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STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0566
A25-1156

State of Minnesota,
Respondent,

vs.

Sharon Ann Schmalzriedt,
Appellant.

Filed April 6, 2026
Affirmed
Harris, Judge

Wabasha County District Court
File No. 79-CR-24-389

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

Matthew Charles Stinson, Wabasha County Attorney, Wabasha, 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 Reyes, Presiding Judge; Harris, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

In these consolidated appeals from the final judgment of conviction for theft by swindle and the corresponding restitution order, appellant argues that her conviction must be reversed for insufficient evidence. Alternatively, appellant contends that the district court committed reversible error by materially misstating the law when it granted respondent's request to modify the pattern jury instruction defining a swindle. Appellant also challenges her sentence, asserting that the matter must be remanded because the district court failed to expressly consider her ability to pay before ordering restitution. We affirm.

FACTS

In 2024, respondent State of Minnesota charged appellant Sharon Ann Schmalzriedt with theft by swindle, in violation of Minnesota Statutes section 609.52, subdivision 2(a)(4) (2020). The complaint alleged that over a six-month period in 2021, Schmalzriedt withdrew $53,300 from her step-grandson B.S.'s Uniform Transfer to Minors Act (UTMA) bank account. Under the UTMA, Schmalzriedt was named as B.S.'s custodian on the account and had a fiduciary duty to manage the funds on his behalf. According to the complaint, Schmalzriedt's custodial authority terminated when B.S. turned 21 in 2019, and therefore she falsely represented herself as B.S.'s custodian to commit the theft. Schmalzriedt admitted to B.S. that she took the funds without his knowledge or permission and stated that she would refund the money. The matter proceeded to a jury trial. The following facts summarize the trial evidence and are presented in a light most favorable to the jury's verdict.

In 2008, a UTMA account was created for B.S. at WNB Financial. Schmalzriedt was designated as the custodian of the account. Under the UTMA, B.S. was the owner of the account and entitled to the funds, but, as the custodian, Schmalzriedt was authorized to perform transactions to take care of B.S.'s personal expenses. According to the banker, a custodian's name remains on the account unless it is removed. Thus, Schmalzriedt's name was not automatically taken off the UTMA account once her custodial authority terminated and, as custodian, Schmalzriedt was responsible for contacting the bank and removing herself from the account at the appropriate time. The banker at WNB Financial was not an expert in UTMA accounts but was not surprised to learn that under Minnesota law, the custodian's authority terminated when the minor turned 21.[1] B.S. turned 21 in January 2019.

In December 2020, B.S. deposited $79,000 into his UTMA account. The money was an insurance payout after his father's death. B.S. transferred $5,000 of that money to his checking account but otherwise did not pay close attention to the account.

Throughout a six-month period between January and June of 2021, Schmalzriedt performed multiple transactions without B.S.'s knowledge or permission, transferring a total of $53,300 from the UTMA account. All transfers happened through an online portal or an online application. B.S. only authorized $5,500 of the transactions. On January 25, 2021, Schmalzriedt transferred $1,000 out of B.S.'s account without B.S.'s knowledge or permission. Two days later, B.S. talked to Schmalzriedt on the phone. Schmalzriedt was crying and said that she needed $5,000 to help pay her mortgage loan. B.S. agreed to loan her the $5,000. That same day, Schmalzriedt transferred $16,000 out of B.S.'s UTMA account instead of $5,000. In March of 2021, B.S. agreed to loan Schmalzriedt $500

[1] Under the UTMA, the custodian's authority terminates when the minor turns 21. Minn. Stat. § 527.40 (2020).

because Schmalzriedt represented that B.S.'s grandfather would not get a job. B.S. agreed because he thought he knew how much money was in his UTMA account.

Schmalzriedt also discussed the transactions with B.S.'s aunt. Schmalzriedt explained that she needed money because she had lost hours and her pay was reduced because of COVID, bills were piling up, they were struggling with their house payments, and her husband, B.S.'s grandfather, would not stop spending money and would not get a job. Schmalzriedt told B.S.'s aunt that B.S. agreed to help her, and that she intended to pay the money back.

