STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0072, A12-2326

State of Minnesota,
Respondent,

vs.

Kevin James LaDue,
Appellant,

and

Kevin James LaDue, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 26, 2013
Affirmed
Kirk, Judge

Mille Lacs County District Court
File No. 48-CR-11-158

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Janice S. Jude, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Hudson, Judge; and Bjorkman, Judge.

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

KIRK, Judge

In these consolidated direct and postconviction appeals, appellant argues that: (1) the district court abused its discretion by admitting the victim's out-of-court statements to a child-protection investigator; (2) the district court abused its discretion by redacting the victim's out-of-court statements to omit mention of the victim's other abuser; (3) the district court abused its discretion by permitting the victim to testify while sitting at the prosecutor's table; (4) the district court committed plain error when it did not instruct the members of the jury that they had to reach unanimous agreement regarding the acts underlying appellant's convictions; (5) the evidence was not sufficient to sustain appellant's convictions; and (6) the district court abused its discretion when it denied his petition for postconviction relief. We affirm.

FACTS

On January 24, 2011, respondent State of Minnesota charged appellant Kevin James LaDue with two counts of first-degree criminal sexual conduct, two counts of second-degree criminal sexual conduct, one count of third-degree controlled substance crime, one count of neglect or endangerment of a child, and one count of contributing to the delinquency of a minor. The complaint alleged that appellant's 14-year-old stepdaughter, D.M., reported that appellant had sexually abused her between January 1,

2009, and January 20, 2011. The complaint further alleged that appellant crushed and snorted Ambien pills with D.M.

The complaint arose from an interview that child protection investigator Jessy Vittum and a police investigator conducted with D.M. at a juvenile facility. The county assigned Vittum to meet with D.M. after someone reported to child protection that D.M. might have been abused. Vittum had very little information before meeting with D.M. and she did not know the name of any alleged perpetrator of abuse. At the beginning of the interview, Vittum asked D.M., "[W]hat are we here to talk about today [D.M.]?" D.M. replied, "I'm not sure." Vittum then asked, "Is there things that have been bothering you?" And D.M. replied, "Yes but it has been put on the back burner for a long time."

D.M. was reluctant to tell Vittum what was bothering her but, over the course of the interview, D.M. described being abused by two men. D.M. expressed concern about her younger sisters' safety and her fear that her mother would be hurt by her disclosure. D.M. was reluctant to talk with Vittum due to her concern that she would be sent to long-term placement and would not be able to go home.

Vittum asked D.M., "[D]o you want to talk about what he did without giving me a name? Do you want to tell me? . . . Like should I be worried that you could have gotten pregnant?" D.M. replied, "Yes." D.M. also stated that the abuse happened in her bedroom, the abuser was sometimes sober and sometimes took pills before the abuse, and the abuse occurred twice when her mother was home. D.M. reported that the abuser gave her Ambien before abusing her, and that he knew she was awake when the abuse

occurred. At the end of the interview, D.M. asked, "Do I have to like exactly tell you who it is?" After Vittum said that she did, D.M. said, "It's my mom's husband." D.M. acknowledged that she had also been abused by another man, but refused to name him.

On the same day that Vittum interviewed D.M., Mille Lacs Tribal Police Investigator Russ Jude and other police officers went to appellant's home. D.M.'s mother, A.L., answered the door at the home. The officers entered the home and found appellant in a crawl space in the master bedroom. The officers transported appellant to the police department, where Investigator Jude conducted an interview. Appellant admitted that he crushed and snorted Ambien pills with A.L. and D.M., and that D.M. would sometimes rub his right leg and he would sometimes rub her neck. When asked if he had any sexual contact with D.M., appellant responded that this was a nightmare and that he did not know that D.M. hated him so much. Appellant was nervous and evasive during the interview.

