STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0969

State of Minnesota,
Respondent,

vs.

Shane Kenneth Wallace,
Appellant.

Filed May 16, 2022
Affirmed
Smith, Tracy M., Judge

Dakota County District Court
File No. 19HA-CR-19-2277

Kathryn M. Keena, Dakota County Attorney, Jessica Bierwerth, Assistant County Attorney, Hastings, Minnesota (for respondent)

Kyle P. Hahn, Lee A. Hutton, III, The Hutton Firm, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Shane Kenneth Wallace appeals from his conviction for second-degree criminal sexual conduct and his two convictions for second-degree attempted criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(a) (2012), Minn. Stat. § 609.343, subd. 1(a) (2014), and Minn. Stat. § 609.343, subd. 1(a) (2016). Wallace argues

that (1) the evidence is insufficient to support his convictions, (2) the district court coerced him into testifying, and (3) the district court improperly admitted two pieces of evidence as relationship evidence. We reject Wallace's first two arguments. As to the third, we conclude that, though the district court erred by admitting the challenged evidence as relationship evidence, the error was harmless. We therefore affirm.

FACTS

The following facts were proved at trial.

In 2010, Wallace began dating B.V., to whom he is now married. B.V. has several siblings, including her younger sister S.V. In 2020, respondent State of Minnesota charged Wallace with three counts of criminal sexual conduct involving S.V. The charges were based on three separate incidents that took place between 2012 and 2017, when S.V. was between 7 and 12 years old. Wallace and B.V. were dating but were not yet married at that time.

The Three Incidents

The first incident occurred in 2012 when S.V. was seven years old. S.V. and another sister, A.V., spent the night at the apartment that Wallace shared with B.V. S.V. and A.V. slept together on an air mattress. During the night, Wallace woke S.V. up by pulling on her underwear. S.V. testified that Wallace pulled her underwear down three times. S.V. testified that she knew that it was Wallace based on his "figure." Only Wallace and B.V. lived in the apartment. S.V. testified that, at the time, she told no one what had happened because she did not believe the incident to be a "big deal."

The second incident occurred in 2014 at a different apartment that Wallace shared with B.V. S.V. was 10 years old at the time. S.V. testified that she thought the incident occurred during the winter. S.V. was sleeping on the couch in the living room when Wallace woke her up by moving her underwear. S.V. testified that she felt Wallace's hand touching her vagina through her underwear. The lights were on so S.V. could see Wallace. S.V. also saw Wallace look at her underwear with his phone's flashlight. When S.V. asked Wallace what he was doing, Wallace looked away, grabbed a pillow, and said nothing. The following morning, S.V. told B.V. what happened, and B.V. acted confused. S.V. also told A.V. what happened a few days later, and S.V. told another sister, A.H.V., what happened a few weeks later. In addition, one of S.V.'s brothers learned of the incident. Because of this incident, S.V. began to feel anxious and confused when she was around Wallace. A few years after the incident, Wallace apologized to S.V., saying that he was just looking for a lighter in the couch cushions.

The third incident occurred in March 2017 when S.V. was 12 years old. S.V. and A.V. were again staying at Wallace and B.V.'s apartment for the night. While sleeping with A.V. on an air mattress in the living room, S.V. woke up when Wallace took the blanket off of A.V. The light was on, so S.V. could see that it was Wallace. When S.V. asked what Wallace was doing, he grabbed the air mattress's pump and looked at it even though the air mattress was not deflated. S.V. fell back asleep, but she again was awakened because Wallace was moving her hand back and forth over his penis. S.V. moved her hand away and turned away from Wallace. The lights were off then, and S.V. testified that she

knew it was Wallace because of his robe. Again, no one other than Wallace and B.V. was living in the apartment.

Effect on S.V. and Disclosure of Abuse

One of S.V.'s brothers testified that S.V. began to act differently around Wallace starting in the fall of 2017. S.V. would hide in her room to be away from Wallace when Wallace visited the family home. In 2019, S.V. became depressed and suicidal. Almost two years after the third incident, S.V. told her older sister A.H.V. and one of her brothers what had happened. These disclosures eventually led to S.V. participating in a forensic interview, in which she described all three incidents. After the forensic interview, the case was referred to the police.

