

*This opinion is nonprecedential except as provided by  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  
A20-0666**

State of Minnesota,  
Respondent,

vs.

Tim Davin Dortch,  
Appellant.

**Filed May 10, 2021  
Affirmed in part, reversed in part, and remanded  
Jesson, Judge**

Ramsey County District Court  
File No. 62-CR-17-13

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney,  
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public  
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and  
Reyes, Judge.

**NONPRECEDENTIAL OPINION**

**JESSON**, Judge

After stabbing a woman six times at the Dorothy Day Center, appellant Timothy Dortch was charged with attempted second-degree murder, first-degree assault, and second-degree assault. The district court found Dortch guilty of each charge. We reversed

due to structural error, concluding that Dortch's then-counsel violated his Sixth Amendment right to autonomy, and remanded for a new trial. Dortch, after being found guilty of the same charges following a second trial, now argues that the retrial violated his double-jeopardy rights. He also asserts that his multiple convictions were improper, and submitted a supplemental pro se brief alleging several other violations of law. Because a retrial following a remand due to trial error does not violate double jeopardy, and Dortch's host of allegations in his supplemental pro se brief are generally mere assertions without citation to legal authority, or otherwise lack merit, we affirm in part. But because second-degree assault is a lesser-included offense of first-degree assault, we reverse in part and remand with instructions to vacate the second-degree-assault conviction.

## **FACTS**

A.H., who had an extensive career as a security guard, lived at the Dorothy Day Center in Saint Paul. On December 30, 2016, after choosing her sleeping mat, A.H. went outside to vape. While outside, A.H. saw a woman through the window that she did not know looking through her belongings. A.H. went back inside and, after seeing her backpack unzipped and items tampered with, went to the bathroom to confront the woman. Dortch, who was also a stranger to A.H. but a companion to the woman A.H. was arguing with, stood near the bathroom door. After an argument with the woman, A.H. exited the bathroom and began a discussion with another woman.

Suddenly, Dortch lunged at A.H. from behind and struck her forehead with a knife, sending her to the ground. Dortch stabbed her three more times in her shoulder and torso and then, as she tried to get away, stabbed her again. A.H. later testified that after the

assault Dortch said, “I ride for my baby mama,” that he knew “how to stab a b-tch,” and that he guaranteed that A.H. would “not make it through the night.” A Dorothy Day Center employee, who was tending to A.H. after security guards pulled Dortch away, overheard Dortch say to A.H. “every time I see you, I will stab you.” Separate workers described A.H.’s heavy bleeding, including one who could see exposed bone on A.H.’s forehead wound. After law enforcement arrived on the scene, Dortch continued to threaten A.H., saying “you’re not going to make it to the hospital.” While alone in a squad car, Dortch laughed spontaneously and uncontrollably. He spoke aloud to himself about how he stabbed A.H. “over and over.”

Meanwhile, an ambulance took A.H. to the hospital. She had six stab wounds to her forehead, right shoulder, right armpit, stomach, and in her right flank. Five of the wounds were superficial, but the sixth wound was a life-threatening injury to her liver. She later recovered.

The state charged Dortch with: attempted second-degree murder, first-degree assault, and second-degree assault.<sup>1</sup> After a bench trial, the court found Dortch guilty of each charge. Dortch appealed, and we reversed and remanded, concluding that a structural error required a new trial.<sup>2</sup> *State v. Dortch*, No. A18-1242 (Minn. App. Apr. 23, 2019) (order op.).

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<sup>1</sup> Minn. Stat. §§ 609.17, subd. 1, .19, subd. 1, .221, subd. 1, .222, subd. 2 (2016). The district court dismissed an attempted first-degree murder charge for lack of probable cause. Minn. Stat. §§ 609.17, subd. 1, .185(a) (2016).

<sup>2</sup> Specifically, we concluded that Dortch’s attorney violated Dortch’s Sixth Amendment right to autonomy by conceding, without Dortch’s consent, that Dortch did not act in self-defense.

On remand, Dortch argued that a second trial would violate the constitutional prohibition against double jeopardy.<sup>3</sup> The district court declined to rule on Dortch's double-jeopardy claim, stating that the issue could be decided on appeal. The district court, after a bench trial, again found Dortch guilty of all three counts. At sentencing, the district court entered convictions for all three counts but only sentenced Dortch to 193 months' imprisonment for attempted second-degree murder.

Dortch appeals.

## DECISION

On appeal, Dortch argues that (1) the second trial on remand violated the constitutional prohibition against double jeopardy and (2) the district court erred by convicting him of both first-degree assault and second-degree assault. In a pro se supplemental brief, Dortch raises a multitude of other issues. We address each challenge in turn.

