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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0938**

State of Minnesota,
Respondent,

vs.

Erik Walden Narveson,
Appellant.

**Filed July 9, 2018
Affirmed in part, reversed in part, and remanded
Rodenberg, Judge**

Olmsted County District Court
File No. 55-CR-15-2238

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Associate County
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Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant
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Considered and decided by Rodenberg, Presiding Judge; Halbrooks, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Erik Walden Narveson appeals from his convictions of third-degree
assault, third-degree criminal sexual conduct, and false imprisonment. We affirm the

district court's decision not to remove juror #4 for cause. We reverse appellant's assault conviction and remand for a new trial because the district court erroneously and prejudicially declined appellant's request for a jury instruction on self-defense. If the state retries appellant for third-degree assault and he is convicted, the district court may sentence appellant for the assault, which was not part of a single behavioral incident with the criminal-sexual-conduct offense. Finally, we see no merit to appellant's pro se arguments.

FACTS

Appellant was convicted of third-degree criminal sexual conduct, third-degree assault, and false imprisonment after a jury trial.

The State's Witnesses' Testimony

The state called seventeen witnesses. Appellant and A.L. had been dating for two years before April 3, 2015. The district court had issued a Domestic Assault No Contact Order (DANCO) in March 2015, prohibiting appellant from contacting A.L. On April 3, 2015, appellant returned to the house where he and A.L. had been living, in violation of the DANCO.

A.L. testified that, on April 4, 2015, she awoke to appellant sexually assaulting her. She testified that she fled to the kitchen and, fearful of appellant, she grabbed a knife. She demanded that appellant collect his things and leave. Appellant then punched her in the face, causing a blowout fracture near her left eye. A.L. testified that she tried to leave the house, but appellant grabbed her hair and dragged her back through the house to the bedroom. Appellant tied A.L.'s left wrist to his right wrist and her left ankle to his right ankle. Appellant and A.L. remained tied together through the night. A.L. testified that she

woke up several times to “being raped” at knifepoint. The next day, when appellant wanted to leave the house to run an errand, and fearing that A.L. might escape or seek help, appellant tied A.L. to a support pole in the basement. Appellant also stuffed a sock into her mouth and tied it to her head with a rope. When he returned to the house, appellant untied A.L. and said that he “felt bad about what happened.” A.L. then ran outside, waved down a passing vehicle, and used the driver’s cell phone to call the police. She soon saw appellant leave the house and ride down the street on his bicycle. Appellant was arrested later.

Appellant’s Testimony

Appellant’s testimony about the incident differed from the state’s evidence. He testified that he went to bed on April 4, 2015 and awoke to A.L. screaming and “having one of her panic attacks.” He got out of bed, dressed, and started tying his shoes when he heard A.L. “in the kitchen stabbing the wall.” He testified that A.L. returned to the bedroom and held a “big kitchen knife” in his face. Appellant thought A.L. planned to stab him, so he grabbed her right hand, in which she held the knife, and punched her in the face. A.L. dropped the knife. Appellant agreed that he tied A.L.’s left ankle to his right ankle and her left wrist to his right wrist to prevent A.L. from leaving the house while he slept. He also admitted that he tied A.L. to a pole in the basement so she could not leave the house while he went on an errand. Appellant denied having sex with A.L. at any time after he punched her. He denied threatening A.L. with a knife, dragging her by her hair or ankles, or choking her.

Expert Witnesses' Testimony

A sexual-assault nurse examiner and an emergency-medicine physician testified about the results of their examinations of A.L. They testified that A.L. had a bruised and swollen left eye, a bruise on her neck, a linear mark below her navel, several linear marks on her wrists and on the top of her feet, and that her hands were swollen and stiff. Vaginal examination revealed “reddish abrasions at twelve o’clock and six o’clock on the cervix.” A CT scan revealed two fractured facial bones. Appellant’s DNA was found in A.L.’s vagina.

In April 2015, the state charged appellant with three counts of criminal sexual conduct, one count of false imprisonment, and one count of third-degree assault. The jury found appellant not guilty of first-degree criminal sexual conduct, but guilty of third-degree criminal sexual conduct, third-degree assault, and false imprisonment. The district court sentenced appellant to 180 months in prison on the criminal-sexual-conduct conviction. It sentenced appellant to separate 24-month executed sentences for both third-degree assault and false imprisonment, concurrent with one another, but consecutive to the 180-month criminal-sexual-conduct sentence. The district court determined that the assault and criminal sexual conduct were not part of a single behavioral incident because they were “broken up in time and behavior,” and it sentenced appellant accordingly. This appeal follows.

