STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0094

State of Minnesota,
Respondent,

vs.

James NMN William,
Appellant.

Filed June 27, 2022
Affirmed
Gaïtas, Judge

Clay County District Court
File No. 14-CR-20-192

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

Brian J. Melton, Clay County Attorney, Pamela L. Foss, Chief Assistant County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant James William challenges his conviction for third-degree criminal sexual conduct, arguing that the district court erred in denying his pretrial motion for in camera

review of the complainant's child-protection records and his postconviction request for a hearing to inquire about potential juror misconduct. We affirm.

FACTS

In 2020, William's adolescent daughter S.J.W. alleged that William had been sexually abusing her since she was seven years old. Following an investigation, William was charged with two counts of first-degree criminal sexual conduct under Minnesota Statutes section 609.342, subdivision 1(a) (2008) (penetration with person under 13 and the actor is 36 months older); one count of first-degree criminal sexual conduct under Minnesota Statutes section 609.342, subdivision 1(h)(iii) (2014) (penetration with person under 16 and actor has a significant relationship with person and multiple acts were committed over an extended period of time); and one count of third-degree criminal sexual conduct under Minnesota Statutes section 609.344, subdivision 1(g)(iii) (2018) (penetration with person between 16 and 18 and actor has a significant relationship with person and multiple acts were committed over an extended period of time), for repeatedly sexually abusing his daughter over a period spanning nearly 12 years.

William's pretrial motion requesting S.J.W.'s child-protection records.

At the outset of his criminal case, William filed a motion to compel disclosure of S.J.W.'s child-in-need-of-protection-or-services (CHIPS) records or, alternatively, for in camera review of those records. He argued that S.J.W.'s CHIPS records would contain relevant evidence because the CHIPS case was based on the same sexual-abuse allegations underlying the criminal charges. Following a hearing, the district court denied William's motion. The district court reasoned that the state would be obligated to disclose any

evidence in the CHIPS file that related to the criminal charges, and that William's quest to obtain any other materials in the file was a "fishing expedition." Although the district court ruled that William could renew his request for the contents of the CHIPS file if circumstances changed, William did not bring an additional motion.

William's trial.

William ultimately had a jury trial that spanned eight days. The state called seven witnesses, including S.J.W., and played the video of S.J.W.'s forensic interview. William testified on his own behalf and called one additional witness. He denied sexually abusing S.J.W. The defense theory was that S.J.W. fabricated her allegations of sexual abuse as a means of emancipating from William.

The jury began deliberating on September 23, 2020. Shortly after deliberations began, the jury presented the district court with three factual questions. After consulting with counsel, the district court reminded the jurors that they were to decide the facts from the evidence introduced at trial. Five-and-a-half hours after beginning deliberations, the jury submitted another communication to the district court stating, "We are unable to come to a unanimous verdict. What are our next steps?" Again, the district court consulted with the attorneys, who agreed that the jury should continue deliberating. The district court reread one of its instructions to the jury:

> In order for you to return a verdict, whether guilty or not guilty, each juror must agree with that verdict and your verdict must be unanimous. You should discuss the case with one another and deliberate with a view toward reaching agreement, if you can do so without violating your individual judgment. You should decide the case for yourself, but only after you have discussed the case with your fellow jurors and have carefully considered their views. You should

> not hesitate to reexamine your views, and change your opinion if you become convinced they are erroneous, but you should not surrender your honest opinion simply because other jurors disagree or merely to reach a verdict.

See 10 *Minnesota Practice*, CRIMJIG 3.04 (2020).

The jury deliberated for another 45 minutes, and then relayed to the district court that one juror was having anxiety and needed to stop deliberations for the night. After consulting with the attorneys, the district court released the jurors overnight.[1]

The jury resumed deliberations on September 24. Shortly after, the jury asked to review the transcript of S.J.W.'s forensic interview. By agreement of the attorneys, the district court responded: "You were previously instructed that the transcript would not be available to you during deliberations and, therefore, it will not be provided." About four-and-a-half hours later, the district court received another note from the jury stating, "We have taken two written votes today and we have had a split vote both times. We are having a hard time with the lack of evidence. There is no chance of reaching consensus." After consulting with the attorneys, the district court told the jury to continue deliberating and again reread its instruction for reaching a verdict.

[1] Before the district court released the jury, the defense moved for overnight sequestration pursuant to Minnesota Rule of Criminal Procedure 26.03, subdivision 5. The district court denied the motion but instructed the jury not to talk about or investigate the case during the recess. When the jury returned to resume deliberations in the morning, the district court polled the jurors to ensure that they had complied with the instructions for the overnight recess.

