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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1518

State of Minnesota,
Respondent,

vs.

Ronald Lee Sandberg-Karnes,
Appellant.

Filed September 4, 2012
Affirmed
Peterson, Judge

Mower County District Court
File No. 50-CR-10-1886

Lori Swanson, Attorney General, John B. Gallus, Assistant Attorney General, St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, Austin, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and Stoneburner, Judge.

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

PETERSON, Judge

In this appeal from a conviction of first-degree criminal sexual conduct, appellant argues that the district court erred in admitting (1) hearsay statements of the three-year-old victim and (2) evidence of his prior felony-domestic-assault conviction. We affirm.

FACTS

Appellant Ronald Lee Sandberg-Karnes and his girlfriend, T.S., moved in with his sister, M.S., his sister's boyfriend, C.W., and their two children. Appellant and T.S. provided care for the two children while M.S. and C.W. were at work. On weekdays, C.W. typically worked until 2:30 p.m., and M.S. typically worked until 5:00 p.m.

One afternoon, C.W. returned home from work around 3:00 p.m. and noticed that his three-year-old daughter, C.A.W., was not behaving normally. C.W. asked C.A.W. what was wrong, and she said that her "butt hurts." C.W. asked why, and C.A.W. responded that "[appellant] did it." C.W. asked, "[Appellant] did what?" and C.A.W. told him that appellant "stuck his pee pee in her butt."

When M.S. returned home, C.W. asked M.S. to ask C.A.W. what was wrong with her. C.A.W. told M.S. that her "butt hurt." M.S. asked her if she had fallen, and C.A.W. said "no." M.S. asked her again, and C.A.W. said appellant's name. M.S. asked her if appellant had spanked her, and C.A.W. said "no." M.S. "asked her a couple more times . . . what happened," and C.A.W. put her hand up by her mouth and whispered, "[Appellant] put his pot pot in my butt."

M.S. and C.W. took C.A.W. to a local medical center, where they were referred to St. Paul Children's Hospital. The next day, they took C.A.W. to the Midwest Children's Resource Center specialty clinic (MCRC) at St. Paul Children's Hospital, where she was interviewed and examined by Beth Carter, a Registered Nurse Case Manager who specialized in assessing children who are alleging abuse.

Carter testified at trial that she had been in her position at MCRC for 13 years, had evaluated more than 1,300 children, and had testified in child-abuse cases 50 to 60 times. Carter follows certain protocol when examining and interviewing a child, including naming body parts on a diagram of a human body. The interviews are video recorded, and the examination rooms have observation areas where "law enforcement or child protection" can watch the proceedings.

Carter testified that during the interview, C.A.W. was "very adamant" that "[appellant's] pot pot hurt [her] butt" and, despite a lack of details surrounding many of her other statements, C.A.W. was "very clear" that "[appellant's] pot pot went in [her] butt." Carter referred to diagrams of a girl and a boy and asked C.A.W to label body parts. On the "boy diagram" C.A.W. identified the penis as "the pot pot." Carter also performed a physical examination, which showed "a little splitting of the skin or a fissure, . . . one at about the twelve o'clock region and one at about the four o'clock region" in C.A.W.'s anal area.

During a competency hearing, C.A.W. did not respond to the district court's questions. Following the hearing, the parties agreed that C.A.W. was not competent to testify. The state moved to admit C.A.W.'s statements to her father, mother, and Carter.

Appellant conceded that C.A.W.'s statements to her parents were nontestimonial, but argued that they lacked sufficient indicia of reliability to be admitted. The court found C.A.W.'s statements to her mother and father were nontestimonial and, applying the factors set forth in *State v. Ahmed*, 782 N.W.2d 253, 260 (Minn. App. 2010), found that:

> (1) C.A.W.'s statement to her father was spontaneous;
> (2) questioning by M.S. did not convey any preconceived idea of what C.A.W. should say;
> (3) the questions M.S. asked were not leading;
> (4) there was no motive for C.A.W. to fabricate;
> (5) the statement was not of the type that one would expect a three-year-old child to fabricate;
> (6) C.A.W.'s statement remained consistent over time; and
> (7) C.A.W. was seeking comfort from her mother and father and from Carter, who was assisting her with her injury.

