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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1513**

Lance Arnold Kingbird, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 21, 2026
Affirmed
Reilly, Judge***

Beltrami County District Court
File No. 04-CR-14-3347

Zachary A. Longsdorf, Longsdorf Law Firm, PLC, Inver Grove Heights, Minnesota (for appellant)

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

David L. Hanson, Beltrami County Attorney, David P. Frank, Chief Assistant County Attorney, Bemidji, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Harris, Judge; and Reilly, Judge.

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

NONPRECEDENTIAL OPINION

REILLY, Judge

In this postconviction appeal concerning a sexual-abuse victim's alleged recantation of trial testimony, appellant argues that (1) the postconviction court abused its discretion by excluding the victim's out-of-court statements, and the victim's false testimony was sufficient to warrant a new trial; and (2) appellant is entitled to a new trial in the interests of justice. We affirm.

FACTS

A jury found appellant Lance Arnold Kingbird guilty of three counts of first-degree criminal sexual conduct based on allegations that he assaulted his minor daughter, A.L., in three separate incidents. The district court entered judgments of conviction on all three offenses and sentenced Kingbird to 360 months in prison.

During the trial, twelve-year-old A.L. testified to three incidents of sexual penetration by Kingbird: one incident occurred on a road when Kingbird was giving her driving lessons, a second took place on a mattress in the living room while her mother was sleeping next to her, and a third occurred on a couch in the living room.

Kingbird appealed, and we stayed the appeal to allow him to pursue postconviction relief. In his postconviction petition, he alleged ineffective assistance of counsel. After a hearing, the postconviction court denied relief. We reinstated the appeal and affirmed the convictions and denial of postconviction relief, and the supreme court denied review. *State v. Kingbird*, No. A15-2001, 2018 WL 1997342, at *2 (Minn. App. Apr. 30, 2018), *rev. denied* (Minn. July 17, 2018).

Kingbird brought a second postconviction petition, which the postconviction court summarily denied. Kingbird appealed, we affirmed, and the supreme court again denied review. *Kingbird v. State*, No. A21-0199, 2021 WL 5872864, at *1 (Minn. App. Dec. 13, 2021), *rev. denied* (Minn. Mar. 15, 2022).

On May 9, 2022, a private investigator, Michael Deisz, conducted a recorded interview in North Dakota with A.L., who was then an adult. During that interview (the “Deisz recording”), A.L. stated that Kingbird received “a hard sentence” and that her mother should also “be sentenced.” A.L. indicated that Kingbird sexually assaulted her, and she stated that “[s]ome” of “what’s happened” is “accurate.” But she stated that “some things” are not “100% accurate.”

A.L. repeatedly stated that her mother told her what to say regarding Kingbird’s abuse and “wanted [her] to not tell people the full story.” A.L. indicated that her mother also sexually abused her. A.L. discussed the “road incident” when her father was teaching her to drive and said that “nothing happened.” Deisz asked her if Kingbird touched her “inappropriately,” and A.L. replied, “No,” and stated that they were merely driving down a dirt road. Regarding the couch incident, A.L. stated that she did not “recall any sexual things happening” and that she and Kingbird were merely tickling each other.

On June 14, 2022, A.L. signed a document in North Dakota (the “recantation document”) declaring “under penalty of perjury” that (1) she gave a recorded statement to Deisz; (2) her trial testimony “was not 100% accurate”; (3) “[t]he incident on the road and the incident on the couch that [she] testified about never happened”; (4) Kingbird “had been teaching [her] to drive, but there was no sexual assault”; (5) “[t]here was also a time

when [Kingbird] was tickling [her] on the couch, but there was no sexual assault”; (6) A.L.’s mother told her to say that Kingbird sexually assaulted her and went over everything that A.L. was to say; (7) A.L.’s mother “also told [her] that [she] had to tell about the sexual assault on the mattress on the floor” but “could not mention that [her mother] was involved”; (8) A.L.’s mother told her that she had to “say these things” about Kingbird so that A.L. and her mother would have a place to stay and so that A.L. and her brother “did not get split up and put in foster care.”

Kingbird filed a third postconviction petition, alleging that A.L.’s statements constituted newly discovered evidence of his innocence. The postconviction court summarily denied his petition, he appealed, and we determined that the postconviction court abused its discretion by denying an evidentiary hearing on his claim of newly discovered evidence. We reversed in part and remanded for an evidentiary hearing on that claim. *Kingbird v. State*, No. A22-1642, 2023 WL 4699776, at *1 (Minn. App. July 24, 2023).

