

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-0063**

Abraham Tony Dolo, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed August 19, 2019  
Reversed and remanded  
Jesson, Judge**

Hennepin County District Court  
File No. 27-CR-16-4863

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Schellhas, Judge; and Smith, Tracy M., Judge.

**S Y L L A B U S**

When the state seeks to play part of a recorded interview and a defendant seeks to have the entire recording admitted under rule 106 of the Minnesota Rules of Evidence, a district court must conduct a fairness analysis to determine whether a party may require introduction of the evidence in its entirety.

## OPINION

**JESSON**, Judge

During his trial for second-degree criminal sexual conduct stemming from his children's mother's allegation that he sexually abused his children, appellant Abraham Tony Dolo objected to the state's request to play a limited portion of his interview with police. Dolo requested that the entire recording of the interview be played for the jury. After the district court overruled his objection, a jury found him guilty and the postconviction court subsequently denied his petition for relief. Because we conclude that it was an abuse of discretion for the district court to overrule Dolo's objection and deny his request for the state to play the entire recording of his interview with police without conducting a fairness analysis, we reverse Dolo's conviction and remand for a new trial.

### FACTS

In December 2015, a family court judge granted appellant Abraham Tony Dolo sole legal custody and joint physical custody of his five-year-old daughter, C.D., and his seven-year-old son, K.D.<sup>1</sup> In late January 2016, the children's mother alleged that the children told her that Dolo had touched them inappropriately. She took the children to the hospital the next day, and hospital staff alerted police.<sup>2</sup>

Police referred the children to Cornerhouse, an organization that conducts forensic interviews with children who may have been abused. During her interview, C.D. disclosed

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<sup>1</sup> Although the transcript spells Dolo's son's name with a "C," it appears that his name actually begins with a "K."

<sup>2</sup> Because the allegations against Dolo only involved touching, a sexual-assault exam was not performed on either child.

that Dolo slept naked with her and her brother, put her feet on his “private part,” “scoot[ed] up” against her and “hump[ed]” her, and put his hands down her pants. And when asked if Dolo ever told her to not talk about what happened, C.D. told the interviewer, “He said, don’t tell my mom” or “[h]e’s gonna tell my teacher.”

Based on the Cornerhouse interview, police requested to speak with Dolo. Dolo agreed. During the voluntary interview—which was recorded—Dolo repeatedly denied that he had sexually abused or inappropriately touched his children. He told police that, as a result of the custody dispute, the children’s mother was trying to create problems by planting the allegations in the children’s heads. Throughout the interview, Dolo remained adamant that the allegations were a “retaliation thing.”

A few weeks later, the state charged Dolo with one count of second-degree criminal sexual conduct based on his daughter’s allegations. The case proceeded to a jury trial. At trial, C.D. testified<sup>3</sup> that she slept in the same bed with Dolo while he was not wearing any clothes. C.D. also explained that Dolo touched her in a way she did not like and that he put her feet on his “private” which made her feel “nasty” and “sad.” Additionally, C.D. described Dolo “scooting up” against her with his “private” and that it felt hard. According to C.D., no one—including her mother—told her what to say.

Dolo’s son K.D. also testified and largely corroborated his sister’s statements. He explained that he also slept in a bed with Dolo and his sister while Dolo was not wearing any clothes. And K.D. testified that on more than one occasion, his butt touched Dolo’s

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<sup>3</sup> Before trial, the district court held a competency hearing and determined both children were competent to testify.

“private.” When asked how he felt about talking about these things, K.D. answered that he felt “happy” because he had been told not to talk about what happened.<sup>4</sup>

During the direct examination of the detective who interviewed Dolo, the state sought to play part of the recorded interview during which Dolo described the layout and living arrangements in the home. According to the state, Dolo lied about the living arrangements in the house, which demonstrated a consciousness of guilt. Dolo’s counsel objected, arguing that under the rule of completeness and Minnesota Rule of Evidence 106, the state should be required to play the entire recording. After taking a recess to review the transcript of the entire recording, the district court overruled Dolo’s objection and allowed the state to play a short portion of the recording. During cross-examination of the officer, defense counsel asked the detective if Dolo maintained his innocence throughout the interview and if he ever admitted to anything. But the district court sustained objections to those questions on hearsay grounds and did not permit the detective to answer.

