and underdeveloped lungs and has cognitive delays.

² CornerHouse is a private independent agency that interviews victims of alleged child abuse who are referred from child protection and law enforcement.

According to A.R., the first assault occurred when she was a teenager. She told the CornerHouse interviewer that she had been sleeping in her bed when Henderson came into her room and woke her up. Henderson led her into her mother's bedroom where the lights were off, the shades were drawn, and there was a movie playing on the television that showed naked people. Then Henderson locked the door. A.R. recounted that Henderson rubbed his penis on her vagina and had A.R. lie on her mother's bed while he masturbated until he ejaculated onto her leg. A.R. told the interviewer that the second assault also occurred when her mother was gone from the Minneapolis residence and that Henderson had touched her with his penis.

The state charged Henderson with fourth- and fifth-degree criminal sexual conduct, alleging that Henderson sexually assaulted A.R. twice between 2012 and 2014.³ Prior to trial, Henderson moved the district court to conduct an in camera review of A.R.'s treatment records, school materials, and Hennepin County Human Services records. He alleged that those documents contained evidence that A.R. previously made several false allegations of sexual misconduct. The district court granted Henderson's motion and released some of the requested documents to the defense. Based on those documents, Henderson then moved to admit evidence that A.R. had a predisposition to fabricate allegations that she had been victimized by sexual predators. As part of Henderson's proffer, he included allegations that A.R. had falsely accused a schoolmate of touching her

³ The state alleged that Henderson committed fourth-degree criminal sexual conduct between August 2012 and April 2014 and fifth-degree criminal sexual conduct between April 2012 and April 2014.

breasts after dragging her into a school bathroom and that A.R. had threatened to accuse her father of sexually abusing her.⁴ The district court ruled that only the bathroom incident was admissible.

During trial, A.R., her half-sister, A.R.'s mother, A.R.'s therapist, law enforcement officers, A.R.'s former teacher, and Henderson testified.

A.R.'s testimony recounted the two alleged sexual assaults as described above, in addition to a third alleged assault. The prosecutor also asked A.R. whether she remembered the incident involving a schoolmate touching her in a manner that she did not like, and A.R. indicated that she did not. Henderson did not question her about this incident or any other incident involving a prior false allegation. Later during trial, the state introduced the video of her CornerHouse interview into evidence.

The testimony of A.R.'s half-sister recounted two instances where Henderson was allegedly alone with A.R. A.R.'s half-sister testified that she remembered one occasion where Henderson took A.R. into their mother's bedroom to watch a movie. She testified about a second instance where she recalled Henderson being alone with A.R. in their mother's locked bedroom. When A.R.'s half-sister knocked on the bedroom door, Henderson became angry and told her to go to sleep. A.R.'s mother testified about, among other topics, the extent of A.R.'s disabilities and what A.R. told her about the alleged

⁴ Henderson's proffer and amended proffer included multiple examples of prior alleged instances where A.R. falsely accused or threatened to falsely accuse others of sexual misconduct. Because Henderson only makes specific arguments about two of the incidents included in his proffer and one incident that he raised during trial, we do not discuss the other alleged instances of A.R.'s purported false accusations.

assaults.⁵ Following the testimony of A.R.'s half-sister and mother, A.R.'s therapist recounted A.R.'s report of the alleged assaults during the therapy session.

As trial unfolded, Henderson sought to introduce evidence of prior false allegations of sexual misconduct made by A.R. Specifically, the incidents that Henderson sought to introduce included that A.R. had falsely accused her mother's goddaughter of sexually assaulting her;⁶ that A.R. had falsely accused a schoolmate of dragging her into a bathroom and grabbing her breasts; and that A.R. had threatened to falsely accuse her father of sexual abuse.

The district court excluded the evidence of all three purported instances of false accusations by A.R. With respect to the incident involving the goddaughter, the district court excluded this testimony because it concluded that there was no clear evidence that A.R. made a false report about this alleged incident. And although the district court initially ruled the schoolmate incident admissible before trial, after hearing testimony during trial, the court excluded evidence of this incident given that no school records or surveillance video supported the allegation. Finally, regarding A.R.'s alleged threat to falsely accuse her father of sexual abuse, the district court found that the information about this alleged incident was not sufficiently supported by the evidence.

⁵ During the testimony of A.R.'s mother, Henderson tried to cross-examine her about the incident with the schoolmate in the bathroom. The district court did not allow this line of questioning.

⁶ We note that the record indicates that at times the parties and the district court referred to the mother's goddaughter as A.R.'s babysitter, a family friend, and a personal care attendant. For purposes of clarity, we refer to her as "the goddaughter."

