STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1768

State of Minnesota,
Respondent,

vs.

Terrance Frelix, Jr.,
Appellant.

Filed January 29, 2024
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-CR-21-10936

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

Mary F. Moriarty, Hennepin County Attorney, Zachary Stephenson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges his three convictions of first-degree criminal sexual conduct against three minor siblings, TL, TK, and TN; arguing that (1) the district court erred by admitting recordings of TL and TK's forensic interviews and a police officer's testimony that recounted TL's statement to the police; (2) the district court abused its discretion by admitting TN's medical records over appellant's hearsay objection; and (3) the state presented insufficient evidence to sustain his conviction as to TN. We affirm.

FACTS[1]

From 2016 to 2018, appellant Terrance Frelix, Jr., lived with a distant relative at her home on Emerson Avenue in Minneapolis (the Emerson house). During that time, appellant had a room next to a room shared by TL, TK, and TN (the sisters). In 2018, TL was 12 years old, TK was 11, and TN was 9.

Three years after leaving the Emerson house, appellant sent a series of sexually explicit text messages to then-15-year-old TL. These messages led TL to make a formal police report in which she told officers that appellant had sexually assaulted her, TK, and TN while he lived in the Emerson house. The police referred the sisters' cases to Hennepin County Child Protection, which scheduled TL and TK for interviews with Cornerhouse, an organization that conducts forensic interviews in child-trauma cases.

[1] These facts are based on the testimony and evidence presented at appellant's trial.

In their Cornerhouse interviews, TL and TK described several occasions during which appellant had sexually penetrated or had sexual contact with either them or their sisters. Both TL and TK described appellant's coercive grooming behavior, inappropriate touching, and forcible sexual contact. TL also stated that, after one assault, appellant threatened to shoot her brothers if she told anybody about what had happened.

In addition to the Cornerhouse interviews, all three sisters received a forensic medical examination. During their examinations, each sister told their respective healthcare provider that appellant had sexually assaulted them. Following the examinations, doctors diagnosed TK and TN with sexually transmitted diseases (STD). TN reported that her only sexual experience had been appellant's sexual assaults.

In 2021, respondent State of Minnesota charged appellant with three counts of first-degree criminal sexual conduct, sexual penetration against a person under 13 and more than 36 months younger than appellant in violation of Minn. Stat. 609.342, subd. 1(a).[2] Count I related to appellant's conduct with respect to TL, Count II related to TK, and Count III related to appellant's alleged assault of TN.[3] TL, TK, the police officer who took TL's formal report, and a pediatrician familiar with the sisters' medical records all testified at appellant's jury trial. TN was unavailable for trial. The district court also admitted TL and TK's Cornerhouse interviews and the sisters' medical records into evidence. Appellant did

[2] The charges relating to TL and TK were charged under the 2014 version of the statute, while the charge relating to TN was charged under the 2016 version of the statute, both of which are substantively identical.

[3] The state originally charged appellant with an additional count of first-degree criminal sexual conduct against TN, but later dismissed the charge before trial.

not object to the Cornerhouse interviews, the officer's testimony, or TL and TK's medical records during trial. Appellant objected to the admission of TN's medical records on hearsay grounds, but the district court overruled appellant's objection and admitted them as statements made for medical diagnosis or treatment under Minn. R. of Evid. 803(4) and as business records under Minn. R. Evid. 803(6).

The jury found appellant guilty of all three counts of first-degree criminal sexual conduct. The district court sentenced appellant to 144 months in prison on each count, with two of the counts to be served consecutively. Appellant's sentence also requires lifetime registration as a predatory sex offender. This appeal follows.

DECISION

I. Appellant cannot show error based on the admission of the Cornerhouse interviews or the officer's testimony regarding TL's police report.

Despite not objecting to either the Cornerhouse interviews or the police officer's testimony at trial, appellant contends on appeal that certain portions of the evidence contained inadmissible hearsay statements.

Appellate courts review unobjected-to evidentiary challenges under the plain-error standard. *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). For appellant to meet the plain-error standard, he must show (1) an error, (2) that was plain, and (3) that affected his substantial rights. *Id.* Errors are "plain" if they are clear or obvious, which is usually established if the unobjected-to error contradicts caselaw, a court rule, or a standard of conduct. *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017). If an appellate court concludes that any of the plain-error prongs are not satisfied, it need not consider the others.

Id. at 786. Even if appellant satisfies all three prongs of the plain-error test, appellate courts will only correct errors that "seriously affect[] the fairness, integrity, or public reputation of judicial proceedings." *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016) (quotation omitted).

Hearsay is defined as an out-of-court statement that is offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c). Hearsay statements are inadmissible unless they fall within a recognized exception to the hearsay rule. Minn. R. Evid. 802; *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). However, the rules of evidence categorically exempt certain out-of-court statements from being classified as hearsay. Minn. R. Evid. 801(d).