DECISION

Appellant’s initial brief raised six issues: (1) his convictions must be reversed because a biased juror was permitted to serve on the jury; (2) his assault conviction must

be reversed because the court declined to instruct the jury on self-defense; (3) his sentence for criminal sexual conduct must be reversed because the district court imposed an upward durational departure without stating reasons for doing so; (4) his sentence for criminal sexual conduct must be reversed due to inadmissible hearsay admitted at the *Blakely* sentencing trial; (5) he should not have been sentenced for assault and false imprisonment because both offenses were committed during the same behavioral incident as the criminal-sexual-conduct offense; and (6) the district court erred in not awarding jail credit against his criminal-sexual-conduct sentence. On November 27, 2017, appellant's counsel submitted a letter to this court withdrawing issues (3), (4), and (6). Accordingly, we address only issues (1), (2), and (5).

I. The district court did not abuse its discretion when it denied appellant's motion to remove juror #4 for cause.

Appellant argues that the district court seated a juror who expressed actual bias and was not rehabilitated. This, he argues, is a structural error requiring reversal of all of his convictions. *See State v. Logan*, 535 N.W.2d 320, 324 (Minn. 1995) (holding that the error is structural if a biased juror is allowed to sit in judgment of a criminal defendant).

Both the United States and Minnesota Constitutions protect the right of a criminal defendant to an impartial jury. *State v. Greer*, 635 N.W.2d 82, 87 (Minn. 2001). A party may seek to have a potential juror removed if his “state of mind—in reference to the case or to either party—satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party.” Minn. R. Crim. P. 26.02, subd. 5(1). An abuse-of-discretion standard of review applies to a district court's

denial of a party's challenge of a juror for cause. *State v. Barlow*, 541 N.W.2d 309, 312 (Minn. 1995).

We give great deference to the district court's determination of a juror's impartiality. *State v. Drieman*, 457 N.W.2d 703, 708-09 (Minn. 1990); *State v. Graham*, 371 N.W.2d 204, 206 (Minn. 1985). In considering a juror's bias, the district court may consider the potential juror's demeanor, *State v. Munt*, 831 N.W.2d 569, 576 (Minn. 2013) (quoting *Patton v. Yount*, 467 U.S. 1025, 1038 n.14, 104 S. Ct. 2885, 2892 n.14 (1984)), hear the juror's testimony, and evaluate his ability to be impartial, *Drieman*, 457 N.W.2d at 708-09. "The test of an impartial juror is not that he shall be completely ignorant of the facts and issues when sworn, but that he can lay aside his impression or opinion and render a verdict based on the evidence presented in court." *State v. Andrews*, 282 Minn. 386, 394, 165 N.W.2d 528, 534 (1969) (quotation omitted). "The juror must simply undertake to try the case fairly." *Graham*, 371 N.W.2d at 206. If a juror indicates his "intention to set aside any preconceived notions, and demonstrate[s] to the satisfaction of the trial judge that [he is] able to do so, [an appellate court] will not lightly substitute its own judgment." *State v. Howard*, 324 N.W.2d 216, 220 (Minn. 1982).

Whether a juror should be removed from a jury panel for cause because of bias requires a two-step analysis. *State v. Fraga*, 864 N.W.2d 615, 623 (Minn. 2015). First, we must determine whether the juror expressed actual bias. *Id.* In doing so, we review the juror's voir dire answers in context. *Id.* The party challenging a juror's bias must establish that the juror responded to questions in a way that demonstrated "strong and deep impressions" that would prevent the juror from "lay[ing] aside [his] impression or opinion"

and “render[ing] a verdict based on the evidence presented in the court.” *Munt*, 831 N.W.2d at 577 (alteration in original); see *Irvin v. Dowd*, 366 U.S. 717, 723, 81 S. Ct. 1639, 1642 (1961) (requiring more than “the mere existence of any preconceived notion as to the guilt or innocence of an accused”). Second, and if a juror has expressed actual bias, we must determine whether that juror was rehabilitated. *Fraga*, 864 N.W.2d at 623. A juror is considered rehabilitated if he “states unequivocally that he or she will follow the district court’s instructions and will set aside any preconceived notions and fairly evaluate the evidence.” *State v. Prtine*, 784 N.W.2d 303, 310 (Minn. 2010). We defer to the district court’s observation of the demeanor of a prospective juror. *Graham*, 371 N.W.2d at 206.