Five hours later, the jury reached a verdict. The jury found William guilty of third-degree criminal sexual conduct and not guilty of each count of first-degree criminal sexual conduct.

Anonymous juror letter.

Six days after the jury verdict and before sentencing, the prosecutor received an anonymous letter purporting to be from a juror at William's trial. Although the letter suggested that the anonymous juror was sympathetic to the prosecution, the letter identified some concerns about the process. The letter stated that there were "nine solid votes for conviction on all four counts," with one juror wavering and two who refused to consider William guilty without "irrefutable evidence that something happened." According to the letter, some jurors believed that they would not be allowed to leave until they reached a verdict based on the district court's responses to their questions. The letter stated that the district court's "demeanor in the jury room after the verdict reinforced this for me. She was pretty happy, as though she got what she wanted, which was a verdict."

Additionally, the letter alleged that there had been low morale and tension among the jurors due to "family situations" and lost time from work. When a juror suggested a compromise, the jurors agreed because of the "overriding pressure" to reach a verdict. According to the letter, the part that "bothered" the anonymous juror most was that "the last two people to give in were two of the youngest [jurors], trying to do what they believed in . . . the pressure that was brought to bear on those two kids will stay with me for the rest of my life."

Once the prosecutor brought the anonymous letter to the district court's attention, it was addressed no further. William did not ask the district court to take any action in connection with the letter before sentencing.

Sentencing, appeal, and postconviction proceedings.

Approximately one month after the trial, William appeared before the district court for sentencing. The district court sentenced him to 57 months in prison, a sentence at the top of the presumptive sentencing range.

William then filed a notice of appeal from the judgment. He later moved to stay the appeal to pursue postconviction proceedings, and we granted the request.

William filed a postconviction petition in the district court, alleging that the anonymous letter showed that his jury had engaged in misconduct. He sought a hearing to question the jurors about any misconduct during their deliberations. The district court denied the petition, concluding that William had failed to satisfy his burden to obtain such a hearing.

Following the denial of his postconviction petition, William moved to dissolve the stay of his direct appeal, and this court granted the motion.

DECISION

I. The district court did not abuse its discretion by denying William's motion for in camera review of S.J.W.'s confidential CHIPS records.

William argues that the district court's denial of his pretrial motion for in camera review of S.J.W.'s CHIPS records was prejudicial error requiring reversal of his conviction.

Criminal defendants are afforded a broad right of discovery, but that right is not unlimited. *State v. Hokanson*, 821 N.W.2d 340, 349 (Minn. 2012). When a defendant seeks privileged records, the district court may screen the records in camera to balance the defendant's right to prepare a defense against a victim's right to privacy. *Id.* (citing *State v. Paradee*, 403 N.W.2d 640, 642 (Minn. 1987)). The parties agree that S.J.W.'s CHIPS records are privileged.

In camera review is not a right but rather a discovery option, and the defendant must first make a "plausible showing" that "the information sought would be both material and favorable to his defense." *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992) (quotations omitted). The request must be reasonably specific, *State v. Lynch*, 443 N.W.2d 848, 852 (Minn. App. 1989), *rev. denied* (Minn. Sept. 15, 1989), and the defendant's argument that the records are material and favorable to the defense must go beyond mere conjecture. *State v. Evans*, 756 N.W.2d 854, 873 (Minn. 2008).

"On appeal, [appellate courts] review the limits placed by the district court on the release and use of protected records for an abuse of discretion." *Hokanson*, 821 N.W.2d at 349 (citing *Evans*, 756 N.W.2d at 872-73). "A 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." *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011).

William argues that he made a "plausible showing" that S.J.W.'s confidential records would be both material and favorable to his defense, requiring the district court to review the information in camera to determine its relevance to his defense. In his pretrial motion, he argued that the records would be material and favorable to his defense because:

> The records will likely contain: (1) statements made by the alleged victim and others regarding the allegations against William (both substantive and impeachment evidence), (2) information regarding any mental health and/or therapy programming of the alleged victim, (3) medical and/or psychological records not currently in the possession of the defense, and (4) information regarding the alleged victim's living arrangements and/or emancipation plans put in place following the filing of the CHIPS petition. The records will likely contain other information that is relevant and material to the defense in this case. It is difficult for the defense to anticipate all information in the possession of Social Services regarding a CHIPS file.

