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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0350**

State of Minnesota,
Respondent,

vs.

Jacoby Jermaine Edwards,
Appellant.

**Filed March 3, 2025
Affirmed in part, reversed in part, and remanded
Johnson, Judge**

Anoka County District Court
File No. 02-CR-22-1659

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

Brad Johnson, Anoka County Attorney, Kelsey R. Kelley, Nina Alley, Assistant County Attorneys, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

An Anoka County jury found Jacoby Jermaine Edwards guilty of first-degree criminal sexual conduct and kidnapping based on evidence that he confined a woman to her apartment for a weekend, threatened her with a gun, and sexually assaulted her multiple

times. We conclude that the district court did not err by admitting *Spreigl* evidence of Edwards's similar conduct toward another woman or by excluding evidence of the victim's prior sexual conduct with Edwards. But we conclude that the district court erred by imposing a greater-than-double upward durational departure on one criminal-sexual-conduct conviction and by ordering Edwards to pay restitution to the Anoka County Sexual Assault Fund. Therefore, we affirm in part, reverse in part, and remand for resentencing.

FACTS

In early August 2021, the Anoka County Sheriff's Office received a report that a woman, L.L.K., had undergone a sexual-assault examination at a local hospital. Two detectives met with L.L.K., who stated that Edwards had sexually assaulted her multiple times during the previous weekend.

At trial, L.L.K. testified as follows: She met Edwards on Facebook approximately two weeks before the incident giving rise to the charged offense, during which time she exchanged many electronic messages with him. She invited Edwards to her apartment on Friday, July 30, 2021. While there, Edwards became angry and accused her of cheating on him. Edwards removed a handgun from his backpack and threatened her. He pushed a couch in front of the door to her apartment, turned off the lights, and closed the blinds. When L.L.K.'s three-year-old daughter awoke and came out of the bedroom she shared with L.L.K., Edwards told L.L.K. to put her daughter back to bed. Edwards followed L.L.K. and her daughter into the bedroom with the gun in his hand and told L.L.K. to turn her daughter's head away and to kiss her goodnight. Edwards made L.L.K. lie down flat

on her bed and inserted his penis into her vagina while threatening her and her daughter. Edwards warned L.L.K. “not to tell anybody about this” or he would kill her.

L.L.K. testified further that Edwards stayed in her apartment the entire weekend. Throughout that time, Edwards forced L.L.K. to keep her daughter on the couch in the living room while he and L.L.K. remained in the bedroom. Edwards allowed L.L.K. to spend time with her daughter only to feed her and change her pull-ups. Edwards alternated between acting “normal” and hitting L.L.K., threatening her, and repeatedly penetrating her vagina with his penis. At one point, Edwards struck L.L.K. with a phone charger. L.L.K. persuaded Edwards to leave her apartment on Monday, August 2, 2021.

In March 2022, the state charged Edwards with (1) first-degree criminal-sexual conduct while using a dangerous weapon to cause the complainant to submit to sexual penetration, in violation of Minn. Stat. § 609.342, subd. 1(d) (2020); (2) first-degree criminal-sexual conduct using force or coercion to accomplish sexual penetration and causing the complainant personal injury, in violation of Minn. Stat. § 609.342, subd. 1(e)(i); and (3) kidnapping, in violation of Minn. Stat. § 609.25, subd. 1(3) (2020). One month later, the state gave notice of its intent to seek an upward durational departure at sentencing based on three aggravating factors, including Edwards’s alleged invasion of L.L.K.’s zone of privacy and Edwards’s commission of the alleged offense in the presence of a minor.

Before trial, the state gave notice of its intent to introduce evidence that, in November 2021 (three and one-half months after the conduct alleged in this case), Edwards threatened a different woman with violence in similar circumstances. Edwards later filed

a motion *in limine* for an order prohibiting the state from introducing such evidence. At the outset of trial, the district court conducted a *Spreigl* hearing. The prosecutor asserted that the state was offering its *Spreigl* evidence to prove a common scheme or plan. Outside the presence of the jury, the woman testified that, in November 2021, while she was in a sexual relationship with Edwards, he became angry with her, accused her of cheating on him, and threatened her with a gun. She testified that this incident took place while she was with Edwards in his bedroom. She testified that when she told Edwards that she wanted to leave, he shut the bedroom door, put a broken closet door in front of the bedroom door to block her exit, turned off the lights, took out a gun, and told her that “he was gonna shoot [her] first and then himself cause he would have nothing to live for.” The woman also testified that Edwards kept his gun visible while they traveled to her apartment, where she was able to prompt another person to call 911. The district court ruled that the state’s *Spreigl* evidence would be admissible at trial.