Vittum interviewed D.M. a second time at the Mille Lacs County Sheriff's Office. D.M. told Vittum that the first incident occurred at her home when she was 13 years old. D.M. stated that she took pain pills and then fell asleep, but later woke up with a "strong feeling" that appellant had done something. D.M. told Vittum that the second time something occurred, her mother was in the hospital with pneumonia. D.M. stated that she was sleeping in her mother's room when appellant "touched [her] from the side and like pulled [her] towards him" and then touched her breasts over her clothes. D.M. stated that she was not impaired on that occasion.

D.M. stated that the next incident occurred after appellant gave her Ambien. After taking the pills, she walked out of the room and appellant followed her. D.M. stated that her mother was home at the time, but had taken Ambien and was sleeping. D.M. stated that she started watching television and then "blacked out and then next thing the blankets are over me and he was like huddled up beside—behind me. Like I was lying on my side . . . and he was like behind me and . . . at that moment I got like kind of freaked out so I like tried to go to sleep." D.M. stated that when she woke up she was not wearing her pants and underwear, but she was still wearing her shirt. She further stated that appellant's "private" was inside her buttocks. D.M. stated that she blacked out again, and when she woke up she was wearing her pants and underwear. D.M. stated that on other occasions she had difficulty remembering because appellant gave her Ambien, but that she could feel that something had happened to her when she woke up.

D.M. told Vittum that another incident occurred the previous year when she was at her mother's house and appellant gave her three or four Ambien pills. D.M. stated that she blacked out, but she remembered that appellant took off her shorts and his pants, laid down, pulled her on top of him, and then his "private" went inside her "girl private." D.M. stated that an incident occurred when she was sober at her grandmother's house. She stated that appellant came over when no one else was home and "kept pulling me towards him and like started touching me." Finally, she stated that an incident occurred while she was sober and was watching a movie with appellant at her mother's house. D.M. stated that appellant started to rub her legs and then "went higher and higher and higher and finally he came up to my private area" and "put[] his fingers in."

Prior to the jury trial, the state moved the district court to admit D.M.'s statements to Vittum as substantive evidence. At the motion hearing, appellant's counsel objected to the admission of D.M's statements. The district court concluded that D.M.'s statements were admissible and granted the state's motion.

The district court held a jury trial in June 2011, and Vittum testified as an expert in forensic interviewing and child abuse assessment. In addition to testifying about her two interviews with D.M., Vittum testified about child sexual abuse accommodation syndrome. Vittum described the characteristics of children who experience the syndrome, but she did not offer her opinion regarding whether D.M. suffered from it. Vittum testified that the syndrome consists of several different stages that some children who have been sexually abused go through, including secrecy, helplessness, entrapment, accommodation, unconvincing or delayed reporting, and retraction.

At trial, the prosecutor moved the district court to permit D.M. to testify from the prosecutor's table because D.M. did not want to testify in the witness box in front of appellant. Appellant's counsel objected. After hearing the parties' arguments, the district court ruled that D.M. would sit at the prosecutor's table after everything was removed from the table, and the attorneys would examine D.M. from a podium. D.M. testified that she remembered talking to Vittum, but she did not want to talk about what they discussed. The prosecutor asked D.M., "[A]re you denying any of those things here today that you talked to Ms. Vittum about?" D.M. responded, "No." Appellant's counsel cross-examined D.M.

The jury convicted appellant of all counts in the complaint. In January 2012, appellant appealed his convictions. In June, appellant moved this court to stay his appeal to allow him to pursue postconviction relief. This court initially denied the motion to stay, but later granted appellant's renewed motion and remanded the case for postconviction proceedings.

