This opinion is nonprecedential except as provided by Minn.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
A21-1221**

State of Minnesota,
Respondent,

vs.

Remona Lysa Brown,
Appellant.

**Filed August 22, 2022
Affirmed
Bjorkman, Judge**

Nobles County District Court
File No. 53-CR-17-852

Keith Ellison, Attorney General, Nicholas B. Wanka, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Kirk, Judge.[*]

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges seven convictions of aiding and abetting theft by false representation, arguing that (1) insufficient evidence supports her convictions, (2) the

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

district court plainly erred by not granting her a new trial based on legally inconsistent verdicts, (3) the district court abused its discretion by imposing an upward durational sentencing departure, and (4) the district court abused its discretion by ordering her to pay $1.8 million in restitution. She asserts additional claims in a pro se supplemental brief. We affirm.

FACTS

The Minnesota branch of Caring and Compassionate Healthcare Agency LLC (CCHA) provided home-care services to clients in southern Minnesota. Appellant Remona Brown ran the Minnesota branch of CCHA. Her mother owned CCHA and ran its original branch in Michigan.

In 2011, CCHA enrolled with the Minnesota Department of Human Services (DHS) as a home-care agency providing nursing services to clients receiving medical assistance.[1] As a home-care nursing agency, CCHA was subject to the following rules and procedures.

To receive reimbursement for nursing services, an agency must first obtain DHS approval of a service agreement for each client, verifying that the client is eligible for nursing services and establishing the length of time the agency will provide them. The agency submits reimbursement claims through an online application. It must submit each claim individually and provide specific information, including the date of service, the client who received the service and that client's service-agreement number, whether a registered nurse (RN) or a licensed practical nurse (LPN) provided the service, and how much time

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[1] CCHA provided various home-care services to private clients and medical-assistance clients. This case concerns only nursing services provided to medical-assistance clients.

was spent providing service (in 15-minute increments). Accurate identification of the caretaker is vital because the reimbursement rate depends on the caretaker's credentials—RNs are paid more than LPNs. Home-care nursing agencies must maintain timesheets identifying the caretaker and detailing the services provided for five years; DHS can audit that information. A claim for reimbursement can be considered fraudulent if it is not supported by documentation, even if services were actually rendered.

Between 2011 and 2015, CCHA submitted thousands of nursing-services claims to DHS and received millions of dollars in reimbursements.

In 2015, a former CCHA employee and the parent of a former CCHA client filed a whistleblower complaint alerting authorities to suspected fraud at CCHA. A joint state and federal investigation led to searches of CCHA's Minnesota and Michigan branch offices in January 2016. Authorities seized extensive documentation and several computers, and conducted a recorded interview with Brown. Investigators examined records to confirm each employee's status and compared that information to CCHA's timesheets and DHS records of the reimbursement claims CCHA filed. They found fraud in three general types—claims without a supporting timesheet, claims for services provided by an unqualified caretaker, and claims for more hours of service than were provided. The fraud led to approximately 6,000 overpayments totaling $1,860,155.57.

The state charged Brown with 14 counts of aiding and abetting CCHA and her mother in theft between October 2012 and December 2015. The complaint broke this time frame into seven distinct periods of time, alleging two counts as to each: theft by false representation of more than $35,000 and theft of less than $1,000 in public funds.

At trial, the state presented the testimony of numerous witnesses, including four DHS employees, twelve former CCHA employees, the mother of a former CCHA client, and the investigators who searched CCHA's offices and interviewed Brown. The state also presented Brown's recorded statement, in which she described herself as CCHA's "CEO" and acknowledged submitting "some" nursing-services reimbursement claims but stated that two other employees were primarily responsible for that work. And it presented extensive documentary evidence, including enrollment documents CCHA filed with DHS, thousands of pages of CCHA personnel documents and timesheets, and a spreadsheet the investigators prepared that details every claim CCHA submitted for nursing-services reimbursement between October 2012 and December 2015.

The jury found Brown guilty on all 14 counts. But with respect to the public-funds counts, it answered "No" to the following question: "Was the value of the property or services stolen not more than $1000 and the property taken was public funds belonging to the state or to any political subdivision or agency?" Brown moved for a judgment of acquittal on those seven counts, which the district court granted.

The state requested an aggravated sentence for the remaining seven offenses on the ground that they constitute major economic offenses. Brown waived her right to a jury determination of the issue. The district court imposed concurrent sentences and sentenced the last offense as a major economic offense, with an aggravated sentence of 93 months' imprisonment. The district court also ordered Brown to pay $1,860,155.57 in restitution.

