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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1600**

State of Minnesota,
Respondent,

vs.

Manuel Richard Buck,
Appellant.

**Filed September 23, 2024
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge**

Sherburne County District Court
File No. 71-CR-21-959

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

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant Manuel Richard Buck was convicted and sentenced for various theft-related and violent crimes following a jury trial. He challenges his convictions and

sentences for attempted theft, attempted first-degree burglary, and attempted second-degree murder, arguing that the district court committed (1) reversible error by admitting a video Buck had recorded three years earlier describing a plan to shoot a gun-store owner and others, (2) reversible error by admitting evidence that he hid ammunition near the store he attempted to rob two to three days before his offenses, and (3) plain error by admitting evidence of his statements to police regarding medication he was taking to deal with homicidal ideations. Buck makes additional challenges to his convictions in a pro se supplemental brief. And he argues that the district court abused its discretion by imposing multiple aggravated sentences. Because the district court abused its discretion by admitting the video recording and there is a reasonable possibility that this evidence significantly affected the verdict, we reverse Buck’s conviction for attempted second-degree murder and remand for a new trial on that charge. We also reverse Buck’s sentences for attempted theft and attempted first-degree burglary, and remand for resentencing on the burglary offense. We otherwise affirm.

FACTS

At approximately 1:00 a.m. on July 10, 2021, Buck packed a duffle bag with various weapons (but not firearms) and tools before going to a pawn shop in Zimmerman to break in and steal firearms. Before he could enter, Buck triggered the security alarm. Anticipating police response, Buck fled toward Lions Park. Meanwhile, two men, later identified as F.S. and J.S., heard the alarm and saw Buck leaving the scene. The men chased Buck on foot while threatening to “kick . . . [his] a--.” Because Buck feared he

would be “severely beaten,” he reached into his duffle bag trying to grab a crowbar for protection. Instead, he pulled out a machete.

F.S. and Buck disagree as to who initiated the physical altercation that led to F.S. sitting on top of Buck while repeatedly punching him in the face. But it is undisputed that, at some point, Buck began swinging the machete and struck F.S., who sustained a two-inch laceration to his head. In an effort to stop Buck, J.S. grabbed the machete blade and cut his hand. Law enforcement arrived at the scene and provided first aid to all three men. Buck admitted to law enforcement that he had homicidal thoughts and was taking medication for “homicidal ideations,” but that “[c]learly that doesn’t work.” Buck also admitted trying to burglarize the pawn shop.

Related to his attempt to steal firearms, respondent State of Minnesota charged Buck with attempted first- and second-degree burglary, attempted theft, and possession of burglary tools. As to Buck’s altercation with F.S. and J.S., the state charged Buck with two counts of second-degree assault with a dangerous weapon, two counts of third-degree assault, and two counts of attempted second-degree murder. And the state charged Buck with first-degree assault as to J.S.

While in jail awaiting trial, Buck told inmate J.F. that he brought the machete to the pawn shop to defend himself and “for his plans” afterward. Buck also drew a map of Grams Park, which is located more than a mile away from the pawn shop, telling J.F. that he hid his ammunition and other weapons there two to three days before he tried to rob the pawn shop. J.F. gave the map to law enforcement, and agents from the Federal Bureau of Investigation (FBI) used it to locate these items.

A five-day jury trial began on April 24, 2023. The district court admitted dozens of exhibits, and the jury heard testimony from 21 witnesses, including Buck. Buck admitted that he tried to steal firearms from the pawn shop to bring to the park where he hid the ammunition. Buck asserted self-defense with respect to his altercation with F.S. and J.S. On cross-examination, Buck admitted having “thoughts of killing people” on the night in question. But on redirect-examination, he explained that he was not prepared to kill anyone, stating, “You can always have homicidal thoughts but not act on them.” And he explained that he only intended to scare F.S. and J.S. away. Following Buck’s testimony, the district court granted the state’s request to admit a video Buck recorded in 2018, in which he discussed shooting an unidentified gun-store owner and others. The court admitted the recording as evidence rebutting Buck’s testimony that he did not intend to kill F.S. and J.S.

The jury found Buck guilty of attempted first-degree burglary, attempted second-degree burglary, attempted theft of firearms, and possession of burglary tools. As for the charges related to F.S., the jury found Buck guilty of second-degree assault and attempted second-degree murder. The jury acquitted Buck of all charges related to J.S. By special verdict, the jury made 18 findings regarding the planning and other steps Buck took in preparing to rob the pawn shop.