Here, juror #4 readily admitted that he finds sex crimes very disturbing. His wife and a friend of his were, in separate incidents, sexual-assault victims. Nevertheless, juror #4 said that he thought he could be fair and impartial. The district court asked juror #4 about the experiences of his wife and his friend and whether those experiences would affect his ability to consider the case. Juror #4 explained that “[i]t would be very hard” because the subject of criminal sexual conduct makes him feel angry. The district court asked juror #4 whether he could fairly view and consider the evidence in the case, and not base his decision on “passion, prejudice, or sympathy.” Juror #4 replied, “I believe so.”

During voir dire, appellant’s trial counsel asked juror #4 additional questions about his ability to serve as an impartial juror:

COUNSEL: . . . What we ask is that you set [your experiences] aside so that they don’t interfere with your duties as a juror on this case. Do you understand that?

JUROR #4: Yes.

. . . .

COUNSEL: . . . But you will try. . . . To set aside those experiences and make a decision based on the evidence.

JUROR #4: I would try to the best of my ability.

COUNSEL: And not get angry and let your passions and emotions take over and make a decision based on that.

JUROR #4: I believe so.

. . . .

COUNSEL: If you listen to the evidence in this case and you start thinking about your wife's and your friend's situation, do you think that might interfere with your ability to focus on this case?

JUROR #4: I don't think so.

COUNSEL: The fact that no one was ever prosecuted in those two cases that you have prior experience with, . . . would you be more inclined to find my client guilty in order to make sure that that doesn't happen again?

JUROR #4: No, I don't think that would happen.

In denying appellant's motion to exclude juror #4 for cause, the district court observed juror #4 to have been "quite pleasant," "smiling," and "friendly in his answers to the Court and to counsel." The district court explained that it believed that juror #4 would not act upon his anger about his prior experiences with sexual assault, and that he would "perform his duties in a way that would be fair and impartial He provided an understanding of the nature and importance of the need to be impartial and a willingness to try to do so."

Appellant cites *Logan*, 535 N.W.2d 320, and *Fraga*, 864 N.W.2d 615, to support his contention that juror #4 expressed actual bias and was not adequately rehabilitated. Both cases are distinguishable.

In *Logan*, the supreme court concluded that the trial court abused its discretion because it denied defense counsel's challenge for cause despite the prospective juror expressing that he would "give greater credence to the testimony of police officers than to the testimony of other witnesses." 535 N.W.2d at 324. During voir dire, the prospective juror explained that he "would favor the testimony of police officers over the testimony of other witnesses" and that his feeling that violent crime had increased would carry "some weight with him in deciding the defendant's guilt." *Id.* at 321. Although the prosecutor asked the prospective juror a series of leading questions, to which the juror responded that he would "try" to be fair and follow the instructions given by the trial court, the juror reverted to his original sentiment that he would still "favor in some way" some testimony over others. *Id.* at 324.

The supreme court reversed the defendant's conviction and remanded for a new trial because the district court erred by seating the prospective juror. *Id.* at 325. The supreme court reasoned that the prospective juror "candidly admitted he likely would give greater credence to the testimony of police officers than to the testimony of other witnesses." *Id.* at 324. The prospective juror did not "swear that he *could* set aside any opinion he might hold and decide the case on the evidence;" he merely said that he would *try*. *Id.* (quotation omitted). The supreme court concluded there had been "a clear showing of actual partiality

for police testimony” and that the district court abused its discretion when it denied the for-cause challenge. *Id.*

