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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0312**

State of Minnesota,
Respondent,

vs.

Corbyn John Bot,
Appellant.

**Filed February 25, 2013
Affirmed
Halbrooks, Judge**

Lyon County District Court
File No. 42-CR-11-64

Lori Swanson, Attorney General, Karen B. Andrews, Assistant Attorney General,
St. Paul, Minnesota; and

Rick Maes, Lyon County Attorney, Marshall, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael W. Kunkel, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and
Collins, Judge.*

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant Corbyn John Bot challenges his convictions of first-degree criminal sexual conduct, first-degree burglary, kidnapping, theft of a motor vehicle, and possession of drug paraphernalia on various grounds and raises several pro se arguments. We affirm.

FACTS

The night of January 10, 2011, K.G. arrived home from work about 9:00 p.m. She watched TV until about 11:00 p.m. and went to bed. At about midnight, K.G. heard a person she assumed to be her boyfriend opening her bedroom door. At some point later, she awoke to someone strangling her. K.G. struggled with her attacker and pleaded with him not to kill her. Her attacker then began to sexually assault her. K.G. testified that she “couldn’t fight anymore,” so she stopped resisting.

K.G. subsequently told her attacker that she was hot and that she wanted to move to a different room. She testified that she made the suggestion because “[she] knew [she] couldn’t get out of that bedroom and [she] thought that maybe someone would see [them] walking—see [her] naked, see him having his hands over [her] eyes, that someone would maybe see something and they would do something.”

Her attacker took her into another bedroom and blindfolded her. He then continued to sexually assault her. K.G. kept telling her attacker that she was thirsty because she wanted him to leave the room so that she could try to escape. She convinced him to tie her up when he said that he would not get her water because he thought she

would run away. K.G. was able to get untied, but when she went out the door, “he was right there.” At that point, K.G. recognized her attacker as Bot, with whom she had worked in the past.

When Bot resumed sexually assaulting K.G., he was unable to sustain an erection. K.G. suggested that Bot rent a pornographic movie to “help him” because he had told her that if she did not “get him off” he would kill her. Bot rented a movie on K.G.’s TV and made K.G. sit on his lap while he watched it. When K.G. said that she had to go to the bathroom, Bot escorted her there and stood in the bathroom with her until she was done. Bot subsequently attempted to perform oral sex on K.G. When she pushed him away, he bit her. He then penetrated her again; this time, K.G. was aware of Bot ejaculating. Bot told K.G. that “he had taken [her] car and not to report it stolen; that it was up the road.”

Bot told K.G. to go to sleep, but she “sat on the couch blindfolded and naked and [Bot] went out the back door.” But Bot returned, told K.G. that he was “still horny” and sexually assaulted her again.

When Bot finally left, K.G. asked a friend via Facebook to call 911 because she could not find her phone. K.G.’s friend arrived just after an ambulance and police officers got there. The friend testified that K.G. was “shaking very bad, . . . screaming incoherently” and that she could not understand many of the words that K.G. was saying except “the baby” and “rape.” K.G. was 15 weeks pregnant at the time.

Jason Lichty, acting chief of police for the city of Tracy, testified that he was called to K.G.’s house at 4:17 a.m. When he arrived, K.G. was already on her way to the hospital. He saw the couch tipped upside down against the inside of the door and the

living room in disarray. Curtains were pulled off the windows, bedding was pulled off the bed, and baskets of clothes were tipped over, with clothes scattered on the floor.

K.G. was examined in the emergency room by a physician's assistant, who observed that K.G. was "very distraught," crying, and appeared to be scared for her life. Sexual-assault-kit samples were collected, and it was later confirmed that semen samples from the kit matched Bot.

Bot's defense at trial was that the sex was consensual. The jury rejected this argument, and Bot was convicted of six separate offenses: two counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342 subd. 1(c), (e)(i) (2010), first-degree burglary in violation of Minn. Stat. § 609.582, subd. 1(c) (2010), kidnapping in violation of Minn. Stat. § 609.25, subd. 1(2) (2010), theft of a motor vehicle in violation of Minn. Stat. § 609.52, subd. 2(17) (2010), and possession of drug paraphernalia. He was sentenced to 360 months in prison. This appeal follows.