Brown challenged the restitution order. Following a hearing during which Brown testified regarding her ability to pay restitution, the district court denied Brown's restitution challenge. Brown appeals.

DECISION

I. Sufficient evidence supports Brown's convictions.

When reviewing a claim of insufficient evidence, we examine the evidence "to determine whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which [s]he was convicted." *State v. Stewart*, 923 N.W.2d 668, 673 (Minn. App. 2019) (quotation omitted), *rev. denied* (Minn. Apr. 16, 2019). A conviction that depends on circumstantial evidence warrants a two-step review. *State v. Irby*, 967 N.W.2d 389, 396 (Minn. 2021). First, we identify "the circumstances proved." *Id.* at 396-97. In doing so, we resolve all fact questions in favor of the jury's verdict, deferring to the jury's credibility determinations. *Stewart*, 923 N.W.2d at 673. Next, we determine whether the proved circumstances are, overall, consistent with guilt and inconsistent with any other rational hypothesis. *Irby*, 967 N.W.2d at 397.

Brown concedes that the state proved that someone at CCHA committed theft by false representation by submitting fraudulent claims to DHS seeking reimbursement for nursing services.[2] She challenges only the sufficiency of the evidence that she played a

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[2] Theft by false representation includes obtaining possession of another's property "by intentionally deceiving" that person with a knowing and intentional "false representation." Minn. Stat. § 609.52, subd. 2(a)(3) (2012). False representation includes "the preparation

knowing role in the theft, as required for her aiding-and-abetting convictions. *See State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012) (explaining that aiding and abetting means that the defendant knew her accomplices were going to commit the offense and intended her presence or actions to further the commission of that offense).

Viewing the record in the light most favorable to the verdicts, the state proved the following circumstances relevant to Brown's knowledge and intent. Brown managed CCHA's Minnesota branch at all relevant times, consistently identifying herself as the chief executive officer, president, or sole managing employee, even in her January 2016 interview with investigators. In that capacity, she hired and supervised employees and was familiar with their credentials. She signed the paperwork to enroll CCHA with DHS. She was the administrator of CCHA's online account for submitting claims and received training on how to submit claims correctly. She had access to records of all claims CCHA submitted to DHS. And Brown was the only person at the Minnesota branch who submitted nursing-services reimbursement claims to DHS.[3]

We next consider the inferences the circumstances proved reasonably support. Brown asserts that they support a rational hypothesis that someone else within CCHA facilitated the theft without her knowledge. We disagree. This hypothesis is not rational because it relies on evidence that we infer the jury disbelieved—particularly Brown's

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or filing" of a medical-assistance reimbursement claim that "intentionally and falsely states the costs of or actual services provided by a vendor of medical care." *Id.*, subd. 2(a)(3)(iii).

[3] No more than three or four claims were filed by a Michigan branch employee, and no evidence indicates any of them was fraudulent.

statements to investigators that two other CCHA employees were primarily responsible for submitting nursing-services reimbursement claims—and facts that are immaterial to her knowledge and intent regarding the theft, like the processing of payroll at the Michigan branch. She also emphasizes that there is no evidence that she personally benefited from the theft. But that is not an element of the theft-by-false-representation offense. And it is not rational to ignore the extensive evidence tying Brown to the theft simply because she may not have personally benefited from it. Rather, the only reasonable inference from the proved circumstances is that Brown knowingly and intentionally authored every fraudulent claim that CCHA submitted for reimbursement. As such, the evidence supports her seven convictions of aiding and abetting theft by false representation.

II. The district court did not plainly err by entering judgments of acquittal on the public-funds counts rather than granting Brown a new trial.

Brown argues that the jury rendered legally inconsistent verdicts by finding her guilty of theft of more than $35,000 and theft of less than $1,000 in public funds. She contends the district court should have granted a new trial—the remedy for legally inconsistent verdicts. *See State v. Christensen*, 901 N.W.2d 648, 651 (Minn. App. 2017). But Brown did not seek a new trial; she sought—and obtained—judgments of acquittal on the public-funds counts. Where a party requests a particular ruling, she generally cannot challenge that ruling on appeal. *State v. Carridine*, 812 N.W.2d 130, 142 (Minn. 2012). An exception to this "invited error doctrine" applies when an appellant establishes (1) error, (2) that is plain, and (3) that affects her substantial rights. *Id.* Brown has not done so.

Verdicts are legally inconsistent only if "proof of the elements of one offense negates a necessary element of another offense." *Steward v. State*, 950 N.W.2d 750, 755 (Minn. 2020) (quotation omitted). Our close examination of the verdicts reveals no legal inconsistency.

