

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1401**

State of Minnesota,
Respondent,

vs.

Benjamin Alexander Russell,
Appellant.

**Filed April 14, 2025
Affirmed
Ross, Judge**

Anoka County District Court
File No. 02-CR-22-3970

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

Brad Johnson, Anoka County Attorney, Carl E. Erickson, Assistant County Attorney,
Anoka, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Smith, Tracy M., Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Benjamin Russell murdered his infant daughter in her crib and concealed the crime for more than a decade before confessing to a minister and the girl's mother. Russell pleaded guilty to the murder and received a sentence that included an order to pay the

Crime Victims Reimbursement Board for payments it claimed to have made to the child's mother to cover the funeral expenses and the mother's lost wages. Russell contests the roughly \$7,200 restitution award on appeal, contending that the state failed to prove that it actually paid the mother the funds. Because Russell based his challenges to the restitution order in the district court on the assumption that the state in fact did pay the mother the funds, he failed to put the state on notice of the only challenge he makes on appeal. We therefore affirm.

FACTS

Benjamin Russell placed a pillow over his infant daughter's face in 2009, ostensibly to end her crying but consequently suffocating her to death. He gave police at the time a different account, which they presumably accepted. Thirteen years later Russell shared the actual events with a minister and admitted to his former romantic partner and mother of the deceased child that he had smothered the girl. We will call the child's mother "Ruth," a name we have randomly chosen in the interest of protecting her privacy. The state charged Russell with second-degree murder and first-degree manslaughter. Russell pleaded guilty to murder. The district court sentenced him to serve 138 months in prison and to pay restitution. The Minnesota Crime Victims Reimbursement Board¹ (CVRB) filed a restitution affidavit totaling \$7,265.11, representing that it had paid Ruth that amount to compensate her for the cost of the child's funeral (\$3,134.81) and for her lost wages

¹ It was previously named and is referred to in the record as the "Crime Victims Reparations Board." The legislature renamed this agency in 2023. 2023 Minn. Laws ch. 52, art. 5, § 57, at 907.

(\$4,130.30) when she became unable to work on learning what actually had happened to the child. Ruth also asked for restitution directly for additional lost wages, commissions, and travel expenses. The district court ordered restitution based on both the CVRB's and Ruth's requests totaling \$32,708.64.

Russell contested the restitution awards and submitted affidavits, and a hearing followed. The state presented Ruth to testify at the hearing, and, among other testimony, she defended her request for restitution by recounting that the emotional impact of learning the true manner of her daughter's death incapacitated her from working. She also testified that the CVRB reimbursed her for funeral expenses and for some of her lost wages for having missed work. Following the hearing, Russell argued that the state failed to document its claim to have reimbursed Ruth.

The district court later asked the parties to "verify what documentary evidence, if any, was received for consideration in issuing a restitution order," observing that, "[u]nless the court is mistaken, it did not receive any evidence at that hearing." The state confirmed that it had not submitted exhibits at the hearing but maintained that documents previously submitted were part of the record. The district court ruled that Russell had waived his objection to the state's prehearing documentary evidence. It mostly rejected Ruth's direct restitution request but it kept intact the CVRB's restitution award after observing that Russell did not "specifically contest the award to the CVRB" in his prehearing affidavit. The district court ordered Russell to pay \$7,433.11 in restitution.

Russell appeals.

DECISION

Russell maintains that the district court improperly ordered restitution. We review a restitution award for an abuse of discretion, relying on the district court’s fact findings unless they are clearly erroneous and reviewing legal questions *de novo*. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). We see no abuse of the district court’s discretion here.

Russell urges us to deem the order invalid because, he argues, the state failed to prove that the CVRB sustained a loss. Crime victims in Minnesota have a right to restitution from a convicted criminal defendant who directly caused the loss, and the CVRB may request restitution by stepping into the shoes of a victim whom it has paid. Minn. Stat. § 611A.04 (2024); *see State v. Latimer*, 604 N.W.2d 103, 105 (Minn. App. 1999). A defendant may challenge a restitution award by first presenting specific evidence framing his challenge:

[T]he offender shall have the burden to produce evidence if the offender intends to challenge [the restitution award]. This . . . must include a detailed sworn affidavit of the offender setting forth all challenges to the restitution or items of restitution, and specifying all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim or victims.