In *Fraga*, the supreme court concluded that a district court abused its discretion by denying a request to remove a prospective juror for cause because the juror provided equivocal answers about whether he could decide the case based on the evidence and not on his personal knowledge of the case and the victim. 864 N.W.2d at 624-25. During voir dire, the prospective juror explained that he knew about the case and had discussed several details of it with his family and friends who were involved in the case. *Id.* at 623-24. When asked whether he could “put all of that aside and decide the case solely based upon what [would be] presented . . . in the courtroom,” the juror said that he thought it would be hard to be fair and impartial because he knew about the case, but the juror eventually answered, “I guess I could do that, yes.” *Id.* at 624-25. Answers to other similar questions did not unequivocally state that the juror would set aside any preconceived notions and be fair. *Id.* at 625. When asked whether he could be fair and impartial, and whether he could decide the case based on the evidence, he responded, “Besides the fact I know about the case, I don’t, no. I think it would be hard.” *Id.* at 625 (emphasis omitted). The supreme court determined that the prospective juror expressed actual bias and that he was not properly rehabilitated because he could not state “unequivocally” that he would set aside his preconceived notions and be fair. *Id.* at 625.

Here, the district court found that juror #4 did not have a bias that would prevent him from setting aside his previous experiences and anger for the purpose of rendering a fair and unbiased verdict. Although juror #4’s answers included the likes of, “I’d like to

think I could” and “I believe so,” the district court determined that juror #4 was not biased and that, even if biased, he had been rehabilitated.¹ Juror #4 stated that he could follow instructions of the district court, set aside his emotions, and “make a decision based on the evidence.” The juror unequivocally stated that he did not think that he would be more inclined to find appellant guilty “to make sure that [another sexual assault] doesn’t happen again.” Juror #4 explained that he could “set aside any opinion he might hold and decide the case on the evidence.” Unlike the jurors in *Logan* and *Fraga*, juror #4 did not express a predisposition to believe certain testimony, nor did he have either prior exposure to the facts of this case or foreknowledge of appellant. See *Logan*, 535 N.W.2d at 324; see also *Fraga*, 864 N.W.2d at 625.

The district court did not find juror #4 to have expressed actual bias. We have only the voir dire transcript, and unlike the district court, we are not positioned to make the fine distinctions the district court made about the conviction with which juror #4’s answers were given. We cannot say on this record that the district court abused its discretion in finding that juror #4 did not exhibit actual bias.

The district court also found juror #4 to have been rehabilitated even if actual bias had been shown, and we defer to that determination. The juror believed himself capable of separating his strong feelings about sexual assault (which we presume are shared by

¹ The meaning of a person’s answer, “I believe so,” depends on the conviction and voice inflection used in addition to the words themselves. Other prospective jurors responded similarly to the district court’s question about setting aside prior experiences and remaining impartial. Those prospective jurors were not challenged for cause. The district court must have found that juror #4’s delivery of the words “I believe so” indicated that the juror firmly believed himself to be capable of serving without bias.

most right-thinking people) from his deliberations as a juror. Here again, we defer to the better-positioned district court, which determined juror #4 to have been rehabilitated. See *Logan*, 535 N.W.2d at 323 (stating that a district court’s determination that a “prospective juror’s protestation of impartiality is believable is entitled to special deference” (quotation omitted)). We see no abuse of the district court’s discretion.²

II. The district court erred by failing to instruct the jury on self-defense.

Appellant argues that the district court should have instructed the jury on self-defense, because he presented evidence that he punched A.L. because she threatened him with a knife and he feared immediate bodily harm or death. Appellant also argues that evidence of a prior act of violence committed by A.L. against him should have been admitted at trial because it supported his reasonable belief that A.L. would stab him.

Appellant preserved the jury-instruction issue by requesting the instruction. The district court denied the request. We apply an abuse-of-discretion standard of review to a district court’s decision about whether a jury instruction should be given. *State v. Hannon*, 703 N.W.2d 498, 509 (Minn. 2005). A district court abuses its discretion if it refuses to give an instruction on the defendant’s theory of the case “if there is evidence to support it.” *State v. Kuhnau*, 622 N.W.2d 552, 557 (Minn. 2001). But, “[i]f the defense was not

² Appellant also argues that the district court’s reliance on juror #4 having been “pleasant,” “smiling,” and “friendly” say nothing about his bias. In context, we disagree. Appellant’s argument that juror #4 demonstrated bias is based on juror #4 having said that sex-assault offenses made him “angry.” In assessing whether such anger is disqualifying, the observed emotional expressions seem at least somewhat relevant. A juror with disqualifying “anger” about a class of cases would not emote as the district court observed juror #4 doing.

prejudiced by a refusal to issue an instruction, there is no reversible error.” *Hannon*, 703 N.W.2d at 509.