The district court adjudicated Buck guilty of attempted first-degree burglary, attempted theft, possession of burglary tools, attempted second-degree murder, and second-degree assault. Based on the jury’s special-verdict findings, the district court determined an aggravating factor existed and sentenced Buck to 120 months in prison for

attempted first-degree burglary (the statutory maximum), to be served concurrently with 120 months in prison for attempted theft. The court also imposed an aggravated 240-month consecutive sentence for attempted second-degree murder.

Buck appeals.

DECISION

I. Buck is entitled to a new trial for attempted second-degree murder.

Buck asserts that he is entitled to a new trial, arguing that the district court (1) abused its discretion by admitting the video Buck recorded three years earlier, (2) abused its discretion by admitting evidence that he hid ammunition near the scene in the days before the offense, and (3) committed plain error by admitting Buck's statements to police about his medication. And he contends these evidentiary errors, individually and cumulatively, significantly affected the verdict. We address each argument in turn.

A. The district court abused its discretion by admitting the 2018 video, and it is reasonably possible that this wrongfully admitted evidence significantly affected the verdict.

Evidentiary rulings fall within the district court's broad discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). To receive a new trial based on evidentiary error, Buck must prove that the challenged evidence was erroneously admitted and prejudicial. *State v. Riddley*, 776 N.W.2d 419, 424 (Minn. 2009). We will not reverse a conviction unless the error creates "a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Ness*, 707 N.W.2d 676, 691 (Minn. 2006).

Buck first asserts that he is entitled to a new trial based on admission of the 2018 video that then-15-year-old Buck recorded in his bedroom. The jury considered the following portion of the video:

I just don't wanna kill any kids. That's all I care about, is not killing kids. I don't care if I pop a few cops. And I don't wanna kill my family either, no. Kids and family, those are off limits. I'll pop a few cops, SWAT, f--king civilians, pop that gun store owner. But not really anything else. I don't think I'll pop anybody else besides ah a few of those. I, I, I wonder what my kill count is gonna be, cause I'm planning on f--king walking into the gun store, popping the store owner.

The district court originally ruled the video inadmissible because its references to Buck's "greater plan to commit acts of violence directed toward the gun shop owner and others," are irrelevant, immaterial, and "highly prejudicial." But the court reversed its ruling on the state's motion after Buck testified that he did not intend to hurt F.S. and J.S. We conclude that the district court abused its discretion by admitting the video for three reasons.

First, the contents of the 2018 video are irrelevant to the charged offenses. Only relevant evidence is admissible. Minn. R. Evid. 402. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. Therefore, the evidence need only "warrant[] a jury in drawing a logical inference assisting, even though remotely, the determination of the issue in question." *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005).

The state argues that Buck's "2018 statements about wanting to kill anyone interfering with a planned attempt to steal firearms tended to show his intent to commit

assault and murder when he followed through on that plan in July 2021.” But the state mischaracterizes the video’s content. The 2018 video depicts Buck sitting on his bed and expressing an intent to shoot a gun-store owner, police officers, and other people. Buck does not say anything about robbing a gun store or any other store. Nor does he say he will hurt anyone who prevents him from doing so.

In *State v. Doughman*, we found no abuse of discretion by the district court in admitting the defendant’s prior threats to “bomb” the complainant’s home as relevant to his intent to commit the charged offenses—attempted assault, attempted arson, and possession of explosives—against the same complainant. 404 N.W.2d 867, 868, 871 (Minn. App. 1987), *rev. denied* (Minn. June 26, 1987). We observed that while Doughman made his threats 18 months before the charged offenses, they were still relevant because he was unable to carry out his plan during 14 of the intervening months because he was incarcerated. *Id.* at 871.

Unlike in *Doughman*, Buck made only vague statements about shooting a gun-store owner and other people, crimes Buck ultimately did not commit against anyone, including F.S. and J.S. *Cf. id.* (involving threats directed at the complainant and on which the defendant acted). Buck expressed a desire to commit homicide by shooting three years before the charged offenses, a time frame during which—unlike *Doughman*—he was capable of carrying out his alleged plan. But Buck did not do so, nor did he use firearms to rob a gun store during business hours when a store owner would be present.

