STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1236

State of Minnesota,
Respondent,

vs.

Raymond Joseph Traylor,
Appellant.

Filed August 17, 2020
Affirmed
Bryan, Judge

Hennepin County District Court
File No. 27-CR-18-12641

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Slieter, Judge; and Bryan, Judge.

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

BRYAN, Judge

In this direct appeal from the judgment of conviction for first- and second-degree criminal sexual conduct, appellant argues that the district court erred by preventing him from

impeaching a witness and by entering convictions for both first- and second-degree criminal sexual conduct. Because we conclude that the district court did not abuse its discretion in preventing impeachment, and because we conclude that the two convictions were based on separate behavioral incidents, we affirm the convictions. In addition, in his pro se brief to this court, appellant asserts that the statute of limitations bars his prosecution in this case and makes various other arguments for the first time on appeal. We do not accept any of these arguments, however, because they have either been forfeited or are without merit.

FACTS

In 2018, respondent State of Minnesota charged appellant Raymond Joseph Traylor with one count of second-degree criminal sexual conduct. The state later amended the original complaint to charge Traylor with two counts of criminal sexual conduct in the first degree and one count of criminal sexual conduct in the second degree. Specifically, the state charged Traylor with a single act of sexual penetration of S.J. in count one (in violation of Minnesota Statutes, section 609.342, subdivision 1(a) (2008)), with multiple acts of sexual penetration of S.J. in count two (in violation of Minnesota Statutes, section 609.342, subdivision 1(h)(iii) (2008)), and with multiple acts of sexual contact involving S.J. in count three (in violation of Minnesota Statutes, section 609.343, subdivision 1(h)(iii) (2008)). All three charges span the same time frame, from "on or about 2009 through May 2, 2014."

Traylor requested to represent himself and waived his right to a jury trial. At the ensuing bench trial, the district court appointed advisory counsel to assist Traylor. The state offered the testimony of several witnesses, including S.J., S.J.'s mother, a nurse to

whom S.J. reported abuse, and the person who conducted the forensic interview of S.J. The district court also admitted a recording of S.J.'s forensic interview into evidence. Traylor testified in his own defense.

The trial testimony established that S.J. was born on October 4, 2001; Traylor was her de facto stepfather; Traylor was approximately 28 years older than S.J.; and Traylor lived with S.J., her mother, and other family members at several residences between 2009 and 2014.[1] Multiple witnesses, including Traylor, testified that S.J. lived at a residence in Plymouth in 2010 (the Plymouth residence), and at a residence on James Avenue in Minneapolis in 2012 (the Minneapolis residence).[2] The district court analyzed the evidence based on the residence where the alleged conduct occurred, and we will do the same.

S.J. testified that, at the Plymouth residence, she woke up one evening because she felt someone's fingers touching the inside of her vagina. She turned to see who it was and saw Traylor, who looked back at her, said, "my bad," and left the room. S.J. also testified that she knew it was Traylor because she was familiar with his build, voice, and smell. S.J. cried and went to sleep. S.J. testified that, at the Minneapolis residence, Traylor again touched the inside of her vagina with his fingers for about 10-15 minutes while she was

[1] Although Traylor denied staying at any of the family's residences during times when S.J. was asleep, the district court discredited this testimony. Because other witnesses contradicted Traylor's claim that he slept in his car or in the garage or on the lawn instead of inside the house, because his name was on a lease for the family's residence, and because he listed the family's residence as a business address, the district court found that Traylor did stay at S.J.'s residences while she was asleep. Traylor does not challenge this factual finding on appeal or assert that the district court erred in any of its factual findings.

[2] S.J. and her family had several residences during the charged time frame, including residences in Saint Paul, Plymouth, and Minneapolis. We refer to the two residences identified by the district court as the locations of the criminal conduct.

laying on her bed in her room, which was at the back of the residence. In addition, S.J. testified that Traylor touched her in her "private areas" four or five times, both over and under her clothing.

