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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0010**

State of Minnesota,
Respondent,

vs.

Servando Suarez Rivera,
Appellant.

**Filed December 23, 2024
Affirmed
Bentley, Judge**

Scott County District Court
File No. 70-CR-22-7061

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

Ronald Hocesvar, Scott County Attorney, Elisabeth M. Johnson, Assistant County Attorney, Shakopee, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

BENTLEY, Judge

In this direct appeal from a judgment of conviction for five counts of second-degree criminal sexual conduct, appellant argues that instances of prosecutorial misconduct entitle him to a new trial. He also maintains that two of the five counts were committed as part of

the same behavioral incident, and so the district court erred when it imposed separate sentences for those counts. We find no basis to reverse his convictions or sentences and therefore affirm.

FACTS

Appellant Servando Suarez Rivera and his wife lived in a mobile home park in Scott County, where his wife ran a daycare for other families in the park. Suarez Rivera was often home while his wife had children in her care. Sometimes, he would act as the primary caregiver while she ran errands, took a shower, or did housework. In 2022, after Suarez Rivera's wife passed away, allegations emerged that Suarez Rivera had sexually abused children in the daycare and in the mobile home community. Three of the four children who had been identified as victims testified at a jury trial—H.M., P.B., and M.G. The district court granted the state's pretrial motion to "prohibit[] any evidence of a fourth victim," Y.R., based on the state's representation that it would not call her as a witness or name her as a victim in the proceedings. The relevant facts, elicited at trial, and additional procedural history follow.

H.M. knew Suarez Rivera as a family friend. She was 8 years old at the time of the charged conduct and 21 years old at trial. H.M. had grown up knowing Suarez Rivera because he and her father were "best friend[s]," and Suarez Rivera would visit H.M.'s home to spend time with her family. One day, when H.M.'s father was not home, Suarez Rivera came over to borrow a tool. H.M. recalled their interaction in detail, including specifics about what she was wearing that day and where she led Suarez Rivera in the house to search for the tool. In the first room they checked, Suarez Rivera "gave [her] a hug from

behind” that was unwanted, “uncomfortable,” and “different than a typical hug that [she] would receive from somebody,” and it made her freeze because she was unsure of what to do. Then, she took him to look for the tool in the outdoor shed. Suarez Rivera again hugged H.M. from behind, and then put his hand down her underwear. He rubbed her pubic hair and told H.M. that she was “growing to be . . . a good girl.” He stopped touching H.M. upon hearing her mother’s car pull up.

P.B. attended Suarez Rivera’s wife’s daycare between the ages of 2 and 8, and she was 11 years old at the time of trial. While she was at daycare, Suarez Rivera would touch her “all over [her] body,” including her “swimsuit areas” after removing her clothes. “Most of the time” it would take place in the living room, but he would also “force” her into the bedroom by “hold[ing] [her] hand and mak[ing] [her] go there.” The touching was mostly “rubbing,” but she recalled that something went inside her body on one occasion.

M.G. attended the daycare when she was 5 or 6 years old, and she was 12 years old at the time of trial. She testified that there were “multiple times” while Suarez Rivera’s wife was in the shower when Suarez Rivera “would take [M.G.] to the bedroom,” “take [her] clothes off,” and touch her “private parts.”

In addition to these three victims, the state called two pediatric nurse practitioners who are trained forensic interviewers with the Midwest Children’s Resource Center (MCRC) as expert witnesses. Prior to trial, one of the MCRC expert witnesses forensically interviewed M.G. and the other forensically interviewed P.B. The expert who interviewed P.B. testified about P.B.’s delayed disclosure, noting that such delays are “common” and often result because “[n]o one ever asked.” Speaking generally, and using P.B.’s disclosure

as an example, she further explained why delayed disclosure occurs: “She is only ten, but in her mind she is understanding that looking back that this wasn’t okay. They also have to feel comfortable in saying it to somebody that they trust.” When asked whether “a delayed disclosure damage[s] the credibility of what they are disclosing in any way,” the expert responded, “No.” When asked whether P.B. “in your opinion [has] been . . . exposed to adverse childhood experiences,” the expert responded, “Yes.”

The second expert’s testimony was similar with respect to M.G. She explained that M.G. had suffered an “adverse childhood experience” and that, based on research in the field and the expert’s experience, M.G.’s delayed disclosure was unsurprising. When asked if M.G. made a “clear disclosure of sexual abuse” during the interview, the expert responded that M.G. had.

