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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0926**

State of Minnesota,
Respondent,

vs.

Marlow Vincent Labatte, Jr.,
Appellant.

**Filed April 15, 2019
Affirmed
Smith, Tracy M., Judge**

Yellow Medicine County District Court
File No. 87-CR-17-263

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Keith R. Helgeson, Yellow Medicine County Attorney, Granite Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Following a bench trial, appellant Marlow Labatte Jr. was convicted of two counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(c) and

(e)(i) (2016). In this direct appeal, Labatte contends that the district court abused its discretion by permitting a pretrial amendment of the complaint and by allowing the state to impeach him with seven prior felony convictions, and that the district court erred by convicting him based on conduct not specifically alleged in the complaint and by imposing consecutive sentences. We affirm.

FACTS

Labatte and M.R. began dating around August 2016, and, shortly thereafter, Labatte moved into M.R.'s house in Granite Falls with her and her two young children. Not long after their relationship began, Labatte became abusive toward M.R., hitting her once late in 2016, then beating her and breaking one of her ribs in February 2017. His physical abuse escalated. In March 2017, while arguing with M.R. over the title to a car, he choked her, lifting her off the floor by the neck and asking her repeatedly if she wanted to die.

Labatte's violence peaked in late May and early June 2017. On May 25, Labatte hit M.R. in the back of the head with a plastic insulated cup, causing a deep gash that would eventually require two staples to close. M.R. did not seek medical attention at the time of the injury because Labatte threatened to kill her and himself if she did. Several days later, Labatte beat M.R. into unconsciousness. In the course of the beating, Labatte re-opened M.R.'s head wound, caused a cataract in her right eye, broke her jaw, broke one of her ribs, and caused extensive bruising over much of her body. M.R. remained unconscious until the following day.

When M.R. awoke, Labatte forced her and her two young children to leave their home and check into a local hotel in an attempt to keep anyone from discovering the extent

of her injuries. They checked into the hotel on June 1, 2017. Labatte occasionally joined them there over the following days.

On June 3, Labatte called M.R. and instructed her to drive into town and pick him up, threatening to beat her if she didn't. M.R. gathered her children and drove into town and picked him up. Eventually, Labatte directed M.R. to drive them to a secluded area on Dike Road near a gravel pit. At the gravel pit, Labatte directed M.R. to get out of the car and walk with him toward the pit, leaving the children in the car. He threatened to kill her with a rock from the pit and broke her phone. He demanded oral sex, and, when M.R. told him she could not open her mouth, he forcibly orally penetrated her. Labatte stopped when a truck drove by. They got back in the car and stopped at a park, where M.R.'s children played and Labatte continued demanding oral sex. They eventually left the park and returned to the hotel.

At the hotel, Labatte threatened M.R. with a small pocket knife because he believed that she had taken a screw out of the plate holding the safety chain to the hotel door. After telling her to turn on cartoons for her children, Labatte told M.R. that he intended to "hate-f-ck" her. Then, despite her verbal refusal and attempts to resist him, Labatte penetrated M.R. both anally and vaginally. Labatte left the hotel room, and M.R. went to her cousin's house and then to the emergency room, where she received medical care and reported the physical and sexual assaults.

Labatte was arrested and charged in two different complaints. One alleged several physical assaults against M.R. The other, at issue here, charged two counts of sexual

assault.¹ Count one was for first-degree criminal sexual conduct—penetration/fear of imminent great bodily harm, in violation of Minn. Stat. § 609.342, subd. 1(c), and count two was for third-degree criminal sexual conduct—penetration/force or coercion, in violation of Minn. Stat. § 609.344, subd. 1(c) (2016). The statement of probable cause generally described the events at Dike Road, including Labatte’s demand for oral sex and M.R.’s statement that she was unable to comply because of the pain from her broken jaw. However, the statement of probable cause did not mention penetration at Dike Road. The statement of probable cause also described the sexual assault at the hotel, including penetration. Two weeks before trial, the state amended the complaint, adding a third count of sexual assault. Count three alleged first-degree criminal sexual conduct—penetration/injury/use of force or coercion, in violation of Minn. Stat. § 609.342, subd. 2(a). The statement of probable cause remained unchanged.