In 2017, S.J. completed a screening questionnaire at a medical clinic, indicating that she had a history of sexual and physical abuse, and disclosed to a school counselor that Traylor had sexually abused her. Subsequently, S.J. underwent a forensic interview at CornerHouse. During the interview, S.J. discussed the abuse she endured. The recording of the interview generally corroborates her trial testimony. Although in the forensic interview S.J. did not refer specifically to the Minneapolis residence, she did report an incident that occurred when she lived in a bed room in the back of a residence. S.J. explained that Traylor touched her vagina over her clothes during this incident.

The district court precluded Traylor from cross-examining S.J.'s mother about his belief that S.J.'s mother previously sexually abused her son, D.S., who is S.J.'s brother. Specifically, the district court sustained the state's objections when Traylor asked S.J.'s mother if she remembered a conversation that she and Traylor had about her sexual contact with D.S.:

> MR. TRAYLOR: . . . [D]o you remember a conversation that I had with you about you having sexual contact with your then 13-year-old son . . . ?
> [THE STATE]: Objection. Relevance. Prejudice.
> THE COURT: Sustained.
> MR. TRAYLOR: Your Honor, at this time, I have no more questions for this witness.

The district court also precluded Traylor from introducing his own medical records during his case-in-chief.[3] The district court tried to determine the relevance of these documents, and Traylor answered by arguing that S.J.'s mother retaliated against him by convincing the Department of Corrections to classify him as a child abuser:

> THE COURT: These are your allegations -- that [S.J.'s mother] is a child molester?
> MR. TRAYLOR: Yes, Your Honor.
> THE COURT: All right. I don't—how is that relevant to this case?
> MR. TRAYLOR: It goes to show, Your Honor, that I had made these allegations and confronted [S.J.'s mother] for having sexual contact and showing pornography material to her then 13-year-old son in 2009. I reported it in 2011 and 2013. It goes to show, then, Your Honor, that [S.J.'s

[3] Just before the trial began, the district court reviewed the documents and described them for the record as follows:

> The documents from NorthPoint in 2011 record a conversation with Mr. Traylor in which he was stating that his girlfriend was a child molester and child protection was called, but there was not sufficient specificity of the allegations to indicate that they—so that they would not take a report.
>
> The therapist . . . discussed with Mr. Traylor his history of paranoid thinking and noted that his diagnosis was depression, psychotic disorder, and paranoid personality. . . .
>
> Then, the documents from Fairview are from October 4, 2013—provider is [S.K.]. "Patient worried about his young children and their safety. He's worried about his ex-girlfriend and her relationship with his—with her 17-year-old son, which he thinks is incestuous, and details his reasons for thinking that." Again, there was a report to child protection, but, apparently, they did not do anything more with it.

> mother] used the information that I told her about in this report back then as a reprisal in 2017 to label me a child molester while I'm incarcerated in the Rush City Prison facility.

After hearing the explanation, the district court decided to exclude the two documents for several reasons. First, the district court excluded the extrinsic evidence because S.J.'s mother did not have an opportunity to explain or deny the allegation that she had molested D.S. Second, the district court concluded that the documents were irrelevant because the documents themselves cast doubt on the reliability of Traylor's belief about S.J.'s mother[4] and because S.J. herself reported the abuse, not her mother. Third, the district court also excluded the evidence pursuant to rule 608(b) of the Minnesota Rules of Evidence because specific instances of conduct, such as allegations that S.J.'s mother sexually abused her son D.S., cannot be proven by extrinsic evidence.

At the conclusion of the trial, the district court issued a written order and determined that the state proved beyond a reasonable doubt that Traylor penetrated S.J.'s vagina with his fingers at the Plymouth residence. The district court determined that the state did not prove beyond a reasonable doubt that penetration occurred at the Minneapolis residence, given S.J.'s statements in the forensic interview that Traylor touched her over her clothes when she lived in the back bedroom. These statements, however, formed the basis for the district court's determination that the state proved beyond a reasonable doubt that Traylor

[4] The district court reasoned that Traylor's statements about S.J.'s mother were not reliable given his diagnoses: "In addition to which—the NorthPoint document specifically indicates that you have a history of paranoid thinking, a psychotic disorder, and paranoid personality disorder, which calls into question the reliability of those statements to that mental health provider."

had sexual contact with S.J. at the Minneapolis residence. In addition, the district court found that the state proved beyond a reasonable doubt that Traylor touched S.J.'s "private areas" four or five times, over and under clothing. The district court entered convictions for first- and second-degree criminal sexual conduct as charged in counts one and three.

