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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1278**

State of Minnesota,
Respondent,

vs.

Ryan Marshall McNally,
Appellant.

**Filed December 2, 2024
Affirmed
Bentley, Judge**

Hennepin County District Court
File No. 27-CR-21-7938

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

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

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Considered and decided by Bentley, Presiding Judge; Segal, Chief Judge; and
Johnson, Judge.

NONPRECEDENTIAL OPINION

BENTLEY, Judge

In this direct appeal from a conviction of second-degree criminal sexual conduct, appellant argues that he is entitled to a new trial because the district court abused its discretion by admitting evidence of a subsequent act of alleged abuse. Alternatively,

appellant seeks resentencing because the district court violated his constitutional right to a jury trial under *Blakely v. Washington*, 542 U.S. 296 (2004), when the court determined the date of the offense by a preponderance of evidence, and thereby increased his criminal-history score and established a longer presumptive sentence. In a pro se supplemental brief, appellant raises additional claims. Because we discern no abuse of discretion regarding the admission of other-bad-act evidence and appellant's supplemental arguments, and because we conclude that the *Blakely* violation was harmless beyond a reasonable doubt, we affirm.

FACTS

Respondent State of Minnesota charged appellant Ryan Marshall McNally III with second-degree criminal sexual conduct, Minn. Stat. § 609.343, subd. 1(a) (2014), alleging that McNally made his eight- or nine-year-old neighbor, B.J.Y., rub his penis. During a six-day jury trial in February 2023, the state presented evidence about the charged conduct involving B.J.Y., as well as evidence about a 2021 incident when McNally allegedly made his daughter, N.M., rub his penis. A summary of the evidence received at trial and the relevant procedural history follows.

B.J.Y. became friends with McNally's daughters after the McNallys moved to B.J.Y.'s neighborhood in Golden Valley in 2015. The children played together about once a week, typically at the McNally home. One day, when B.J.Y. was eight or nine years old, B.J.Y. went there to play with McNally's daughters. McNally answered the door and told B.J.Y. that his daughters were not home, but he invited B.J.Y. inside anyway. B.J.Y. sat with him on a couch and watched him play video games. McNally was wearing a robe with nothing underneath. At some point, McNally said that he had a stomachache and asked

B.J.Y. to rub his stomach. After B.J.Y. complied, McNally repeatedly asked B.J.Y. to rub lower until B.J.Y.'s hand was on McNally's penis. McNally then asked B.J.Y. to "rub it." When B.J.Y. did, they felt semen on their hand.¹ B.J.Y. testified that they felt uncomfortable, removed their hand, and told McNally that they had to leave. B.J.Y. ran home and washed their hands. B.J.Y. testified that they did not tell anyone about the incident until "[a] few years later."

In 2020, B.J.Y. told B.J.Y.'s grandmother and father about the alleged abuse. B.J.Y.'s father contacted the police, and B.J.Y. was forensically interviewed at a child-advocacy center a month later. The state charged McNally with criminal sexual conduct in April 2021.

In February 2021, after the incident with B.J.Y. but before he was charged in relation to it, McNally allegedly sexually abused his daughter, N.M. The district court allowed evidence relating to N.M. "to demonstrate a common scheme or plan" between the alleged incidents and to show that B.J.Y. was not fabricating their testimony. N.M. and her two sisters had stayed the night with McNally at a hotel in Eau Claire, Wisconsin. N.M.'s mother and McNally were separated, and he arranged for an overnight visit. The hotel room had one king-sized bed and one couch with a pullout bed. N.M.'s sisters fell asleep on the pullout, and N.M. initially fell asleep on the floor. McNally then woke N.M. and told her to lie on the bed with him. N.M. fell back asleep on the bed, but she woke up again when McNally grabbed her arm, "made [her] touch his penis," and made "[her] hand go . . . up

¹ Both parties note in their briefs that B.J.Y. uses they/them pronouns.

and down.” N.M. was afraid to move her hand away. She then felt wetness on her hand. N.M. moved her arm away and fell asleep. The next morning, after McNally left the hotel room, N.M. told one of her sisters what McNally did. After N.M. and her sisters returned home later that day, N.M. told her other sister. N.M. then spoke with her mother about the incident.

