

*This opinion is nonprecedential except as provided by  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  
A25-1097**

State of Minnesota,  
Respondent,

vs.

Nathan A Wabasha,  
Appellant.

**Filed August 24, 2026  
Affirmed in part, reversed in part, and remanded  
Reilly, Judge\***

Redwood County District Court  
File No. 64-CR-23-446, 64-CR-23-906

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Considered and decided by Ede, Presiding Judge; Worke, Judge; and Reilly, Judge.

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

## NONPRECEDENTIAL OPINION

**REILLY**, Judge

In this direct appeal following the district court’s final judgment of conviction for seven counts of first-degree criminal sexual conduct and one count of third-degree criminal sexual conduct, appellant argues that the district court (1) abused its discretion by admitting the victim’s recorded forensic interviews under Minnesota Rule of Evidence 807; and (2) erred by entering multiple convictions for first-degree criminal sexual conduct, which were included offenses of his conviction for committing multiple acts over an extended period of time. We affirm appellant’s convictions of third-degree criminal sexual conduct and first-degree criminal sexual conduct (multiple acts over time), but we reverse and remand for the district court to vacate appellant’s convictions for counts one through six, which were included in the offense of committing multiple acts over an extended period of time.

### FACTS

In June 2023, when she was no longer living with her father and mother, M.W. told her school social worker that she had been sexually assaulted by her father, appellant Nathan A Wabasha. As a mandated reporter, the social worker informed social services of the allegations. M.W. then participated in a CornerHouse-style forensic interview at Child’s Place.<sup>1</sup> During the interview, M.W. disclosed that, after seeing Wabasha at a local

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<sup>1</sup> “CornerHouse is a private independent agency that interviews victims of alleged child abuse who are referred from child protection and law enforcement.” *State v. Goldenstein*, 505 N.W.2d 332, 337 (Minn. App. 1993), *rev. denied* (Minn. Oct. 19, 1993).

powwow, she went to her uncle's house where Wabasha was living to get money from Wabasha. According to M.W., Wabasha pushed her down on a bed, pulled her pants down, kissed her from her ankles to her waist, and reached under her bra and touched her breasts.

Respondent State of Minnesota charged Wabasha on July 7, 2023, with fourth-degree criminal sexual conduct in file number 64-CR-23-446. M.W. subsequently participated in a second forensic interview at Child's Place in October 2023. During that interview, M.W. disclosed that Wabasha began sexually abusing her when she was five years old and recalled several specific instances of abuse when she was between the ages of five and ten years old. According to M.W., the abuse was "routine," and included oral sex and vaginal penetration. M.W. also stated that Wabasha sometimes made her watch pornography, including child pornography, and recalled an incident when Wabasha inserted a pink sex toy shaped like a penis in her vagina. Finally, M.W. alleged that the last incident of abuse occurred after the powwow in June 2023, when Wabasha put his penis in her vagina when they were in her uncle's basement.

After the October 2023 forensic interview, the state charged Wabasha with seven counts of first-degree criminal sexual conduct in file number 64-CR-23-906. The state also amended the complaint in file number 64-CR-23-446 to third-degree criminal sexual conduct. The two files were later joined for trial.

At trial, the state called M.W. as its first witness. At the beginning of her testimony, M.W., who was almost 18 years old at the time of trial, repeatedly stated that she wanted "to go home," and that she did not want to testify. But when she gained her composure, M.W. testified that she grew up on the Lower Sioux Indian Reservation where she lived

with Wabasha and her mother. M.W. testified that, in June 2023, after going to a powwow, she met Wabasha at her uncle's house to "get money" from Wabasha but claimed that she could not remember what happened next. The prosecutor then asked M.W. about a statement she made during the forensic interviews, to which defense counsel objected because the interviews had not been admitted into evidence. After a lengthy sidebar, in which the prosecutor acknowledged that it "took [M.W.] an hour" to get to the stand, the district court determined that it would allow the prosecutor to ask M.W. "leading questions."