The banker at WNB Financial and B.S. discussed the transactions that Schmalzriedt performed, and B.S. was surprised to learn about the amount withdrawn. B.S. spoke with Schmalzriedt in person in April, and Schmalzriedt pleaded with him not to tell his grandfather, stating that she would deal with it directly. B.S. also spoke with Schmalzriedt on June 18, 2021, about closing the account. B.S. could not close the account unless Schmalzriedt signed off on it. Schmalzriedt agreed to close the account but did not. Two more transfers were made totaling $35,800, and then the transfers stopped as of June 25, 2021. Schmalzriedt agreed to a repayment plan—at least $250 per month every two weeks. Schmalzriedt made payments for about a year and paid about $11,000 back. But Schmalzriedt stopped paying in 2023, after which B.S. and his aunt reported her actions to law enforcement.

Within a year after her initial conversation with B.S. about the unauthorized transactions, the banker advised B.S. that he should ask Schmalzriedt to contact the bank and have her removed as custodian of the account. On another occasion, the banker talked with Schmalzriedt and B.S. and told them both that Schmalzriedt would need to contact the bank to have Schmalzriedt removed as custodian of B.S.'s account. The banker ultimately helped B.S. remove Schmalzriedt from the account in December 2023.

The jury found Schmalzriedt guilty of theft by swindle and found that the state proved that the value of the property was more than $35,000. The district court sentenced Schmalzriedt to 27 months in prison but stayed the sentence for five years. The district court also ordered Schmalzriedt to pay $38,800 in restitution and required her to pay $100 per month toward restitution.

After the sentencing hearing, Schmalzriedt objected to the restitution ordered, asserting that she did not have the ability to pay. In February 2025, the parties appeared for a contested restitution hearing. After taking the matter under advisement, the district court affirmed its original restitution order but did not make written findings on Schmalzriedt's ability to pay.

Schmalzriedt appeals.[2]

DECISION

Schmalzriedt raises three arguments on appeal. First, she contends that her conviction must be reversed because there is insufficient evidence that she swindled B.S. out of his money because she had unencumbered access to his UTMA account. Second, Schmalzriedt argues that she is entitled to a new trial because the district court committed reversible error by materially misstating the law when it granted the state's request to

[2] Schmalzriedt appealed both the judgment of conviction and the restitution order in separate appeals. We consolidated the appeals.

modify the pattern jury instruction defining a swindle. Lastly, Schmalzriedt challenges her sentence and asserts that the matter must be remanded because the district court failed to expressly consider her ability to pay before ordering restitution. We address each argument in turn.

I. The circumstantial evidence is sufficient to support Schmalzriedt's theft-by-swindle conviction.

Schmalzriedt challenges the sufficiency of the evidence supporting her theft-by-swindle conviction.

The state must prove every element of an offense beyond a reasonable doubt. *State v. Beganovic*, 991 N.W.2d 638, 654 (Minn. 2023). As charged here, theft by swindle required the state to prove that Schmalzriedt, "by swindling, whether by artifice, trick, device, or any other means, obtain[ed] property or services from another person." Minn. Stat. § 609.52, subd. 2(a)(4). The state must prove three elements: "(i) the owner of the property gave up possession of the property due to the swindle; (ii) the defendant intended to obtain for h[er]self or someone else possession of the property; and (iii) the defendant's act was a swindle." *State v. Pratt*, 813 N.W.2d 868, 873 (Minn. 2012); *see also State v. Marth*, 25 N.W.3d 911, 923 (Minn. App. 2025), *rev. denied* (Minn. Oct. 29, 2025). "[T]heft by swindle requires the intent to defraud," and "[i]nherent in the intent requirement is that the swindler must act affirmatively to defraud another." *State v. Flicek*, 657 N.W.2d 592, 598 (Minn. App. 2003) (quotations omitted). "[A]lthough the value of the property obtained must be proved beyond a reasonable doubt for sentencing purposes, it is not an element of the offense of theft by swindle." *Marth*, 25 N.W.2d at 923.

Schmalzriedt argues that the state failed to prove that she committed theft by swindling B.S. because "she had unencumbered access to [the account]," and could move money freely without fraud or deception. This argument implicates both the first and third elements. In other words, Schmalzriedt argues that the state did not prove that B.S. "gave up possession of the property due to a swindle," as she had unencumbered access to the account. And she contends that there was no "swindle" because she "freely transferred money on 17 occasions without engaging in any trickery."