At trial, the state established these facts through witness testimony and exhibits. As to B.J.Y.’s allegations, the jury heard testimony from B.J.Y., B.J.Y.’s father and grandmother, the forensic interviewer who interviewed B.J.Y., and the police officer who spoke with B.J.Y.’s father about the allegations. The jury also viewed a recording of B.J.Y.’s forensic interview.

As to N.M.’s allegations, the jury heard testimony from N.M., N.M.’s mother and grandmother, the forensic interviewer who interviewed N.M., and two police officers who investigated N.M.’s allegations. The jury also viewed a redacted recording of N.M.’s forensic interview, photographs of the hotel room, and screenshots of text messages between one of N.M.’s sisters and N.M.’s mother.

On each day that the jury was presented evidence relating to N.M., and directly before the testimony of four of the six witnesses, the district court issued an instruction like the following:

Members of the jury, the State is about to introduce evidence of an occurrence on or about February 20th, 2021, at a hotel in Eau Claire, Wisconsin. This evidence is being offered for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in the complaint. The defendant is not being tried and may not be convicted of any offense other than the charged

offense. You are not to convict the defendant on the basis of occurrences on February 20th, 2021, in Eau Claire. To do so might result in unjust double punishment.

The district court issued a similar instruction before closing argument.

The district court also instructed the jury that, to convict McNally, it must find that the offense date relating to the incident involving B.J.Y. occurred between August 31, 2015, and December 31, 2019. That offense-date range was wider than the range alleged in the original complaint, which only extended to August 30, 2017. The state had amended its complaint during the trial to reflect the wider offense-date range.

The jury found McNally guilty of second-degree criminal sexual conduct. A sentencing worksheet assigned four felony points to McNally's criminal-history score, including two points for two felony convictions from 2004. At McNally's sentencing hearing, defense counsel questioned the inclusion of those two points on the ground that the 2004 offenses would have decayed in 2019 for purposes of calculating McNally's present criminal-history score under the Sentencing Guidelines. Minn. Sent'g Guidelines 2.B.1.c. (Supp. 2019). Defense counsel reasoned that, if the offense against B.J.Y. had occurred after the 2019 decay dates, the two points should not have been included in McNally's criminal-history score for this conviction.

In response, the district court asked whether defense counsel agreed that, "[w]ith regard to all of these factual issues" relating to the criminal-history score, the standard of proof was "not proof beyond a reasonable doubt to a jury, but it's to the [c]ourt by a preponderance that the state has the burden." Defense counsel agreed. The state did not directly address which burden of proof was correct but responded that the court could make

a finding that the offense occurred before 2019—and at the latest on August 30, 2017—based on B.J.Y.’s testimony and B.J.Y.’s statements in the video of the forensic interview. The state noted that even if it had “to have [the] jury come back and figure this out[,] . . . the state would present the transcript of the trial and that would be it.” The district court then found “based solely on the trial evidence that the state has proven that the offense for sentencing was between August 31, 2015, and August 30, 2017, at least to a preponderance of the evidence to the Court.” Accordingly, the district court kept the criminal-history score at four and sentenced McNally to 91 months in prison.

McNally appeals.

DECISION

McNally argues for a new trial on the basis that the district court abused its discretion by admitting evidence that McNally sexually abused N.M. He also seeks resentencing because the district court violated his constitutional right to a jury trial when it imposed a presumptive sentence based in part on findings relating to the offense date that the court itself determined by a preponderance of the evidence. We address McNally’s arguments in turn.

I

Evidence of other bad acts, also known as *Spreigl* evidence, is “generally not admissible to prove the defendant’s character for committing crimes.” *State v. Gomez*, 721 N.W.2d 871, 877 (Minn. 2006) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)); *see also* Minn. R. Evid. 404(b) (providing rule for admissibility of other-acts evidence). But *Spreigl* evidence “may be admissible for other purposes,” including to show a

“common scheme or plan” and to rebut a defendant’s contention “that the conduct on which the charge was based was a fabrication.” *State v. Clark*, 738 N.W.2d 316, 346 (Minn. 2007) (quotation omitted). Appellate courts review a district court’s decision to admit evidence of other bad acts for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016).

The supreme court has adopted a five-step process to determine whether *Spreigl* evidence is admissible:

(1) the State must provide notice of its intent to use the evidence; (2) the State must clearly indicate what the evidence is being offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the other act; (4) the *Spreigl* evidence must be relevant and material; and (5) the probative value of the evidence must not be outweighed by the potential prejudice.

