

2023 WL 2230351

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This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).
Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,

v.

Jose Isidro ONTIVEROS-SILVERIO, Appellant.

A22-0419

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Filed February 27, 2023

Hennepin County District Court, File No. 27-CR-21-12028

Attorneys and Law Firms

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Considered and decided by [Bjorkman](#), Presiding Judge; [Jesson](#), Judge; and [Frisch](#), Judge.

NONPRECEDENTIAL OPINION

[BJORKMAN](#), Judge

*1 Appellant challenges his conviction for second-degree criminal sexual conduct, arguing that (1) the district court's evidentiary rulings violated his constitutional rights to confrontation and to present a meaningful defense, and (2) the district court erred in denying appellant's motions to strike two prospective jurors for cause. We affirm.

FACTS

In April 2021, J.O. was admitted to PrairieCare, an inpatient hospital for children and adolescents, after attempting suicide. At the intake interview, J.O. disclosed that her uncle, appellant Jose Ontiveros-Silverio, touched her sexually when she was approximately ten years old. The intake nurse referred J.O. to CornerHouse, an organization that conducts forensic interviews of children who allege they have been sexually abused and provides advocacy and therapy services.

J.O. told the CornerHouse staff that in July 2005, she was staying at Ontiveros-Silverio's apartment while her family was in the process of moving. Ontiveros-Silverio came into her room and bed while she was sleeping, put his hand in her underwear, and rubbed her vagina. When the police questioned Ontiveros-Silverio about J.O.'s allegations, he said that he did not recall this happening and that he may have been drunk.

Respondent State of Minnesota charged Ontiveros-Silverio with second-degree criminal sexual conduct. Before trial, Ontiveros-Silverio moved the district court to order disclosure and, in the alternative, to conduct an in camera review of J.O.'s therapy records. The district court denied the motion, stating that disclosure of the records is prohibited by [Minn. Stat. § 595.02, subd. 1\(d\), \(g\) \(2022\)](#), and that Ontiveros-Silverio had not demonstrated a need for the records because he “merely alleges that evidence supporting his assertions are ‘likely’ in the files.” And the district court noted that the state had already provided the PrairieCare records to defense counsel.

At the start of trial, the state moved to prohibit defense counsel from inquiring about Ontiveros-Silverio's or any witness's immigration status. Ontiveros-Silverio objected, contending that his immigration status and receipt of a work permit and government benefits were relevant because they created conflict with J.O.'s family and may have motivated J.O. to falsely accuse him of sexual misconduct. The district court granted the state's motion, concluding:

In this case, it appears to me that [J.O.] didn't have contact with the

people who knew about [Ontiveros-Silverio's] immigration status before—immediately before she made the report, and they—at best is attenuated, and I just—I don't find—whatever probative value it has, it is substantially outweighed by the prejudicial impact. I believe that the immigration status of the other witnesses is similarly of minimal relevance to whether they are truthfully relating information.

During voir dire, Ontiveros-Silverio asked the district court to remove Juror 11 for cause. The district court denied the motion. But when Ontiveros-Silverio later renewed his request, the district court granted it; Juror 11 did not serve on the jury. Ontiveros-Silverio also sought to remove Juror 28 for cause. The district court denied Ontiveros-Silverio's motion. Juror 28 was impaneled but excused prior to deliberations because they were an alternate.

*2 The jury found Ontiveros-Silverio guilty as charged. The district court entered a judgment of conviction and imposed a stayed 36-month prison sentence.

Ontiveros-Silverio appeals.

DECISION

A district court has broad discretion when making evidentiary rulings and we will not reverse an evidentiary ruling absent abuse of discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

Ontiveros-Silverio contends that the district court made two evidentiary errors that not only constitute abuse of discretion but violated his constitutional rights to confrontation and to present a meaningful defense. Under the Confrontation Clause, criminal defendants have the right to confront and cross-examine witnesses. U.S. Const. amends. VI, XIV;

Minn. Const. art. I, § 6. “The essence of confrontation is the opportunity to cross-examine opposing witnesses.” *State v. Greer*, 635 N.W.2d 82, 89 (Minn. 2001). But district court judges have broad discretion to control the scope of cross-examination. *Id.*; see also *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986) (stating district courts have discretion to “impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant”).