The defendant bears the burden of “going forward with evidence to support a claim of self-defense.” *State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997). In determining whether appellant produced sufficient evidence to support his self-defense claim, we consider “whether such evidence was sufficient to shift the burden to the state to disprove the elements beyond a reasonable doubt.” *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006). Whether reasonable grounds exist for appellant’s belief that the danger of death or great bodily harm is imminent is an objective test. *See State v. Boyce*, 284 Minn. 242, 256, 170 N.W.2d 104, 113 (1969). We resolve all doubts in appellant’s favor. *Johnson*, 719 N.W.2d at 631-32. If the defendant meets his burden of production, the state bears the burden of disproving one or more of the following elements of self-defense beyond a reasonable doubt:

- (1) the absence of aggression or provocation on the part of the defendant;
- (2) the defendant’s actual and honest belief that he or she was in imminent danger of death or great bodily harm;
- (3) the existence of reasonable grounds for that belief; and
- (4) the absence of a reasonable possibility of retreat to avoid the danger.

Id. at 629.

Both appellant and A.L. testified that A.L. was holding a knife when appellant punched her. Appellant testified that he feared A.L. would stab him because this was not the first time that “anything like that ever happened” between them. Before appellant could explain that A.L. had stabbed his hand a few weeks before this incident, the district court

stopped this series of questions and excluded the evidence that appellant intended to introduce. The district court reasoned that the state had not been sufficiently notified of the prior assault and that A.L. had already left town so she could not rebut appellant's testimony.

Appellant argues that reasonable grounds existed for him to believe that he was in imminent danger of death or great bodily harm because he heard A.L. stabbing the kitchen wall and, shortly thereafter, she appeared in the bedroom doorway holding a large kitchen knife. "When self-defense is asserted, evidence of a specific act is admissible only to show that a defendant reasonably feared great bodily harm, provided that the defendant proves that he knew of the specific act at the time of the alleged offense," *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017), and "where commonsense indicates that these acts could legitimately affect a defendant's apprehensions," *State v. Matthews*, 301 Minn. 133, 134, 221 N.W.2d 563, 564 (1974). Such evidence must be relevant and more probative than prejudicial. *State v. Penkaty*, 708 N.W.2d 185, 203 (Minn. 2006) (citing Minn. R. Evid. 403). Because appellant sought to support his claim of self-defense with evidence of a prior incident where A.L. stabbed his hand, we conclude that the evidence in question goes to appellant's state of mind, and appellant was not required to have provided notice of the evidence to the state.³

³ Had the evidence been introduced to show prior acts by A.L. and cast reasonable doubt on the state's claim of his guilt, *State v. Richardson*, 670 N.W.2d 267, 279 (Minn. 2003), the "reverse-404(b)" or "reverse-*Spreigl*" analysis would be appropriate, including consideration of whether the evidence would "establish motive, intent, absence of mistake or accident, identity or common scheme or plan," *State v. Slowinski*, 450 N.W.2d 107, 113 (Minn. 1990) (citing *State v. Spreigl*, 272 Minn. 488, 491, 139 N.W.2d 167, 169 (1965)).

Even absent the prior-incident evidence, appellant introduced sufficient evidence to warrant his self-defense instruction. Appellant testified that he was passed out in the bedroom when he awoke to A.L. screaming and having a panic attack. He testified that he was preparing to leave the house, but, as he was dressing and tying his shoes, he heard A.L. “in the kitchen stabbing the wall.” Appellant testified that A.L. then entered the bedroom, screamed at him, and pointed a large kitchen knife at him. He claims to have believed that A.L. was going to stab him, and that he hit her in an effort to defend himself.

Viewing the evidence in the light most favorable to appellant, who requested the instruction, *see State v. Dahlin*, 695 N.W.2d 588, 597 (Minn. 2005), and resolving all doubts in appellant’s favor, as we must, *Johnson*, 719 N.W.2d at 631, we conclude that the district court abused its discretion by denying appellant’s request for a jury instruction on appellant’s self-defense theory and on the state’s burden to disprove one of the elements of self-defense beyond a reasonable doubt. Whether appellant acted in self-defense is a question for the jury, but absent an instruction to guide the jury’s assessment of appellant’s self-defense claim, appellant was effectively denied his right to present a defense reasonably supported by the evidence at trial. The denial of a self-defense instruction prejudiced appellant.⁴

This is not the case here. The proposed testimony about the earlier stabbing was not the “reverse-*Spreigl*” type; it was evidence tending to show why appellant’s fear of A.L. holding a knife was reasonable. *Zumberge*, 888 N.W.2d at 694.