In April 2023, while that appeal was pending, Officer Nick Lewis conducted a recorded interview with A.L. (the “Officer Lewis recording”). A.L. told the officer that she hoped to get her mother charged for sexual molestation. A.L. stated, “[I]t happened multiple times um, involving [Kingbird]. They both . . . engaged in it. . . . [T]he sexual assault . . . was continuous. It just happened to involve [Kingbird] during that time.” A.L. stated, “[T]here was sexual molestation going on prior to even moving and [Kingbird] being involved.” When Officer Lewis asked A.L. about her recantation, A.L. stated that

she had “filtered out” her mother’s involvement in the sexual abuse but that “everything that [Kingbird] did, he did it.” The following exchange then occurred:

OFFICER LEWIS: Ok. So . . . I, don’t want to put words in your mouth, but it kinda sounds like . . . the stuff with [Kingbird] happened. But there was also some other stuff that happened as well with your [mother]. Um, is there anything that you said happened, you know like during court or during your testimony or anything like that or during any other investigation, is there anything that you said happened between [Kingbird] and yourself that didn’t actually happen?

A.L.: Um, no. It all happened.

OFFICER LEWIS: Ok, um[.]

A.L.: All I remember is . . . the whole road incident where . . . my brother was [riding] our bicycle, my father drove up (inaudible) of miles and then he did what he did to me and then also, there . . . were multiple incidents inside the house. It was, like . . . an every night basis where I would get touched and . . . my mo[ther] would be involved with it.

OFFICER LEWIS: Ok.

A.L.: But everything that happened, happened.

OFFICER LEWIS: Ok.

A.L.: Um, yeah. I was basically trying to state . . . during my conversation with the last investigator, . . . that everything happened that was said, like that was said during court, everything happened. It’s just[,] I was told to not include my mother . . . into the whole case And also[,] when . . . I was told to go [to] this . . . place where they take children and . . . you basically are asked to give them details and, and explain areas and et cetera, I was told to filter out my mother being involved

Officer Lewis later asked A.L. about her conversation with Deisz, and the following exchange occurred:

A.L.: Um, he spoke to me about recalling the incidents . . . with [Kingbird]. And . . . that was basically all, recalling what happened with [Kingbird]. He wanted me to state . . . the things that he did. I don't know if I . . . told him that these things didn't happen, I don't know exactly the whole conversation. All I remember telling him is that . . . [Kingbird] did what he did. And . . . that was (inaudible).

OFFICER LEWIS: Ok. Did you ever, did you ever tell him, if you, if you remember, I can understand if you don't remember or something like that. But do you remember telling that investigator . . . you want to recant any of your statements or anything like that? Like you want to say some stuff that didn't actually happen with [Kingbird]? Do you remember talking about that at all?

A.L.: Um, I believe there was one thing that I wanted to recant. I can't quite remember what that is. Um, I . . . think there's one thing, one thing that I wanted to recant. Um, yeah.

OFFICER LEWIS: Do you remember what that was at all?

A.L.: No, I don't recall.

OFFICER LEWIS: Ok. Do you . . . remember . . . why you wanted to recant something? Was this something that wasn't true? Or something that you, or something else or?

A.L.: Um, at that time, like I said, I wanted to recant, I was trying to pursue the recant just . . . to go back on . . . what I had said originally[.]

OFFICER LEWIS: Yeah.

A.L.: Um, (inaudible) my mother.

At a postconviction evidentiary hearing in January 2025, A.L. testified under a grant of immunity in Minnesota. But North Dakota did not grant A.L. immunity from prosecution relating to the recantation document she signed there. As a result, A.L.

asserted her Fifth Amendment¹ right against self-incrimination. Kingbird, in turn, argued for the admission of the recantation document and Deisz recording under Minn. R. Evid. 804(b)(3) because A.L. was “unavailable.” The postconviction court continued the hearing to determine the admissibility of that evidence.