D E C I S I O N

I.

Bot argues that he is entitled to a new trial based on four alleged instances of prosecutorial misconduct. He alleges that the prosecutor (1) elicited inadmissible testimony; (2) impermissibly injected emotion into the case; (3) improperly shifted the burden of proof to him; and (4) exploited the authority of the prosecutor's office during opening argument.

If this court determines that prosecutorial misconduct occurred, the standard of review depends on whether the appellant objected to the misconduct at the time that it

occurred. *State v. Ramey*, 721 N.W.2d 294, 298 (Minn. 2006). The supreme court applies one of two harmless-error standards to review objected-to prosecutorial-misconduct claims. *See id.* In cases involving less-serious prosecutorial misconduct, this court considers “whether the misconduct likely played a substantial part in influencing the jury to convict.” *State v. Caron*, 300 Minn. 123, 128, 218 N.W.2d 197, 200 (1974). In cases involving “unusually serious” misconduct, the misconduct is harmless only if there is certainty beyond a reasonable doubt that the misconduct was harmless. *Id.*¹

For unobjected-to instances of prosecutorial misconduct, we use a plain-error analysis. *Ramey*, 721 N.W.2d at 299. If the defendant can show that the error was “clear or obvious,” the burden shifts to the state to demonstrate that “there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *Id.* at 302 (quotations omitted).

Eliciting inadmissible testimony

Bot argues that the prosecutor elicited inadmissible testimony in two separate instances. “[A]ttempting to elicit or actually eliciting clearly inadmissible evidence may constitute [prosecutorial] misconduct.” *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007).

Bot first claims that the prosecutor elicited testimony from K.G. “about matters that were irrelevant, had not previously been disclosed, and that were highly prejudicial

¹ The supreme court has noted that whether the two-tiered test set forth in *Caron* is “still good law has been questioned in some of [its] recent decisions.” *State v. Nissalke*, 801 N.W.2d 82, 105 n.10 (Minn. 2011). But the supreme court in *Nissalke* did not decide the issue, and the issue has not been addressed further by the supreme court. *See id.*

bad character evidence.” During trial, the prosecutor asked K.G., “Was your car in good shape when you got it back?” K.G. responded, “The engine had been blown on it. My brother-in-law grabbed a jacket out of it and he had it in the car when he picked me up from the hospital” Bot’s attorney objected. The district court sustained the objection on the basis of hearsay, and the prosecutor did not continue the line of questioning. The prosecutor then asked K.G. about what happened at the hospital. K.G. stated that her brother-in-law “had grabbed a jacket from the car . . . and it smelled just like [Bot] did He smelled bad. My whole house smelled like him and my car” There was no objection to that testimony.

Bot contends on appeal that this testimony was irrelevant because identity was not an issue and “the condition of [K.G.]’s car was not relevant to the question of whether appellant stole it.” But as the state points out, there is some relevance to the condition of the car to explain why it was found only a block and a half away. And the testimony about how the jacket smelled is relevant to show that Bot was inside K.G.’s car.

Bot also argues that the testimony regarding his smell was “highly prejudicial bad character evidence.” *See* Minn. R. Evid. 403 (“[Relevant evidence] may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.”); Minn. R. Evid. 404 (“Evidence of a person’s character or trait of character is not admissible for the purpose of proving action in conformity therewith.”). But we find nothing about a person’s body odor that suggests a certain character trait that could possibly be used to prove conforming action. Nor do we find testimony that a person had a certain smell unfairly prejudicial such that it would outweigh the probative value of tending to show

that Bot had been in K.G.'s car. We therefore conclude that the prosecutor did not elicit inadmissible testimony with respect to the car or jacket.

Next, Bot claims that the prosecutor elicited inadmissible testimony from the physician's assistant who examined K.G. In response to the question, "[W]hy did you examine [K.G.]?," the physician's assistant testified that [K.G.] "was brought into the emergency room after being raped and the findings that [she] found seemed to be that that was true." After this testimony, Bot's attorney objected, and the district court instructed the jury to "disregard the witness's last remark."

