STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1464

State of Minnesota,
Respondent,

vs.

Bryan Morgan Holl,
Appellant.

Filed August 24, 2020
Affirmed in part, reversed in part, and remanded
Worke, Judge
Concurring in part, dissenting in part, Hooten, Judge

Itasca County District Court
File No. 31-CR-17-794

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Matti R. Adam, Itasca County Attorney, Grand Rapids, Minnesota (for respondent)

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

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Hooten, Judge.

S Y L L A B U S

Confessions to multiple charged offenses require sufficient evidence corroborating either the commission of each individual offense or their attendant facts and circumstances so as to support an inference of trustworthiness sufficient to sustain the conviction.

O P I N I O N

WORKE, Judge

Appellant challenges his five criminal-sexual-conduct convictions, arguing that (1) the district court abused its discretion by denying his motion for a mistrial; (2) the evidence was insufficient to corroborate his confession to one of the offenses; (3) the district court erred by convicting him of included offenses; and (4) the district court erred by sentencing him on two counts which were encompassed by a more serious count. Appellant also raises claims in his pro se supplemental brief. Because the evidence was insufficient to corroborate appellant's confession to one of his second-degree criminal-sexual-conduct offenses and the district court erred by entering convictions on two of the counts, we affirm in part, reverse in part, and remand.

FACTS

In 2017, 13-year-old C.D. was hospitalized for mental-health treatment. During her hospitalization, C.D. reported that the man she considered to be her stepfather, appellant Bryan Morgan Holl, molested her. Following her hospitalization, C.D. met with a forensic interviewer in Illinois, where she lived with her father, and disclosed that Holl sexually abused her when she was nine or ten years old and living with her mother and Holl in Minnesota.

C.D. disclosed that Holl came into her bedroom one night and had sexual intercourse with her, which she described as Holl putting his fingers inside of her vagina. C.D. stated that Holl touched her breasts and vagina under her clothes and touched inside and outside of her vagina. C.D. stated that she thought that the incident had been the last time Holl

abused her. C.D. informed the interviewer that while she could not remember the first time, Holl had informed her that he abused her multiple times. C.D. told the interviewer that Holl sent her a message on Facebook stating that he regretted abusing her and he had confessed to his mother and sister.

In February 2017, Investigator Bliss interviewed Holl about C.D.'s allegations. Holl admitted that he sent C.D. the message on Facebook and stated that he was willing to talk to Investigator Bliss "as long as it's going to help [C.D.], that's all [he] g[ave] a sh-t about."

Holl disclosed four incidents of sexual misconduct with C.D. According to Holl, the first incident occurred when C.D., ten years old at the time, showered with him, but he stated that he did not allow her to touch him. The second incident occurred when Holl and C.D. "were scouting for deer country" and "[he] had to take a pee, and she wanted to hold [his penis] while [he] peed." The next incident occurred while the two were sitting on a couch at the residence and C.D. masturbated Holl until he ejaculated onto a deer-print blanket. The last incident involved C.D., 11 years old at the time, touching Holl's penis and Holl touching the outside of C.D.'s vagina in his bedroom.

When asked whether he ever penetrated C.D.'s vagina with his fingers, Holl stated that "[i]t's possible, but I don't remember." Holl also denied having intercourse with C.D.

Investigator Bliss subsequently obtained the Facebook message that Holl sent to C.D. It read:

> [C.D.] I am so sorry for the sexual abuse that I put you threw for all that time an I should of turned my self including your mom into the police sooner for that I will never forgive my self but I wanted you to hear it from me that that day has come its today I am truly sorry for the things I put you threw an the long

> road still ahead for you but I know you have a great support team to help you threw it your strong.

The state charged Holl with three counts of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(a) (2010). Count one corresponded to the deer-scouting incident Holl described in his interview. Count two corresponded to the couch incident, and count three corresponded to the bedroom incident. Holl was also charged with one count of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(h)(iii) (2010), which encompassed the conduct alleged for the other three second-degree counts. Additionally, the state charged Holl with one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a) (2010), which corresponded to the bedroom incident.

At Holl's jury trial, the state called C.D, the forensic interviewer, and Investigator Bliss as witnesses. Holl did not testify or present any evidence.

