

STATE OF MINNESOTA

IN SUPREME COURT

A25-0709

Hennepin County

Moore, III, J.

State of Minnesota,

Respondent,

vs.

Filed: September 16, 2026
Office of Appellate Courts

Derrick Lamon Johnson,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Britta Nicholson, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

Andrew C. Wilson, Wilson & Clas, Minneapolis, Minnesota, for appellant.

S Y L L A B U S

1. The district court did not abuse its discretion by excluding hearsay from a co-defendant's cellmate under Minn. R. Evid. 804 because the appellant did not establish the co-defendant was a legally unavailable witness.

2. The district court did not abuse its discretion by excluding evidence of Facebook interactions between the victim and a third party under Minn. R. Evid. 403

because the evidence's minimal probative value was substantially outweighed by the risk of confusing the jury by suggesting that the third party was an alternative perpetrator.

3. The district court did not abuse its discretion by denying the appellant's motion for a mistrial after a witness referenced a sexual relationship between the appellant and a minor.

Affirmed.

O P I N I O N

MOORE, III, Justice.

Appellant Derrick Johnson was convicted of first-degree premeditated murder for the drive-by shooting of Stevi Palacio. Johnson appeals, seeking a new trial on the grounds that the district court abused its discretion by excluding two pieces of evidence and by denying his motion for a mistrial. Because the district court did not abuse its discretion by making these rulings, we affirm.

F A C T S

A Hennepin County grand jury indicted Johnson for first-degree premeditated murder and first-degree intentional murder committed during a drive-by shooting. *See* Minn. Stat. § 609.185(a)(1), (3). Johnson pleaded not guilty, and the case proceeded to a jury trial.

*The Murder*¹

During the summer of 2023, Johnson was selling drugs. He kept the money he earned from sales in his apartment. In mid-July, on the morning after an incident in which Johnson had overdosed, he noticed that drugs and money were missing from his apartment. Johnson accused Palacio, one of the people who had been at his apartment that morning, of stealing from him.

A few days after the overdose, Johnson had D.C. and Tremaine Bucholz over at his apartment. Johnson asked if D.C., for \$10,000, would “get rid of” Palacio and another person Johnson believed to have been involved with stealing his money and drugs. D.C. refused, but Bucholz offered to kill them “for free.”

Palacio learned that Johnson believed she stole from him and that Johnson wanted to kill her. She denied any involvement in the theft. On July 31, Palacio messaged a friend that she was afraid she would not live through the night because “[t]here [was] a hood bounty on [her] head.”

The night of August 8, Johnson had Bucholz and several other people over at his apartment. Johnson and Bucholz left the apartment at one point. Around midnight, Johnson’s conversion van pulled up alongside Palacio while she was walking down a sidewalk in north Minneapolis. Someone fired several shots out of the passenger window at Palacio and killed her. Johnson and Bucholz returned to the apartment about five

¹ The evidence in Johnson’s trial was voluminous. We do not summarize it all here but instead summarize the relevant portions of the record that provide background for the issues on appeal.

minutes after midnight. It takes about three minutes to drive from the scene of the murder to Johnson's apartment.

After an investigation into Palacio's death—including a review of evidence from the crime scene, surveillance footage from the crime scene and Johnson's apartment building, and bullet casings and fingerprints from Johnson's conversion van—law enforcement identified Bucholz and Johnson as suspects. Law enforcement arrested Bucholz. They collected his cell phone and found a text conversation between Bucholz and a contact saved in his phone as "CEO" several days before Palacio died. Bucholz sent CEO photos of himself holding a Glock handgun, and CEO responded, "Damn bro youve [sic] always wanted a 10 mili." During the investigation into the murder, a firearms examiner determined that discharged cartridge casings recovered from the crime scene and Johnson's van were fired from a 10 mm Glock handgun.

Johnson fled to Texas. While there, Johnson told the person he was staying with that he was "on the run." He also admitted to that person that he was driving Bucholz when Bucholz shot Palacio. Johnson explained that he targeted Palacio because he believed she played a part in stealing his money and drugs. When local law enforcement arrested him, Johnson told the arresting officer—unprompted—that Minneapolis police would be coming to get him and that he would "get life."

Trial Proceedings

Among the issues litigated in the case, three of the district court's rulings are relevant to this appeal: two evidentiary rulings and a motion for mistrial.