Because trial objections are particularly important for appellate review of hearsay issues, the scope of plain-error review is exceptionally narrow for hearsay challenges. *See Manthey*, 711 N.W.2d at 504. When a defendant fails to make a hearsay objection at trial, the state has no opportunity to establish that the challenged statements are admissible under one of the many exceptions to the hearsay rule, and the district court cannot create a record detailing its decisionmaking process. *Id.* Minnesota courts therefore require a defendant to demonstrate that unobjected-to statements were "clearly or obviously inadmissible hearsay" to show that admitting the statements constituted a reversible error. *Id.*

A. Appellant cannot show error based on permitting the jury to hear TL and TK's Cornerhouse interviews in their entirety.

Here, appellant challenges the admissibility of TL and TK's Cornerhouse interviews as prior consistent statements because the interviews contained more detailed descriptions

of appellant's assaultive acts than what TL and TK testified to at trial. We are not convinced.

A prior out-of-court statement is not hearsay and is admissible as substantive evidence if it is reasonably "consistent with the declarant's testimony and helpful to the trier of fact in evaluating the declarant's credibility as a witness." Minn. R. Evid. 801(d)(1)(B); *State v. Zulu*, 706 N.W.2d 919, 924 (Minn. App. 2005). A declarant's prior statement is not reasonably consistent with their trial testimony when the inconsistencies "directly affect the elements of the criminal charge" by providing evidence of a more serious offense. *State v. Bakken*, 604 N.W.2d 106, 110 (Minn. App. 2000), *rev. denied* (Minn. Feb. 24, 2000).

Although the Cornerhouse interviews provided a more detailed description of appellant's sexually assaultive behavior, the jury did not need to believe any of the additional interview information to sustain appellant's conviction of first-degree criminal sexual conduct.[4] *Contra Bakken*, 604 N.W.2d at 110. Additionally, in both their Cornerhouse interviews and their trial testimony, TL and TK stated that appellant had assaulted them many times, forced them to have oral sex with him, and assaulted TL while TK was in the room. TL and TK's Cornerhouse interviews are "reasonably consistent" with their trial testimony, meaning that appellant fails to meet the error prong of the plain-

[4] There is no dispute that, at the time of the assaults, TL and TK were under 13 years old and appellant was more than 36 months older than TL and TK, as required to sustain appellant's conviction under Minn. Stat. § 609.342, subd. 1(a).

error test. *Zulu*, 706 N.W.2d at 924. We therefore need not consider the other prongs. *Webster*, 894 N.W.2d at 786.

B. Appellant cannot show error based on permitting the police officer to testify about TL's report that appellant had sexually assaulted TN.

The officer who interviewed TL during her formal statement to the police testified that, during the interview, TL stated that appellant had sexually assaulted TN. Like the Cornerhouse interviews, TL's statement to the officer qualified as a prior consistent statement under rule 801(d)(1)(B). Although TL did not testify, as the officer did, that appellant "penetrat[ed]" TN, TL testified that she did not tell her sisters appellant sexually assaulted her until her sisters, including TN, "opened up to [TL] first." TL's prior statement to the officer is therefore "reasonably consistent" with her trial testimony regarding appellant's abuse of TN. Further, because any inconsistencies between TL's prior statement and her trial testimony concern specificity rather than the elements of the offense, the officer's testimony was not "clearly or obviously" inadmissible hearsay, and therefore does not constitute reversible error. *Manthey*, 711 N.W.2d at 504.; *Bakken*, 604 N.W.2d at 110.

II. The district court did not abuse its discretion by admitting TN's medical records.

Appellant next argues that the district court abused its discretion by determining that TN's medical records, including TN's statements identifying appellant as her assailant, were admissible both as statements made for the purpose of medical diagnosis or treatment and as business records. We disagree.

Appellate courts review a district court's determination that a statement meets the requirements of a hearsay exception for an abuse of discretion. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). A district court abuses its discretion when its decision is based on an erroneous view of the law or is contrary to the facts and the record. *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). Appellant has the burden to show both error and prejudice resulting from the error. *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009).

Under Minn. R. Evid. 803(4), "statements made for purposes of medical diagnosis or treatment and describing medical history" are not excluded by the hearsay rule. Statements in a victim's medical records which identify the accused perpetrator are ordinarily not admissible under rule 803(4). *State v. Robinson*, 718 N.W.2d 400, 404 (Minn. 2006). However, courts often make an exception for child victims, based on the theory that the abuser's identity is pertinent to a child's subsequent treatment. *See, e.g.*, *State v. Salazar*, 504 N.W.2d 774, 777-78 (Minn. 1993); *United States v. Renville*, 779 F.2d 430, 437 (8th Cir. 1985) ("The exact nature and extent of the psychological problems which ensue from child abuse often depend on the identity of the abuser").[5] A child's statement to their medical provider which identifies the child's abuser is admissible under rule 803(4) if the evidence shows that the child knew they were speaking to medical personnel and understood the importance of being truthful. *Robinson*, 718 N.W.2d at 405.

Here, the record reflects that TN knew that she was speaking to medical personnel, understood the gravity of her examination, and knew the importance of telling the truth.