Due process requires that a “defendant be afforded a meaningful opportunity to present a complete defense.” *Rickert v. State*, 795 N.W.2d 236, 249 (Minn. 2011) (quotation omitted); see also U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. This right “includes the ability to present the defendant's version of the facts through witness testimony.” *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006). But the right to present a complete defense “is subject to rules of procedure and evidence.” *State v. Hannon*, 703 N.W.2d 498, 506 (Minn. 2005). Even when, as Ontiveros-Silverio does here, an appellant claims they were deprived of the “constitutional right to a meaningful opportunity to present a complete defense,” we review for an abuse of discretion. *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017).

I. The district court did not abuse its discretion by denying Ontiveros-Silverio's motion for disclosure or in camera review of J.O.'s therapy records.

Ontiveros-Silverio argues that he “should have been allowed” to introduce the CornerHouse records at trial. But the record does not indicate that he attempted to do so. Accordingly, we construe his argument as a challenge to the district court's pretrial ruling.

The district court has broad discretion when ruling on a defendant's discovery request. *State v. Crane*, 766 N.W.2d 68, 71 (Minn. App. 2009), rev. denied (Minn. Aug. 26, 2009). The court may screen confidential records in camera to balance the defendant's right to prepare and present a defense against a victim's right to privacy. *State v. Hokanson*, 821 N.W.2d 340, 349 (Minn. 2012) (citing *State v. Paradee*, 403 N.W.2d 640, 642 (Minn. 1987)). We review a district court's denial of a motion for in camera review for an abuse of discretion. *Id.*

*3 A defendant does not have a right to in camera review of discovery information. *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992). Rather, they must make a “plausible showing” that the records sought will be both “material and favorable” to their defense. *Id.* (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). Evidence is material only if there is a “reasonable probability” that disclosure would lead to a different result at trial. *State v. Wildenberg*, 573 N.W.2d 692, 697 (Minn. 1998) (quotation omitted).

Ontiveros-Silverio argues that the district court abused its discretion because the requested records will show “how the disclosures came about” and will “explain how other issues in J.O.’s life may have led to her trying to overdose on pills.” We disagree for three reasons.

First, it is unclear what precise records he sought to obtain or have the district court review in camera. Ontiveros-Silverio’s motion did not specify whether he sought records from PrairieCare, CornerHouse, or any of J.O.’s other medical providers. Absent a reasonably specific request, he was not entitled to obtain the records. *See Lynch*, 443 N.W.2d at 852.

Second, Ontiveros-Silverio did not establish that these records would contain the information he sought. In requesting in camera review, Ontiveros-Silverio asserted that it is “likely that [J.O.] has talked about [Ontiveros-Silverio] and these allegations” during therapy sessions and that the records “may explain” other things going on in J.O.’s life that “may have le[d] to her trying to overdose on pills.” As the district court observed, “[Ontiveros-Silverio] merely alleges that evidence supporting his assertions are ‘likely’ in the files.” The district court acted well within its discretion by concluding that Ontiveros-Silverio’s request was an impermissible fishing expedition. *See State v. Conrad (In re Hope Coal.)*, 977 N.W.2d 651, 659 n.6 (Minn. 2022) (“‘Fishing expeditions’ are never sufficient.”).