State v. Buchan, 993 N.W.2d 614, 626 (Minn. 2023). If the district court abused its discretion by admitting *Spreigl* evidence, we “must then determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Griffin*, 887 N.W.2d at 262.

Here, the state offered the *Spreigl* evidence to prove a common scheme or plan and to rebut McNally’s contention that the charged conduct did not happen. The district court determined that the state satisfied all five steps. On appeal, McNally challenges only the district court’s determination of steps four and five: that the evidence was relevant and that the probative value outweighed its potential prejudice to McNally. For the following reasons, we conclude that the district court did not abuse its discretion.

A

For *Spreigl* evidence to be relevant, the “general rule” is that a bad act must be “sufficiently or substantially similar to the charged offense—determined by time, place, and modus operandi.” *State v. Ness*, 707 N.W.2d 676, 688 (Minn. 2006) (quotation and emphasis omitted). But when the state introduces *Spreigl* evidence for the purpose of showing a common scheme or plan, as it does here, the other bad act must have a “*marked* similarity in modus operandi” to the charged conduct. *Id.* at 688 (emphasis added) (quoting *State v. Forsman*, 260 N.W.2d 160, 166 (Minn. 1977)).

McNally first argues that the district court erroneously applied the “sufficiently or substantially similar” standard, instead of the “marked similarity” standard, when determining the relevance of the other bad act for purposes of establishing a common scheme or plan. We disagree. The district court first described the general relevance rule, outlined above, that the state must show “sufficient similarity” in “time, place, and modus operandi.” But when discussing the modus-operandi factor, the district court explained that “the *Spreigl* evidence should have a ‘marked similarity’ in modus operandi to the charged offense.” It then compared the factual circumstances of the *Spreigl* incident to the charged conduct under that framework. The district court did not misapply the legal standard.

McNally next argues that the *Spreigl* incident was not markedly similar. A *Spreigl* incident can be markedly similar in modus operandi without being “identical in every way to the charged crime,” so long as the *Spreigl* incident serves to “complete the picture of the defendant” and does not “paint another picture.” *Ture v. State*, 681 N.W.2d 9, 15-16 (Minn. 2004) (quotation omitted).

To support his argument that the *Spreigl* incident and charged conduct here are not markedly similar, McNally cites cases he identifies as involving more distinctive modus operandi than this case. *E.g.*, *State v. Kennedy*, 585 N.W.2d 385, 391 (Minn. 1998) (reasoning that “the modus operandi was nearly identical” because both incidents involved attempted penetration of the same victim in the same room). But while the conduct in those cases certainly met the marked-similarity standard, we have little trouble concluding that the district court was within its discretion in finding a marked similarity here. The district court noted that the victims were both eight or nine years old; the conduct occurred in a private location where the children were isolated with McNally on a bed or a couch; both events began with “seemingly innocent conduct” (McNally asking B.J.Y. to rub his belly to help ease a stomachache, and McNally telling his daughter to sleep in the hotel bed with him); and, in both instances, McNally then directed the children (verbally or physically) to rub his penis to the point of ejaculation.

The modus operandi here is at least as distinctive as that in *State v. Wermerskirchen*, where the supreme court affirmed the admission of common-scheme-or-plan *Spreigl* evidence. 497 N.W.2d 235 (Minn. 1993). In *Wermerskirchen*, the charged conduct involved the defendant sticking his hand down his nine-year-old daughter’s pants and touching her vagina. *Id.* at 236-37. The state presented two *Spreigl* incidents from before the charged conduct: one from 19 years earlier that involved the defendant touching his 12- and 13-year-old nieces’ breasts and buttocks, and another from 7 years earlier that involved the defendant touching his stepdaughter’s breast and buttocks as well as rubbing his penis on her. *Id.* at 237-38, 242 n.3. The *Wermerskirchen* court determined that the evidence of

prior sexual abuse was admissible to rebut a fabrication defense because it “showed an ongoing pattern of opportunistic fondling of young girls within the family context.” *Id.* at 242.

