

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0689**

State of Minnesota,
Respondent,

vs.

Slade James Kruse,
Appellant.

**Filed March 4, 2024
Affirmed
Larkin, Judge**

Nobles County District Court
File No. 53-CR-21-831

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

Braden Hoefert, Nobles County Attorney, Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Gaïtas, Judge; and Kirk,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct and two convictions of methamphetamine-related crimes involving children, arguing that the district court violated his constitutional right to confrontation at his jury trial by allowing the child victim to testify outside of his presence through the use of remote technology. We affirm.

FACTS

Respondent State of Minnesota charged appellant Slade James Kruse with two counts of first-degree criminal sexual conduct, one count of second-degree criminal sexual conduct, and two counts of methamphetamine-related crimes involving children. The circumstances underlying the charges are as follows.¹

At approximately 3:00 a.m. on August 28, 2021, Worthington police responded to a call that a lost child, later identified as 10-year-old AK, was brought to an emergency room by individuals whom AK had asked for a ride. Officers observed that AK was “extremely hyper” and “all over the place.” AK told officers that his parents died in a car crash and that he needed to return to Mitchell, South Dakota.

When officers identified Kruse as AK’s biological father, AK became “extremely upset” and pleaded with officers not to return him to his home because he was “being held against his will” by his “fake dad.” When officers brought AK to Kruse’s house, AK hid

¹ Our recitation of the facts is based on the trial record.

in the backseat of the squad car. AK eventually told officers that Kruse made him smoke out of a blue and brown pipe and ingest a “salt-like substance” from a lightbulb, which “made him feel hyper” and gave him “a little jumpstart.” Officers surmised that the substance was methamphetamine. Kruse consented to a search of his basement and gave officers a blue and brown marijuana pipe along with a small amount of marijuana. At the foot of Kruse’s bed, officers observed a chest containing dildos and pornographic videos. AK was taken into protective custody the same day.

On August 31, 2021, AK participated in a forensic interview. During the interview, AK stated that he intended to run away to Mitchell, South Dakota—where he was previously enrolled in school—because Kruse said he would not enroll AK in school. AK stated it was “hard” sending his dad to jail for giving him drugs and that watching Kruse’s arrest made him sad.

When AK told the interviewer that he had not been able to talk to his family since he was removed from Kruse’s care, the interviewer asked AK whether he would like to do so. AK said that he would, so long as Kruse was not present. AK explained that Kruse would “probably [] be very mad at [him] [be]cause [he was] the one [who] tattled on [Kruse].” AK explained that when Kruse gets mad he “either spanks [AK]” on the buttocks or “takes away something,” but now it would be something “big time.”

During the interview, AK alleged that Kruse used “bad touches” on him, including masturbation and oral sex. Although AK described Kruse’s actions as unwanted and “totally gross,” he did as Kruse asked because Kruse would give him a “huge reward” afterward.

After pointing to a nude drawing that AK said looked like Kruse, AK told the interviewer that he wanted “to be done.” But he answered a few more questions. AK stated that to get a reward, he would have to perform oral sex on Kruse and “hump [Kruse’s] butt” with a “fake penis” and “fake ball.” AK again expressed that he was no longer comfortable talking about the abuse. He stated that he never spoke of the abuse because Kruse forbade it. Then he ended the interview by apologizing to the interviewer and walking out of the room.

Based on AK’s interview, officers were granted and executed a search warrant for Kruse’s basement. Officers found methamphetamine, drug paraphernalia, a “black strap-on fake penis,” and a red fake penis. The state charged Kruse with two counts of first-degree criminal sexual conduct, one count of second-degree criminal sexual conduct, and two counts of methamphetamine-related crimes in the presence of a child.

Before trial, the state moved the district court to allow AK to testify outside of Kruse’s presence via remote technology. The district court held a hearing on the state’s motion. As support for its motion, the state submitted AK’s forensic interview and AK’s diagnostic assessment, which was completed by a licensed clinical counselor after he was removed from Kruse’s care. The hearing was continued so that the state could call the counselor as a witness. The counselor testified that she met with AK from September 2021 to January 2022. She diagnosed AK with generalized anxiety disorder, post-traumatic-stress disorder (PTSD), and neglect. She expressed concern that if AK was re-exposed to the source of his trauma, he could lose the progress he had made in therapy and resume exhibiting PTSD symptoms. She explained that AK’s symptoms manifest when he

becomes “really overwhelmed,” causing him to “flee” and to shut down questioning related to Kruse’s abuse.