⁴ The district court’s reason for prohibiting the admission of evidence about that earlier assault incident is erroneous. But the district court may, on remand, consider whether any other basis exists on which the evidence may be excluded.

III. The assault and false-imprisonment convictions occurred in a separate behavioral incident from the criminal-sexual-conduct conviction.

The district court concluded that the criminal-sexual-conduct conviction was not part of a single behavioral incident, and it sentenced appellant accordingly. Although we reverse appellant's assault conviction, the state may elect to pursue the charge of third-degree assault on remand. If appellant is again convicted of the assault, the single-behavioral-incident question will again arise, so we address it now in the interests of judicial economy.

Minnesota Statutes provide that a court may only sentence a defendant once for a single behavioral incident, even if the incident results in multiple crimes. Minn Stat. § 609.035, subd. 1 (2014); *State v. Williams*, 608 N.W.2d 837, 841 (Minn. 2000). In determining whether multiple crimes comprise a single behavioral incident, we consider “factors of time and place . . . [and] whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective.” *Id.* (alteration in original) (quotation omitted); see also *State v. Johnson*, 273 Minn. 394, 404, 141 N.W.2d 517, 525 (1966). We also consider whether the offenses “arose from a continuous and uninterrupted course of conduct” and whether the offender “manifested an indivisible state of mind.” *State v. Johnson*, 653 N.W.2d 646, 652 (Minn. App. 2002); see also *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997); *State v. Chidester*, 380 N.W.2d 595, 597 (Minn. App. 1986), review denied (Minn. Mar. 21, 1986). The state bears the burden of proving by a preponderance of the evidence that the conduct underlying the offenses did not occur as part of a single behavioral incident. *Williams*, 608 N.W.2d at 841-42.

Criminal sexual conduct has been considered a separate behavioral incident when it was not part of “a single criminal objective” underlying multiple offenses, and it “was not a necessary prelude to any other crime.” *State v. Bookwalter*, 541 N.W.2d 290, 295-96 (Minn. 1995). Here, the district court determined that the convictions for third-degree assault and third-degree criminal sexual conduct were two separate behavioral incidents because “there are breaks, there are gaps in time in the acts that occurred against this victim. . . . The acts are separate, they’re broken up in time and behavior.” The district court agreed with the state that appellant “didn’t rape [A.L.] because he had broken her face. They’re two different and distinct things.”

The record supports the district court’s conclusion that the criminal-sexual-conduct offense was not part of a single behavioral incident with the assault and false-imprisonment offenses. Although the offenses were committed at the same place, the criminal-sexual-conduct offense did not occur at the same time as the other offenses, and appellant was not motivated to obtain a single criminal objective. Between the late night or early morning hours of April 4, 2015 and April 5, 2015, and while in a back bedroom, appellant punched A.L. in her face. After “quite some time” passed, they moved to the living room. That afternoon and throughout the next night, A.L. testified that she woke “to being raped.” Appellant testified that he punched A.L. to disarm her, and that he tied up A.L. in the basement because he “didn’t want to face the music.” Because the incidents were separated by time and did not share a single criminal motivation, we conclude that the district court

properly found the assault and false-imprisonment to have been separate behavioral incidents from the criminal-sexual-conduct offense.⁵

IV. We see no merit to appellant’s pro se arguments.

Appellant argues that his trial counsel was ineffective in 13 ways and states that each of “these instances clearly had a cumulative negative effect” on his ability to present his defense. Appellant does not support these statements with argument or authority. Without support for any of appellant’s varied contentions, we deem these assertions waived and do not address them. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997); *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997). We also observe that the clear majority of appellant’s ineffective-assistance claims relate to trial strategy, which are generally unreviewable. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).

Affirmed in part, reversed in part, and remanded.

⁵ Should the state pursue the assault claim against appellant on remand, and if appellant is convicted, the district court must resentence him in the order required by Minn. Sent. Guidelines 2.B.1(e) (2016) (third-degree assault first, third-degree criminal sexual conduct second, and false-imprisonment third).