When arguing against Schmalzriedt's directed-verdict motion,[3] the state asserted that "The intentional scheme was to get [B.S.'s] authorization to transfer funds and then to take more funds than he actually authorized." The state also asserted that "the jury [could] find that there's an intentional scheme to say that [she] would pay it back and then not continue to make payments towards repaying it, even when given the opportunity." Additionally, the state noted that Schmalzriedt did not want her husband to be informed, and "that [the] scheme to keep drawing this out and keep [B.S.] onside is itself its own artifice or scheme that a jury could reasonably rely upon to call this a swindle." And the state argued that every transaction that B.S. did not authorize and was not for B.S.'s benefit was a false representation to the bank.

To the extent that Schmalzriedt's arguments implicate the meaning of the theft-by-swindle statute and present a question of statutory interpretation, we apply a de novo

[3] On appeal, the state argues that Schmalzriedt's contention that "the theft by swindle conviction must be reversed is in substance similar to the directed verdict motion of trial counsel." Accordingly, the state relies solely on the argument that it made at trial to respond to Schmalzriedt's appellate argument.

standard of review. *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019). But in general, when analyzing a sufficiency-of-the-evidence claim, "[t]he applicable standard of review depends on whether the conviction—or . . . the specific element at issue—is supported by direct evidence or circumstantial evidence." *State v. Nyonteh*, 24 N.W.3d 271, 283 (Minn. 2025). "[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Id.* We interpret Schmalzriedt's argument as challenging the sufficiency of the circumstantial evidence related to her theft-by-swindle conviction.

When reviewing the sufficiency of the circumstantial evidence, appellate courts "apply a two-step test." *State v. Firkus*, ___N.W.3d___, ___, 2026 WL 517248, at *5 (Minn. Feb. 25, 2026). "The first step requires us to 'winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury's verdict,' which results in 'a subset of facts that constitute the circumstances proved.'" *Id.* (quoting *Harris*, 895 N.W.2d at 600). "At the second step, we consider whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt." *Id.* (quotations omitted).

Here, when we consider the evidence in the light most favorable to the verdict, the circumstances proved by the state's evidence include the following: (1) Schmalzriedt was the designated custodian on B.S.'s UTMA account at WNB Financial and was authorized to perform transactions to take care of B.S.'s personal expenses, (2) Schmalzriedt's authority as custodian over the account terminated when B.S. turned 21 in 2019, (3) In 2020, B.S. deposited $79,000 into his UTMA account and transferred $5,000 to his checking account, (4) B.S. did not pay close attention to his UTMA account, (4) On January 25, 2021, Schmalzriedt transferred $1,000 out of B.S.'s account without B.S.'s knowledge or permission, (5) On January 27, 2021, Schmalzriedt transferred $16,000 out of B.S.'s UTMA account, even though B.S. only authorized Schmalzriedt to withdraw $5,000 to help her pay her mortgage loan, (6) In March 2021, B.S. agreed to loan Schmalzriedt $500 because Schmalzriedt represented that B.S.'s grandfather would not get a job and because he thought he knew how much money was in his UTMA account, (7) Schmalzriedt told B.S.'s aunt that she needed money because her hours and pay were reduced because of COVID, bills were piling up, they were struggling with their house payments, her husband would not stop spending money and would not get a job, that B.S. agreed to help her, and that she intended to pay the money back, (8) Schmalzriedt made other transfers without B.S's knowledge or permission, (9) Schmalzriedt transferred $53,000 in total, but only $5,500 was authorized by B.S., (10) all transfers were done in an online portal or application, (11) a banker at WNB Financial informed B.S. about the transfers and B.S. was surprised, (12) B.S. spoke with Schmalzriedt twice and Schmalzriedt asked B.S. not to tell his grandfather and agreed to close the account but never did, (13) After talking to B.S. for the last time, Schmalzriedt made two more transfers but then the transfers stopped, (14) Schmalzriedt agreed to pay back $250 every two weeks, and made payments for about a year, paying back $11,000, (15) The banker at WNB

Financial was not an expert in UTMA accounts but was not surprised that under Minnesota law, the custodian's authority terminated when the minor turned 21, (16) WNB Financial's position was that, as custodian, Schmalzriedt needed to contact the bank and remove herself from the account, (17) Schmalzriedt did not remove herself from the account, but after talking with B.S. and Schmalzriedt, the banker ultimately helped B.S. remove Schmalzriedt from the account in December 2023.