The case was tried to a jury on four days in September 2023. The state called nine witnesses. The state introduced its *Spreigl* evidence through the testimony of the woman involved in the November 2021 incident and two police officers who were familiar with the incident. In addition, the state introduced evidence that a DNA sample taken from a vaginal swab of L.L.K. matched Edwards’s DNA profile.

Edwards testified in his own defense. His testimony aligned with L.L.K.’s testimony inasmuch as she invited him to her apartment on Friday, July 30, 2021; they spent the weekend together in her apartment; L.L.K.’s daughter was present throughout; and they argued about alleged infidelities. But Edwards testified that the sexual conduct

between him and L.L.K. was consensual, and he denied that he barricaded the door to the apartment or that he possessed a gun.

The jury found Edwards guilty of all three charges. In addition, the jury returned a special-verdict form in which it found two aggravating factors: that Edwards committed the offense in L.L.K.'s bedroom and that he committed the offense in the presence of a minor. At sentencing, the state urged the district court to rely on the two aggravating factors to impose an upward durational departure equal to the statutory maximum sentence of 360 months of imprisonment. The district court imposed a 360-month prison sentence on count 1, which is a greater-than-double upward durational departure, and a concurrent 36-month prison sentence on count 3, which is a presumptive sentence. The district court did not impose a sentence on count 2, which was deemed a lesser-included offense. Edwards appeals.

DECISION

I. *Spreigl* Evidence

Edwards first argues that the district court erred by admitting the state's *Spreigl* evidence.

Edwards's argument is based on a rule of evidence that provides, "Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith" though it may be admissible "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Minn. R. Evid. 404(b)(1). In Minnesota, evidence of "prior bad acts" is known as *Spreigl* evidence. *State v. Washington*, 693 N.W.2d 195, 200

(Minn. 2005) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)). Such evidence generally is inadmissible unless

- (a) the proffered evidence is relevant to an identified material issue other than conduct conforming with a character trait;
- (b) the other crime, wrong, or act and the participation in it by a relevant person are proven by clear and convincing evidence;
- and (c) the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.

Minn. R. Evid. 404(b)(2). This court applies an abuse-of-discretion standard of review to a district court’s admission of *Spreigl* evidence. *State v. Smith*, 9 N.W.3d 543, 561 (Minn. 2024).

In this case, Edwards argues that the district court erred for three reasons. First, he contends that the district court erred by finding that the state proved by clear and convincing evidence that the *Spreigl* incident occurred. “Clear and convincing evidence is more than a preponderance of the evidence but less than proof beyond a reasonable doubt.” *State v. Profit*, 591 N.W.2d 451, 464 (Minn. 1999) (quotation omitted). Edwards contends that the district court should not have credited the testimony of the woman involved in the *Spreigl* incident because she did not cooperate with the state’s prosecution of Edwards for that incident, which caused the state to dismiss charges that had been filed. Edwards does not cite any caselaw in support of his contention. Rule 404(b) does not require that “other acts” evidence be criminal in nature. We generally give “great deference” to a district court’s finding that evidence is clear and convincing. *State v. McLeod*, 705 N.W.2d 776, 788 (Minn. 2005). The district court’s finding that the *Spreigl* incident occurred is

supported by the lengthy and detailed testimony of the woman who was involved in the incident.

