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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0867**

State of Minnesota,
Respondent,

vs.

Kyle Steven Monson,
Appellant.

**Filed May 26, 2026
Affirmed in part, reversed in part, and remanded
Cochran, Judge**

Aitkin County District Court
File No. 01-CR-23-833

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St. Paul, Minnesota; and

James P. Ratz, Aitkin County Attorney, Aitkin, Minnesota (for respondent)

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Considered and decided by Cochran, Presiding Judge; Larkin, Judge; and
Rasmusson, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal from convictions of two counts of first-degree criminal sexual
conduct following a court trial, appellant argues that (1) he is entitled to a new trial because
the district court committed structural error by closing the courtroom during portions of

the trial, (2) the district court abused its discretion by admitting a photograph of a journal entry over his objection, (3) the district court may have abused its discretion by not disclosing certain documents following in camera review, and (4) the district court erred by convicting him of both counts I and III because the offenses are based on the same conduct.

We first conclude that the district court failed to make the findings required to support closure of the courtroom and that remand is necessary for the district court to conduct an evidentiary hearing and make findings regarding the closure of the courtroom. Next, we conclude that appellant has not shown an abuse of discretion by the district court in its evidentiary rulings. We further conclude that the district court did not abuse its discretion by disclosing some, but not all, of the documents that it reviewed in camera. Lastly, we conclude that the district court erred by entering convictions on both counts I and III, requiring vacation of one of the convictions. We therefore affirm in part, reverse in part, and remand.

FACTS

The following facts are drawn from the district court's order and supplemented by evidence at trial as necessary to address the issues on appeal.

Appellant Kyle Steven Monson is the parent of M.V. (the child). For several years, Monson and the child lived in a home with Monson's father. Monson was a single parent to the child. Monson's cousin and his cousin's wife, V.M., assisted with childcare. Around the child's third birthday, V.M. began having concerns about the child's welfare and made

several complaints to child protective services about Monson. After being reported, Monson limited the child's contact with V.M. and her husband for about six months.

A few years later, when the child was five, the child disclosed to V.M. that a teenage boy at a drive-through restaurant had touched her inappropriately. When V.M. told Monson about the incident, Monson responded that he already knew. V.M. reported the incident to police and Monson assisted with the follow-up investigation.

In August of 2023, when the child was eight years old, Monson told his cousin that he found the child watching pornographic movies. He explained that she found the DVDs under his mattress. His cousin told V.M., who was upset that the child had access to the movies and had watched pornography.

On Sunday, November 5, 2023, when the child was staying with Monson's cousin and V.M., the child told V.M. that Monson had touched her inappropriately. The child stated that "it only happened once" and that Monson promised it would not happen again. The child told V.M. that Monson had been rubbing her "like in the movies," which V.M. understood to mean "[m]ovies that have adult content or sex scenes." The child did not expressly say where Monson had touched her, but she made a gesture with her hands—moving them up and down on the front of her body. When she told V.M. about the incident, the child was crying and appeared scared.

Later that day, Monson's cousin and V.M. took the child to the local police station and reported what the child had told V.M. During a police interview that same day, the child twice denied ever being touched inappropriately by Monson. The police called Aitkin

County Health and Human Services (ACHHS), and the agency placed the child into protective custody with V.M. and Monson's cousin.

On November 7, two days after the report to police, the child participated in a forensic interview with an ACHHS social worker. Another social worker who was in training observed the interview. To help the child feel more comfortable, the interviewer and child did some exercises that involved building rapport and labeling body parts on a diagram. During the interview, the child initially said that she had not been touched on her chest or bottom. When asked if she had ever seen a picture of "anyone without their clothes on," the child disclosed that she had seen a "movie box" under her father's mattress when she was making a fort with blankets and that the box showed people without clothes on. When asked what words were on the box, she wrote the word "sex."

A few minutes later, the child explained that she "forgot" to tell the interviewer that her father had touched her "there," which was the reason she came to the interview. She then pointed to the genital region of the anatomical drawing. When the interviewer asked how Monson had touched her, the child made a rubbing motion with her hands. She also rubbed her hand on the arm of a couch to demonstrate how Monson touched her.