McNally also argues that the up-to-six-year gap in time between the charged conduct and the *Spreigl* incident demands even greater similarity to establish a modus operandi. To be sure, the supreme court has said that “as the time span increases between the past misconduct and the crime charged, the similarity between the acts in terms of modus operandi must likewise increase in order for the past misconduct to be relevant.” *Clark*, 738 N.W.2d at 346. But the gap here is still shorter than the incidents in *Wermerskirchen*, the shortest of which involved a seven-year gap. 497 N.W.2d at 242 n.3. And in cases where the supreme court has invoked that principle to reverse the admission of *Spreigl* evidence, the gaps were significantly longer. *E.g.*, *State v. Wright*, 719 N.W.2d 910, 918 (Minn. 2006) (13 years); *State v. Blom*, 682 N.W.2d 578, 601 (Minn. 2004) (about 16 years).

Ultimately, the district court is “best positioned to weigh” the factors determining the relevance of *Spreigl* evidence. *State v. Washington*, 693 N.W.2d 195, 201 (Minn. 2005). We see no reason to disturb its conclusion here.

B

We next turn to the district court’s assessment of *Spreigl*’s fifth prong: whether the potential for undue prejudice substantially outweighed the evidence’s probative value. *Ness*, 707 N.W.2d at 686.

The need for the evidence is a “major factor” in this analysis. *Id.* at 690. As the supreme court recognizes, *Spreigl* evidence may be needed when “it is not clear that the jury will believe the state’s other evidence bearing on the disputed issue,” even if the state has otherwise presented sufficient evidence to convict. *Id.* (quotation omitted). And, particularly in child sexual abuse prosecutions, “problems of secrecy, victim vulnerability, the absence of physical proof of the crime, the unwillingness of some victims to testify, and a general lack of confidence in the ability of the jury to assess the credibility of child witnesses” may require *Spreigl* evidence to strengthen an otherwise weak case. *State v. McLeod*, 705 N.W.2d 776, 786 (Minn. 2005).

Here, the district court admitted the *Spreigl* evidence because it was “highly probative” of the lack of fabrication of B.J.Y.’s testimony. At trial, the state’s primary evidence was B.J.Y.’s own testimony about McNally’s abuse. The state had no physical evidence of the crime and could not present any other witnesses with personal knowledge of the charged conduct. B.J.Y. did not disclose the allegations to others until years later, which is common for child victims of sexual abuse according to the forensic interviewers who testified. Alongside McNally’s testimony that the abuse did not occur, the *Spreigl* evidence served to rebut his denial and support B.J.Y.’s credibility. *See State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009) (holding that the state needed *Spreigl* evidence to rebut defendant’s testimony that the charged offense was an accident).

McNally argues that the state did not need the *Spreigl* evidence because B.J.Y. was old enough to testify at trial, and B.J.Y.’s recitation of events was corroborated by family

members and the forensic interview. But while the non-*Spreigl* evidence may have been sufficient for a jury to convict McNally, “it is not clear that the jury [would have] believe[d] the state’s other evidence.” *Ness*, 707 N.W.2d at 690 (quotation omitted). The district court was within its discretion to conclude that the evidence was needed to rebut McNally’s claim that B.J.Y. fabricated testimony.

2

Having assured itself of the need for the evidence, the court still must consider that need in light of the potential for undue prejudice. “[T]he overarching concern over the admission of *Spreigl* evidence is that it might be used for an improper purpose, such as suggesting that the defendant has a propensity to commit the crime or that the defendant is a proper candidate for punishment for his or her past acts.” *Id.* at 685 (quotation omitted). *Spreigl* evidence should be excluded if it is unduly cumulative with the potential to be used as propensity evidence. *Ture*, 681 N.W.2d at 16.

McNally argues that the volume of the *Spreigl* evidence admitted here was unduly prejudicial and likely to be treated as propensity evidence. He highlights that most of the state’s exhibits and 6 of the state’s 11 witnesses related to the *Spreigl* incident. In support of this argument, he relies on *Ture*, in which the supreme court reiterated that “courts should not allow the state, when presenting *Spreigl* evidence, to present evidence that is unduly cumulative with the potential to fixate the jury on the defendant’s guilt of the other crime.” *Ture*, 681 N.W.2d. at 16.

Outside of that general principle, however, *Ture* does not support McNally’s cause. Here, the jury heard from six *Spreigl* witnesses, whereas in *Ture*, the jury heard four times

that number. *Id.* And even though the *Spreigl* evidence in this case constituted a significant proportion of the overall evidence, the district court was within its discretion to admit it as relevant to N.M.'s credibility, especially given that McNally testified that N.M.'s allegations were fabricated as well. The *Spreigl* evidence supporting N.M.'s recitation of the events, including the forensic interview video and testimony of N.M.'s mother, therefore had significant probative value.