For all seven odd-numbered counts, the jury returned the following verdicts:

> We, the Jury, find the defendant, Remona Lysa Brown, GUILTY, of the charge of Aiding and Abetting Theft by False Representation (Over $35,000)
>
> Was the value of the property more than $35,000? ☒ Yes ☐ No
>
> Was the value of the property more than $5,000, but not more than $35,000? ☐ Yes ☒ No
>
> Was the value of the property more than $1,000, but not more than $5,000? ☐ Yes ☒ No
>
> Was the value of the property more than $500, but not more than $1,000? ☐ Yes ☒ No
>
> Was the value of the property less than $500? ☐ Yes ☒ No

And for all seven even-numbered counts, the jury returned the following verdicts:

> We, the Jury, find the defendant, Remona Lysa Brown, GUILTY, of the charge of Aiding and Abetting Theft by False Representation (Public Funds)
>
> Was the value of the property or services stolen not more than $1000 and the property taken was public funds belonging to the state or to any political subdivision or agency?
>
> ☐ Yes
>
> ☒ No

Brown contends these verdicts are legally inconsistent because they require implicit findings that the value of the stolen property was both over $35,000 and under $1,000. We are not persuaded. In each of the 14 verdicts, the jury found the value of the stolen property was more than $1,000. Nothing about the jury's verdicts on the even-numbered counts negated an element of the offenses charged in the odd-numbered counts. In short, the verdicts are not inconsistent; they reflect the jury's determination that the state failed to prove an element of the public-funds counts—that the amounts stolen were less $1,000. Accordingly, the district court did not plainly err by granting Brown's request for judgments of acquittal on those counts rather than sua sponte granting a new trial.

III. The district court did not abuse its discretion by imposing an upward durational sentencing departure.

We review a district court's decision to depart from the presumptive sentence for an abuse of discretion. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A district court abuses its discretion when its reasons for departure are legally impermissible or the record evidence does not justify the departure. *Id.*

A district court may impose an aggravated sentence for a "major economic offense" if it finds at least two of the following factors:

> (i) the offense involved multiple victims or multiple incidents per victim;
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> (ii) the offense involved an attempted or actual monetary loss substantially greater than the usual offense or substantially greater than the minimum loss specified in the statutes;
>
> (iii) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;
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> (iv) the offender used the offender's position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships; or
>
> (v) the offender had been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions.

Minn. Stat. § 244.10, subd. 5a(a)(4) (2012); *see* Minn. Sent. Guidelines 2.D.3.b.(4) (2012) (same). But a court may not impose an aggravated sentence based on factors necessarily used in convicting the defendant of another offense or already factored into the seriousness of the current offense. *State v. Thompson*, 720 N.W.2d 820, 829-30 (Minn. 2006).

The district court sentenced only the last offense—the theft that occurred between December 1, 2015, and December 29, 2015—as a major economic offense. In support of that sentence, the district court found two aggravating factors: (1) multiple incidents per victim (the public), and (2) the offense involved monetary losses substantially greater than the usual offense and substantially greater than the minimum loss specified in the charging statute.[4] Brown challenges the district court's findings as to both factors.

She first asserts that the district court abused its discretion by relying on the multiple-incidents factor because it looked to conduct underlying all of the offenses. This argument is unavailing. While the court used imprecise language that the "total number" of incidents was "highly substantial," it also referenced the investigators' spreadsheet, which details every single fraudulent claim and identifies which claims pertain to each offense. Review of the spreadsheet confirms that the offense for which the court imposed an aggravated sentence included 256 incidents not covered by any of the other offenses—a "highly substantial" number that amply satisfies the multiple-incidents requirement.

Brown next argues that the district court abused its discretion by relying on the monetary-losses factor because it looked to a factor already encompassed in the offense

[4] The court initially stated that the offenses occurred over a lengthy period of time, then clarified that the offense for which it was imposing an aggravated sentence did not. Thus, it did not rely on that factor in sentencing Brown. Moreover, any such reliance would have been harmless since the other two factors support the district court's sentencing decision. *See Thompson*, 720 N.W.2d at 830-31 (upholding aggravated sentence for major economic offense when district court relied on some improper factors but two proper factors).

itself. We disagree. The district court expressly stated that it was not considering the total but the amount associated with each offense, and that the offense it was sentencing involved the theft of $101,774.65, which is "almost triple" the $35,000 statutory threshold. This finding did not rely on conduct underlying other offenses or factors already accounted for in establishing the seriousness of the offense. Rather, it recognized a distinction of degree, precisely as contemplated in the "major economic offense" statute and guideline.