During the interview, she provided additional details about what she remembered. The child told the interviewer about an incident that occurred one night during the summer when she was eight years old. According to the child, it was hot that evening and she was sleeping on the floor of Monson's room on a fluffy, dark blue blanket. She recalled that she was sleeping in only her underwear. Monson had been sleeping on the bed but moved down to the floor. The child recalled that Monson then touched the child's pubic region

with his fingers. The child told Monson to stop multiple times and told Monson she did not like it, but Monson continued. The child recalled feeling scared, and assumed Monson was drunk because of his behavior. The child fell asleep when Monson stopped touching her. She also told the interviewer that Monson instructed her not to tell her grandfather, who was living with Monson and the child, about the incident.

On November 8, police applied for and were granted a search warrant for Monson's home. When officers searched the home, they found pornographic DVDs under Monson's mattress and a dark blue blanket in Monson's room. The next day, respondent State of Minnesota charged Monson with one count of first-degree criminal sexual conduct in violation of Minnesota Statutes section 609.342, subdivision 1a(e) (2022) (penetration or sexual contact with person under age 14 where actor is more than 36 months older) (count I); one count of first-degree criminal sexual conduct in violation of section 609.342, subdivision 1a(f) (2022) (sexual penetration or contact with person between the ages of 14 and 16 where actor is 36 months older and in a position of authority) (count II); and one count of criminal sexual conduct in violation of section 609.342, subdivision 1a(g) (2022) (sexual penetration or sexual contact with person under age 16 with whom actor has a significant relationship) (count III).

Several months after Monson was charged, the child wrote an entry in her journal dated June 26, 2024. She was nine years old when she made the entry. In the entry, the child described that her father and grandfather had a box of "sex movies" and "this all started" when her father let her sleep with him. She wrote that she slept on the floor. She also wrote that her father put a pornographic movie on the television in his bedroom and

then made her “touch” and “lick his privates.” The entry also explained that this happened two times. After reading the entry for June 26, V.M. sent an email to police with a copy of the journal page containing the entry.

Trial

Monson waived his right to a jury trial and elected to have a court trial. At the start of trial, the state moved to exclude the public from the trial pursuant to Minnesota Statutes section 631.045 (2022). Counsel explained that the victim was under the age of 18 and stated the closure was “necessary to protect the victim.” The following exchange then took place:

PROSECUTOR: Your Honor, I believe that request is particularly relevant in small towns such as ours where really the victim, the child victim here, can be impacted by a community perception, by knowledge of her case. She’s very young. I would hate to see this sort of thing brought up with her at school or by her peers. And so that’s why the State makes this request.

....

DEFENSE: Your Honor, I wouldn’t actually have any objection to this but for the State at several hearings leading up to this one and actually during this very hearing has mentioned the alleged victim’s name several times. The Defense has made a concerted effort not to do so to protect the alleged victim in this case. But I believe at the December 17 hearing, the State said her full name on the record in a public hearing at least three times, if not more. And the State has said her name again today several times, so I don’t know how this is going to help at this point.

....

PROSECUTOR: It's one thing to know the child's name. It's another thing to know sort of the grisly details of the allegations.

....

DEFENSE: The complaint is public, Your Honor.

THE COURT: Indeed it is. I do have—I do want to make sure that this child is dealt with carefully during the course of this trial. I'm going to grant the motion to exclude spectators from the courtroom. That would be both in the virtual courtroom and in the actual courtroom itself during [the child's] testimony.

The district court later clarified that its ruling excluding spectators also applied while the forensic interview of the child was being played, not solely during the child's testimony.

The child testified at trial that, when she was nine years old, she started living with V.M. and Monson's cousin. She stated that something happened that caused her to move into their house, but she was not "ready" to talk about what happened because it made her "sad." She did agree that she told V.M. and Monson's cousin about what happened, as well as a policeman, and that she talked to "a lady" after she talked to the policeman. The child also testified that she kept a journal. The court admitted a copy of the journal entry received by police, over Monson's objection, after the state established that the child wrote the journal entry. The state also introduced, and the district court received, the video recording of the child's forensic interview. In addition, the state called V.M., Monson's cousin, law enforcement personnel, and the forensic interviewer to testify. These witnesses testified consistently with the facts found by the district court and set forth above.

Monson presented testimony from an ACHHS social worker who observed the child's forensic interview as part of her training. Monson also called one of the child's

teachers as a witness, who testified as to her behavior as a student. Finally, Monson called an expert witness that provided testimony regarding forensic interviews of children generally.