We agree with Bot that this testimony was inadmissible. An expert may not testify about "the credibility of the complainant, or the ultimate question of whether the complainant was sexually assaulted." *State v. Obeta*, 796 N.W.2d 282, 294 (Minn. 2011). The record does not indicate that the prosecutor intentionally elicited this testimony, however, or that he continued this line of questioning after the district court's ruling. Further, "the jury must be presumed to have followed the court's instructions and to have disregarded any question to which an objection was sustained." *State v. Steward*, 645 N.W.2d 115, 122 (Minn. 2002). Under these circumstances, any misconduct did not likely play a substantial role in influencing the jury to convict and, accordingly, is not a basis for a new trial.

Injecting emotion into the case

Bot argues that the prosecutor inflamed the jury during closing argument by "us[ing K.G.]'s emotional state to encourage the jurors to return a verdict based on sympathy." It is prosecutorial misconduct to "inflam[e] the jury's passions and

prejudices against the defendant.” *State v. Porter*, 526 N.W.2d 359, 363 (Minn. 1995). And appellate courts must “pay special attention to statements that may inflame or prejudice the jury where credibility is a central issue.” *Id.* Bot points to the prosecutor’s “referring to [K.G.] as a ‘mess,’ ‘screaming,’ ‘not making sense,’ ‘hysterical,’ ‘crying,’ [and] ‘very agitated.’” Bot also refers to the prosecutor’s statement that “[K.G.] had to come and talk about this horrific event not to one person but to a courtroom.”

Whether K.G.’s version of events was more credible than Bot’s version of events was the sole question before the jury. Relevant to answering this question were the witnesses’ accounts of K.G.’s demeanor the night of the alleged assault. It is not misconduct for a prosecutor to refer to a witness’s testimony during closing argument and argue why the testimony is plausible. *State v. Leutschaft*, 759 N.W.2d 414, 425 (Minn. App. 2009), *review denied* (Minn. Mar. 17, 2009). We therefore conclude that these references during closing argument did not constitute prosecutorial misconduct.

Shifting the burden of proof

Bot argues that the prosecutor improperly shifted the burden of proof to him during closing argument by suggesting that he had the burden to introduce evidence to explain why he did not notice K.G.’s injuries. An argument that shifts the burden of proof to the defendant to prove his innocence is improper. *State v. Carridine*, 812 N.W.2d 130, 148 (Minn. 2012). But a prosecutor is allowed to “pose rhetorical questions to the jury, asking it to use common sense to determine whether the defense presented is reasonable.” *State v. Bauer*, 776 N.W.2d 462, 474 (Minn. App. 2009), *aff’d on other grounds*, 792 N.W.2d 825 (Minn. 2011).

The prosecutor described to the jury its role in evaluating the credibility of the witnesses. He then walked through the evidence presented by the state and asked:

Does any of this suggest that this was consensual? Mr. Bot told us it was consensual. Of course, he didn't see any injuries either. How can someone who has consensual sex not once, but according to Mr. Bot, twice, in lit rooms, at least in the living room while the TV's on, not notice injuries? Does that at all suggest it was consensual?

The prosecutor's question asked the jurors to use their common sense to determine whether Bot's defense was plausible. It did not suggest, as Bot claims, that the prosecutor shifted the burden of proof to Bot. Accordingly, this was not prosecutorial misconduct.

Exploiting the authority of the prosecutor's office

Bot claims that the prosecutor committed reversible misconduct by exploiting the authority of his office. During his opening statement, the prosecutor stated:

I've been here about twenty years. My office is responsible for various prosecutions occurring in the county; in fact, all prosecutions out in the county, so felonies, gross misdemeanors, misdemeanors, petty misdemeanors, juvenile offenses. We do the felonies occurring within the cities, a lot of the gross misdemeanors. We do all of the juvenile offenses occurring in the county. The office also does child support, establishment, we do commitments, we represent various local agencies associated with the county.

Bot's attorney objected, and the objection was sustained by the district court. Although the statement may technically be interpreted as exploiting the authority of the prosecutor's office, we cannot agree that this brief, irrelevant, remark played a substantial role in convincing the jury to convict. *See Caron*, 300 Minn. at 128, 218 N.W.2d at 200.

