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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1993**

State of Minnesota,
Respondent,

vs.

Abdikadir Yusuf Mohamed,
Appellant.

**Filed August 27, 2012
Affirmed
Cleary, Judge**

Ramsey County District Court
File No. 62-CR-10-10191

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Deborah Ellis, Susan L. Johnson, Ellis Law Office, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Cleary, Judge; and
Muehlberg, 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UNPUBLISHED OPINION

CLEARY, Judge

Following trial, a jury found appellant guilty of fourth-degree criminal sexual conduct using coercion. Appellant challenges the conviction, arguing that the district court erred by failing to suppress evidence related to his unrecorded interview; the district court erred by permitting testimony regarding a text-message conversation that occurred between the victim and her friend; the evidence is insufficient to sustain the conviction; the state withheld evidence helpful to the defense; the district court erred by prohibiting the introduction of evidence related to a telephone call from a person named Ashley; and these cumulative errors require that he be given a new trial. We affirm.

FACTS

In the early-morning hours of December 5, 2010, B.N. finished her shift as a bartender at Barrio in St. Paul and then stayed and drank beer with some of her coworkers. Sometime after 3:00 a.m., B.N. climbed into the backseat of appellant Abdikadir Mohamed's minivan taxicab and instructed him to drive her to the home of a friend, D.F. During the drive, B.N. moved to the front-passenger seat of the taxicab, where the window rolled down, so she could smoke a cigarette. The events that followed were disputed at trial.

According to B.N., after she climbed into the front seat, appellant reached up her skirt and touched her thigh and vaginal area. B.N. became "really scared," pushed his hand away, and asked to be let out of the taxicab. Appellant responded, "[N]o, no, I'll take you home," and would not stop the taxicab. When B.N. tried to move to the

backseat, appellant held out his arm and again said, “[N]o, no, I’ll take you home.” B.N. and D.F. began to exchange text messages. B.N. then asked appellant if he had a business card, and appellant said that his name was Abdi and gave her his cellphone number, which she saved in her cellphone. Appellant then reached up B.N.’s skirt again and touched her thigh and vaginal area, and B.N. pushed and hit him and tried to force his hand back. B.N. again asked to be let out, but appellant would not stop the taxicab. Appellant turned the taxicab into a parking lot and tried to reach up B.N.’s skirt a third time. She began to panic and yell at appellant and tried to get out of the taxicab, but its doors were locked. Appellant turned the taxicab around in the parking lot without stopping and eventually let B.N. out close to D.F.’s house. Once inside the house, B.N. cried, smoked a cigarette, and went to bed. She did not call the police because she “didn’t think anything could be done because [she] didn’t get raped and [she] got away.”

According to appellant, the drive from Barrio to D.F.’s house took between 10 and 11 minutes. He and B.N. had very little conversation during the drive, and B.N. was busy with her cellphone and purse. When the taxicab reached D.F.’s house, appellant gave B.N. his business card, as he does with all of his customers to make a connection for possible future business. Appellant dropped B.N. off in front of D.F.’s house. Appellant denies that he touched or attempted to touch B.N., that B.N. ever asked him to stop the taxicab, or that he prevented B.N. from moving to a different seat in the taxicab.

B.N.’s boss at Barrio eventually encouraged her to call the police. During a 911 call, B.N. told the dispatcher that a taxicab driver “put his hand up my leg and tried to put his hand in a place where it doesn’t belong.” Later that day, two police officers went to

Barrio, where B.N. made a statement and gave them the driver's cellphone number and description. Sergeant Tracie McHarg of the St. Paul Police Department was assigned to investigate B.N.'s claims. Sergeant McHarg called appellant to the police department, where he was photographed, fingerprinted, and released without being questioned.

On December 8, 2010, B.N. identified appellant as the taxicab driver from a photographic line-up. Appellant was then called back to the police department, where he was interviewed by Sergeant McHarg and Sergeant Brian Reed. This interview was not recorded. Also on December 8, the police received a telephone call from a woman who said that her name was Ashley, that she knew B.N., and that B.N. was attention-seeking and drank too much. Appellant was subsequently charged with kidnapping, in violation of Minn. Stat. § 609.25, subd. 1(2) (2010), and fourth-degree criminal sexual conduct using force or coercion, in violation of Minn. Stat. § 609.345, subd. 1(c) (2010).

