

*This opinion is nonprecedential except as provided by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
A21-1630**

State of Minnesota,
Respondent,

vs.

Moosisaa Dhugumaa Bulchaa,
Appellant.

**Filed March 6, 2023
Affirmed in part and remanded
Ross, Judge**

Hennepin County District Court
File No. 27-CR-20-11364

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

Mary F. Moriarty, Hennepin County Attorney, Peter R. Marker, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Surveillance-camera video footage captured a man following a woman into an apartment building, riding up the elevator with her, and exiting the elevator behind her. The woman later testified that, out of the surveillance camera's view, the man pushed her down and sexually assaulted her. Police identified the man by comparing the video footage

of him with images of a man whom police knew from other recent encounters. Appellant Moosisaa Bulchaa asks us to reverse his first-degree criminal-sexual-conduct conviction, contending that the district court improperly denied his motion to strike an officer's testimony that Bulchaa was the man in the surveillance images, an opinion she based on her prior interaction with Bulchaa. We affirm the conviction because Bulchaa has not shown that there is a reasonable possibility that the officer's testimony significantly affected the jury's guilty verdict and because arguments he presents in a supplemental brief are either unconvincing or are undeveloped. We remand for the district court to amend the warrant of conviction to include only the first-degree offense.

FACTS

An emergency dispatcher received a report in April 2020 that a woman, whom we will call Ruth to protect her privacy, was sexually assaulted in the hallway of a Minneapolis apartment building. Ruth told responding Minneapolis police officers that a man rode up the building's elevator with her, followed her out of the elevator onto the tenth floor, pushed her to the floor, and digitally penetrated her vagina. Police viewed a building surveillance video of a man who matched the physical description that Ruth had provided, and Ruth confirmed that the man in the video appeared to be her attacker.

A Minneapolis police investigator seeking to identify the assailant circulated video-footage still images of the man who followed and attacked Ruth to local law enforcement. At least two officers recognized the photographed man as appellant Moosisaa Bulchaa, based on their recent encounters with him. Police obtained photographs depicting Bulchaa wearing what appeared to be the same clothes worn by Ruth's attacker. His physical

characteristics also matched Ruth's description and those of the man in the surveillance video.

The state charged Bulchaa with first-, third-, and fourth-degree criminal sexual conduct. At trial, the state presented eleven witnesses, including police sergeant Christine Patino, the sole witness whose testimony Bulchaa challenges in this appeal. Sergeant Patino testified that she knew Bulchaa and had spoken with him before the attack. She said that she reviewed the surveillance video, identified Bulchaa as the man in the video, and explained how she recognized Bulchaa:

Since I've seen him numerous times before . . . I can see . . . he stands about [6 feet] tall . . . he's of light build. Some may describe that as skinny. His facial features are something that I recognize also. He has a slim nose. [It's] just the way that his eyes lay on his face, his complexion. All of those are things that I was able to recognize when I watched the video of this from the times that I've interacted with Mr. Bulchaa.

Bulchaa moved to strike Sergeant Patino's identification as improperly invading the province of the jury, and the district court denied the motion.

The jury found Bulchaa guilty as charged. The district court sentenced him to 144 months in prison on the conviction of first-degree criminal sexual conduct.

Bulchaa appeals.

DECISION

Bulchaa argues that we must reverse his conviction because, he maintains, Sergeant Patino's identification constituted improper opinion testimony that the district court should have struck. He also argues that we should reverse based on additional issues in his supplemental brief. None of the arguments requires reversal.

I

We are not persuaded to reverse by Bulchaa's contention that the district court erroneously refused to strike Sergeant Patino's allegedly impermissible identification testimony. He contends particularly that the testimony constituted improper opinion testimony from a nonexpert witness, violating Minnesota Rule of Evidence 701. We review a district court's evidentiary rulings for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Even if we recognize an evidentiary ruling that constitutes an abuse of discretion, we consider whether the error is harmless, meaning that we will reverse a conviction only if the erroneous ruling prejudiced the defense. *Id.* Erroneously admitted evidence that does not implicate a constitutional right has prejudiced the defense only if there is a reasonable possibility that the evidence significantly affected the verdict. *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016); *see also State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011) (listing factors to consider when determining whether any prejudice arose from inadmissible testimony). Because Bulchaa has shown no resulting prejudice regardless of whether the district court should have excluded the evidence, we need not consider whether the district court's ruling constituted an abuse of discretion.