The first evidentiary issue arose before trial. In a pretrial motion in limine, Johnson sought to introduce testimony from Bucholz’s cellmate who would purportedly testify that Bucholz admitted to shooting Palacio while CEO drove the conversion van and Johnson drove in a different vehicle. Johnson’s counsel expressly stated they were not introducing this evidence to assert an alternative perpetrator defense. Johnson’s counsel explained that they could not identify CEO, but because CEO was not Johnson, this evidence would support the presumption that Johnson was innocent. Johnson’s counsel argued that the cellmate’s testimony was admissible as a statement against Bucholz’s interest—a hearsay exception if Bucholz was unavailable as a witness. *See* Minn. R. Evid. 804(b)(3).² Bucholz was in prison after being convicted of first-degree murder for Palacio’s death, but the time to appeal had not elapsed.³ Johnson’s counsel

² Under Minnesota Rule of Evidence 804(b)(3), a statement against interest is “not excluded by the hearsay rule if the declarant is unavailable as a witness.” A statement against interest is:

A statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true.

Minn. R. Evid. 804(b)(3). Additionally, “[a] statement tending to expose the declarant to criminal liability and offered in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.” *Id.*

³ Bucholz was convicted in December 2024 and had 90 days to appeal his conviction. *See* Minn. R. Crim. P. 29.03, subd. 3 (“An appeal by a defendant from a final judgment of conviction of first-degree murder must be filed within 90 days after the final judgment.”). Johnson’s trial occurred during that period of time, in January 2025.

represented that they had tried to contact Bucholz's trial lawyer about whether Bucholz would testify, but they did not receive a response. Johnson's counsel did not subpoena Bucholz or seek a writ to transport him to court. The district court denied Johnson's motion to introduce the cellmate's testimony as a statement against interest because Johnson failed to show that Bucholz was unavailable to testify or would be unavailable if called.

The second evidentiary issue arose during trial. Johnson sought to admit evidence of Facebook interactions between Palacio and a person with the initials "D.G." These interactions included missed calls between the two and a message that D.G. sent Palacio on August 8 saying, "I want my money today. I'm not playing with you Stevi. Yep. Don't answer and when I see you, though, I'm not talking." Johnson asserted he was not offering the evidence to present D.G. as an alternative perpetrator—that is, as the individual responsible for shooting Palacio—but rather for the purpose of casting doubt on the State's theory that Johnson had a hood bounty on Palacio. The district court ruled that evidence of Facebook messages between Palacio and D.G. was inadmissible under Minn. R. Evid. 403 because any potential probative value was outweighed by the danger of prejudice and confusing the jury about whether D.G. was an alternative perpetrator.

Lastly, as relevant to this appeal, Johnson moved during trial for a mistrial based on two statements D.C.—the individual whom Johnson initially asked to "get rid of" Palacio—made while testifying. Two times, D.C. alluded to a relationship between Johnson and Bucholz's 14-year-old sister.

During direct examination, the prosecutor asked D.C. what D.C. said when Bucholz offered to kill Palacio for free. D.C. stated, “I just looked at him, man, like this kid’s sad, man. He should be putting the gun to the back of his head for sleeping with his little 14-year-old sister.”⁴ Immediately following D.C.’s statement, the district court held a bench discussion where it offered to instruct the jury to disregard D.C.’s statement, but Johnson declined. During cross-examination, defense counsel asked D.C. to explain the nature of the relationship between Bucholz and his sister, who was identified in the question by her first name rather than as Bucholz’s sibling. D.C. said that she was “the sister/girlfriend of Derrick Johnson, yeah. 14-year-old girl.”

At the end of D.C.’s testimony, the district court instructed the jury that it heard testimony about Johnson’s “alleged conduct ... on separate occasions,” but that Johnson was not being tried for anything other than the charged offenses. As such, the district court instructed the jury that it must not “convict [Johnson] on the basis of any conduct on a separate occasion” from the charged offense.⁵ The jury then left the courtroom, and Johnson moved for a mistrial based on D.C.’s statements. The district court denied the motion.

⁴ D.C. did not explicitly identify who he was referring to with the pronouns in this statement.