The district court ruled that William had failed to satisfy his burden. It observed that because the criminal and CHIPS cases involved a joint investigation, "[a]ll of the records related to the investigation of the incident, including a medical examination of [S.J.W.], have been provided to the state and disclosed to the defense." Moreover, the district court noted, any remaining documents in the CHIPS file "would be related to case planning and services for the family," and William did not show "how that information would be material or relevant to the criminal case." The district court explained that William had made no showing that S.J.W. suffered from mental-health issues and had failed to demonstrate how her mental-health records would relate to his criminal case. Likewise, the district court rejected William's claim that S.J.W.'s living arrangements, which were under the control of social services, advanced the defense theory that S.J.W. fabricated the allegations of sexual abuse to obtain early emancipation. The district court concluded that, although William explained the "general logic behind his request," he did not offer any evidence to support a belief that the requested records existed or contained material information favorable to his case. However, the district court stated that William

could renew his motion for in camera review if he supplied additional information about the records "he believes are contained in the social services file and how they would be material to his case."

William argues that the district court abused its discretion by refusing to review the CHIPS file to ensure that it did not contain information pertinent to his defense. He contends that, without reviewing the CHIPS file, the district court had no way of knowing its contents. According to William, the district court's assumptions about the contents of the file were "purely speculative" and the "summary denial" of his motion was therefore an abuse of discretion.

But William, and not the district court, had the burden to make a plausible showing that records existed that would be material and favorable to his defense. *Hummel*, 483 N.W.2d at 72. And beyond the bald assertion that there *could* be records relating to the criminal charges that had not already been disclosed, William made no showing that such records existed.

William attempts to illustrate the district court's error by contrasting his case with the circumstances in *Hummel*, where the Minnesota Supreme Court affirmed the district court's denial of a motion for in camera review of confidential records. There, the defendant, who was accused of murdering his girlfriend, requested in camera review of the victim's psychiatric records. *Id.* at 69-71. In affirming the district court, the supreme court observed that the defendant had failed to provide a single theory for how the victim's psychiatric records would relate to the defense or would be "reasonably likely to contain information related to the case." *Id.* at 72. William asserts that his motion for in camera

review, by contrast, explained precisely how S.J.W.'s confidential records might relate to his defense. We agree that William did offer the district court a theory—he alleged that the records potentially contained S.J.W.'s "emancipation plans," which would have supported his defense that S.J.W. fabricated her allegations to gain independence from William.

But William's citation to *Hummel* does not persuade us that the district court abused its discretion in concluding that William failed to make the requisite plausible showing. In reaching this conclusion, we consider another supreme court case—*State v. Burrell*, where the supreme court *did* find an abuse of discretion. 697 N.W.2d 579, 605 (Minn. 2005). In *Burrell*, a murder case involving three codefendants, Burrell moved for in camera review of any documents relating to plea negotiations between the prosecution and two codefendants, who had pleaded guilty. *Id.* at 603. Burrell alleged that the plea negotiations could show that the state had failed to comply with its constitutional discovery obligations because the codefendants' plea agreements contained some unusual terms. *Id.* The district court denied Burrell's motion, but the supreme court reversed. *Id.* at 603-05. Although the supreme court determined that it was a "close call" as to whether Burrell had made the requisite "plausible showing," it concluded that the district court should have reviewed the plea negotiations in camera. *Id.* at 605.

Unlike William's motion, which simply speculated that favorable evidence might exist, Burrell alleged specific facts showing that the evidence he sought plausibly existed, namely the codefendants' plea agreements, where one codefendant was warned that any inconsistent testimony could impact his plea agreement and another codefendant was

required to disclaim prior statements that Burrell was not involved in the murder. *Id.* at 603-05. And unlike the evidence that William sought, the evidence at issue in *Burrell* was not otherwise available. Here, as the district court determined, the prosecution was required to produce material evidence that was related to William's criminal case. Moreover, evidence that S.J.W. no longer lived with William after alleging that he had sexually abused her for 12 years was not a fact solely available in confidential records. Indeed, William's attorney cross-examined S.J.W. about her "emancipation plan" at trial. Finally, we note that the district court encouraged William to renew the request for in camera review of the CHIPS records if he could make the required plausible showing. He did not renew his motion before or during trial.

William did not show with reasonable specificity or with more than mere conjecture that the CHIPS file contained additional records that would be material and favorable to his defense. *See Lynch*, 443 N.W.2d at 852; *see also Evans*, 756 N.W.2d at 873. We therefore conclude that the district court did not abuse its discretion by denying William's motion for in camera review of those records.

II. The district court did not abuse its discretion by denying William's postconviction request for a hearing to question jurors about their deliberations.

William contends that the district court abused its discretion by denying his postconviction request for a hearing to question jurors about their deliberations for the purpose of determining whether misconduct occurred.