Traylor made two motions to set aside the verdict based on the statute of limitations.[5] Traylor first argued that the statute of limitations had run in 2016, three years after S.J. reported to her mother that Traylor looked up S.J.'s shorts while she was sleeping on a couch.[6] In his second motion, Traylor argued that his own statement reporting his concerns about S.J.'s mother triggered a three-year statute of limitations, barring any prosecution against him after 2016. The district court denied these motions, noting that it had already determined that the nine-year statute of limitations did not bar prosecution of this case.[7]

At sentencing, the district court imposed an executed sentence of 360 months in prison for the first-degree criminal-sexual-conduct offense in count one, and a concurrent executed sentence of 300 months for the second-degree criminal-sexual-conduct offense in count three. This appeal follows.

---

[5] The second motion includes the phrase "Actual Innocence Proof" in the title and as the basis for the motion. The remainder of the motion, however, argues that the statute of limitations began to run in 2013, when Traylor reported his concerns about S.J.'s mother.

[6] Traylor based the motion on testimony from S.J. regarding when she reported this incident to her mother.

[7] The district court previously denied multiple requests to dismiss the charges because of the statute of limitations, including several oral requests to dismiss, two written motions to dismiss, a written objection to these rulings, and a renewed request to dismiss at the start of the court trial. The motions to set aside the verdict include arguments identical to those previously considered and denied.

D E C I S I O N

I. Precluding Traylor's Impeachment of S.J.'s Mother

Traylor argues that he was denied his constitutional right to present a complete defense because the district court precluded him from asking a question on cross-examination of S.J.'s mother and because the district court excluded Traylor's medical records. Because the district court acted within its discretion when it precluded Traylor from cross-examining S.J.'s mother on this point and when it excluded Traylor's medical records, we affirm the district court's evidentiary rulings.

Generally, a witness's bias—whether demonstrated through confrontation or by extrinsic evidence—is "relevant as discrediting the witness and affecting the weight of his testimony." *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995) (quoting *Davis v. Alaska*, 415 U.S. 308, 316, 94 S. Ct. 1105, 1110 (1974)); *see also*, Minn. R. Evid. 616.[8] The Minnesota Supreme Court has recognized, however, that this general rule has limits:

> But not everything tends to show bias, and courts may exclude evidence that is only marginally useful for this purpose. The evidence must not be so attenuated as to be unconvincing because then the evidence is prejudicial and fails to support the argument of the party invoking the bias impeachment method . . . .
>
> . . . .
>
> Courts may exclude evidence of extraneous matters based on concerns about such things as harassment, decision making on an improper basis, confusion of the issues, and cross-examination that is repetitive or only marginally relevant.

[8] We note that when a court admits bias evidence under rules 613 or 616, the evidence is admitted for impeachment purposes only and not as substantive evidence.

Lanz-Terry, at 640-41 (citation omitted) (affirming district court's decision to limit cross-examination and exclude extrinsic evidence); *see also, e.g.*, *State v. Larson*, 787 N.W.2d 592, 598-99 (Minn. 2010) (affirming district court's decision to exclude extrinsic evidence because that evidence was too attenuated to support an argument of bias); *State v. Brown*, 739 N.W.2d 716, 720 (Minn. 2007) (affirming district court's decision to disallow bias-related cross-examination regarding whether one witness was in the same gang as a different witness and quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S. Ct. 1431, 1435 (1986) (holding that trial courts "retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness safety, or interrogation that is repetitive or only marginally relevant")). We review a district court's decision to exclude bias evidence and to limit impeachment regarding bias for an abuse of discretion. *State v. Hill*, 801 N.W.2d 646, 651 (Minn. 2011); *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006) (noting that we apply an abuse-of-discretion standard of review to evidentiary rulings that invoke constitutional rights).

