STATE OF MINNESOTA
IN COURT OF APPEALS
A11-315

State of Minnesota,
Respondent,

vs.

Kirk Robert Williams,
Appellant.

Filed February 21, 2012
Affirmed in part, reversed in part, and remanded
Ross, Judge
Concurring in part, dissenting in part, Kalitowski, Judge
Concurring in part, dissenting in part, Minge, Judge

Martin County District Court
File No. 46-CR-09-168

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Terry Viesselman, Martin County Attorney, Fairmont, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, G. Tony Atwal, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Kalitowski, Judge; and Minge, Judge.

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

ROSS, Judge

This appeal concerns the criminal-sexual-conduct conviction of a man who confessed to the crime during a period in which he was experiencing symptoms of his mental illness. On appeal from his conviction of second-degree criminal sexual conduct for molesting his son, Kirk Williams argues that his conviction must be reversed on three grounds: (1) his uncorroborated and possibly delusional confession alone is insufficient to prove that he committed the crime; (2) the district court erred by failing to suppress his confession that he gave while exhibiting a psychotic and delusional mental condition such that he could not and did not validly waive his *Miranda* rights; and (3) the court violated his Sixth Amendment rights by excluding material testimony that supported his defense. We are a divided court in resolving the close and difficult issues of this appeal, holding ultimately that although the evidence is sufficient to support the conviction and Williams validly waived his *Miranda* rights, the district court should have allowed Williams to introduce the excluded testimonial evidence. We therefore affirm in part and reverse in part, and remand for a new trial.

FACTS

On July 21, 2008, Kirk Williams's parents brought him to the Marshalltown Medical and Surgical Center in Iowa because he was suicidal, made sexual comments about family members, and had not eaten or bathed in days. Williams was transferred to the Ellsworth Municipal Hospital in Iowa Falls and placed on a mental-health hold. Hospital staff members noted that he appeared depressed, needed assistance changing his

clothes, stared blankly, and was catatonic, delusional, and paranoid. Williams reported that he heard voices speaking to him from the television and radio, which, presumably, either were not on at the time or delivered messages that Williams wrongly interpreted as directed personally to him.

The next day, Dr. Robert Stern evaluated Williams. Dr. Stern observed that Williams was not oriented to place or time and that he reported that he had been hearing the voices for about a year. Williams remained catatonic, nearly mute, anxious, isolated, guarded, and had delusions of persecution. Most significant to this appeal, Williams also reported to a hospital staff member that he had molested his son, W.W., around Father's Day of that year and his sister, M.P., at a younger age.

Williams's statement about W.W. led hospital staff to report the sex abuse to the local social services agency, which in turn reported it to police. Iowa Falls police investigator Sergeant Michael Liittschwager interviewed Williams on behalf of the Martin County Sheriff's Office. Sergeant Liittschwager called the hospital inquiring whether Williams was well enough to be interviewed and was told to call back in a few days. That same day Williams started taking antipsychotic and antidepressant medication.

Dr. Stern evaluated Williams again two days later. According to Dr. Stern, Williams demonstrated psychomotor retardation and disorientation to time and situation, and he reported that he was still hearing voices from the television and radio. But Dr. Stern observed that Williams was "beginning to get a little bit better" because he was "open[ing] up a little" and "was beginning to talk about some of the things going on in

his mind." Williams stated to hospital staff that he couldn't live with the guilt and wanted to kill himself.

That day, Sergeant Liittschwager called the hospital again and was told that Williams was well enough to be interviewed. So he went to the hospital and met with Williams. He saw nothing to arouse any concerns about Williams's mental state. He testified that Williams "appeared normal . . . he was fine" and that he was not "talking nonsense." Sergeant Liittschwager recorded and transcribed the interview, which commenced with the sergeant reading Williams his *Miranda* rights. Williams responded that he understood his rights and signed a form stating so.

During the interview, Williams admitted to molesting W.W. while he was living in Grenada, Minnesota, with his girlfriend, L.F., who was W.W.'s mother. He said that L.F. was at work at Hy-Vee when it happened. He also said that he worked at Fairmont Foods at the time. They worked different shifts and he watched W.W. while L.F. was at work. Williams and L.F. had been fighting because L.F. did not wish him a happy Father's Day and the couple had not been sexually active for some time. Williams confessed that because he was angry at L.F., he touched his son's buttocks with his penis. He stated that he placed his penis "[a]gainst his cheeks" "in a sick way," and that doing so was "kinda" arousing sexually. Sergeant Liittschwager observed that at one point Williams became "upset" as he discussed what he had done. According to Williams, the touching lasted about two minutes. Williams denied having any other sexual experiences with minors since he became an adult.