Dolo presented several witnesses on his behalf, including the custody evaluator from the family-court matter who testified that there were no allegations of sexual abuse during the family-court proceedings and that she found Dolo to be credible when working with him. Dolo’s mother, who owns the house where the sexual abuse allegedly occurred, testified that the children never slept downstairs in Dolo’s room and that she never saw him touch the children inappropriately.

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<sup>4</sup> The state also presented testimony from the children’s mother, who reiterated that she did not tell the children to make these allegations so she would obtain custody of her children. And the state presented testimony from the Cornerhouse forensic interviewer and played C.D.’s interview for the jury.

Finally, Dolo testified on his own behalf. He adamantly denied abusing his children, touching them inappropriately, or placing his hands down C.D.'s pants. Dolo explained that when he learned of the allegations against him, his first thought was that the children's mother was fabricating false allegations against him, so he told his side of the story to police. Dolo testified that although the jury only heard about eight minutes of his interview with police, during that interview he maintained his innocence and told police that he believed the children's mother was making up allegations because a family court judge awarded him custody of their children. During the state's cross-examination, the prosecutor asked Dolo questions about what he said to police during portions of the interview that were not played for the jury. Several of those questions involved whether Dolo told police that the children's mother was trying to retaliate against him, whether Dolo asked how his children were doing, and statements the prosecutor alleged Dolo made regarding the children's truthfulness. And although Dolo attempted to answer the questions, he repeatedly told prosecutors that he did not remember exactly what was said during the interview because it took place several months before the trial.

The jury found Dolo guilty of second-degree criminal sexual conduct. After denying Dolo's motions for judgment of acquittal and a new trial, the district court sentenced him to a stayed 36-month prison term and five years of probation. Dolo did not file a direct appeal but filed a petition for postconviction relief, which the postconviction

court denied without an evidentiary hearing.<sup>5</sup> Dolo appeals the denial of his postconviction petition.

### ISSUE

Did the district court abuse its discretion by refusing to require the state to play the entire recording of Dolo's interview with police without conducting a fairness analysis?

### ANALYSIS

Dolo argues that the postconviction court abused its discretion by denying his petition for relief. Specifically, Dolo contends it was an abuse of discretion for the district court to allow the state to play about eight minutes of his hour-long interview with police for the jury without requiring the state to play the recording in its entirety. According to Dolo, this decision violated the rule of completeness, codified in rule 106 of the Minnesota Rules of Evidence, which allows a party to require the introduction of an *entire* recording if the opposing party seeks to introduce only a portion of it. *See* Minn. R. Evid. 106. The decision to permit the state to play only a portion of the interview denied Dolo his right to present a complete and meaningful defense, he contends.

We review the denial of a postconviction petition for relief for an abuse of discretion. *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018). In doing so, we evaluate legal issues *de novo*, but our review of factual issues is limited to whether sufficient evidence in the record supports the postconviction court's findings. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). And we will not reverse the denial of a postconviction

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<sup>5</sup> Dolo did not request an evidentiary hearing in his postconviction petition.

petition “unless the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Id.* (quotation omitted). Dolo’s asserted basis for postconviction relief is an allegedly erroneous evidentiary decision, which is within the “sound discretion” of the district court and is not reversed without a clear abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). And on appeal, Dolo bears the burden of demonstrating such an abuse of discretion and the resulting prejudice. *Id.*

In order to discern whether the postconviction court abused its discretion by denying Dolo’s petition for relief, we begin by considering the background and purpose of the common law rule of completeness and rule 106 of the Minnesota Rules of Evidence. With rule 106 in mind, we then analyze whether the district court abused its discretion by permitting the state to play only a portion of Dolo’s interview with police when Dolo requested that the entire recording be played for the jury. Because we conclude that the district court did not adequately consider whether fairness required the introduction of the entire recording for the jury, we then evaluate whether the erroneous exclusion of the recording prejudiced Dolo. And because our review of the record demonstrates that the failure to play the entire recording resulted in prejudice, we conclude that it was an abuse of discretion for the postconviction court to deny Dolo’s petition for relief.