At trial, M.R. testified to forcible penetration at Dike Road and at the hotel. The district court made conclusions of law with respect to all three counts based on both assaults. It concluded that the state had proved all three counts beyond a reasonable doubt based on the Dike Road assault. It concluded that the state had also proved counts two and three based on the assault at the hotel, but that the hotel assault did not satisfy all elements of count one.²

¹ The charges were separated into two complaints because the physical assaults occurred in Chippewa County while the sexual assaults occurred in Yellow Medicine County.

² Specifically, the district court concluded that M.R. reasonably feared great bodily harm during that assault, but that her fear was not of *imminent* great bodily harm.

The district court entered a conviction on count one, based on the Dike Road sexual assault, and sentenced Labatte to 360 months' imprisonment, plus ten years conditional release. The district court also entered a conviction on count three, based on the hotel sexual assault. In deciding whether to impose a sentence for count three, the district court found that there was both a break in time and a break in Labatte's conduct between the assault at Dike Road and the assault at the hotel and concluded that the two assaults were not part of the same behavioral incident. The district court also concluded that consecutive sentencing was appropriate because Labatte lacked remorse or empathy, had engaged in escalating criminal behavior, and was a threat to public safety. The district court sentenced Labatte on count three to 172 months' imprisonment, to be served consecutively to count one, plus lifetime conditional release. Because count two was a lesser included offense of count three, the district court neither convicted nor sentenced Labatte on that count.

Labatte appeals.

D E C I S I O N

I. The district court did not abuse its discretion by permitting the state to amend the complaint before trial.

Labatte argues that the district court abused its discretion when it allowed the state to amend the complaint two weeks before trial. He contends that Minn. R. Crim. P. 17.05 governed the amendment.

Under rule 17.05, a complaint may be amended at any time before a verdict or finding so long as "no additional or different offense is charged and if the defendant's substantial rights are not prejudiced." But Minn. R. Crim. P. 17.05 applies to amendments

to a complaint only after trial has begun. *State v. Alexander*, 290 N.W.2d 745, 748 (Minn. 1980) (holding that rule 17.05 did not apply to an amendment after a mistrial and before the start of a second trial); *State v. Mickelson*, 378 N.W.2d 17, 20 (Minn. App. 1985) (“The supreme court has interpreted Rule 17.05 to apply only to motions to amend *after* the commencement of trial.”), *review denied* (Minn. Jan. 23, 1986). When a complaint is amended before trial, the relevant standard is contained in Minn. R. Crim. P. 3.04. *Alexander*, 290 N.W.2d at 748. Under that standard, the district court “is relatively free to permit amendments,” even if the amendments charge additional offenses, so long as the court grants continuances as needed. *State v. Bluhm*, 460 N.W.2d 22, 24 (Minn. 1990).

Here, the state amended the complaint before trial, so rule 3.04 governs, not rule 17.05. Thus, the district court was free to allow the amendment as long as it granted a continuance if Labatte needed one. *See id.* Labatte’s attorney did not identify any prejudice from the amendment, stated that there was no other investigation that he would do or witnesses that he would call, and declined to challenge probable cause for the charge before the start of trial. Labatte did not require, or even request, a continuance. The district court did not abuse its discretion by permitting the amendment.

II. The district court did not plainly err by constructively amending the complaint.

Labatte argues that the district court erred by “constructively amending” the complaint after trial had begun by finding him guilty of criminal sexual conduct at Dike Road although the statement of probable cause in the complaint did not describe penetration at Dike Road.

At trial, Labatte’s counsel never objected to the state’s use of the Dike Road assault as a basis for finding guilt on the three counts alleged in the complaint. Labatte therefore argues, and we agree, that the proper standard for review is plain error. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (stating that unobjected-to assertions of error are reviewed for plain error). Under this standard, an appellant must show (1) error, (2) that is plain, and (3) that affects substantial rights. *State v. Kelley*, 855 N.W.2d 269, 273-74 (Minn. 2014). “If the appellant satisfies the first three prongs of the plain-error doctrine, [an appellate court] may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 274 (quotation omitted).