### **I. Holding a trial after remand for structural error did not violate Dortch's double-jeopardy rights.**

First, Dortch contends that retrying him for these offenses violates the Double Jeopardy Clause of the United States Constitution. We review the application of the constitutional protection against double jeopardy de novo. *State v. Gouleed*, 720 N.W.2d 794, 800 (Minn. 2006).<sup>4</sup>

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<sup>3</sup> Dortch's counsel for the second trial disagreed that there was a violation of double jeopardy, but documented Dortch's belief that there was for the record and possible appeal.

<sup>4</sup> The district court chose not to address Dortch's double-jeopardy claim, and instead said it could be heard on appeal. We observe that district courts should rule on the issues before them.

The Fifth Amendment of the United States Constitution provides that no person shall be “subject for the same offense to be twice put in jeopardy of life or limb.” The Minnesota Constitution similarly provides that “no person shall be put twice in jeopardy of punishment for the same offense.” Minn. Const. art. I, § 7. Each constitutional provision “protects against multiple punishments for the same offense, and against a second prosecution after an acquittal or conviction.” *State v. Jeffries*, 806 N.W.2d 56, 60-61 (Minn. 2011).

If a defendant’s conviction is reversed based on insufficient evidence, then the Double Jeopardy Clause<sup>5</sup> clearly precludes further prosecution. *Burks v. United States*, 437 U.S. 1, 18, 98 S. Ct. 2141, 2150-51 (1978). But it is also well established that if a conviction is reversed based on trial error, the “defendant is entitled to a new trial, not to outright reversal of his conviction.” *State v. Harris*, 533 N.W.2d 35, 36 (Minn. 1995). Stated differently, the Double Jeopardy Clause does not bar retrial when a case is heard on remand following structural trial error. *Id.*; see also *Burks*, 437 U.S. at 15, 98 S. Ct. at 2149 (“In short, reversal for trial error, as distinguished from evidentiary insufficiency, does not constitute a decision to the effect that the government has failed to prove its case. As such, it implies nothing with respect to the guilt or innocence of the defendant.”).

Here, Dortch faced retrial because we determined that the defense attorney in the first trial committed structural error when he disagreed with Dortch’s claim of self-defense. Structural errors—those defects that affect the framework within a trial and “call[] into

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<sup>5</sup> For ease of reference, we refer to both clauses collectively as “the Double Jeopardy Clause.”

question the reliability and fairness of the trial”—require automatic reversal. *State v. Dalbec*, 800 N.W.2d 624, 627 (Minn. 2011). We reversed in the first appeal based on a trial error—not based on the insufficiency of the evidence. Dortch’s trial after remand does not implicate one purpose of the prohibition against double jeopardy—his expectation of finality—as it is consistent with the remedy he sought in his first appeal. *State v. Humes*, 581 N.W.2d 317, 321 (Minn. 1998).

Because we remanded in the first appeal due to a trial error, the retrial did not violate the prohibition against double jeopardy.

## **II. Imposing convictions for both first-degree and second-degree assault violate Minnesota Statutes section 609.04.**

Next, Dortch argues that we should reverse and remand because his multiple convictions violate Minnesota Statutes section 609.04 (2016). His conviction of second-degree assault, Dortch asserts, should be vacated as a lesser-included offense. The state agrees that the second-degree-assault conviction should be vacated.

In general, a person may be convicted of either the crime charged or an included offense, but not both. Minn. Stat. § 609.04, subd. 1. An offense is an included offense if it is a “lesser degree of the same crime.” *Id.*; see also *State v. Hackler*, 532 N.W.2d 559, 559 (Minn. 1995) (“If the lesser offense is a lesser degree of the same crime . . . then it is an ‘included offense’ under section 609.04.”). We review de novo a district court’s application of section 609.04. *State v. Degroot*, 946 N.W.2d 354, 364 (Minn. 2020).

Here, the district court convicted Dortch of both second-degree assault and first-degree assault. Second-degree assault is a lesser degree of first-degree assault. See

*Hackler*, 532 N.W.2d at 559. Because it is a lesser-included offense, the district court erred by entering a conviction for second-degree assault.

We reverse Dortch’s conviction of second-degree assault and remand for correction of the warrant of commitment. *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984).