### ***Background and Purpose***

Rule 106 evolved from the common law doctrine of completeness.<sup>6</sup> 21A Charles Alan Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure: Evidence* § 5072, at 383 (2d ed. 2005). This doctrine “presume[s] two tenets of the adversary system.” *Id.* Those two tenets are (1) that parties, rather than the court, are responsible for offering evidence to support their claims and (2) that a trial follows a sequential procedure in which parties alternate in presenting their evidence. *Id.* at 383-84.

But in some cases, the phrasing of questions or presentation of incomplete statements can mislead the jury. The common law doctrine of completeness sought to remedy that problem by creating “a limited restriction” to a party’s ability to control their case. *Id.* at 386. That restriction allowed one party to require an adverse party seeking to introduce part of a writing or statement to introduce it in its entirety. *Id.* at 387-88; *see also State v. Brodt*, 185 N.W. 645, 647 (Minn. 1921) (stating that “[w]hen the significance of a former statement of a witness has been distorted by a fragmentary or inaccurate repetition of it, the entire conversation or writing may be received to explain its true significance”). And when the inculpatory portion of a statement or transaction was admitted into evidence, an opposing party had the right to have the exculpatory portion—“including self-serving declarations”—admitted as well. *State v. Kiewel*, 217 N.W. 598, 600 (Minn. 1928).

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<sup>6</sup> Because our review of Minnesota caselaw does not reveal significant analysis of rule 106 and because it closely resembles rule 106 of the Federal Rules of Evidence, we rely on scholarship and caselaw analyzing the federal rule. *See* Fed. R. Evid. 106 (stating that “[i]f a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time”).



Rule 106 encompasses the common law completeness doctrine and is based on the concept of fairness.<sup>7</sup> 11 Peter N. Thompson, *Minnesota Practice* § 106.01, at 94 (4<sup>th</sup> ed. 2012). It is similarly intended to address the two-pronged danger presented by incomplete evidence: first, that admitting only a portion of a statement ignores the context in which it was said, potentially creating a “distorted impression,” and second, that an initial false impression created by presenting incomplete evidence may not be overcome by a later introduction of the omitted portions of the statement. 1 Charles T. McCormick, *McCormick on Evidence* § 56, at 391-93 (Kenneth S. Broun, et al. eds., 7th ed. 2013); *see also* Fed. R. Evid. 106 advisory comm. note (explaining that the rule is based on two considerations: “the misleading impression created by taking matters out of context” and “the inadequacy of repair work when delayed to a point later in the trial”).

In order to avoid these dangers, parties may, under rule 106, request that the entirety of a statement be introduced for the jury to consider. That request is framed as a *requirement*, which the court should evaluate according to *fairness*. Rule 106 of the Minnesota Rules of Evidence provides:

When a writing or recorded statement or part thereof is introduced by a party, *an adverse party may require* the introduction at that time of any other part or any other writing or recorded statement *which ought in fairness* to be considered contemporaneously with it.

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<sup>7</sup> Rule 106 is broader than the common law rule of completeness, permitting a party the “right to demand” that the opposing party expand the scope of his or her inquiry to avoid creating a “misleading initial impression.” 1 Charles T. McCormick, *McCormick on Evidence* § 56, at 393 (Kenneth S. Broun, et al. eds., 7th ed. 2013).

(Emphasis added.) But rule 106 does not permit admitting otherwise inadmissible evidence. *See* 11 Peter N. Thompson, *Minnesota Practice* § 106.01, at 95 (4th ed. 2012). As such, “[i]f portions of a document are inadmissible because of privilege, hearsay, or otherwise, the operation of this rule does not sanction the admissibility of the entire document.” *Id.* Rule 106 is thus properly understood as addressing the *order* of presentation of evidence rather than the *admissibility* of evidence. *Id.*