Second, Edwards contends that his conduct in the *Spreigl* incident is not sufficiently similar to the conduct that was alleged and proved in this case. To determine whether *Spreigl* evidence is relevant, a district court generally should consider, among other things, “whether there is a sufficiently close relationship between the charged offense and the *Spreigl* offense in time, place, or modus operandi.” *State v. DeBaere*, 356 N.W.2d 301, 305 (Minn. 1984); *see also State v. Ness*, 707 N.W.2d 676, 688 (Minn. 2006). If *Spreigl* evidence is being offered to show a common scheme or plan, “the misconduct must have a *marked similarity* in modus operandi to the charged offense.” *State v. Clark*, 738 N.W.2d 316, 346 (Minn. 2007) (quotation omitted).

The district court identified several similarities between Edwards’s alleged conduct in this case and his conduct in the *Spreigl* incident. Specifically, the district court stated that Edwards’s conduct in the *Spreigl* incident was “markedly similar” because of “the uniqueness in which [Edwards] became upset, questioned the alleged victims, blocked their exit from the location and used a black handgun to gain compliance.” The record supports the district court’s reasoning. In addition, both incidents involved sexual partners, and both incidents occurred in bedrooms. Furthermore, the two incidents occurred less than four months apart. Given the numerous similarities, the district court did not abuse its discretion by determining that Edwards’s conduct in the *Spreigl* incident is markedly similar to the conduct alleged in this case.

Third, Edwards contends that the potential for unfair prejudice outweighed the probative value of the *Spreigl* evidence. In considering this requirement, a district court should seek to balance the relevance of the evidence against the risk that the evidence will be used as propensity evidence. *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009). The district court reasoned that the *Spreigl* evidence tended to show that Edwards followed a common scheme or plan when confronting his romantic partners over alleged infidelities by confining them and using a gun to gain compliance with his demands. It is notable that, in this case, Edwards denied possessing a gun and denied barricading L.L.K.'s door. Consequently, the *Spreigl* evidence was probative of Edwards's and L.L.K.'s credibility and whether the incident occurred in the manner described in L.L.K.'s testimony. Given the issues in dispute, the district court did not abuse its discretion by determining that the probative value of the specific evidence outweighed the potential for unfair prejudice.

Thus, the district court did not err by admitting the state's *Spreigl* evidence.

II. Evidence of Prior Sexual Conduct

Edwards also argues that the district court erred by excluding evidence of his and L.L.K.'s prior sexual conduct and evidence of the nature and extent of their relationship.

In pre-trial discovery, Edwards produced 1,616 pages of printouts of electronic messages that he and L.L.K. exchanged during the two-week period between the date on which they met online and the date of the alleged offense. Shortly before trial, the state moved to preclude Edwards from introducing or otherwise using any of those documents as exhibits, especially messages relating to prior sexual conduct between Edwards and L.L.K. Edwards opposed the motion, arguing that the messages are relevant because they

show “a complete picture of the relationship” between Edwards and L.L.K., including “I love you” statements. The district court initially reserved ruling on the admissibility of the documents and asked Edwards’s attorney to submit them for review. The following day, the district court filed an order in which it granted in part and denied in part the state’s motion. In applying the so-called rape-shield law, the district court ruled that evidence that Edwards and L.L.K. “had previously engaged in allegedly consensual sex” would be inadmissible at trial. Similarly, the district court ruled that sexually explicit electronic messages and “professions of love and a desire to be together long term” would be inadmissible. But the district court ruled that either party could introduce evidence concerning “how the parties met, how long they had been communicating with each other, whether they had met in person prior to the night in question, and whether the alleged victim invited Defendant to her home on July 30th.”

Minnesota’s rape-shield law generally provides that, in a prosecution for criminal sexual conduct, “evidence of the victim’s previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury.” Minn. Stat. § 609.347, subd. 3 (2024). Nonetheless, if “consent of the victim is a defense in the case,” evidence of a victim’s previous sexual conduct with the accused may be admitted “if the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature.” Minn. Stat. § 609.347, subd. 3, 3(a); Minn. R. Evid. 412(1)(A). Such evidence also may be admitted if its admission “is constitutionally required by the defendant’s right to due process, his right to confront his accusers, or his right to offer

evidence in his own defense.” *State v. Wenthe*, 865 N.W.2d 293, 306 (Minn. 2015) (quotation omitted).

