STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0932

State of Minnesota,
Appellant,

vs.

Carr Leon Hagerman,
Respondent.

Filed January 21, 2020
Reversed
Hooten, Judge

Scott County District Court
File No. 70-CR-18-10396

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

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for appellant)

Piper Kenney Wold, Law Office of Piper Kenney Wold, Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

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

HOOTEN, Judge

In this appeal from a pretrial order in a criminal sexual conduct case, the state argues that: (1) the district court's decision to allow evidence of a separate sexual assault of the

complainant by another perpetrator critically impacts the state's case, and (2) the district court's allowance of such evidence is in violation of Minnesota's rape-shield law, Minn. Stat. § 609.347, subd. 3 (2016), and constitutes an abuse of discretion. We reverse.

FACTS

The state charged respondent Carr Leon Hagerman with two counts of first-degree criminal sexual conduct after receiving information of the following alleged sexual assault. In the fall of 2017, the complainant was working as a part-time photographer at the Renaissance Festival. She later reported that the following events occurred: On September 23, Hagerman, the festival's entertainment director, asked the complainant to take a picture from a building located at the site of the festival. Hagerman brought her to the upstairs floor of the building and into a storage room for drums, when he noticed that she was wearing a pink ribbon in solidarity with a support group for women at the festival. Angered, Hagerman ripped the ribbon off of her and began to beat her. Hagerman forced his penis into her mouth, then penetrated her anally and vaginally with a drum stick. He then penetrated her anally with his penis. He continued to beat her throughout the assault until she lost consciousness. Two days later, the complainant went to the doctor, but did not report the sexual assault. Instead, she was treated, according to her medical records, for "pain and numbness in her right hand from an injury incurred two days earlier."

On October 30, 2017, at the urging of her therapist and a friend, the complainant presented at the hospital for a mental health evaluation. Following discharge, the complainant's friend was driving her to the police station to report Hagerman, when the

complainant became agitated and fled the car. She fell and hit her head. Police and paramedics arrived and brought her to North Memorial Hospital for treatment.

When the complainant first arrived at the hospital, she told emergency room staff that she was sexually assaulted by a colleague in September and had been depressed since the assault. Hospital records show that on November 3, three doctors treated the complainant. In the early afternoon, she saw a psychiatrist and told him that, in addition to being sexually assaulted in September, she was also sexually assaulted the weekend before presenting at the hospital. In the evening, she saw a family medicine physician. The physician noted, "Patient reports that she was sexually assaulted (vaginally) in September by someone she worked with, and then again, rectally, by a different person this past weekend . . . Patient also states that she has had rectal bleeding since the last assault that is now scant in quantity." About an hour later, a third physician examined the complainant for an "evaluation regarding sexual assault." The physician's notes indicate that the complainant "states she was sexually assaulted a month and a half ago and again a week ago by a different person. She stated that the second assault involved rectal penetration and since that time she has been experiencing pain for about 1–2 hours following defecation," but reported that she no longer had rectal bleeding.

Four days later, on November 7, a Scott County Sheriff's Office detective interviewed the complainant. The detective began the interview by stating, "I was made aware of an incident between you and another male at the Renaissance Festival. So, we just kind of want you to explain to me what happened during that incident." The

complainant then explained, in detail, the sexual assault. She was discharged from the hospital on November 11, 2017.

The state charged Hagerman with two counts of criminal sexual conduct in the first degree on June 12, 2018. On March 19, 2019, Hagerman moved to admit evidence of the complainant's medical records in which she reported that she had been recently sexually assaulted by another individual in a separate incident.

A pretrial motion in limine hearing was held on March 21, 2018. At the hearing, Hagerman argued that the complainant made inconsistent statements to her physician and the police because she told her physician that Hagerman penetrated her vaginally and that she was penetrated anally in the second sexual assault, while she told the police that Hagerman penetrated her vaginally, anally, and orally. He also argued that the complainant's accusation of a second unrelated sexual assault is not precluded from admission by Minnesota's rape-shield law because it was a false accusation. The state argued that there was nothing to indicate that the allegation of a second sexual assault was in any way fabricated.