Three days after the interview, Dr. Stern noted that Williams's recovery was progressing. Williams was more cooperative and oriented, appeared "somewhat brighter" in expression, and had improved concentration. Still, Dr. Stern did not believe he had improved to the point where he could live independently; he continued to have a flat expression, was very depressed, and appeared to be suffering from schizophrenia. Dr. Stern increased his dosage of antipsychotic medication, and, later that same day, an Iowa district court ordered Williams civilly committed based on Dr. Stern's petition. Within one day, Williams's paranoid delusions were much less frequent, and he was no longer hearing voices from the television or radio, although he recalled hearing them in the previous days. Five days after the interview, Williams denied molesting his son or others. On the following day, he was released from the hospital.

The state charged Williams with second-degree criminal sexual conduct based on his confession about W.W. Before trial, Williams moved to suppress his confession, arguing that his mental state precluded him from making a voluntary, knowing, and intelligent waiver of his *Miranda* rights. He also moved to dismiss the complaint, arguing that his confession was not corroborated by other evidence and therefore could not lead to his conviction, based on Minnesota Statutes section 634.03 (2008). The district court denied Williams's motions. He also proffered the testimony of his sister, M.P., who would testify that, inconsistent with his statement in the hospital, Williams had never molested her. The district court granted the state's motion in limine to preclude M.P. from testifying about any alleged sexual contact between Williams and her.

At trial, the state's evidence consisted largely of Sergeant Liittschwager's description of Williams's confession. L.F. also testified. She stated that she had not noticed any bruises or marks on W.W.'s body around the time of the alleged incident, but she had noticed that at about the time of the alleged incident, W.W. had become clingy to her and fearful when Williams was around. She also corroborated several of the circumstantial details in Williams's confession.

The jury found Williams guilty of second-degree criminal sexual conduct. He appeals.

D E C I S I O N

I

Williams first argues that the evidence was insufficient to support the jury's guilty verdict. We analyze insufficient-evidence claims by determining whether the evidence, when considered in the light most favorable to the conviction, could reasonably support the verdict with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004). In doing so, we assume that the jury believed the state's witnesses and evidence and disbelieved conflicting testimony. *State v. Robinson*, 539 N.W.2d 231, 238 (Minn. 1995). We must therefore consider whether a reasonable jury could convict Williams of criminal sexual conduct against his son largely relying on Williams's own confession to Sergeant Liittschwager.

Despite our deference to the jury on matters of credibility, the tension in this case arises from the statutory restatement that, as a matter of law, "[a] confession of the

defendant shall not be sufficient to warrant conviction without evidence that the offense charged has been committed." Minn. Stat. § 634.03 (2008). This requirement is a codification of the common-law precept that the state must prove the *corpus delicti*, the "body of the crime," by evidence independent of the confession. *State v. Lalli*, 338 N.W.2d 419, 420 (Minn. 1983). The dual purposes of this statute are to dissuade coercive confessions and ensure confession reliability. *Matter of Welfare of M.D.S.*, 345 N.W.2d 723, 735 (Minn. 1984). But each element of the offense need not be independently corroborated to satisfy the statute. *State v. Heiges*, 806 N.W.2d 1, 13 (Minn. 2011). "Instead, [section] 634.03 only requires 'independent evidence of attending facts or circumstances from which the jury may infer the trustworthiness of the confession.'" *Id.* (quoting *M.D.S.*, 345 N.W.2d at 735). The United States Supreme Court has summarized the same concept: "It is the practical relation of the statement to the Government's case which is crucial, not its theoretical relation to the definition of the offense." *Smith v. United States*, 348 U.S. 147, 155, 75 S. Ct. 194, 199 (1954).