When faced with a demand from an adverse party that an entire recording be played pursuant to rule 106, the district court—heeding the words of the rule that a party “may require” introduction of the entire recording—must begin with the presumption that the adverse party has the right to demand that the entire statement be introduced. In light of that presumption, the district court then conducts a fairness analysis to determine whether introduction of the entire statement is appropriate. When conducting a fairness analysis, district courts have broad discretion to determine when to admit the entirety of a writing or recording. *Id.* at 94. While Minnesota caselaw has yet to delineate the parameters of this fairness analysis, federal caselaw provides guidance. It identifies four fairness factors that a district court should consider when deciding whether to admit the entirety of a recording: whether “it is necessary to (1) explain the admitted portion, (2) place the admitted portion in context, (3) avoid misleading the trier of fact, or (4) insure a fair and impartial understanding.” *United States v. Sweiss*, 814 F.2d 1208, 1211-12 (7th Cir. 1987) (quotation omitted); *see also State v. Mills*, 562 N.W.2d 276, 286-87 (Minn. 1997) (noting that rule 106 “applies only where it is necessary to give the jury a full understanding of the facts and it may not be used to introduce otherwise irrelevant statements”). And if

consideration of fairness weighs in favor of admitting the entire statement or recording, the district court should require its introduction in its entirety.

### *Application to Dolo*

With rule 106 in mind, we turn to Dolo's case. Here, during its direct examination of the detective who interviewed Dolo, the state sought to introduce a roughly eight-minute portion of Dolo's one-hour interview with police, during which he discussed the layout of the house and living arrangements. The state contended that Dolo lied about the living arrangements at the house, which demonstrated a consciousness of guilt. Dolo objected, contending that rule 106 required the recording to be played in its entirety. In response, the state, citing *State v. Bauer*, 598 N.W.2d 352 (Minn. 1999), maintained that the district court should not require the entire interview to be played because the portion being played was not misleading to the jury and because the balance of Dolo's statements were self-serving hearsay. After reviewing the transcript of the entire interview, the district court ruled that it was appropriate for the state to play only part of the recording because it was limited to a very specific topic: the layout of the home. We disagree.

Although the topic of the recording—living arrangements and the layout of the home—may have been limited in scope, the state's *purpose* for introducing the portion of the recording was much broader. As the prosecutor explained to the district court, Dolo allegedly lied to police during his interview about the living arrangements at his house. And, according to the prosecutor, this demonstrated a consciousness of guilt. But the district court failed to acknowledge the state's purpose—to demonstrate that Dolo lied to police—when determining that the state did not have to introduce the entire recording. The

rest of the recording, as Dolo argues, contained his repeated assertions to police that the children's mother was fabricating allegations of sexual abuse because he was awarded custody of their children. Had the entire recording been played, the jury could have better understood the context of the entire interview, particularly given that several of Dolo's statements during the interview refuted the state's consciousness of guilt argument.

Further, in announcing its decision, the district court made no mention of any fairness analysis it conducted when reaching its conclusion. Nothing in the record indicates that the district court considered fairness at all, either implicitly or explicitly. For instance, the district court did not consider whether the entire recording would have helped place Dolo's statements in context, avoided misleading the jury, and ensured a fair and impartial understanding of the recording. *See Sweiss*, 814 F.2d at 1211-12. Had the district court considered these factors, it very well may have concluded that requiring the state to play the entire recording for the jury was necessary for the sake of fairness. *See Minn. R. Evid.* 106. Instead, the district court's ruling had the arguable effect of allowing the state to demonstrate that Dolo was not credible and showed a consciousness of guilt without allowing the jury to consider the context of the entire interview, which contained statements from Dolo refuting the state's consciousness of guilt argument. *See Sweiss*, 814 F.2d at 1211-12 (identifying placing the recording in context and avoiding misleading the jury as factors a district court should consider when conducting a fairness analysis under

rule 106). As such, it was an abuse of discretion for the district court to deny Dolo's request pursuant to rule 106 without conducting the required fairness analysis.<sup>8</sup>

The state relies on *Bauer* in support of its argument that the district court properly excluded the entire recording. This reliance is misplaced. In *Bauer*, the state did not introduce any part of the actual recording into evidence, instead relying on the testimony of officers who interviewed the defendant. 598 N.W.2d at 368. And the supreme court reiterated that rule 106 of the Minnesota Rules of Evidence "is not applicable unless portions of the actual recording have been introduced into evidence." *Id.* But here, the state very clearly sought to introduce a portion of the actual recording and in fact did so. Because no recording was introduced into evidence in *Bauer*, it does not dictate the outcome of this case.