Labatte’s argument implicates Minn. R. Crim. P. 17.05. That rule generally applies prospectively, when the state asks to amend a complaint after trial has begun. But appellate courts have also applied it retrospectively, when a defendant claims to have been convicted of a crime that was not charged in the complaint. For example, in *State v. DeVerney*, the supreme court applied rule 17.05 in analyzing the appellant’s argument that the district court “improperly instructed the jury on a theory of vicarious liability which was not included in the indictment.” 592 N.W.2d 837, 845 (Minn. 1999). The supreme court reasoned that, although “the indictment was never formally amended pursuant to Rule 17.05,” analysis under that rule was appropriate because the appellant argued that the jury instruction “resulted in an impermissible variance” from the indictment. *Id.* at 845-46. Labatte makes a similar argument here. We therefore apply the rule 17.05 analysis to his argument.

Again, under rule 17.05, a complaint may be amended as long as (1) no additional or different offense is charged and (2) the defendant's substantial rights are not prejudiced. Minn. R. Crim. P. 17.05; *see also DeVerney*, 592 N.W.2d at 846-47 (applying both prongs). Labatte contends that neither prong was met.

As to the first prong, Labatte cites indirectly to this court's decision in *State v. Guerra* to argue that the district court constructively amended the complaint by convicting him of an offense that was additional to or different from those charged in the complaint. 562 N.W.2d 10 (Minn. App. 1997). In *Guerra*, a complaint charged Javier Guerra with possession of a stolen firearm and two counts of possession of a short-barreled shotgun. 562 N.W.2d at 11. The statement of probable cause described two thefts of firearms, one involving the taking of seven shotguns, the other involving the taking of seven handguns. *Id.* The probable-cause statement asserted that the person who stole the handguns said he gave them to "an Hispanic male named Javier" and also described how three of the stolen shotguns were found in Guerra's home during the execution of a search warrant. *Id.* Statements on the record indicated that, at the beginning of trial, the court, the defendant, and the state all believed that all of the charges related only to the shotguns, not the handguns. *Id.* at 11-12. But, during trial, the court re-interpreted the complaint so that the count alleging possession of a stolen firearm related to Guerra's possession of the stolen handguns. *Id.* at 12. The jury convicted Guerra of possession of a stolen firearm and acquitted him of possession of the short-barreled shotguns. *Id.* This court reversed, holding that the district court had violated Minn. R. Crim. P. 17.05 by constructively amending the complaint to charge a different offense after trial had begun. *Id.* at 14. It noted specifically

that, even though the category of offense was the same, “the object of the offense, the date, and the alleged facts underlying each offense were all different,” as was the evidence of possession. *Id.* at 13.

Though the facts of *Guerra* are in some ways analogous to the facts of this case, we are not persuaded that the district court plainly added a new or different offense. The complaint in *Guerra* alleged that the crimes had occurred “[o]n or about January 30,” but the possession of the handguns had allegedly occurred in December of the previous year, indicating that the handguns were not the subject of the charges. *Id.* at 11 (alteration in original). Moreover, the record in *Guerra* contained several specific statements that the charges related only to the shotguns. *Id.* at 11-12. Here, in contrast, although the complaint’s statement of probable cause did not specifically reference penetration in its description of the sexual conduct at Dike Road, the charge descriptions adequately described that offense, stating that Labatte “engaged in sexual penetration” in a manner that violated the law “[o]n or about June 3, 2017.” In this situation, it is not plain that the criminal sexual conduct at Dike Road constituted an “additional or different offense” from the allegations in the complaint.

As to the second prong, Labatte argues that inclusion of the incident at Dike Road as a basis for finding criminal sexual conduct prejudiced his substantial rights because he was not prepared to defend against it. The opportunity to prepare a defense against criminal charges is a substantial right. *DeVerney*, 592 N.W.2d at 846. In *DeVerney*, the complaint alleged that the defendant aided and abetted a murder under one subdivision, but the court instructed the jury on another subdivision as well. 592 N.W.2d at 845. The supreme court

held that the defendant was not prejudiced because he did not identify “any specific way in which his case would have been presented differently” if both subdivisions had been listed in the initial complaint. *Id.* at 846-47.