In addition to A.R.'s alleged false accusations, Henderson sought to introduce evidence that A.R. had used her school-issued iPad to access sexual materials. Henderson intended to use this evidence to show that A.R. had an alternative source of knowledge about sexual matters. The district court denied the admission of this evidence.

After the district court resolved these evidentiary issues, Henderson presented his case-in-chief. A.R.'s former special-education teacher testified that she considered A.R. to be untruthful. And Henderson testified that he considered A.R. to be one of his children. He explained that he was in prison during some of the time when the assaults allegedly occurred and denied sexually assaulting A.R.

During closing arguments, A.R.'s credibility as a witness was front and center. The state depicted A.R. as an unsophisticated teenager with disabilities. The prosecutor urged the jury to consider whether A.R. was someone who appeared to be capable of maintaining a lie about Henderson's alleged abuse for such a long period of time and that to disbelieve her would be to characterize her as a "manipulative little sociopath." In contrast, Henderson assailed A.R.'s credibility and highlighted the teacher's characterization of her as "untruthful."

After deliberating for three days, the jury found Henderson guilty of fourth-degree criminal sexual conduct.⁷ But the jury acquitted him of fifth-degree criminal sexual

⁷ A person is guilty of fourth-degree criminal sexual conduct if they engage in sexual contact with another person where the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense. Minn. Stat. § 609.345, subd. 1(f) (2012).

conduct.⁸ The district court sentenced Henderson to 96 months in prison. This appeal follows.

DECISION

Henderson argues that he is entitled to a new trial for two central reasons. First, Henderson contends he was denied his right to present a complete defense when the district court excluded evidence of A.R.’s alleged prior false accusations. Second, he claims that the district court erred by excluding evidence that A.R.’s source of sexual knowledge came from her use of her school-issued iPad rather than him. Finally, Henderson makes several pro se arguments as to why he is entitled to relief. We address each argument in turn.

I. The district court erred by excluding evidence about A.R.’s false allegation of sexual abuse against the goddaughter, which denied Henderson his right to present a complete defense.

Henderson argues that the district court denied him the right to present a complete defense by excluding evidence of the three previous instances where A.R. purportedly falsely accused others of sexual abuse. These incidents involved the goddaughter, a schoolmate, and her father. We begin by addressing the standard of review, and then apply it to each allegation.

A criminal defendant has a constitutional right to “a meaningful opportunity to present a complete defense.” *California v. Trombetta*, 467 U.S. 479, 485, 104 S. Ct. 2528, 2532 (1984). That right encompasses “the right to present the defendant’s version of the facts . . . to the jury so it may decide where the truth lies.” *Washington v. Texas*,

⁸ A person is guilty of fifth-degree criminal sexual conduct if they engage in nonconsensual sexual contact. Minn. Stat. § 609.3451, subd. 1(1) (2010).

388 U.S. 14, 19, 87 S. Ct. 1920, 1923 (1967). But in presenting a defense, a defendant must comply with established rules of evidence. *Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S. Ct. 1038, 1049 (1973). And evidentiary rulings—which rest within the sound discretion of the district court—will not be reversed absent a clear abuse of discretion. *State v. Nunn*, 561 N.W.2d 902, 906-07 (Minn. 1997).⁹ But even if the district court abuses its discretion, “we reverse only if the exclusion of evidence was not harmless beyond a reasonable doubt.” *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017).

To examine these three evidentiary rulings for an abuse of discretion, we turn to the rules of evidence. Admission of evidence of prior sexual conduct of the victim in a criminal-sexual-conduct case is governed by Minnesota Rule of Evidence 412, commonly known as the rape-shield rule. Under this rule, “evidence of the victim’s prior sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order” under the rule’s procedure. Minn. R. Evid. 412(1); *see also* Minn. Stat. § 609.347, subd. 3 (2010). Prior sexual conduct includes making *prior allegations* of sexual abuse. *State v. Kobow*, 466 N.W.2d 747, 750 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991) (emphasis added).

But a defendant’s constitutional right to present a complete defense creates an exception to the rape-shield rule. *State v. Goldenstein*, 505 N.W.2d 332, 341 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993). As we explained in *Goldenstein*, a case

⁹ This court applies the abuse-of-discretion standard even if a defendant claims that exclusion of evidence deprived him of “his constitutional right to present a complete defense.” *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006).

involving allegations of sexual abuse of minor children, evidence of a prior false accusation by an alleged victim of sexual abuse is admissible both to attack the *credibility* of the complainant and as *substantive evidence* tending to prove that the current offense did not occur. *Id.* at 340 (emphasis added). However, admission of a prior false accusation is predicated upon the district court's threshold determination that a *reasonable probability of falsity* exists.¹⁰ *Id.* (emphasis added). With this standard in mind, we address each piece of challenged evidence.