Based on these findings, the district court concluded that the statements to mother, father, and Carter

> indicate . . . that there's a trustworthiness or reliability that the finder of fact should be allowed to hear these statements and make a determination based upon those statements, plus other physical evidence in the matter, plus other evidence that may be introduced . . . to make a determination as to the credibility of the statements made by the child to the parents, as well as to [Carter].

The state moved to impeach appellant with two felony convictions. Following the close of the state's case, the district court applied the *Jones*[1] factors and granted the state's motion with respect to a conviction for felony domestic assault, finding that the assault had impeachment value because it allowed the jury to see "the whole person," that

[1] *State v. Jones*, 271 N.W.2d 534, 537-38 (Minn. 1978)

the offense occurred in 2009, and that appellant's testimony and the credibility of the witnesses in general was "extremely important."

Appellant testified, but the state did not impeach him with the prior conviction during his testimony. Following the close of the defense case, the state offered rebuttal testimony from the primary investigating officer. During the rebuttal testimony, a video recording of appellant's statement to the officer was admitted into evidence and played for the jury. The video recording contained the following exchange:

> Officer: Okay. What do you mean by, "trying to make money"?
> Appellant: Looking to cut yards, cut grass, work on cars . . .
> Officer: Okay. Nothing as far as getting a job someplace? . . .
> Appellant: It's hard for me because I'm a convicted felon.
> . . .
> Appellant: So, it's not many places will hire me because of the charge of I've had, which was a domestic assault, a felony.

Appellant was convicted of first-degree criminal sexual conduct. The district court sentenced appellant to 281 months in prison. This appeal followed.

D E C I S I O N

I.

"Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted). "In criminal cases, offering hearsay statements against the accused from declarants who do not testify and are not subject to cross-examination, may implicate the constitutional right to confrontation." Minn. R. Evid. 807 comm. cmt;

see U.S. Const. amend VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . .").

The Confrontation Clause bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination." *Crawford v. Washington*, 541 U.S. 36, 53-54, 124 S. Ct. 1354, 1365 (2004). C.A.W. was deemed incompetent, and, thus, was unavailable to testify. Appellant did not have a prior opportunity to cross-examine C.A.W. Therefore, unless C.A.W.'s statements were nontestimonial, admitting the statements violated appellant's right to confrontation.

The Minnesota Supreme Court's holding in *State v. Scacchetti* is directly on point. 711 N.W.2d 508 (Minn. 2006). *Scacchetti* addresses whether an interview of an alleged child sex-abuse victim by a nurse at MCRC is a testimonial statement. *Scacchetti* holds, in part, that the statement is nontestimonial because the nurse at MCRC is not a government actor or acting in concert with or as an agent of the government. 711 N.W.2d at 514-515.

The district court found that the local medical center referred C.A.W. to MCRC and C.A.W. was taken there for a medical purpose. The district court found: "There was no referral by any law enforcement agency to [MCRC]. There was no law enforcement agent present at the center." The record supports these findings, and, thus, under *Scacchetti*, the district court did not err in concluding that Carter was not acting in concert with the government and that the statements were nontestimonial.

To support his argument that C.A.W.'s statements to Carter were testimonial, appellant cites *Bobadilla v. Carlson*, 575 F.3d 785 (8th Cir. 2009). That case is distinguishable from this case. The interview in *Bobadilla* "was initiated by a police officer," the police officer "asked [the social worker] to assist him," and "the interview was conducted for the purpose of the criminal investigation." 575 F3d at 791 (quotation marks omitted).

Appellant accurately argues that the U.S. Supreme Court's opinion in *Davis v. Washington*, 547 U.S. 813, 126 S. Ct. 2266 (2006), is controlling authority on evaluating the testimonial nature of a statement. But *Davis* does not compel a result contrary to *Scacchetti*. In *Davis*, the Supreme Court held that statements to a 911 operator were nontestimonial because they were made in the context of an ongoing emergency. 547 U.S. at 828, 126 S. Ct. at 2277. Evaluating the status of 911 operators as law-enforcement officers, the court noted:

> If 911 operators are not themselves law enforcement officers, they may at least be agents of law enforcement when they conduct interrogations of 911 callers. For purposes of this opinion (and without deciding the point), we consider their acts to be acts of the police. . . . [O]ur holding today makes it unnecessary to consider *whether and when statements made to someone other than law enforcement personnel are "testimonial."*

Id. at 823 n.2, 2274 n.2 (emphasis added). Because *Davis* does not draw a conclusion that statements made to non-law-enforcement personnel are testimonial, it does not compel us to disregard *Scacchetti's* holding that a child's statements to an MCRC nurse are nontestimonial because the nurse is not a law-enforcement officer or agent.