Appellant moved to suppress all evidence related to the unrecorded December 8 interview. At a hearing on the motion, Sergeant McHarg testified regarding the circumstances of the interview and how it failed to be recorded. Sergeant McHarg testified that she turned a recorder on, that its red light was on, that it appeared to be recording, and that she thought it was recording. After the interview, however, she realized that the interview had not been recorded. Sergeant McHarg testified that the recorder was new, that she had never taped an interview on it before, and that she "should have double-checked to make sure it was functioning." Sergeant McHarg also testified that appellant was read his *Miranda* rights and signed a *Miranda* waiver prior to the interview and that, at one point, he asked for an attorney, after which questioning

stopped. The district court denied appellant's motion to suppress the evidence related to the December 8 interview. The court determined that the failure to record the interview was not willful or substantial, that appellant "did not make a statement" during the interview, and that the failure to record did not influence appellant's decision whether to make a statement.

Appellant moved to prohibit the state from eliciting testimony regarding the content of the text messages exchanged between B.N. and D.F. during the taxicab ride. The text messages had been erased and copies of the messages could not be reproduced. Appellant argued that the content of the text messages was hearsay and that testimony regarding the content would violate his constitutional right to confront the witnesses against him. The state argued that the content of the text messages was not hearsay pursuant to Minn. R. Evid. 801(d)(1)(B) because they were prior consistent statements which would be helpful to the jury in evaluating the credibility of B.N. and D.F. as witnesses. The district court denied appellant's motion to prohibit testimony regarding the content of the text messages.

The state moved to prohibit appellant from introducing evidence related to the December 8 telephone call from Ashley. The telephone number from which Ashley had called had been disconnected, and the state argued that Ashley's statement to police was hearsay that would confuse and mislead the jury. Appellant argued that evidence of the Ashley telephone call was relevant and critical to the jury's ability to assess the credibility, motives, and truthfulness of B.N. Appellant also objected that the existence of the call had not been reduced to a police report or disclosed to him until more than four

months after the call was made and that the police did not investigate the call. The district court granted the state's motion to prohibit introduction of evidence relating to the Ashley telephone call.

A jury trial was held during which B.N. testified regarding her version of the events that occurred on the morning of December 5, 2010. B.N. testified as to her text-message conversation with D.F. during the taxicab ride, stating that she had texted "oh, my gosh, my cabby is attacking me," and that D.F. had responded "get out, like wherever you are, I'll come get you." D.F. also testified as to the text-message conversation and stated that B.N. had texted "I'm in the cab. He touched me and he will not let me out." D.F. stated that she had responded "get out of the cab wherever you are. I will come and get you." B.N. and D.F.'s cellphone bills were admitted as exhibits and showed that the two exchanged text messages between 3:39 a.m. and 3:41 a.m. on December 5, 2010. D.F. also testified that, when B.N. arrived at her house, B.N. was "hyperventilating, crying, pretty hysterical," that D.F. tried to calm her down, and that the two decided to call the police in the morning.

Sergeant McHarg testified regarding the December 8 interview and stated that, during the interview, she showed appellant a photograph of B.N. and that appellant claimed that he never had B.N. in his taxicab and that he had never seen her. Sergeant McHarg testified that appellant denied picking up a passenger at Barrio and that he stated, "I don't know who she is, I've never seen her, it never happened." Sergeant McHarg stated that she tried to record the interview and that the recorder's red light was

on, indicating that the recorder was working, but that “[i]t was a nonfunctioning recorder.”

Appellant testified as to his version of the events that occurred on the morning of December 5, 2010. Appellant also testified regarding the December 8 interview, stating that Sergeant McHarg had shown him a photograph of a female and that he had said that he did not know the female and had never seen her. Appellant testified that he had not denied picking someone up near Barrio on the morning of December 5 but had told Sergeant McHarg that he did pick someone up. At the conclusion of the trial, the jury found appellant guilty of fourth-degree criminal sexual conduct using coercion, guilty of fifth-degree criminal sexual conduct (included as a lesser-included offense), and not guilty of kidnapping. This appeal followed.