C.D. testified that she, her mother, and Holl, whom she considered her stepfather, moved into a house in Grand Rapids when she was around eight years old and moved to Nashwauk two years later. C.D. testified that Holl began abusing her when she was around eight years old and continued up until she was 13 years old. C.D. estimated that Holl touched her more than 20 times during this period, but she could not remember every time because she "would either have a lot of Adderall in [her] system, alcohol, or both."

C.D. testified about one incident at the Nashwauk residence. One evening, C.D. went into the bedroom shared by Holl and her mother. She stated that she got into bed with them to watch a movie and drank Kool-Aid that tasted "sour and bitter." C.D. began

shaking badly and felt sick. C.D. testified that the next thing she remembered was Holl taking her clothes off and he touched her breasts and the outside and inside of her vagina, and penetrated her vagina with his penis. C.D. stated that her mother was naked on the bed next to them and told her to relax while holding her hand.

C.D. testified about an incident that occurred when she and Holl were in the woods during duck-hunting season. C.D. stated that Holl touched the inside and outside of her vagina with his fingers when they were alone in his truck.

C.D. recounted that the last instance of sexual abuse occurred one evening at the Nashwauk residence when she was 12 or 13 years old. She stated that Holl came into her bedroom and sat on her bed. Holl began moving closer to C.D. and touched her breasts under her clothing. C.D. testified that Holl then put his hands down her pants and touched the outside and inside of her vagina.

When asked why she had not disclosed multiple instances of abuse with the forensic interviewer, C.D. testified that she had not been in the right state of mind due to the issues resulting in her hospitalization. C.D. stated that everything she told the interviewer had been truthful, and that while she had used the term "sexual intercourse" to describe Holl's abuse during the last incident, she did not know its exact meaning at that time and had meant sexual touching. Following C.D.'s testimony, a photograph of the deer-print blanket and the Facebook message were received as evidence.

After direct examination of C.D., Holl moved for a mistrial, arguing that C.D.'s testimony went beyond what had been alleged in the complaint. Holl asserted that he was not put on notice or prepared to address C.D.'s testimony regarding sexual intercourse,

numerous instances of ejaculation, or the "ingestion," "consumption," or "use" of Adderall or alcohol. The district court denied Holl's motion for a mistrial after concluding that the state had notified Holl that C.D.'s anticipated testimony would be about "repeated and regular acts over a course of a period of time," and that "[t]here was reference to the incident of sexual intercourse."

Investigator Bliss testified about his investigation, and the recording of his interview with Holl was received as an exhibit and played for the jury. In concluding his testimony, Investigator Bliss confirmed that Holl is 21 years older than C.D., C.D. was around eight or nine years old when the abuse began and, according to Holl, 11 years old when it stopped, and the abuse occurred at the residences located in Nashwauk and Grand Rapids, which are in Itasca County.

The jury found Holl guilty as charged. The district court convicted Holl on all five counts and imposed concurrent sentences of 60 months in prison on count one, 91 months in prison on count two, and 306 months in prison on count four. This appeal followed.

ISSUES

I. Did the district court abuse its discretion by denying Holl's motion for a mistrial?

II. Was Holl's confession sufficiently corroborated so that the evidence adequately supported one of his second-degree criminal-sexual-conduct convictions?

III. Did the district court err by convicting Holl of counts three and five in violation of Minn. Stat. § 609.04, subd. 1 (2010)?

IV. Did the district court err by sentencing Holl on two offenses that were encompassed by a more severe offense?

V. Is Holl entitled to relief on his pro se claims?

ANALYSIS

I. Motion for a mistrial

Holl argues that the district court abused its discretion by denying his motion for a mistrial. This court reviews the denial of a motion for a mistrial for an abuse of discretion. *State v. Bahtuoh*, 840 N.W.2d 804, 819 (Minn. 2013). "A mistrial should not be granted unless there is a reasonable probability that the outcome of the trial would be different if the event that prompted the motion had not occurred." *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006) (quotation omitted).

A. Notice

Holl first contends that he did not receive notice that C.D. would testify about "new" and "different" crimes involving C.D.'s mother, Holl penetrating C.D. with his penis, and that C.D. was given alcoholic beverages and Adderall. However, the record belies this assertion. An exhibit admitted during a pretrial hearing indicated that C.D.'s "mother was part of it." The prosecutor also sent Holl's counsel an email stating that C.D. had "said sexual abuse was regular and on-going" and disclosed an incident involving Holl and C.D.'s mother. The email also disclosed C.D.'s statement that Holl had penetrated C.D.'s vagina with his penis.