When the prosecutor resumed examining M.W., she claimed that she could not remember many of the details of the sexual abuse she had described in her forensic interviews. But through leading questions, M.W. was able to testify to several times when Wabasha had sexual contact with her, including penetration. Although M.W. sometimes claimed that she could not remember details, she agreed that she told the forensic interviewer more details about the sexual abuse. And M.W. admitted that the abuse was "routine," that Wabasha made her watch pornography, including child pornography, and inserted a "pink shaped penis inside" of her.

During the forensic interviewer's testimony, the state sought to admit the forensic interviews. Over Wabasha's objection, the district court admitted the forensic interviews under Minnesota Rule of Evidence 807. The interviews, which total almost three hours, were then played for the jury.

Wabasha testified in his defense and denied sexually abusing M.W. The jury found Wabasha guilty as charged. The district court entered convictions on all eight counts in

both district court files and imposed a presumptive 201-month prison sentence for count seven of the complaint in file number 64-CR-23-906, and a concurrent presumptive prison sentence of 59 months for the third-degree offense charged in file number 64-CR-23-446. This appeal follows.

## DECISION

### **I. The district court did not abuse its discretion in admitting the forensic interviews under Minnesota Rule of Evidence 807.**

Wabasha argues that the district court abused its discretion by admitting M.W.’s Child’s Place interviews under Minnesota Rule of Evidence 807. Such a ruling is reviewed for an abuse of discretion. *See State v. Fravel*, 34 N.W.3d 309, 319 (Minn. 2026). “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.” *Id.* (quotation omitted). To obtain reversal based on an objected-to evidentiary error that does not implicate a constitutional right, an appellant “must prove that there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016) (quotation omitted).

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). A hearsay statement “is not admissible” unless it fits into an exception to the hearsay rule. Minn. R. Evid. 802. There are many enumerated exceptions to the rule against hearsay. *See, e.g.*, Minn. R. Evid. 801(d), 803-804. And, if a statement

is not covered under a specific hearsay exception, it still may be admitted under the “residual exception” found in Minnesota Rule of Evidence 807.

Wabasha argues that the “forensic interviews were inadmissible under the residual exception to the hearsay rule” and the erroneous admission of the “forensic interviews was prejudicial and requires a new trial.” We disagree. The residual exception to the hearsay rule states:

A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Minn. R. Evid. 807.

To determine whether to admit a hearsay statement under rule 807, the district court conducts a two-step analysis. *State v. Hallmark*, 927 N.W.2d 281, 292 (Minn. 2019). “First, the district court must look at the totality of the circumstances to determine whether the hearsay statement has circumstantial guarantees of trustworthiness.” *Id.* (quotations omitted). Second, it must determine whether requirements (A) through (C) listed in rule 807 are met. *Id.* at 293. If the district court evaluates some, but not all, aspects of rule 807, appellate courts may independently review the record to determine whether the statement at issue is admissible under the rule. *See id.* at 294-97.

Wabasha argues that the forensic interviews were inadmissible under the residual-hearsay exception because (A) “M.W.’s forensic interviews lacked circumstantial

guarantees of trustworthiness”; and (B) “[t]he enumerated requirements of Minn. R. Evid. 807 were not met.” We address these arguments in turn.

***A. Circumstantial Guarantees of Trustworthiness***

When determining whether a statement has circumstantial guarantees of trustworthiness, courts generally consider four factors, known as the *Ortlepp* factors. *Id.* at 292-93; *see also State v. Ortlepp*, 363 N.W.2d 39, 44 (Minn. 1985). These factors are whether (1) there is a Confrontation Clause issue, (2) “the statement is recorded, removing any real dispute about what the declarant said,” (3) “the statement is against the declarant’s penal interest,” and (4) the statement is consistent with other evidence “pointing strongly toward” guilt. *Hallmark*, 927 N.W.2d at 293; *see also Ortlepp*, 363 N.W.2d at 44. But, as the supreme court has explained, since *Ortlepp*, “the *Ortlepp* factors are not exclusive and merely represent an application of the totality of the circumstances approach to satisfy the equivalent circumstantial guarantees of the trustworthiness element of the residual hearsay exception.” *Hallmark*, 927 N.W.2d at 293 (internal quotations and citation omitted).