The state played recordings of P.B.’s and M.G.’s MCRC interviews for the jury. In P.B.’s unredacted interview, she mentions Y.R. and Y.R.’s allegations. The prosecutor, however, manually muted the video as it was being played to the jury so as not to violate the court’s pretrial order barring reference to Y.R. Before the video played, the parties and the court discussed that the video would eventually need to be redacted for purposes of appellate review in a way that reflects what the prosecutor muted. Nevertheless, as we explain more below, the redacted copy in the record on appeal does not directly align with the description of the redactions in the trial transcript and includes references to Y.R.’s allegations. The state also introduced a squad car video of P.B. providing a statement to a deputy that includes references to Y.R.’s allegations. As far as we can tell from the record,

the prosecutor did not manually mute that video. The copy in the record on appeal is partially redacted but still includes audible references to Y.R.

During closing arguments, as relevant here, the prosecutor told the jury that its verdict would ultimately be “a direct reflection on who you find credible in this case, a direct reflection on if you think these girls are credible.” The prosecutor said that “the other evidence support[ed] [the victims] as being credible” and that the victims’ testimonies were consistent with their MCRC interviews. He referenced the testimony of the MCRC experts, noting “how common it is for children of this age to keep these things buried inside them, to delay disclosure,” “how the behavior and the demeanor of [P.B. and M.G.] was right on par with what [the interviewers] have seen, their expert opinion,” and “that these girls made a clear disclosure to them.” The prosecutor also told the jury that the victims “had their childhood innocence” until Suarez Rivera “ripped it away” from each of them. The victims “stayed consistent and steadfast because of the belief and hope that they would be believed” by the jury and the evidence was “clear” and “strong that [the victims] are credible.”

The jury returned a guilty verdict on all five counts of second-degree criminal sexual conduct, Minn. Stat. § 609.343.1(a) (2022)—two counts relating to Suarez Rivera’s conduct involving P.B., two counts relating to his conduct involving M.G., and one count relating to his conduct involving H.M. Respectively, the district court sentenced Suarez Rivera on those counts to concurrent terms of imprisonment of 91, 156, 48, 70, and 36 months.

Suarez Rivera appeals.

DECISION

I

Suarez Rivera brings three claims of prosecutorial misconduct. He argues that the state improperly elicited vouching testimony from its expert witnesses, failed to properly redact two video exhibits that were played for the jury, and appealed to the jurors' passions and sympathies at closing argument. Suarez Rivera did not object to this conduct at trial.

We review allegations of unobjected-to prosecutorial misconduct under a modified plain-error standard. Under that standard, the defendant has the initial burden of “show[ing] an error . . . that was plain.” *State v. Waiters*, 929 N.W.2d 895, 901 (Minn. 2019) (quotation omitted). “An error is plain if it is clear or obvious.” *Id.* (quotation omitted). Then, “[i]f the defendant satisfies this burden, the burden shifts to the [s]tate to establish that the unobjected to misconduct did not affect substantial rights.” *Id.* (quotation omitted). “A plain error affects the substantial rights of the defendant when there is a reasonable likelihood that the error substantially affected the verdict.” *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011) (quotation omitted). Finally, if the prosecutorial misconduct was plain error that affected substantial rights, a reviewing court “then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings.” *State v. Ramey*, 721 N.W.2d 294, 298 (Minn. 2006) (quoting *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998)). Here, the instances of asserted prosecutorial misconduct either did not constitute plain error or did not affect Suarez Rivera's substantial rights. We address each claim of prosecutorial misconduct in turn.

A

Suarez Rivera first argues that the MCRC expert witnesses impermissibly vouched for the victims' credibility by testifying that P.B. and M.G. suffered an adverse childhood experience. He relies on the general rule that courts must "reject expert opinion testimony regarding the truth or falsity of a witness[']s allegations about a crime, for the expert's status may lend an unwarranted 'stamp of scientific legitimacy' to the allegations." *State v. Myers*, 359 N.W.2d 604, 611 (Minn. 1984).