Holl's argument that C.D.'s testimony violated his constitutional right to notice because it went beyond the allegations in the complaint is also misplaced. As this court noted in *State v. Levie*, "[t]here is absolutely no support for the proposition that the state cannot attempt to introduce evidence not previously identified in the criminal complaint. The complaint is simply the charging document and . . . is not evidence." 695 N.W.2d 619,

628 (Minn. App. 2005). This court further determined that Levie was not prejudiced because the complaint put him on notice and "there were simply more facts brought out at trial than were stated in the complaint." *Id.* at 628-29. Similarly, in this case, Holl was not misled about the charges brought against him and was put on notice that he would have to defend against allegations that his abuse of C.D. had been continuous and ongoing, involved at least one instance of penetration, and involved C.D.'s mother. Therefore, the district court did not abuse its discretion by denying Holl's motion for a mistrial on this basis.

B. Prior-bad-acts evidence

Holl also argues that the district court abused its discretion by denying his motion for a mistrial because C.D.'s testimony included evidence of Holl's prior bad acts, which he contends violated Minn. R. Evid. 404(b)(1) and *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965). Because Holl did not raise this challenge in district court, he seemingly believes that the district court should have sua sponte granted his mistrial motion on this basis because he did not raise this challenge in district court. Because Holl failed to object to C.D.'s testimony and did not advance a *Spreigl* argument when he moved for a mistrial, we review this issue for plain error. *State v. Vasquez*, 912 N.W.2d 642, 649-50 (Minn. 2018).

To prevail, Holl must show "(1) error; (2) that was plain; and (3) that affected substantial rights." *See State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017). An error is plain when it was clear or obvious, which is typically shown if it "contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006).

Plain error affected substantial rights if it "affected the outcome of the case." *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998).

In making his *Spreigl* argument, Holl relies on *State v. Doughman*, 384 N.W.2d 450 (Minn. 1986). In *Doughman*, an arson case, the state sought to elicit testimony that the defendant told a witness that he was going to burn down a barn, which did burn down. *Id.* at 452. At pretrial, the district court ruled that the state could not elicit the testimony, but after a mid-trial *Spreigl* hearing, the district court determined that the witness could testify about the defendant's statement. *Id.* The supreme court determined that the testimony was inadmissible because the state had not introduced clear and convincing evidence that a prior bad act had occurred, and it prejudiced the defendant due to lack of notice because the district court ruled that the testimony was admissible mid-trial. *Id.* at 455.

Holl's reliance on *Doughman* is misplaced because, in this case, it was not clear that a *Spreigl* analysis was applicable. Neither party was under the impression that C.D.'s testimony regarding the complained-of incidents constituted *Spreigl* evidence, nor is Holl contesting that there was clear and convincing evidence of his involvement in the incidents. Further, a district court's "failure to sua sponte strike unnoticed *Spreigl* evidence or provide a cautionary instruction is not ordinarily plain error." *See State v. Vick*, 632 N.W.2d 676, 685 (Minn. 2001).

However, even if Holl has established plain error because the district court failed to sua sponte grant his motion for a mistrial on this basis, he has failed to establish a reasonable likelihood that the jury would have reached a different result had the evidence not been admitted. *See Griller*, 583 N.W.2d at 741 (stating that third prong of plain-error

test requires appellant to establish that error had significant effect on verdict). There was a significant amount of evidence—including portions of C.D.'s testimony that Holl does not challenge on appeal—establishing Holl's guilt. Further, the state did not rely on the challenged evidence during its closing argument. *See State v. Jaros*, 932 N.W.2d 466, 474 (Minn. 2019) (noting that when determining whether evidence significantly affected verdict, an appellate court considers whether the state presented other evidence on the issue and relied on inadmissible evidence during closing argument). Holl has not, therefore, demonstrated the required prejudice.