In sum, we discern no abuse of discretion by the district court in relying on the multiple-incidents and monetary-losses factors to sentence the December 2015 theft as a major economic offense.

IV. The district court did not abuse its discretion by ordering Brown to pay $1.8 million in restitution.

A district court has broad discretion to award restitution, and we generally will not disturb a restitution order absent an abuse of that discretion. *State v. Wigham*, 967 N.W.2d 657, 662 (Minn. 2021).

When deciding whether to order restitution, and for how much, a court must consider (1) the amount of the victim's "economic loss" from the offense, and (2) the defendant's "income, resources, and obligations." Minn. Stat. § 611A.045, subd. 1(a) (2020). Brown contests both aspects of the restitution order.

With respect to economic loss, Brown asserts that the district court erred by failing to account for services actually provided but mischaracterized for reimbursement.[5] She

[5] For example, she points to instances when an LPN provided services but CCHA submitted a reimbursement claim at the higher RN rate.

contends this failure overstates the actual loss and would place DHS in a "better position than it was before the crime." But Brown did not present this argument to the district court. Her only challenge to the amount of loss was to reiterate her position that the state failed to prove that she was a knowing participant in the theft, emphasizing the absence of evidence indicating that she personally received any of the stolen funds.

A defendant has 30 days to challenge the amount of restitution requested. Minn. Stat. § 611A.045, subd. 3(b) (2020). To do so, she must provide "a detailed sworn affidavit" that states "all challenges to the restitution or items of restitution, and specif[ies] all reasons justifying dollar amounts of restitution which differ from the amounts requested." Minn. Stat. § 611A.045, subd. 3(a) (2020). Timely and thorough identification of all restitution challenges is vital to enable the state to respond with appropriate evidence to substantiate the amount of loss. *See id.* Accordingly, a defendant's failure to comply results in forfeiture. *See id.*, subd. 3(b) ("A defendant may not challenge restitution after the 30-day time period has passed."); *see also State v. Rosenbush*, 931 N.W.2d 91, 97 n.7 (Minn. 2019) (stating that arguments may not be raised for first time on appeal); *cf. State v. Gaiovnik*, 794 N.W.2d 643, 647 (Minn. 2011) (explaining that the statutory forfeiture rule applies to challenges to amount of restitution, not challenges to the court's authority to order restitution). Because Brown did not ask the district court to account for services CCHA may have actually provided in connection with the fraudulent reimbursement claims, she forfeited this challenge.[6]

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[6] Our supreme court recently held, in another case involving medical-assistance fraud, that "a district court must consider the value of economic benefits, if any, the defendant

Regarding her ability to pay restitution, Brown contends the district court "summarily dismissed" her assertion that she is unable to pay. This argument is unavailing. A district court is not required to make specific findings on the defendant's income, resources, and obligations, but it must "expressly state, either orally or in writing, that it has considered" those factors. *State v. Cloutier*, 971 N.W.2d 743, 749 (Minn. App. 2022) (quoting *Wigham*, 967 N.W.2d at 659). The district court issued a written order addressing Brown's financial circumstances. It noted that Brown lacked any significant current income or assets and would face economic hardship when released from prison because of the loss of her nursing license. But it also found that Brown had experience as a truck driver and that she acknowledged she might be able to regain her licensure and return to that work after serving her prison term.

The district court also emphasized that Brown's inability to pay the full amount does not, in itself, preclude or limit an award of restitution. *See Wigham*, 967 N.W.2d at 664 n.4 (stating that a court need not "limit a restitution award amount to only what the defendant can afford"); *see also State v. Davis*, 907 N.W.2d 220, 227 (Minn. App. 2018) (stating that "courts can order restitution even when offenders are unable to pay"), *rev. denied* (Minn. Apr. 17, 2018). Rather, Brown's financial circumstances require an appropriate schedule to enable her to make reasonable payments toward restitution. The

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conferred on the victim as a result of the offense when determining 'the amount of economic loss sustained by the victim as a result of the offense.'" *State v. Currin*, 974 N.W.2d 567, 573 (Minn. 2022) (quoting Minn. Stat. § 611A.045, subd. 1(a)(1)). Because Brown did not challenge the amount of loss in the district court, she is not entitled to relief under *Currin*.

district court's original restitution order assigned probation the task of establishing such a schedule, as permitted under Minn. Stat. § 611A.045, subd. 2a (2020). On this record, we discern no abuse of discretion by the district court.

V. Brown's pro se arguments do not entitle her to relief.

In a pro se supplemental brief, Brown argues that (1) the district court erred by denying her motion to suppress evidence obtained during the search of CCHA, (2) she was denied a speedy trial, and (3) a witness gave false testimony. We address each in turn.