Second, the 2018 video is unfairly prejudicial. Even relevant evidence may be excluded “if its probative value is substantially outweighed by the danger of unfair

prejudice.” Minn. R. Evid. 403. Evidence is unfairly prejudicial if it “persuade[s] by illegitimate means.” *State v. Kendell*, 723 N.W.2d 597, 609 (Minn. 2006) (quotation omitted); *see Schulz*, 691 N.W.2d at 478 (explaining that evidence persuades by “illegitimate means” when it gives “one party an unfair advantage”). That is the situation here.

While brief in duration at 49 seconds, the 2018 video is nonetheless compelling in its content and tone. It shows 15-year-old Buck sitting on his bed and calmly relaying his desire to shoot many people, including a gun-store owner. With the exception of “kids and family,” Buck expresses no hesitation to shoot people. He even contemplates what his “kill count” would be. The chilling nature of the recording—made three years earlier—gave the state an unfair advantage by suggesting to the jury that Buck’s intention to kill on July 10, 2021, was a natural extension of a broader plan he had hatched three years earlier.

Third, Buck did not open the door to introduction of the video as rebuttal evidence. “A party ‘opens the door’ when it introduces evidence that creates a right in the opposing party to respond with evidence that would otherwise be inadmissible.” *State v. Fraga*, 898 N.W.2d 263, 272 (Minn. 2017). The ability to respond “ensure[s] that one party will not have an unfair advantage and that the factfinder is not presented with a misleading or distorted representation of reality.” *Id.* (quotation omitted). We review the admission of rebuttal evidence for an abuse of discretion. *Id.*

Buck testified that he did not intend to hurt F.S. Instead, he grabbed the machete from his duffle bag because he feared being “severely beaten” and intended “to scare” F.S. away. Buck did not testify about any broader plan to commit homicide, and he had no

firearms—the focus of his 2018 statement—at the time of these offenses. This record does not persuade us that Buck’s testimony regarding his intent on July 10, 2021, gave him an unfair advantage or misled the jury. *See id.*

Having concluded that the district court abused its discretion by admitting the 2018 video, we turn next to whether its admission requires a new trial. A new trial is warranted if, after reviewing the entire record, we determine there is a reasonable possibility that the error “substantially influenced the verdict.” *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024) (quotation omitted). This standard requires us to consider more than simply whether the evidence was sufficient to prove the defendant’s guilt. *Id.* Instead, we analyze “(1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who offered the evidence used it in closing argument, and (4) whether the defense effectively countered the evidence.” *Id.* (quotation omitted). We also consider whether the district court issued cautionary instructions, and whether “the evidence of guilt was overwhelming.” *Riddley*, 776 N.W.2d at 428. Analysis of these factors convinces us that a new trial is warranted on the attempted second-degree murder charge.

The 2018 video shows Buck discussing his willingness to shoot law-enforcement officers, a gun-store owner, and civilians, all while musing about his potential “kill count.” The video was highly persuasive in a number of ways, including its suggestion that Buck would, in fact, have committed a mass shooting if his burglary attempt had been successful. The prosecutor referenced the video approximately 20 times during closing argument. She told the jury that the video established that it was Buck’s “mission” to steal firearms from

the pawn shop “and assault and murder anyone who got in his way” because “[t]hat was his plan from 2018.” And while Buck did not use a firearm during the commission of his offenses, the prosecutor stated that the 2018 video proved that Buck intended to “shoot and kill anyone in his way.” Buck had no opportunity to effectively counter the impact of the video. It was the last piece of evidence the jury received, after Buck had testified that he takes medication to address homicidal ideations and had general thoughts of killing others on the night of the offenses. Any rebuttal testimony from Buck would have only drawn more attention to the evidence. In addition, the district court did not give the jury any cautionary instruction to limit the jury’s consideration of the disturbing video. In short, the 2018 video became the centerpiece of the state’s case: that Buck intended to kill anyone in his path on the night in question, including F.S. and J.S.

Importantly, the evidence supporting Buck’s intent to kill—as opposed to harm—F.S. is not overwhelming. Buck testified that, after setting off the pawn shop’s security alarm, he decided to go home and that he ran away from F.S. and J.S. because he “wanted to avoid confrontation.” As they drew closer, he feared being beaten to death, so he attempted to retrieve a crowbar from his duffle bag but pulled out a machete by mistake. Although the jury rejected Buck’s self-defense claim, it is undisputed that F.S. and J.S. initiated contact with Buck by chasing him. In short, even if the evidence of Buck’s intent to harm the men who pursued him was substantial, it does not translate into overarching evidence of an intent to kill them. Nor are we persuaded by the state’s argument that Buck’s acquittal on all charges related to J.S. means the video did not significantly affect

the jury's verdict. This is so because J.S. testified that it was his own intentional act of grabbing the machete's blade that caused his injury.