II. Corroboration of the confession

Holl next argues that the state failed to introduce independent evidence sufficient to corroborate his confession to the deer-scouting incident which represents count one of the charging document. This court reviews a challenge to the sufficiency of the evidence by determining whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jury to reach the verdict it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). A verdict will not be disturbed if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could have reasonably concluded that the defendant was guilty of the offense charged. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

A defendant's confession is direct evidence of guilt. *State v. McClain*, 292 N.W. 753, 755 (Minn. 1940). Under Minn. Stat. § 634.03 (2018), however, "[a] confession of the defendant shall not be sufficient to warrant conviction without evidence that the offense charged has been committed." Not every element of the charged offense needs to be

corroborated to satisfy this requirement; it is adequate if the confession is "sufficiently substantiated by independent evidence of attending facts or circumstances from which the jury may infer the trustworthiness of the confession." *In re Welfare of M.D.S.*, 345 N.W.2d 723, 735 (Minn. 1984) (quotation omitted).

The state relies on *M.D.S.* to argue that the evidence was sufficient to allow the jury to infer the trustworthiness of Holl's confession regarding count one, the deer scouting incident. In *M.D.S.*, a juvenile was charged with aiding and abetting felony murder after being in a vehicle with two men who shot at a home and killed an individual. *Id.* at 725-26. During the police investigation, the juvenile made inculpatory statements. *Id.* at 727-28. Following her conviction, the juvenile challenged whether her statements were sufficiently corroborated by independent evidence. *Id.* at 726.

The supreme court determined that the state met its burden of providing evidence sufficient to corroborate the confession. *Id.* at 736. The corroborating evidence included testimony from an individual, who shared an apartment with the two men involved in the shooting, that the juvenile brought a newspaper clipping about the murder to the apartment the day after the murder, and they discussed hiding the weapon and leaving town. *Id.* at 735-36. The victim's neighbor testified about observing a vehicle at the home similar to the one the juvenile described. *Id.* at 736. The victim's son and husband also testified that, of the three accused individuals, only the juvenile had been to their home prior to the shooting, which corroborated the juvenile's statement that she gave the men the address. *Id.* Glass fragments found in the victim's back corroborated the juvenile's statement that

she directed the men to shoot at the windows, and damage to a nearby school corroborated her statement that she suggested that the men shoot at the school. *Id.*

In claiming that Holl's confession about an incident that occurred while scouting for deer was similarly corroborated, the state relies on the following evidence. First, C.D.'s testimony corroborated Holl's confessions to the bedroom and couch incidents. Second, C.D.'s testimony about a duck-hunting incident demonstrated that Holl had been alone with her in the woods. And third, Holl's apology to C.D. through Facebook occurred prior to any police investigation, and he stated during the interview with Investigator Bliss that he cared only about helping her. The state contends that, collectively, this evidence was sufficient to corroboration.

We disagree. The state charged, and was therefore required to prove, the incident related to the deer scouting incident specifically, but failed to provide evidence other than Holl's confession to support it. While the evidence arguably corroborated the bedroom and couch incidents, it cannot be a basis to independently corroborate Holl's confession to the deer-scouting incident. *See* Minn. Stat. § 634.03 (requiring corroboration that "the offense charged has been committed"). And even though C.D. testified about an instance of criminal sexual conduct when Holl touched her vagina while inside his truck during a duck-hunting outing, this testimony was significantly different from Holl's confession that he and C.D. "were scouting for deer country" and "[he] had to take a pee, and she wanted to hold [his penis] while [he] peed." Further, the Facebook apology referred only to sexual

abuse in general terms.[1] And finally, while Holl stated during an interview that he cared only about helping C.D., this statement was not independent of the confession.

Based on this record, the evidence was neither sufficient to corroborate the charged offense nor adequate to sufficiently substantiate its attending facts or circumstances in a manner consistent with *M.D.S.* Thus, in our view, the evidence was insufficient to allow the jury to infer the trustworthiness of Holl's confession to the deer-scouting incident and reach a guilty verdict on this count. Therefore, we reverse count one.