In this case, the district court ruled that the “probative value of the evidence that the parties had previously engaged in allegedly consensual sex is far outweighed by the prejudicial value of the evidence.” The district court reasoned that “consent to prior encounters, or even consent to initial sexual contact, is not relevant to whether Defendant sexually assaulted the alleged victim on the date in question.” The district court also reasoned that evidence of sexually explicit messages between Edwards and L.L.K. were “significantly more prejudicial than probative.” This court applies an abuse-of-discretion standard of review to a district court’s decision to exclude evidence under the rape-shield law on the ground that the probative value of the evidence is outweighed by its inflammatory or prejudicial nature. *Id.*

Edwards contends that evidence that he and L.L.K. previously engaged in consensual sex would have been relevant because it would have shown that the incident in question was “not the first time they had engaged in sex” and “not a random or casual hook-up.” Edwards’s contention is contrary to law because it assumes that evidence of L.L.K.’s prior sexual history is generally relevant. The caselaw interpreting the rape-shield law makes clear that “[t]he rape-shield law serves to emphasize the general irrelevance of a victim’s sexual history, not to remove relevant evidence from the jury’s consideration.” *Id.* (quotation omitted). Accordingly, the district court did not err by reasoning that the probative value of evidence of Edwards’s and L.L.K.’s prior sexual encounter was “far outweighed by the prejudicial value of that evidence.”

Edwards also appears to contend that evidence about other aspects of their relationship (other than their prior sexual conduct) “would have helped the jury have a better understanding of why L.L.K. invited Mr. Edwards to her apartment, why it was okay for him to stay the weekend, and why they had consensual sex.” But the district court expressly allowed Edwards to introduce evidence concerning “how the parties met, how long they had been communicating with each other, whether they had met in person prior to the night in question, and whether the alleged victim invited Defendant to her home on July 30th.” As it happened, the jury heard a fair amount of evidence about the nature of Edwards’s and L.L.K.’s relationship. L.L.K. and Edwards testified that they had met on Facebook, had previously “hung out,” and that L.L.K. invited Edwards to her home on July 30. Edwards also testified that they were in the “I love you” stage of a relationship. Edwards does not explain with specificity the non-sexual evidence that was excluded or how the evidence he was allowed to introduce was insufficient to accomplish the purposes he identifies. The only other type of evidence the district court excluded (other than evidence of L.L.K.’s prior sexual conduct) was evidence of sexually explicit electronic messages. The district court did not abuse its discretion by limiting the evidence Edwards could introduce concerning the nature of his relationship with L.L.K.

Thus, the district court did not err by excluding evidence of Edwards’s and L.L.K.’s prior sexual conduct or evidence of the nature and extent of their relationship.

III. Upward Durational Departure

Edwards argues, in the alternative, that the district court erred by imposing a statutory maximum sentence of 360 months of imprisonment on his conviction of first-

degree criminal sexual conduct using a dangerous weapon, a sentence that is a greater-than-double durational departure from the presumptive sentence of 144 months.

The Minnesota Sentencing Guidelines specify presumptive sentences for felony offenses. Minn. Sent’g Guidelines 2.C (2020). For any particular felony offense, a presumptive sentence is “presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.” Minn. Sent’g Guidelines 1.B.13 (2020). Accordingly, a district court “must pronounce a sentence . . . within the applicable [presumptive range], unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (2020); *see also State v. Jones*, 745 N.W.2d 845, 848 (Minn. 2008). “Substantial and compelling circumstances are those demonstrating that the defendant’s conduct in the offense of conviction was significantly more or less serious than that typically involved in the commission of the crime in question.” *State v. Hicks*, 864 N.W.2d 153, 157 (Minn. 2015) (quotation omitted). To impose an upward sentencing departure, there must be “(1) a factual finding that there exists one or more circumstances not reflected in the guilty verdict or guilty plea, and (2) an explanation by the district court as to why those circumstances create a substantial and compelling reason to impose a sentence outside the range on the grid.” *State v. Rourke*, 773 N.W.2d 913, 919 (Minn. 2009). The sentencing guidelines provide a non-exclusive list of aggravating factors that may justify a departure. Minn. Sent’g Guidelines 2.D.3.b & cmt. 2.D.301 (2020). This court applies an abuse-of-discretion standard of review to a district court’s imposition of a durational departure. *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009). Under this standard of review, we will

affirm an upward departure if the reasons for the departure “are legally permissible and factually supported in the record.” *Id.*

In this case, the district court noted the jury’s findings that “the offense was committed within [L.L.K.’s] bedroom and it was committed in the presence of the minor child.” The district court stated that, given the jury’s findings, “there is a substantial basis for an upward durational departure.”