At trial, Monson argued that V.M. directed the child to make the allegations of sexual abuse because V.M. wanted custody of the child. In closing arguments, Monson claimed V.M. “subtly, but deliberately, created her own narrative and worked to control it so all of the professionals in this case searched for evidence to support it.” The state argued that the child’s reports regarding Monson’s sexual conduct were credible and consistent. It noted that the child’s journal entry, her forensic interview, and her disclosures to V.M. were all consistent.

In a detailed order, the district court found Monson guilty of count I and count III, and not guilty of count II. The district court made extensive factual findings to support its conclusion that the state proved beyond a reasonable doubt that Monson was guilty of first-degree criminal sexual conduct under section 609.342, subdivision 1a(e) and subdivision 1a(g). The district court acknowledged that the child “has gotten in trouble at school before for lying,” but it also found the child’s forensic interview was corroborated by the police search of Monson’s home. For example, the child’s description of the location of pornographic materials was corroborated by law enforcement’s discovery of pornographic movies underneath Monson’s mattress during its execution of the search warrant. Law enforcement also found a dark blue blanket in Monson’s room, as described by the child during her forensic interview. Relying on the forensic interview and the child’s journal entry, the district court determined the state proved beyond a reasonable doubt that

Monson engaged in sexual penetration with the child and found Monson guilty of counts I and III.¹ At sentencing, the court entered convictions on counts I and III and sentenced Monson to 144 months' imprisonment on count III.

Monson appeals.

DECISION

Monson raises four arguments on appeal. First, he argues that the district court committed reversible error by excluding spectators from the courtroom during portions of the trial. Next, he contends the district court abused its discretion by admitting a photograph of a single page of the child's journal over his objection. Third, he argues that the district court may have abused its discretion during its in camera review of ACHHS records. Lastly, he argues that the district court erred by convicting him on both counts I and III for the same conduct. We consider each argument in turn.

I. The district court erred by closing the courtroom without holding an evidentiary hearing and making the required findings.

Monson argues that the district court deprived him "of his constitutional right to a public trial" by excluding the public from portions of the trial. He argues that the error was structural, requiring a new trial. The state concedes that the district court failed to follow the proper procedure when it decided to close the courtroom but contends that the appropriate remedy under existing precedent is to remand for an evidentiary hearing and

¹ The district court concluded that the state did not prove count II beyond a reasonable doubt because the record indicated that the child was eight years old at the time the conduct occurred. But Minnesota Statutes section 609.342, subdivision 1a(f), requires that a complainant be "at least 14 years of age but less than 16 years of age." Minn. Stat. § 609.342, subd. 1a(f).

to allow the district court to make findings on whether the closure was justified under the circumstances. We agree with the state.

The right to a public trial is guaranteed by the United States and Minnesota Constitutions. *State v. Bell*, 993 N.W.2d 418, 422 (Minn. 2023) (citing U.S. Const. amend. VI; Minn. Const. art. I, § 6). But “[t]he right to a public trial is not absolute.” *Id.* at 423. A public trial may be limited “if there is an overriding interest that is likely to be prejudiced if the public is allowed in the courtroom without any limitations.” *Id.* at 424 (citing *Waller v. Georgia*, 467 U.S. 39, 48 (1984)). Even then, courtroom “restrictions are not constitutional unless (1) the restrictions are no broader than necessary to protect the overriding interest and (2) the district court considered reasonable alternatives to closure.” *Id.* at 425 (citing *Waller*, 467 U.S. at 48). Additionally, to impose restrictions, the “district court must make specific and detailed findings identifying the overriding interest requiring the closure, disclosing that the district court considered reasonable alternatives to closure and explaining why the limitations adopted were no broader than necessary to serve the interest that prompted the closure.” *Id.* These findings are known as the *Waller* factors. *State v. Fageroos*, 531 N.W.2d 199, 201-02 (Minn. 1995) (citing *Waller*, 467 U.S. at 48).

“One recognized overriding interest is safeguarding the physical and psychological well-being of a minor.” *Id.* at 202 (quotation omitted). The legislature has recognized this interest in statute. Minn. Stat. § 631.045. In a trial involving allegations of criminal sexual conduct against a minor under 18 years of age, a judge “may exclude the public from the courtroom during the victim’s testimony or during all or part of the remainder of the trial upon a showing that closure is necessary to protect a witness or ensure fairness in the trial.”