Bulchaa's argument that the alleged error prejudiced him does not prevail. He contends that Sergeant Patino's opinion testimony identifying him as the man in the surveillance video footage was especially impactful because the jury heard this testimony "coming from a licensed peace officer." The contention is not convincing considering that the jury had already received similar police testimony before Sergeant Patino testified. Metropolitan Transit Police Officer Ahmad Kahin had informed the jury plainly that, when

he saw the surveillance image of the man who followed Ruth off the elevator before the attack, he “immediately knew that it was the person” he had encountered during a medical call when he attended to Bulchaa having breathing trouble at a light-rail station. He had identified Bulchaa during the medical call by Bulchaa’s state identification card, and he recognized him instantly when he saw the surveillance image that Minneapolis police circulated after the attack. Officer Kahin’s testimony was stated in even more absolute terms than Sergeant Patino’s identification testimony. And before the jurors heard from Sergeant Patino, they had already heard from Minneapolis Police Sergeant Bevan Blauert. Sergeant Blauert testified that, when he compared the images of Bulchaa’s two contacts with Metropolitan Transit Police Department officers to the surveillance images from the night of Ruth’s attack, he too had “determined it to be the same person.” That two police officers had already testified—without objection and without challenge on appeal—to having identified Bulchaa as the man in the surveillance video substantially diminishes the significance of Sergeant Patino’s identification testimony. Indeed, the prosecutor referenced all of this police testimony together during her closing argument to the jury: “Yesterday, you heard from a bunch of law enforcement officers talking about the process that they went through to identify this defendant”

We add that this was an atypical case in that the victim did not identify her attacker before or during trial. The state instead relied heavily on the jury’s opportunity to compare surveillance video footage and images of Bulchaa identified during other incidents to the video and images surrounding the attack. In other words, the prosecutor essentially produced evidence that allowed the jury itself to directly identify the defendant. This was

largely the way the prosecutor urged the jury to decide the case, minimizing the officers' identification and ushering the jury toward its own:

It's the defendant. And *you'll* be able to go back to the jury room, *you'll* be able to look at these photos and compare them side by side, and when *you* do that, *you* will see he has the same build, he has the same stature. *You'll* see that the skin tone is the same across those photographs. *You'll* be able to compare the facial hair, *you'll* be able to compare how he's standing, how he's dressed, the manner of dress, how he's wearing that hood, how he's all zipped up. The jacket, of course, is very identifiable. The backpack's identifiable, and he has the same pants and shoes. *You will be able to compare across all of these photographs and know, beyond a doubt, that this defendant is the man who attacked [Ruth].*

(Emphasis added.) Given the fact that the jury had already heard from other police witnesses who testified that they reached the same conclusion that Sergeant Patino later said she reached, and given the state's focus at trial on the photographic evidence with the prosecutor's argument that the jury could identify Bulchaa as the attacker, we are satisfied that Sergeant Patino's allegedly improper opinion testimony identifying Bulchaa as Ruth's attacker had little independent impact on the verdict. This reasoning about the lack of prejudice also disposes of Bulchaa's related emphasis on the fact that Sergeant Patino's testimony was the last testimony the jury received.

II

Bulchaa raises five arguments in his supplemental brief. We address only one in substance, and we conclude that none merits reversal.

Bulchaa argues that the district court improperly denied his motion for a downward durational departure from the presumptive sentence designated by the Minnesota

Sentencing Guidelines. A district court may depart downward durationally from a presumptive guidelines sentence only if the defendant's criminal conduct was significantly less serious than conduct an offender typically engages in when committing the offense. *State v. Solberg*, 882 N.W.2d 618, 623–24 (Minn. 2016). We review a district court's refusal to depart for an abuse of discretion, and we will therefore affirm a guidelines sentence if the district court carefully evaluated all the evidence and information presented to it before sentencing. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013); *see also Solberg*, 882 N.W.2d at 623. Our review of the record convinces us that the district court carefully evaluated all the testimony presented. The district court observed that Ruth's physical injuries were less severe than those in some first-degree criminal-sexual-conduct cases, but it reasonably implied that Bulchaa's conduct was not significantly less serious than conduct in a typical offense. The district court issued the sentence within its discretion.

Bulchaa's other assertions—that the state failed to produce sufficient evidence on four issues: to prove the elements of fourth-degree criminal sexual conduct; to prove the element of force; to support the first-degree criminal-sexual-conduct conviction; and to establish that he was Ruth's assailant—lack any supporting argument or legal authority. We generally do not consider unsupported contentions. *See State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015). We therefore do not address the arguments further.

III

We have spotted an issue that neither party raises. *See State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (emphasizing that the duty of appellate courts to decide

cases in accordance with law is not diminished by a party's "failure to specify issues" (quotation omitted)). The district court may not convict a person of both a crime and a lesser-included offense. Minn. Stat. § 609.04, subd. 1 (2018). The warrant of commitment here suggests that the district court may have inadvertently entered convictions of third- and fourth-degree criminal sexual conduct, not just first-degree criminal sexual conduct, for the same conduct. The district court properly sentenced Bulchaa only to the first-degree offense. But on remand, the district court should amend the warrant language to confirm the entry of only one conviction.

Affirmed in part and remanded.