"[W]hen the alleged victim of a sexual assault is a child," however, "there is presented one of those unusual cases in which expert testimony concerning credibility of a witness should be received." *Id.* at 610 (quotation marks omitted). The supreme court in *Myers* explained that, in such cases, "jurors are often faced with determining the veracity of a young child who tells of a course of conduct carried on over an ill-defined time frame and who appears an uncertain or ambivalent accuser." *Id.* Expert testimony may provide "insight into the puzzling aspects of the [victims'] conduct . . . which the jury could not otherwise bring to its evaluation of [their] credibility." *Id.* Particularly relevant here, expert testimony about the victims' delayed disclosures and demeanor may provide the jury with "[b]ackground data" that is "helpful and appropriate in cases of sexual abuse of children." *Id.*

Still, this court has also recognized that there are limits to the appropriate admission of expert testimony regarding a child's credibility. In *State v. Morales-Mulato*, for example, we held that the district court erred when it admitted testimony of a forensic interviewer that a child had been sexually abused. 744 N.W.2d 679, 688 (Minn. App.

2008), *rev. denied* (Minn. Apr. 29, 2008). We distinguished *Myers* on two primary grounds. First, there was an age difference between the child victims in *Myers* and *Morales-Mulato*. *Id.* The child in *Myers* was 7 years old at the time of the abuse and 8 years old at trial, 359 N.W.2d at 606-07, whereas the child in *Morales-Mulato* was 10 years old at the time of the abuse and 12 years old at trial, 744 N.W.2d at 682, 688. And the child in *Morales-Mulato* was able to testify “in great detail” as to the sexual abuse in a manner “comparable to that of many adult witnesses.” 744 N.W.2d at 688-89. Second, the expert in *Morales-Mulato* had no medical training and was not offered “as an expert qualified to testify about the characteristics of abused children or qualified to identify those characteristics in a particular child.” *Id.* at 689.

In another case, *State v. Wembley*, we similarly identified error when the district court admitted testimony of a forensic interviewer that assessed the credibility of a 12-year-old child victim. 712 N.W.2d 783, 786, 792 (Minn. App. 2006). Prior to trial, the witness had assessed the victim for the “purpose of . . . determin[ing] [the victim’s] credibility.” *Id.* at 791. At trial, the witness not only identified the factors she used to assess the child’s credibility but then applied them to the facts of the case in a way that showed the victim’s “interview was consistent with all factors making up the credibility assessment.” *Id.* at 792. We held that that testimony “violated the prohibition against expert opinion as to a witness’s credibility.” *Id.*

The facts of this case walk the line between the appropriate expert testimony in *Myers* and the inappropriate testimony in *Morales-Mulato* and *Wembley*. P.B. and M.G. were 11 and 12 years old at the time of trial, respectively, but they were much younger

when the abuse took place (and younger than the victims in *Morales-Mulato* and *Wembley* were at the time of their respective experiences of abuse). And, while P.B. and M.G. were consistent in their statements before and during trial, neither testified with the same level of detail as the victim in *Morales-Mulato*. 744 N.W.2d at 688. The expert testimony contextualizing the delayed disclosures and lack of some detail in the victims' testimony, therefore, provided "insight into the puzzling aspects of the [victims'] conduct . . . which the jury could not otherwise bring to its evaluation of [their] credibility." *Myers*, 359 N.W.2d at 610.

Suarez Rivera maintains that the experts' testimony that P.B. and M.G. each had experienced "adverse childhood experiences" in the form of sexual abuse crossed the line because the experts impliedly revealed to the jury that they found P.B.'s and M.G.'s allegations truthful. We agree that those statements are troubling in view of our caselaw. But the supreme court noted in *Myers* that a defendant may waive the right to object to such testimony by "opening the door" in the examination of other witnesses by eliciting testimony that a complainant "was a creative and imaginative child." *Id.* at 611. Suarez Rivera asked the victims on cross-examination if they "kn[ew] the difference between a dream and reality," to define a "dream," and if they had "ever confused the two, reality and dream." "Having sought . . . to discredit the child[ren's] credibility," Suarez Rivera arguably "waived objection to responsive opinion testimony." *Id.* at 611-12.

Given the delicate balance of issues at play in this inquiry, it is a close call as to whether the admission of expert testimony about the victims' "adverse childhood experiences" would have been an abuse of discretion if the district court had been asked to

make that ruling. But given our standard of review and the circumstances that distinguish this case from *Myers*, *Morales-Mulato*, and *Wembley*, we cannot conclude that the admission of the expert testimony here rose to the level of plain error.¹

B

Suarez Rivera also argues that the state committed prosecutorial misconduct by failing to redact references to Y.R. in P.B.’s videotaped interview at MCRC and in the squad car video of P.B.’s statement to police, both of which were played for the jury. We will assume without deciding that the admission of references to Y.R. constituted plain error because, even so, Suarez Rivera’s substantial rights were not affected.