Here, the complaint’s lack of specificity as to the fact of penetration at Dike Road did not prejudice Labatte’s opportunity to defend himself for the same reason as in *DeVerney*. Labatte notes that his trial counsel did not cross-examine M.R. with respect to the Dike Road assault and speculates that this may have been “because he believed it only to be relationship evidence or, in any case, not charged and so . . . not . . . an act for which appellant could be found guilty.” But this is not the same as saying that defense counsel would have cross-examined M.R. Labatte does not identify any way that his defense would have differed if the complaint had specifically stated that penetration occurred at Dike Road, and we can conceive of none. Labatte’s defense to both assaults was based on his own credibility; he has not explained how his foreknowledge of the specific claim of penetration at Dike Road would have aided him in establishing his credibility regarding events at that location. Labatte has not shown that he was plainly prejudiced.

Because the district court did not plainly vary from the complaint, and because Labatte has not identified how a more specific complaint would have changed his defense, we conclude that the district court did not plainly err by convicting Labatte based on the sexual assault at Dike Road.³

³ Labatte argues that his trial counsel’s failure to object to the district court’s reliance on the Dike Road events constituted inadequate assistance of counsel. An inadequate-assistance claim requires a defendant to “show that counsel’s representation fell below an objective standard of reasonableness” and to affirmatively prove prejudice. *Strickland v.*

Labatte also argues that reversal is required under *State v. Stempf*, 627 N.W.2d 352, 356 (Minn. App. 2001), because the state relied on either of two acts as bases for conviction on a single count. In *Stempf*, a defendant was charged with and found guilty of one count of possession of a controlled substance, but the jury was presented with evidence supporting several separate acts of possession. 627 N.W.2d at 354. This court held that the district court erred by not either requiring the state to clarify which act it relied on or instructing the jury that it had to agree on which act the defendant committed. *Id.* at 356. Because the district court had done neither of those things, it was possible that the jury’s verdict was not unanimous, requiring reversal and remand. *Id.* at 359.

But *Stempf* does not hold that the state may not rely on multiple acts as the basis for a single count. *See id.* at 356 (stating that the state must either elect a single act *or* the jury must be instructed to agree on which act was committed). Indeed, *Stempf* implicitly authorizes the use of multiple acts as bases for a single count, as long as the jury members are instructed that they must all agree on which act was committed. *See id.* at 358 (“Because the state did not elect which act of possession it was relying on . . . [,] the trial court’s refusal to give a specific unanimity instruction violated appellant’s right to a unanimous

Washington, 466 U.S. 668, 688, 693, 104 S. Ct. 2052, 2064, 2067 (1984). We need not address both prongs of *Strickland*’s test if one is determinative. *Id.* at 697, 104 S. Ct. at 2069. Because Labatte has not shown prejudice for the purposes of the plain-error analysis, he also has not shown prejudice under *Strickland*, and his ineffective-assistance-of-counsel claim fails. *See State v. Rhodes*, 657 N.W.2d 823, 839 n.7 (Minn. 2003) (stating that “it is redundant to address” an ineffective-assistance-of-counsel claim based on a failure to object and an assertion of plain error based on the same unobjected-to error).

verdict.”). Moreover, Labatte waived his right to a jury trial, so it is impossible for his right to a unanimous verdict to have been violated. *Stempf* does not require reversal.

III. The district court did not abuse its discretion by allowing the state to impeach Labatte with seven past felony convictions.

Labatte argues that the district court abused its discretion by admitting seven prior felony convictions for impeachment purposes because the probative value of all seven convictions did not outweigh their cumulative prejudicial effect. See Minn. R. Evid. 609(a)(1) (permitting admission of a felony conviction for impeachment if the court determines that its probative value outweighs its prejudicial effect).

Under *State v. Jones*, district courts consider five factors when determining whether evidence of prior convictions is admissible under rule 609:

(1) the impeachment value of the prior crime, (2) the date of the conviction and the defendant’s subsequent history, (3) the similarity of the past crime with the charged crime . . . , (4) the importance of defendant’s testimony, and (5) the centrality of the credibility issue.