At the continued hearing, Kingbird’s sister testified regarding her interactions with A.L. in the spring of 2022. Deisz testified, and defense counsel offered the recantation document and Deisz recording into evidence, though the postconviction court reserved its ruling on the admissibility of that evidence. Kingbird’s cousin testified that she saw A.L. and her mother around the time of Kingbird’s arrest. According to the cousin, A.L.’s mother made statements about calling the police on Kingbird, and in response, A.L. said, “I don’t want to tell, I don’t want to say these things about [Kingbird].”² The state offered the Officer Lewis recording into evidence and called Officer Lewis as a witness. Kingbird later filed written arguments requesting the admission of the recantation document, Deisz recording, and Officer Lewis recording under Minn. R. Evid. 804(b)(3).

In July 2025, the postconviction court denied Kingbird’s third postconviction petition. The court determined that the recantation document and Deisz recording were inadmissible. The court did not expressly address the admissibility of the Officer Lewis

¹ The Fifth Amendment protects a person from being a witness against herself by privileging her not to answer official questions in any other proceeding, civil or criminal, formal or informal, in which the answers might incriminate her in future criminal proceedings. *State v. Morales*, 788 N.W.2d 737, 747 (Minn. 2010).

² Kingbird also testified.

recording. The court determined that Kingbird failed to satisfy the “*Larrison* test”³ for relief based on recanted trial testimony, Kingbird “failed to submit trustworthy evidence to show that A.L.’s trial testimony was false,” and Kingbird failed to present sufficient evidence “that the jury might have reached a different verdict.”

Kingbird appeals.

DECISION

Under Minnesota’s postconviction statutes, a person convicted of a crime may seek relief by filing a petition claiming that the conviction “violated the person’s rights under the Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1(1) (2024). We review the postconviction court’s denial of relief for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017) (quotation omitted). “A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Id.* (quotation omitted). “Legal issues are reviewed de novo, but our review of factual issues is limited to whether there is sufficient evidence in the record to sustain the postconviction court’s findings.” *Id.*

³ “We apply a three-prong test known as the *Larrison* test to determine whether a petition for postconviction relief warrants a new trial based on recantation of trial testimony.” *State v. Turnage*, 729 N.W.2d 593, 597 (Minn. 2007); *see Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928), *overruled by United States v. Mitrione*, 357 F.3d 712, 718 (7th Cir. 2004), *vacated on other grounds*, 543 U.S. 1097 (2005). “Although *Larrison* was overruled in *Mitrione*, Minnesota courts continue to apply the *Larrison* test in cases involving witness-recantation and false-testimony claims.” *State v. Duol*, 25 N.W.3d 135, 139 n.4 (Minn. 2025) (quotation omitted).

(quotations omitted). We review a postconviction court's evidentiary rulings for abuse of discretion. *Ferguson v. State*, 826 N.W.2d 808, 812 (Minn. 2013).

I.

Kingbird argues that the postconviction court abused its discretion by concluding that the recantation document, the Deisz recording, and the Officer Lewis recording were inadmissible under Minn. R. Evid. 804(b)(3). We first address the recantation document and Deisz recording. We then separately consider the Officer Lewis recording, and in doing so, address Kingbird's argument that he presented sufficient evidence for relief under the *Larrison* test.

The parties do not dispute that the evidence at issue is hearsay. Hearsay is defined as "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 inadmissible. Minn. R. Evid. 802. But the rules of evidence provide numerous exceptions to the general rule of exclusion. *See* Minn. R. Evid. 803, 804, 807. One such exception is a statement against interest. Minn. R. Evid. 804(b)(3). Under rule 804(b)(3), the following is not excluded under the hearsay rule if the declarant is unavailable:

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. 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.

Kingbird proceeded under a theory that the recantation document and Deisz recording exposed A.L. to criminal liability, i.e., perjury charges, because her statements are inconsistent with her trial testimony. Such hearsay statements are known as statements against penal interest, and three requirements must be met for them to be admitted into evidence if they are exculpatory in nature: (1) the declarant must be unavailable to testify, (2) the statements must be sufficiently against the declarant's interests, and (3) there must be corroborating circumstances showing the trustworthiness of the statements. *Dobbins v. State*, 845 N.W.2d 148, 152 (Minn. 2013).⁴

The postconviction court concluded that the recantation document and Deisz recording lacked corroborating circumstances showing trustworthiness. Because that determination is dispositive and because the postconviction court did not abuse its discretion in making that determination, we address only that requirement for admission. *See id.* at 155 (concluding that a postconviction court did not abuse its discretion by excluding statements offered under rule 804(b)(3) for lack of sufficient indicia of trustworthiness).