D E C I S I O N

I

Appellant argues that the failure to record the December 8 interview was a violation of *State v. Scales*, which required suppression of all evidence related to the interview. 518 N.W.2d 587 (Minn. 1994). Whether a failure to record a custodial interrogation is a substantial violation of the *Scales* requirement is a legal question subject to de novo review. *State v. Inman*, 692 N.W.2d 76, 79 (Minn. 2005).

In *Scales*, the Minnesota Supreme Court declared that “all custodial interrogation including any information about rights, any waiver of those rights, and all questioning shall be electronically recorded where feasible and must be recorded when questioning occurs at a place of detention.” 518 N.W.2d at 592. If law enforcement violates this

requirement, suppression of any statements obtained during the interrogation is required if the violation is deemed “substantial.” *Id.* Whether a violation is substantial is decided on a “case-by-case basis” after considering “all relevant circumstances bearing on substantiality.” *Id.*

A violation of the *Scales* requirement is substantial if one or more of the following paragraphs applies:

(a) The violation was gross, willful and prejudicial to the accused. A violation shall be deemed willful regardless of the good faith of the individual officer if it appears to be part of the practice of the law enforcement agency or was authorized by a high authority within it.

(b) The violation was of a kind likely to lead accused persons to misunderstand their position or legal rights and to have influenced the accused’s decision to make the statement.

(c) The violation created a significant risk that an incriminating statement may have been untrue.

Id. at 592 n.5 (quotation omitted). If a *Scales* violation does not fall into one of those three paragraphs, a court must consider the following factors to determine whether the violation is substantial:

- (a) the extent of deviation from lawful conduct;
 - (b) the extent to which the violation was willful;
 - (c) the extent to which the violation was likely to have led the defendant to misunderstand his position or his legal rights;
 - (d) the extent to which exclusion will tend to prevent [*Scales* violations];
 - (e) whether there is a generally effective system of administrative or other sanctions which makes it less important that exclusion be used to deter such violations;
 - (f) the extent to which the violation is likely to have influenced the defendant’s decision to make the statement;
- and

(g) the extent to which the violation prejudiced the defendant's ability to support his motion, or to defend himself in the proceeding in which the statement is sought to be offered in evidence against him.

Id. (quotation omitted). "Willful" is defined as "[v]oluntary and intentional, but not necessarily malicious." *Black's Law Dictionary* 1737 (9th ed. 2009); *see also The American Heritage Dictionary of the English Language* 2042 (3d ed. 1992) (defining "willful" as "[s]aid or done on purpose; deliberate").

Appellant argues that paragraph (a) applies to the situation in this case, making the *Scales* violation substantial. However, even if the violation could be said to have been gross and prejudicial to appellant, there is no evidence that the failure to record the December 8 interview was willful; in fact, the evidence points to the contrary. Sergeant McHarg testified that she turned the recorder on and tried to record the interview; that the recorder's red light was on; that it appeared to be recording and she thought it was doing so; and that she didn't realize until after the interview that the recorder had malfunctioned. Appellant argues that the failure to record was willful because it was due to operator error and could have been prevented if Sergeant McHarg had double-checked the recorder. However, Sergeant McHarg's failure to double-check that the recorder was working, when it appeared to her to in fact be working, does not equate with the *Scales* violation having been voluntary, intentional, deliberate, or done on purpose, or with it having been part of the practice of the police or authorized by a high authority within the police department.

We must next consider the seven factors articulated in *Scales* to determine whether the failure to record was substantial. The entire interview was unrecorded but, as stated above, the failure to record was not willful. The failure to record did not likely lead appellant to misunderstand his position or legal rights or influence his decision to make a statement. Appellant was read his *Miranda* rights and signed a *Miranda* form, and it is likely that appellant assumed that the recorder was working as Sergeant McHarg did. Exclusion of the evidence relating to the December 8 interview would not tend to prevent future *Scales* violations, as it appears that the failure to record here was due either to mistake or equipment malfunction. Further, any prejudice to appellant resulting from the failure to record was minimal. Both appellant and Sergeant McHarg testified as to the December 8 interview at trial, and both stated that appellant had been shown a photograph of a female and had said that he did not know the female and had never seen her. The only point on which their testimony differed as to appellant's interview statements was whether appellant had denied even picking up a passenger near Barrio. Given all of these factors, the *Scales* violation was not substantial and the district court did not err by failing to suppress the evidence related to the unrecorded interview.