Williams argues that the evidence independent of his statement did not sufficiently corroborate his confession because it did not establish the *corpus delicti*—that W.W. was sexually abused—only that Williams had motive and opportunity to commit the crime. He appears to argue for a rule that the state must introduce evidence that independently corroborates the elements of the charged offense. But the supreme court rejected such a rule in *M.D.S.* 345 N.W.2d at 735 ("Nonetheless, not all *or any* of the elements ha[ve] to be individually corroborated." (emphasis added)). The *M.D.S.* court instead held that an inculpatory statement alone may establish the elements of the offense if it is "'sufficiently

substantiated by independent evidence of attending facts or circumstances from which the jury may infer the trustworthiness of the confession.'" *Id.* (quoting *Smoot v. United States*, 312 F.2d 881, 885 (D.C. Cir. 1962)); *cf. Smith*, 348 U.S. at 156, 75 S. Ct. at 199 ("All elements of the offense must be established by independent evidence or corroborated admissions, but one available mode of corroboration is for the independent evidence to bolster the confession itself and thereby prove the offense 'through' the statements of the accused.").

In articulating this rule, the supreme court recognized that for some crimes, there will be no independent evidence that a crime has been committed. *Id.* (citing *Smoot*, 312 F.2d at 885, where the crime of aiding and abetting left "no tangible injury which [could] be isolated as the *corpus delicti* [of] the crime" and therefore the accused had to be identified "in order to show a crime ha[d] been committed"). This is such a crime. Williams and W.W. were alone at the time of the incident with no eyewitnesses. W.W. could not be interviewed about the incident because he was only one year old when it occurred. And no physical evidence existed because of the nature of the sexual contact with W.W. and the long period before police became aware of it. So we look to whether the attendant facts and circumstances that Williams described in his statement to Sergeant Liittschwager are corroborated by sufficient independent evidence such that the confession as a whole may be deemed reliable.

L.F.'s testimony substantially corroborated circumstantial but significant components of Williams's confession. Specifically, her testimony substantiated Williams's statements that (1) he and L.F. were living together in rural Grenada at the

time of the alleged incident; (2) he worked at Fairmont Foods at the time; (3) L.F. worked at Hy-Vee; (4) the two worked opposite schedules and alternated watching W.W. and working; (5) L.F. often left W.W. and Williams home alone; (6) she and Williams were not sexually active around the time of the incident; (7) Williams became angry with L.F. because she did not wish him a happy Father's Day; (8) the couple broke up shortly after Father's Day; and (9) Williams moved out soon after. Although these corroborating facts do not directly establish Williams's guilt for molesting W.W., they do establish his motive and opportunity, and they lend credence to the remainder of his confession. Our holding is particularly influenced by L.F.'s testimony more directly related to Williams's confession, which was that W.W. became so fearful of Williams around the time of the incident that he began to cling to L.F. when Williams was present. We conclude that all of this supporting evidence rendered Williams's testimony sufficiently reliable.

We are not moved from our decision by William's citation to *State v. Sellers*, a case in which the supreme court reversed the defendant's conviction for keeping ferrets unlawfully because his confession was not sufficiently corroborated by independent evidence. 507 N.W.2d 235, 235–36 (Minn. 1993). In *Sellers*, the only independent evidence the state offered to corroborate the defendant's admission to keeping ferrets—the defendant's refusal to allow officers to enter his home—was ambiguous. *Id.* at 236 (stating that the defendant's refusal "may be indicative of his guilt or it may be that he was simply standing on his rights, as he was free to do"). In contrast, L.F.'s corroborating testimony did not bear on any exercise of constitutional rights and it included multiple details of corroborating circumstances.

The prosecutor's case was not overwhelming, and our decision is an exceptionally close one; but viewing the evidence in the light most favorable to the verdict, after some struggle we conclude that the consistencies between L.F.'s testimony and Williams's confession are enough to establish the reliability of the confession; and because Williams confessed to conduct that met the elements of second-degree criminal sexual conduct, his confession is sufficient to support the conviction. The forceful dissenting opinion on this issue convinces us that, because of Williams's mental impairment, the jury might have logically rejected the state's case altogether. But it does not convince us that we can or should supplant the jury's credibility determination with our own. The jury was free to decide—as Williams argued throughout the trial and especially in his closing argument—that Williams's confession simply should not be trusted. The jury was convinced of Williams's guilt because it believed his confession rather than his denials, and the demonstrated extent of his mental impairment was not so compelling as to subject that credibility determination to our reversal.