Relationship Evidence

At trial, over Wallace's objection, the district court admitted as relationship evidence two pieces of evidence offered by the state—specifically, evidence concerning two incidents that took place involving Wallace and S.V.'s sister A.H.V. These incidents occurred before Wallace and B.V. were married. The first incident occurred on a family trip to Duluth in either 2013 or 2014, when A.H.V. was 17 years old. A.H.V. testified that, while her family and Wallace were in an elevator taking a picture, Wallace placed his hand on her buttock, which "made [her] feel, like, really weird afterwards." The district court admitted into evidence the family photo, in which Wallace is touching A.H.V. The second incident occurred in 2016, when A.H.V. was 19 years old. A.H.V. testified that Wallace sent her a text message that contained a pornographic image and said something like he thought she might like it. The district court admitted the text message into evidence. A.H.V.

testified that, at the time, she shared with her siblings that Wallace had sent her the message and that, during the family's Thanksgiving later that year, Wallace apologized to A.H.V. for sending it. A.H.V. also testified that she could tell S.V. was hurt by Wallace's apology to A.H.V. because S.V. questioned why Wallace did not apologize to her, too. Before A.H.V. testified regarding each of the two incidents, the district court read the jury an instruction stating that the jury was "not to convict [Wallace] on the basis of the—occurrences" but that they are "for the limited purpose of assisting. . . in determining whether [Wallace] committed those acts with which [Wallace] is charged in this Complaint."

Wallace's Decision to Testify

In opening statements, defense counsel did not comment on whether Wallace would testify. At the close of Wallace's case in chief, outside the presence of the jury, the district court addressed the question of whether Wallace intended to testify. After giving defense counsel and Wallace time to discuss it, the district court placed Wallace under oath for inquiry by his counsel. Defense counsel questioned Wallace to confirm that he understood his right to testify as well as his right to remain silent and asked Wallace whether he wanted to testify in his own defense. Wallace stated that he did not. Following that questioning, the district court asked the prosecutor if she had any questions, and the prosecutor asked one question, confirming that Wallace understood that the decision whether to testify was his decision. The district court then asked Wallace several questions to confirm that he understood that he had a constitutional right to remain silent and that, while he should consult with his lawyer and carefully consider his advice, the decision whether to testify

was his. The district court also asked whether Wallace had spoken with counsel and had been given sufficient time to make his decision. Wallace confirmed that he had spoken with counsel and had been given sufficient time, and he then stated that he had changed his mind and had decided to testify. Court was then adjourned.

When trial resumed three days later, following the weekend, the district court and defense counsel conducted a second colloquy with Wallace to confirm that his decision to testify was knowing, intelligent, and voluntary. Wallace then testified in his own defense and denied all S.V.'s accusations against him.

The jury found Wallace guilty of all three counts, and the district court imposed concurrent prison sentences of 84 months, 24 months, and 18 months. This appeal follows.

DECISION

Wallace presents three arguments on appeal: (1) that his convictions must be reversed because the circumstantial evidence is insufficient to support them, (2) that he is entitled to a new trial because the district court improperly coerced him into testifying when it independently questioned him about his decision, and (3) that he is entitled to a new trial because the district court erred by admitting evidence of prior conduct involving A.H.V. as relationship evidence. We address each argument in turn.

I. The evidence is sufficient to support all three convictions.

Wallace first argues that the evidence is insufficient to support his convictions because the state failed to prove beyond a reasonable doubt that he engaged in sexual contact with S.V. *See* Minn. Stat. § 609.343, subd. 1(a) (identifying sexual contact as an element of the offense).

To have engaged in sexual contact, Wallace must have committed acts with "sexual or aggressive intent." *State v. Ahmed*, 782 N.W.2d 253, 262 (Minn. App. 2010) (citing Minn. Stat. § 609.341, subd. 11(b)(i) (2006) (defining sexual contact)). An act "is committed with sexual intent when the actor perceives himself to be acting based on sexual desire or in pursuit of sexual gratification." *State v. Austin*, 788 N.W.2d 788, 792 (Minn. App. 2010), *rev. denied* (Minn. Dec. 14, 2010).

Intent is usually established through circumstantial evidence by drawing inferences from the defendant's words and actions in light of the totality of the circumstances. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). For a conviction to be upheld based on circumstantial evidence, "the circumstances must form a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt." *State v. Reed*, 737 N.W.2d 572, 581 (Minn. 2007) (quotation omitted).

In reviewing whether circumstantial evidence is sufficient to sustain a conviction, we apply a two-step inquiry. First, we identify the circumstances proved. *See State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). In doing so, we consider only those circumstances that are consistent with the verdict. *See State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). Conflicting evidence is construed in the light "most favorable to the verdict," and we assume "that the jury believed the State's witnesses and disbelieved the defense witnesses." *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008).