On this record, we conclude that there is a reasonable possibility that the wrongfully admitted 2018 video significantly affected the verdict. *See Ness*, 707 N.W.2d at 691. Buck is therefore entitled to a new trial on the attempted second-degree murder charge.¹

B. The district court abused its discretion by admitting evidence that Buck hid ammunition in Grams Park.

Although we hold that Buck is entitled to a new trial on attempted second-degree murder based on the erroneous admission of the 2018 video alone, we address Buck's remaining evidentiary challenges in anticipation of such retrial. Buck asserts that the district court abused its discretion by admitting evidence that he hid ammunition in Grams Park two to three days prior to the charged offenses as immediate-episode evidence. We agree.

Evidence of a person's other crimes or bad acts is not admissible to prove the defendant's character to show that he acted in conformity with that character. Minn. R. Evid. 404(b)(1); *Ness*, 707 N.W.2d at 685. But it may be admissible for other limited purposes. Minn. R. Evid. 404(b)(1). One such purpose is when the other acts "were part of the immediate episode for which defendant is being tried." *See State v. Fardan*, 773 N.W.2d 303, 315-16 (Minn. 2009) (quotation omitted). To fit within this exception, the

¹ Buck also argues that the wrongful admission of the 2018 video significantly affected the verdicts on the charges of attempted first-degree burglary and attempted theft. We disagree. The jury's verdicts on those charges flow from the essentially unchallenged evidence that Buck attempted to break into the pawn shop to steal firearms.

other acts must share a close causal and temporal connection to the charged crime, “so that one cannot be fully shown without proving the other.” *Riddley*, 776 N.W.2d at 425 (quotation omitted).

Buck contends that the district court abused its discretion by admitting as immediate-episode evidence (1) J.F.’s testimony that Buck requested help moving ammunition hidden in Grams Park; (2) a map Buck drew of the ammunition’s location; and (3) an FBI agent’s testimony that, by using Buck’s map, his team found a military-style bandolier, instructions for creating fully automatic weapons, a “variety of calibers of ammunition,” a handgun holster, an ammunition cannister, and a replica shotgun. He argues that this is not immediate-episode evidence because there is neither a temporal nor a causal connection as Buck hid the ammunition two or three days before the charged offenses and his act of doing so did not facilitate his commission of the charged offenses. Buck’s arguments have merit.

In *Fardan*, our supreme court concluded that the defendant’s felony-murder and aggravated-robbery offenses were not part of the same immediate episode as the robbery, kidnapping, and sexual-assault offenses he committed more than an hour later. 773 N.W.2d at 316-17. That all of the offenses were committed by the same perpetrators as “part of the same broad plan to commit robbery” and with the same gun, did not persuade the supreme court that the requisite causal connection existed to make them “part of the same ‘immediate episode.’” *Id.* at 312 n.4, 317. Similarly, in *Riddley*, the defendant’s robbery offense, although committed within one block and within 15 minutes of the charged murder offense, did not fit within the immediate-episode exception because neither

offense was committed to facilitate the other. 776 N.W.2d at 426-27. In contrast, in *State v. Leecy*, the defendant’s threats “earlier in the evening” were admissible as immediate-episode evidence because they led to the charged assault. 294 N.W.2d 280, 282 (Minn. 1980).

The circumstances here convince us that there is no temporal connection between Buck concealing the ammunition and his conduct underlying the charged offenses, as the former occurred at least two days before the latter and the acts occurred at locations over a mile apart—time and space differentials greater than those in *Riddley* and *Fardan*. There is also no causal connection because the concealment of the ammunition did not facilitate the charged offenses. And unlike in *Leecy*, Buck’s act of concealing ammunition did not lead to the charged offenses because Buck did not use the ammunition in committing his offenses. Any alleged plan Buck had to use the ammunition with the firearms he hoped to steal from the pawn shop does not create the causal connection required for application of the immediate-episode exception. On this record, we conclude that the district court abused its discretion by admitting the ammunition evidence.²

² We need not decide whether the erroneous admission of the ammunition evidence prejudiced Buck because we have already concluded that he is entitled to a new trial on the attempted second-degree murder charge. But we note that the manner in which the evidence was presented—including J.F.’s testimony that Buck’s statements about hiding the ammunition made him concerned for “public safety” and the FBI’s agent’s detailed testimony regarding the ammunition and weapons found in Grams Park that included bullets that “expand upon impact to create larger wound cavities”—supports a determination that its admission significantly affected the verdict.