Goddaughter Incident

Henderson contends that the district court erred in excluding evidence that A.R. falsely accused the goddaughter of sexual assault. Because this alleged incident was not part of Henderson's proffer, he requested to voir dire A.R.'s mental-health case manager outside the presence of the jury to allow the district court to rule on the admissibility of her testimony about this alleged false accusation.

During the voir dire, A.R.'s case manager explained that she learned of this alleged prior false accusation from A.R.'s mother. This occurred during a session with both A.R. and her mother when they were discussing A.R.'s sexually inappropriate behavior around peers. A.R.'s mother, according to the case manager, described a false allegation made by A.R. against the goddaughter. The case manager then turned to A.R., who admitted the

¹⁰ The district court must make this determination outside the presence of the jury. *Id.*

allegation was false. After hearing about the false allegation against the goddaughter, the following exchange took place:

[THE COURT]: Where did that come from if you put that in your reports?

[CASE MANAGER]: Okay.

[THE COURT]: How did that get its genesis?

[CASE MANAGER]: Sure. Well, the false accusations, I mean, she made false accusations towards it was a [g]oddaughter to the family that stayed with them and that's -- that's where the false accusations and the reason why I put that in the reports.

[THE COURT]: Was it the --

[CASE MANAGER]: Because --

[THE COURT]: -- one time?

[CASE MANAGER]: That accusation, yes.

[THE COURT]: Okay. And how did you learn of that accusation?

[CASE MANAGER]: Mom informed me of that.

[THE COURT]: Okay. And how -- So it was mom determining that it was false?

[CASE MANAGER]: Mom was determining it was false, yes.

[THE COURT]: Okay. Did you ever talk with [A.R.] about that?

[CASE MANAGER]: Yes.

[THE COURT]: Okay. And did [A.R.] say it was false.

[CASE MANAGER]: *A.R. admitted it was false, yes.*

...

[THE COURT]: Okay. Was it one time that you talked with [A.R.] about that or was that revisited, do you know?

[CASE MANAGER]: It was probably just one time.

[THE COURT]: Okay. Do you -- Do you recall how you raised it with [A.R.]?

[CASE MANAGER]: How I brought it up with her?

[THE COURT]: Yeah.

[CASE MANAGER]: Mom and I were having a conversation about just her inappropriate behavior, sexually inappropriate behavior with peers and obsessive behavior with peers and that's -- and then it just came up, mom brought it up.

[THE COURT]: So was [A.R.] sitting in the room with mom and you --

[CASE MANAGER]: Yes.

[THE COURT]: -- and mom said she made this false accusation against the God --

[CASE MANAGER]: Yes.

[THE COURT]: -- mother's daughter or something?

[CASE MANAGER]: Right.

[THE COURT]: And then did you just turn to [A.R.] and say did you or like --

[CASE MANAGER]: Yes.

[THE COURT]: Okay. Was there any private discussion with [A.R.] about this?

[CASE MANAGER]: I didn't have a private conversation, I did have communication with the therapist about what was brought up so the therapist was made aware to follow up with her on it.

[THE COURT]: Okay. And this would be a therapist at Kenwood?

[CASE MANAGER]: No, this was probably Claire at the time because Kenwood wasn't in place yet, I don't believe.

[THE COURT]: Okay. And now the reports say her tendency, I think, were to make false accusations in the plural --

[CASE MANAGER]: Um-hum.

[THE COURT]: -- were there other ones that you were aware of?

[CASE MANAGER]: I'm trying to jog my memory.

[THE COURT]: Sure, right.

[CASE MANAGER]: You know, I mean, I know there's been inappropriate interactions with peers.

[THE COURT]: And are you -- you're treating that as a separate issue, that deals with her inappropriate sexual boundaries perhaps --

[CASE MANAGER]: Right.

[THE COURT]: -- or something but dealing with --

[CASE MANAGER]: Accusations.

[THE COURT]: -- accusations of sexual misconduct against her I think is how it's worded in the document.

[CASE MANAGER]: Right. I mean, that's the one that pops out.

[THE COURT]: Okay.

[CASE MANAGER]: With the [g]oddaughter.

[THE COURT]: And is it your understanding that—What was your understanding of the accusation that was made? Like do you even know what the accusation was that [A.R.] said happened initially?

[CASE MANAGER]: Yes.

[THE COURT]: Okay. What was that?

[CASE MANAGER]: So [A.R.] reported to her mom initially that her [g]oddaughter was the one that was perpetrating on her, and then when mom asked [g]oddaughter further the [g]oddaughter said no, absolutely not, [A.R.] was standing over me masturbating while watching me sleep. And [A.R.] initially reported that it was her sleeping and not the [g]oddaughter.