Id. The statute also provides that the district court “shall give the prosecutor, defendant and members of the public the opportunity to object to the closure before a closure order.”

Id. And, “the judge shall specify the reasons for closure in an order closing all or part of the trial.” *Id.* But, because constitutional rights are at stake, the district court must also expressly make each of the *Waller* findings if it decides to close the courtroom under section 631.045. *Fageroos*, 531 N.W.2d at 202. These findings are required to ensure that any closure is necessary to address an overriding interest, is no broader than necessary, and was made after considering alternatives. *Bell*, 993 N.W.2d at 425.

We review a district court’s closure decision to determine if the district court made sufficient findings on the *Waller* factors to pass constitutional muster. *See Fageroos*, 531 N.W.2d at 201. Here, the record shows that the district court did not make the necessary findings. The district court simply stated that it wanted “to make sure that this child is dealt with carefully.” Because the district court did not make findings on the *Waller* factors, the district court erred in closing the courtroom for a portion of the trial.

The question before us then is, what is the appropriate remedy? We recognize that “[u]njustified or overbroad closure of a trial is structural error and not subject to harmless error review.” *Bell*, 993 N.W.2d at 428. But we are not persuaded that the new trial requested by Monson is the appropriate remedy here because it is unclear that the closure of the courtroom during the child’s testimony and the playing of the forensic interview was unjustified or overbroad. In *Fageroos*, the Minnesota Supreme Court addressed a similar situation. 531 N.W.2d at 201. In that case, the supreme court concluded that the proper remedy was to remand to the district court for an evidentiary hearing and to allow the

district court to make findings regarding the *Waller* factors. *Id.* at 203. The supreme court reasoned that the county attorney should be given an opportunity to establish that closure was necessary. *Id.* And, “[i]f the county attorney is unable to do so, then [the] defendant is entitled to a new trial.” *Id.*

We conclude that the same remedy is appropriate here. The district court did not hold an evidentiary hearing on the state’s request for a closure. As in *Fageroos*, the state should be given an opportunity at an evidentiary hearing to establish that closing of the courtroom during the victim’s testimony and during the playing of the forensic interview was justified, no broader than necessary, and that there was no reasonable alternative. We are not persuaded by Monson’s contention that “[s]uch a hearing would be pointless in this case” because the state’s proffered reasons for closure of the courtroom are moot. One reason proffered by the state was the impact on the child. And, in determining whether a courtroom closure is necessary to protect the welfare of the child, the supreme court has instructed that the district court shall consider “the minor victim’s age, psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of parents and relatives.” *Id.* at 202. By remanding this matter to the district court for an evidentiary hearing, the district court may properly assess these factors in determining the potential impact on the child. We are not able to make the determination based on the record before us.

We therefore reverse and remand to the district court for an evidentiary hearing and for the district court to make findings on the *Waller* factors. We note that if the district court determines, based on the *Waller* factors, that closure during the child’s testimony and

the playing of the forensic interview passes constitutional muster, then the district court may sustain the verdict. But, if the district court instead determines that it should not have closed the courtroom during either the child's testimony or the playing of the forensic interview, then we direct the district court to vacate Monson's convictions and hold a new trial.

II. The district court did not abuse its discretion by admitting the journal page.

Next, Monson argues that he is entitled to a new trial because the district court abused its discretion by admitting a "photograph of a single page of [the child's] multi-page journal describing how she was sexually abused, without requiring the state to produce the complete original journal." The state responds that the district court acted within its discretion when it received the journal page at trial because there is no evidence the state had possession of any other portion of the child's journal and the child authenticated the entry. We agree with the state.

At trial, the deputy testified that V.M. sent him an email with a copy of a page from the child's journal "detailing the allegations that had already been made." The child confirmed at trial that she wrote the words on the page that the deputy received from V.M. When the state moved to admit the journal entry into evidence, Monson objected based on lack of foundation because the exhibit was a duplicate and not the original. The district court overruled the objection, concluding the child's testimony laid the necessary foundation. After the exhibit was received, Monson asserted that admission of the single page of the journal also violated Minnesota Rule of Evidence 1002. Monson noted that he had never received the entire journal and argued that a single page should not be admitted

without the rest of the journal. But importantly, Monson did not allege that the state had possession of the journal itself or copies of any other parts of the journal. The district court noted Monson’s objection for the record.

