STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1632

State of Minnesota,
Respondent,

vs.

Victorino Gustavo Ventura Mendez,
Appellant.

Filed December 13, 2021
Affirmed in part, reversed in part, and remanded
Slieter, Judge

Nobles County District Court
File No. 53-CR-17-77

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

Joseph M. Sanow, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal, appellant challenges his conviction for first-degree criminal sexual conduct, arguing that the district court abused its discretion by excluding other-

source-of-sexual-knowledge evidence involving the victim who experienced overlapping periods of sexual assault by appellant and the victim's cousin. The district court properly exercised its discretion by excluding the challenged evidence pursuant to Minnesota Rule of Evidence 412 and we affirm the conviction. Because the warrant of commitment does not accurately reflect the district court's pronouncement during sentencing, we reverse in part and remand to correct the warrant of commitment.

FACTS

Appellant Victorino Gustavo Ventura Mendez was found guilty by jury verdict of two counts of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a), (g) (2014): (1) sexual penetration or sexual contact with a person under 13 years of age and the actor is more than 36 months older than the victim; and (2) sexual penetration or sexual contact with a person under 16 years of age at the time of the act and the actor has a significant relationship to the victim.

In April 2016, a Worthington police officer received a report that a 12-year-old female victim had been sexually assaulted. At the time of the report, the victim identified her cousin, Cesar Rosario Lopez-Ramos, as her abuser.[1] In May 2016, the state charged Lopez-Ramos with one count of first-degree criminal sexual conduct pursuant to Minn. Stat. § 609.342, subd. 1(a). In December 2016, a jury found Lopez-Ramos guilty, and he was sentenced to 144 months' imprisonment.

[1] In its order denying appellant's motion, the district court took judicial notice of "the criminal complaint, trial verdict, and appellate court orders in *State v. Lopez-Ramos*, 53-CR-16-420."

During the investigation, the police officer learned the victim was pregnant and that Lopez-Ramos was excluded as the father. In September 2016, the victim first reported that her paternal half-brother, appellant, also sexually assaulted her.

In October 2016, the police officer interviewed appellant, who stated that the victim and appellant had lived in the same home since 2014. Appellant initially denied any sexual contact with the victim, but after the officer told him that the victim was pregnant, appellant admitted to having sexual intercourse with the victim when he was 18 years old. The officer drove appellant home after the interview. When the officer returned the next day with a search warrant for appellant's DNA, appellant was not home and efforts to locate him were unsuccessful.

In January 2017, the State of Minnesota charged appellant with first-degree criminal sexual conduct and the court issued a warrant for appellant's arrest. Appellant was apprehended in September 2019 in Colorado and, after waiving extradition, was transported back to Minnesota. The state obtained a district court order requiring appellant to provide a DNA sample which indicated he was the father of the victim's child.

In March 2020, the district court considered and denied appellant's rule 412 motion to permit evidence of the victim's sexual abuse by Lopez-Ramos to demonstrate that someone other than appellant was the source of her sexual knowledge or familiarity with sexual matters.

At sentencing, the district court pronounced a judgment of conviction for count two only, in violation of Minn. Stat. § 609.342, subd. 1(g), and imposed the presumptive prison sentence of 144 months. However, the warrant of commitment, which includes the terms

of appellant's sentence, reflects a judgment of conviction for both counts. This appeal follows.

DECISION

I. The district court was within its discretion to exclude evidence of sexual assault by Lopez-Ramos.

Generally, "[e]videntiary rulings rest within the sound discretion of the district court," and on review, we will not reverse "absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). "We review a district court's evidentiary rulings for abuse of discretion, even when, as here, the defendant claims that the exclusion of evidence deprived him of his constitutional right to a meaningful opportunity to present a complete defense." *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

A defendant has the right to present a complete defense and to confront his accuser under the United States and Minnesota Constitutions. U.S. Const. amend. VI, XIV, § 1; Minn. Const. art. I, § 7; *State v. Crims*, 540 N.W.2d 860, 865 (Minn. App. 1995), *rev. denied* (Minn. Jan. 23, 1996). The right to a complete defense is subject to the rules of evidence. *State v. Hannon*, 703 N.W.2d 498, 506 (Minn. 2005). We conclude that no abuse of discretion occurred by the district court excluding the evidence regarding a source of sexual knowledge.