[THE COURT]: Okay. And so this would have happened one time, is your understanding?

[CASE MANAGER]: Yes.

[THE COURT]: Was there any—and so that was— Was that the extent of what you understood the situation involving?

[CASE MANAGER]: Yes.

[THE COURT]: Fair to say you never talked to the [g]oddaughter?

[CASE MANAGER]: Right, no.

Later, the goddaughter incident came up in voir dire questioning by defense counsel as follows:

[DEFENSE COUNSEL]: Do you recall if the [g]oddaughter was also a PCA for a period of time with -- for [A.R.]?

[CASE MANAGER]: I'm not sure.

[DEFENSE COUNSEL]: And you're -- the redacted records that I received have numerous notations in 2013 and 2014, and I can go through the very specific dates that [A.R.] shouldn't be left alone with an adult due to past sexual allegations, false allegations, do you know what that's about, past false accusations?

[CASE MANAGER]: Um-hum. Yeah, I mean, like I said, when I first started working with her mom made that -- or told me about the incident between her

and [g]odmom and so -- or the [g]odchild and so myself and other professionals decided it would be in our best interests not to meet with [A.R.] individually or alone and always have mom present or another adult present or out in the community.

Finally, the prosecutor asked A.R.'s case manager about the alleged incident and the following exchange occurred:

[PROSECUTOR]: Now, if I'm understanding you correctly the inclusion in the reports referencing this false accusation about the [g]oddaughter about inappropriate touching, that came to be from a conversation you had with her mother, [Q.R.]; is that right?

[CASE MANAGER]: That's correct.

[PROSECUTOR]: And did this conversation take place in their home or in the office?

[CASE MANAGER]: In their home.

[PROSECUTOR]: And what specific touching did [A.R.] report?

[CASE MANAGER]: [A.R.] admitted to --

[THE COURT]: Well, okay, just -- I want to be careful, is it you're asking what [A.R.] reported to mom, or what mom reported [A.R.] said, or what [A.R.] said to this witness?

[PROSECUTOR]: I want to know what [A.R.] told [case manager].

[THE COURT]: Okay.

[PROSECUTOR]: About the sexual touching.

[CASE MANAGER]: That she did it to herself, it wasn't her Godmom [sic].

[PROSECUTOR]: That [A.R.] had masturbated?

[CASE MANAGER]: Yes.

[PROSECUTOR]: And what did mom -- Did [A.R.] admit to you that she had lied?

[CASE MANAGER]: Yes.

[PROSECUTOR]: What did she say?

[CASE MANAGER]: That she actually did it.

[PROSECUTOR]: And she had told mom that her [g]oddaughter had masturbated in front of her?

[CASE MANAGER]: Right.

[PROSECUTOR]: *And she said, actually no, it was me who was masturbating?*

[CASE MANAGER]: *That's correct.*

[PROSECUTOR]: And any -- Any inclination or any indication that these reports were made to law enforcement?

[CASE MANAGER]: Yes, I believe they were.

[PROSECUTOR]: Do you have any record of that?

[CASE MANAGER]: I don't have a record, though --

[PROSECUTOR]: Okay. So --

[CASE MANAGER]: -- no.

[PROSECUTOR]: -- this is where it's getting --

[THE COURT]: We really just need you to testify from your knowledge, ma'am.

[PROSECUTOR]: If you know.

[CASE MANAGER]: Okay.

[PROSECUTOR]: And what --

[CASE MANAGER]: No.

[PROSECUTOR]: -- I'm worried is happening is that you're hearing questions and you're assuming there's facts to support these questions.

[CASE MANAGER]: Um-hum.

[PROSECUTOR]: And please don't assume that.

[CASE MANAGER]: Okay.

[PROSECUTOR]: [Defense counsel] can ask you whatever she wants, I can ask you whatever I want, all you have to do on this witness stand is tell the truth.

[CASE MANAGER]: Okay.

[PROSECUTOR]: If you don't know if the police were called the answer is I don't know.

[CASE MANAGER]: Okay.

[PROSECUTOR]: If you know the police were called the answer is yes, the police were called.

[DEFENSE COUNSEL]: Objection, Your Honor, this is --

[THE COURT]: This is totally fine, I would be saying it if she weren't. I mean, I -- I want to be accurate here.

[CASE MANAGER]: Um-hum.

[THE COURT]: And we're not asking for supposition. We're not asking for guessing. We're asking for your knowledge of things. Do you know if the police were contacted as a result of any statement that [A.R.] made to her mom about the PCA, [the goddaughter]?

[CASE MANAGER]: I do not know.

[THE COURT]: Okay.

[PROSECUTOR]: Other than mom saying it was false did you have any other information regarding that instance?

