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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2040**

State of Minnesota,
Respondent,

vs.

Joshua Alan Sather, a/k/a Joshua Allan Sather,
Appellant.

**Filed January 29, 2008
Affirmed
Dietzen, Judge**

Clay County District Court
File No. K4-06-243

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Considered and decided by Dietzen, Presiding Judge; Lansing, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

DIETZEN, Judge

Appellant challenges his convictions of first-degree and second-degree criminal sexual conduct, arguing that the district court erred in various evidentiary rulings that prejudiced his right to a fair trial. Because the district court properly applied the law and did not abuse its discretion, we affirm.

FACTS

G.T. was 9 years old at the time of trial and lived with his mother, father, and younger sister in an apartment and then a trailer home in Moorhead, Minnesota. G.T. has his own bedroom where he likes to play video games. Appellant Joshua Allen Sather is a cousin of G.T.'s father, and occasionally stayed with the family in the trailer.

In December 2005, Michelle Franek, the children's babysitter, came to their home one evening to pick up G.T. and his sister for an overnight stay. Appellant responded by saying to G.T., "don't go. Stay here. I'll play PlayStation with you." G.T. kept repeating, "No, no, I'm going with [Franek]." Franek took the children overnight and returned them the next day. Based on a conversation that G.T.'s mother had with Franek and the interaction between G.T. and appellant the previous Friday evening, she decided to speak with G.T. about it.

G.T. told his mother that appellant touched his penis once when he was going to the bathroom and appellant started playing with him, and again when G.T. and appellant were playing video games, and that appellant put his penis in G.T.'s butt and mouth.

Appellant told G.T. not to tell anyone and threatened to “drill a hole in [G.T.’s] head” with a screw gun if he said anything.

G.T.’s mother took G.T. to the police station where he was interviewed by Detective Stafford. During the interview, G.T. told the detective that appellant “touched [his penis]” in the bathroom and the bedroom and threatened to kill him. G.T. was also seen by Dr. Alonna Norberg, the medical director of Red River Children’s Advocacy Center, a few days later. Following the investigation, appellant was charged with first-degree criminal sexual conduct and second-degree criminal sexual conduct.

At trial, G.T. testified consistent with his statements to his mother and the detective. But G.T. denied several times that anal penetration had occurred. When G.T. admitted that he was “kind of” scared of testifying, the prosecutor requested a short recess. During the recess, victim-advocate had a conversation with G.T. After the recess, the state again asked G.T. if appellant anally penetrated him. Appellant objected on the ground that G.T. had already answered the question and that the testimony was “tainted” by the conversation with the victim-advocate. The district court allowed G.T. to testify, and he then stated that appellant anally penetrated him.

The district court allowed appellant’s attorney to cross-examine the victim-advocate regarding the conversation. The victim-advocate admitted that she told G.T. “I just want you to know that at the beginning of the case the attorneys talked about what’s going to be said and what’s been disclosed,” and that “[j]ust so that you know, the jury has already heard some of the things that have happened to you. And so they already know about some of these things. So it’s okay to tell what happened.” Also, the district

court allowed appellant's attorney to cross-examine G.T. regarding the conversation with the victim-advocate.

Both G.T.'s mother and Franek also testified. G.T.'s mother stated that in October 2005, G.T. repeatedly told her that his "butt hurt," that he hated himself, and that he should "just be dead." Franek testified that during the sleepover, G.T. asked her if "big boys were supposed to touch little boys." When it was time to go home, G.T. told Franek that, "I don't want to go home if [appellant] is there."

Dr. Norberg testified that she examined G.T., that G.T. told her appellant "put his [penis] up my butt," on more than one occasion." G.T. stated that "it hurt for a long time and it hurt when I went poopie." Appellant told him "not to talk about it." Based on G.T.'s history and physical examination, Dr. Norberg concluded that he had been sexually abused. She admitted that G.T. did not disclose anal penetration during the police interview, but stated children often disclose abuse in pieces and that limited disclosure of abuse is different than inconsistent disclosure. She observed that G.T. did not change his story from the core details.

Following the trial, appellant was convicted of both charges. This appeal follows.

DECISION

I.

Appellant argues that the district court abused its discretion in admitting G.T.'s testimony following the recess, which prejudiced his right to a fair trial. The district court has broad discretion in evidentiary matters and its rulings will not be disturbed absent a clear abuse of discretion. *State v. Shannon*, 583 N.W.2d 579, 583 (Minn. 1998).

A defendant claiming error in the district court's admission of evidence bears the burden of showing that the district court erred and that prejudice resulted. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998).