Minn. Stat. § 611A.045, subd. 3(a) (2024).

It is clear to us that the language in Russell’s affidavit that meets his requirement to “set[] forth all challenges to the restitution or items of restitution” presents a challenge that differs materially from the challenge he makes on appeal. *Id.* In generally challenging the CVRB’s restitution request, the affidavit acknowledged that the CVRB had already compensated Ruth \$4,130 for lost wages and stated that “any amount for ‘funeral’

dispersed to [Ruth] by the [CVRB] was dispersed in error.” The affidavit asserts that Ruth did not pay for the child’s funeral and that the lost wages claimed were speculative or duplicative. We do not read the affidavit as challenging whether payments from the CVRB to Ruth actually occurred but rather as challenging whether certain restitution items were a “direct consequence of the crime for which [he] was sentenced.”

Russell’s statements to commence the restitution hearing support our understanding. He presented specific issues: Do “the numbers on the victim’s affidavit . . . add up[?]” What was Ruth doing while not working? And did Ruth pay for the funeral? But he did not raise the question of whether the CVRB made payments to Ruth until he submitted his post-hearing, closing-argument brief. Having failed to raise the issue in his affidavits (or even during the hearing itself), he did not sufficiently put the state on notice that it needed to present evidence addressing the occurrence of payments. The state likens this case to *State v. Seeman*, when we held that a defendant failed to put the state on sufficient notice of some of his challenged restitution claims when he did not adequately explain the grounds on which he was challenging certain items. 5 N.W.3d 171, 177–78 (Minn. App. 2024), *rev. granted* (Minn. June 26, 2024). Russell’s failure here exceeds the defendant’s notice failure in *Seeman*, as Russell bases his appeal on a premise entirely *contradicting* what he presented to the district court. The existence of CVRB payments was a presumption on which he built his restitution attacks in his restitution-challenging affidavit. Because the state did not have a burden at the hearing to produce evidence that the CVRB in fact paid Ruth—a fact Russell not only did not contest but implicitly accepted as true—the district court did not abuse its discretion by ordering Russell to pay the CVRB.

We are not persuaded otherwise by Russell’s argument that the state forfeited its insufficient-notice argument on appeal by not arguing it in the district court. It is true that the state did not make the notice argument in the district court, but “[a] respondent can raise alternative arguments on appeal in defense of the underlying decision when there are sufficient facts in the record . . . to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted.” *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003). The circumstances here meet those elements, and the district court in fact ruled that Russell did not “specifically contest the award to the CVRB.” Russell’s procedural argument fails.

Although we need not, therefore, decide whether the state carried its evidence-production burden, we observe that the state provided evidence sufficient for the district court’s restitution award. Russell’s evidence-sufficiency argument stems from the district court’s consideration of extra-record affidavits and pay stubs. We review evidentiary decisions for an abuse of discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). And the rules of evidence apply to contested restitution hearings. Minn. R. Evid. 1101(c); *State v. Willis*, 898 N.W.2d 642, 648 (Minn. 2017). Because the state did not offer any documentary evidence at the hearing, the district court arguably abused its discretion by relying on documentary evidence in its order. But any error in relying on extra-record evidence was inconsequential and therefore harmless. *See* Minn. R. Civ. P. 61. The district court received sufficient evidence of the CVRB payments based on Ruth’s testimony. She testified that the CVRB paid her “\$3,500 . . . strictly for the funeral.” Ruth also testified that, from July 5 through November 19, 2022, which is the period she worked only either

intermittently or not at all, the CVRB paid her “regular income,” and Ruth specified her hourly wage. This testimony itself justifies the district court’s findings that the CVRB paid Ruth \$3,134.81 for the funeral and \$4,130.30 for lost wages. The district court’s alleged evidentiary error was harmless and its restitution award was not an abuse of discretion.

Affirmed.