Since deciding *Ortlepp*, the supreme court has noted additional relevant factors, including whether the statement was made voluntarily; whether it was made under oath and subject to cross-examination; the declarant’s motivation for making the statement, relationship to the parties in the litigation, and personal knowledge of the statement; whether the declarant recanted; whether there is corroborating evidence; and the declarant’s reputation for honesty. *State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn.

2020) (explaining that the *Ortlepp* factors are nonexclusive and are merely meant to represent the totality of the circumstances).

And in *State v. Ahmed*, this court identified relevant factors for evaluating the trustworthiness of statements by children about abuse:

In child-abuse cases, these circumstances include whether the statement was spontaneous, whether the questioner had a preconceived idea of what the child should say, whether the statement was in response to leading questions, whether the child had any apparent motive to fabricate, whether the statements are of the type one would expect a child of that age to fabricate, whether the statement remained consistent over time, and the mental state of the child at the time of the statements.

782 N.W.2d 253, 260 (Minn. App. 2010). This court considered these factors in determining that the district court did not abuse its discretion in admitting testimony from a three-year-old victim's grandmother that the victim told her that the defendant caused his injuries. *Id.* at 260-61.

In the second forensic interview, M.W. disclosed that, when she was five years old, Wabasha put his fingers in her vagina while she was lying next to Wabasha on a couch in their living room. M.W. also recalled two incidents in her parents' bedroom when she was about six years old when Wabasha put his penis in her vagina and was going "like up and down." In addition, M.W. recalled two incidents when she was about eight years old; in one incident, Wabasha put his penis in her vagina and then pulled it out, spit on his penis, and showed her how to move her hands up and down on it. And M.W. claimed that, in the other incident, Wabasha put his penis in her mouth and told her "to act like it's a sucker and don't bite." M.W. further recalled an incident when she was about ten years old, when

Wabasha put his penis in her vagina when she was sleeping in the same bed with her parents and her mother was asleep. Finally, M.W. recalled an incident with a sex toy, and alleged that the last incident of abuse occurred after the powwow in June 2023, when Wabasha put his penis in her vagina when they were in her uncle's basement.

In determining that the forensic interviews were admissible under the residual-hearsay exception, the district court found that the statements were recorded and made to a trained professional. The district court also found that “the initial disclosures were spontaneous and were to open-ended questions.” In addition, the district court found that the statements were made to a professional who “was uncertain of the specifics of the allegations, only that they were general in the nature of sexual assault or sexual touching.” And the district court found that there were “no inconsistencies of what was disclosed,” that M.W.’s “basic story remain[ed] unchanged,” and that there was “nothing about [M.W.’s] mental state, which from the stand and in the video that gives the Court pause that the [s]tatements . . . were not reliable.”

Wabasha argues that the district court erred in admitting the forensic interviews because it “narrowly focus[ed] on the *Ahmed* factors to the exclusion of other, more relevant factors regarding circumstantial guarantees of trustworthiness.” To support his position, Wabasha points out that *Ahmed*, and the cases the court relied on in that case, involved out-of-court-statements made in an uncontrolled environment. Wabasha asserts that, in contrast, the statements here “involved a controlled forensic interview by a professional trained in specific protocols for interviewing children.” Wabasha argues that, because the statements here were made in a controlled environment, the factors set forth in

*Ahmed* “have little bearing on whether an out-of-court statement is trustworthy.” Wabasha contends that the district court, instead, should have focused on the facts that the “interviews were unsworn, uncontested, uncorroborated by physical evidence, and inconsistent with M.W.’s trial testimony.”<sup>2</sup>

Wabasha’s argument is unpersuasive. Wabasha cites no authority stating that the factors set out in *Ahmed* are not relevant for times when the statements were made in a controlled environment. And not all factors have to be met in order to find that a statement is sufficiently trustworthy under the totality-of-the-circumstances test. *See, e.g., Hallmark*, 927 N.W.2d at 293. Rather, the supreme court has emphasized that the totality-of-the-circumstances test “requires a careful balancing of *all relevant circumstances* surrounding the making of the statement,” and the court must “look[] to *all relevant factors* bearing on trustworthiness.” *Id.* 292-93 (emphasis added and quotation omitted).