The district court granted Hagerman's motion. It decided, "Information contained in the Complainant's North Memorial medical records dated on and about November 3, 2017, regarding a separate sexual assault, including any discrepancies and inconsistencies between that event and the present charges, may be elicited at trial." The state moved for reconsideration, and the district court agreed to reconsider its decision.

The district court issued an order after reviewing the parties' submissions and the entire record and affirmed its prior decision to rule admissible the statements made

regarding the alleged second sexual assault. The district court noted that it "intends to afford Defendant the opportunity to highlight the possible contradictions or discrepancies in Complainant's statements, where these same contradictions or discrepancies may well factor heavily in a factfinder's determination of substantive evidence and Complainant's credibility." The district court considered the "competing interests" of the parties—the protections afforded by the rape-shield law and Hagerman's right to present a full and complete defense. The district court weighed the interests and determined that Hagerman's right to present a full defense included any discrepancies in the complainant's reports. The district court also determined that there was a reasonable probability that the complainant's second allegation of sexual assault was false. This appeal follows.

D E C I S I O N

The state challenges the district court's pretrial order affirming its decision to admit statements about the second allegation of sexual assault. The state argues that (1) the admission of evidence that the complainant reported being sexually assaulted by another individual in a separate incident critically impacts the state's case, and (2) the district court abused its discretion by admitting such evidence in violation of Minnesota's rape-shield law.

I. Admission of the complainant's second separate report of sexual assault by another individual will have a critical impact on the state's ability to prosecute Hagerman.

In a state pretrial appeal, appellate courts will only reverse if the state can "clearly and unequivocally show both that the trial court's order will have a critical impact on the state's ability to prosecute the defendant successfully and that the order constituted error."

State v. Zanter, 535 N.W.2d 624, 630 (Minn. 1995) (quotations omitted). This critical-impact test applies to pretrial orders admitting evidence. *State v. Skapyak*, 702 N.W.2d 331, 335 (Minn. App. 2005), *review denied* (Minn. Oct. 18, 2005). This court "view[s] critical impact as a threshold issue and will not review a pretrial order absent such a showing." *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017) (quotations omitted).

The critical-impact test "is intended to be a demanding standard" and requires the state to show that the ruling "'significantly reduces the likelihood of a successful prosecution.'" *State v. Rambahal*, 751 N.W.2d 84, 89 (Minn. 2008) (quoting *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005)). While a demanding standard, "it is a fair and workable rule." *Zanter*, 535 N.W.2d at 630.

Minnesota's rape-shield law strictly limits the admissibility of a victim's sexual history. *State v. Kobow*, 466 N.W.2d 747, 750 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991). "[P]revious 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 procedure provided in Rule 412." Minn. R. Evid. 412(1). A victim's previous sexual conduct, under Minn. Stat. § 609.347, subd. 3, includes allegations of sexual abuse. *Kobow*, 466 N.W.2d at 750. The district court must determine whether the probative value of the evidence of a victim's sexual conduct is substantially outweighed by its inflammatory or prejudicial nature in order to be admitted. Minn. R. Evid. 412(2)(C).

The state argues that the district court's ruling the evidence admissible that the complainant reported a second sexual assault critically impacts the outcome of the state's case against Hagerman because the case rests on the complainant's credibility.

In this case, the district court found that "the credibility of Complainant will inevitably be paramount to the jury's decision regarding Defendant's guilt or innocence." We agree that the complainant's credibility is highly important to the defense's case. But the complainant's second allegation of sexual assault—that she was penetrated anally without her consent by another individual about one month after the incident in question—is evidence of sexual conduct that is considered highly prejudicial to a jury. *See State v. Olsen*, 824 N.W.2d 334, 340 (Minn. App. 2012) (admitting evidence of a victim's prior sexual conduct is "highly prejudicial"). The district court ruled as admissible evidence not only what is clearly protected by Minnesota's rape-shield law, but irrelevant evidence intended only to discredit the complainant. As the district court found, the "likely implication [that the complainant's statements were inconsistent] is that the statements are false." If the jury were to consider evidence of the second allegation of sexual assault, it is likely that they would be swayed by irrelevant inferences that either the complainant lied about one or both sexual assaults or that she somehow caused the sexual assaults to occur. Both highly prejudicial inferences are protected against by the rape-shield law. Because the admission of the complainant's report of a second unrelated sexual assault would allow for highly prejudicial inferences by the jury, we hold that admitting her statements would have a critical impact on the state's case.