Appellant then filed a petition for postconviction relief, claiming that D.M. had recanted her trial testimony and that he received ineffective assistance of counsel. At a postconviction hearing, three witnesses testified that D.M. had recanted her testimony. A.L. testified that shortly after the trial D.M. told her that "she didn't think it was going to go [as] far as it did," and that "the person that did it was already incarcerated." D.M. would not give A.L. the name of this other person. A.L. claimed that D.M. told her she persisted in the allegations against appellant because she was angry that appellant had come into their lives. Appellant's sister, T.M., testified that she asked D.M. on Facebook or MySpace why she made the allegations, and D.M. told her "that her cousin had told the cops that and she didn't want to lie to them about it so she was going along with it." T.M. was unsure of the timing of her conversation with D.M., but she thought it had occurred prior to the trial. D.M.'s cousin, N.B., testified that he asked D.M. if the allegations she made against appellant were true, and D.M. shook her head. N.B. testified that D.M. told him that "she was threatened that she would have been locked up until she was 18 . . . if they found out that she was lying about that." N.B. testified that his conversation with D.M. occurred either before or during appellant's trial. N.B. was incarcerated at the same time as appellant, and he told appellant what D.M. had told him.

As a result of that conversation, appellant wrote out an affidavit that included what N.B. had told him, and N.B. signed the affidavit.

Several other witnesses testified at the postconviction hearing, including D.M., Vittum, D.M.'s probation officer, and a professional who worked with D.M. D.M. denied telling A.L., T.M., or N.B. that the allegations she made against appellant were not true. Both Vittum and D.M.'s probation officer testified that testifying at trial was very difficult for D.M. and D.M. never recanted her allegations to them. A professional who transported D.M. from her residential facility testified that D.M. was hesitant to testify at the postconviction hearing because she was "tired of reliving it."

The district court denied appellant's petition. The district court found that the three witnesses who testified that D.M. had recanted all have a relationship with appellant and that N.B. and T.M. approached D.M. with the specific purpose of confronting her about her allegations. The district court found that all three witnesses were inconsistent, exhibited bias, and were unreliable sources of evidence. The district court further found that even if the three witnesses' testimony was accurate, it was not convinced that D.M.'s testimony at trial was false. The district court noted that D.M.'s alleged comments to all three witnesses reflected her feelings of guilt and were motivated by her desire to maintain relationships. The district court found that the testimony from the three professionals was consistent and that D.M. maintained her allegations. The district court concluded that appellant had not demonstrated by a fair preponderance of the evidence that the trial testimony was false.

In December 2012, appellant filed a notice of appeal from the postconviction order. This court consolidated appellant's direct and postconviction appeals. These consolidated appeals follow.

D E C I S I O N

I. The district court did not abuse its discretion by admitting the victim's out-of-court statements to the child-protection investigator.

"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).

The district court granted the state's motion to admit D.M.'s out-of-court statements to Vittum because the district court determined that the statements were admissible under Minn. R. Evid. 807. Hearsay is generally inadmissible except as provided by the Minnesota Rules of Evidence. Minn. R. Evid. 802. Under Minn. R. Evid. 807:

> 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.

In making a reliability determination under rule 807, courts "use 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 exceptions to hearsay. *State v. Robinson*, 718 N.W.2d 400, 408 (Minn. 2006) (quotations omitted). Under rule 807, the relevant factors are the circumstances that were present when the statement was made. *State v. Ahmed*, 782 N.W.2d 253, 260 (Minn. App. 2010). In child-abuse cases, courts consider the following circumstances:

> [W]hether 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.; *see also Robinson*, 718 N.W.2d at 410 (applying several factors and determining that the victim's statements contained sufficient circumstantial guarantees of trustworthiness).

Here, the district court concluded that D.M.'s two statements to Vittum were trustworthy, but it did not specifically address these factors. Instead, the district court determined that D.M.'s statements were admissible under rule 807, "because they will be offered to show material facts, the video is more probative than other evidence due to the reliability of the interview and the professional process under which it was obtained, and justice will be best served by admission of the reliable forensic interview."

Seven factors support the admission of these statements. First, D.M.'s statements to Vittum demonstrated spontaneity. D.M. made several statements during the first interview that implied her abuser was her mother's husband, but she did not identify appellant by name until Vittum stated, "You had a bad childhood. I wonder what your dad would think right now." D.M. replied, "I can guarantee you that if he was still alive Kevin wouldn't be alive by now." And in response to Vittum's questions during the second interview, D.M. described several incidents with specific details that she had not previously disclosed.