II

Appellant argues that the district court erred by permitting testimony regarding the content of the text messages exchanged between B.N. and D.F. "Evidentiary rulings rest within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). "A 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.” *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). On appeal, the appellant has the burden of establishing that the trial court abused its discretion and that the appellant was thereby prejudiced. *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997).

“Hearsay” is an out-of-court statement offered to prove the truth of the matter asserted and is admissible only in certain instances. Minn. R. Evid. 801(c), 802. A statement is not hearsay if it is offered for corroborative purposes, rather than to prove the truth of the matter asserted. *State v. Smith*, 384 N.W.2d 546, 548 (Minn. App. 1986), *review denied* (Minn. May 29, 1986). Additionally, a statement is not hearsay if, among other things, “[t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . (B) consistent with the declarant’s testimony and helpful to the trier of fact in evaluating the declarant’s credibility as a witness” Minn. R. Evid. 801(d).

At trial, B.N. testified that she texted “oh, my gosh, my cabby is attacking me.” This statement is not hearsay because it is an out-of-court statement that is consistent with B.N.’s testimony that she was the victim of sexual contact in the taxicab and was helpful for the jury to evaluate B.N.’s credibility as a witness.¹ B.N. also testified that

¹A statement is not hearsay if “[t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . (D) a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter.” Minn. R. Evid. 801(d). This rule may also apply to B.N.’s texted statement. However, such an argument was not raised before the district court and was not included in the state’s brief to this court and was therefore waived. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that an appellate court “generally will not decide issues which were not raised before the district court”);

D.F. responded “get out, like wherever you are, I’ll come get you.” This statement is not hearsay because it was not offered to prove the truth of the matter asserted, but rather to corroborate B.N.’s texted statement. D.F. testified that she texted “get out of the cab wherever you are. I will come and get you.” This statement is not hearsay because it was not offered to prove the truth of the matter asserted. However, D.F. also testified that B.N. texted “I’m in the cab. He touched me and he will not let me out.” This statement was offered to prove the truth of the matter asserted, is not a prior consistent statement by D.F., and is inadmissible hearsay.

It was an error of law, and therefore an abuse of discretion, for the district court to allow D.F. to testify regarding B.N.’s text message. However, appellant did not object to this testimony at trial. “Ordinarily, the defendant’s failure to object to an error at trial forfeits appellate consideration of the issue.” *State v. Ramey*, 721 N.W.2d 294, 297 (Minn. 2006). “On appeal, an unobjected-to error can be reviewed only if it constitutes plain error affecting substantial rights.” *Id.* (citing Minn. R. Crim. P. 31.02). An error is “plain” if it was clear or obvious, and usually this is shown if the error contravenes caselaw, a rule, or a standard of conduct. *Id.* at 302. A plain error affects substantial rights if it “was prejudicial and affected the outcome of the case.” *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). “A defendant is prejudiced by an evidentiary ruling when there is a reasonable possibility that without the error the verdict might have been more favorable to the defendant.” *State v. Miller*, 754 N.W.2d 686, 700 (Minn. 2008)

State v. Butcher, 563 N.W.2d 776, 780 (Minn. App. 1997) (stating that an issue not addressed in an appellate brief is deemed waived), *review denied* (Minn. Aug. 5, 1997).

(quotations omitted). The defendant bears the burden of persuading the court that a plain error affected his or her substantial rights, and this is a heavy burden. *Griller*, 583 N.W.2d at 741.