Appellant cites numerous law-review articles and cases from other jurisdictions to support his argument that C.A.W.'s statements to Carter were testimonial and thus, barred under the Confrontation Clause. But, unlike *Scacchetti*, none of these sources is controlling authority. *Scacchetti* is directly on point and compels our conclusion that C.A.W.'s statements to Carter were nontestimonial. Accordingly, admitting the statements did not violate the Confrontation Clause.

II.

Appellant argues that the district court abused its discretion in admitting C.A.W.'s statements to M.S., C.W., and Carter[2] under the residual exception to the hearsay rule. "A determination that a statement meets the foundational requirements of a hearsay exception is reviewed for an abuse of discretion." *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009). "On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *Amos*, 658 N.W.2d at 203 (citation omitted).

[2]Respondent argues that appellant waived a challenge to Carter's testimony under the residual hearsay exception because he argued in his principal brief only that admitting the testimony was error because C.A.W.'s statements were testimonial and inadmissible under the medical-diagnosis exception. In his reply brief, appellant argues that the district court abused its discretion in admitting C.A.W.'s statements to Carter under the residual exception. But issues raised "for the first time in [an appellant's reply brief in a criminal appeal] having not been raised in the respondent's brief," are "not proper subject matter for [the] appellant's reply brief," and they may be deemed "waived" and be "stricken" by an appellate court. *State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009). We agree that appellant failed to raise the issue in his principal brief. However, because the evidentiary issues are legally and factually intertwined, we address the issue in the interests of justice. *See* Minn. R. Civ. App. P. 103.04 (allowing appellate court to review matter in the interest of justice).

The district court ruled that C.A.W.'s statements to M.S., C.W., and Carter were admissible under the residual exception to the hearsay rule, which provides:

> A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Minn. R. Evid. 807. Applying Rule 807, the district court found that (1) "any statements [C.A.W.] made to a non-governmental agency . . . are material as to how she was injured," (2) C.A.W.'s statements were "probably the only probative evidence available" to explain her injuries, (3) the interests of justice would be served by introducing the statements, and (4) admitting the statements complied "with the spirit and intent of the rule." Because the evidence primarily consisted of inconclusive medical findings and C.A.W.'s statements, the district court did not abuse its discretion in concluding that the statements were material and the most probative evidence regarding the cause of C.A.W.'s injury and that admitting the statements served the interests of justice and the general purpose of the rules of evidence.

Admitting a hearsay statement under rule 807 requires that the statement have "circumstantial guarantees of trustworthiness" equivalent to the hearsay exceptions identified in rules 803 and 804. Minn. R. Evid. 807. "In considering the reliability of statements offered under the residual exception, courts follow the 'totality of the

circumstances approach, looking to all relevant factors bearing on trustworthiness to determine whether the extrajudicial statement has circumstantial guarantees of trustworthiness' equivalent to other hearsay exceptions." *State v. Ahmed*, 782 N.W.2d 253, 260 (Minn. App. 2010) (quoting *State v. Robinson*, 718 N.W.2d 400, 408 (Minn. 2006)).

Relevant circumstances under Minn. R. Evid. 807 "are those circumstances actually surrounding the making of the statements." *Id.* These circumstances include:

> whether the statement was spontaneous, whether the questioner had a preconceived idea of what the child should say, whether the statement was in response to leading questions, whether the child had any apparent motive to fabricate, whether the statements are of the type one would expect a child of that age to fabricate, whether the statement remained consistent over time, and the mental state of the child at the time of the statements.

Id. (citing *Robinson*, 718 N.W.2d at 410).

The district court found that (1) there was "no indication" that C.A.W. had a motive to fabricate, (2) C.A.W. "was friendly with [appellant] until this . . . happened," (3) C.A.W.'s disclosures were not "the type of thing that a 3 or a 3 1/2 year old child would fabricate or talk about," (4) C.A.W.'s statements to C.W., M.S., and Carter remained consistent over time, and (5) C.A.W.'s mental state in giving the statements was to seek comfort from the caregivers. The court found:

> The child was hurt. The child tried to get comfort from Father and tried to get comfort from Mother. The child . . . understood that when she was talking to [Carter], the reason . . . was to give the child assistance for her injury or hurt. The nurse was very emphatic in explaining that to the child.

