SUMMARY
March 24, 2022

2022COA34

No. 19CA0342, *People v. Gulyas* — Crimes — Sexual Assault on a Child — Victim's and Witness's Prior History; Juries — Challenges for Cause

In this appeal from defendant's conviction for sexual assault on a child, a division of the court of appeals concludes that the trial court abused its discretion by denying a challenge for cause to a juror who acknowledged a bias in favor of child witnesses and was not rehabilitated by the prosecution or the court. Consequently, the division reverses the judgment and remands for a new trial.

And, because the issue is likely to arise on remand, the division determines, as a matter of first impression, that the rape shield statute, section 18-3-407, C.R.S. 2021, does not apply to a defendant who seeks to admit evidence of his or her own prior

sexual history, including evidence that the defendant was previously sexually assaulted.

COLORADO COURT OF APPEALS **2022COA34**

Court of Appeals No. 19CA0342
Boulder County District Court No. 17CR578
Honorable Patrick Butler, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Natalie Nicole Gulyas,

Defendant-Appellant.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division VI
Opinion by JUDGE HARRIS
Navarro and Freyre, JJ., concur

Announced March 24, 2022

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¶ 1 After defendant, Natalie Nicole Gulyas, became involved in a sexual relationship with her teenage tutee, she was charged with sexual assault on a child by one in a position of trust, sexual exploitation of a child, and internet sexual exploitation of a child. A jury convicted her as charged, and the trial court sentenced her under the Colorado Sex Offender Lifetime Supervision Act (SOLSA) to an indeterminate term of ten years to life in prison and a consecutive term of probation.

¶ 2 On appeal, Gulyas contends that the trial court erred by denying a challenge for cause to a deliberating juror who had acknowledged a bias in favor of child witnesses and by excluding, under the rape shield statute, evidence that Gulyas was previously sexually assaulted.[1]

¶ 3 We agree that the trial court erred by denying the challenge for cause, so we reverse the judgment and remand for a new trial. And because the applicability of the rape shield statute is likely to arise on remand, we consider that issue and conclude that the statute

[1] Gulyas also argues that the prosecutor committed misconduct during cross-examination and closing argument and that the SOLSA is unconstitutional. In light of our disposition, we decline to address those arguments.

does not apply when the defendant seeks to introduce evidence of her own prior sexual history. Under those circumstances, the evidence is admissible in accordance with ordinary principles of relevancy and prejudice.

I. Background

¶ 4 Gulyas met T.B. and his family at church when T.B. was nine or ten years old. A couple of years later, she began tutoring him in math and violin. In January 2017, when T.B. was fourteen years old and Gulyas was thirty-five, Gulyas moved in with T.B.'s family to tutor him full-time.

¶ 5 By February, T.B.'s parents had become suspicious of Gulyas's relationship with T.B., and they installed an application on T.B.'s phone to monitor his text messages. They discovered sexually explicit messages between Gulyas and T.B. and, at around the same time, T.B.'s mother saw Gulyas and T.B. kissing in the kitchen.

¶ 6 The parents reported Gulyas's conduct to the police. In a subsequent interview with a detective, Gulyas admitted that she had engaged in intimate touching with T.B. and that she knew the relationship was "inappropriate."

¶ 7 The People charged Gulyas with sexual assault on a child by one in a position of trust as part of a pattern of abuse, sexual exploitation of a child, and internet sexual exploitation of a child.

¶ 8 At trial, it was uncontested that Gulyas and T.B. had engaged in some intimate contact. But from there, the prosecution and Gulyas presented sharply conflicting versions of events.

¶ 9 According to the prosecution's evidence, Gulyas initiated the sexual relationship in early February by writing a letter to T.B. in which she expressed romantic feelings for him. Over the next few weeks, T.B. and Gulyas exchanged sexual and romantic text messages and explicit photographs of themselves and engaged in intimate contact at T.B.'s home and in the family's van. On Valentine's Day, T.B. proposed marriage and, after that, the two referred to one another as "fiancé." T.B. testified that their relationship was mutual. At times he initiated intimate contact with Gulyas, while at other times she was the initiator.