⁵ The district court emphasized to the jury that this evidence was “being offered for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged” but was “not to be used to prove the character of the defendant or that the defendant acted in conformity with such character. The defendant is not being tried for and may not be convicted of any offenses other than the charged offenses.”

Verdict and Sentencing

At the conclusion of the trial, the jury found Johnson guilty of both counts of first-degree murder. The district court entered a judgment of conviction on the first count of first-degree premeditated murder and sentenced Johnson to life in prison without the possibility of release. Johnson appeals.

ANALYSIS

Johnson raises three issues on appeal. First, he challenges the district court's decision to exclude testimony that would place CEO, instead of Johnson, in the driver's seat of the conversion van when Palacio was shot. Second, he argues that the district court legally erred or abused its discretion by excluding evidence of Facebook interactions between Palacio and a third party, which alluded to a debt Palacio owed the person. Lastly, he claims the district court abused its discretion by denying his motion for a mistrial when a witness alluded to a sexual relationship between Johnson and a minor. We address each challenge in turn.

I.

We first address Johnson's claim that the district court abused its discretion by excluding testimony from Bucholz's cellmate as inadmissible hearsay. On appeal, Johnson now argues the cellmate's proffered testimony—about Bucholz admitting to shooting Palacio while CEO, not Johnson, drove the conversion van—was admissible as alternative perpetrator evidence, and that he should have been able to argue to the jury that CEO committed the crime because (1) the testimony had an inherent tendency to connect CEO with Palacio's murder, and (2) Bucholz was legally unavailable. But as the

State highlights, Johnson expressly told the district court that he was *not* presenting CEO as an alternative perpetrator. As such, the district court did not make any ruling on whether Johnson could present an alternative perpetrator defense but rather ruled on the admissibility of the evidence as Johnson offered it: as a statement against interest under Minn. R. Evid. 804(b)(3).

Issues not presented to and considered by the district court are generally forfeited. *Steward v. State*, 950 N.W.2d 750, 756 (Minn. 2020); *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But whether Johnson forfeited his alternative perpetrator argument is ultimately irrelevant because it fails on the merits when considering the district court's ruling under Minn. R. Evid. 804(b)(3).

Evidence offered in support of an alternative perpetrator defense must be admissible under the rules of evidence. *State v. Woodard*, 942 N.W.2d 137, 142 (Minn. 2020). We review a district court's evidentiary rulings for an abuse of discretion. *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). A criminal defendant "has the constitutional right to present a complete defense," which "includes the right to present evidence showing that an alternative perpetrator committed the crime with which the defendant is charged." *Atkinson*, 774 N.W.2d at 589. Even if a district court abused its discretion by excluding evidence of an alternative perpetrator, we will affirm the conviction if the evidentiary decision was harmless beyond a reasonable doubt. *Id.*

Here, the district court excluded the cellmate’s testimony about Bucholz’s admission because it was hearsay that did not meet the exception for statements against interest. 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). Generally, hearsay is not admissible unless an exception applies. Minn. R. Evid. 802. One such exception is for a statement that is against the declarant’s “pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, ... that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true.” Minn. R. Evid. 804(b)(3). But “[i]n order for the statement against penal interest hearsay exception to be applicable, the quoted witness must be unavailable.” *State v. Ford*, 539 N.W.2d 214, 227 (Minn. 1995); accord Minn. R. Evid. 804(b) (stating that the exceptions to the hearsay rule apply only if “the declarant is unavailable as a witness”). The rules of evidence define five types of unavailability, but only one is implicated here, which is that the declarant “is absent from the hearing and the proponent of a statement has been unable to procure the declarant’s ... attendance or testimony ... by process or other reasonable means.” Minn. R. Evid. 804(a)(5).

We have not previously defined what “reasonable means” are in the context of Rule 804(a)(5). Yet in other contexts, we have said that a witness is not unavailable unless counsel “made a good-faith effort to obtain his presence at trial.” *State v. Trifiletti*, 6 N.W.3d 79, 91 (Minn. 2024) (citation omitted) (internal quotation marks omitted). To make a good-faith effort, counsel need not “exhaust every avenue of inquiry, no matter

how unpromising,” but they must “exhaust some avenues.” *Id.* at 92 (citation omitted) (internal quotation marks omitted). It is undisputed that the cellmate’s testimony about Bucholz’s alleged statement against his penal interest would be hearsay. The issue is whether the district court abused its discretion by excluding that hearsay because Bucholz’s attendance or testimony at trial could not be achieved “by process or other reasonable means.”