The definition of swindle is very broad and covers a wide range of actions. *State v. Ruffin*, 158 N.W.2d 202, 205 (1968). The theft-by-swindle statute "punishes any fraudulent scheme, trick, or device whereby the wrongdoer deprives the victim of his money or property by deceit or betrayal of confidence." *Id.* The statute, "was intended to protect gullible people who need as much, if not more, protection against swindlers than do others endowed with greater caution." *Id.* (quotation omitted). "A swindle can be accomplished by false representation as to both past and future acts," and "does not require the use of some mechanical device" or something similar. *State v. Hanson*, 285 N.W.2d 483, 486 (Minn. 1979).

Schmalzriedt requested a loan from B.S. three times but took more money than authorized, transferred money without B.S.'s knowledge or permission, represented that she would close the account and pay the funds back but did not, and requested that B.S. and his aunt not tell B.S.'s grandfather. Schmalzriedt also caused B.S. to give up possession of his property by abusing her position as custodian on B.S.'s account, not removing herself from the account, not informing the bank that B.S. was no longer a minor, and not using the funds for B.S.'s benefit as required under the UTMA.

Schmalzriedt argues that the state proved she committed theft under Minnesota Statutes section 609.52, subdivision 2(a)(1) (2020), but did not prove she swindled B.S. Instead, she asserts that she "committed a crime of opportunity" because she freely transferred money out of B.S.'s UTMA account, which she had unencumbered access to, without engaging in trickery. This alternative hypothesis ignores the circumstances proved that Schmalzriedt had unencumbered access because she exceeded the scope of her position as custodian on B.S.'s account by not removing herself from the account once her authority as custodian terminated, even after she told B.S. that she would, not informing the bank that B.S. was no longer a minor, and not using the funds for B.S.'s benefit as required under the UTMA. *Firkus*, 2026 WL 517248, at *9 (stating that "under the second step of a circumstantial-evidence analysis, [appellate courts] view the circumstances proved as a whole, not as discrete, isolated facts, in determining whether a reasonable inference of guilt can be drawn and no reasonable inference inconsistent with guilt can be drawn."). We conclude that these circumstances proved are consistent with the jury's verdict and inconsistent with any reasonable hypothesis other than guilt.

Because the only reasonable inference is that Schmalzriedt had the intent to defraud, the circumstances proved are sufficient to support her theft-by-swindle conviction.

II. The district court acted within its discretion when instructing the jury on the definition of a swindle because the instruction did not materially misstate the law.

Alternatively, Schmalzriedt contends that she is entitled to a new trial because the district court committed reversible error by modifying the pattern jury instruction defining a swindle.

"District courts are entitled to considerable latitude when selecting language for jury instructions, but an instruction that materially misstates the law is error." *State v. Carridine*, 812 N.W.2d 130, 144 (Minn. 2012). Appellate courts review the district court's jury instructions for abuse of discretion. *State v. Segura*, 2 N.W.3d 142, 166 (Minn. 2024). "A district court abuses its discretion if the challenged instruction confuses, misleads, or materially misstates the law." *Id.* (quoting *State v. Guzman*, 892 N.W.2d 801, 816 (Minn. 2017)). "We review the jury instructions as a whole to determine whether they fairly and adequately explain the law." *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). A reviewing court need not grant a new trial if an erroneous jury instruction was harmless. *Segura*, 2 N.W.3d at 166. But "[a]n erroneous jury instruction is harmless only if it can be said that, beyond a reasonable doubt, the error had no significant impact on the verdict rendered." *Id.* (quotation omitted).

Minnesota Statutes section 609.52, subdivision 2(a) (2020), identifies 19 acts that constitute theft, including theft by swindle. The relevant part of this statute reads: "Whoever does any of the following commits theft and may be sentenced as provided in subdivision 3 . . . (4) by swindling, whether by artifice, trick, device, or any other means, obtains property or services from another person." *Id.*, subd. 2(a)(4). The district court and the parties largely relied on the pattern jury instruction for theft by swindle. The relevant portion of the pattern jury instruction provides:

> **First**, the defendant intentionally engaged in a swindle.
>
> "Intentionally" means that the defendant either had a purpose to do the thing or cause the result specified or believed that the act performed by the defendant, if successful, would

> cause that result. In addition, the defendant must have knowledge of those facts that are necessary to make the defendant's conduct criminal and that are set forth after the word "intentionally."
>
> The essence of a swindle is cheating another person by a deliberate artifice or scheme. [A swindle may also be accomplished through a false representation or representations to another in order to obtain that person's property or services so long as the defendant knew or believed the representations to be false, the representation was material, the defendant intends (INSERT name of alleged victim) to believe the representation(s), and (INSERT name of alleged victim) believes the representation(s) and acts accordingly.]
>
> **Second**, as a result of the swindle, the defendant obtained for (himself) (herself) the (property) (services) of (INSERT name of alleged victim).