Appellant offers alternative explanations for the child's statements: that her mental state was exhausted and overstimulated, that she mentioned appellant's name because he was "her caretaker and she adored him," and that children of her age "often engage in magical thinking – confabulating cause and effect." But providing an alternative explanation does not make the district court's determination an abuse of discretion. The record supports the district court's findings that C.A.W. did not have a motive to fabricate, the disclosure was not the type of thing that a child of her age would fabricate, the statement remained consistent over time, and C.A.W.'s mental state was to seek comfort from the caregivers.

1. C.A.W.'s statements to C.W.

The district court found that C.A.W.'s statements to C.W. were spontaneous:[3]

> In this case, we have a child that makes a spontaneous statement to the father . . . who first sees her after he comes from work on the day the alleged injury occurred, and she makes a comment to the effect that her butt hurts. When further inquiry was made by the father, there was an indication that either at that point or at a later point when mom gets home, she makes an expression as to how her butt was hurt that day. Mom comes home . . . and dad says, "She told me her butt hurts, but she won't tell me why. I asked her why."

The findings that C.A.W.'s statement was "a comment . . . that her butt hurts," and that the statement occurred when C.W. "first sees her after he comes from work" indicate that C.W. did not have a preconceived idea of what C.A.W. should disclose. And the finding

[3] Respondent asserts that the district court found that C.W. did not have a preconceived idea of what C.A.W. should say, but the district court did not make a finding about this factor with respect to C.W.

that C.W. said, "She told me her butt hurts, but she won't tell me why. I asked her why," indicates that C.W.'s questions to C.A.W. were not leading. The findings demonstrate that C.A.W.'s statements to C.W. were spontaneous, were not given in response to leading questions or questions asked by C.W. with a preconceived idea of what C.A.W. should disclose. Accordingly, the district court did not abuse its discretion in admitting C.A.W.'s statements to C.W. under the residual exception to the hearsay rule.

2. C.A.W.'s statements to M.S.

Regarding C.A.W.'s statements to M.S., the district court found that M.S. asked "mostly open-ended questions" that were "not directing the child to make a specific response." The district court found that M.S. was surprised by what C.A.W. disclosed to her and that the questions she asked, including "Did you fall?" "Did he spank you?" and "Well, how did he hurt you?" indicated that M.S. did not have a preconceived idea of what C.A.W. should say. Respondent contends that the court found that C.A.W.'s statements to M.S. were spontaneous, but the district court did not make a finding on this factor with respect to M.S. However, the findings that C.A.W.'s statements were given in response to open-ended questions and to questions asked without a preconceived idea of what C.A.W. should say, demonstrate that C.A.W.'s statements to M.S. were spontaneous. Accordingly, the district court did not abuse its discretion in admitting C.A.W.'s statements to M.S. under the residual exception to the hearsay rule.

3. C.A.W.'s statements to Carter

The district court did not make findings regarding whether C.A.W.'s statements to Carter were in response to leading questions or spontaneous or whether Carter had a

preconceived idea of what C.A.W. should say It is not clear from the record whether Carter had a preconceived idea of what C.A.W. should say. But it is undisputed that C.A.W. was referred to MCRC for a "sexual abuse consultation," and the exhibits received at the pretrial hearing demonstrate that Carter spoke with M.S. before speaking with C.A.W., and M.S. told Carter that C.A.W. had reported that appellant put his penis in her butt. Also, before Carter examined C.A.W., the investigating police officer spoke with Carter and faxed her police reports that included C.A.W.'s disclosures. It is unclear whether, before examining C.A.W., Carter received medical records from the local clinic that reflect C.A.W.'s disclosures and preliminary medical findings.

However, even if we assume that Carter was aware of C.A.W.'s disclosures and the police investigation, we conclude that she conducted the examination and interview without communicating any preconceived idea to C.A.W. Carter testified that C.A.W. was not present when Carter talked with C.A.W.'s parents. Also, the questions that Carter asked C.A.W. were open-ended: "Well, why does your butt hurt?" "Do you have any owies anywhere?" "How did you get an owie on your butt?" And, after C.A.W. told Carter that appellant's "pot pot" "hurt [her] butt" Carter asked, "What did [appellant] do?" and "How did your butt get hurt?"