Suarez Rivera directs the court to two instances in P.B.’s MCRC interview when P.B. mentions Y.R. In the first instance, P.B. discusses her longtime friendship with Y.R., but makes no reference to Y.R.’s allegations of abuse. The state alerted Suarez Rivera and the court to those references before playing the video for the jury, and Suarez Rivera did not object or request redaction. In the second instance, the interviewer asks P.B. whether she saw Suarez Rivera abuse anyone else. In the unredacted version, P.B. then identifies

¹ Even if the admission of testimony about the victims’ “adverse childhood experiences” was plain error, we would find for similar reasons as we did in *Morales-Mulato* and *Wembley* that any such error did not affect Suarez Rivera’s substantial rights. See *Morales-Mulato*, 744 N.W.2d at 690 (concluding the expert opinion “did not affect the verdict and was harmless error”); *Wembley*, 712 N.W.2d at 792 (concluding “there was no plain error in allowing the expert testimony” because the improper testimony “did not unfairly prejudice” the defendant). The jury heard direct testimony of both victims and watched videotapes of both interviews. The jury could, therefore, “judge for itself” the credibility of the victims after observing the victims on the tapes and at trial and considering their observations in light of the unchallenged expert testimony about delayed disclosure and other typical behavior of child victims of abuse. *Morales-Mulato*, 744 N.W.2d at 690.

both M.G. and Y.R. According to the trial transcript, the parties agreed that the prosecutor would manually mute the audio from the timestamp “18:45 to 18:46” when playing it for the jury, so that the jury could hear M.G.’s name but not Y.R.’s name. Suarez Rivera did not object in real time to any mention of Y.R., but the video included in the record on appeal is redacted between the timestamps of 18:44 and 18:45, such that M.G.’s name is not audible but Y.R.’s is. We therefore have no way of knowing whether the redacted copy in the record reflects what the prosecutor muted for the jury, as it was created after-the-fact. But, because it is the record provided to us, we will presume that Y.R.’s name was audible to the jury in violation of the court’s order prohibiting evidence of Y.R.’s allegations.

The jury also heard a passing reference to Y.R.’s allegations in the squad car video of P.B.’s interview with an officer. P.B. explains that she talked to a school counselor about the other victims and says that the counselor also “talked to [Y.R.].”²

Assuming the admission of the references to Y.R.’s allegations in these video clips was plain error, the jury’s exposure to that evidence did not violate Suarez Rivera’s substantial rights. To determine whether a defendant’s substantial rights were violated, appellate courts consider “(1) the strength of the evidence against [the defendant]; (2) the pervasiveness of the erroneous conduct; and (3) whether [the defendant] had an

² Suarez Rivera points to another part of this video when the deputy tells P.B.’s father that P.B. “named at least what, four other girls,” which could have clued the jury into the fact that there were more than three known victims of Suarez Rivera. But according to the transcript, the prosecutor stopped the squad car video at the timestamp 18:47:10; the challenged statement occurs at timestamp 18:59. According to the record, that statement was not played to the jury, so there was no error.

opportunity to rebut any improper remarks.” *State v. Peltier*, 874 N.W.2d 792, 805-06 (Minn. 2016) (citing *State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007)). Given the detailed and consistent testimonies of multiple victims, the evidence against Suarez Rivera was strong. The erroneous conduct was also not pervasive. Although there were a few references to Y.R.’s allegations that were entered into evidence, other references to Y.R. were properly excluded, and the state “did not rely on” the references to Y.R.’s allegations in its closing argument or elicit further testimony about those references from the testifying victims or the deputy. *State v. Mosley*, 853 N.W.2d 789, 803 (Minn. 2014); *see Peltier*, 874 N.W.2d at 803 (holding that there was no reasonable likelihood that the allegedly improper evidence significantly affected the verdict, in part because the state did not mention the contested evidence in its closing argument).

Because there “is no reasonable likelihood” that the challenged unredacted statements in the video exhibits “had a significant effect on the [jury’s] conclusion of guilt,” the state has met its burden of demonstrating that the admission of this evidence did not affect Suarez Rivera’s substantial rights. *Mosley*, 853 N.W.2d at 803.