II

Williams argues also that the district court was bound to suppress his confession because his mental state at the time he gave his statement to Sergeant Liittschwager precluded him from knowingly, intelligently, and voluntarily waiving his *Miranda* rights. The state counters with a threshold argument that the sergeant's interview in the hospital was noncustodial and therefore not subject to a *Miranda* warning. Because the state raises this argument for the first time on appeal, we will not consider it. *See Roby v.*

State, 547 N.W.2d 354, 357 (Minn. 1996). We therefore determine whether Williams made a knowing, intelligent, and voluntary waiver of his *Miranda* rights.

Whether a *Miranda* waiver is knowing, intelligent, and voluntary has two elements. *Colorado v. Spring*, 479 U.S. 564, 573, 107 S. Ct. 851, 857 (1987). A waiver is knowing and intelligent if it was the product of a "free and deliberate choice" and was "made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it." *Id.* (quotation omitted). With regard to voluntariness, "the question for the court is whether, considering the totality of the circumstances, the police actions were 'so coercive, so manipulative, [or] so overpowering' that defendant's will was overborne." *State v. Mills*, 562 N.W.2d 276, 283 (Minn. 1997).

We review fact findings concerning a challenged *Miranda* waiver for clear error, and we review legal conclusions arising from those facts de novo to determine whether the state has shown that the appellant's waiver was knowing, intelligent, and voluntary. *State v. Burrell*, 697 N.W.2d 579, 591 (Minn. 2005). But when an appellant contends that credible evidence supports a finding that a *Miranda* waiver is invalid, we will consider the facts to determine whether, under the totality of the circumstances, the waiver was valid. *State v. Camacho*, 561 N.W.2d 160, 168 (Minn. 1997). Several factors frame our inquiry:

> [the appellant's] age, maturity, intelligence, education, experience, and ability to comprehend; the lack or adequacy of warnings; the length and legality of the detention; the nature of the interrogation; physical deprivations; and limits on the individual's access to counsel, friends, and others.

> Courts may also consider other factors such as familiarity with criminal justice system, physical and mental condition, and language barriers.

Id. (citation omitted).

Williams contends specifically that his waiver was not knowing and intelligent because his "undisputed psychotic and delusional condition made him unable to understand and validly waive his *Miranda* rights." We are not persuaded by the argument.

The district court made extensive factual findings and concluded that his mental illness did not impair his ability to understand the nature of his rights and the consequences of waiving them. The court found specifically that Williams's condition had improved by the time he was interviewed, he conversed normally during the interview, he was able to accurately recite details of his life and the alleged criminal conduct, and there was no evidence that Williams suffered from paranoid delusions about subjects other than voices from televisions or radios.

Williams does not challenge any of the district court's specific factual findings, only its conclusions that his waiver was valid. Because the record supports the district court's specific findings, they are not clearly erroneous. And under the totality of the circumstances, these facts demonstrate that Williams's waiver was knowing and intelligent.

That Williams was suffering from a mental illness at the time of his waiver does not, by itself, render his waiver invalid. *See Wold v. State*, 430 N.W.2d 171, 178 (Minn. 1988) ("Merely because an accused exhibits equivocal signs of borderline mental

deficiency, or may even be suffering from a mental illness at the precise time of the waiver, those facts alone may not automatically mandate a finding of incompetence to waive."); *see also Camacho*, 561 N.W.2d at 169 (holding that evidence of defendant's mental deficiency did not compel a finding of incompetence to waive *Miranda* rights, and concluding that defendant's waiver was knowing, intelligent, and voluntary). Rather, we look to whether Williams's mental illness "prevent[ed] him from understanding the meaning and effect of his confession[]." *See Camacho*, 561 N.W.2d at 169.

Sergeant Liittschwager interviewed Williams several days after he had been admitted to Ellsworth Municipal Hospital. By that point, Williams had been taking antipsychotic medications for several days and Dr. Stern observed that Williams's condition had improved. When Sergeant Liittschwager read Williams his rights, Williams responded that he understood each right and he signed a form confirming that fact. Our review of the transcript indicates that Williams was lucid and his responses to Sergeant Liittschwager were congruent with the questions. Williams accurately recited facts about his life. He made no stray remarks that would indicate unclear thinking. He was appropriately remorseful about molesting his son. His statement demonstrates that he understood that sexual contact with his son was wrong and it did not include any of the delusions hospital staff had reported from Williams, including voices from television and radio. Aside from the fact that he had a mental illness, no evidence indicates that Williams was incapable of understanding his rights or the questions he was asked. We cannot say that the district court's finding that Williams's statement was knowing and intelligent is clearly erroneous.