Based on our review of all the relevant factors, we discern no abuse of discretion in the district court’s determination that M.W.’s statements in the forensic interviews have circumstantial guarantees of trustworthiness. As for the *Ortlepp* factors, there is no Confrontation Clause issue because M.W. testified at trial and was subject to cross-

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<sup>2</sup> The state argues that Wabasha’s argument is not properly before this court because he did not make this specific “argument in the district court.” Indeed, appellate courts generally consider only issues that were presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But as Wabasha points out in his reply brief, “his legal theory has remained the same [throughout this case]: M.W.’s forensic interviews were not admissible under” rule 807. And although Wabasha’s argument on appeal may be more specific, forfeiture does not apply when a party “has simply refined [their] arguments” on appeal. *State v. Woolridge Carter*, 9 N.W.3d 839, 842 n.3 (Minn. 2024). We therefore conclude that Wabasha’s arguments are properly before us.

examination. Nor is there any dispute as to what M.W. said because her statements were recorded. Although the statements were not against M.W.'s penal interests, the statements were consistent with other evidence pointing strongly toward guilt. This evidence consisted of M.W.'s reluctant testimony of multiple instances of sexual abuse. And M.W.'s testimony tended to be corroborated by multiple witnesses and evidence, including evidence that a sex toy described by M.W. was found at Wabasha's house. As a result, the *Ortlepp* factors support the trustworthiness of M.W.'s statements in the forensic interviews.

Similarly, other factors discussed by the supreme court favor the trustworthiness of the statements. See *Vangrevenhof*, 941 N.W.2d at 736. These factors include: (1) the voluntariness of M.W.'s statements; (2) M.W. was subject to cross-examination, despite defense counsel's understandable decision not to vigorously cross-examine M.W.; (3) M.W. was Wabasha's daughter, who testified that she loved her father and showed reluctance to testify against him, but testified that she just wanted the abuse to stop; (4) despite appellant's claim to the contrary, M.W. did not recant her statements, but claimed that she did not remember making some of the statements; and (5) a lack of evidence in the record establishing M.W.'s character for untruthfulness and dishonesty.

Finally, as we addressed above, the district court evaluated the *Ahmed* factors, which this court stated were particularly relevant to child sexual-abuse cases. See *Ahmed*, 782 N.W.2d at 260. In considering these factors, the district court emphasized that the individual who conducted the forensic interviews was an experienced professional who was trained in the CornerHouse style of interviews. And the district court found that the interviewer followed CornerHouse protocol by using drawings and conducting multiple,

recorded, “child led,” interviews. Although there may be factors that weigh against the trustworthiness of the challenged statements, such as the fact that the interviews were unsworn and uncontested, not all factors must be met in order to find that a statement is sufficiently trustworthy under the totality-of-the-circumstances test. *See, e.g., Hallmark*, 927 N.W.2d at 293.

In sum, the district court made thoughtful, detailed findings consistent with the facts in the record. It also considered a multitude of factors established by caselaw. Under these circumstances, Wabasha has not shown that the district court abused its discretion in determining that M.W.’s statements in the forensic interviews had circumstantial guarantees of trustworthiness.

***B. Enumerated Requirements of Rule 807***

Wabasha also contends that the “enumerated requirements of Minn. R. Evid. 807 are not met.” These requirements are that (1) “the statement is offered as evidence of a material fact,” (2) “the statement is more probative on the point for which it is offered than any other evidence” procurable “through reasonable efforts” by the proponent, and (3) the general purpose behind the Minnesota Rules of Evidence and the interests of justice are served by the admission of the statement into evidence. Minn. R. Evid. 807.

The district court found that the statements were offered as “a material fact,” are “more probative than other possible evidence,” and are “consistent” with “M.W.’s testimony.” And the district court found that the admission of the interviews would serve the interests of justice.

Wabasha “agrees that M.W.’s forensic interviews were evidence of facts material to the case.” But Wabasha argues that the second enumerated requirement of rule 807 was not satisfied because “the interviews were not the most probative: M.W.’s testimony was.”