C.A.W.'s statements to Carter were not spontaneous, because they were made in response to questions that Carter asked, and the questions were often repetitive. But the statements were articulated in C.A.W.'s words in response to open-ended questions.

We conclude that the quality of Carter's interview supports admission under the residual exception: the questions, even if repetitive, were open-ended; C.A.W.'s

responses were clear and articulated in her own words; and even if Carter had an indication of what would be disclosed, her questions and conduct did not communicate that to C.A.W. Accordingly, the district court did not abuse its discretion in concluding that C.A.W.'s statements to Carter were admissible under the residual exception.

III.

Minn. R. Evid. 609(a)(1), (b), allows evidence of a felony conviction to be admitted for impeachment purposes provided that ten or fewer years have elapsed since the conviction and the probative value of the evidence outweighs its prejudicial effect. *See also State v. Ihnot*, 575 N.W.2d 581, 586 (Minn. 1998) (listing factors to consider when determining whether probative value outweighs prejudice) (quoting *State v. Jones*, 271 N.W.2d 534, 537-38 (Minn. 1978)). The district court's ruling on the impeachment of a witness by prior conviction is reviewed for a clear abuse of discretion. *Id.* at 584.

In considering whether probative value outweighs prejudicial effect, a district court considers the five *Jones* factors: "(1) the impeachment value of the prior crime; (2) the date of the conviction and the defendant's subsequent history; (3) the similarity of the past crime with the charged crime; (4) the importance of defendant's testimony; and (5) the centrality of the credibility issue." *State v. Williams*, 771 N.W.2d 514, 518 (Minn. 2009) (citing *Jones*, 271 N.W.2d at 538).

Appellant argues that the district court abused its discretion in allowing impeachment with his conviction for felony domestic assault because the conviction was for an offense that was similar to the charged crime, appellant's testimony was important, and credibility was not a central issue.

Similarity of Crimes

"The danger when the past crime is similar to the charged crime is that the likelihood is increased that the jury will use the evidence substantively rather than merely for impeachment purposes." *State v. Bettin*, 295 N.W.2d 542, 546 (Minn. 1980). "[T]he greater the similarity, the greater the reason for not permitting use of the prior crime to impeach." *Jones*, 271 N.W.2d at 538. Appellant was charged with first-degree criminal sexual conduct, perpetrated against a three-year-old child, and his prior conviction was for a felony domestic assault. These crimes are not similar, and this factor weighs in favor of admission.

Importance of Appellant's Testimony

The importance of a defendant's version of the facts tends to support exclusion of prior convictions as impeachment evidence. *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993). Appellant's testimony was vitally important to the defense case: there were no witnesses to the charged crime, and the victim was a three-year-old child who had been deemed incompetent to testify. Also, the district court found that appellant's testimony was important:

> . . . I waited until I heard what [the investigating officer] had to say . . . . If I had a statement given by [appellant] . . . but I didn't get that, so I don't know what [appellant's] story is. The only one that's going to be able to tell me what [appellant's] story is is [appellant].

This factor weighs against admission.

Centrality of Credibility

The state's case primarily included C.A.W.'s statements to three people and the medical findings. Appellant argues that because C.A.W. did not testify at trial and appellant's testimony was needed to explain where he was that day and why he did not return to the home, his credibility was not central to the outcome of the case, and the need to use the prior conviction to impeach did not outweigh his need to testify. But appellant's argument assumes that credibility is only central when there is conflicting testimony about an issue. In light of all the evidence presented by the state, the fact that C.A.W. did not testify does not mean that appellant's credibility was not a central issue in the case. This factor weighs in favor of admission.

Appellant did not argue that the conviction did not have impeachment value or was untimely. Felony domestic assault is not similar to the charged crime of first-degree criminal sexual conduct, and appellant's credibility was a central issue in the case. While appellant's testimony was important, on balance, the *Jones* factors weighed in favor of admission. The district court did not abuse its discretion in allowing impeachment with the prior conviction for felony domestic assault.