Kruse opposed the motion, arguing that remote technology would violate his rights under the Confrontation Clause. The district court granted the state’s motion.

The case was tried to a jury. The jury heard from 17 witnesses, including AK. AK described how Kruse sexually abused him and forced him to use drugs. His testimony was generally consistent with his forensic interview—which was played for the jury. The state introduced physical evidence suggesting that AK had “repetitive exposure” to methamphetamine. The state also admitted evidence that the pipe recovered from Kruse’s residence contained methamphetamine residue and that Kruse’s DNA was found on the black strap-on fake penis.

The jury found Kruse guilty as charged. The district court entered judgments of conviction for one count of first-degree criminal sexual conduct and two counts of methamphetamine-related crimes involving children. The district court sentenced Kruse to serve 172 months in prison.

Kruse appeals.

DECISION

Kruse contends that AK’s remote testimony violated his constitutional right to confront the witnesses against him. The confrontation clauses of the United States and Minnesota Constitutions provide: “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI; Minn. Const. art. 1, § 6.

“[W]hether the admission of evidence violates a defendant’s rights under the Confrontation Clause” is a question of law that we review de novo. *State v. Sutter*, 959 N.W.2d 760, 764 (Minn. 2021). We review the district court’s underlying findings of fact for clear error. See *Martin v. State*, 969 N.W.2d 361, 363 (Minn. 2022). A finding of fact is clearly erroneous if “it lacks evidentiary support in the record.” *State v. Lopez*, 988 N.W.2d 107, 116 (Minn. 2023).

Confrontation Clause Exception

Although the Confrontation Clause generally secures a defendant’s right to face-to-face confrontation, that right is not absolute. *State v. Tate*, 985 N.W.2d 291, 297 (Minn. 2023) (citing *Coy v. Iowa*, 487 U.S. 1012, 1016, 1020 (1988)). In *Maryland v. Craig*, the United States Supreme Court stated that the Confrontation Clause’s preference for face-to-face confrontation at trial “must occasionally give way to considerations of public policy and the necessities of the case.” 497 U.S. 836, 849 (1990) (quotation omitted). Protecting the psychological well-being of child-abuse victims can be a sufficiently important state interest to justify infringement of the right to face-to-face confrontation. *Id.* at 855.

Minnesota allows children who are victims in criminal-sexual-conduct cases to testify outside the presence of a defendant if the witness is younger than 12 years old and the defendant’s presence “would psychologically traumatize the witness so as to render the witness unavailable to testify.” Minn. Stat. § 595.02, subd. 4 (2022). In *State v. Conklin*, the Minnesota Supreme Court stated that section 595.02, subdivision 4(c), “establishes a permissible exception to the confrontation clause.” 444 N.W.2d 268, 272 (Minn. 1989). Kruse states, and we agree, that *Conklin* “established the same standard as *Craig* for

determining whether a district court's invocation of a statutory procedure allowing a child witness to testify outside the presence of a defendant violated the defendant's constitutional right to confrontation." We therefore focus our analysis on the district court's application of section 595.02, subdivision 4, as Kruse has done.

Section 595.02, Subdivision 4(c)

Minn. Stat. § 595.02, subd. 4, applies to proceedings "in which a child less than 12 years of age is alleging, denying, or describing . . . an act of physical abuse or an act of sexual contact or penetration performed with or on the child." Subdivision 4(c) authorizes the district court to order that the testimony of a child be taken outside the presence of the defendant if the court finds that "the presence of the defendant during testimony . . . would psychologically traumatize the witness so as to render the witness unavailable to testify."

The court may order the procedure set forth in subdivision 4(c), only after making an "individualized finding of necessity" and only after finding "by specific evidence that the particular witness[] is or would be psychologically traumatized and that traumatization is substantially caused by the presence of the defendant." *Conklin*, 444 N.W.2d at 272, 274. General anxiety does not justify infringing the defendant's confrontation right. *See Craig*, 497 U.S. at 856 (noting trauma must not arise from testifying in the courtroom generally and must be more than de minimis); *see also Conklin*, 444 N.W.2d at 274 (requiring more than mere nervousness).

The state moved the district court to allow AK to testify in a manner that would allow Kruse to see and hear AK's testimony and to communicate with defense counsel but that would not require AK to see or hear Kruse. The district court granted the motion in a

written order.² As support for its order, the district court found that during AK’s forensic interview, he “was clearly intelligent, able to communicate clearly and willing to communicate about topics that he was comfortable with.” However, AK’s “willingness to participate in the interview quickly deteriorated” when the interviewer asked about Kruse’s sexual abuse.