The state further contends that the district court properly excluded Dolo's statements made during the remainder of the interview under the doctrine of self-serving hearsay. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). And hearsay is not admissible at trial unless it falls into one of several exceptions delineated in the rules of evidence. Minn. R. Evid. 802.

While the rules of evidence provide several exceptions that allow statements that would otherwise be classified as inadmissible hearsay to be admitted into evidence, the

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<sup>8</sup> We further note that neither party could point this court to a case in which a Minnesota state court upheld admitting only a portion of a recording where the defendant requested that the entire recording be admitted.

rules also categorically exempt some statements from being classified as hearsay at all. That is to say that the rules of evidence identify certain types of statements that simply *are not hearsay*. See Minn. R. Evid. 801(d). One type of statement that is not hearsay is a statement by a party-opponent. Minn. R. Evid. 801(d)(2). A statement can be characterized as a statement by a party-opponent when it is the party's own statement offered against the party. *Id.*

Here, we conclude that Dolo's statements to police are properly characterized as statements by a party-opponent. The state—not Dolo—sought to introduce part of Dolo's recorded interview with police. Because the state—the adverse party—sought to introduce Dolo's own statements against him, his statements are statements of a party-opponent. They are not hearsay. See Minn. R. Evid. 801(d)(2).

Our conclusion is further bolstered by our reading of rule 106. Under rule 106, a party may require *the adverse party* to introduce the entirety of a recorded statement. Minn. R. Evid. 106. In this case, that means that Dolo had the right to require the state to introduce the entire recording.<sup>9</sup> And again, because the state would have been the party introducing the entire recording, Dolo's statements are appropriately characterized as statements by a party-opponent. See Minn. R. Evid. 801(d)(2); *see also State v. Robertson*, 884 N.W.2d 864, 873 n.8 (Minn. 2016) (recognizing that “[a] statement of a party opponent

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<sup>9</sup> We note that if the district court had ruled in Dolo's favor and required the state to introduce the entire recording of the interview, the state could have withdrawn its request to play a portion of the interview. See *State v. Robledo-Kinney*, 615 N.W.2d 25, 29-31 (Minn. 2000).

is not hearsay when *offered against* the party opponent and several other conditions are met”). Simply stated, before a statement can properly be characterized as self-serving hearsay, it must in fact be classified as hearsay. We conclude that Dolo’s statements are not. Accordingly, we are not persuaded by the state’s contention that the rule against hearsay—self-serving or not—justified the district court’s decision to allow the state to play only a portion of Dolo’s interview with police.

In sum, when a party seeks to introduce part of a recorded statement, the opposing party may require the introduction of the entire recording under rule 106. And rule 106 mandates that when a party makes such a request, the district court must consider whether, for the sake of fairness, the entire recording should be played. Here, it is not evident that the district court evaluated Dolo’s request to require the state to play the entire recording on the basis of fairness. Because the district court did not properly consider whether fairness required the introduction of the entire recording of Dolo’s interview with police, we conclude that it was an abuse of discretion for the district court to deny Dolo’s request under rule 106.

### ***Prejudicial Effect***

Because we conclude that the district court abused its discretion by allowing the state to play only a portion of Dolo’s interview with police without conducting a fairness analysis, we turn to consider the prejudicial effect, if any, of the exclusion of the entire recording. When defense evidence is erroneously excluded, we must determine “whether, assuming that the damaging potential of the [excluded evidence] were fully realized, a

reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt.” *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994) (quotation omitted).

Here, the prejudicial effect of the exclusion of the entire interview is evident. As Dolo notes, the key question in this case involved witness credibility and whether the jury believed his testimony or the children’s testimony. Presenting the entire interview in which Dolo asserted essentially the same defense—that the children’s mother was fabricating allegations against him because of the custody arrangement—could have given credibility to the same testimony he presented at trial and removed any concern that Dolo only came up with the strategy for trial.