10A *Minnesota Practice*, CRIMJIG 16.11 (2025) (footnotes omitted).

The explanatory notes to the model jury instructions state that, when "a criminal offense can be proved in different ways, the model jury instructions use parentheses to denote a choice among various options, and brackets to identify a clause that may or may not be applicable, depending on how the case is charged." 10 *Minnesota Practice*, Criminal Explanatory Notes (2025).

When drafting the jury instructions with the court, the state requested to include both B.S. and WNB Financial in the spaces allotted for the alleged victim. The district court agreed to include the state's suggested language, concluding that "the statute essentially makes a false representation to a third person that results in a victim losing property to be a crime." The district court changed "that person's property" to "a person's property," and included both B.S. and WNB Financial in the spaces designated for the alleged victim related to the first element only. The jury was instructed as follows:

> The essence of a swindle is cheating another person by a deliberate artifice or scheme. A swindle may also be accomplished through a false representation or representations to another, in order to obtain a person's property or services so long as the defendant knew or believed the representations to be false. The representation was material. The defendant intends [B.S.] or WNB Financial to believe the representations, and [B.S] or WNB Financial believes the representations and acts accordingly.
>
> Second, as a result of the swindle, the defendant obtained for herself the property of [B.S.].

For clarity, Schmalzriedt objected to all but the first sentence, and specifically disagreed with including WNB Financial, noting, "if we're defining victim as a person that actually incurs a loss, WNB doesn't necessarily incur a loss."

Schmalzriedt argues that the modified instruction materially misstated the law and misled the jury in a way that allowed it to find her guilty if it found that she only swindled WNB Financial rather than B.S., the actual victim of her crime. She maintains that "the fact scenario involving WNB Financial [would] not prove the swindle element because WNB Financial is not the victim of [her] crime and because it was not WNB Financial's money that she transferred." The state argues that the jury instruction did not misstate the law because the phrase "any other means" in the statute allows for a swindle to be defined as "a false representation to a third party to obtain the property or services of a victim."

We disagree with Schmalzriedt's argument that the victim of the crime must be the person swindled. And Schmalzriedt does not provide any authority other than the pattern instruction to support this assertion. The pattern instructions are "not precedential or binding" legal authority. *State v. Gunderson*, 812 N.W.2d 156, 162 (Minn. App. 2012) (quotation omitted). The elements of theft by swindle are well-established. A person commits theft by swindle when they "obtain[] property or services from another person" by "artifice, trick, device, or any other means." Minn. Stat. § 609.52, subd. 2(a)(4). Theft by swindle may also include "depriv[ing] the victim of his money or property by deceit or betrayal of confidence." *Ruffin*, 158 N.W.2d at 205. The state must prove that: "(i) the owner of the property gave up possession of the property due to the swindle; (ii) the defendant intended to obtain for h[er]self or someone else possession of the property; and (iii) the defendant's act was a swindle." *Pratt*, 813 N.W.2d at 873; *see also Marth*, 25 N.W.3d at 923.

The district court's jury instruction correctly informed the jury on the elements of theft by swindle. Applying the elements to the facts here, the jury could find that Schmalzriedt deprived B.S. of his money by deceit. Schmalzriedt did not remove herself from B.S.'s UTMA account once her authority as custodian terminated after he turned 21, failed to inform the bank that B.S. was no longer a minor, and transferred funds out of the account for her personal use without B.S.'s knowledge or permission. And Schmalzriedt's swindle caused the bank to give up possession of B.S.'s property. Moreover, when reading the jury instructions as a whole, we note that the jury was also required to find that as a result of the swindle, the defendant obtained for herself the property of [B.S.]. This instruction accurately informed the jury on the elements of the offense, including who the victim of Schmalzriedt's crime was. We therefore conclude that the instruction did not materially misstate the law or mislead the jury.

Accordingly, the district court acted within its discretion when it modified the pattern jury instruction.

III. The district court acted within its discretion when it ordered Schmalzriedt to pay $100 per month in restitution because it expressly considered her ability to pay.

Lastly, Schmalzriedt challenges the portion of her sentence ordering her to pay $38,800 in restitution, asserting that the district court did not expressly consider her ability to pay.