Here, Johnson’s counsel made only one attempt to contact Bucholz’s trial counsel. When Bucholz’s counsel did not respond, Johnson’s counsel did not follow up. Nor did Johnson’s counsel attempt to secure Bucholz’s attendance or testimony at trial through a subpoena or writ. One unanswered attempt to contact Bucholz’s attorney does not demonstrate that defense counsel exhausted any—much less multiple—avenues for securing Bucholz’s attendance or testimony at trial. It therefore fails to establish Bucholz’s unavailability under Rule 804(a)(5).

Johnson’s arguments to the contrary are not persuasive. He argues that other means of attempting to secure Bucholz’s testimony—such as contacting Bucholz directly or compelling his attendance only for Bucholz to refuse to testify—would be unethical and unpromising. But direct communication with Bucholz was not necessary to secure his appearance. Johnson’s counsel could have subpoenaed Bucholz or sought a writ for his transport to trial. And even if it is likely Bucholz would have refused to testify, he would not have been unavailable on that basis unless he actually refused. *See Ford*, 539 N.W.2d at 227 (concluding that although “[u]navailability can be established by a witness deciding to invoke his/her Fifth Amendment right against self incrimination,” a defendant

did not establish a witness’s unavailability because the witness “was never asked if he would testify”). Moreover, there is nothing “categorically prohibiting a defendant from calling a right-invoking alternative perpetrator to the witness stand.” *State v. Foster*, 20 N.W.3d 6, 23 (Minn. 2025). Johnson highlights many potential challenges to securing Bucholz’s testimony, but those challenges do not suggest that Johnson was absolved from the requirement to “exhaust some avenues” to demonstrate Bucholz’s unavailability. *See* Minn. R. Evid. 804(a) (placing the burden on “the proponent of a statement” to show a witness’s unavailability); *see also Miles v. State*, 840 N.W.2d 195, 204 (Minn. 2013) (stating that a petitioner for postconviction relief had the burden to prove a witness’s unavailability under Minn. R. Evid. 804(b)(3)).

Based on the foregoing, we conclude that the district court did not abuse its discretion by excluding testimony from Bucholz’s cellmate because Bucholz was not an unavailable witness.

II.

The second issue is whether the district court abused its discretion by excluding evidence of Facebook interactions between Palacio and D.G.⁶ Once again, we review this evidentiary issue for an abuse of discretion. *Atkinson*, 774 N.W.2d at 589.

⁶ Johnson does not directly challenge the district court’s evidentiary ruling but advocates for a new rule distinguishing between what he describes as specific and general alternative perpetrator evidence. But here, the district court did not rule on an alternative perpetrator defense. The district court’s ruling was based on Minn. R. Evid. 403. And even assuming the evidence was offered to support an alternative perpetrator defense, such evidence must nonetheless be admissible under the rules of evidence. *Woodard*,

Here, Johnson sought to introduce a series of missed calls and a message that D.G. sent Palacio on August 8 that said, “I want my money today. I’m not playing with you, Stevi. Yep. Don’t answer and when I see you, though, I’m not talking.” The district court excluded this evidence under Minn. R. Evid. 403 because of the danger of prejudice and confusing the jury.⁷ The rule states that “[a]lthough 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, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403. “Evidence is relevant and has probative value when it, in some degree, advances the inquiry” at hand. *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005). Evidence is prejudicial if it persuades the jury “by illegitimate means, giving one party an unfair advantage.” *Id.*; see also *State v. Cermak*, 365 N.W.2d 243, 247 n.2 (Minn. 1985).

We conclude that the district court did not abuse its discretion by excluding this evidence as more prejudicial than probative. First, evidence of the Facebook interactions between Palacio and D.G. has little probative value, and the series of missed calls have no probative value. The Facebook message suggests that Palacio owed D.G. money hours before her death. Although this evidence could support an inference that D.G. could have

942 N.W.2d at 142. As such, we review the district court’s ruling under Minn. R. Evid. 403.

⁷ Johnson claims we should not consider whether the proffered D.G. evidence satisfies the rules of evidence because “the district court did not reach the question.” This misstates the record. The district court expressly excluded the evidence under Minn. R. Evid. 403.

had a motive to harm Palacio, the message does not suggest D.G. was present when Palacio died, was involved with a plan to kill her, or had any role in her death. The fact that Palacio may have owed D.G. money does little to “advance the inquiry” about who was involved with killing Palacio. *Schulz*, 691 N.W.2d at 478. As such, its probative value in this case was not significant.