Third—and most importantly—Minnesota law prohibits a district court from ordering disclosure of the kind of records Ontiveros-Silverio sought without the victim’s consent. In *Conrad*, our supreme court held that sexual-abuse counselors cannot disclose “privileged records unless the victim consents or the court finds good cause in matters involving neglect or termination of parental rights.” *Id.* at 659; *see Minn. Stat. §*

595.02, subd. 1(k) (2022). We recently applied this holding to records created as part of the patient-health-care-provider relationship protected by *Minn. Stat. § 595.02, subd. 1(d), (g) (2022)*. *State v. Ramirez*, No. A22-1490 (Minn. App. Nov. 22, 2022) (order) (holding that disclosure of medical and mental-health records is not permitted without the consent of the patient or another applicable statutory exception). Because the record does not show J.O. consented to disclosure of the requested records, and Ontiveros-Silverio has not explained how denial of his discovery motion impacted his right to confront witnesses or his ability to present a complete defense, we discern no abuse of discretion by the district court or constitutional violation.

II. The district court did not abuse its discretion when it excluded testimony regarding immigration status.

Ontiveros-Silverio argues testimony regarding his immigration status and that of other witnesses was relevant to show that his relationship with J.O.’s family soured when “he received his status, a legal job, stimulus checks, and other benefits,” and that his change in status motivated J.O. to lie about his conduct. Without citation to the record, he asserts that his defense strategy was to show J.O. worked with her family “to create a situation where J.O. would be the victim of a crime that would allow the family to obtain their U-Visa.” The district court determined that this claimed evidence of bias was “at best ... attenuated,” “minimal relevance,” and “whatever probative value it has, it is substantially outweighed by the prejudicial impact.”

*4 Both parties cite *State v. Larson*, 787 N.W.2d 592 (Minn. 2010). In *Larson*, the defendant argued that the district court abused its discretion by excluding evidence of a witness’s immigration status because such evidence was probative of bias. 787 N.W.2d at 597. The supreme court held that evidence of the witness’s immigration status was not probative of bias because the witness was not given consideration for his testimony at his deportation hearing, noting that evidence of bias “must not be so attenuated as to be unconvincing because then the evidence is prejudicial and fails to support the argument of the party invoking the bias impeachment method.” *Id.* at 598 (quotation omitted). The supreme court determined that the district court did not abuse its discretion by concluding that the prejudicial nature of the evidence substantially outweighed its probative value. *Id.* at 598-99.

Ontiveros-Silverio contends that this case is distinguishable from *Larson* because the “immigration testimony was offered for reasons other than impeaching the witnesses because of their immigration status.” We are not persuaded. As in *Larson*, there is no evidence that J.O. or any other witness was paid for their testimony. Ontiveros-Silverio did not provide evidence or make an offer of proof to support his contention that his immigration status caused friction between the families. The district court carefully weighed the probative value of evidence concerning immigration status, concluding its connection to the assault of J.O. is too attenuated to outweigh its potential for prejudice. *See id.* at 598. On this record, we discern no abuse of discretion by the district court in excluding testimony regarding immigration status.

III. Ontiveros-Silverio was not prejudiced by the jury's composition.

To prevail on a claim of juror bias on appeal, the appellant must demonstrate that “the challenged juror was subject to challenge for cause, that actual prejudice resulted from the failure to dismiss, and that appropriate objection was made by appellant.” *State v. Stufflebean*, 329 N.W.2d 314, 317 (Minn.

1983). Any error in not dismissing a juror for cause is cured if that juror did not serve on the jury. *State v. Barlow*, 541 N.W.2d 309, 312 (Minn. 1995). We review the denial of a for-cause challenge for abuse of discretion. *State v. Munt*, 831 N.W.2d 569, 576 (Minn. 2013).

Ontiveros-Silverio asserts that the district court abused its discretion by denying his for-cause challenges to Jurors 11 and 28. This argument is unavailing. The record shows the district court granted Ontiveros-Silverio's motion to remove Juror 11. And the record shows Juror 28 was dismissed before the jury began deliberating. Because neither challenged juror deliberated, there can be no prejudice to Ontiveros-Silverio. *See Barlow*, 541 N.W.2d at 313 (concluding defendant was not deprived of his right to a fair and impartial jury, emphasizing “neither alternate juror participated in the jury's deliberations or decision”).

Affirmed.

All Citations

Not Reported in N.W. Rptr., 2023 WL 2230351