A. Aggravating Factors

Edwards challenges both of the aggravating factors on which the district court relied in imposing an upward durational departure.

With respect to the first aggravating factor, Edwards argues that the district court erred by relying on the jury’s finding that Edwards committed the crime in L.L.K.’s bedroom. Edwards acknowledges that an aggravated sentence may be imposed if an offense “is committed in a location in which the victim had an expectation of privacy.” *See* Minn. Sent’g Guidelines 2.D.3.b(14) (2020). Nonetheless, Edwards contends that the district court erred by “merely repeat[ing] the jury’s factual finding that Mr. Edwards committed the offense in LLK’s bedroom” without stating that the jury’s finding “implicated the zone-of-privacy” aggravating factor.

Given the procedural history of the case, there is no doubt that the district court relied on the zone-of-privacy aggravating factor at sentencing. Before trial, the state gave written notice of its intent to seek an upward durational departure at sentencing based on three aggravating factors, including Edwards’s alleged invasion of L.L.K.’s zone of privacy. When Edwards filed a motion *in limine* challenging the state’s proposed special-

verdict form asking whether Edwards committed an offense in L.L.K.'s bedroom, the district court denied the motion on the grounds that the interrogatory referred to the zone-of-privacy aggravating factor and that "there's case law to support that a sexual assault in a bedroom is a zone of privacy." Indeed, the caselaw makes clear that a bedroom is a location where a person has an expectation of privacy. *See, e.g., State v. Parker*, 901 N.W.2d 917, 928-29 (Minn. 2017) (affirming reliance on zone-of-privacy aggravating factor based on jury's finding that crime occurred in victim's home); *State v. Vanengen*, 3 N.W.3d 579, 583 (Minn. 2024) (affirming reliance on zone-of-privacy aggravating factor based on jury's finding that crime occurred in victim's bedroom, without evidence of victim's subjective expectation of privacy). Given the procedural history of the case, the district court did not err by not expressly invoking the zone-of-privacy aggravating factor when imposing sentence.

Edwards also contends that the district court erred with respect to the first aggravating factor by not explaining why his crime is significantly more serious than the typical offense. Edwards relies on caselaw stating that, in ordering an upward durational departure following a jury's finding of an aggravated circumstance, a district court must give "an explanation . . . as to why those circumstances create a substantial and compelling reason to impose a sentence outside the range on the grid." *Rourke*, 773 N.W.2d at 919. But such an explanation is unnecessary if the facts underlying an aggravating factor and the reasons for a departure are "indistinguishable." *State v. Alvarez*, 820 N.W.2d 601, 623 (Minn. App. 2012), *aff'd sub nom. State v. Castillo-Alvarez*, 836 N.W.2d 527 (Minn. 2013).

In that event, “[n]o purpose is served by requiring the district court to separately state on the record that the factor is a reason for departure.” *Id.*

The supreme court’s caselaw establishes that the existence of the zone-of-privacy aggravating factor, by itself, creates a substantial and compelling reason to impose an upward durational departure. In *Parker*, the appellant argued that “an additional rationale” is required to show that the necessary “substantial and compelling circumstances” are present, but the supreme court did not adopt the appellant’s argument. 901 N.W.2d at 928-29. In *Vanengen*, the supreme court stated that the zone-of-privacy aggravating factor “contains no term like ‘particularly’ to constrain its application to markedly unusual or distinctive circumstances.” 3 N.W.3d at 584. Rather, “the plain language of the zone-of-privacy factor focuses solely on *where* the offense was committed and not on the *type* of case committed or *how* it was committed.” *Id.* at 585. Consequently, “if the facts show that an offense is ‘committed in a location in which the victim had an expectation of privacy,’ a district court has discretion to impose an upward departure.” *Id.* (citing Minn. Sent’g Guidelines 2.D.3.b(14)). Accordingly, the district court did not err by not explaining why Edwards’s crime is significantly more serious than the typical offense. Thus, the district court did not err by relying on the zone-of-privacy aggravating factor.