Second, we conclude the district court did not abuse its discretion by concluding—under the specific facts of this case—that this evidence risked confusing the jury about whether D.G. was being presented as an alternative perpetrator. *Cf. Atkinson*, 774 N.W.2d at 593 (concluding that social media images offered by the defendant to prove another person’s motive were inadmissible because they had “limited probative value” with respect to motive but had “the potential to mislead and confuse the jury”). At trial, the defense disclaimed any intent to offer this evidence in order to identify D.G. as an alternative perpetrator. But evidence suggesting D.G. had a motive to harm Palacio could confuse the jury about whether the defense was arguing D.G. killed Palacio. And the risk of confusing the jury is a legitimate concern as to the potential for unfair prejudice. *See id.*; *see also Doe 136 v. Liebsch*, 872 N.W.2d 875, 881 (Minn. 2015) (stating that evidence which may confuse the jury causes undue prejudice).

Under the specific facts of this case, we conclude that the district court did not abuse its discretion by excluding evidence of Facebook interactions between D.G. and Palacio because the district court had reason to do so under Minn. R. Evid. 403. Even if another district court may have reached a different conclusion regarding the admissibility of this evidence, that difference does not warrant reversal here. *See State v. Bertsch*, 707

N.W.2d 660, 668 (Minn. 2006) (noting that we do not reverse on the basis that another district court may have made a different sentencing decision that was within the district court’s discretion); *see also State v. Diggins*, 836 N.W.2d 349, 357 (Minn. 2013) (“We defer to the court’s evidentiary rulings because the court stands ‘in the best position to evaluate the prejudicial nature’ of evidence.” (quoting *State v. Mayhorn*, 720 N.W.2d 776, 783 (Minn. 2006))).

III.

Finally, we consider Johnson’s claim that the district court abused its discretion by denying his motion for a mistrial based on D.C.’s testimony at trial referring to an alleged relationship between Johnson and Bucholz’s 14-year-old sister. Specifically, when D.C. was asked about his reaction to Bucholz offering to kill Palacio for free, D.C. said, “I just looked at him, man, like this kid’s sad, man. He should be putting the gun to the back of his head for sleeping with his little 14-year-old sister.” Later, D.C. described a 14-year-old girl as Bucholz’s “sister/girlfriend of Derrick Johnson.”

A district court may grant a motion for a mistrial “only if there is a reasonable probability, in light of the entirety of the trial^[8] including the mitigating effects of a

⁸ Johnson argues that instead of considering the totality of evidence presented at trial, we should consider only the evidence admitted at the time a defendant moves for a mistrial. But Johnson cites no legal authority for this statement and acknowledged at oral argument that he has none. We decline to adopt such an approach, which is contrary to our well-established precedent. *See Griffin*, 887 N.W.2d at 262 (explaining that we consider “the entirety of the trial” to determine if a mistrial should have been granted); *State v. Jaros*, 932 N.W.2d 466, 474 (Minn. 2019) (stating “we examine the entire record” when reviewing the denial of a motion for mistrial).

curative instruction, that the outcome of the trial would have been different had the incident resulting in the motion not occurred.” *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016).⁹ We review the denial of a motion for mistrial for an abuse of discretion. *Id.*; *State v. Bahtuoh*, 840 N.W.2d 804, 819 (Minn. 2013) (noting that we review for abuse of discretion because “the district court is in the best position to evaluate the prejudicial impact, if any, of an event occurring during the trial”).

The State argues that it is not clear whether the jury heard D.C.’s comments or understood them. We have no basis upon which to conclude the jury did not hear D.C.’s statements. The statements are clear in the record, and it would be speculative to assume they were not clear to the jury. But even assuming the jury heard D.C.’s comments and understood that he was referring to a sexual relationship between Johnson and a minor, we agree with the State that there is no reasonable probability that the jury’s verdict would have been different but for the statements.