Williams also contends that his waiver was not voluntary because "Sgt. Liittschwager's conduct suggests a coercive police tactic designed to elicit a confession from a vulnerable patient in a secured mental health hospital." This argument is contradicted by the district court's findings that the interview had been postponed to a time when Williams's condition had improved, was brief, and was free of any police misconduct, and that it occurred when Williams was responding well to medication. Here again, Williams has not challenged these findings, and we conclude that they are supported by the record. Sergeant Liittschwager delayed beginning his interview with Williams until a medical professional indicated that Williams was well enough to be interviewed. The interview lasted only 30 minutes. Williams was not mistreated, physically deprived, or denied access to others during the interview. And Sergeant Liittschwager conducted the interview in a noncoercive and nonmanipulative manner. The district court's finding that Williams's *Miranda* waiver was voluntary was not clearly erroneous. We hold that Williams's *Miranda* waiver was valid.

III

Williams argues that the district court violated his right to compulsory process under the Sixth Amendment when it excluded his witness, M.P., from testifying. To prevail, he must show that testimony was improperly excluded and the excluded testimony would have been material and favorable to his defense. *See State v. Lee*, 480 N.W.2d 668, 670 (Minn. App. 1992), *rev'd on other grounds by* 494 N.W.2d 475 (Minn. 1992). But a defendant has no constitutional right to introduce evidence that is either

irrelevant, or whose prejudicial effect outweighs its probative value. *State v. Crims*, 540 N.W.2d 860, 866 (Minn. App. 1995), *review denied* (Minn. Jan. 23, 1996).

We review a district court's evidentiary rulings under an abuse-of-discretion standard, even when the defendant claims that excluding the evidence deprived him of the constitutional right to present a complete defense. *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006). If we determine that the district court's evidentiary ruling denied the defendant the right to present a complete defense, we will reverse unless the error is harmless beyond a reasonable doubt. *State v. Richardson*, 670 N.W.2d 267, 277 (Minn. 2003).

Williams proffered the testimony of his sister, M.P., to establish that he had not sexually abused her, contrary to his alleged statement to hospital staff around the time he was admitted to Ellsworth Municipal Hospital. This testimony, he hoped, would raise doubt about the veracity of his statement to hospital staff, and in turn, the veracity of his confession to Sergeant Liittschwager. Because Williams was not charged with any crime against M.P., the district court excluded M.P.'s testimony as both irrelevant and "likely to be confusing and disingenuous for the jury's ultimate decision in this case."

The district court wrongly decided that the proffered evidence is irrelevant. It is plainly relevant. "Relevant evidence" is any evidence that tends to make more or less probable the existence of any consequential fact in the case. Minn. R. Evid. 401. Relevance is not a high bar, as even "[a] slight probative tendency is sufficient under rule 401." *Id*. 1977 comm. cmt. And "credibility evidence is almost always relevant." *State v. Blasus*, 445 N.W.2d 535, 545 (Minn. 1989) (Kelley, J., dissenting). Evidence of the

alleged falsity of Williams's admission about his abuse of his sister is probative to his credibility generally on any detail of his testimony, and it is even more probative specifically to the trustworthiness of his admissions about his own sexual misconduct.

Looking at this issue of relevance from a different perspective, Williams was on trial essentially because he accused himself of sexually abusing his son. In the usual setting (where the accuser is the victim) an accuser's prior false allegation of sex abuse is so relevant to a new allegation that a district court risks violating the defendant's constitutional right to defend himself if it excludes evidence of the prior false allegation. *State v. Goldenstein*, 505 N.W.2d 332, 340 (Minn. App. 1993) ("We agree with appellants that the trial court's exclusion of evidence of the prior false allegations violated their constitutional right to present a defense."), *review denied* (Minn. Oct. 19, 1993). We see no reason that an accuser's prior false accusation is less relevant to the accuser's credibility when the accuser happens also to be the accused.