[5] Federal Rule of Evidence 803(4) is substantively identical to Minn. R. Evid. 803(4). Although not binding, we cite the Eighth Circuit's *Renville* opinion for its persuasive value.

TN was twelve years old at the time of her examination, TN knew that her examination related to her reports of appellant's sexual assault, and TN's legal guardian accompanied her to the appointment. The medical provider told TN that the examination was designed to ensure her body was healthy and TN "verbalized understanding." Given the particular circumstances of this case, TN's statement identifying appellant as her abuser presented sufficient indicia of reliability to be admitted under rule 803(4), and the district court therefore acted within its discretion when it admitted TN's medical records. Because we conclude that the district court did not abuse its discretion by admitting TN's medical records under rule 803(4), we do not address the district court's determination that TN's records were admissible as business records.

III. The state presented sufficient evidence to sustain appellant's conviction of sexually assaulting TN.

Appellant contends that the state failed to prove that Hennepin County was the proper trial venue and that his assault of TN occurred while he lived at the Emerson House between 2016 and 2018. We are not persuaded.

When considering insufficient-evidence claims, appellate courts examine the record to determine whether the evidence, when viewed in the light most favorable to the conviction, could reasonably support the verdict. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). Evidence is sufficient to support a guilty verdict if a factfinder could reasonably conclude that the defendant committed the charged offense. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). Venue is an essential element of every criminal offense, and the state must prove beyond a reasonable doubt that appellant committed the offense

in the county where the case is tried. *State v. Pierce*, 792 N.W.2d 83, 85 (Minn. App. 2010).

Instead of TN's testimony, which would be direct evidence, the state relied on the information provided in TN's medical report to establish both that appellant assaulted TN in Hennepin County and that the assault occurred between 2016 and 2018. Because TN's medical report constitutes circumstantial rather than direct evidence of appellant's guilt, we review appellant's conviction in two steps. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, the reviewing court must identify the circumstances proved, deferring to the jury's acceptance of the state's proof of these circumstances and rejecting any contrary evidence. *Id.* at 598-99. Next, the reviewing court must independently examine the reasonableness of all inferences that might be drawn from the circumstances proved. *Id.* at 599. To sustain the conviction, the circumstances proved must be consistent with the hypothesis that the accused is guilty and inconsistent with any other "rational hypothesis." *Id.* (quotation omitted).

A. The circumstances proved are consistent only with the hypothesis that appellant assaulted TN in Hennepin County.

The circumstances proved at appellant's trial include that: (1) appellant and TN lived together at the Emerson House in Minneapolis from 2016 until TN's mother died in 2018; (2) appellant had not lived with TN prior to 2016; (3) appellant sexually penetrated TN; (4) the sexual assault occurred in [appellant's] room "before [TN's] mom died" (5) both TN and her sisters referred to appellant's room in the Emerson house as "his room;" (6) medical experts diagnosed TN with an STD during her medical examination in

2021; (7) TN reported that her only sexual experience had been appellant's sexual assaults; and (8) TN was 12 years old at the time of the examination.

Appellant concedes, and we agree, that the circumstances proved permitted the jury to infer that appellant sexually assaulted TN while the two lived together at the Emerson house in Minneapolis. However, appellant argues that the circumstances proved also permit an alternative hypothesis that appellant sexually assaulted TN before they lived together in a room appellant occupied outside of Hennepin County. The circumstances proved do not support that inference.

To establish a rational alternative hypothesis, appellant must rely on more than conjecture or speculation. *State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010). Rather, appellant must point to circumstances proved that are consistent with the hypothesis that he is not guilty. *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). Appellant's suggestion that TN was referring to an unknown location outside of Hennepin County when she stated that she was assaulted in "[appellant's] room" is inconsistent with the circumstances proved, which show that the assault occurred in Minneapolis at the Emerson house. Appellant's opposing theory is nothing more than conjecture, which is insufficient to overturn his conviction. *Al-Naseer*, 788 N.W.2d at 480. We conclude that the state presented sufficient evidence to support the jury's finding that appellant assaulted TN in Hennepin County.

B. The circumstances proved are consistent only with the hypothesis that TN's assault occurred between 2016-2018.

Appellant contends that, because TK testified that appellant visited the sisters "a lot" before the family moved to the Emerson house, the circumstances proved support an alternative hypothesis that appellant assaulted TN before he moved into the Emerson house in 2016. We are not persuaded.

Initially, appellant's visits to the sisters before 2016 are not a part of the subset of facts comprising the circumstances proved and are therefore beyond the scope of our review. *See Silvernail*, 831 N.W.2d at 598-99. Moreover, the circumstances proved show that TN told her healthcare provider that appellant assaulted her in "his room," appellant only lived in the same home as TN between 2016 and 2018, and that TN and her sisters referred to appellant's room in the Emerson house as "his room." Furthermore, TN stated that appellant assaulted her "before mom died" in 2018. These circumstances proved unerringly point to only one conclusion, that appellant sexually assaulted TN in "his room" that he occupied while living with TN at the Emerson House in Hennepin County between 2016 and 2018.

Affirmed.