Finally, and in any event, the district court's repeated cautionary instructions "lessen[ed] the probability of undue weight being given by the jury to the [*Spreigl*] evidence." *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008); *see also State v. Clark*, 755 N.W.2d 241, 261 (Minn. 2008) (holding that the district court's cautionary instructions regarding permissible uses of *Spreigl* evidence "minimized" concerns about the potential for undue prejudice); *cf. Buchan*, 993 N.W.2d at 626-27 (concluding that any error in admitting *Spreigl* evidence was harmless in part because the district court issued a cautionary instruction before all *Spreigl* witnesses and before closing). We are not persuaded otherwise by McNally's contention that the cautionary instructions were ineffective because of the volume of the *Spreigl* evidence. McNally cites no authority directly supporting that argument. To the contrary, "[w]e presume that jurors follow the court's instructions." *Clark*, 755 N.W.2d at 261. And here, the district court issued a detailed instruction on the permissible uses of the *Spreigl* evidence on each day that the evidence was presented and before closing, five times in total. This instruction reduced the risk that the jury used the *Spreigl* evidence as improper propensity evidence.

In sum, we discern no abuse of discretion in the district court’s decision to admit the *Spreigl* evidence. The district court appropriately determined that the evidence was relevant, was highly needed by the state, and that the probative value was not substantially outweighed by the risk of undue prejudice. Any potential for undue prejudice was mitigated by the repeated issuance of a detailed cautionary instruction.

II

McNally next argues that the district court erred by sentencing him based on a criminal-history score that was calculated using a judicially determined offense date in violation of *Blakely v. Washington*, 542 U.S. 296 (2004). This presents a question of law that we review de novo. *State v. DeRosier*, 719 N.W.2d 900, 903 (Minn. 2006).

McNally raises the *Blakely* issue for the first time on appeal. But “*Blakely* rights can only be waived if the waiver is knowing, intelligent, and voluntary.” *DeRosier*, 719 N.W.2d at 902. Although McNally’s trial counsel agreed to have the district court determine the offense date by a preponderance of the evidence, the record does not reflect that McNally knowingly, intelligently, and voluntarily waived his *Blakely* rights. And the state concedes that McNally did not waive his *Blakely* rights. Accordingly, we will address McNally’s argument. *See State v. Reimer*, 962 N.W.2d 196, 200 (Minn. 2021) (reaching *Blakely* issue where the “district court . . . determin[ed] the date of Reimer’s offense without receiving a *Blakely* waiver”); *see also State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007) (concluding that, “because a sentence based on an incorrect criminal history score is an illegal sentence,” a defendant “may not waive review of his criminal history score

calculation”). We first decide whether a *Blakely* violation occurred and then consider whether any error was harmless beyond a reasonable doubt.

A

Blakely established that a criminal defendant’s Sixth Amendment right to a jury trial includes the right to be sentenced based only on facts found by a jury and proved beyond a reasonable doubt. 542 U.S. at 301, 303. A court violates *Blakely* when it “determines any disputed fact essential to increase the ceiling of a potential sentence, including factual findings related to offense dates, without the defendant waiving the right to a jury’s determination of that issue.” *Reimer*, 962 N.W.2d at 198 (quotation omitted). In turn, the right applies to any facts that affect which presumptive sentence applies. *Id.* at 198-99.

Here, the district court’s offense-date finding affected whether the two 2004 felonies had “decayed” for purposes of calculating the criminal-history score. Decayed felonies are given no weight towards a defendant’s score. Minn. Sent’g Guidelines 2.B.1.c (Supp. 2019). That means zero criminal-history points would have been assigned for McNally’s two 2004 felonies if the offense date here was after October 20, 2019—the date on which the second 2004 felony decayed. *See id.* (providing the rules for when felonies decay).

Because the district court found “that the offense [date] for sentencing was between August 31st, 2015 and August 30, 2017,” it shortened the end range of the offense date presented to the jury from December 31, 2019 to August 30, 2017. As a result, the district court concluded that the felonies had not decayed and assigned one-half point for the January 7, 2004 felony conviction and one and one-half point for the October 20, 2004 felony conviction. The district court sentenced McNally to a presumptive 91 months in

prison based on the criminal-history score of four. Had the offense date extended to the outer limit of the range presented to the jury, however, both 2004 felonies would have decayed, McNally's criminal-history score would have been two, and his presumptive sentence would have been 60 months. *Id.*; Minn. Sent'g Guidelines 2.B.1.i. (2015) (providing that partial felony points are rounded down to the nearest whole number). The district court's offense-date finding therefore "increase[d] the ceiling of a potential sentence" and violated *Blakely*. *Reimer*, 962 N.W.2d at 198.