Bot argues that because there was evidence supporting his consent defense, “the jury’s verdict was not surely unattributable to the misconduct, and appellant’s conviction must be reversed.” As support for this proposition, he cites *Van Buren v. State*, 556 N.W.2d 548 (Minn. 1996), and *State v. Richardson*, 514 N.W.2d 573 (Minn. App. 1994). But these cases involved multiple acts of serious prosecutorial misconduct. *See Van Buren*, 556 N.W.2d at 551-52 (concluding that the prosecutor intentionally elicited highly prejudicial vouching testimony); *Richardson*, 514 N.W.2d at 577-79 (concluding that the prosecutor committed at least nine separate acts of serious misconduct).

Here, the only instances of misconduct consisted of the prosecutor’s elicitation of the improper testimony of the physician’s assistant and the brief comments in his opening statement regarding the role of the prosecutor’s office. The district court sustained objections to both of these incidents, and neither rose to the level of “unusually serious.” *See Caron*, 300 Minn. at 128, 218 N.W.2d at 200. Therefore, the proper standard is “whether the misconduct likely played a substantial part in influencing the jury to convict,” *id.*, not whether the verdict was “surely unattributable to the misconduct.” The fact that there was some evidence supporting Bot’s consent defense is insufficient to show that these minor acts of misconduct met either of these standards.

II.

The district court sentenced Bot to 360 months. It concluded that the motor vehicle theft occurred first, the burglary second, the kidnapping third, and the criminal sexual conduct occurred fourth. The district court began sentencing with a criminal-history score of two based on Bot’s prior conviction and custody status. After sentencing

Bot for the theft conviction, the district court increased Bot's criminal-history score to three. After the burglary conviction, Bot's score was increased to five. The district court used this score to sentence both the kidnapping and criminal-sexual-conduct convictions.

Bot argues that (1) the district court erred by sentencing him for theft of a motor vehicle first because it did not occur first in time; (2) the kidnapping was merely incidental to the criminal sexual conduct and therefore cannot sustain a separate sentence; and (3) the district court improperly increased his criminal-history score with the burglary and kidnapping convictions before sentencing him for the criminal sexual conduct.

Order of sentencing

Bot argues that the district court erred by imposing his sentence for theft of a motor vehicle before his other sentences. "Multiple offenses are sentenced in the order in which they occurred." Minn. Sent. Guidelines II.B.1. (2010). It is the role of the district court to "resolve any factual dispute bearing on the defendant's criminal history score." *State v. Olson*, 379 N.W.2d 524, 527 (1986). This court will not interfere with the district court's exercise of its broad discretion in sentencing as long as the sentence is authorized by law. *See State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). Bot claims that "[K.G.] testified that [Bot] took her car key and told her not to report the car stolen *after* he had sex with her on the couch." K.G.'s actual testimony was:

Q. Okay. When you were in the living room he told you that he had taken the key or the car?

A. The car. He had taken the car and he had driven it to a friend[']s and it was now parked down the block.

Bot did not leave K.G.'s house until after he told her that he "had taken [her] car." The only reasonable interpretation is that Bot had stolen K.G.'s car earlier in the night and was then telling her about it. This timeline is supported by Officer Lichty's testimony that at 1:00 a.m., while the sexual assault was occurring, K.G.'s car was parked about one and one-half blocks away. Because there is factual support for the district court's conclusion that the motor-vehicle theft occurred first, the district court did not abuse its discretion when determining the order of sentencing.

Separate sentences for kidnapping and criminal sexual conduct

The district court sentenced Bot to 61 months for the kidnapping conviction, and 360 months for the first-degree criminal-sexual-conduct conviction. These sentences were imposed concurrently. Bot argues that this court must vacate his conviction and sentence for kidnapping because the kidnapping charge was merely incidental to the sexual-assault charge.