On appeal, Traylor argues that S.J.'s mother had a motive to lie, namely to retaliate against Traylor because he disclosed his belief that the mother sexually abused her son, D.S. The district court precluded Traylor from asking S.J.'s mother about these beliefs and excluded two exhibits, both of which showed that Traylor had mentioned his concerns about S.J.'s mother to his medical providers. We address each evidentiary ruling in turn.

At the conclusion of his cross-examination of S.J.'s mother, Traylor asked the following question: "do you remember a conversation that I had with you about you having

sexual contact with your then 13-year-old son?" The district court sustained objections based on relevancy and prejudice. Traylor argues that the question properly showed that S.J.'s mother was biased against him. We disagree for several reasons. First, the question does not illicit an answer that could indicate bias. As phrased, the question relates to a conversation between Traylor and S.J.'s mother, not to a conversation between Traylor and some other third party, such as law enforcement officers or child protection workers. S.J.'s mother would have little reason to retaliate against Traylor for having a conversation just with her. Second, the question assumes that sexual contact between S.J.'s mother and D.S. occurred, without any evidence of this fact in the record. District courts may sustain objections to these misleading questions, especially ones that are loaded or emotionally charged. Third, the charges here concern Traylor's actions and contact with S.J. They do not directly concern S.J.'s mother or S.J.'s brother, D.S. For these reasons, we conclude that the question falls outside the scope of general bias impeachment. Instead, the question falls within the category of harassing, prejudicial, confusing, and irrelevant inquiries that our caselaw prohibits. *See Lanz-Terry*, at 639; *see also Brown*, 739 N.W.2d at 720. The district court did not abuse its discretion in disallowing this question on cross-examination.

The district court also excluded Traylor's medical records during his case-in-chief. Both excluded documents indicate that Traylor expressed his concerns about S.J.'s mother to his medical providers. In his brief before this court, Traylor argues that these documents constitute extrinsic evidence of bias and that the district court erred in excluding them. When asked what relevance the documents had during the trial, however, Traylor argued that the documents establish that he "reported it in 2011 and 2013," and that "[S.J.'s

mother] used the information that I told her about in this report back then as a reprisal in 2017 to label me a child molester while I'm incarcerated in the Rush City Prison." Given this explanation at trial, the district court determined that Traylor's disclosure of his concerns to his medical providers had almost no relevance.[9]

We see no abuse of the district court's discretion. First, Traylor's explanation at trial centered on how the documents supported his belief that S.J.'s mother had convinced the Department of Corrections to classify him as a "child molester" in 2017. Whether S.J.'s mother had done so would have no bearing on any fact of consequence at the trial. Second, even assuming that Traylor had articulated a different purpose for seeking to admit the documents, as he now does on appeal, the documents themselves are not evidence of S.J.'s mother's bias. Without more, the documents only show that Traylor had concerns about S.J.'s mother. They do not show that S.J.'s mother had decided to lie or that she was even aware of what Traylor reported to his medical providers. Third, the credibility contest at issue in the trial was between Traylor and S.J. Since Traylor's attempts to impeach the credibility of S.J.'s mother did not attack or call into question S.J.'s credibility, they had only marginal relevance. Finally, as the district court observed, the documents themselves describe Traylor's history of paranoid thinking and diagnoses of psychotic disorder and

[9] Traylor argues that the district court misapplied rules 613 and 616 of the Minnesota Rules of Evidence. In making its ruling, the district court did, at one point, refer to the explain-or-deny requirement found in rule 613(b), even though rule 613 does not apply to extrinsic bias evidence or to evidence of Traylor's prior statements. It would only apply to extrinsic evidence of prior statements made by the witness, S.J.'s mother. Despite the reference to rule 613, we conclude that the district court made its evidentiary rulings based on the perceived marginal relevance of the proffered impeachment evidence and not based on the requirements of rule 613.

paranoid personality disorder. Traylor's beliefs about S.J.'s mother become even further attenuated given Traylor's specific mental condition at the time of these disclosures. Therefore, the district court did not abuse its discretion when it excluded these documents.[10]

II. Multiple Convictions

Traylor argues that the district court erred in entering convictions for both the second-degree offense in count three and the first-degree offense in count one. Because the first-degree offense in count one occurred at the Plymouth residence and all of the acts included in the second-degree offense in count three occurred at the Minneapolis residence, we affirm the convictions.