The district court found that AK’s counselor had diagnosed him with generalized anxiety disorder, PTSD, and neglect. The district court summarized AK’s counselor’s testimony regarding his PTSD as follows:

[T]he experience was on the forefront of [AK’s] mind, [AK] experienced strong feelings of guilt for putting his father in jail, and he was quick to move into a flight response when asked about the abuse. She also stated [AK] demonstrated guilt, anger, and shame, had irritable behavior, low frustration tolerance and displayed verbal or physical aggression. She explained that [AK] held a scissors to his neck at school and once it was taken away responded by saying “what kind of kid puts their dad in jail.” She also reported that [AK] has threatened to throw a brick at the school counselor and jump off the balcony and staircase. [She] stated that if [AK] was to be re-exposed to the trauma that led to his PTSD, he could regress. Finally, she recommended that [AK] be reintegrated slowly to avoid being overstimulated or overwhelmed. Slow reintegration includes avoiding large groups of people. Regression and overstimulation would cause a return of his

² The state also moved the district court to allow AK’s testimony to be taken in a room other than the courtroom and that AK’s testimony be recorded for the jury to view. See Minn. Stat. § 595.02, subd. 4(a)(2) (authorizing the district court to “order that the testimony of the child be taken in a room other than the courtroom . . . to minimize the trauma to the child of testifying in the courtroom setting and, where necessary, to provide a setting more amenable to securing the child witness’s uninhibited, truthful testimony”). The district court granted the first part of the motion, but it denied the second part, ruling that AK would “be allowed to testify from a secondary courtroom in the same courthouse with a live Zoom video feed to the primary courtroom.”

symptoms (flight response, physical and/or verbal aggression, overwhelming guilty feelings, anger, and shame).

Based on the testimony of AK's counselor, AK's alleged statements "showing feelings of intense guilt for his father getting in trouble," and AK's "significant risk of regression if required to testify in the courtroom with the full jury, counsel, court staff and [Kruse]," the district court expressly found that it was "necessary to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony." See Minn. Stat. § 595.02, subd. 4(a)(2). And the district court expressly found that based on AK's diagnoses, including, but not limited to, PTSD, and AK's "apparent significant and extreme struggle" with feelings of guilt and self-hatred for getting his dad in trouble, Kruse's "presence in the same room as [AK] would psychologically traumatize [AK] so as to render [AK] unavailable to testify." See Minn. Stat. § 595.02, subd. 4(c).

Kruse's Arguments

Kruse argues that the district court's findings "were insufficient . . . to invoke the procedure of section 595.02, subdivision 4(c), and denied [his] right to confront the witness against him." Specifically, Kruse argues that the district court did not make a finding that Kruse's presence during AK's testimony would psychologically traumatize AK so as to render him unavailable to testify. Kruse also argues that the district court did not find that AK would be traumatized because of Kruse's presence, as opposed to testifying in the courtroom generally. But the district court's memorandum supporting its ruling expressly states that the "facts meet the threshold findings" for section 595.02, subdivision 4 and that

Kruse’s “presence in the same room as [AK] would psychologically traumatize [AK] so as to render [AK] unavailable to testify.”

Kruse argues that the district court’s reliance on the need to prevent or minimize the possibility that AK would regress or experience trauma while testifying in Kruse’s presence was insufficient to show that it was Kruse’s presence that would traumatize AK and render him unavailable to testify. Kruse complains that “the [district] court’s findings nowhere discuss how Kruse’s presence in the courtroom would psychologically traumatize AK.” In a similar vein, Kruse argues that because the district court did not specifically find that AK would be traumatized by Kruse’s mere presence while AK testified, the court did not make the necessary finding that any emotional distress suffered by AK as a result of Kruse’s presence would have been “more than de minimis.” *Craig*, 497 U.S. at 856; *see Conklin*, 444 N.W.2d at 274.

Kruse further argues that the record does not support the necessary statutory findings because AK’s diagnoses “are premised on the abuse and neglect that AK experienced while living with Kruse” and do not address “whether AK would be psychologically traumatized by having to testify in Kruse’s presence.” He argues that AK’s counselor’s testimony regarding what could happen to a child of AK’s age if “re-exposed to the offending trauma that led to the post-traumatic stress disorder” fails to address what would likely happen if AK were required to testify in Kruse’s presence. In sum, Kruse argues that “nothing in the record supports the [district] court’s finding that Kruse’s presence would ‘psychologically traumatize’ AK ‘so as to render [him]unavailable to testify.’”