First, the district court instructed the jury immediately after D.C.’s testimony that it must not find Johnson guilty based on any uncharged conduct. In other words, the

⁹ In his briefing, Johnson argued that the factors outlined in *State v. Cox* govern our review. 322 N.W.2d 555, 559 (Minn. 1982) (describing the factors to consider for a mistrial motion under certain circumstances as “the nature and source of the prejudicial matter, the number of jurors exposed to the influence, the weight of evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice”). But at oral argument, Johnson properly conceded the *Cox* factors do not control. Indeed, we have limited *Cox*’s application to prejudicial material outside of the trial itself; it does not apply to potentially prejudicial witness testimony. *See Jaros*, 932 N.W.2d at 473 (rejecting the application of the *Cox* factors to witness testimony). Accordingly, we do not consider Johnson’s arguments pertaining to the *Cox* factors and instead focus our review on whether, considering the entire record, there is a reasonable probability that D.C.’s testimony affected the verdict.

district court instructed the jury that it could not find Johnson guilty of murdering Palacio based on evidence that he had a sexual relationship with a minor. This instruction mitigates any potential prejudice because “we presume that the jurors followed the district court’s instruction.” *Griffin*, 887 N.W.2d at 262.

Second, the State did not elicit the testimony or reference the testimony in its closing argument. Rather, the State represented, and Johnson does not dispute, that the State took steps to prevent the testimony from coming in by admonishing D.C. on multiple occasions not to reference Johnson’s relationship with Bucholz’s sister. The State did not rely on the testimony at issue to make its case.

Third, and most significantly, there was ample evidence connecting Johnson with the crime. Among other things, the trial record included evidence of Johnson’s motive for killing Palacio (his suspicion that she had stolen from him), statements Johnson made about killing Palacio (asking D.C. to “get rid of” her for \$10,000, admitting to a person in Texas that he drove the van when Bucholz shot Palacio, and acknowledging to police during his arrest that he knew he would “get life” in prison), and evidence placing Johnson at the scene of the crime (leaving the apartment with Bucholz before Palacio’s death and returning minutes later). When considered alongside this evidence of Johnson’s guilt, D.C.’s two references at trial to Johnson’s relationship with Bucholz’s sister were isolated incidents. The jury heard six days of witness testimony, and these statements occupy only a few lines in a trial transcript that spans over 1,900 pages. *See State v. Chavez-Nelson*, 882 N.W.2d 579, 590–91 (Minn. 2016) (determining a district court did not abuse its discretion in denying a mistrial because the problematic testimony was “one

short statement in a lengthy trial that produced over 1,400 pages of transcript,” and “the State’s overall case against [the defendant] was strong”); *Bahtuoh*, 840 N.W.2d at 819 (concluding the district court did not abuse its discretion in denying a motion for mistrial because “the disputed reference was isolated and brief: it was uttered only once during the course of a 4-day trial,” and “the State’s case against [the defendant] was strong”).

Johnson’s arguments to the contrary are not persuasive. The fact that we have recognized that evidence of criminal sexual conduct not charged may be prejudicial, as Johnson highlights, *see State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009), does not necessarily mean that a reference to such conduct creates the reasonable probability that the outcome of the trial would have been different but for that reference. *Cf. State v. Fraga*, 898 N.W.2d 263, 274 (Minn. 2017) (concluding there was no reasonable possibility that the admission of evidence that a defendant sexually abused a child affected the jury’s verdict). For the reasons already stated, on this record, there is no reasonable probability that the jury’s verdict would have been different but for D.C.’s two statements. We conclude that the district court did not abuse its discretion by denying Johnson’s motion for mistrial.¹⁰

In sum, Johnson has failed to demonstrate there is a reasonable probability that the outcome of his trial would have been different but for D.C.’s two references to Johnson’s

¹⁰ Johnson also argues that D.C.’s comments appeared to have been prompted by a desire to prejudice Johnson. Even if that is true, D.C.’s subjective desire to prejudice Johnson does not mean that his two comments did prejudice Johnson, particularly in light of the court’s instruction to the jury that it must only convict Johnson based on the charged conduct and the ample evidence of Johnson’s guilt for the charged offenses.

relationship with Bucholz's sister. The district court did not abuse its discretion in denying Johnson's motion for a mistrial.

CONCLUSION

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.