Although Minnesota law generally prohibits multiple sentences arising out of a single behavioral incident, there is a statutory exception for kidnapping. Minn. Stat. §§ 609.035, subd. 1, .251 (2010). But imposing separate sentences for kidnapping and criminal sexual conduct requires that the confinement be more than "completely incidental to the crime committed during the course of kidnapping." *State v. Welch*, 675 N.W.2d 615, 621 (Minn. 2004) (quotation omitted). Whether the kidnapping was merely incidental to the underlying crime depends on whether the confinement or removal was only done to accomplish the underlying crime or whether it was a distinct act. *Id.* at 620-21.

Here, Bot confined K.G. to her home for approximately four hours, periodically sexually assaulting her. *See State v. Butterfield*, 555 N.W.2d 526, 532 (Minn. App. 1996) (holding that defendant's confinement of victim for 19 hours was sufficient to sentence separately for kidnapping and criminal sexual conduct because defendant "did not spend this entire time assaulting" the victim), *review denied* (Minn. Dec. 17, 1996). During that period of time, Bot tied K.G. to the bed while he left to get a glass of water, stood over her while she used the bathroom, moved her to different rooms for various sexual acts, and restrained her on his lap while watching a pornographic movie.

These facts are sufficient to demonstrate that kidnapping was not simply incidental to the criminal sexual conduct. Bot confined K.G. for a significant period, including time in which he was not actively assaulting her. *See State v. Smith*, 669 N.W.2d 19, 32-33 (Minn. 2003) (momentarily blocking the doorway was not sufficiently distinct from murder to support separate sentences), *overruled on other grounds by State v. Leake*, 699 N.W.2d 312 (Minn. 2005). The confinement was more than "the very force and coercion that supports" the criminal-sexual-conduct conviction. *See Welch*, 675 N.W.2d at 615 (restraining victim during sexual assault was not sufficiently distinct to support a sentence for kidnapping). We therefore conclude that separate sentences for kidnapping and criminal sexual conduct are appropriate in this case.

The effect of Bot's burglary and kidnapping convictions on his criminal-history score

Finally, Bot argues that the district court erred because "the burglary and kidnapping convictions were used to increase [his] criminal history score. As a result, appellant's criminal history score was increased to six points by the time he was

sentenced for criminal sexual conduct, resulting in a 360-month sentence.” This court “will not reverse the district court’s determination of a defendant’s criminal history score absent an abuse of discretion.” *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

Bot misstates the record with regard to the kidnapping conviction. The district court used a criminal-history score of five to sentence Bot on the kidnapping and the criminal-sexual-conduct convictions. It is correct that the sentencing worksheet used a criminal-history score of six to recommend the presumptive sentence of 360 months for the criminal-sexual-conduct conviction. And using a criminal-history score of five instead of six would have reduced the presumptive sentence from 360 months to 306 months. Minn. Sent. Guidelines IV (2010). The district court’s sentence of 360 months was the top of the box for a conviction of first-degree criminal sexual conduct based on a criminal-history score of five, rather than the presumptive sentence. But it was not a departure. *Id.*

The district court did increase Bot’s criminal-history score to five following his sentence for the burglary conviction. Bot argues that this was impermissible because the burglary was part of the same course of conduct as the kidnapping and criminal sexual conduct. Minn. Sent. Guidelines II.B.1.c (2010). We disagree. “[O]n established facts, whether multiple offenses are part of a single behavioral incident presents a question of law, which we review de novo.” *State v. Rivers*, 787 N.W.2d 206, 213 (Minn. App. 2010), *review denied* (Minn. Oct. 19, 2010). “In order to determine whether two intentional crimes are part of a single behavioral incident, we consider factors of time and

place and whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective.” *State v. Bauer*, 792 N.W.2d 825, 828 (Minn. 2011) (quotation omitted).