The Fourteenth Amendment to the United States Constitution, and Article I, § 7 of the Minnesota Constitution both guarantee a criminal defendant “due process,” which includes the right to a fair trial. *State v. Reardon*, 245 Minn. 509, 513-14, 73 N.W.2d 192, 195 (1955). The constitutional guarantee of a fair trial does not, however, require a trial which is perfect in every detail. *State v. Billington*, 241 Minn. 418, 427, 63 N.W.2d 387, 392-93 (1954). A conviction will not be reversed for mere technical errors where it appears that the accused has not been prejudiced through the impairment of substantial rights essential to a fair trial. *Id.*

The district court overruled appellant’s objection, concluding that appellant’s objection went to the issue of the credibility of G.T.’s testimony and not its admissibility. We agree. Initially, G.T. denied that appellant anally penetrated him. But he also stated that appellant threatened to kill him if he said anything and that he was afraid to testify. The district court allowed defense counsel to cross-examine G.T. and the victim-advocate about their conversation. Under the circumstances, we see no abuse of discretion in allowing the state to repeat the question and to allow G.T. to answer it. Ultimately, G.T.’s testimony was a question of credibility to be resolved by the jury. *State v. Clifton*, 701 N.W.2d 793, 797 (Minn. 2005). On this record, we see no abuse of discretion.

II.

Appellant argues that the district court erred in admitting Dr. Norberg's testimony that G.T.'s story was consistent with sexual abuse and imply that it was truthful. The decision to admit expert testimony is within the district court's discretion. *State v. Hall*, 406 N.W.2d 503, 505 (Minn. 1987). A ruling admitting expert testimony will not be reversed on appeal unless there has been an abuse of discretion. *State v. Sandberg*, 406 N.W.2d 506, 511 (Minn. 1987).

An expert witness may testify in the form of an opinion. Minn. R. Evid. 702. Opinion testimony is not objectionable merely because it embraces an ultimate issue to be decided by the jury. Minn. R. Evid. 704. To be admissible, expert opinion testimony must be helpful to the jury in reaching its decision. *State v. Saldana*, 324 N.W.2d 227, 229 (Minn. 1982). However, an expert witness may not give opinion testimony about the truthfulness of a complainant's allegations. *State v. Myers*, 359 N.W.2d 604, 611 (Minn. 1984).

Appellant did not object to Dr. Norberg's testimony at trial, and, therefore, we review for plain error. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Plain error requires that (1) there was error, (2) that was plain, and (3) that affected substantial rights. *Id.* An error affects substantial rights when it is reasonably likely that the error had a significant effect on the jury's verdict. *Id.* at 741. "If these three factors are met, we may correct the error only if the fairness, integrity, or public reputation of the judicial proceeding is seriously affected." *State v. Jones*, 678 N.W.2d 1, 18 (Minn. 2004).

Appellant argues that Dr. Norberg impermissibly testified that G.T. “repeated consistently” where the incidents occurred and that appellant threatened to kill him. But expert testimony that statements made by G.T. during clinical interviews were consistent is admissible. *State v. Myers*, 359 N.W.2d 604, 609-10 (Minn. 1984); *see State v. Campa*, 390 N.W.2d 333, 335 (Minn. App. 1986) (concluding that psychologist’s professional opinion on whether a victim had been sexually abused was admissible testimony), *review denied* (Minn. Aug. 27, 1986).

Appellant next argues that the district court erred in allowing Dr. Norberg to testify that an eight-year-old child, who has not been the victim of sexual abuse, would not have been able to give the descriptive details of abuse given by G.T. We disagree. Essentially, Dr. Norberg’s testimony was given to support her opinion that G.T. was sexually abused and, therefore, is admissible. *See Myers*, 359 N.W.2d at 609; *Campa*, 390 N.W.2d at 335.

Appellant also argues that it was error to allow Dr. Norberg to testify why G.T. may not have disclosed anal penetration to Detective Stafford. But we have previously held that testimony regarding the disclosure process of sexually abused children is not improper. *See In re Welfare of K.A.S.*, 585 N.W.2d 71, 76-77 (Minn. App. 1998) (holding that the district court did not abuse its discretion in admitting expert testimony on the disclosure process of sexually abused children).

Lastly, appellant argues that Dr. Norberg’s testimony improperly implied “that G.T.’s story was truthful.” But appellant concedes that the state never asked Dr. Norberg whether she believed G.T.’s story. Dr. Norberg’s testimony may have had the secondary

effect of bolstering G.T.'s credibility, but that does not render her testimony inadmissible. Dr. Norberg's testimony likely assisted the jury in understanding the evidence in this case and resolving the factual questions before it. *Myers*, 359 N.W.2d at 609-10.

We conclude that the district court did not plainly err in admitting Dr. Norberg's testimony.

Affirmed.