C. The district court did not plainly err by admitting evidence that Buck was taking medication to address homicidal ideations.

Buck asserts that the district court committed plain error by allowing a police officer and a paramedic to testify (and admitting the accompanying body-worn camera recording) that Buck told them he was taking prescribed medication for homicidal ideations. Because Buck did not timely object, he must establish that admission of his statements (1) was error, (2) that was plain, and (3) that affected his substantial rights. *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). An error is plain if it clearly “contravenes case law, a rule, or a standard of conduct.” *State v. Wren*, 738 N.W.2d 378, 393 (Minn. 2007) (quotation omitted). But even if Buck establishes these three prongs, we will reverse only if the error “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Pulczynski v. State*, 972 N.W.2d 347, 356 (Minn. 2022).

Buck argues that admission of his statements about taking medication to address homicidal ideations was plainly erroneous because the evidence was irrelevant to the charged offenses and unfairly prejudicial because the jury likely convicted him based on his perceived violent character. *See* Minn. R. Evid. 404(a). We are not persuaded that any purported evidentiary error was plain.

As noted above, relevance is broadly construed to include evidence that even remotely assists the jury in drawing logical inferences regarding an issue before it. *Schulz*, 691 N.W.2d at 478. But whether its probative value is outweighed by the risk of unfair prejudice requires delicate balancing that falls within the district court’s purview. *Id.* at 477 (emphasizing the court’s “wide range” of discretion). *Kendell* guides our analysis. In

that case, the supreme court held that the defendant's statement, that he was "going to hell," made immediately after a shooting was relevant to his state of mind to prove premeditated first-degree murder, was admissible as a party admission, and was not unfairly prejudicial because it did not "persuade by illegitimate means." 723 N.W.2d at 612-13 (quotation omitted). As in *Kendell*, Buck's intent to commit murder was at issue, *see* Minn. Stat. § 609.19, subd. 1(1) (2020), and evidence that Buck took medication to address homicidal ideations that, in his own words, was "[c]learly" not working, is probative of his state of mind at the time of the charged offenses. And as in *Kendell*, we conclude that admission of his statement, while likely damaging, did not persuade the jury by illegitimate means.

In sum, Buck has not shown that the district court plainly erred by admitting his statements about his medication. On remand, the district court may exercise its considerable discretion if presented with a timely objection to this evidence.

II. Buck's pro se challenges to his convictions do not warrant relief.

In a pro se supplemental brief, Buck makes additional arguments for reversal. None of them persuade us to reverse.

First, Buck argues that the district court violated his right to due process and committed reversible error by prohibiting him from testifying about how his autism disorder related to his homicidal ideations. The Due Process Clauses of the United States and Minnesota Constitutions require that criminal defendants be "afforded a meaningful opportunity to present a complete defense." *State v. Richards*, 495 N.W.2d 187, 191 (Minn. 1992) (quotation omitted). This includes the defendant's right to explain their conduct to the jury even if their motive is not a valid defense. *State v. Rein*, 477 N.W.2d

716, 719 (Minn. App. 1991), *rev. denied* (Minn. Jan. 30, 1992). The district court prohibited Buck from testifying about his autism disorder without providing expert testimony. Because we agree that it was within the district court’s discretion to exclude Buck’s testimony on this point, and because Buck explained that his homicidal thoughts do not mean he intended to kill anyone, Buck’s right to present a complete defense was not violated.