As to the potential impact of Kruse's presence on AK, the record established that as a young child, AK was forced to allow his father to masturbate him and to perform oral sex on him. AK was also forced to perform oral sex on his father and to simulate anal penetration of his father. Finally, AK was forced to use marijuana and methamphetamine with his father. AK went to great lengths to escape the abuse and refused police efforts to return him to his father's home. AK ultimately was removed from his father's care after disclosing the abuse.³

The record also established that Kruse's abuse led to AK's diagnoses of generalized anxiety disorder, PTSD, and neglect. AK experienced immense guilt for getting Kruse in trouble, evidenced by an incident at school where he held scissors to his neck and stated, "[W]hat kind of kid puts their dad in jail." And AK's counselor testified that if AK was re-exposed to the source of his PTSD, he could "regress" and resume exhibiting PTSD symptoms, including flight response, physical and/or verbal aggression, overwhelming guilty feelings, anger, and shame.⁴

Moreover, the record established that during AK's forensic interview, he stated that he wanted to talk to his family so "long as [Kruse] [was] not there" because he feared Kruse

³ We note that AK used extremely graphic, age-inappropriate language to describe the sexual acts that Kruse forced on him. We have not quoted that language in this opinion. But AK's descriptions are disturbing and reasonably suggest that any contact with Kruse would be traumatic for AK.

⁴ The counselor acknowledged that at the time of her testimony, she had not seen AK in eight months. Nonetheless, she testified generally to the possibility of regression given AK's diagnoses and background. As the factfinder, the district court was entrusted to weigh that evidence, and its reliance on the counselor's opinion despite her lack of recent contact with AK is not a basis to set aside the district court's related findings.

would “be very mad” at him and that his punishment would be “big time.” AK pleaded with the forensic interviewer not to ask him about the abuse, attempted twice to stop the forensic interview, and ultimately did so by walking out of the room. Finally, Kruse’s abuse of AK caused him to run away from home at the age of 10 in an attempt to reach Mitchell, South Dakota, to ask strangers for a ride, and to lie to police to avoid being returned to Kruse.

This record supports the district court’s finding that Kruse’s “presence in the same room as [AK] would psychologically traumatize [AK] so as to render [AK] unavailable to testify.”

Kruse also argues that AK’s prior incidents of “fleeing” when discussing his abuse occurred when Kruse was not present and that, therefore, “it was not Kruse’s presence that inhibited AK from further discussing his abuse, it, presumably, was the nature of the subject matter itself.” Therefore, Kruse argues that “the evidence that AK ‘fled’ when Kruse was *not* present necessarily failed . . . to show [that] Kruse’s ‘presence’” would render “AK ‘unavailable to testify.’” But an equally plausible interpretation of the record—and one that is consistent with the district court’s ruling—is that AK had a difficult enough time discussing the abuse without Kruse present and that Kruse’s presence during AK’s testimony regarding the abuse would exacerbate that difficulty.

In sum, the record is sufficient to show that Kruse’s presence would have caused AK to be psychologically traumatized, that AK’s potential emotional distress would not have been de minimis, and that the trauma likely would have rendered AK “unavailable to testify.” Minn. Stat. § 595.02, subd. 4(c). Thus, Kruse fails to show that the district court’s

order allowing AK to testify outside of Kruse’s presence violated Kruse’s constitutional right to face-to-face confrontation. Instead, the district court’s order protected the psychological wellbeing of a young sexual-assault victim, which justified the infringement of Kruse’s right to face-to-face confrontation, without compromising Kruse’s ability to cross-examine AK.⁵ Because the lack of face-to-face confrontation was not error, we do not address the parties’ arguments regarding whether the alleged error was harmless. See *Conklin*, 444 N.W.2d at 275 (stating that infringement of confrontation rights is subject to a harmless-error analysis).

Affirmed.

⁵ “The combined effect of these elements of confrontation—physical presence, oath, cross-examination, and observation of demeanor by the trier of fact—serves the purposes of the Confrontation Clause by ensuring that evidence admitted against an accused is reliable and subject to the rigorous adversarial testing that is the norm of Anglo–American criminal proceedings.” *Craig*, 497 U.S. at 846.