With respect to the second aggravating factor, Edwards argues that the district court erred by relying on the jury’s finding that he committed the crime in the presence of a minor. An offense is committed “in the presence of” a minor only if “the child sees, hears, or otherwise witnesses some portion of the commission of the offense in question.” *State v. Robideau*, 796 N.W.2d 147, 152 (Minn. 2011). Edwards contends that the evidence is

insufficient to support the jury’s finding that the child saw, heard, or otherwise witnessed his offense. But L.L.K. testified that, after her daughter awoke during the night, she put her back in bed while Edwards followed them into the bedroom with a gun in his hand. L.L.K. also testified that Edwards told her to turn her daughter’s face to the wall. Shortly thereafter, Edwards penetrated L.L.K.’s vagina with his penis. This evidence is sufficient to allow an inference that L.L.K.’s daughter saw the gun in Edwards’s hand and heard Edwards’s sexual assault of L.L.K. Thus, the district court did not err by relying on the presence-of-a-minor aggravating factor.

B. Greater-than-Double Departure

Edwards also challenges the district court’s decision to impose a greater-than-double upward durational departure.

The supreme court has held that, “in a case in which an upward departure in sentence length is justified, the upper limit will be double the presumptive sentence length.” *State v. Evans*, 311 N.W.2d 481, 483 (Minn. 1981). A district court may impose a greater-than-double durational departure only if it finds “*severe* aggravating factors.” *State v. Stanke*, 764 N.W.2d 824, 828 (Minn. 2009) (emphasis added). This court applies an abuse-of-discretion standard of review to a district court’s decision to impose a greater-than-double upward durational departure. *State v. Barthman*, 938 N.W.2d 257, 269 (Minn. 2020).

Edwards notes that the district court did not expressly find a “severe” aggravating factor, but he does not seek appellate relief on that ground. Rather, Edwards argues that the aggravating factors found by the jury do not make this case “one of the extremely rare cases in which a statutory maximum sentence is justified.” Edwards urges the court to rely

on its “collective, collegial experience in reviewing a large number of criminal appeals from all the judicial districts” to determine whether the aggravating factors found by the jury are severe enough to justify a greater-than-double upward durational departure. *See State v. Norton*, 328 N.W.2d 142, 146-47 (Minn. 1982).

Edwards cites *Barthman*, in which the appellant was convicted of first-degree criminal sexual conduct but a greater-than-double upward durational departure was reversed on appeal because the victim’s particular vulnerability was not a *severe* aggravating circumstance. 938 N.W.2d at 272-75. Edwards also cites two other supreme court opinions in which the appellants were convicted of first-degree criminal sexual conduct but the aggravating circumstances were deemed insufficiently severe to justify a greater-than-double upward durational departure. *See State v. Johnson*, 450 N.W.2d 134, 135 (Minn. 1990) (aggravating factors of particular vulnerability and invasion of zone of privacy); *State v. Partlow*, 321 N.W.2d 886, 887 (Minn. 1982) (aggravating factors of particular vulnerability and particular cruelty). In response, the state cites *State v. Vance*, 765 N.W.2d 390 (Minn. 2009), a first-degree-criminal-sexual-conduct case in which the supreme court affirmed a double upward durational departure based on two aggravating factors but did not have occasion to consider imposing a *greater-than-double* upward durational departure. *See id.* at 393-96.