Second, Vittum interviewed D.M. after child protection received a report from an unidentified informant that D.M. might have been abused. But Vittum had very little information before she interviewed D.M., including no knowledge of the identity of the abuser or abusers or specific details about the abuse D.M. had suffered.

Third, Vittum has been extensively trained as a child-protection investigator and has been certified as a forensic interviewer. As part of that training, Vittum has been taught to avoid suggestibility during a forensic interview. Viewing Vittum's statements in context, the questions she asked D.M. were not leading. Vittum's first question to D.M. about the reason for the interview was, "[S]o what are we here to talk about today [D.M.]?" During much of the interview, Vittum and D.M. discussed D.M.'s feelings and worries in general. When D.M. made statements that indicated she had been abused, Vittum expressed concern for her safety and asked open-ended follow-up questions. Vittum never suggested that appellant had abused her, but asked D.M. additional questions after D.M. identified appellant as a person who had hurt her. During the

second interview, Vittum asked D.M. open-ended questions to learn more information about the abuse, such as, "[T]ell me about the first time that something happened."

Fourth, D.M.'s statements to Vittum during the interviews establish that she did not have a motive to fabricate the allegations. As appellant argues, D.M. stated numerous times that she was unhappy in her out-of-home placement and she wanted to return home to live with her family. But D.M. specifically told Vittum that she did not want to disclose who had abused her because if she did, she would not be allowed to go home.

Fifth, at the time she made the first statement, D.M. was 14 years old; she had turned 15 years old by the time she made the second statement. D.M. used words such as "private" and was able to describe appellant's penetration of her on several occasions. Given her age, D.M.'s statements about the abuse were not particularly surprising.

Sixth, D.M.'s statements were consistent. Once D.M. identified appellant, she consistently stated that he had abused her. D.M. also consistently stated that appellant provided her with Ambien on several occasions before he abused her.

Finally, nothing in the record raises concerns about D.M.'s mental state at the time she gave the statements to Vittum. We also note that D.M.'s statements were partially corroborated by appellant's statements that he used Ambien with D.M. and that D.M. rubbed his right leg and he rubbed her neck. Because D.M.'s statements to Vittum had sufficient guarantees of trustworthiness, the district court did not abuse its discretion by admitting the statements.

II. The district court did not abuse its discretion by redacting the victim's out-of-court statements to omit the victim's mention of another abuser.

Appellant argues that the district court abused its discretion by redacting D.M.'s statements to Vittum to omit reference to D.M.'s claims that she was also abused by another man. A district court's evidentiary ruling will not be reversed absent an abuse of discretion. *Amos*, 658 N.W.2d at 203.

Prior to trial, the state moved the district court to redact the portions of D.M.'s statements that discussed her previous sexual contact. The district court granted the motion over appellant's objection. During the trial, the district court received the redacted statements into evidence over appellant's renewed objection. Appellant also renewed his objection to the preclusion of rape-shield evidence and requested that the district court allow him to question witnesses about D.M.'s statements that she had been previously abused by another man. Appellant argued that the evidence should be admitted to provide an alternate explanation for D.M.'s sexual knowledge. The district court did not allow appellant to present any evidence that D.M. was abused by anyone else.

Appellant contends that the redaction of D.M.'s statements to exclude any reference to another abuser violated his constitutional right to present a complete defense. In Minnesota, evidence of a victim's prior sexual conduct generally "shall not be admitted nor shall any reference to such conduct be made in the presence of the jury." Minn. R. Evid. 412(1); Minn. Stat. § 609.347, subd. 3 (2010) (rape-shield statute). The rape-shield statute and rule 412 provide that this evidence is only admissible "if the

probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature" and (1) if the defendant is asserting a consent defense, or (2) if the state's case "includes evidence of semen, pregnancy, or disease at the time of the incident." *Id.*; *see* Minn. R. Evid. 403. However, Minnesota courts have recognized that this evidence is also admissible "in all cases in which admission is constitutionally required by the defendant's right to due process, his right to confront his accusers, or his right to offer evidence in his own defense." *State v. Benedict*, 397 N.W.2d 337, 341 (Minn. 1986). This includes "[a]ny evidence tending to establish a predisposition to fabricate a charge of rape . . . unless its potential for unfair prejudice outweighs its probative value." *State v. Kroshus*, 447 N.W.2d 203, 204 (Minn. App. 1989) (citing *State v. Caswell*, 320 N.W.2d 417, 419 (Minn. 1982)), *review denied* (Minn. Dec. 20, 1989). Absent special circumstances, evidence of a victim's prior sexual history will not survive the rule 403 balancing test. *State v. Crims*, 540 N.W.2d 860, 868 (Minn. App. 1995), *review denied* (Minn. Jan. 23, 1996). Special circumstances "include situations in which the evidence explains a physical fact in issue at trial, suggests bias or ulterior motive, or establishes a pattern of behavior *clearly* similar to the conduct at issue." *Id.*

Here, the district court did not conduct an in-depth analysis on the record before determining that the evidence was inadmissible under the rape-shield statute. But, applying the rule 403 balancing test, the potential for unfair prejudice outweighs the probative value of the evidence. The evidence is very prejudicial because it could suggest that D.M. has a propensity to report that she has been abused, and it has limited probative value. D.M. was a teenager at the time she gave the statements to Vittum, and

her sexual knowledge could have come from sources other than appellant. *Cf. Benedict*, 397 N.W.2d at 341 (noting that if there was evidence that the five-year-old victim's sexual knowledge came from someone other than the appellant, the district court could have admitted that evidence). There is no indication that the jury would have credited D.M.'s statements about the other abuser but discredited her statements about appellant, and there is no evidence that D.M. had a history of fabrication, or that any other special circumstances were present. *See Crims*, 540 N.W.2d at 868.

Appellant also argues that, under the "rule of completeness," the district court's refusal to admit evidence of D.M.'s other abuser left the jury with a distorted impression of what actually occurred during Vittum's interviews with D.M. We decline to consider this argument because it was not raised to or decided by the district court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) ("This court generally will not decide issues which were not raised before the district court.").

Therefore, the district court did not abuse its discretion by redacting D.M.'s out-of-court statements to omit her mention of another abuser.

III. The district court did not abuse its discretion by permitting the victim to testify while sitting at the prosecutor's table.

"[District] courts have a grave responsibility in overseeing and regulating courtroom conduct and procedure during trials, including criminal trials." *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006). As a result, this court accords broad discretion to district courts in deciding matters of courtroom procedure. *Id.*

Appellant contends that allowing D.M. to testify from the prosecutor's table created a substantial risk of prejudice. The United States and Minnesota Constitutions guarantee a criminal defendant a fair trial by an impartial jury. U.S. Const. amend. V, VI, and XIV; Minn. Const. art. I, § 6. "The presumption of innocence is a basic component of the fundamental right to a fair trial." *State v. Bowles*, 530 N.W.2d 521, 529 (Minn. 1995). To ensure that the presumption is protected, courts must be aware of "factors that may undermine the fairness of the fact-finding process" and "must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt." *Id.* (quotation omitted).

Certain courtroom arrangements, such as shackling the defendant, are "the sort of inherently prejudicial practice that . . . should be permitted only where justified by an essential state interest specific to each trial." *Id.* (quotation omitted). An arrangement is inherently prejudicial if "an unacceptable risk is presented of impermissible factors coming into play." *Id.* (quotation omitted). If an arrangement is not inherently prejudicial then courts examine whether the use of the arrangement actually prejudiced the defendant on a case-by-case basis. *Id.*

Here, the district court allowed D.M. to sit at the prosecutor's table for her testimony. Before D.M. sat at the table, the prosecutor removed all of her things from the table. The prosecutor conducted her direct examination of D.M. from a podium that was placed away from the prosecutor's table, and appellant's counsel conducted his cross-examination from the same podium. Minnesota appellate courts have not addressed the propriety of the specific seating arrangement that the district court authorized in this case.