When there is evidence of juror misconduct, the court may, in its discretion, order a hearing, which is often called a "*Schwartz* hearing" after the leading Minnesota Supreme

Court decision regarding claims of jury misconduct. *State v. Church*, 577 N.W.2d 715, 720 (Minn. 1998); *see also Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301, 303 (Minn. 1960) (establishing procedure for investigating claims of juror misconduct). The rules of evidence prohibit juror testimony about jury deliberations, including "any matter or statement occurring during the course of the jury's deliberations," "the effect of anything upon [a] juror's mind or emotions as influencing the juror to assent to or dissent from the verdict," or anything "concerning the juror's mental processes" in reaching a verdict. Minn. R. Evid. 606(b); *State v. Kelley*, 517 N.W.2d 905, 910 (Minn. 1994). But there are several exceptions to this general rule. Jurors may testify about (1) "extraneous prejudicial information that was improperly brought to the jury's attention," (2) any outside influence improperly weighing on any juror, (3) threats of violence or violent acts against jurors, (4) false statements made during voir dire that concealed prejudice or bias toward a party, and (5) information necessary to correct an error made in notating the verdict on the verdict form. Minn. R. Evid. 606(b).

To obtain a *Schwartz* hearing, a party "must establish a prima facie case of jury misconduct" by pointing to facts that "standing alone and unchallenged would warrant the conclusion of jury misconduct." *State v. Starkey*, 516 N.W.2d 918, 928 (Minn. 1994). The moving party bears the burden of making a prima facie case. *State v. Larson*, 281 N.W.2d 481, 484 (Minn. 1979). Appellate courts review a district court's denial of a *Schwartz* hearing for an abuse of discretion. *Church*, 577 N.W.2d at 721. Where the basis for seeking a *Schwartz* hearing is "wholly speculative" and would intrude on the jury's

deliberative process, the district court does not abuse its discretion by denying a hearing. *State v. Martin*, 614 N.W.2d 214, 226 (Minn. 2000).

Here, the district court rejected William's claim that the anonymous letter created a prima facie case of jury misconduct. At most, the district court concluded, the letter revealed that jurors experienced ordinary stresses that are inherent to jury service. Moreover, the district court ruled that its instructions to the jury to continue deliberating did not amount to an "outside influence" on the deliberations. The district court pointed out that it had relied on a pattern jury instruction to encourage continued deliberations, the attorneys agreed with the approach taken, and the duration of the deliberations was appropriate given the length of the trial and the complexity of the charges.

William argues that the district court's refusal to order a *Schwartz* hearing was an abuse of discretion. He contends that the letter establishes a prima facie case of juror misconduct because it shows that the jurors pressured each other to compromise for personal reasons, the district court pressured the jurors to reach a verdict, and the "combination of outside pressures" worked "in concert to force the jurors to relinquish their individual judgments about the case for the sole purpose of reaching a verdict so they could go home."

We disagree. A juror's second thoughts about a verdict after trial ordinarily do not warrant a *Schwartz* hearing. *State v. Bauer*, 471 N.W.2d 363, 367 (Minn. App. 1991), *rev. denied* (Minn. July 24, 1991). Likewise, communications between jurors that involve psychological intimidation, coercion, or persuasion, do not constitute misconduct unless there are threats of violence or actual violence. *State v. Jackson*, 615 N.W.2d 391, 396

(Minn. App. 2000) (citing Minn. R. Evid. 606(b) cmt.). It is also well established that a district court may reread CRIMJIG 3.04—the pattern instruction that the district court reread to the jury here—when a jury claims to be deadlocked.[2] *See Kelley*, 517 N.W.2d at 909-10 (explaining that rereading CRIMJIG 3.04 is an appropriate practice for a district court confronted with a purported jury deadlock). And we agree with the district court that, due to the duration and subject matter of William's trial, the jury did not deliberate for an unreasonable length of time. *See State v. Jones*, 556 N.W.2d 903, 912 (Minn. 1996) (stating that appellate courts will look to the nature, complexity, and length of the trial to determine the reasonableness of requiring the jury to continue its deliberations). Even considering all of the circumstances alleged in the anonymous letter, William did not make a prima facie showing of jury misconduct. Accordingly, the district court did not abuse its discretion in denying William's postconviction request for a *Schwartz* hearing.

Affirmed.

[2] William cites to a nonprecedential case, *State v. Schwendeman*, to support his argument that the district court inappropriately forced the jurors to reach a verdict. No. A20-0762, 2021 WL 2645468 at *7-8 (Minn. App. June 28, 2021) (reversing and remanding for a *Schwartz* hearing where the jury may have received instructions from the district court to "compromise" after alerting the court to a deadlock). We are not bound by nonprecedential opinions. *See Jackson ex rel. Sorenson v. Options Residential, Inc.*, 896 N.W.2d 549, 553 (Minn. App. 2017) ("[W]e are bound by precedent established in the supreme court's opinions and our own published opinions."). Nonetheless, we have reviewed the case cited and conclude that it is factually distinguishable from the circumstances in William's case.