The rules of evidence generally exclude as irrelevant a victim's sexual history in prosecutions for criminal sexual conduct. Minn. R. Evid. 412(1); *see also State v. Olsen*, 824 N.W.2d 334, 340 (Minn. App. 2012), *rev. denied* (Minn. Feb. 27, 2013). This rule is commonly known as the rape-shield rule. *See State v. Benedict*, 397 N.W.2d 337, 341 (Minn. 1986). "In a prosecution for acts of criminal sexual conduct . . . evidence of the victim's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury" unless "the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature." Minn. R. Evid. 412(1).

"Despite the prohibition of a rape-shield law or rule, 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." *Benedict*, 397 N.W.2d at 341. But the district court must "balance the probative value of the evidence against its potential for causing unfair prejudice." *Id.*

Appellant argues that the Lopez-Ramos evidence was relevant to establish that Lopez-Ramos, not appellant, was the source of the victim's sexual knowledge and refers to *Benedict* and *State v. Kroshus*, 447 N.W.2d 203 (Minn. App. 1989), *rev. denied* (Minn. Dec. 20, 1989), to support his argument. We conclude that *Benedict* and *Kroshus* are inapplicable to these facts and, thus, do not provide support for appellant's argument.

In *Benedict*, the defendant claimed that the district court "improperly refused to let him show that the [victim]'s knowledge came from his family, not from [the] defendant."

397 N.W.2d at 340-41. An expert testified to the source of the victim's knowledge of sexual matters. In particular, "the victim exhibited an unusual knowledge of sexual activities for someone his age and that it was the result of the [victim] having been given an education by somebody." *Id.* at 340. The supreme court held that the district 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." *Id.* at 341.

Similarly, in *Kroshus*, a psychologist specializing in the treatment of developmentally delayed individuals testified that the victim was incapable of fabricating an intricate story of sexual abuse, could not function at an abstract level, and probably could not consistently make up or keep reporting sexual abuse unless she had experienced it or had repeatedly seen very explicit pornographic material. 447 N.W.2d at 204. This court concluded that "the jury could infer" that the victim "could not have made the allegations involving [the defendant] unless the events she described had occurred" based on testimony concerning the victim's "inability to function at such an abstract level" and that the victim was "not educated about sexual matters." *Id.* at 205.

We agree with the district court's conclusion that the relevance of the Lopez-Ramos evidence was "extremely questionable" and the balancing test in this case "weighs significantly in favor of the State." As the district court reasoned:

> Because the State's evidence in this case includes evidence of pregnancy caused by the [appellant], the relevance of a prior sexual assault is limited. The prejudice of the prior evidence in this case relates to bringing up the Victim's prior sexual victimization at the hands of another adult male, which, in

> addition to being humiliating, unfairly prejudices and stigmatizes the Victim and has the potential to confuse the issues and mislead the jury.
>
> . . . [W]hether the Victim had prior knowledge of sexual matters because of [the Lopez-Ramos] sexual assault is not relevant under these facts because this does not explain-away the DNA results or the [appellant]'s alleged confession.

The record supports the district court's conclusion that the primary evidence supporting guilt was the victim's pregnancy, the DNA test establishing appellant as the father, and appellant's confession—not the victim's source of sexual knowledge. Unlike *Benedict* and *Kroshus*, the circumstances here are not such that the jury could infer that the victim "could not have made the allegations involving [appellant] unless the events she described had occurred" because there was no testimony concerning the victim's disabilities or lack of education "about sexual matters." 447 N.W.2d at 205. Therefore, the district court properly exercised its discretion in denying appellant's motion.[2]

II. Appellant should receive one conviction for first-degree criminal sexual conduct.

Minnesota law provides that "[u]pon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2020). Additionally, "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses

[2] Appellant filed a *pro se* supplemental brief raising several claims which, because they are not clear, we summarize as a claim of insufficiency of the evidence to support the jury's guilty verdicts. However, appellant failed to support his argument with any citation to the factual record or to legal authority and, therefore, we deem them forfeited. *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002); *see also State v. Beaulieu*, 859 N.W.2d 275, 278 n.3 (Minn. 2015) (failure to make a timely assertion of a right is a forfeiture of that right).

and a conviction or acquittal of any one of them is a bar to prosecution for any other of them." Minn. Stat. § 609.035, subd. 1 (2020).

Courts may "look to the official judgment of conviction in the district court file as conclusive evidence of whether an offense has been formally adjudicated." *Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007) (quotation omitted). The warrant of commitment reflects that appellant was convicted of two counts arising from the same behavioral incident though the district court pronounced conviction of only one count of first-degree criminal sexual conduct at sentencing.

Therefore, we reverse in part and remand to the district court to correct the warrant of commitment to reflect judgment of conviction for one count of first-degree criminal sexual conduct.

Affirmed in part, reversed in part, and remanded.