Method of Impeachment

Appellant argues that it was improper to present evidence of his prior conviction by introducing the recording of his interview with the investigating officer, in which he admitted that he had been convicted of felony domestic assault.

Appellant contends that "[d]efense counsel had objected and requested that the statement be redacted." But the record reflects that although defense counsel requested

that the statement be redacted, the request was based on a mistaken belief that the district court had previously ruled that evidence of the conviction was inadmissible. The record does not reflect that counsel asserted any other objection to receiving the unredacted recording of appellant's interview with the investigating officer.

Failure to object generally constitutes waiver of the right to appeal on that basis. *State v. Bauer*, 598 N.W.2d 352, 363 (Minn. 1999). However, an appellate court may consider a waived issue if there is (1) error, (2) that is plain, and (3) the error affects the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). An error is plain if the error is clear or obvious under current law. *Johnson v. United States*, 520 U.S. 461, 467, 117 S. Ct. 1544, 1549 (1997) (discussing *United States v. Olano*, 507 U.S. 725, 734, 113 S. Ct. 1770, 1777 (1993)). An error affects the defendant's substantial rights "if the error was prejudicial and affected the outcome of the case." *Griller*, 583 N.W. 2d at 741. The defendant bears the "heavy burden" of demonstrating prejudice and that the error affected the outcome of the case. *Id.*

Appellant has not cited any authority indicating that the method of impeachment allowed by the district court was improper. An error cannot be deemed plain in the absence of binding precedent. *State v. Jones*, 753 N.W.2d 677, 689 (Minn. 2008). Because the error is not plain, appellant is not entitled to relief due to the method of impeachment.

Also, appellant has not met his "heavy burden" of demonstrating prejudice and that the error affected the outcome of the case. The district court properly concluded that impeachment with the prior conviction was proper, and there was not a significant

difference between admitting evidence of the conviction during cross-examination or by playing the recording. The manner in which the evidence was presented did not prejudice appellant or affect the outcome of the case.

IV.

In a pro se brief, appellant argues that his conviction should be reversed because most of the jurors were not fair and impartial and had made up their minds before the trial started and that the pre-sentence investigation was not fairly done and the district court punished him for exercising his right to trial. Appellant also argues that admitting C.A.W.'s statements violated his right to confrontation, which we have already addressed.

"To prevail on a claim of bias under Minnesota law, an appellant must show that (1) the juror alleged to be biased was subject to challenge for cause; (2) actual prejudice resulted from the district court's failure to dismiss; and (3) an appropriate objection was subsequently made." *State v. Anderson*, 603 N.W.2d 354, 356 (Minn. App. 1999), *review denied* (Minn. Mar. 14, 2000). Appellant argues that seven jurors, L.W. (1), C.G., G.E., C.Y., L.W. (2), S.R., and V.G. were biased. The record reflects that the first six of these jurors were subject to voir dire by appellant and appellant joined the state's motion to dismiss two jurors for cause and moved to dismiss two additional jurors for cause. The district court granted the motions and dismissed all four of the challenged jurors. Following the initial dismissals for cause, V.G. was subject to voir dire by appellant. Appellant then passed the panel for cause. Because appellant did not move to dismiss for cause any of the jurors that he now challenges, he cannot prevail on a claim of juror bias.

The investigator who prepared the presentence investigation initially determined that appellant's criminal-history score was five. But, before the sentencing hearing, the investigator prepared a supplemental report that indicated that appellant's criminal-history score was four. Appellant did not object to the criminal-history score and does not argue on appeal that the score is incorrect. Under the sentencing guidelines, the presumptive sentence for first-degree criminal sexual conduct with a criminal-history score of four is 199-281 months. Minn. Sent. Guidelines IV (2010). Appellant was sentenced to 281 months, which is within the presumptive range.

"An appellate court will not generally review the [district] court's exercise of its discretion in cases where the sentence imposed is within the presumptive range." *State v. Witucki*, 420 N.W.2d 217, 223 (Minn. App. 1988) (quotation omitted), *review denied* (Minn. Apr. 15, 1988). Appellant argued below that the presentence investigation contained unfair characterizations concerning his family, lack of remorse, and medical condition. On appeal, appellant argues that the district court punished him for exercising his right to trial. The record does not support his assertion, and appellant's arguments do not persuade us that the district court abused its discretion in sentencing appellant.

Affirmed.