C

Suarez Rivera’s final argument of prosecutorial misconduct challenges statements made in closing argument that appealed to the jurors’ passions and sympathies. We agree the state’s closing argument contained improper statements, but conclude that those statements did not affect Suarez Rivera’s substantial rights.

A closing argument “should be based on the evidence presented at trial and inferences reasonably drawn from that evidence.” *State v. DeWald*, 463 N.W.2d 741, 744

(Minn. 1990). Particularly in sexual abuse cases, which “inevitably evoke an emotional reaction” and “where credibility is the central issue,” any attempt “to exacerbate this natural reaction by making any emotive appeal to the jury is likely to be highly prejudicial.” *State v. McNeil*, 658 N.W.2d 228, 234 (Minn. App. 2003) (quotation marks omitted); *State v. Rucker*, 752 N.W.2d 538, 551 (Minn. App. 2008), *rev. denied* (Minn. Sept. 23, 2008).

In the state’s closing argument, the prosecutor told the jury that Suarez Rivera had “ripped” the victims’ “childhood innocence” away from them and that the victims “stayed consistent and steadfast because of the belief and hope that they would be believed” by the jury. On appeal, the state defends these statements as responding to the defense’s suggestion that the victims may have dreamed or fantasized about the abuse. In the state’s view, “for a child to have such a sexual fantasy, there would have to be some base of experience or knowledge of sexual conduct that is lacking in a young child. The victims did not have that knowledge because of their childhood innocence.” But regardless of the prosecution’s motivation for making these statements, it does not change that the statements were “wholly unrelated to the elements of the offenses with which appellant was charged or the evidence at trial.” *McNeil*, 658 N.W.2d at 235. Like the statements about a victim’s loss of virginity and childhood in *McNeil*, the statements here “appeal[ed] . . . to the sympathies of the jurors” and were improper. *Id.* at 234.

Nevertheless, the state’s improper remarks were not “unduly prejudicial.” *Id.* In looking at “the whole argument in context, not just selective phrases or remarks,” the state’s two challenged comments were couched within a closing argument that otherwise focused on the elements of the crimes, the jury’s duty to weigh the evidence as it saw fit,

the state’s burden of proof, and key parts of trial testimony. *Id.* (citing *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993)); see *State v. Epps*, 964 N.W.2d 419, 424 (Minn. 2021) (holding that defendant’s substantial rights were not affected partly because the challenged statements constituted a minimal portion of the transcript). The state’s remarks, “overall, urged the jury to convict on the evidence and not on sympathy.” *DeWald*, 463 N.W.2d at 745.

The state’s improper statements in its closing argument “simply cannot, even when considered with the other errors, outweigh [the victims’] descriptive and detailed testimony.” *McNeil*, 658 N.W.2d at 236. Therefore, they did not unduly prejudice Suarez Rivera.

II

Suarez Rivera challenges the district court’s imposition of separate sentences for his offenses against M.G. in counts three and four. Suarez Rivera argues that the state did not meet its burden of proving that these offenses were not committed as part of a single behavioral incident. “Whether a defendant’s offenses occurred as part of a single course of conduct is a mixed question of law and fact.” *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014). We review the district court’s findings of fact “under the clearly erroneous standard” and its “application of the law to those facts de novo.” *Id.*

“[M]ultiple sentences for multiple offenses committed as part of the same behavioral incident are prohibited.” *State v. Barthman*, 938 N.W.2d 257, 265 (Minn. 2020). Therefore, before a district court can impose multiple sentences, the state must prove, “by a preponderance of the evidence, that a defendant’s offenses were not part of a single

behavioral incident.” *Id.* at 266 (citing *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016)). “Whether a defendant’s multiple offenses occurred during a single course of conduct depends on the facts and circumstances of the case.” *Jones*, 848 N.W.2d at 533. In making that determination, courts consider two factors: “(1) whether the offenses occurred at substantially the same time and place, and (2) whether the conduct was motivated by an effort to obtain a single criminal objective.” *Bakken*, 883 N.W.2d at 270 (quotations and citations omitted). Here, there is no dispute that every instance of Suarez Rivera’s conduct towards M.G. occurred at the same location. Our inquiry therefore focuses on whether the conduct occurred at different times and whether Suarez Rivera had a single criminal objective. *See Barthman*, 938 N.W.2d at 266-67.