To determine whether the “corroborating circumstances” requirement of rule 804(b)(3) is satisfied, courts have considered the following factors: (1) whether other

⁴ “When a statement against penal interest is offered to inculcate the accused, then its trustworthiness need not be clearly indicated by corroborating circumstances, but its admission must be consistent with the requirements of the Confrontation Clause” *Dobbins*, 845 N.W.2d at 152-53 n.1.

evidence corroborates the facts in the hearsay statement; (2) the extent to which the hearsay statement is consistent with the declarant's prior testimony and other statements; (3) the relationship between the declarant and other witnesses and parties, including the defendant; (4) whether the declarant has reason to fabricate the statement; (5) the overall credibility and character of the declarant; and (6) the timing of the statement. *Ferguson*, 826 N.W.2d at 813. In the end, the trustworthiness of the out-of-court statements depends on the totality of the circumstances. *Id.* at 814; *Bobo v. State*, 969 N.W.2d 829, 834 (Minn. 2022).

As found by the postconviction court, during the Officer Lewis recording, which occurred after the recantation document and Deisz recording, A.L. "reaffirmed the sexual assaults inflicted upon her by [Kingbird]." Thus, A.L.'s later statements directly conflict with the statements made in the recantation document and Deisz recording. Indeed, at the postconviction evidentiary hearing, A.L. could have endorsed the statements that she made in the recantation document and Deisz recording, as she had been granted immunity in Minnesota. She did not. She asserted her Fifth Amendment right against self-incrimination based on a lack of immunity in North Dakota, meaning her North Dakota statements (the recantation document and Deisz recording) might subject her to criminal liability. This undermines the credibility of A.L.'s North Dakota statements. Additionally, the hearsay evidence repeatedly shows A.L.'s concern over the severity of Kingbird's punishment and her intent to obtain punishment for her mother's actions, indicating that A.L. had reasons to fabricate her North Dakota statements. The totality of the circumstances supports the postconviction court's determination that the recantation document and Deisz recording were not trustworthy.

In determining that the recantation document lacked corroborating circumstances, the postconviction court concluded that it did not qualify as an “affidavit.” Kingbird assigns error to that determination, arguing that the recantation document satisfied the requirements of Minn. Stat. § 358.116 (2024), which states that a signed affidavit filed with the court generally need not be notarized if it states that the affirmations are being made under penalty of perjury.

The recantation document listed the State of North Dakota and County of Ward, was signed and dated by A.L., and stated, “I declare under penalty of perjury that everything I have stated in this document is true and correct.” We agree that the postconviction court erred in concluding that the recantation document did not qualify as an affidavit. It also erred in finding that the recantation document “does not reference any penalty of perjury implication” and in finding that A.L. “did not sign the [recantation] document under penalty of perjury.”

That said, Kingbird must do more than show that the postconviction court abused its discretion; he must establish that he was prejudiced by the error. *See State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (“On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.”). Here, while the postconviction court declined to consider the recantation document as an affidavit, it nonetheless set forth numerous, and more substantial, grounds to support its determination that the recantation document was not trustworthy, including the fact that “[a] year after this statement,” A.L. “again confirmed her trial testimony without recantation.” In sum, even setting aside the postconviction court’s determination that the

recantation document was not an affidavit, we are satisfied that the postconviction court did not abuse its discretion in excluding that document. *See Dobbins*, 845 N.W.2d at 154-55 (stating that “[e]ven if we limit our consideration to only those aspects of the court’s order” that address the proper criteria, “the court’s evidentiary ruling finds sufficient support in the record”).

Moving to the Officer Lewis recording, Kingbird relies on two elements of that evidence to support his assertion that he is entitled to a new trial: (1) A.L. told Officer Lewis that she wanted to recant “one thing” and (2) A.L. stated that she had filtered out her mother’s sexual abuse during her testimony.

The postconviction court made no express ruling on the admissibility of the Officer Lewis recording. The record indicates, however, that the postconviction court *did* admit the Officer Lewis recording as substantive evidence. Unlike the recantation document and Deisz recording, the *state* offered the Officer Lewis recording into evidence and did so *without objection*. And the postconviction court relied on the Officer Lewis recording in determining that there were no grounds for a new trial.

But even if the postconviction court erroneously excluded the Officer Lewis recording, Kingbird is not entitled to relief. The most exculpatory portion of that evidence is A.L.’s statement that she wanted to recant “one thing.” The postconviction court found that the “one thing” related to A.L.’s mother, not Kingbird, and the record supports that finding. The postconviction court found that A.L. confirmed her trial testimony regarding Kingbird in the Officer Lewis recording, and the record supports that finding as well.