Here, even if it was plain error for the district court to allow D.F. to testify about B.N.'s text message, appellant has not shown that his substantial rights were affected and he was prejudiced because the outcome of the case would have been more favorable without the error. B.N. properly testified about the text message that she sent and was subject to cross-examination regarding that message. It is improbable that appellant's conviction is attributable to the error of allowing D.F. to testify about B.N.'s message when testimony as to the content of that message was otherwise admissible. Because all of the elements of the plain-error test have not been satisfied, we need not address the error further. *See Griller*, 583 N.W.2d at 740.

Appellant argues that the district court erred by permitting any testimony regarding the content of the text messages because the text messages had not been authenticated as required by Minn. R. Evid. 901(a), which states, "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." In this case, no actual text messages were introduced into evidence at trial, as they had been erased and could not be reproduced. There were no text messages to authenticate or that needed to be authenticated. B.N. and D.F. were subject to cross-examination regarding their testimony.

Appellant argues that the testimony of B.N. and D.F. regarding the text-message conversation was inconsistent as to the number of messages, who began the conversation, and what was said; that the testimony was contrary to the cellphone bills admitted as exhibits; and that B.N. and D.F. did not remember the exact words that were used. However, these arguments go to the weight and credibility given to the evidence, which was for the jury, not this court on appeal, to decide. *See State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

III

Appellant argues that the evidence presented at trial is insufficient to sustain the conviction of fourth-degree criminal sexual conduct using coercion. When there is a challenge to the sufficiency of the evidence, appellate review is “limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that the jury believed the state’s witnesses and disbelieved any evidence to the contrary. *Moore*, 438 N.W.2d at 108. The reviewing court “will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that [a] defendant was proven guilty of the offense charged.” *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004) (alteration in original) (quotation omitted). The weight and credibility given to testimony is for the jury to determine. *Moore*, 438 N.W.2d at 108.

Appellant argues that B.N.'s testimony and the evidence of guilt were "far from convincing." However, this was a he-said-she-said case; the jury could have reasonably believed either B.N.'s story that appellant engaged in sexual conduct or appellant's story that he did not. Which version of the story is more credible was for the jury to determine, and we will not disturb that determination. *See id.*; *see also State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998) ("The jury determines the weight and credibility of individual witnesses and of the defendant's story and a conviction may rest on the testimony of a single credible witness.").

Appellant argues that "the record is void of any facts to support the use of force to accomplish sexual contact" and that "[f]orce is an element of the fourth degree charge and required proof beyond a reasonable doubt." However, a person may be found guilty of fourth-degree criminal sexual conduct if the person engaged in sexual contact and "use[d] force *or* coercion to accomplish the sexual contact." Minn. Stat. § 609.345, subd. 1(c) (emphasis added). In this case, the jury found that appellant used coercion in the commission of fourth-degree criminal sexual conduct and answered "[n]o" to the question, "Did the defendant use force in the commission of the offense?"

Appellant argues that "the record is void of any evidence of coercion." For purposes of an offense of criminal sexual conduct, "coercion" means:

the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant's will.

Proof of coercion does not require proof of a specific act or threat.

Minn. Stat. § 609.341, subd. 14 (2010). Based on the evidence presented, the jury could have reasonably found either that the circumstances caused B.N. to reasonably fear that appellant would inflict bodily harm or that appellant used confinement. B.N. testified that she was “really scared,” that appellant refused to stop the taxicab to let her out, that the vehicle’s doors were locked, and that appellant held out his arm when she tried to get into the backseat of the vehicle. The jury could also have reasonably found that appellant used his superior size or strength, as B.N. testified that she pushed, hit, and tried to force back appellant and that appellant blocked her from climbing into the backseat of the taxicab. While appellant objects that there was no testimony at trial as to the size or strength of appellant and B.N., both individuals were present during the trial and the jury could observe their physical characteristics. The evidence, when viewed in a light most favorable to the conviction, is sufficient to sustain appellant’s conviction of fourth-degree criminal sexual conduct using coercion.

IV

Appellant argues that the state withheld evidence regarding the Ashley telephone call in violation of *Brady v. Maryland*. 373 U.S. 83, 83 S. Ct. 1194 (1963). When reviewing claims of prosecutorial misconduct, an appellate court will reverse a conviction “only if the misconduct, when considered in light of the whole trial, impaired the defendant’s right to a fair trial.” *State v. Swanson*, 707 N.W.2d 645, 658 (Minn. 2006).