In *Barthman*, the supreme court surveyed criminal-sexual-conduct cases in which appellate courts have upheld greater-than-double departures and noted that all such cases involved “particular cruelty, often involving gratuitous violence, *and* multiple aggravating factors.” 938 N.W.2d at 273-74 & n.4. In this case, the state did not allege the particular-

cruelty aggravating factor, and the state did not argue that Edwards subjected L.L.K. to gratuitous violence. It appears that neither the supreme court nor this court has upheld a greater-than-double upward durational departure in a first-degree-criminal-sexual-conduct case in the absence of the particular-cruelty aggravating factor. It further appears that neither the supreme court nor this court has upheld a greater-than-double upward durational departure in a first-degree-criminal-sexual-conduct case based on the aggravating factors of zone of privacy and presence of a minor. The absence of such caselaw indicates that, as a matter of law, the aggravating factors found by the jury in this case are not “severe” enough to have given the district court discretion to impose a greater-than-double upward durational departure. In addition, our comparison of the aggravating factors and underlying facts in this case with those of the cases cited by Edwards leads to the conclusion that the aggravating factors in this case are not severe enough to justify a greater-than-double upward durational departure. *See Barthman*, 938 N.W.2d at 272-75; *Johnson*, 450 N.W.2d at 135; *Partlow*, 321 N.W.2d at 887.

Thus, the district court erred by imposing a greater-than-double upward durational departure. Therefore, we remand for resentencing. On remand, the district court may impose a sentence no greater than double the presumptive sentence.

IV. Restitution

Edwards last argues that the district court erred by ordering him to pay \$450 in restitution to the Anoka County Sexual Assault Victims Fund.

Restitution awards are governed primarily by statute. *See* Minn. Stat. §§ 611A.04-.046 (2024); *State v. Gaiovnik*, 794 N.W.2d 643, 646-52 (Minn. 2011). In a felony case, a

district court may impose a restitution obligation in addition to a prison sentence and a fine. Minn. Stat. § 609.10 (2024); *State v. Beganovic*, 974 N.W.2d 278, 287 (Minn. App. 2022), *aff'd*, 991 N.W.2d 638 (Minn. 2023). The “primary purpose” of restitution is “to restore crime victims to the same financial position they were in before the crime.” *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007). This court applies a *de novo* standard of review to the question whether a district court has authority to order restitution and an abuse-of-discretion standard of review to a district court’s award of restitution. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015).

Edwards contends that the district court erred on the ground that the Anoka County Sexual Assault Victims Fund is not a “victim” of his crime. The relevant statute provides, “A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge . . . if the offender is convicted” Minn. Stat. § 611A.04, subd. 1(a). The term “victim” is defined in the restitution statute primarily to mean “a natural person who incurs loss or harm as a result of a crime.” Minn. Stat. § 611A.01(b) (2024). Restitution may be ordered for a victim’s losses only if the losses “are directly caused by, or follow naturally as a consequence of, the defendant’s crime.” *State v. Boettcher*, 931 N.W.2d 376, 381 (Minn. 2019). The record does not indicate that the fund has incurred a loss or a harm that was directly caused by, or followed naturally as a consequence of, Edward’s crimes.

The statutory definition of “victim” also includes “(1) a corporation that incurs loss or harm as a result of a crime, (2) a government entity that incurs loss or harm as a result of a crime, and (3) any other entity authorized to receive restitution under section 609.10

or 609.125.” Minn. Stat. § 611A.01(b). The record does not indicate whether the fund is a corporation or a “government entity.” Regardless, the fund cannot be a victimized corporation or government entity because it has not incurred a loss or a harm as a result of Edward’s crime. *See id.* The fund may be “a victim assistance program or other program directed by the court,” but, if so, it may not receive restitution unless “the victim is deceased or already has been fully compensated.” Minn. Stat. § 609.10, subd. 2(a)(2) (2024). At the sentencing hearing, the prosecutor confirmed that L.L.K. is still alive, and there is no indication in the record that L.L.K. has been fully compensated.

For these reasons, the Anoka County Sexual Assault Victims Fund is not a “victim” of Edwards’s crime and, thus, does not have a right to an award of restitution. We note that the state concedes that the record does not support the restitution award. Thus, the district court erred by ordering Edwards to pay restitution to the Anoka County Sexual Assault Victims Fund. On remand, the district court shall vacate the restitution award. *See State v. Grayson*, 546 N.W.2d 731, 739 (Minn. 1996) (vacating restitution award due to lack of evidence of loss).

Affirmed in part, reversed in part, and remanded.