¶ 10 Gulyas, on the other hand, testified that T.B. was the instigator and had pressured her into a sexual relationship. According to Gulyas, T.B. made unwanted sexual advances and, in response, she froze and submitted to the contact. Then, he

threatened to tell his parents about their sexual encounters, so she continued to acquiesce to his advances. She admitted at trial that she sent T.B. romantic text messages and sexually explicit photographs, told him she loved him, and accepted his marriage proposal. But she explained that she did so in part because of T.B.'s threats and her own vulnerable position in the family's home and in part because she liked the "non-abusive" aspects of her relationship with T.B. and the attention she received from him.

¶ 11 To support her version of events and, more specifically, to explain why she froze in response to T.B.'s sexual advances, Gulyas sought to introduce evidence that, as a teenager, she had been the victim of a sexual assault. The trial court ruled that the rape shield statute, which generally prohibits the admission of evidence concerning a "victim's or a witness's" prior sexual conduct, barred that evidence. § 18-3-407(1), C.R.S. 2021. The court reasoned that Gulyas was a "witness" for purposes of the statute, she had failed to comply with the statute's notice requirement, and the evidence was irrelevant and unfairly prejudicial.

¶ 12 The jury returned guilty verdicts on all counts.

II. For-Cause Challenge to Juror R

¶ 13 Gulyas contends that the trial court should have excused Juror R because he acknowledged that he was more likely to believe a child witness than an adult witness. We agree.

A. Additional Background

¶ 14 During voir dire, defense counsel questioned some prospective jurors about their own experiences with sexual assault. One juror conceded that, as a child victim of sexual assault, she might not be "completely impartial" and "might give [a] child [victim] more credibility." Following that exchange, Juror R offered his own views on the subject:

> [JUROR R]: Well, I don't [have] personal experience, but I have two daughters, and so -- young daughters. So emotionally I know I'm close to them and probably side with them, or the kid or the child more than their adult or supervisor.
>
> [DEFENSE COUNSEL]: Okay. And certainly I think that would make sense for parents, that they would feel very protective over their children and want to side with their children. And I believe it was [Juror H] had talked about children being different than other types of witnesses because they're more trusting, they're more innocent. Is that something that resonated with you as well?
>
> [JUROR R]: Yes.

[DEFENSE COUNSEL]: Can you talk more about that?

[JUROR R]: I'm just -- my, you know, daughters, you know, they look up to adults all the time because that's their point of reference. So they're trusting.

And like you said, stranger danger, I tried to instill that with our daughters. And so because they're easily -- they easily trust people I guess in power, and so --

[DEFENSE COUNSEL]: And so knowing that the alleged victim is a child and is going to be in here testifying about the alleged sexual assault, would you -- if you were picked to serve on the jury would you be thinking about your own children and how you would --

[JUROR R]: Yes.

[DEFENSE COUNSEL]: Okay. Tell me more about that.

[JUROR R]: I'm just -- because, you know, I don't know, it's my kids, you know. So it's hard to not think of if they're in that situation what I would do or -- you know.

[DEFENSE COUNSEL]: Okay.

[JUROR R]: Like I said with the kids.

[DEFENSE COUNSEL]: Siding with the kids?

[JUROR R]: Yeah.

[DEFENSE COUNSEL]: And you feel like would that also be the case if you were serving on a jury and it wasn't your own kids?

> [JUROR R]: Probably 90 percent of the time, yeah.
>
> [DEFENSE COUNSEL]: Okay. And so would you say that a child witness who is testifying would have an advantage in sort of the credibility --
>
> [JUROR R]: Well, yeah. I would take the child's word, the credibility more probably than the adult.
>
> [DEFENSE COUNSEL]: Okay. Thank you for sharing that with me. I appreciate you.

¶ 15 At the conclusion of voir dire, defense counsel challenged Juror R for cause based on a bias in favor of child witnesses. The prosecutor objected, arguing that Juror R had not specifically said he could not be impartial and had merely "mentioned having children and thinking of them." Still, the prosecutor suggested that the court "do some follow-up questioning with [Juror R] and explain that there's a credibility instruction and ask whether he's agreeing to follow that instruction."