The relevance of the excluded evidence is apparent. Williams confessed contemporaneously to two acts of sexual misconduct—one regarding his son and one regarding his sister. The jury had only one basis to convict Williams—trust in the veracity of his confession about his son. If the jury found the confession incredible, it had no basis on which to convict; and if the jury knew that a similar confession—one made in the same hospital at the same time to the same staff under his same mental condition—was dismissed by the alleged victim as a mere incredible delusion, the jury might have dismissed as a mere incredible delusion the now-challenged confession. In sum, a jury might believe the self-accusation of a delusional man and convict him based

almost entirely on it, but evidence that his delusions tainted a similar, contemporaneous self-accusation is at least relevant to whether his contested self-accusation should be trusted.

We think the district court also abused its discretion by deeming this evidence too confusing to be admitted. Even 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. The excluded evidence held significant probative value particularly because the evidence of guilt was so thin—the scantly corroborated word of a man whose confession was possibly clouded by delusion. The district court thought that confusion arising from the evidence of the dismissed confession about the abuse of Williams's sister would substantially outweigh its probative quality value. We do not see how this could be. After a man stands in a theater and yells "Fire!" it might be confusing if someone next to him stands immediately and adds calmly, "I'm his sister, and he yelled that same thing midway through the last movie," but it wouldn't be so confusing that the patron of average intelligence would be unsure how to process the competing information. Had the district court admitted the evidence, the state would have been free to argue that a sister might lie to protect her brother, or it could have offered some other explanation for the discrepancy. We also "assume that jurors are intelligent and practical people" capable of following a district court's plain instructions, *In re Welfare of D.D.R.*, 713 N.W.2d 891, 903 (Minn. App. 2006), and are therefore able to follow an instruction to use the evidence regarding the confessed but rejected claim of M.P.'s abuse only to aid in determining the credibility of

Williams's central confession. We don't see how any supposed confusion from M.P.'s anticipated testimony rebutting Williams's claims of abusing her can justly prevent the testimony under rule 403.

Relying on the same rule, the district court also based its rejection of the sister's testimony on its view that it is "likely to be . . . disingenuous." The district court has no discretion under rule 403 or any other evidentiary rule to prevent the jury from hearing relevant evidence on the ground that the district court thinks the evidence will be "disingenuous." And even if it had that discretion, we see no basis in the record for the district court to have made that apparently preemptive credibility finding. *See State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006) ("Assessing the credibility of a witness and the weight to be given a witness's testimony is exclusively the province of the jury."). Additionally, criminally accused defendants have a right to present a complete defense. *State v. Ferguson*, 804 N.W.2d 586, 590–91 (Minn. 2011). Although the district court has significant discretion in making evidentiary determinations,

> a meaningful opportunity to present a complete defense . . . would be an empty one if the State were permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant's claim of innocence. In the absence of any valid state justification, exclusion of this kind of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case encounter and survive the crucible of meaningful adversarial testing.

Crane v. Kentucky, 476 U.S. 683, 690–91, 106 S. Ct. 2142, 2146–47 (1986) (quotations and citations omitted); *see also State v. Hurd*, 763 N.W.2d 17, 29 (Minn. 2009) (quoting and applying *Crane*).

On balance, although we think the evidence was sufficient to (barely) clear both the sufficiency hurdle and Williams's *Miranda*-waiver voluntariness argument, the conviction cannot stand because Williams was denied his opportunity to present relevant evidence essential to his defense. Given the very close call on the sufficiency of the evidence and the potentially substantial weight of the excluded testimony, we cannot treat the evidentiary error as harmless.

Affirmed in part, reversed in part, and remanded.

KALITOWSKI, Judge (concurring in part, dissenting in part)

I concur that the evidence sufficiently corroborated the trustworthiness of appellant's confession under Minn. Stat. § 634.03 (2008) as applied by the supreme court in *In re Welfare of M.D.S.*, 345 N.W.2d 723, 735 (Minn. 1984). I also agree that appellant's *Miranda* waiver was valid. But I respectfully disagree that the district court abused its broad discretion by excluding M.P.'s testimony.