II. The district court abused its discretion by ruling admissible evidence of the complainant's unrelated and irrelevant report of sexual abuse by another individual.

The state argues that the district court abused its discretion by ruling admissible evidence that the complainant made a second sexual assault allegation against another

individual. We "largely defer to the trial court's exercise of discretion in evidentiary matters and will not lightly overturn a trial court's evidentiary ruling." *State v. Kelly*, 435 N.W.2d 807, 813 (Minn. 1989). Evidentiary rulings stand unless there is a clear abuse of discretion. *Id.*

The rape-shield law "serves to emphasize the general irrelevance of a victim's sexual history." *State v. Crims*, 540 N.W.2d 860, 867 (Minn. App. 1995), *review denied* (Minn. Jan. 25, 1996). The law prohibits admission of a victim's prior sexual assault allegation, unless the procedure in Minn. R. Evid. 412 is followed. *Kobow*, 466 N.W.2d at 750. Evidence of prior sexual conduct may be admitted when "it is constitutionally required by the defendant's right to due process, his right to confront his accuser, or his right to offer evidence in his own defense." *Id.* Yet even in doing so, the district court must balance the probative value of the evidence against its "inflammatory or prejudicial nature." Minn. R. Evid. 412(2)(C); *Kebow*, 466 N.W.2d at 750. When a conflict arises between the defendant's constitutional rights and the rape-shield law, "the defendant's constitutional rights require admission of evidence excluded by the rape shield law." *Crims*, 540 N.W.2d at 866.

A. The complainant's out-of-court statements were improperly ruled admissible as inconsistent statements.

The district court first addressed whether the complainant's statements regarding the second unrelated allegation of sexual assault by another individual is admissible as inconsistent statements necessary to Hagerman's right to present a full and complete

defense. The district court found that the complainant's statements are highly relevant based on their inconsistencies.

The district court concluded that this case was similar to our decision in *State v. Carroll*, 639 N.W.2d 623 (Minn. App. 2002), *review denied* (Minn. May 15, 2002). In that case, the defendant was charged with two counts of criminal sexual conduct after a teenage girl reported that the defendant had inappropriately touched her. *Carroll*, 639 N.W.2d at 626. The victim had previously been questioned by police after an allegation arose that the defendant was found lying in bed with her. *Id.* at 625. In a videotaped statement, the victim told officers that she had *not* been inappropriately touched by anyone. *Id.* Nearly a year later, she came forward and, in a second videotaped statement, told officers that the defendant had inappropriately touched her and that she had been inappropriately touched by another man. *Id.* at 626. At trial, the district court admitted both videotaped statements into evidence. *Id.* Although the district court admitted the inconsistent statements, it refused to allow the defense to cross-examine the victim on the inconsistency and prohibited any reference to the inconsistency in closing argument. *Id.* The jury found the defendant guilty, and he appealed. *Id.*

This court considered whether the defendant's constitutional rights mandated that the defense should be able to cross-examine the victim regarding her inconsistent statements. *Id.* at 627. Because the jury heard the conflicting statements already, this court found that "due process mandates appellant have the right to impeach [the victim] through cross-examination as to those inconsistent statements, and now her claim that not one man, but rather two different individuals, had inappropriately touched her." *Id.* at 629. This

court further emphasized that when evidence is "admitted in a trial and heard by the jury, thus giving the jury the right to consider it for whatever it is worth, we cannot fathom a case where either the state's attorney or the defendant's attorney is not allowed to refer to evidence that has been admitted!" *Id.*