¶ 16 The court denied the for-cause challenge without questioning Juror R.

> The challenge for cause as to [Juror R] is denied.
>
> Although [defense counsel] certainly indicated that he talked about his own children and

> certainly wanting to believe them, he wasn't specific about this case.
>
> And certainly the jury will have to determine what credibility to give to every witness. They will be properly instructed about that, and ultimately decide whether the People have proven the case or not.

¶ 17 Juror R ultimately served on the jury.

B. Legal Principles and Standard of Review

¶ 18 Every criminal defendant has a constitutional right to a fair trial by an impartial jury. *See* U.S. Const. amends. VI, XIV; Colo. Const. art. II, § 16; *see also People v. Clemens*, 2017 CO 89, ¶ 15. To protect this right, section 16-10-103(1)(j), C.R.S. 2021, and Crim. P. 24(b)(1)(X) require disqualification of a juror who indicates a bias in favor of or against either side, unless the court is satisfied that the juror will render an impartial verdict that is based solely upon the evidence and instructions of the court. *See People v. Wilson*, 2014 COA 114, ¶ 8.

¶ 19 A prospective juror's indication that he or she has a preconceived belief as to some aspect of the case does not, however, mandate exclusion of that juror for cause. *Marko v. People*, 2018 CO 97, ¶ 21. If, after further examination, the court is convinced

that the juror will follow the law and be impartial — in other words, if "rehabilitative efforts" prove successful — the juror should not be removed. *Clemens*, ¶ 16. But when a prospective juror's statements compel the inference that he or she cannot decide the issues fairly, and no rehabilitation occurs, the challenge for cause must be granted. *People v. Merrow*, 181 P.3d 319, 321 (Colo. App. 2007).

¶ 20 We review the trial court's denial of a challenge for cause for an abuse of discretion. *People v. Oliver*, 2020 COA 97, ¶ 7. A court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair, or when it misconstrues or misapplies the law. *Id.* If the trial court fails to excuse a biased juror who then serves on the jury, the error is structural and requires reversal. *People v. Marciano*, 2014 COA 92M-2, ¶ 10; *see also People v. Abu-Nantambu-El*, 2019 CO 106, ¶ 29.

C. Discussion

¶ 21 No one disputes that the court must excuse a prospective juror who favors one side over the other or who cannot impartially evaluate the credibility of the witnesses. *See People v. Blassingame*, 2021 COA 11, ¶¶ 21, 27 (trial court erred by failing to dismiss

prospective juror whose comments suggested that she would "struggle" to "evaluate the competing stories without relying on her preconceived notions about the credibility of sexual assault victims"); *People v. Luman*, 994 P.2d 432, 435-36 (Colo. App. 2004) (court abused its discretion by denying a challenge for cause where the juror said that her own experience as a victim of sexual assault would make it difficult for her to set aside her empathy for the victim in a sexual assault on a child case).

¶ 22 In *Blassingame*, ¶ 7, for example, the defendant was charged with sexual assault. A prospective juror revealed during voir dire that she had been molested by a family member as a child. She told the lawyers and the court that she would "try" to follow the court's instructions, *id.* at ¶ 13, but she also acknowledged that, "everything else being equal," she "might be more apt to believe" the victim, *id.* at ¶ 16. The trial court denied defense counsel's for-cause challenge, ruling that the juror's bias in favor of the victim had to be "definite," such that she would believe the victim "no matter what the rest of the evidence is," and the juror's expression of bias did not "rise[] to that level." *Id.* at ¶ 18.

¶ 23 The division concluded that the court had erred by failing to dismiss the juror. To be disqualified, the division explained, the prospective juror did not need to "unequivocally state her partiality for one side." *Id.* at ¶ 26. It was enough that the juror gave "uncertain answers" and was never sufficiently rehabilitated. *Id.* at ¶ 27.