271 N.W.2d 534, 538 (Minn. 1978). Labatte focuses on only the third factor, arguing that the past crimes were similar to the charged crimes because they were or were related to domestic abuse and that this similarity outweighed the other *Jones* factors.

Labatte relies heavily on *State v. Swanson*, 707 N.W.2d 645 (Minn. 2006). That reliance is mistaken. *Swanson* held that the district court erred “by failing to make a record of the *Jones* factor analysis” but that the error was harmless because the district court did not abuse its discretion in admitting the past felonies. *Swanson*, 707 N.W.2d at 654-55. The supreme court acknowledged that the similarity factor weighed against admission of

the past convictions but ruled that the similarity factor did not outweigh the other four factors. *Id.* at 655-56. Thus, *Swanson* is analogous to this case, but not in a way that is favorable to Labatte. Both here and in *Swanson*, four of the five factors weighed in favor of admission, and similarity is the only factor weighing against admission. We conclude that, as in *Swanson*, district court did not abuse its discretion by admitting Labatte's prior convictions for impeachment.

Labatte next contends that the district court erred in stating that there was "no danger of unfair prejudice" in admitting the prior convictions because the trial was to the court rather than to a jury. Labatte argues that judges are just as prone to prejudice as an ordinary juror. While Labatte is correct that there is some risk of misuse of evidence by a district court judge, given the judge's experience and familiarity with the rules of evidence, there is "comparatively less risk." *State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009). The district court analyzed the *Jones* factors, properly determining whether the probative value outweighed the potential for undue prejudice. The court's mild overstatement of its imperviousness to unfair prejudice was not an abuse of discretion.

Labatte also argues that the district court abused its discretion because it was unnecessary to admit all seven prior convictions, contending that "one prior, or, at most two or three would have been more than sufficient." Impeachment by prior felonies is intended to "allow[] the factfinder 'to judge better the credibility of a witness by affording it the opportunity to view that person as a whole.'" *State v. Hofmann*, 549 N.W.2d 372, 375 (Minn. App. 1996) (quoting *State v. Lloyd*, 345 N.W.2d 240, 247 (Minn. 1984)). Labatte's convictions served this purpose, and we cannot conclude that the district court

abused its discretion by admitting all seven. *See id.* (holding that district court did not abuse its discretion in admitting six recent convictions).

Finally, Labatte argues that the admission of the prior convictions had a chilling effect on his right to testify. *See Jones*, 271 N.W.2d at 538. But admission of prior convictions is not a basis for reversal merely because it dissuades a defendant from testifying as a tactical matter; the admission must independently be an abuse of discretion. *State v. Newman*, 408 N.W.2d 894, 899-900 (Minn. App. 1987). And in any event, Labatte testified. It is unclear how his right to tell his side of the story was prejudiced.

The district court did not abuse its discretion by admitting Labatte's prior felony convictions for impeachment.

IV. The district court did not err by imposing consecutive sentences.

Lastly, Labatte argues that he should not have been sentenced on both counts one and three, because they were part of a single behavioral incident. He also argues that consecutive sentencing was improper.

A person may not be punished for more than one offense if the offenses were part of a single behavioral incident. Minn. Stat. § 609.035, subd. 1 (2018); *Munt v. State*, 920 N.W.2d 410, 416 (Minn. 2018). Whether offenses are part of the same behavioral incident is a mixed question of law and fact—appellate courts “review the district court’s findings of fact for clear error and its application of the law to those facts de novo.” *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016). When a crime contains a mens rea element, offenses arise from a single behavioral incident if they occur at substantially the same time and place and if the conduct was motivated by an effort to obtain a single criminal objective. *Id.*

Labatte does not challenge specific factual findings but rather argues that the district court erred because the findings support only one criminal objective underlying both assaults—specifically, his desire to hide M.R.’s injuries. He claims that his sexual assaults were committed with the purpose of controlling M.R., in order to prevent her from seeking help. Further, he argues that there was no break in the course of conduct, which is why M.R. did not seek help until after the sexual assault at the hotel.