However, the courtroom arrangement is not inherently prejudicial. Contrary to appellant's argument, there was no indication that D.M.'s testimony was sanctioned by the prosecutor because the prosecutor had removed her belongings from the table and she was not sitting next to D.M. during the testimony. *Cf. State v. Biehoffer*, 269 Minn. 35, 49, 129 N.W.2d 918, 927 (1964) (determining that it was inappropriate for the county sheriff who conducted the investigation to sit at the prosecutor's table during the trial). In addition, appellant has not demonstrated that he was actually prejudiced by the courtroom arrangement. Appellant contends that the seating arrangements conveyed to the jury that D.M. was a special witness. But, like the other witnesses who testified at the trial, D.M. testified under oath and was cross-examined by appellant. The only way D.M. was treated differently than the other witnesses was the location where she sat during her testimony.

Accordingly, the district court did not abuse its discretion by permitting D.M. to testify while sitting at the prosecutor's table.

IV. The district court did not commit plain error by failing to instruct the jury that it had to reach unanimous agreement on the acts underlying appellant's convictions.

The district court instructed the jury that its verdict had to be unanimous. Appellant did not request, and the district court did not provide, an instruction that the jury had to reach unanimous agreement on the act underlying each offense. Appellant concedes that he did not object to the jury instructions at trial. In the absence of an objection, this court has the discretion to review the district court's admission of evidence. *State v. Griller*, 583 N.W.2d 736, 742 (Minn. 1998). If we exercise that

discretion, our review is under the plain-error standard. *Id.* at 740. This standard requires that the defendant demonstrate: "(1) error; (2) that was plain; and (3) that affected substantial rights." *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). If all three prongs are met, this court "may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* (quotations omitted).

Appellant contends that the district court committed plain error when it did not instruct the jury that it had to reach unanimous agreement on the acts that constituted the offenses for which the jury convicted him. A criminal defendant has the right to a unanimous jury verdict. *State v. Hart*, 477 N.W.2d 732, 739 (Minn. App. 1991), *review denied* (Minn. Jan. 16, 1992). The jury must reach unanimous agreement on whether the defendant committed the act or acts that constitute the charged offense. *State v. Stempf*, 627 N.W.2d 352, 355 (Minn. App. 2001).

Appellant relies on *Stempf* in support of his argument. In that case, the state charged Stempf with one count of a fifth-degree controlled substance crime. *Id.* at 354. The state introduced evidence that Stempf possessed a controlled substance that was found at his workplace and in his truck. *Id.* At the end of the trial, Stempf requested a specific-unanimity instruction, but the district court refused to give the instruction. *Id.* On appeal, this court determined that Stempf's right to a unanimous verdict was violated. *Id.* at 358. This court stated that because the statute includes the act of possession as an element of the crime, the jury was required to reach unanimous agreement that one act of possession was proved beyond a reasonable doubt. *Id.* at 357. Without the specific-unanimity instruction, this court observed that some jurors could have believed that

Stempf possessed the controlled substance in his truck and some could have believed he possessed it at his workplace. *Id.*

This case is distinguishable from *Stempf*. In that case, the defendant was charged with one count that included two separate offenses occurring on different dates and in different locations. *Id.* at 354. In contrast, appellant was charged with sexually abusing D.M. over a period of time between January 1, 2009, and January 20, 2011. "[T]here is no constitutional requirement that the jury agree on the way in which a crime was committed." *State v. Poole*, 489 N.W.2d 537, 543 (Minn. App. 1992), *aff'd* 499 N.W.2d 31 (Minn. 1993). And "specific dates need not be charged or proven in a sexual abuse case." *Id.* at 544. Thus, the district court was not required to provide a specific-unanimity instruction to the jury. The district court did not commit plain error by failing to instruct the jury that it had to unanimously agree on the acts underlying the offenses.