Second, we independently "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not

simply whether the inferences that point to guilt are reasonable." *Silvernail*, 831 N.W.2d at 599 (quotation omitted). Here, we give no deference to the jury's choice between any reasonable inferences. *See Harris*, 895 N.W.2d at 601. If there is any rational hypothesis of innocence based on the circumstances proved, then the evidence was insufficient and the conviction must be overturned. *See State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010).

A. Circumstances Proved

When the testimony and evidence submitted at trial is viewed in the light most favorable to the jury's verdict, *Tscheu*, 758 N.W.2d at 858, the state proved the following circumstances:

Regarding the first incident:

- S.V. was seven years old at the time.
- Along with her sister, A.V., S.V. was asleep on an air mattress in B.V. and Wallace's apartment.
- S.V. woke up when she noticed Wallace tugging on her underwear.
- Wallace tugged on S.V.'s underwear three times.
- The lights were off at the time, but S.V. knew it was Wallace because of his "figure."
- Only S.V., B.V, A.V., and Wallace were in the apartment that night.

Regarding the second incident:

- S.V. was ten years old at the time.
- S.V. was asleep on a couch in B.V. and Wallace's apartment.

- S.V. woke up when she felt Wallace move her underwear to the side.
- Wallace had his phone's flashlight on, and it was pointed at S.V.'s genital area.
- Wallace was looking at S.V.'s genital area.
- Wallace's hand touched S.V.'s vagina over her underwear.
- When S.V. asked Wallace what he was doing, Wallace moved away and grabbed a pillow before walking away without saying anything.
- After this incident, S.V. began to act differently when Wallace was around.
- S.V. told her sisters A.V. and A.H.V. what happened shortly after the incident and S.V.'s brother also found out about the incident.
- A few years after the incident, Wallace apologized and claimed that he was only looking for his lighter.

Regarding the third incident:

- S.V. was 12 years old at the time.
- In March 2017, S.V. and her sister A.V. were asleep on an air mattress in B.V. and Wallace's apartment.
- S.V. woke up when she felt Wallace move the blanket off A.V.
- S.V. knew it was Wallace because the lights were on.
- S.V. asked what Wallace was doing, but Wallace did not reply. Instead, he picked up the air-mattress air pump and looked at it before leaving the room.
- S.V. fell back asleep, but later woke up when she felt Wallace moving her hand back and forth over his penis.
- S.V. moved her hand away and turned away from Wallace.
- Even though the lights were off, S.V. could tell it was Wallace because of the robe he was wearing.

- Only S.V., A.V., B.V., and Wallace were in the apartment that night.

B. The circumstances proved are consistent only with guilt.

The circumstances proved are consistent with guilt and inconsistent with any rational hypothesis of innocence. With respect to each incident, the circumstances proved demonstrate only that Wallace was acting based on sexual desire or gratification. *See Austin*, 788 N.W.2d at 792. In the first two incidents, Wallace tried to remove S.V.'s underwear. In the second incident, Wallace was looking at S.V.'s underwear with his phone's flashlight and touched S.V.'s vagina over her underwear. And in the third incident, Wallace used S.V.'s hand to touch his penis and rub it up and down before S.V. pulled her hand away. Based on these circumstances proved there is no rational hypothesis other than that Wallace intended to engage in sexual contact with S.V.

Wallace's arguments to the contrary are unpersuasive. Wallace first contends that the evidence is insufficient because the jury's verdict was based on unsubstantiated testimony from S.V. He states that only S.V. testified about Wallace's actions and that her testimony is not credible because the lights were off for two of the three incidents. But S.V.'s testimony need not be corroborated to support the convictions. *See* Minn. Stat. § 609.347, subd. 1 (2020) (stating that victim testimony need not be corroborated in prosecutions for criminal-sexual-conduct charges). And we assume that the jury believed the state's witnesses and disbelieved any evidence to the contrary. *See Tscheu*, 758 N.W.2d at 858.

Wallace next argues that the evidence is insufficient because it is consistent with rational hypotheses of innocence. He asserts that the evidence regarding the first and third

incidents is consistent with the rational hypothesis that S.V.'s testimony was the "product of fabricated memories" due to family dislike of Wallace and that the evidence regarding the second incident is consistent with the rational hypothesis that he was just looking for a lighter. But these are not arguments for reasonable inferences of innocence drawn from the circumstances proved; rather, these are arguments to find different circumstances proved. In determining the circumstances proved, we assume that the jury believed the testimony of the state's witnesses, and here that includes S.V.'s testimony that Wallace pulled on her underwear, touched her vagina through her underwear, and placed her hand on his penis. These actions are consistent only with sexual intent.