[CASE MANAGER]: No.

[PROSECUTOR]: So you don't know if [the goddaughter] did talk to her -- or did touch her and [A.R.] recanted?

[CASE MANAGER]: Right, I do not know.

[PROSECUTOR]: You never talked to [the goddaughter]?

[CASE MANAGER]: I never spoke with [the goddaughter].

Following the voir dire of A.R.'s case manager, the district court excluded the goddaughter incident because it determined that there was "no clear evidence that there was a false report by [A.R]." The district court also stated that A.R.'s case manager would be an inappropriate witness given that any potential false allegation was hearsay within hearsay.

Based on our review of the record, we conclude that Henderson established that A.R.'s allegation against the goddaughter met the *Goldenstein* reasonable-probability-of-falsity standard. First, we observe that the district court's determination that there was no *clear evidence* of a prior false accusation is not the proper application of *Goldenstein*. *Goldenstein* sets forth a reasonable-probability-of-falsity standard, which requires less than "clear evidence." And when we apply the correct legal standard, we conclude that A.R.'s admission to her case manager—that her accusation against the goddaughter was false—meets this *Goldenstein* threshold.

We acknowledge that after the case manager testified that A.R. admitted to the false allegation, she explained that she only learned of the false accusation from the mother. But she never retreated from her testimony that after the mother (in a room with both A.R. and the case manager) laid out the false allegation, A.R. admitted it was just that: false. Certainly, had this evidence been admitted, the prosecutor could have cross-examined A.R.'s case manager about her knowledge of this incident which would have allowed the jury to make a determination about the case manager's credibility. But that determination,

in light of a defendant's right to present a complete defense, should be left to the jury. The district court erred in excluding evidence of the goddaughter incident when A.R. admitted it was false.

This error is not rectified by the district court's premature conclusion that the case manager's proposed testimony was "hearsay within hearsay." We first note that when the district court conducted its hearsay analysis, it attributed the statement to A.R.'s mother, while the record reflects an admission by A.R. herself. But more fundamentally, as Henderson correctly notes, an important distinction exists between a district court's threshold determination of whether the falsity requirement has been met and a subsequent decision regarding the admissibility of the proffered evidence. This appeal deals with the threshold *Goldenstein* issue. The separate question of the evidence's admissibility is hypothetical and not before us in this appeal.¹¹

Because the district court's evidentiary ruling resulted in the erroneous exclusion of Henderson's evidence in violation of his constitutional rights, the verdict must be reversed unless the error was harmless beyond a reasonable doubt. *See State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994). To meet this high standard, we must conclude "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." *Id.* But, if there is even a reasonable

¹¹ We further note that the state did not make an appellate argument on this "hearsay within hearsay" basis. *See State v. Stockwell*, 770 N.W.2d 533, 541 (Minn. App. 2009) (stating that "arguments not made in appellant's principal brief will be deemed waived"), *review denied* (Minn. Oct. 28, 2009).

possibility that the verdict might have been different, the error is prejudicial and a new trial is necessary. *Id.* The strength of the evidence is one factor we consider in this assessment. *State v. Carlson*, 268 N.W.2d 553, 561 (Minn. 1978).

The state argues that even if the district court's ruling under *Goldenstein* was erroneous, it was harmless beyond a reasonable doubt given the strength of the state's case. Specifically, the state argues that any error was harmless because A.R. described how Henderson sexually assaulted her and that A.R.'s half-sister had no motive to testify untruthfully about her father when she corroborated certain details of A.R.'s testimony.

We disagree. Had evidence of A.R.'s false accusation against the goddaughter been admitted and its damaging potential fully realized, it would have discredited A.R.'s testimony. And the bulk of the other state witnesses—A.R.'s therapist, the CornerHouse interviewer, and law enforcement—would have added little value in proving Henderson's guilt, given that this testimony largely summarized what A.R. told others. As a result, if the jury had found A.R. not credible, the state's case would have relied on the testimony of A.R.'s half-sister. Yet A.R.'s half-sister only partially corroborated A.R.'s account. She testified about suspicious circumstances where Henderson was allegedly alone with A.R. But A.R.'s sister did not witness Henderson sexually abusing A.R.

We are particularly concerned about the prejudicial impact of this admissibility error given the testimony of A.R.'s teacher. This special-education teacher, who had A.R. in class for three to six hours a day, every school day in 2013-14, testified that she considered A.R. untruthful.