At least two incidents were established at trial. M.G. testified that Suarez Rivera had sexually abused her “[m]ultiple times.” She testified that “every time he would touch [her], the multiple times,” it occurred in the same room and he touched the same area of her body. On cross-examination of M.G., and in his brief on appeal, Suarez Rivera concedes that the conduct occurred “two times.” But he argues that the state failed to prove they were not part of the same behavioral incident because “M.G. was never asked to explain how much time passed between those incidents,” and her statement that she was wearing pants when the abuse occurred “suggests that the alleged abuse occurred on one day.” We are not convinced. The lack of testimony about a specific gap in time does not negate other evidence showing that M.G. “was describing separate incidents.” *Id.* at 266. For example, on cross-examination, M.G. testified that Suarez Rivera’s wife was “in the shower on both occasions” when the abuse occurred. That testimony, in addition to M.G.’s statement on

direct examination that the abuse occurred “multiple times” and would take place while Suarez Rivera’s wife was showering, satisfies us that the abuse took place on separate days rather than twice during a single shower episode.³

As to the single-criminal-objective factor, the supreme court has explained that “[b]road statements of criminal purpose do not unify separate acts into a single course of conduct.” *Jones*, 848 N.W.2d at 533. The question is “whether all of the acts performed were necessary to or incidental to the commission of a single crime and motivated by an intent to commit that crime.” *Barthman*, 938 N.W.2d at 267 (quoting *State v. Krampotich*, 163 N.W.2d 772, 776 (Minn. 1968)).

Here, as in *Barthman*, Suarez Rivera’s “sexual acts that formed the basis of [one] incident were not in furtherance of, or incidental to, his successful completion of the other sexual assault.” *Id.* at 267. Thus, “even assuming that [Suarez Rivera] committed each sexual act ‘to satisfy his sexual urges, the mere fact that he committed multiple crimes over

³ Suarez Rivera also argues that the complaint improperly included the same offense-date range for these two counts and maintains that each offense must relate to a “distinct timeframe within [a] long period,” relying on *State v. Suhon*, 742 N.W.2d 16 (Minn. App. 2007). For what it is worth, the amended complaint includes distinct offense-date ranges for counts three and four (“09/08/2014 to 09/08/2016” for count three; “10/24/2015 to 10/24/2017” for count four); but, to Suarez Rivera’s credit, the charge descriptions describe the range in both counts as “between September 8, 2014 and September 8, 2016.” Regardless, appellant’s reliance on *Suhon* is misplaced. In *Suhon*, the appellant’s abuse over a ten-year period was divided into three distinct timeframes of six years, two years, and two years. 742 N.W.2d at 22. The court explained that the criminal sexual conduct statutes did “not explicitly or impliedly *prohibit* separately charging three offenses that could each independently constitute its own extended period of abuse.” *Id.* (emphasis added). Nothing in *Suhon* requires the state, as Suarez Rivera suggests, to “delineate acts occurring in distinct segments” within an overarching timeframe if the evidence otherwise shows that the unlawful conduct occurred in separate behavioral incidents.

time for the *same* criminal objective does not mean he committed those crimes to attain a *single* criminal objective.” *Id.* (quoting *Bakken*, 883 N.W.2d at 271).

Suarez Rivera attempts to narrow the criminal purpose from one of “sexual gratification” to “exploiting a caretaking role in order to satisfy perverse sexual desires,” relying on a nonprecedential decision of this court, *State v. Hernandez*, No. A17-0187, 2018 WL 4558151 (Minn. App. Sept. 24, 2018). Considering that narrower purpose, Suarez Rivera argues that the incidents involving M.G. were part of that single criminal objective. We disagree. *Hernandez* is inapposite because it involved review of a district court’s decision to join two offenses involving different victims into one trial. *Id.* at *3. In that context, we upheld the joinder after concluding that the defendant “exploited his caretaker role [to satisfy] his perverse needs” by abusing multiple child victims at his home over a three-month period. *Id.* at *5. That decision, which preceded the supreme court’s decisions in *Jones* and *Barthman*, does not persuade us to conclude that Suarez Rivera’s purpose here was anything other than satisfaction of his sexual urges in each incident. That is especially so, in light of his conviction for the abuse of H.M., who was not a child in the daycare.

Because Suarez Rivera’s acts towards M.G. were not part of a single behavioral incident, the district court did not err in separately sentencing him for counts 3 and 4.

Affirmed.