In sum, we conclude that the evidence is sufficient to support Wallace's convictions.

II. The district court did not coerce Wallace to testify.

Wallace next argues that the district court coerced him into testifying after, with the assistance of counsel, he invoked his right to remain silent. Wallace contends that the district court coerced Wallace into testifying by "interrogat[ing]" and making "comments" about his decision not to testify.

Wallace did not object at trial when the district court engaged in its colloquies with Wallace. We review claims of unobjected-to error under the plain-error test. *See State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). "In order to meet the plain error standard, a criminal defendant must show that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant's substantial rights." *Id.*

Wallace's argument does not satisfy even the first element of this test. It is true that the supreme court has not required district courts "to perform an on-the-record colloquy

with every criminal defendant who does not testify." *State v. Walen*, 563 N.W.2d 742, 751-52 (Minn. 1997). But the supreme court has not forbidden district courts from engaging in such a colloquy either. *See id.* (noting that "placement on the record of a defendant's waiver of his right to testify often will save both the court and defense counsel considerable time at any postconviction proceeding"). When Wallace first was questioned by his counsel and said that he would not testify, the district court and the prosecutor followed up with a few questions confirming that Wallace understood that the decision whether to testify was his to make. When Wallace then suddenly changed his mind and said he wanted to testify, the district court adjourned for the day. When trial resumed three days later, the district court took the time to again ensure that Wallace understood his rights and indeed had decided to testify. The district court acted with appropriate attention to Wallace's rights. It did not err.[1]

III. The district court erred by admitting what it classified as relationship evidence, but that error is harmless.

Finally, Wallace argues that the district court erred by admitting over his objection two pieces of evidence: (1) A.H.V.'s testimony that Wallace grabbed A.H.V.'s buttock in 2013 or 2014, along with a family photo showing the incident, and (2) A.H.V.'s testimony

[1] In his reply brief, Wallace argues he was denied effective assistance of counsel when his trial counsel did not object to the district court's colloquy. But Wallace did not raise this issue in his principal brief to this court, and the argument is therefore forfeited. *See McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990), *rev. denied* (Minn. Sept. 28, 1990); *see also* Minn. R. Civ. App. P. 128.02, subd. 3 (stating that "[t]he reply brief must be confined to new matter raised in the brief of the respondent").

that Wallace sent her a pornographic image in 2016, along with the texts around that incident.

"Evidentiary rulings rest within the sound discretion of the district court, and [appellate courts] will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). A district court abuses its discretion when its "ruling is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Bustos*, 861 N.W.2d 655, 666 (Minn. 2015) (quotation omitted). To prevail on appeal, a party usually must show error and prejudice resulting from that error. *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981). As a result, a district court's erroneous ruling on an evidentiary objection is reviewed for harmless error. *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011). A nonconstitutional error is harmless unless it "substantially influenced the jury's verdict." *State v. Morrow*, 834 N.W.2d 715, 729 n.7 (Minn. 2013).

Generally, under Minn. R. Evid. 404(b), evidence of other bad acts is not admissible to prove the character of a person to show action in conformity therewith. But such evidence may be admissible for other purposes, provided the state follows the process and meets the standards for introducing such evidence. *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965); *see also State v. Ness*, 707 N.W.2d 676, 682, 685 (Minn. 2006).

Relationship evidence, however, is treated differently from *Spreigl* evidence. *State v. Zinski*, 927 N.W.2d 272, 278 (Minn. 2019). Under the relationship-evidence rule, evidence of the defendant's previous conduct involving the alleged victim may be introduced to illuminate the history of the relationship between the accused and the alleged victim to place the crime charged in the context of their relationship. *Id.* But relationship

evidence is not limited to conduct between the accused and the alleged victim. Minnesota Statutes section 634.20 (2020) establishes a "subtype of general relationship evidence." *State v. Bell*, 719 N.W.2d 635, 638 n.4 (Minn. 2006). Under that statute, evidence of domestic conduct against the victim or against other family or household members may also be admitted. Minn. Stat. § 634.20. Evidence that shows how a person treats family or household members may inform how the person treats those close to them and may suggest how the person may interact with the victim. *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. 2010).