Second, Buck contends that the prosecutor committed misconduct by demanding that he provide “yes/no answers” on cross-examination. Because Buck did not object to the prosecutor’s method of questioning at trial, he must establish plain error. *See State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Buck cannot meet this burden because prosecutors are permitted to use leading questions on cross-examination. Minn. R. Evid. 611(c).³

III. The district court abused its discretion by imposing a sentence for attempted theft.

When multiple convictions are based on a single behavioral incident, a district court is generally precluded from imposing multiple sentences. Minn. Stat. § 609.035, subd. 1 (2020). But there are several exceptions to this rule. *Id.* One exception permits multiple

³ Buck also asserts that he is entitled to a new trial based on cumulative error. A new trial may be warranted when the cumulative effect of trial errors effectively denied the defendant a fair trial. *State v. Yang*, 774 N.W.2d 539, 560 (Minn. 2009). But because Buck’s argument is vague and cites only one claimed evidentiary error—exclusion of his testimony regarding the impact of his autism disorder—his argument is forfeited. *See State v. Reek*, 942 N.W.2d 148, 165 (Minn. 2020). Likewise, his argument that defense counsel was ineffective because she did not ensure that he was permitted to testify about his autism disorder is forfeited because he offers no supporting argument or legal authority. *Id.*

sentences for a burglary conviction and for “any other crime committed on entering or while in the building entered.” Minn. Stat. § 609.585 (2020). We review the imposition of multiple sentences under these statutes de novo. *State v. Holmes*, 778 N.W.2d 336, 339 (Minn. 2010).

It is undisputed that Buck’s convictions for attempted first-degree burglary and attempted theft were part of a single behavioral incident. The parties agree that the district court erred by imposing separate sentences under Minn. Stat. § 609.585 because Buck was convicted of *attempted* burglary, not burglary. Because an attempt conviction is different from a conviction for the completed crime, we agree that the district court erred by imposing sentences for both attempted first-degree burglary and attempted theft. *See Tichich v. State*, 4 N.W.3d 114, 123-24 (Minn. 2024) (clarifying that “a conviction for attempt is not a violation of the statute defining the underlying completed crime”). Accordingly, we reverse and remand for the district court to vacate Buck’s 120-month sentence for attempted theft.

IV. The district court abused its discretion by imposing a greater-than-double upward departure for attempted first-degree burglary.

The Minnesota Sentencing Guidelines seek to “maintain uniformity, proportionality, rationality, and predictability in sentencing.” Minn. Stat. § 244.09, subd. 5 (2020). To further that goal, the guidelines establish presumptive sentences for felony offenses. *Id.* A district court must impose a sentence within the presumptive sentencing range unless there are “identifiable, substantial, and compelling circumstances” to warrant an upward departure. Minn. Sent’g Guidelines 2.D.1 (2020). “Substantial and compelling

circumstances are those showing that the defendant's conduct was significantly more . . . serious than that typically involved in the commission of the offense in question.” *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009) (quotation omitted); *see also* Minn. Sent’g Guidelines 2.D.3 (2020) (providing nonexclusive list of departure factors).

We generally review a district court’s decision to depart from the sentencing guidelines for an abuse of discretion. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017). A district court abuses its discretion if its departure decision rests on inadequate or improper reasons. *Edwards*, 774 N.W.2d at 601. But we are less deferential when a district court imposes a sentence that is more than double the presumptive length, which requires the existence of “severe aggravating circumstances.” *Dillon v. State*, 781 N.W.2d 588, 596 (Minn. App. 2010) (quotation omitted), *rev. denied* (Minn. July 20, 2010). In such cases, whether the departure reasons are valid and whether the aggravating factors are severe are questions of law that we review de novo. *Id.* at 598.

Buck asserts that the district court abused its discretion by imposing an aggravated 120-month sentence for attempted first-degree burglary, the statutory maximum and a quadruple upward departure from the 29-month presumptive sentence. *See* Minn. Sent’g Guidelines 4.A (2020) (indicating that presumptive sentence for first-degree burglary is 58 months in prison); Minn. Stat. § 609.17, subd. 4(2) (2020) (providing that the presumptive sentence for an attempt is half that for the underlying crime). He argues that (1) a “high degree of planning, sophistication, or manipulation” is not a valid aggravating factor; (2) his offense is not significantly more serious than is typical of other attempted first-

degree burglaries; and (3) any valid aggravating factors are not severe. We address each of Buck's arguments in turn.