Because we are not satisfied beyond a reasonable doubt that a jury would have convicted Henderson had it heard evidence of A.R.'s prior false accusation against the goddaughter, we determine that the district court's error prejudiced Henderson by not allowing him to present a complete defense. Without this evidence, Henderson was unable to prove that A.R. fabricated the allegations against him. Therefore, because the district court abused its discretion in excluding this evidence, we reverse and grant Henderson a new trial.¹²

Schoolmate Incident and Threat to Accuse Father of Sexual Abuse

Although we are granting Henderson a new trial, we choose to address Henderson's *Goldenstein* arguments with respect to the alleged schoolmate incident and A.R.'s alleged threat to accuse her father of sexual abuse in the interest of judicial economy as these issues may arise again on remand.¹³ See, e.g., *State v. Hunter*, 857 N.W.2d 537, 543 (Minn. App. 2014). As with the exclusion of evidence relating to the goddaughter incident, we review the district court's exclusion of the challenged evidence for an abuse of discretion. *Nunn*, 561 N.W.2d at 906-07.

¹² The dissent also accords weight to Henderson's decision not to cross-examine A.R. about the goddaughter incident. But, pursuant to *Goldenstein*, evidence of a prior false accusation by an alleged victim can be admissible either to attack the credibility of the individual or as substantive evidence tending to prove the offense did not occur. 505 N.W.2d at 340. As a result, Henderson's decision to pursue the latter approach is consistent with *Goldenstein*.

¹³ In his brief, Henderson contends, in general, that the district court erroneously excluded "all the evidence" that A.R. made multiple prior false allegations of sexual abuse. But Henderson only makes specific arguments regarding the three allegations discussed above. Accordingly, we limit our analysis here to Henderson's fully developed arguments.

Henderson argues that the district court erred by excluding evidence of an incident where A.R. purportedly falsely accused a schoolmate of dragging her into a school bathroom and touching her breasts. While Henderson’s initial offer of proof indicated that the schoolmate incident was false based on an investigation that had been conducted by the school—including a review of surveillance video—Henderson did not investigate this incident until he requested school records during trial. Following his request, the school responded that it had neither records nor surveillance video relating to this incident. While the district court had initially ruled that there was a reasonable probability that A.R. had made a false accusation about this incident, it reversed its prior ruling, determining that Henderson had not presented sufficient evidence to meet his burden under *Goldenstein*. Based on our review of the record, we agree. There was insufficient evidence with respect to this alleged incident to show there was a reasonable probability of falsity. Therefore, we conclude that the district court did not abuse its discretion in excluding evidence of the schoolmate incident.

Finally, Henderson argues that the district court erred by excluding evidence that A.R. allegedly threatened to falsely accuse her father of sexual abuse. This incident was included in Henderson’s proffer, and he also sought to bring in this evidence through A.R.’s case manager at trial. Notably, rather than being a false accusation, this evidence was offered as an instance where A.R. *threatened* to falsely accuse her father of sexual abuse rather than as an actual false accusation.¹⁴ Because this alleged *threat* to make a false

¹⁴ The record is not clear as to whether A.R. was referring to her biological father or Henderson.

allegation does not meet the *Goldenstein* standard—which requires an actual accusation—the district court did not err in excluding evidence that A.R. threatened to accuse her father of sexual abuse.

In sum, we affirm the district court’s rulings with respect to the alleged incident involving A.R.’s schoolmate and her alleged threat to falsely accuse her father of sexual abuse. Neither meets the probability-of-falsity standard set forth in *Goldenstein*. Therefore, Henderson was not deprived of his right to present a complete defense based on these evidentiary rulings.

II. The district court did not err by excluding evidence of A.R.’s alleged source of sexual knowledge.

Henderson also contends that the district court abused its discretion by denying the admission of evidence that A.R. accessed sexual materials on her school-issued iPad, which he intended to use to show her alternative source of knowledge regarding sexual matters.¹⁵ He argues that this evidence was admissible under the source-of-knowledge exception to rule 412—the rape-shield rule—of the Minnesota Rules of Evidence. “[A] trial court has discretion to admit evidence tending to establish a source of knowledge of or familiarity with sexual matters in circumstances where the jury otherwise would likely infer that the defendant was the source of the knowledge.” *State v. Benedict*, 397 N.W.2d 337, 341 (Minn. 1986). In making this determination, the district court must “balance the probative value of the evidence against its potential for causing unfair prejudice.” *Id.*

¹⁵ While Henderson argues that A.R. accessed pornography, the record does not reflect that this characterization is accurate. As such, we refer to the materials allegedly accessed by A.R. as “sexual materials.”