III. Multiple convictions

Under Minn. Stat. § 609.04, subd. 1, "[u]pon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both. An included offense may be . . . a lesser degree of the same crime; or . . . a crime necessarily proved if the crime charged were proved." Whether the district court erred in adjudicating multiple convictions is a question of law that we review de novo. *State v. Ferguson*, 729 N.W.2d 604, 618 (Minn. App. 2007), *review denied* (Minn. June 19, 2007). When a district court erroneously adjudicates on both a crime and a lesser-included offense, the proper disposition on appeal is to reverse the lesser conviction and remand with instructions to

[1] This court has held that statements made by a defendant to friends or acquaintances prior to the commencement of a police investigation are not subject to the statutory-corroboration requirement and may be used to corroborate a defendant's subsequent confession to the police. *See State v. Heiges*, 779 N.W.2d 904, 911 (Minn. App. 2010), *aff'd*, 806 N.W.2d. 1 (Minn. 2011). We do not view *Heiges* as being persuasive in this case because Holl sent his Facebook message to C.D., rather than friends or acquaintances. And while C.D. testified that Holl told his mother, his sister, and C.D.'s mother about the sexual abuse, there was no evidence as to what Holl specifically told these individuals beyond general sexual abuse.

vacate that conviction while leaving the jury's finding of guilt intact. *State v. Hallmark*, 927 N.W.2d 281, 300 (Minn. 2019).

Here, the district court entered judgments of conviction on all five counts. The parties agree that the district court erroneously entered judgments of conviction on counts three and five in violation of section 609.04, subdivision 1. Count three, second-degree criminal sexual conduct, was a lesser-included offense of count four, first-degree criminal sexual conduct, because both relate to the bedroom incident. *See State v. Kobow*, 466 N.W.2d 747, 751 (Minn. App. 1991) (noting second-degree criminal sexual conduct is a lesser-included offense of first-degree criminal sexual conduct), *review denied* (Minn. Apr. 18, 1991). As to count five—multiple acts of second-degree criminal sexual conduct—it was necessarily proved by Holl's convictions for second-degree criminal sexual conduct based on counts one, two, and three. Although we reverse on count one, count five is still proved by counts two and three. As such, the district court erroneously entered judgment of conviction on count five. Therefore, we reverse and remand for the district court to vacate the convictions of counts three and five while leaving the jury's verdicts intact, and to resentence.

IV. Sentencing

Holl also argues that the district court erred by sentencing him on two counts of second-degree criminal sexual conduct, rather than on the more severe count of second-degree criminal sexual conduct based on multiple acts committed over an extended period of time. Because we reverse count one, we need not address Holl's sentencing claim.

V. Pro se claims

In his pro se supplemental brief, Holl argues that his counsel was ineffective and that the state committed two *Brady* violations.[2]

A. Ineffective assistance of counsel

Holl argues that his counsel was ineffective by failing to interview C.D.'s father and not moving to dismiss the amended complaint. To succeed on his ineffective-assistance-of-counsel claim, Holl must show "that [his] counsel's performance was deficient," and "that the deficient performance prejudiced [his] defense." *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). The first part of this test is analyzed under an objective standard of reasonableness. *Id.* at 688, 104 S. Ct. at 2064. Under the second part of the test, courts consider whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994) (quotation omitted).

The decision of Holl's attorney about whether to interview C.D.'s father involves a matter of trial strategy, which appellate courts do not review. *See State v. Davis*, 820 N.W.2d 525, 539 n.10 (Minn. 2012) (noting decisions about which witnesses to interview are typically matters of trial strategy that appellate courts do not review). And it was not objectively unreasonable for Holl's counsel to not move to dismiss the amended complaint, because Minnesota law allows for the district court to "freely permit amendments to the complaint so as to charge additional offenses" so long as jeopardy has not attached. *See*

[2] *See Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963).

State v. Pettee, 538 N.W.2d 126, 131-32 (Minn. 1995); Minn. R. Crim. P. 3.04, subd. 2 (allowing district court to permit amendments to charge additional offenses before trial commences); *see also* Minn. R. Crim. P. 17.05 (allowing complaint to be amended prior to verdict or finding if no additional or different offense is charged and defendant's substantial rights are not prejudiced). Thus, Holl fails to establish an ineffective-assistance-of-counsel claim.