This court has explained that “a defendant’s desire to satisfy his perverse sexual desires is too broad a motivations [sic] to justify application of the single behavioral incident rule.” *Butterfield*, 555 N.W.2d at 531. In *Butterfield*, we held that a defendant could be sentenced for multiple assaults when he “stopped his assaults and moved [his victim] to a new location to serve his own whims.” *Id.*

Bot’s criminal objective with respect to the initial strangulation and attack in K.G.’s bedroom may have been to subdue K.G. in order to sexually assault her, but it is not improper to impose sentences for distinct assaults—even when they are motivated by a single criminal objective. Bot’s assault of K.G. was interrupted several times—either due to K.G.’s escape attempts or because Bot left. Bot’s decision to assault K.G. anew at least three additional times is sufficient for us to agree with the district court that the initial burglary in K.G.’s bedroom was not part of the same behavioral incident as the ongoing kidnapping and sexual assaults. Accordingly, Minn. Sent. Guidelines II.B.1.c does not apply, and the district court was permitted to increase Bot’s criminal-history score after the burglary sentence and before imposing the kidnapping and criminal-sexual-conduct sentences.

III.

Bot raises five additional arguments in a pro se supplemental brief. He argues that (1) he is entitled to a new trial because the prosecutor failed to disclose the jacket that

was found in K.G.'s car; (2) he is entitled to a new trial based on newly discovered evidence; (3) K.G.'s restitution claim was not timely filed; (4) K.G. was not credible; and (5) the district court abused its discretion by denying his motion to admit evidence of K.G.'s character and previous sexual conduct.

The state's nondisclosure of K.G.'s testimony regarding the jacket is not a constitutional violation because the evidence was not favorable to Bot. *See Pederson v. State*, 692 N.W.2d 452, 459 (Minn. 2005) (explaining the elements of a *Brady* violation). Bot's next two arguments (newly discovered evidence and untimely restitution claim) were not properly preserved for appeal. *See* Minn. R. Crim. P. 26.04, subd. 1(1)(5) (stating that a defendant must move for a new trial to challenge a jury verdict based on new evidence); *State v. Henry*, 809 N.W.2d 251, 254 n.1 (Minn. App. 2012) (outlining the requirements to challenge a restitution order). And credibility determinations are not disturbed on appeal. *State v. Garrett*, 479 N.W.2d 745, 747 (Minn. App. 1992) (stating that the assessment of the credibility of witnesses rests with the jury), *review denied* (Minn. Mar. 19, 1992).

Bot also challenges the district court's pretrial denial of his request to introduce evidence of an incident involving K.G. that occurred on August 21, 2010, and a statement by K.G.'s neighbor. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted).

Bot alleges that K.G. attempted suicide on August 21, 2010, and then lied to the police when they arrived. The district court deferred Bot's request to introduce evidence of K.G.'s reputation for truthfulness and provisionally denied his request to introduce adverse character traits "based on the offer of proof presented at the hearing, consisting of a three-page police report from the City of Tracy." Later, at trial and outside of the jury's presence, the district court explained that

[u]pon reviewing that offer of proof, the Court found that it did not provide a basis for the character traits as alleged by the defense. The Court cannot find that the offer of proof provides a basis for irrationality, non[-]accidental . . . self[-]inflicted injury or false reporting on the part of the victim. The offer of proof did not provide a basis that any of [K.G.]'s alleged conduct is a "pertinent trait of character" under Rule 404(a)(2). To allow the proposed testimony would be more prejudicial than probative [and] would be confusing

Bot provided no evidence to support his theory that K.G. lied to the police, and the district court acted within its discretion by denying the admission of this theory.

Bot also sought to introduce a neighbor's statement as evidence of K.G.'s previous sexual conduct. Minnesota Rule of Evidence 412(1) generally prohibits the admission of evidence of a victim's previous sexual conduct in a criminal-sexual-conduct prosecution. But "evidence of the victim's previous sexual conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue, relevant and material to the issue of consent" can be admissible when consent of the victim is a defense of the case, as can evidence of the victim's previous sexual conduct with the accused. Minn. R. Evid. 412(1)(A).

Minn. R. Evid. 412(2) outlines a procedure for making an offer of proof for evidence under this rule. Bot submitted notes of an interview with K.G.'s neighbor as his initial offer of proof. The district court found that Bot's initial offer of proof was insufficient to warrant a further hearing. The district court found that much of Bot's initial offer of proof was based on inadmissible hearsay and that "[t]he remaining offer of proof regarding the alleged victim's conduct with [a neighbor]'s husband and a third party's boyfriend does not tend to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue."

The district court acted well within its discretion by denying admissibility of this evidence.

Affirmed.