We review a district court’s evidentiary rulings for an abuse of discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). “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. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). The appellant has the burden to demonstrate an abuse of discretion by the district court in its admission of evidence. *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024). And “[w]e generally will not reverse a verdict even when improper evidence is presented to the jury unless there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Id.* (quotation omitted).

Monson argues that the district court abused its discretion by admitting the journal entry because admission of the journal entry was contrary to rule 1002—the best-evidence rule. Under the best-evidence rule, the original is required to prove the contents of “a writing” unless an exception applies. Minn. R. Evid. 1002. One such exception is set forth in rule 1003, which states that “[a] duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.” Minn. R. Evid. 1003.

On appeal, Monson does not contest the authenticity of the duplicate that was admitted into evidence. Instead, he argues that it was unfair to admit the journal entry

without the remainder of the journal. He contends that the entire journal was necessary for the trier of fact to assess the credibility of and weight to afford to the child's written statements, and, without the entire journal, the district court should not have admitted the single page. But Monson points to no evidence that the state ever had possession of the entire journal. Instead, the testimony at trial establishes that V.M. sent a picture of a single page of the child's journal containing the journal entry in question to the testifying officer. And based on our review of the record, there is no indication that any other portion of the journal was provided to the state or that Monson ever sought a court order to obtain the journal from the child. Consequently, Monson has not demonstrated that it was unfair to admit the journal entry under the circumstances presented to the district court.

Monson also relies on Minnesota Rule of Evidence 106 to argue that the district court abused its discretion. Rule 106 provides that “[w]hen 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 . . . which ought in fairness to be considered contemporaneously with it.” Minn. R. Evid. 106. Monson's reliance on this rule is similarly unavailing. First, Monson did not cite to rule 106 when he raised an objection in district court. Consequently, this argument is forfeited. *State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018) (“A defendant's objection to the admission of evidence preserves review only for the stated basis for the objection or a basis apparent from the context of the objection.”). Even so, as discussed above, fairness did not require introduction of the entire journal at the time the single page was introduced because there is no evidence that the state had the remainder of the journal in its possession and Monson did not seek to compel

discovery of the journal from the child prior to trial. *See* Minn. R. Crim. P. 22.01, subd. 2(a) (permitting a party to obtain a subpoena to “command a person to produce books, papers, documents, or other designated objects”). Monson has not shown an abuse of discretion based on rule 106.

For these reasons, we conclude that the district court did not abuse its discretion by admitting the journal entry.

III. The district court did not abuse its discretion by ordering disclosure of some, but not all, of the confidential records in the ACHHS file.

Prior to trial, Monson requested an order from the district court requiring the state to disclose confidential records from the ACHHS file. After reviewing the ACHHS file in camera, the district court ordered disclosure of some, but not all, of the ACHHS file records. The district court ordered disclosure of approximately 100 pages, which the district court determined were relevant to Monson’s defense. The disclosure was subject to a protective order. The district court also concluded that the remaining 500 or so pages of the ACHHS file, which includes additional ACHHS case file records as well as therapy and medical records, were not subject to disclosure under the applicable legal standards.

Following the district court’s ruling, Monson renewed his request for the disclosure of additional ACHHS records. In response, the district court ordered the state to disclose additional records including ACHHS reports of forensic interviews with the child and records of electronic communications between V.M. and the Aitkin County Sheriff’s Office, but concluded that the remaining pages from the ACHHS file were not subject to disclosure.

Monson now requests that this court conduct its own in camera review of the undisclosed confidential records to determine whether the district court abused its discretion by failing to disclose additional records from the ACHHS file. The state appears to argue that such a review is not necessary.

Criminal defendants have a broad right to discovery to prepare for trial, but a request to discover confidential records requires a district court to balance this right against a victim's right to privacy. *State v. Paradee*, 403 N.W.2d 640, 642 (Minn. 1987). Appellate courts “review the limits placed by the district court on the release and use of protected records for an abuse of discretion.” *State v. Hokanson*, 821 N.W.2d 340, 349 (Minn. 2012). A district court abuses its discretion when its decision is contrary to law or is “against logic and the facts in the record.” *Hallmark*, 927 N.W.2d at 291 (quotation omitted).