B. *Brady* violations

Holl also argues that the state failed to disclose investigative reports made by the Decatur police department that "vanished" and an interview with "a defense witness" conducted by Investigator Bliss. To prevail on his claim of a *Brady* violation, Holl must demonstrate that: (1) the undisclosed evidence was favorable to him because it was exculpatory or impeaching; (2) the state suppressed the evidence; and (3) the evidence was material in that there is a reasonable probability that the verdict would have been different had the evidence been disclosed. *See Pederson v. State*, 692 N.W.2d 452, 459-60 (Minn. 2005). In considering a due-process-violation claim because of the destruction of evidence, the supreme court has considered two categories of evidence: *Brady* evidence that has "apparent and material exculpatory value," and evidence that is "potentially useful." *State v. Hawkinson*, 829 N.W.2d 367, 372 (Minn. 2013). A claim involving the destruction of potentially useful evidence requires a showing of bad faith. *Id.* at 373. Bad faith "requires an intentional act and that in evaluating that act we consider whether there is any evidence that the [s]tate destroyed or released the evidence to avoid discovery of evidence beneficial to the defense." *Id.* (quotations omitted).

Holl has failed to establish a *Brady* violation with respect to the Decatur police department reports. First, it does not appear that these reports had any apparent exculpatory or impeachment value, but rather would be potentially useful evidence given that C.D. consistently gave statements about Holl sexually abusing her. Further, even assuming the reports were destroyed, Holl makes no claim or showing of bad faith on the part of the state.

With respect to the second claimed *Brady* violation, it appears that Holl is referring to information brought out during the cross-examination of Investigator Bliss indicating that he had contact with Holl's sister. However, after a bench conference outside of the presence of the jury, Holl withdrew his claim of a disclosure issue and the district court instructed the jury to disregard the testimony relating to an interview of Holl's sister. Further, the record reflects that Investigator Bliss's interview with Holl's sister had no apparent exculpatory value as he was seeking information about whether she planned to testify. And while Holl claims that Investigator Bliss interviewed his sister to intimidate her into not testifying, this argument has no support in the record.

As a final matter, Holl asks us to "federalize" his pro se claims. However, Holl provides no authority in support of this court's ability to provide his requested relief, and we decline to consider this request. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) (stating appellate courts will not consider pro se claims that are unsupported by arguments or citations to legal authority).

D E C I S I O N

The district court did not err by denying Holl's motion for a mistrial, and none of his pro se issues merit relief. For these reasons, we affirm in part. However, the evidence was insufficient to independently corroborate Holl's confession and to support his conviction of count one. We therefore reverse in part. Finally, because Holl was erroneously convicted of multiple offenses, we remand for the district court to vacate his improper convictions and for resentencing.

Affirmed in part, reversed in part, and remanded.

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

I concur with the majority that the district court did not err when it denied Holl's motion for a mistrial, that none of Holl's pro se issues merit relief, and that Holl was erroneously convicted of multiple offenses. However, because I believe the majority has conflated the *admissibility* of Holl's confession—which is the narrow issue before us—with a broader conclusion that there is insufficient evidence as to the overall *veracity* of the confession, I respectfully dissent from the majority's conclusion on this issue alone.

Holl argues that the state failed to introduce independent evidence sufficient to corroborate his confession to count one, the deer-hunting incident.

Minn. Stat. § 634.03 (2018) mandates that a confession made by a defendant is admissible only if it is corroborated by independent evidence proving the defendant's culpability. The statute does not require a district court to weigh, or assess, the sufficiency of this corroboration. *See id.* It merely establishes a threshold finding of the existence of some other form of evidence, in addition to the confession itself, in order for the confession to be admissible. *Id.* Indeed, here all this so-called "corroborating evidence" must do is establish the *existence* of a crime so as to "*implicate* the accused." *Smith v. U.S.*, 348 U.S. 147, 154, 75 S. Ct. 194, 198 (1954); *see also In re Welfare of M.D.S.*, 345 N.W.2d 723, 735–36 (Minn. 1984) (applying *Smith* to determine that evidence provided by the state was sufficient to identify the defendant and to "bolster and substantiate" defendant's admissions).

The majority seems quick to bypass the threshold question of the very existence of corroborative evidence, and it instead wishes to assess the sufficiency of that evidence to

support Holl's conviction. But Holl does not challenge the sufficiency of the evidence supporting his conviction to this court, only the sufficiency of corroborative evidence. Evaluating the judgment of the credibility and veracity of the corroborating evidence in light of the circumstances of the case is a task that we continually reserve for the finder of fact. *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (stating that the factfinder is in the best position to assess the credibility of witnesses and appellate courts defer to factfinder's credibility determinations). In a criminal jury trial, it is the solemn duty of the jury, and the jury alone, to assess the credibility of all declarants, to weigh the evidence, and to decide whether or not the evidence truly supports the charges brought by the state. In other words, whether or not the corroborating evidence is "enough" to prove the veracity of the confession itself is a task reserved for the jury, and not for the district court in determining the admissibility of the statement.