Wabasha’s argument is unpersuasive because, as the state points out, Wabasha’s contention “ignores the fact that the standard is not simply whether the forensic interviews were the ‘most probative’ evidence but rather whether the statements are more probative than any other evidence procurable through reasonable efforts by the State.” Although M.W.’s testimony would generally be more probative of whether she was sexually abused, when the state called her to testify, she was unable or unwilling to recall many details she provided in the forensic interviews. Under these circumstances, the probative value of M.W.’s testimony was diminished. Thus, the forensic interviews were the most probative evidence procurable through reasonable efforts by the state.

Wabasha further argues that the third enumerated requirement of rule 807 was not met because “the majority of the state’s evidence against [him] did not come from M.W.’s live testimony; instead, it came from nearly three hours of forensic interviews, the credibility of which could not be effectively challenged.” But because M.W. testified at trial and was subject to cross-examination, Wabasha had the opportunity to challenge her credibility. The supreme court has also stated that the general purpose of the third enumerated requirement of rule 807 “is to secure fairness and to promote the growth and development of the law of evidence to the end that the truth may be ascertained and the proceedings justly determined.” *Vangrevenhof*, 941 N.W.2d at 739 (quotation omitted). The admission of the forensic interviews satisfied this purpose because, when testifying in

front of her father, M.W. expressed reluctance to testify and claimed she could not remember details of the sexual abuse. Under these circumstances the third enumerated requirement of rule 807 is satisfied. Wabasha has thus not shown that the district court abused its discretion in admitting the forensic interviews under rule 807.

**II. The district court erred by entering convictions on all seven first-degree criminal-sexual-conduct offenses.**

Wabasha argues that the district violated Minn. Stat. § 609.04, subd. 1 (2024), by entering convictions on all seven first-degree criminal-sexual-conduct offenses of which he was found guilty. This argument presents a legal question that we review de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

An offender “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1. An included offense is, among other things, “a crime [that is] necessarily proved if the crime charged were proved.” *Id.*, subd. 1(4). Thus, a district court cannot enter judgments of conviction for “two counts of criminal sexual conduct (different sections of the statute or different subsections) on the basis of the same act or unitary course of conduct.” *State v. Folley*, 438 N.W.2d 372, 373 (Minn. 1989).

Wabasha was charged with seven first-degree criminal-sexual-conduct offenses between January 2012 and June 2023. Counts one through six alleged first-degree criminal sexual conduct—penetration-victim under the age of 16-significant relationship and count seven alleged first-degree criminal sexual conduct—penetration-victim under the age of 16-significant relationship-multiple acts over time. All six individual-acts offenses were alleged to have been committed during the same time frame alleged by the multiple-acts-

over-time offense. After the jury found Wabasha guilty as charged, the district court entered convictions on all seven first-degree criminal-sexual conduct offenses. But the district court sentenced Wabasha only on count seven.

Wabasha argues that, because counts one through six are included in count seven, which involved “multiple acts over an extended period of time,” counts one through six should be vacated. The state “agrees” that counts one through six should be vacated. Indeed, count seven was based on proof that, over an extended period, Wabasha engaged in multiple acts of sexual penetration or sexual contact with a victim under 16 years old while he was in a position of authority. *See* Minn. Stat. § 609.342, subd. 1(h)(iii) (2010). Counts one through six are included offenses because they are based on proof that Wabasha engaged in at least one act of the same conduct during the same time frame that supports the conviction under count seven. *See* Minn. Stat. § 609.342, subd. 1(g) (2010). Because counts one through six consist of the same acts that comprise the multiple-acts count, we agree that they are included offenses of count seven, and the district court erred in entering convictions on counts one through six. *See Folley*, 438 N.W.2d at 373 (holding that the 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”). Accordingly, we leave the jury’s verdicts intact, but we reverse and remand in part for the district court to vacate Wabasha’s convictions for counts one through six. *See id.* (remanding for the district court to vacate one of two convictions of criminal sexual conduct when both were based on the same evidence of the same acts).

**Affirmed in part, reversed in part, and remanded.**