In this case, the district court determined that "the reasoning in *Carroll* is, by and large, applicable to the instant case" because "the credibility of Complainant will inevitably be paramount to the jury's decision regarding Defendant's guilt or innocence." While we agree that the complainant's credibility is highly important, *Carroll* is not controlling as this case can be distinguished from *Carroll* in three ways. First, this is an appeal from a pretrial order on admissibility. No jury has been selected, and a jury has not yet heard any statements from the complainant. Unlike in *Carroll*, where the main question was whether the district court's ruling prohibiting the defense from questioning the victim about the conflicting statements was proper, the question here is whether the complainant's second unrelated allegation of sexual assault should be admitted in the first place.

Second, the victim's statements in *Carroll* were clearly inconsistent. In the first videotape, the victim said that "no one had ever touched her inappropriately." *Id.* at 625. In the second videotape, she said that she "had been inappropriately touched by appellant and by another man." *Id.* at 625–26. The statement in the second videotape directly contradicts her statement in the first videotape and therefore is probative of her credibility. *Id.* at 627. In this case, the complainant's statement regarding the second sexual assault is not inconsistent with her statements about being sexually assaulted by Hagerman. The complainant told one of her physicians that she had been vaginally penetrated by Hagerman

in the first sexual assault and anally penetrated by another man in the second sexual assault. Days later, police interviewed her regarding the first sexual assault. She told the detective that she had been vaginally, anally, and orally penetrated by Hagerman without her consent. The complainant's second allegation of sexual assault is, in no way, contradictory to her report that Hagerman sexually assaulted her. No inconsistency exists between her statements regarding the second sexual assault with her reports that Hagerman sexually assaulted her.

Third, and importantly, the state does not argue that the complainant's report to her physician of the first sexual assault should be excluded. It is true that the complainant's statement to her physician that Hagerman vaginally penetrated her during the assault is not entirely consistent with her report to the detective that Hagerman vaginally, anally, and orally raped her. For this reason, the defense is free to point out any discrepancies between her reports regarding the first sexual assault. Furthermore, the defense may cross-examine the complainant and refer to any discrepancies in her statements during closing argument, unlike what occurred in *Carroll*.

For these reasons, we hold that the district court abused its discretion by ruling admissible evidence of the complainant's statements regarding the second unrelated allegation of sexual assault by another individual because there are no inconsistencies in her report of a second sexual assault with her reports that Hagerman sexually assaulted her. Because there is no inconsistency, excluding the evidence of the second sexual assault does not impede in any way on Hagerman's right to present a full and complete defense.

B. The district court abused its discretion in determining that the complainant made a subsequent false accusation.

After the district court ruled admissible the second allegation of sexual assault as inconsistent statements, it discussed, as an "aside," whether there was a reasonable probability that the complainant's second allegation of sexual assault was false.[1] The district court concluded that "there is a reasonable probability that the additional allegation is false," and the state argues that this finding constitutes an abuse of discretion.

Prior false accusations of sexual abuse are admissible to attack a victim's credibility. *Goldenstein*, 505 N.W.2d at 340. "Before evidence of prior false accusations is admissible, however, the trial court must first make a threshold determination outside the presence of the jury that a reasonable probability of falsity exists." *Id.* This court has yet to define "reasonable probability of falsity" in a published opinion. *State v. Spiegel*, No. A15-1523, 2016 WL 4162778, at *2 (Minn. App. Aug. 8, 2016), *review denied* (Minn. Oct. 26, 2016). In *Spiegel*, an unpublished opinion of this court, we adopted the standard of "reasonable probability" as defined by the Minnesota Supreme Court in the context of ineffective assistance of counsel cases: "a probability sufficient to undermine confidence in the outcome." *Id.* (quoting *Leake v. State*, 767 N.W.2d 5, 10 (Minn. 2009)). In another unpublished case, we applied the probable-cause standard as the "reasonable probability of

[1] While the district court did not explicitly admit the complainant's statements regarding the second sexual assault as prior inconsistent statements, a finding of falsity is a prerequisite for admitting prior false accusations. *State v. Goldenstein*, 505 N.W.2d 332, 340 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993). Because the district court found a reasonable probability of falsity, we address the state's argument that the district court abused its discretion in making this finding.

falsity" standard. *State v. Horton*, No. A13-0181, 2014 WL 621364, at *10 (Minn. App. Feb. 18, 2014) (citing *State v. Harris*, 202 N.W.2d 878, 881 (Minn. 1972)). We need not determine which definition applies as either would suffice to conclude that the district court abused its discretion by finding that there was a reasonable probability of falsity as to the complainant's second allegation of sexual abuse.