### **III. Pro Se Supplemental Brief**

Finally, Dortch raises a multitude of issues in a supplemental pro se brief. We recognize a duty to accommodate pro se litigants, so long as no prejudice results. *State v. Schloegl*, 915 N.W.2d 14, 24 (Minn. App. 2018). But we have repeatedly emphasized that pro se litigants are “generally held to the same standards as attorneys and must comply with court rules.” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

Because Dortch either cites no legal authority in support or otherwise inadequately briefed the majority of his arguments, those arguments are waived.<sup>6</sup> *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002). There are four remaining issues that, while they also largely do not contain citations or are unsupported by facts in the record, rise above the level of a mere assertion and warrant review. Those four issues are Dortch’s claims

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<sup>6</sup> The listed assertions that do not rise above the level of an argumentative assertion include: (1) violation of Minnesota Rules of Criminal Procedure 17.05; (2) violation of Minnesota Rules of Criminal Procedure 17.06; (3) violation of “laws of expiditaions [sic] in time limitation and proper authority” when transporting; (4) violation of collateral estoppel; (5) violation of Minnesota Rules of Criminal Procedure 11.09 and 6.1; (6) violation of “expiration to charge an offense” under Minnesota Rules of Criminal Procedure 1.0 to 37.02; (7) privileged communications admitted at trial; (8) ineffective assistance of counsel; and (9) a violation of the right to a public trial.

of: (1) a violation of his right to a speedy trial; (2) a violation of his *Miranda* rights; (3) an illegal sentence; and (4) a lack of consent to a retrial.

### *Speedy Trial*

Dortch argues that his speedy-trial rights were violated. But the argument centers on whether a delay in starting his *first* trial violated his right to a speedy trial. On remand after his first appeal, Dortch's second trial began only 48 days after Dortch demanded a speedy trial. As a result, his speedy-trial claim lacks merit. *See State v. Friberg*, 435 N.W.2d 509, 512 (Minn. 1989) (stating that while there is no arbitrary time limit for speedy trials, "delays greater than 60 days after a demand for speedy trial has been made are presumptively prejudicial").

### *Violation of Miranda Rights*

Dortch claims that his *Miranda* rights were violated when law enforcement transported him to Ramsey County from jail for retrial, because he was not read his *Miranda* rights. But he does not point to a specific time when he was under custodial interrogation or otherwise had evidence used against him at trial when he was not *Mirandized*. *See State v. Edrozo*, 578 N.W.2d 719, 724 (Minn. 1998) ("Statements made by a suspect during custodial interrogation are generally inadmissible unless the suspect is first given a [*Miranda*] warning."). Accordingly, this claim lacks merit.

### *Illegal Sentence*

Dortch alleges that his sentence was improper because the district court imposed an illegal sentence with an unsupported upward departure.

This court may correct an illegal sentence at any time. Minn. R. Crim. P. 27.03, subd. 9. We review de novo the interpretation of the Minnesota Sentencing Guidelines. *State v. Rouland*, 685 N.W.2d 706, 708 (Minn. App. 2004), *review denied* (Minn. Nov. 23, 2004).

Upon our review of the record, it appears that Dortch is mistaken about this claim. Because Dortch was convicted of attempted second-degree murder, the Minnesota Sentencing Guidelines instruct the district court to apply an attempt-sentencing modifier. Minn. Sent. Guidelines 2.G.2 (2016). This modifier halves the duration “found in the appropriate cell on the applicable Grid for the underlying offense.” *Id.* Second-degree intentional murder is a severity level 11 offense with a presumptive sentence of 386 months for a defendant with four criminal-history points. Minn. Sent. Guidelines 4.A (2016). When the attempt modifier is applied, the presumptive sentence becomes 193 months—the sentence length that the district court imposed. In sum, the district court imposed the presumptive sentence—not an aggravated departure—assuming that Dortch had four criminal-history points, a calculation of which he does not appear to challenge.

#### *Consent to Retrial*

Finally, Dortch argues that he did not consent to having a retrial and did not file a motion for a retrial, but instead requested acquittal. Similar to his other claims, Dortch does not cite to any legal authority to explain how the district court or this court erred. He also makes several statements that are not supported by facts in the record. If an argument contains no citation to legal authority, it is waived. *State v. Taylor*, 869 N.W.2d 1, 22 (Minn. 2015).

In sum, the supplemental brief is largely lacking in citation to legal authority, factual support, and arguments that rise above the level of mere assertions. After a thorough review of the record, we conclude these claims are all waived or lack merit.

Ultimately, we conclude that the retrial following a reversal due to structural error did not violate Dortch's double-jeopardy rights. And because the allegations in Dortch's supplemental pro se brief do not rise above a level of assertion or cite to legal authority, we affirm in part. But, because second-degree assault is a lesser-included offense of first-degree assault, we reverse in part and remand to the district court to vacate the second-degree conviction.

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