¶ 24 We conclude that the trial court should have dismissed Juror R. The juror specifically said that he would believe a child witness "[p]robably 90 percent of the time" and agreed with defense counsel that a child witness would have "an advantage" in terms of credibility. And because here the prosecutor did not ask any questions of Juror R on this issue, Juror R did not provide any additional answers to "counterbalance" his unambiguous statements. *Id.* at ¶ 22. If the *Blassingame* juror's equivocal responses demonstrated that "some rehabilitation was needed before she could be deemed fit to serve on the jury," *id.* at ¶ 21, the same must be true here, where Juror R's answers were unequivocal. But despite the prosecutor's suggestion, the trial court did not make any rehabilitative efforts. Thus, Juror R never

gave any assurances that he could set aside his clearly expressed bias in favor of child witnesses and follow the court's instructions.

¶ 25 The People emphasize that deference is generally owed to the trial court's decisions regarding for-cause challenges because the trial court is "in the best position to observe the potential juror's demeanor and credibility when assessing whether the juror can follow the court's instructions." That proposition is certainly true as far as it goes. *See, e.g.*, *Carrillo v. People*, 974 P.2d 478, 486 (Colo. 1999). But here, the trial court did not base its decision to deny the for-cause challenge on an assessment of Juror R's credibility or demeanor. It based its decision on a misrecollection of Juror R's comments. The court recalled that Juror R had "talked about his own children and certainly wanting to believe them," but that Juror R "wasn't specific about this case." In fact, though, defense counsel specifically asked Juror R if his predisposition to "[s]id[e] with the kids" would carry over to a case where he was "serving on a jury and it wasn't [his] own kids." Juror R said it would — "90 percent of the time." *See People v. Gurule*, 628 P.2d 99, 103 (Colo. 1981) (explaining that reviewing court will not defer to trial court's "determination of the juror's state of mind" where the

juror's responses do not require the court to assess his or her credibility or demeanor).

¶ 26 We also reject the People's argument that excusal was not warranted because although Juror R said he would "more probably" take a child's word over an adult's, "he gave no indication that he would believe them to such a degree that he would disregard the court's instructions." For one thing, a declaration by the juror that he will not follow the court's instructions is not a prerequisite for disqualification. *See Merrow*, 181 P.3d at 321 (holding that the trial court's basis for denying the for-cause challenge — that the juror "never stated that she would be unable to follow the court's instructions" — was error); *see also Blassingame*, ¶ 26 (dismissal may be necessary even where a juror does not "unequivocally state her partiality for one side"). But more to the point, Juror R's statements *did* indicate that, absent some intervention by the court, he was unlikely to impartially evaluate the witnesses' testimony. Thus, he either had to be rehabilitated or excused. *See, e.g.*, *People v. Prator*, 833 P.2d 819, 820-21 (Colo. App. 1992) (trial court erred by failing to dismiss prospective juror who admitted that she was

likely to believe a police officer over other witnesses, and there was no rehabilitation), *aff'd*, 856 P.2d 837 (Colo. 1993).

¶ 27 Because Juror R expressed a bias in favor of the child victim, and he was not rehabilitated, the trial court abused its discretion in denying the challenge for cause. And because Juror R served on the jury, reversal is required. *Marciano*, ¶ 10.

III. Admission of Evidence Under the Rape Shield Statute

¶ 28 Gulyas also contends that the trial court abused its discretion by applying the rape shield statute, section 18-3-407, to bar admission of evidence that she had previously been sexually assaulted. She argues that the statute prohibits evidence related to "the victim's" or "a witness's" prior sexual conduct and she is neither — she is a defendant.

¶ 29 Because the issue is likely to arise on remand, we address whether the rape shield statute applies when a defendant seeks to admit evidence of her own prior sexual history. Based on the language and purpose of the statute, we conclude that it does not. But because the issue is unlikely to arise in precisely the same

posture on remand, we do not determine whether any particular evidence concerning Gulyas's prior sexual history is admissible.[2]

A. Principles of Statutory Construction

¶ 30 The primary purpose in interpreting statutes is to give effect to the General Assembly's intent. *People v. Gallegos*, 2013 CO 45, ¶ 7. To do so, we look first to the statute's plain language, construing it to give "consistent, harmonious, and sensible effect" to each statutory provision. *People v. Banks*, 9 P.3d 1125, 1127 (Colo.