In its order, the district court noted that the record before it was "very limited" and that the only evidence available was the "short statements given by the Complainant." While noting that it did not reach its decision with ease, the district court concluded that, "given the contradictory and inconsistent nature of the statements," the complainant's second allegation of sexual assault was false.

After a careful review of the record, we find no evidence to support the district court's determination. The stipulated record on appeal contains the complainant's statements to the police, medical records from her stay at North Memorial hospital, and the ambulance record from October 30, 2017. In the over 200-page record, the only references to the second allegation of rape are from the complainant herself. The district court considered her statements inconsistent and therefore concluded that she fabricated the second sexual assault. But the defendant has not produced even a shred of evidence to support the district court's finding. The complainant did not tell her physicians varying versions of the second allegation but was consistent in reporting that she had suffered rectal bleeding and pain from the second sexual assault that had lessened over time. Furthermore, in each instance that the complainant reported the second sexual assault, she also reported

the earlier sexual assault by Hagerman. It is unclear how the district court arrived at its conclusion given the "very limited record" before it.

Because there is no evidence in the record to support a finding that there is a reasonable probability that the complainant's second allegation of sexual assault was false, the district court abused its discretion. As the district court abused its discretion in making the threshold determination of falsity, the complainant's statements regarding the second sexual assault cannot be admitted as a subsequent false accusation.

C. The complainant's statements are not relevant.

Absent a showing that the complainant's statement regarding the second sexual assault is admissible as an inconsistent statement or a subsequent false accusation, we next determine whether there remains any relevancy to support the admission of the statements based on Hagerman's right to present a full and complete defense. We first note that the district court did not balance the probative value of admitting the statements with their "inflammatory or prejudicial nature" as required by Minn. R. Evid. 412(2)(C). To be admitted, the probative value must "substantially outweigh" the prejudicial nature of the statements of prior sexual conduct. *Id.*

In *State v. Crims*, we discussed the relevancy of a victim's past sexual history. 540 N.W.2d at 868. We noted that:

> [E]vidence of sexual activity with third persons cannot withstand a rule 403 weighing unless special circumstances enhance its probative value. Such circumstances include situations in which the evidence explains a physical fact in issue at trial, suggests bias or ulterior motive, or establishes a pattern of behavior clearly similar to the conduct at issue.

Id. (emphasis omitted) (internal citations omitted).

Because the complainant's statements were not inconsistent regarding the second sexual assault, and there is no evidence that these statements were anything but truthful, we cannot fathom any other basis for admitting the evidence of her statements in light of the rape-shield law. None of the special circumstances described in *Crims* exist here. It is clear that the defense intends to suggest that the complainant's second report of sexual assault was false. But because we have already determined that there is no evidence to support that inference, the second report of sexual assault has no bearing on the complainant's report that Hagerman sexually assaulted her. The nature of the evidence that the complainant was sexually assaulted a second time, a month after being sexually assaulted by Hagerman, is highly prejudicial and inflammatory for the reasons discussed earlier. The prejudicial nature of the statements substantially outweighs any probative value of their admission, even though we are disinclined to find that the second allegation of sexual assault carries any probative value at all.

Therefore, we conclude that the district court abused its discretion in ruling admissible the complainant's statements regarding the allegations of a second sexual assault by another individual as inconsistent statements or as a subsequent false accusation. Because there is no conflict between Hagerman's right to present a full and complete defense and the protections afforded by the rape-shield law, we reverse the district court's pretrial order.

Reversed.