In *Brady*, the United States Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. at 87, 83 S. Ct. at 1196–97. The prosecution’s duty to disclose material evidence may exist even where there has been no request for the evidence by the defendant. See *United States v. Agurs*, 427 U.S. 97, 107, 96 S. Ct. 2392, 2399 (1976); *State v. Clark*, 296 N.W.2d 359, 370 (Minn. 1980). This duty to disclose is articulated in Minn. R. Crim. P. 9.01, subd. 1(6), which states that the prosecutor must disclose “[m]aterial or information in the prosecutor’s possession and control that tends to negate or reduce the defendant’s guilt.”

The prosecutor’s obligations under this rule extend to material and information in the possession or control of members of the prosecution staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to the prosecutor’s office.

Minn. R. Crim. P. 9.01, subd. 1a(1); see also *State v. Williams*, 593 N.W.2d 227, 235 (Minn. 1999) (stating that the duty to disclose extends to material and information in the possession of the police).

In this case, the state did not violate its duty to disclose evidence because the state did not suppress the evidence of the Ashley telephone call. This evidence was disclosed to appellant prior to trial, and appellant does not dispute that it was. If appellant felt that he needed additional time to prepare for trial in light of this newly disclosed evidence, he could have requested a continuance of the trial date. There is no evidence that he did so,

and appellant does not argue that he made a request for a continuance that was improperly denied.

It appears that appellant's actual objection on this issue is that, had he learned of the telephone call soon after it was made, he may have been able to discover the identity of Ashley before the telephone number from which she called had been disconnected. However, even though the telephone number had been disconnected, appellant could have attempted to determine the telephone company associated with the number and to subpoena that company to provide information linked to the number. It does not appear that this was done.

V

Appellant argues that the district court erred by prohibiting evidence of the Ashley telephone call from being introduced at trial. "Evidentiary rulings rest within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion." *Amos*, 658 N.W.2d at 203. "A 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." *Riley*, 792 N.W.2d at 833. On appeal, the appellant has the burden of establishing that the trial court abused its discretion and that the appellant was thereby prejudiced. *Nunn*, 561 N.W.2d at 907.

"Relevant evidence" means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. "It is a general rule that all evidence which may tend to impeach a witness is relevant." *State v.*

Underwood, 281 N.W.2d 337, 341 (Minn. 1979). Relevant evidence may be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury” Minn. R. Evid. 403. “Hearsay” is an out-of-court statement offered to prove the truth of the matter asserted and is admissible only in certain instances. Minn. R. Evid. 801(c), 802.

Here, the evidence excluded was that a person, supposedly named Ashley, had reported to the police that she knew B.N. and that B.N. was attention-seeking and drank too much. This evidence was relevant because it could have been used to undermine B.N.’s credibility as a witness. However, the person who made the telephone call apparently could not be called to testify at trial, and it was unknown who this person was, how she knew B.N., how she had drawn her conclusions about B.N., and what the motivation behind her statement was. The evidence had little probative value, and any value that it had was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. Additionally, Ashley’s out-of-court statement to the police was hearsay and did not fall within any exception to the rule against hearsay. The district court did not abuse its discretion by prohibiting the introduction of evidence relating to the Ashley telephone call.

VI

Appellant argues that, even if we determine that one error by the district court does not require reversal of the conviction on its own, multiple errors taken cumulatively do require reversal and a new trial. A conviction may be reversed if a district court committed errors that, taken cumulatively, “deprived the appellant of his right to a fair

trial.” *State v. Keeton*, 589 N.W.2d 85, 91 (Minn. 1998). “Cumulative error” exists when the cumulative effect of errors, “none of which alone might have been enough to tip the scales, operate to the defendant’s prejudice by producing a biased jury.” *State v. Johnson*, 441 N.W.2d 460, 466 (Minn. 1989) (quotation omitted). Given the above analysis, the district court did not commit multiple errors that, taken cumulatively, deprived appellant of his right to a fair trial.

Affirmed.