Based on our review of the record, this case did not have circumstances from which the jury would otherwise likely infer that Henderson was the source of A.R.’s sexual knowledge. There was no testimony or evidence relating to A.R.’s sexual knowledge being unusual for her age or her developmental delays. In addition, the state did not argue that Henderson was A.R.’s source of sexual knowledge. The record also indicates that A.R.’s use of her iPad to search for information about body parts was different from the abuse she claimed that she suffered from Henderson. Therefore, we conclude that the district court did not err in excluding evidence relating to A.R.’s use of her iPad to access sexual materials.¹⁶

III. Henderson is not entitled to relief based on his pro se claims.

In his pro se brief, Henderson asserts that he is entitled to a new trial because he was denied a defense as the jury only “got a chance to see and hear a picture perfect model of the alleged victim; along with a mountain [of] fabricated claims executed by the prosecutor.” In making these assertions, Henderson points to inconsistencies in the police reports and A.R.’s testimony as demonstrating that he has been wrongly convicted and imprisoned. However, because Henderson’s assertions are not supported by legal

¹⁶ Even if the district court erroneously excluded the iPad evidence, the exclusion was harmless. *See Post*, 512 N.W.2d at 102. Through his cross-examination of A.R. and his closing argument, Henderson advanced his theory to the jury that A.R. had alternative sources of sexual knowledge. For example, Henderson questioned A.R. about watching R-rated movies and television shows about adult and criminal topics. And in his closing argument, Henderson argued that A.R. had access to sources of information—through the internet, television, or movies—where she could have learned about sexual scenarios. These examples served the same purpose that the iPad evidence would have served in demonstrating alternative sources of A.R.’s sexual knowledge. Accordingly, any error in excluding the iPad evidence was harmless.

arguments, we decline to consider them. *See State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008). Henderson also refers to a recorded jail call between him and his daughter, A.R.'s half-sister, where he claims they discussed her memory of the incidents she testified to, and she said she did not remember. But we decline to address Henderson's above assertions because they are outside the appellate record. *See State v. Maidi*, 520 N.W.2d 414, 419-20 (Minn. App. 1994), *aff'd* (Minn. Sept. 15, 1995). Therefore, Henderson is not entitled to relief based on his pro se claims.

Affirmed in part, reversed in part, and remanded.

WORKE, Judge (concurring in part, dissenting in part)

I concur in the majority opinion affirming the district court's rulings on the exclusion of purported evidence relating to A.R. falsely accusing a schoolmate of touching her breasts in a school bathroom, A.R. threatening to falsely accuse her father of sexual abuse, and A.R. accessing sexual materials on her iPad. But I do part company with the majority and would also affirm the district court's like-minded determination that there was insufficient reliable evidence from A.R.'s case manager to support the purported allegation that A.R. fabricated a claim that the goddaughter sexually assaulted her.

The majority concludes that the district court erred in its determination that Henderson failed to show clear evidence that A.R. falsely reported the goddaughter sexually assaulted her.¹ But the district court's ruling conformed to the *Goldenstein* reasonable-probability-of-falsity standard that is required prior to the admission of a victim's prior false accusation of sexual misconduct. *See State v. Goldenstein*, 505 N.W.2d 332, 340 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993).

While the majority is correct that A.R.'s case manager, during her voir dire, stated that A.R. had admitted that her accusation against the goddaughter was false, this narrow reading of the voir dire distorts the record. Read in its entirety, a review of the case

¹ The majority claims that the district court did not apply the correct legal standard when it determined that there was no clear evidence of a false report by A.R. In my view, the district court was not using a "clear-evidence" standard, as the district court had made earlier rulings citing the *Goldenstein* reasonable-probability-of-falsity standard. Rather, the district court viewed the testimony as a whole in light of the case manager's responses on direct *and* cross-examination; it determined that there was no clear evidence of the alleged incident that demonstrated a reasonable probability of falsity.

manager's voir dire shows that she did not remember what happened, she was unsure about whether A.R. or A.R.'s mother stated that the allegations were false, and she did not investigate by speaking with either the goddaughter or A.R. In addition, Henderson did not attempt to cross-examine A.R. about this alleged incident.²

“Evidentiary rulings generally rest within the district court’s discretion and will not be reversed absent a clear abuse of that discretion.” *State v. Johnson*, 568 N.W.2d 426, 432 (Minn. 1997). This court “will not lightly overturn a [district] court’s evidentiary ruling,” and “[a]bsent a clear abuse of discretion, the ruling will stand.” *State v. Kelly*, 435 N.W.2d 807, 813 (Minn. 1989).

During the voir dire of A.R.’s case manager, the district court not only observed and heard her, but also made pointed inquiries to attempt to clarify her statements about this alleged incident. During the prosecutor’s cross-examination of A.R.’s case manager, the district court purposefully interjected itself into the following exchange to clarify her knowledge of the genesis of the possible false allegation:

[THE] COURT: And we’re not asking for supposition. We’re not asking for guessing. We’re asking for your knowledge of things. Do you know if the police were contacted as a result of any statement that [A.R.] made to her mom about the [goddaughter]?