Minnesota law provides that a person may be convicted "of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2008);[11] *see also State v. Cermak*, 350 N.W.2d 328, 334 (Minn. 1984) (vacating eleven second-degree criminal-sexual-conduct convictions because they concerned the same acts as eleven first-degree criminal-sexual-conduct convictions); *State v. Larson*, 520 N.W.2d 456, 463 (Minn. App. 1994) (vacating one of two different first-degree criminal-sexual-conduct convictions

[10] Given this conclusion, we need not address the alternative basis for the district court's decision: that the documents constitute the type of extrinsic evidence prohibited by rule 608(b) of the Minnesota Rules of Evidence. Likewise, we need not determine whether the decision prejudiced Traylor because we conclude that the district court did not err. *See State v. Loebach*, 210 N.W.2d 58, 64 (Minn. 1981) (stating that a defendant claiming error in a district court's evidentiary ruling "has the burden of showing both the error and the prejudice resulting from the error").

[11] The relevant portions of Minnesota Statutes, section 609.04, have remained unchanged throughout the charged timeframe.

because both convictions concerned the same act), *review denied* (Minn. Oct. 14, 1994). Whether section 609.04 precludes multiple convictions presents a legal question that we review de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

The statutory elements of first-degree criminal sexual conduct can include the elements of second-degree criminal sexual conduct. *See State v. Hesse*, 281 N.W.2d 491, 493 (Minn. 1979) (vacating second-degree criminal-sexual-conduct conviction under 609.04 because sexual intercourse "by definition involves not just penetration but also contact"). A comparison of the statutory elements, however, is not always sufficient to conclude that section 609.04 applies. We have also previously held that when the lesser-included offense does not depend on proof of any of the same acts as the greater offense, section 609.04 does not apply, and multiple convictions are valid. *State v. Axford*, 419 N.W.2d 813, 815 (Minn. App. 1988) (affirming separate convictions). In *Axford*, we reasoned that "[n]either offense was includable within the other" because the defendant sexually abused his granddaughter "at separate times in separate townships." *Id.* *Axford* controls our analysis here.

In this case, Traylor argues that section 609.04 precludes convictions for both counts one and three. We are not persuaded. The district court's detailed findings divide the various allegations based on the residence where S.J. lived at the time. The state proved beyond a reasonable doubt that Traylor penetrated S.J.'s vagina with his fingers at the Plymouth residence. In addition, the state proved beyond a reasonable doubt that Traylor multiple acts of sexual contact at the Minneapolis residence. Based on these findings, we conclude that the first-degree offense in this case does not include any of the acts

underlying the second-degree offense. Therefore, section 609.04 does not preclude entering both convictions.

III. Remaining Arguments from Traylor's Brief

In his pro se brief, Traylor argues that the three-year statute of limitations had already run by the time the complaint was filed in 2018. We review the construction and application of a statute of limitations de novo. *State v. Carlson*, 845 N.W.2d 827, 832 (Minn. App. 2014), *review denied* (Minn. June 17, 2014). A complaint charging first- or second-degree criminal sexual conduct must be filed within "nine years after the commission of the offense" or "three years after the offense was reported to law enforcement authorities," whichever is "later." Minn. Stat. § 628.26(e) (2018). In this case, Traylor's argument lacks merit under both limitations periods. S.J. reported the abuse in 2017, and the state filed the complaint well within three years of that disclosure. In addition, the complaint charged that the offenses occurred between 2009 and 2014, and the state filed the complaint within nine years of that time period. The statute of limitations does not bar prosecution or conviction in this case.

Traylor also advances a variety of other issues and theories for the first time on appeal. We need not consider these arguments as they are deemed forfeited. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996); *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Affirmed.