The state's contrary position—that it may "prove[] by a preponderance of evidence [a]ppellant's criminal history score underlying his guideline sentence"—is unavailing. The state cites *State v. Griffin*, but that case involved a judicial determination of the fact of a prior conviction, not an offense-date determination. 336 N.W.2d 519, 525 (Minn. 1983). *Blakely* expressly carves out "the fact of a prior conviction" from its requirement that facts be determined by a jury and proved beyond a reasonable doubt. 542 U.S. at 301 (quotation omitted). *Griffin* is therefore inapposite to the issue at hand. We conclude that the district court erred in determining the offense date by a preponderance of the evidence.

B

Although the district court violated McNally's *Blakely* rights, resentencing is not appropriate if the error was harmless beyond a reasonable doubt. *Reimer*, 962 N.W.2d at 198-99. Our close review of the record assures us that, here, the error was harmless beyond a reasonable doubt and McNally is not entitled to relief.

The circumstances in this case track closely with *Reimer*. There, the supreme court held that the district court violated *Blakely* when it determined that the offense dates

relevant to Reimer's case occurred after August 1, 2006. *Id.* at 198. Based on that determination, the district court applied the sentencing guidelines that were in effect after August 1, 2006, which imposed higher presumptive sentences for each offense. *Id.* Nevertheless, the supreme court concluded that the district court's *Blakely* violation was harmless because "there was no evidence presented at trial" that the offense date occurred before 2010, let alone before August 1, 2006. *Id.* at 200. That was so even though the complaint alleged offense dates ranging between 2004 and 2018. *Id.* at 199. The supreme court recognized that "[a]n indictment or complaint should be as specific as possible with respect to time," but "it is not always possible to know with certainty when an offense or offenses occurred." *Id.* (quoting *State v. Waukazo*, 269 N.W.2d 373, 375 (Minn. 1978)). That is "especially true in cases like this where there is a minor victim who does not complain to the authorities immediately." *Id.*

McNally argues that, because the state moved during trial to extend the end range of the charged offense to December 31, 2019, the district court's *Blakely* violation was not harmless beyond a reasonable doubt. He also points to the prosecutor's closing argument, which identified the date range of the offense as August 31, 2015, to December 31, 2019. We are not persuaded that those aspects of the record create reasonable doubt.

The only trial testimony relating to the date of the offense established that the offense occurred on or before August 30, 2017, which is well over a year before the 2019 decay dates. B.J.Y. testified that the offense happened when B.J.Y. was eight or nine years old, which would place the offense date between August 31, 2015 and August 30, 2017. That date range is consistent with B.J.Y.'s testimony that the 2020 conversations with their

grandmother and father took place “a few years” after the offense date. McNally does not “contest the timeline of events in this case” with any evidence or testimony that contradicts the district court’s conclusion. *Reimer*, 962 N.W.2d at 200 n.3. And our review of the record revealed no such evidence. This case is therefore one of those “unique” cases, *id.*, where the *Blakely* violation does not warrant a remand because “the error was harmless beyond a reasonable doubt.” *Id.* at 200.

III

McNally raises two arguments in a supplemental pro se brief. A party that appears pro se “is held to the standard of an attorney in presenting his appeal.” *Francis v. State*, 781 N.W.2d 892, 896 (Minn. 2010). McNally’s first argument is substantially similar to the *Blakely* issue discussed above, and there is no nuance in the supplemental brief that requires additional discussion. McNally next argues that “his public defender is refusing to investigate [his] concerns over the trial record being fraudulent” and laments that he is unable to make motions related to that issue while represented. But McNally does not explain what portions of the record before us are fraudulent or inaccurate. *See Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996), *aff’d*, 568 N.W.2d 705 (Minn. 1997) (stating that factual assertions “are to be supported by a cite to the record”). Nor does he provide applicable authority that would support his requested relief. The authorities he does cite are inapposite. In light of these deficiencies, and because “prejudicial error is [not] obvious on mere inspection,” *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (quotation omitted), McNally’s fraud argument is forfeited.

Affirmed.