Based on the record before it, the district court properly determined that M.P.'s testimony would have limited probative value. *See* Minn. R. Evid. 403. The record indicates that on either July 21 or July 22, shortly after appellant was admitted to the hospital, he stated to hospital staff that he had sexually abused his son, his brother, and his sister, M.P. The record further indicates that, at this time, appellant was "nearly mute with a blank stare," and believed people were watching him and the television and radio were talking to him.

Significantly, at least three days separated appellant's initial reference to sexual abuse from the statement he gave to Sergeant Liittschwager regarding sexual abuse of W.W. And in the interval, the record indicates that appellant began taking and responding to medication and was making notable progress in his recovery. Dr. Stern testified that on July 25, appellant was "open[ing] up" and "beginning to talk about some of the things going on in his mind." Appellant's demeanor during the interview with Sergeant Liittschwager was normal, and the interview transcript reflects that appellant's responses were appropriate, detailed, and accurately reflected details from his life. He was lucid, appropriately remorseful, made no stray remarks, and specifically and

repeatedly denied abusing children other than the single incident involving W.W. Because the passing reference to abuse of M.P. and the detailed confession to Sergeant Liittschwager concerning W.W. were not contemporaneous and were made under distinctly different circumstances, the district court properly determined that M.P.'s testimony would have little probative value to the jury in assessing the veracity of appellant's confession.

Moreover, the district court appropriately recognized that the jury could be confused by evidence that appellant may have abused M.P. resulting in a trial within a trial, and that M.P.'s testimony was "likely to be confusing and disingenuous for the jury's ultimate decision in this case." *See State v. Harris*, 521 N.W.2d 348, 351-52 (Minn. 1994) ("[A]s we have often said, even relevant evidence may be inadmissible where its probative value is substantially outweighed by its potential to . . . confuse the issues, or to mislead the jury."). Thus, after weighing the slight probative value of M.P.'s testimony against the likelihood that it could be used for inappropriate purposes, the district court exercised its discretion and excluded the testimony. I would affirm the district court.

MINGE, Judge (concurring in part, dissenting in part)

II join in part III of the court's opinion, holding that it was error to exclude evidence of and testimony of the sister regarding Kirk Williams' statements that he had sexually abused her. I respectfully dissent with respect to the first two issues on appeal. First, a person cannot be convicted on the basis of a "confession . . . without evidence the offense charged has been committed." Minn. Stat. § 634.03 (2008). This is a fundamental tenet of Anglo-American law. It is not just the risk of false, coerced confessions, but also the risk of false statements of persons suffering from mental illness. David A. Moran, *In Defense of the Corpus Delicti Rule*, 64 Ohio St. L.J. 817, 817 (2003) ("The corpus delicti rule was first developed more than three hundred years ago in England to prevent the conviction of those who confessed to non-existent crimes as a result of coercion or mental illness.").

Kirk Williams is a paranoid schizophrenic. Sergeant Liittschwager obtained the confession in a relatively brief, directed interview conducted like a cross-examination, using leading questions. The interview took place four days after Williams was admitted to a locked Iowa psychiatric ward. Two days after the confession, an Iowa court ordered him committed. On the day of the confession, staff noted that Williams reported hearing strange voices from the TV and radio. Sergeant Liittschwager conducted the interview without the knowledge or approval of the attending psychiatrist.

The majority points to nine facts corroborating Williams's confession. It is noteworthy that none of them actually indicates that a crime was committed. They do not bolster the trustworthiness of Williams' confession. Perhaps the most telling is that

Williams's one-year-old son, the victim, clung to his mother. The attachment of a one-year old to his mother is legendary. As a generalized observation without any attending evidence it scarcely indicates criminal abuse. It is not surprising that a child would be apprehensive of a paranoid schizophrenic father due to that very condition. Such apprehension is not probative of abuse.

Also significant, Sergeant Liittschwager never inquired into Williams's state of mind. He did not ask any questions that might jeopardize the confession that was obtained. On this record, the overwhelming attendant circumstance to the confession is Williams's mental illness. It is undisputed and indicates the untrustworthiness of the confession.

The second issue is the validity of the *Miranda* waiver. Based on Williams's paranoid schizophrenic condition and on the lack of a contemporaneous evaluation by the attending psychiatrist of that condition or an explanation for the absence of such an evaluation, I would conclude the waiver was presumptively ineffective.

Based on my dissent on these two issues, I would reverse and not remand.