The district court, over Wallace's objection, admitted A.H.V.'s testimony about the two incidents, along with the photo and text messages, as relationship evidence. As the state acknowledged at oral argument, the precise theory for how this evidence was determined to be relationship evidence is unclear. Having reviewed the record, we conclude that the evidence does not qualify as relationship evidence. First, the evidence involved a third party (A.H.V.)—and not S.V.—and thus did not illuminate the history between Wallace and S.V. or place the crime charged in context with the relationship between Wallace and S.V. Second, the evidence did not satisfy the requirements of section 634.20 because it was conduct against a third party (A.H.V.) who was not, at the time, Wallace's family or household member as defined by statute. *See* Minn. Stat. § 634.20 (incorporating definition of "family or household members" in Minn. Stat. § 518B.01, subd. 2(b) (2020)). At the time of the two incidents, A.H.V. was the sister of Wallace's then-girlfriend, B.V. Wallace was not related to A.H.V. by blood, by marriage, or otherwise, nor did Wallace and A.H.V. share the same household. In sum, because the

evidence involving A.H.V. did not constitute relationship evidence under section 634.20 or otherwise, the district court abused its discretion by admitting it as such.[2]

That said, we conclude that the district court's error is harmless. In determining whether wrongfully admitted evidence significantly affected the verdict, Minnesota courts have considered: (1) the strength of the case against the defendant, (2) whether there was a limiting instruction given to the jury not to base any conviction on the evidence, and (3) whether the state dwelled on the evidence during closing argument. *See State v. Courtney*, 696 N.W.2d 73, 84 (Minn. 2005) (applying these factors when determining whether erroneously admitted *Spreigl* evidence significantly affected the verdict); *State v. Stewart*, 643 N.W.2d 281, 298 (Minn. 2002) (same).

First, the evidence against Wallace was strong. S.V. provided consistent testimony describing three discrete incidents of sexual contact. Her recollections matched Wallace's opportunity to commit the offenses at B.V. and Wallace's apartments. Her testimony was corroborated by her contemporaneous or nearly contemporaneous disclosure of one or more of the incidents to A.V., who was sleeping over with her at B.V. and Wallace's apartments during two of the incidents. Family members also testified to S.V.'s change in behavior and her discomfort being around Wallace. There was also no evidence of a motivation for S.V. to fabricate a story.

Second, the district court gave limiting instructions before the state introduced each piece of the challenged evidence and during its final instructions to the jury. We assume

[2] The state offers no other basis for admission of the evidence involving A.H.V.

the jury followed those instructions. *See State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009). We observe that those instructions did not follow the standard instruction for relationship evidence. Instead, they were the standard instruction for other-bad-acts evidence under *Spriegl*. But, while the standard relationship-evidence instructions and the standard other-bad-acts instructions are not identical, they both advise that the evidence is admitted for the limited purpose of helping the jury determine whether the defendant committed the charged acts. And both advise that the defendant is not being tried for and may not be convicted of any behavior other than the charged offense. *Compare* 10 *Minnesota Practice* CRIMJIG 2.01, 3.16 (2021) (reciting the standard *Spreigl* evidence limiting instruction), *with* 10 *Minnesota Practice* CRIMJIG 2.07 (2021) (reciting the standard relationship evidence limiting instruction). The district court's limiting instructions thus support a determination of harmless error.

Third, the state did not dwell on the challenged evidence in its closing arguments. It did not argue that those incidents showed a propensity to commit sexual abuse and that Wallace therefore committed the abuse that was charged. In its principal closing argument, the state discussed only the incident involving the pornographic text message and did so for two purposes: to establish that B.V. was a biased witness in favor of Wallace because she supported him even when he engaged in misconduct with another sibling, A.H.V.; and to challenge the credibility of Wallace's testimony that he accidentally sent those messages to his then-girlfriend's sister. The state argued that the theory of "accident, misinterpreting, misunderstanding" was "a pretty common thread" in the case. Defense counsel in his closing argument spoke about both incidents, challenging the accuracy of the evidence and

the significance of the incidents. The prosecutor returned to the pornographic-text evidence briefly in rebuttal, emphasizing that Wallace was not being tried for that conduct but that the text message showed that Wallace claims an "accident" and has loose boundaries when it comes to his then-girlfriend's sisters. While this latter use of the evidence is more troubling, on the whole the state did not unfairly dwell on the two incidents in closing arguments.

Finally, we note that the evidence itself was not overly prejudicial. One incident involved a pornographic text sent to a 17-year-old—it did not involve sexual misconduct with a child. And the other incident, which the state did not even discuss in its closing arguments, involved an alleged grabbing of A.H.V.'s buttock in a crowded elevator while taking a family photo—an incident that A.H.V. even acknowledged on cross-examination she was not "for sure" was intentional. Thus, although the district court erred by admitting the challenged evidence, the error was harmless.

Affirmed.