Whether a postconviction petitioner is entitled to a new trial due to witness recantation is analyzed under the *Larrison* test for recanting witnesses. *Campbell v. State*, 916 N.W.2d 502, 507-09 (Minn. 2018); *Turnage*, 729 N.W.2d at 600. The *Larrison* test consists of three factors: (1) the court is reasonably well-satisfied that the trial testimony of a material witness was false, (2) “without the testimony the jury might have reached a different conclusion,” and (3) the defendant “was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after trial.” *Campbell*, 916 N.W.2d at 507. “Although the first two prongs are mandatory, the third prong, while relevant, is not a requirement for relief.” *Id.* Kingbird had the burden of proving by a preponderance of the evidence that the facts alleged in the recanted testimony met the requirements of the *Larrison* test. *State v. Reed*, 737 N.W.2d 572, 590 (Minn. 2007).

As earlier discussed, the postconviction court determined that the recantation document and Deisz recording were inadmissible under rule 804(b)(3), and the postconviction court therefore determined that Kingbird “failed to submit trustworthy evidence to show that A.L.’s trial testimony was false.” The postconviction court did not abuse its discretion in making that determination.

Moving to the Officer Lewis recording, under the second prong of the *Larrison* test, we evaluate “whether the petitioner has demonstrated that without the [false] testimony, the jury might have reached a different conclusion.” *Turnage*, 729 N.W.2d at 598-99 (quotation omitted). The question is not “whether the evidence was sufficient to convict

the defendant in the absence of the [false] testimony,” rather we must assess “whether the jury might have found the defendant not guilty.” *Id.*

Again, the record indicates that the postconviction court considered the Officer Lewis recording as substantive evidence. And, proceeding with that understanding, we are satisfied that the postconviction court did not abuse its discretion in ultimately concluding under the *Larrison* test that Kingbird had not “shown [by] a preponderance of the evidence that the jury might have reached a different verdict.” But even if the postconviction court erroneously excluded the Officer Lewis recording, we are still satisfied that the postconviction court did not abuse its discretion in ultimately concluding that Kingbird’s claim failed under the second prong of the *Larrison* test.

Again, A.L. confirmed during the Officer Lewis recording that “everything” that Kingbird did, “he did it.” Officer Lewis asked, “Um, is there anything that you said happened, you know like during court or during your testimony or anything like that or during any other investigation, is there anything that you said happened between [Kingbird] and yourself that didn’t actually happen?” A.L. replied, “Um, no. It all happened.” Simply put, A.L.’s statements in the Officer Lewis recording that she filtered out her mother’s abuse and wanted to recant “one thing” concerning her mother are not exculpatory. We agree with the postconviction court that Kingbird failed to present sufficient evidence that the jury might have reached a different verdict.

In sum, the postconviction court did not abuse its discretion by refusing to admit the recantation document and Deisz recording under rule 804(b)(3) for lack of circumstances corroborating their trustworthiness. The record suggests that the postconviction court

admitted the Officer Lewis recording as substantive evidence and did not abuse its discretion in ultimately determining that Kingbird was not entitled to relief under the *Larrison* test. But even accepting that the postconviction court erroneously excluded the Officer Lewis recording, Kingbird was not prejudiced because that evidence does not persuade us that the postconviction court abused its discretion in its ultimate determination that Kingbird failed to present sufficient evidence to satisfy the *Larrison* test.

II.

Kingbird argues that he is entitled to a new trial “in the interests of justice.” In *State v. Beecroft*, 813 N.W.2d 814 (Minn. 2012), the case cited by Kingbird, and *State v. Cabrera*, 700 N.W.2d 469 (Minn. 2005), the supreme court held that, under exceptional circumstances, it may exercise its supervisory powers and grant a new trial in the interests of justice even when there is no showing of actual prejudice. *Beecroft*, 813 N.W.2d at 846; *Cabrera*, 700 N.W.2d at 475. We do not hold the same authority to grant such relief. *State v. Ramey*, 721 N.W.2d 294, 302 n.6 (Minn. 2006) (“The court of appeals does not exercise supervisory powers that are reserved to [the supreme] court.”). And Kingbird cites no authority to support the assertion that we may grant such relief. In sum, this court is without authority to grant a new trial in the interests of justice.

Affirmed.