While Monson does not explain how the district court may have abused its discretion, an appellant in a criminal matter is not required to demonstrate an abuse of discretion by the district court to be entitled to a subsequent in camera review by an appellate court. *See Hokanson*, 821 N.W.2d at 349-50 (conducting in camera review on appeal of confidential social services documents previously reviewed in camera by district court without requiring appellant to claim that district court abused its discretion). Requiring an appellant to claim or demonstrate an abuse of discretion by the district court would impose an impossible burden on the appellant because the appellant has not had the opportunity to view the undisclosed documents in question—only the state and district court have reviewed the documents. Therefore, we conclude that it is appropriate for us to

review the undisclosed documents in camera to determine whether the district court properly exercised its discretion by ordering the release of only a portion of the documents.

Having reviewed the undisclosed confidential documents in the ACHHS file, we discern no abuse of discretion by the district court in its decision not to disclose additional records. We reach this conclusion because the undisclosed documents are either: (1) not relevant, (2) cumulative of the disclosed documents, or (3) privileged and not subject to disclosure. First, the district court properly declined to disclose documents in the ACHHS file that are not relevant to Monson because a criminal defendant is not entitled to discovery of materials that are irrelevant. *Id.* at 350 (concluding that the district court did not abuse its discretion where it did not disclose documents which were irrelevant). Second, with regard to the cumulative documents, caselaw establishes that a district court does not abuse its discretion when, following in camera review, it withholds documents which are “duplicative.” *Id.* Third, the district court did not abuse its discretion by not ordering the disclosure of documents containing information from mental health and medical providers in the ACHHS file because caselaw establishes that such information is privileged under Minnesota Statutes section 595.02, subdivision 1(d) and (g) (2024), and not subject to disclosure by the district court without the consent of the patient, absent a statutory exception. *See State v. Ramirez*, 985 N.W.2d 581, 585-87 (Minn. App. 2023) (holding that a district court may not order the production of records protected by Minnesota Statutes section 595.02, subdivision 1(d) and (g) without the consent of the patient, absent an express statutory exception), *rev. granted* (Minn. Mar. 14, 2023) *and appeal dismissed* (Minn. July 31, 2023). Here, there is no record of consent from the victim, no

statutory exception applies to permit disclosure, and Monson does not allege that he has a constitutionally recognized right to the materials at issue here. We therefore conclude that the district court did not abuse its discretion by declining to disclose the remainder of the documents from the ACHHS file to Monson.

IV. The district court erred by convicting Monson of two counts of criminal sexual conduct.

Lastly, Monson argues that the district court improperly convicted him of two counts of criminal sexual conduct based on the same act or course of conduct, and his conviction for count I must be vacated. The state agrees. Upon review, we concur with the parties.

A defendant “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1 (2022). The supreme court has interpreted section 609.04 to “bar[] multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident.” *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985). We review de novo questions about the application of section 609.04. *State v. Chavarria-Cruz*, 839 N.W.2d 515, 522 (Minn. 2013).

Following the court trial, the district court found Monson guilty of both counts I and III and subsequently convicted him of both counts. Count I alleged Monson violated section 609.342, subdivision 1a(e)—first-degree criminal sexual conduct involving sexual contact or penetration with a victim under 14 years of age and an actor more than 36 months older. Count III alleged Monson violated section 609.342, subdivision 1a(g)—first-degree criminal sexual conduct involving sexual contact or penetration with a victim under

16 years of age and the actor has a significant relationship with the victim. The district court relied on the same act and course of conduct to support both guilty verdicts and convictions—a single act of sexual penetration by Monson. Because the district court convicted Monson of two counts of criminal sexual conduct under different provisions of the same statute and relied on the same act or course of conduct for each count, we conclude the district court erred by entering two convictions. *See State v. Folley*, 438 N.W.2d 372, 373 (Minn. 1989) (holding defendant was improperly convicted of two counts of first-degree criminal sexual conduct “based on the same evidence and the same acts, all of which occurred before complainant turned 13”).

While the record reflects that the district court convicted Monson on both counts I and III, it sentenced Monson only on count III. Accordingly, we conclude that the conviction for count I was entered in error and must be vacated. We therefore reverse and remand so that the district court may vacate Monson’s conviction on count I but leave in place the finding of guilt.

In sum, we affirm the district court’s admission of the journal entry and discern no abuse of discretion on the part of the district court in releasing some, but not all, of the ACHHS records. But we reverse and remand for the district court to conduct an evidentiary hearing and make findings on the *Waller* factors regarding closure of the courtroom and for the district court to vacate the conviction on count I.

Affirmed in part, reversed in part, and remanded.