In its conflation of the sufficiency of the evidence and the existence of corroborative evidence, the majority relies on *M.D.S.* to establish a sufficiency bar as to what amount of corroborating evidence is sufficient to deem Holl's confession admissible. However, *M.D.S.* did not state that the evidence presented by the state was the minimum threshold of evidence necessary to be deemed corroborative. Instead, the Minnesota Supreme Court merely held that independent evidence must exist from which a jury may infer that a confession is trustworthy. *M.D.S.*, 345 N.W.2d at 735. Indeed, so long as some corroborating evidence exists, it is the *jury* that is to assess the trustworthiness of the confession; it is not a threshold determination for the district court to make when ruling on admissibility. *See id.* (stating that a confession must be "sufficiently substantiated by

independent evidence of attending facts or circumstances from which the *jury* may infer" its trustworthiness (emphasis added)).

The majority seems to conclude that the only acceptable corroborative evidence would be specific independent evidence that definitively proves that Holl committed every action described in his confession. However, Minnesota courts have consistently allowed relatively peripheral evidence, not evidence of criminal elements in and of itself, to constitute the threshold corroborative evidence necessary to admit a confession. In *State v. Koskela*, the Minnesota Supreme Court concluded that the time at which a defendant entered a home (at approximately 6:00 a.m.), and the method by which a defendant entered a home (by leaping), constituted corroborative evidence for the purpose of admitting a defendant's confession of burglary. 536 N.W.2d 625, 629 (Minn. 1995); *see also State v. Heiges*, 806 N.W.2d 1, 13 (Minn. 2011) (concluding that circumstantial evidence of pregnancy and birth, such as the defendant's clothing choices, and a pre-offense general statement to a witness, was corroborating evidence for defendant's confession to murdering her infant); *State v. Glaze*, 452 N.W.2d 655, 659–60 (Minn. 1990) (concluding that evidence of flight, and defendant's statements expressing general dislike for Native American women, was corroborating evidence for defendant's confession to murdering three Native American women).

In the case at issue, Holl confessed to, and was being tried for, sexually assaulting C.D. on multiple occasions. In his specific confession related to this one specific occasion, Holl stated that C.D. held his penis while he urinated in the woods during a hunting trip. For this act, Holl was charged with the crime of second-degree criminal sexual conduct, in

violation of Minn. Stat. § 609.343, subd. 1(a) (2010). To corroborate the existence of the crime of criminal sexual conduct, in addition to the several instances of criminal sexual assault to which Holl already confessed and for which he was being tried, the state offered Holl's Facebook confession acknowledging that he sexually abused C.D. "for all that time." Holl's Facebook confession, although general in nature, established the existence of the crime of sexual assault and implicated Holl as the perpetrator. *See Smith*, 348 U.S. at 154, 75 S. Ct. at 198. Thus, this general statement substantiates his confession to law enforcement because it is "independent evidence of attending facts or circumstances" on which a jury "may," but is not compelled, to "infer the trustworthiness of the confession." *M.D.S.*, 345 N.W.2d at 735 (quotation omitted).

Furthermore, the state provided C.D.'s testimony that Holl touched C.D.'s vagina while hunting in the woods, as well as her testimony regarding other acts of criminal sexual conduct by Holl against her. This testimony implicates the crime of criminal sexual conduct and identifies Holl as the perpetrator. The majority relies upon factual discrepancies between Holl's confession and C.D.'s account of the hunting incident as evidence to conclude that the veracity of Holl's confession is not sufficiently corroborated. However, the veracity of this evidence, as judged by the credibility of the declarants, is not the issue before this panel. The only issue here is the existence of corroborative evidence that implicates a crime and identifies a defendant. Even if the evidence is not consistent, the overall thematic similarities could be used by a jury to "infer the trustworthiness of the confession." *M.D.S.*, 345 N.W.2d at 735.

Because the state has provided corroborative evidence for the threshold admissibility determination described in Minn. Stat. § 634.03, the district court did not abuse its discretion when it admitted Holl's confession, leaving it up to the jury to assess the ultimate veracity of the confession and the sufficiency of the evidence.