[CASE MANAGER]: I do not know.

[THE] COURT: Okay.

[PROSECUTOR]: Other than [A.R.’s] mom saying it was false did you have any other information regarding that instance?

² While Henderson did not attempt to cross-examine A.R. about this alleged incident—presumably for strategic reasons due to her cognitive limitations—the majority’s holding essentially grants Henderson a new trial because of his strategic decision to limit the manner in which he presented his defense.

[CASE MANAGER]: No.

[PROSECUTOR]: So you don't know if [the goddaughter] did . . . touch her and [A.R.] recanted?

[CASE MANAGER]: Right, I do not know.

[PROSECUTOR]: You never talked to [the goddaughter]?

[CASE MANAGER]: I never spoke with [the goddaughter].

We afford great discretion to the district court in its determination as to what evidence is proper and admissible. As a reviewing court, it is difficult to measure the certainty and weight of testimony from a written transcript. Under the *Goldenstein* reasonable-probability-of-falsity standard, a district court is implicitly directed to evaluate the relevancy, credibility, and the weight of such evidence in determining whether it is admissible. 505 N.W.2d at 340. This is so because the district court is directed to act as the trier of fact on the threshold determination as to whether a reasonable probability of falsity exists with respect to the victim's previous reports of alleged sexual assault. *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (recognizing that trier of fact is in best position to determine credibility and weight of evidence). Based on my review of the record, the district court did just that.

In my view, the record shows that A.R.'s case manager presented as an unreliable witness who was enormously confused given the inconsistencies in her vague and contradictory statements about this incident. After considering the voir dire testimony and arguments from the parties, the district court determined that "[t]here is no clear evidence that there was a false report by [A.R]." It appears that the only aspect about the incident that the case manager was certain of was that she did not investigate the incident, as she stated she did not follow-up with those allegedly involved. Based on a reading of the record

in its entirety, there was never any clear indication of a false allegation by A.R. against the goddaughter and thus the district court did not err in excluding such evidence.

Henderson failed to establish that there was a reasonable probability of falsity, as required by *Goldenstein*, that A.R. falsely accused the goddaughter of sexual assault. A.R.'s case manager was an unreliable witness and her testimony about this incident, had it been deemed admissible, would have confused the jury. *See* Minn. R. Evid. 403 (stating that even relevant evidence may be excluded “if its probative value is substantially outweighed by the danger of . . . confusion of the issues, or misleading the jury”).

In addition, as noted by the district court, this evidence was inadmissible hearsay. *See* Minn. R. Evid. 802. In *State v. Pass*, our supreme court recognized that “a defendant’s due process right to present a complete defense yields to the application of an evidentiary rule unless the rule ‘infringe[s] upon a weighty interest of the accused and [is] arbitrary or disproportionate to the purposes [the rule is] designed to serve[,]’” or unless the rules of evidence “‘serve no legitimate purpose or . . . are disproportionate to the ends that they asserted to promote.’” 832 N.W.2d 836, 841-42 (Minn. 2013) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 324-25, 326, 126 S. Ct. 1727, 1731, 1732 (2006)). The United States Supreme Court has held that the constitutional right to present a complete defense does not alter a state district court’s “ordinary evidentiary rulings” so long as the application of the rules of evidence “serve[s] the interests of fairness and reliability.” *Crane v. Kentucky*, 476 U.S. 683, 689-90, 106 S. Ct. 2142, 2146 (1986). Therefore, the district court did not clearly abuse its discretion by excluding evidence of this incident.

Because in my view there was no error in the district court's exclusion of evidence of the alleged incident involving the goddaughter, a prejudice analysis is not warranted in this case. I would also note that because the *Goldenstein* standard is vague, there is a strong probability that a case involving confusion about the reasonable-probability-of-falsity standard will arise in the future.³ See 505 N.W.2d at 340 (stating only that before evidence of prior false accusation is admissible, district court must make a threshold determination that "a reasonable probability of falsity exists" without further explanation on how a district court is to go about arriving at this conclusion).

I commend the district court for its painstaking analysis and the care with which it reviewed all of the evidence in this difficult case. Because the district court did not clearly abuse its discretion by excluding evidence that A.R. allegedly falsely accused the goddaughter of sexual assault, I would affirm. Therefore, in my opinion, the district court did not violate Henderson's right to present a complete defense and he is not entitled to a new trial.

³ Not only does this vague standard make it difficult for the district court to make a determination about the admissibility of a victim's alleged prior false accusation, but the lack of a clear standard makes it difficult for an appellate court to determine whether the district court *clearly* abused its discretion in ruling on such evidence.