A. Suppression of Evidence

When reviewing a pretrial motion to suppress, we review factual findings for clear error and legal determinations de novo. *State v. Marsh*, 931 N.W.2d 825, 829 (Minn. App. 2019), *rev. denied* (Minn. Sept. 17, 2019).

Brown first argues that the search of CCHA exceeded the scope of the warrant. A search pursuant to a warrant must be limited to the scope of the warrant. *State v. Hill*, 918 N.W.2d 237, 241 (Minn. App. 2018). "The test for determining whether a search has exceeded the scope of the warrant is one of reasonableness." *Marsh*, 931 N.W.2d at 830 (quotation omitted). A court examines the totality of the circumstances in determining the reasonableness of the officers' conduct in executing a search. *Id.*

The warrant authorized a search of "suite 6" of a particular office building—the address that CCHA had provided when enrolling with DHS. The district court found that the officers executing the search warrant "did clearly search areas outside that authorized by the plain language of the search warrant" by searching other offices in the building. But the court determined that the search of those areas was reasonable because the offices were unmarked, Brown's comments to officers as they began the search led them to understand that CCHA occupied multiple offices in the building, and there is no indication that the officers' reliance on these factors led them to search any areas unconnected to CCHA. Because the record supports the district court's findings and Brown identifies no flaw in its reasoning, she has not demonstrated any error in the district court's determination that the scope of the search was reasonable.

Brown next asserts that the affidavit supporting the warrant contained false statements. A search-warrant application is presumptively valid if, on its face, it provides probable cause to justify a search. *Franks v. Delaware*, 438 U.S. 154, 164-65, 171 (1978). But a defendant may seek to invalidate a search warrant by challenging the truthfulness of factual statements made in the warrant application. *Id.* at 155-56, 172. To prevail, the defendant must show that the affiant "deliberately made a statement that was false or in reckless disregard of the truth" and "the statement was material to the probable cause determination." *State v. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010) (quotation omitted).

Brown contends the investigator who requested the affidavit falsely averred that (1) Brown was a partial owner of CCHA and (2) CCHA filed reimbursement claims with DHS, when individual users must file the claims. She also requests a *Franks* hearing. But while she referenced "false statements" in her motion to suppress, she never advanced any argument on the issue to the district court and never requested a *Franks* hearing. She may not raise the issue for the first time on appeal. *See Rosenbush*, 931 N.W.2d at 97 n.7.

B. Speedy Trial

Whether a criminal defendant was deprived of her constitutional right to a speedy trial depends on a "constellation" of factors, including the length of the delay, whether the state or the defendant is responsible for the delay, whether and how the defendant asserted the right, and any prejudice to the defendant from the delay. *State v. Mikell*, 960 N.W.2d 230, 245 (Minn. 2021). Examination of these factors reveals no speedy-trial violation.

We recognize that there was a long delay between when Brown was charged in September 2017 and her May 2021 jury trial. But the record shows Brown was the primary cause of the delay, seeking and obtaining seven continuances through January 2020. An April 2020 hearing was canceled because of pandemic restrictions, but it caused a delay of only about two and one-half months before trial preparations resumed. *See State v. Paige*, ___ N.W.2d ___, ___, 2022 WL 2826253, at *5 (Minn. July 20, 2022) (concluding that delay to enable pandemic safety measures is not attributable to the state). At no point did Brown demand a speedy trial. And no prejudice is apparent from the delay since she was not subject to pretrial detention and she identifies no specific evidence that was lost or impaired. On this record, Brown has not demonstrated that she was denied her right to a speedy trial.

C. False Testimony

Finally, Brown contends she is entitled to a new trial because one of the former CCHA employees falsely testified that Brown was the "owner" of CCHA. We are not persuaded. A defendant may be entitled to a new trial based on false testimony if (1) a court is "reasonably well satisfied that the testimony given by a material witness is 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 the trial." *State v. Nicks*, 831 N.W.2d 493, 511 (Minn. 2013). Brown cannot meet any of these elements. First, we are satisfied the statement about Brown's ownership was not false; it was the witness's perception of Brown's role in the business and reasonably consistent with Brown's own presentations of herself as CEO and president. Second, it is inconceivable that this single statement materially influenced the verdict, given the volume of testimony from numerous other CCHA employees and Brown's own statements establishing her position of authority within CCHA. And third, even in the unlikely event that Brown was surprised by the testimony, she had ample opportunity to cross-examine the witness. Accordingly, her false-testimony argument fails.

Affirmed.