Certainly, the magnitude of the prejudicial effect of the erroneous-evidentiary ruling unfolded as trial proceeded. First, Dolo attempted to cross-examine the detective about whether Dolo maintained his innocence during the interview and about whether Dolo ever admitted to sexually abusing his children. But the district court sustained the state’s hearsay objections to each of those questions, preventing Dolo from eliciting that information for the jury. And during the state’s cross-examination, the state asked Dolo *several* questions about statements he did or did not make to police during the portion of the interview that was *not* played for the jury. For instance, consider the following exchange between the prosecutor and Dolo:

Q. You had an interview with the police in this case, yes or no?

A. With [the detective].

Q. Yeah.

A. Yeah.



Q. Okay. It was an hour long, approximately. I played about ten minutes of it, right?

A. Yeah.

Q. Okay. During the [portion] that I left out you professed your innocence, correct?

A. Absolutely.

Q. All right. You told her that this was all made up?

A. Yeah, I told- Whatever I said on the interview. That was way back in January.

Q. What you didn't say is that [the children's mother] called you and told you she was going to retaliate against you. Did you ever say that?

A. If you go back in January I won't be accurate, I think I might, I think I did say that but I'm not quite sure because it was back in January. And on that interview, just to give you a little key information—

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Q. Are you saying that in that interview with [the detective] you told her that [the children's mother] called you and said that she was going to retaliate?

A. No, I didn't say it just like that.

Q. Okay.

A. I didn't say it just like that. What you saw for last ten minutes and going back, I can't be all accurate, actually.

Q. I understand. It's been a while.

A. Yeah, it's been a while, it's been heavy on my mind with this whole allegation story.

Q. Did you tell the detective that [the children's mother] indicated to you in any way that she was going to frame you for a crime?

A. Probably I believe I did.

Q. Okay. That's all I wanted to know. You said you told the Detective?

A. Probably I believe I did.

Q. Probably you believe you did. So if you did it's on the recording?

A. Yeah, probably I believe I did.

Q. And if you did it's on the recording?

A. We're in the month of June, that was January, I can't be quite accurate now.

Q. I got you. But if you said that then it's on the recording, right.

A. Probably I did. I will go with probably I did.

Despite the prosecutor's repeated questioning of Dolo about what he did or did not tell police, and despite Dolo's repeated assertions that he did not remember exactly what he said but that it would be on the recording, *the jury never heard the entire recording*. And without listening to the entire recording, the jury was unable to evaluate the prosecutor's questions and Dolo's answers within the context of the interview as a whole.

Still, the state contends that because all of the information Dolo told police was conveyed to the jury through his testimony, any error in excluding the entire recording of the interview was harmless. This argument ignores the reality of this case. Ultimately, this case centered on credibility and on whether the jury believed the children's testimony or Dolo's testimony. And his statements to police in his interview could have provided the jury with a basis to conclude that Dolo was testifying credibly based on the consistency of

his defense. Accordingly, we conclude that the district court's erroneous exclusion of the entire recording was not harmless beyond a reasonable doubt.

Because it was an error for the district court to allow the state to play only a portion of Dolo's interview with police without conducting a fairness analysis and because we are not satisfied that the exclusion of the entire recording was harmless beyond a reasonable doubt, we conclude that Dolo is entitled to a new trial.

### **D E C I S I O N**

The purpose of rule 106 of the Minnesota Rules of Evidence—which is premised on fairness—is to protect individuals from potentially false impressions created by incomplete evidence, realizing that an initial false impression may never be overcome despite later efforts. Here, nothing in the record suggests that the district court considered whether the entire recording “ought in fairness” be introduced. Minn. R. Evid. 106. This decision to permit the state to introduce only a portion of Dolo's interview to demonstrate his consciousness of guilt without evaluating, in fairness, whether Dolo should have the same opportunity—through playing the entire interview—is not in accordance with rule 106. Accordingly, we reverse and remand for a new trial.

**Reversed and remanded.**