Under Minnesota law, "[a] victim of a crime has the right to receive restitution as part of the disposition of a criminal charge . . . against the offender if the offender is convicted." Minn. Stat. § 611A.04, subd. 1(a) (2020). Before awarding restitution, "the district court must consider the defendant's ability to pay and the loss sustained by the victim of the crime." *State v. Boettcher*, 931 N.W.2d 376, 380 (Minn. 2019). "District courts have 'broad discretion' in awarding restitution in criminal matters, but that discretion 'is constrained by the statutory requirements.'" *State v. Seeman*, 25 N.W.3d 858, 863 (Minn. 2025) (quoting *State v. Wigham*, 967 N.W.2d 657, 662 (Minn. 2021)).

Schmalzriedt contends that the district court abused its discretion by failing to expressly consider her ability to pay before ordering restitution. Schmalzriedt acknowledges that at sentencing, the district court ordered Schmalzriedt to pay restitution in installments of $100 per month based on defense counsel's representation that Schmalzriedt was not employed. But she argues that "the court never indicated that it wholly considered [her] income, resources, and obligations that were included in the presentence investigation report."

There is "wide flexibility" afforded to district courts in deciding how to best structure restitution orders to consider a defendant's ability to pay. *State v. Maidi*, 537 N.W.2d 280, 285-86 (Minn. 1995). "[A] district court fulfills its statutory duty to consider a defendant's income, resources, and obligations in awarding and setting the amount of restitution when it expressly states, either orally or in writing, that it considered the defendant's ability to pay." *Wigham*, 967 N.W.2d at 664.

Factual findings are not required, but "the record must include sufficient evidence about the defendant's income, resources, and obligations to allow a district court to consider the defendant's ability to pay the amount of restitution ordered." *Id.* at 665. Such evidence may include "specific, concrete evidence of the defendant's income, resources, and obligations"; information from a presentence investigation; "express concession" by the defendant that they are able to pay the amount of restitution awarded; or the inclusion of a restitution payment schedule or structure reflecting the defendant's "ability to make the periodic payments." *Id.* at 665-66 (["C]onsideration of a defendant's ability to pay may [also] be shown by including a restitution payment schedule or structure that reflects the defendant's ability to make the periodic payments.").

Here, the presentence investigation (PSI) report includes information about Schmalzriedt's ability to pay restitution, including her employment status, previous income, living expenses, and assets. Schmalzriedt's counsel also informed the court at sentencing that Schmalzriedt was unemployed. And the district court expressly explained how it considered Schmalzriedt's ability to pay, stating:

> Restitution is the agreed upon amount which is $38,800. I'm going to come back and explain the amount that I'm going to require you to pay and at what rate. I am going to order you to pay restitution at least $100 per month, and so where did I come up with that number you might ask. Well, No. 1, it's agreed that $38,800 is owed. I'm certainly not going to order that $0 be paid, and based on [defense counsel's] representation, Ms. Schmalzriedt, that you are not employed right now, I don't think it makes sense to impose a significantly high monthly payment. In my view $100 a month is maybe on the low end. I see that what was recommended in the PSI really was $55 per month on this file, but I'm ordering you to pay $100 per month on this file. And of course, [defense counsel], you know that if you want to make any sort of challenge, you have the option to do that, but that's what my sentencing order will indicate.

While the district court did not use the exact phrase, "ability to pay," or "income, resources, and obligations," the record shows that the district court expressly considered Schmalzriedt's ability to pay by explaining its reasoning for the payment schedule.[4] *See Wigham*, 967 N.W.2d at 666. And although Schmalzriedt argues that the district court's restitution order "created a judgment that can never be satisfied," the district court is not required to limit a restitution award amount to only what the defendant can afford. *See State v. Lindsey*, 632 N.W.2d 652, 663-64 (Minn. 2001) (concluding district court acted within its discretion when it stated it considered defendant's ability to pay and ordered

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[4] We acknowledge that the district court's written order following the contested restitution hearing concerning Schmalzriedt's ability to pay did not include any written findings on that issue. While district courts are not required to make express findings about the defendant's ability to pay, the supreme court has explained that doing so is a "best practice" for transparency and effective appellate review. *Wigham*, 967 N.W.2d at 665 n.6.

$32,682.93 in restitution to be paid from prison earnings, even though the defendant was indigent, incarcerated, and unable to pay the total amount). Thus, the district court properly considered Schmalzriedt's ability to pay and acted within its discretion in ordering restitution.

Affirmed.