First, Buck argues that "planning and sophistication" is not a valid aggravating factor here because the sentencing guidelines recognize it as such only for major economic or major controlled-substance offenses. *See* Minn. Sent'g Guidelines 2.D.3.b(4) (identifying a "major economic offense" if two or more of five enumerated circumstances exists, including a high degree of sophistication or planning); 2.D.3.b(5) (defining a "major controlled substance offense"). But the list of aggravating factors in the sentencing guidelines is "nonexclusive." Minn. Sent'g Guidelines 2.D.3. Caselaw has consistently recognized that "planning and sophistication" is a valid aggravating factor for a wide variety of offenses. *See State v. Kindem*, 338 N.W.2d 9, 17-18 (Minn. 1983) (murder); *State v. Yaritz*, 791 N.W.2d 138, 146 (Minn. App. 2010) (criminal sexual conduct), *rev. denied* (Minn. Feb. 23, 2011); *State v. Grampre*, 766 N.W.2d 347, 349, 353 (Minn. App. 2009) (criminal sexual conduct, burglary, and assault), *rev. denied* (Minn. Aug. 26, 2009). Accordingly, we discern no error in the district court's reliance on this factor to support an upward departure.

Buck next contends that the jury's findings do not establish that his conduct was significantly more serious than is typical of an attempted second-degree burglary offense. In its special verdict, the jury answered "yes" to all 18 questions regarding Buck's planning and sophistication in committing the offense. These findings include that Buck (1) had visited the pawn shop to look at guns; (2) brought gun cases, various weapons, and a multitude of burglary tools to the pawn shop on the night of the offense; (3) obtained

ammunition for the weapons he sought to steal; and (4) wore clothes that concealed his identity.⁴ Based on these findings, we are persuaded that the district court did not err in determining that Buck’s offense was more serious than a typical attempted first-degree burglary.

Finally, Buck asserts that even if his “sophistication and planning” provide a valid departure ground, his conduct does not rise to the level of severity that justifies a greater-than-double departure. While there is no “easy-to-apply test” to determine whether an aggravating circumstance is severe, *Dillon*, 781 N.W.2d at 596 (quotation omitted), we look to the “collective, collegial experience” gathered from “reviewing a large number of criminal appeals from all the judicial districts” to guide our analysis, *State v. Johnson*, 450 N.W.2d 134, 135 (Minn. 1990) (quotation omitted). Only in “rare cases” when “the facts are so unusually compelling” will a greater-than-double durational departure be justified. *State v. Barthman*, 938 N.W.2d 257, 272 (Minn. 2020) (quotation omitted).

Generally, the appellate courts have affirmed such substantial departures when the defendant terrorizes the victim or inflicts permanent injury. See *State v. Norton*, 328 N.W.2d 142, 147 (Minn. 1982) (affirming departure when the defendant terrorized a young child after kidnapping her from her front yard); *Dillon*, 781 N.W.2d at 602 (affirming departure when the defendant physically assaulted his wife and caused her to suffer

⁴ We observe that two of the jury’s 18 special-verdict findings relate to Buck’s act of hiding ammunition in Grams Park—evidence that was improperly admitted. But we are satisfied that the remaining findings amply support the district court’s determination that there are “identifiable, substantial, and compelling circumstances” warranting an upward departure. Minn. Sent’g Guidelines 2.D.1.

permanent organ damage and loss of other bodily functions). In contrast, we reversed a greater-than-double departure for first-degree burglary and aggravated robbery sentences, even though the defendant terrorized and physically attacked a 72-year-old victim in her home, because the defendant did not use a weapon and no medical testimony established whether the victim suffered “extensive aftereffects.” *State v. Dye*, 371 N.W.2d 47, 49, 52 (Minn. App. 1985), *rev. denied* (Minn. Aug. 29, 1985).

Based on our review of the caselaw and our collective, collegial experience, we are not persuaded that this is a “rare” case involving severe aggravating circumstances that justifies a greater-than-double departure. Buck did not inflict harm on individuals during his unsuccessful attempt to break into the pawn shop. And we are not persuaded by the state’s argument that Buck’s “detailed plan” to steal firearms is a severe aggravating circumstance because it created a “very real possibility” that Buck would act on his desire to commit a mass shooting. Buck did not commit or even attempt to commit a mass shooting. It is axiomatic that a defendant may be punished only for crimes they committed. *See Barthman*, 938 N.W.2d at 271 (declining to consider additional facts not part of the conduct underlying the charged offense).

In sum, we reverse Buck’s 120-month prison sentence for attempted first-degree burglary and remand for resentencing with instructions to impose a sentence no more than double the upper limit of the presumptive range.

Affirmed in part, reversed in part, and remanded.