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[2] The issue arose on the third day of trial, after defense counsel cross-examined a prosecution expert and elicited testimony that "in response to a sexual assault, a victim might freeze and just submit to the sexual assault," might "not physically resist the perpetrator," and might not "outwardly express their lack of consent." The expert agreed that "being a victim of a sexual assault is a traumatic experience" and that "trauma can impact how a person acts." And the expert acknowledged that a victim "may want to continue a relationship with their abuser" because the victim "actually enjoy[s]" parts of the abusive relationship, "like the affection or the attention." Following this testimony, defense counsel sought to introduce evidence that Gulyas had been sexually assaulted at age eighteen.

It is not clear whether, at a retrial, an expert would testify the same way or even whether Gulyas might seek to introduce other or additional evidence of her prior sexual history. At sentencing, defense counsel discussed information in the presentence investigation report indicating that Gulyas had also been molested as a young child and had been in an abusive relationship in her early twenties. And in her opening brief, Gulyas contends that the jury should have learned that she "had endured a lifetime of sexual abuse."

2000) (quoting *Cooper v. People*, 973 P.2d 1234, 1239 (Colo. 1999)). We must avoid constructions that would render any words or phrases superfluous or lead to illogical or absurd results. *McCoy v. People*, 2019 CO 44, ¶ 38.

¶ 31 If the statutory language is unambiguous, we look no further and apply the words as written. *People v. Hicks*, 262 P.3d 916, 918 (Colo. App. 2011). If, however, the language is ambiguous, we consider other aids to statutory construction, including the "end to be achieved by the statute" and the consequences of a given construction. *McCoy*, ¶ 38.

¶ 32 We review de novo the trial court's interpretation of a statute governing the admissibility of evidence. *People v. Marx*, 2019 COA 138, ¶ 30.

B. Discussion

¶ 33 Under the rape shield statute, "[e]vidence of specific instances of the victim's or a witness's prior or subsequent sexual conduct" is presumptively irrelevant and therefore inadmissible. *See* § 18-3-407(1); *People v. Salazar*, 2012 CO 20, ¶ 19. However, pursuant to three statutory exceptions, the evidence is admissible if

- it is evidence of the victim's or witness's prior or subsequent sexual conduct with the actor, *see* §§ 18-3-401(1), 18-3-407(1)(a), C.R.S. 2021;
- it is evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease, or any similar evidence of sexual intercourse offered to show that the charged act was not committed by the defendant, *see* § 18-3-407(1)(b); or
- the proponent of the evidence provides notice and makes an offer of proof showing that the evidence is relevant to a material issue in the case, *see* § 18-3-407(2); *see also People v. Melillo*, 25 P.3d 769, 774 (Colo. 2001).

¶ 34 Because the statute generally prohibits the admission of evidence of a "witness's" prior sexual conduct, and "sexual conduct" includes a prior sexual assault as a type of "involuntary" sexual conduct, *see People v. Aldrich*, 849 P.2d 821, 824 (Colo. App. 1992), the question is whether a defendant is a "witness" for purposes of the statute.

¶ 35 Relying on the dictionary definition of the term, the People say a testifying defendant like Gulyas is a witness because a witness is

"one who testifies in a cause or before a judicial tribunal." *See* Merriam-Webster Dictionary, https://perma.cc/DB7Z-C698. Though dictionary definitions may be useful in construing undefined statutory terms, here we need not resort to the dictionary, as the meaning of the term is clear from the statute's context. *Compare, e.g.*, *People v. Pratarelli*, 2020 COA 33, ¶ 17 (using Black's Law Dictionary to discern meaning of the term "force"), *with People v. Hodge*, 2018 COA 155, ¶¶ 15-16 (declining to use Black's Law Dictionary to discern the meaning of the term "force" and relying instead on principles of statutory construction and case law).

¶ 36 The rape shield statute refers to three separate categories of people: victims, witnesses, and defendants. The legislature's use of different terms signals its intent to give each term a different meaning. *Carlson v. Ferris*, 85 P.3d 504, 509 (Colo. 2003).