V. The evidence is sufficient to sustain appellant's convictions.

In assessing whether the evidence was sufficient to support a jury's guilty verdict, this court "determine[s] whether the legitimate inferences drawn from the facts in the record would reasonably support the jury's conclusion that the defendant was guilty beyond a reasonable doubt." *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). "We give due regard to the defendant's presumption of innocence and the [s]tate's burden of proof, and will uphold the verdict if the jury could reasonably have found the defendant guilty." *Id.* We assume that the jury believed the state's witnesses and disbelieved contrary evidence. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

Appellant contends that D.M.'s out-of-court statements were not sufficiently reliable to support his criminal-sexual-conduct convictions. In cases that depend primarily on conflicting testimony, it is particularly important to assume that the jury believed the state's witnesses because it is the jury's exclusive function to weigh the credibility of witnesses. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). A "jury is free to accept part and reject part of a witness's testimony." *Mems*, 708 N.W.2d at 531. "Inconsistencies or conflicts between one witness and another do not necessarily constitute false testimony or serve as a basis for reversal." *Id.*; *see also Pieschke*, 295 N.W.2d at 584 ("Even inconsistencies in the state's case will not require a reversal of the jury verdict.").

The district court did not abuse its discretion by admitting D.M.'s out-of-court statements to Vittum. Throughout those statements, D.M. consistently stated that appellant abused her on numerous occasions, and she specifically described several occasions. D.M. did not testify about the specific incidents, but she testified that she was not denying anything she had previously told Vittum. And, although a victim's statement does not need to be corroborated in a first-degree criminal-sexual-conduct prosecution, some of D.M.'s statements were corroborated by appellant's statements to police. *See* Minn. Stat. § 609.347, subd. 1 (stating that "the testimony of a victim need not be corroborated" in certain criminal-sexual-conduct prosecutions). D.M. told Vittum that appellant provided her with Ambien on several occasions before sexually assaulting her and appellant admitted to police officers that he provided Ambien to D.M. and that D.M. sometimes rubbed his leg and he rubbed her neck. This court must assume that the jury

believed D.M.'s testimony. *See Pieschke*, 295 N.W.2d at 584. Based on D.M.'s testimony and her statements to Vittum, the jury could reasonably have found that appellant was guilty. The evidence is sufficient to support appellant's convictions.

VI. The district court did not abuse its discretion when it denied appellant's petition for postconviction relief.

Appellant contends that he established by a preponderance of the evidence that D.M.'s out-of-court statements to Vittum were false and, thus, his convictions must be reversed. A district court's decision to deny postconviction relief is reviewed for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). Generally, the "scope of review is limited to the question of whether sufficient evidence exists to support the postconviction court's findings." *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). When considering a district court's denial of postconviction relief, we review issues of law de novo and findings of fact for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

In cases of alleged false testimony, Minnesota appellate courts will grant a new trial if the following three-part test is satisfied: "(1) the court is reasonably well satisfied that the testimony in question was false; (2) that without the testimony the jury might have reached a different conclusion; and (3) that the petitioner was taken by surprise at trial or did not know of the falsity until after trial." *Dobbins v. State*, 788 N.W.2d 719, 733 (Minn. 2010). Here, appellant has not satisfied the first prong of the test. The only evidence that appellant submitted in support of his petition for postconviction relief was statements from three witnesses alleging that D.M. had recanted. The district court

determined that the three witnesses were not credible because all three witnesses were inconsistent, exhibited bias, and were unreliable. We give considerable deference to a postconviction court's credibility determinations. *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006) ("[T]he postconviction court is in a unique position to assess witness credibility, and we must therefore give the postconviction court considerable deference in this regard."). Accordingly, we conclude that the district court did not abuse its discretion by denying appellant's petition for postconviction relief.

Affirmed.