When there is a short break in time and place between criminal sexual acts, when that break is motivated by a desire to avoid detection, and when the later act is merely a continuation of the former, the two acts have been held to be a single course of conduct. See *Bixby v. State*, 344 N.W.2d 390 (Minn. 1984); *State v. Herberg*, 324 N.W.2d 346 (Minn. 1982). But relatively little separation between two sexual assaults is required for them to be considered distinct courses of conduct. In *State v. Stevenson*, two sexual assaults against a single victim “in the same general place and on the same day” but separated by five hours and without any “essential relationship” between them were deemed not to be part of a single behavioral incident. 286 N.W.2d 719, 720 (Minn. 1979). Similarly, a break of several hours between incidents of sexual conduct, when interrupted by other activities, is sufficient to make the incidents separate. *State v. Secrest*, 437 N.W.2d 683, 685 (Minn. App. 1989), *review denied* (Minn. May 24, 1989). This court also held in *Secrest* that being motivated by “perverse sexual desires” is too broad a motive to make separate acts into a single behavioral incident. *Id.*

Here, the break was likely not five hours long, and at least part of the reason for the change of location was Labatte’s fear of detection—he stopped the sexual assault at Dike

Road because the truck drove by. Further, there was testimony that, when they were at the park, Labatte instructed M.R. to “finish what [she] started,” referring to the oral penetration occurring at Dike Road, and that he demanded oral sex “again” when they were at the hotel. These facts could suggest some continuity between the assaults. However, the district court did not make findings about what happened at the park, nor did it find that Labatte and M.R. moved from Dike Road to the park and then to the hotel solely as a way for Labatte to continue the assault without detection. And Labatte’s use of “again” suggests consciousness of the past assault, but not necessarily continuity. Finally, even if Labatte was motivated by “perverse sexual desire,” that is not enough to connect the events. Thus, this case is distinguishable from *Bixby* and *Herberg*, where the only thing intervening between two sexual assaults was driving to another area in order to continue the assault. See *Bixby*, 344 N.W.2d at 391; *Herberg*, 324 N.W.2d at 347. The district court did not err by imposing sentences for both convictions.

Labatte also challenges the imposition of consecutive, rather than concurrent, sentences. The district court sentenced Labatte to consecutive terms of 360 and 172 months. Labatte challenges his consecutive sentences primarily by arguing that the offenses arose out of a single behavioral incident, an assertion that we have rejected. He also asserts that consecutive sentencing was “disproportionate.”

Consecutive sentences are a permissible punishment for criminal sexual conduct committed in violation of Minn. Stat. § 609.342, subd. 1. Minn. Sent. Guidelines 2.F.2(a)(1)(ii), 6 (2016). The length of these sentences is within the guidelines. See Minn. Sent. Guidelines 4.B (2016). A district court’s decision to impose permissive consecutive

sentences will not be reversed unless the district court clearly abused its discretion. *State v. Fardan*, 773 N.W.2d 303, 322 (Minn. 2009). The district court abuses its discretion if it imposes a sentence that is “disproportionate to the offense or [that] unfairly exaggerates the criminality of the defendant’s conduct.” *State v. Perleberg*, 736 N.W.2d 703, 705 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Oct. 16, 2007). We determine whether a sentence is disproportionate by comparing it with “sentences imposed on other similarly situated offenders.” *Id.*

Labatte does not cite to any caselaw suggesting that his sentence is longer than those of similarly situated individuals. Instead, he repeats the argument that he made below, that he was already going to receive the statutory maximum sentence for a single count, so adding a consecutive sentence would make his sentence very long. But even if his sentence is long, it is comparable to cases involving multiple counts of criminal sexual conduct that have been punished similarly. *See, e.g., State v. Barthman*, 917 N.W.2d 119, 132 (Minn. App. 2018) (holding that the district court abused its discretion by imposing two consecutive sentences of 360 months, but affirming one sentence and remanding for resentencing on the second with an instruction that the second sentence be between 288 and 344 months), *review granted* (Minn. Nov. 27, 2018); *Miller v. State*, 714 N.W.2d 745, 746 (Minn. App. 2006) (mentioning consecutive sentences of 360 months for first-degree criminal sexual conduct and 42 months for second-degree criminal sexual conduct). The district court did not abuse its discretion in sentencing Labatte consecutively.

Affirmed.