¶ 37 And indeed, that intent is confirmed by an examination of the statute as a whole. *See M.T. v. People*, 2012 CO 11, ¶ 8 ("The language at issue must be read in the context of the statute as a whole and the context of the entire statutory scheme." (quoting

Jefferson Cnty. Bd. of Equalization v. Gerganoff, 241 P.3d 932, 935 (Colo. 2010))).

¶ 38 Section 18-3-407(1)(a), for example, permits the admission of evidence of a "witness'[s]" prior sexual conduct "*with the actor*." (Emphasis added.) "Actor" in this statute means "the person accused of a sexual offense." § 18-3-401(1). So, under the People's interpretation, the legislature intended to create a statutory exception to permit the defendant to testify about her prior sexual conduct with herself. We reject that reading as illogical and absurd. Instead, we conclude that the legislature's use of the separate terms "witness" and "actor" in subsection 407(1)(a) demonstrates that a "witness" and the "actor" (i.e., the defendant) are different people under the rape shield statute.

¶ 39 The exception in section 18-3-407(2) permits the admission of evidence to show that "a witness" has a history of falsely reporting sexual assaults. Construing "a witness" to include the defendant would mean the exception is intended to allow a defendant to introduce evidence of her own history of false reporting. We find this reading implausible and illogical as well.

¶ 40 And under the People's construction, the rape shield statute would bar evidence that a *testifying* defendant had been the victim of a sexual assault but would not bar that evidence (though other rules of evidence might) concerning a *non-testifying* defendant. In this way, the statute would give a non-testifying defendant broader rights to present a defense than a testifying defendant, a result we do not think the legislature intended.

¶ 41 Even assuming the dictionary definition of "witness" creates some ambiguity, we would then look to the purpose of the statute. Case law from the supreme court makes clear that the essential purpose of the rape shield statute is to protect victims and witnesses from humiliating "public 'fishing expeditions' into their past sexual conduct." *People v. MacLeod*, 176 P.3d 75, 79 (Colo. 2008) (quoting *People v. McKenna*, 196 Colo. 367, 371, 585 P.2d 275, 278 (1978)).

¶ 42 Before the enactment of the rape shield statute, "a sexual assault witness's sexual history was admissible to undermine the witness's credibility." *Id.* Cross-examination became a "probing examination" of the witness's sexual history and, as a result, "the witness, instead of the defendant, was effectively — and needlessly

— put on trial." *Id.* The rape shield statute reflects a "pronounced policy shift away from permitting inquisitions of witnesses in sexual assault cases, and toward greater procedural protections for those witnesses, to encourage them to come forward and confront defendants in sexual assault cases." *Pierson v. People*, 2012 CO 47, ¶ 11.

¶ 43 The clear statutory purpose supports our conclusion that the defendant is not a "witness" under section 18-3-407. No statutory purpose is served by precluding a defendant from introducing evidence of her prior sexual history. Gulyas's proffered evidence did not embarrass or humiliate T.B., or any other trial witness, because the evidence pertained to her own conduct. Indeed, neither party has cited, nor have we uncovered, any state or federal case construing a rape shield statute to preclude a defendant from introducing evidence of her own prior sexual conduct.

¶ 44 As the Supreme Court has cautioned, "restrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve." *Rock v. Arkansas*, 483 U.S. 44, 55-56 (1987). Thus, "[i]n applying its evidentiary rules a State must evaluate whether the interests served by a rule justify

the limitation imposed on the defendant's constitutional right to testify." *Id.* at 56. Here, because no legislative goal is advanced by limiting Gulyas's right to testify about her own sexual conduct, particularly her own experience of being sexually assaulted, we will not assume the legislature intended to infringe on this important right.

¶ 45 Accordingly, we conclude that the trial court erred by applying the rape shield statute to bar evidence that Gulyas was previously sexually assaulted. The evidence should have been evaluated under ordinary principles of relevancy and prejudice. *See* CRE 401, 403.

IV. Conclusion

¶ 46 The judgment of conviction is reversed, and the case is remanded for a new trial.

JUDGE NAVARRO and JUDGE FREYRE concur.