

*This opinion is nonprecedential except as provided by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
A25-0659**

State of Minnesota,
Respondent,

vs.

Ahmed Hussein Ibrahim,
Appellant.

**Filed May 18, 2026
Affirmed; motion denied
Cochran, Judge**

Stearns County District Court
File No. 73-CR-24-1919

Keith Ellison, Attorney General, Lisa Lodin, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Cochran, Presiding Judge; Larkin, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this appeal from the final judgment of conviction for first-degree criminal sexual conduct, appellant argues that his conviction must be reversed for insufficient evidence. Alternatively, appellant challenges his aggravated sentence. We affirm.

FACTS

In 2024, respondent State of Minnesota charged appellant Ahmed Hussein Ibrahim by amended complaint with three counts of first-degree criminal sexual conduct based on allegations of criminal sexual conduct occurring in December 2023 at his home, where the alleged victim also lived. Count I charged Ibrahim with first-degree criminal sexual conduct in violation of Minnesota Statutes section 609.342, subdivision 1(d) (2022) (actor uses force), for conduct that allegedly occurred in the victim's bedroom. The other two counts involved conduct that the state alleged occurred in Ibrahim's bedroom. Count II was charged under the same statute as count I. Count III alleged that Ibrahim caused personal injury and used coercion to accomplish the act in violation of Minnesota Statutes section 609.342, subdivision 1(c)(i) (2022). The state also provided notice that it intended to seek an aggravated sentence based on the use of threats, taunts, and degradation to the victim, as alleged in the complaint.

The matter proceeded to a jury trial. The trial evidence included testimony from M., the alleged victim, as well as from Ibrahim's wife, the wife's coworker, and two law enforcement officers. Ibrahim also testified. The evidence also included videos found on Ibrahim's phone.

M. provided the following testimony at trial. M. moved to the United States in 2023 from Kenya to attend college. Ibrahim was married to M.'s mother in Kenya and is M.'s step-father. When M. moved to the United States, she lived with Ibrahim and his current wife, whom he married in 2022. Ibrahim's wife eventually moved out and M. was contemplating moving out as well.

In December, M. was planning to take a trip to North Carolina to visit a family friend. She planned to leave on December 18 but ended up getting a ticket to leave on December 15 because Ibrahim assaulted her the day before and she needed to get away. She did not tell Ibrahim that she bought a ticket for a flight on December 15.

On the morning of the 15th, Ibrahim told M. that they had "to go somewhere," but he did not tell her where they were going. Ibrahim drove them to his workplace. While Ibrahim went inside his workplace, M. talked to her uncle on the phone. Unbeknownst to M., the conversation with her uncle was recorded by a device in Ibrahim's car. During the conversation with her uncle, M. describes Ibrahim physically abusing her.

When Ibrahim got back in the car, M. told him that she had a flight to catch and asked him to take her back to his apartment in St. Cloud so that she could get her bag before going to the airport. Once they were back home, Ibrahim came into M.'s room and told her to remove the items from her suitcase. M. told Ibrahim that she did not have time because of her flight, but Ibrahim made her remove each item, one-by-one, and questioned her about the items. While in her bedroom, Ibrahim made M. call her mother, and Ibrahim asked M.'s mother if he had "permission to beat [M.]." Ibrahim then made M. take off her clothes and "started beating [her]." Ibrahim hit M. in the face, which caused her to spit

blood. Ibrahim threw M. on the bed, and she lost consciousness. When she woke up, she saw Ibrahim recording her with his phone. He told her that he was going to send the video to her family and friends. When she tried to cover up, he kept throwing her clothes away from her. She also testified that, at some point while Ibrahim was in her room, she “could feel him on” her but she was unclear about exactly what happened because she was dizzy at the time.

Ibrahim recorded two videos in M.’s room. One video depicts Ibrahim questioning M. about items in her suitcase, the conversation with M.’s mother asking for permission to beat M., Ibrahim threatening to kill M., audio of Ibrahim hitting M., and Ibrahim demanding M.’s cellphone password. The second video depicts M. sitting naked on her bed, while Ibrahim makes various derogatory statements to her.

M. further testified that Ibrahim briefly left when she was in her room and she tried to escape, but Ibrahim stopped her. This was also recorded, although it is audio-only because it appears the phone that was recording had been set down. While she was trying to escape, Ibrahim grabbed her and held her mouth. Ibrahim then took M. to his bedroom. According to M., once in his room, Ibrahim penetrated M.’s vagina without her consent. Ibrahim recorded a video which shows the lower half of M.’s naked body, M. bent over a bed with Ibrahim’s hand on her back, and briefly, Ibrahim’s penis.

M. testified that “it was already 12:00 when the whole thing started.” At around 4:00 p.m. that same day, M. took pictures of her injuries. The photos show that M. has a black eye and swollen cheek and jaw. M. experienced pain in her jaw and neck for about two weeks following the assault. A few weeks after the assault, in early January, Ibrahim’s

spouse discovered the videos and photos from the assault in a locked application on Ibrahim's phone. After talking to a coworker, Ibrahim's spouse made a report to law enforcement and gave them the videos and photos.

Ibrahim testified in his own defense. He stated that he had a secret relationship with M. for years. Ibrahim admitted to arguing with M. and hitting her in the face. He also acknowledged recording the videos discussed above. Regarding the video in his bedroom, Ibrahim agreed that he took his pants off but denied penetrating M.

The jury found Ibrahim guilty of two of the three counts of criminal sexual conduct. It found him not guilty of count I related to conduct that allegedly occurred in M.'s bedroom. But it found him guilty of the two remaining counts of criminal sexual conduct involving the nonconsensual sexual penetration that the state alleged to have occurred in Ibrahim's bedroom.

During trial, Ibrahim requested to bifurcate the proceedings for *Blakely*¹ purposes and agreed that he would rather have the judge than a jury decide the *Blakely* issues. After Ibrahim was found guilty, the parties filed memoranda on the *Blakely* factors previously noticed by the state. Based on the trial transcript, video evidence, and relevant legal authority, the district court found that the state proved the aggravated sentencing factors of "threats, taunts, and degradation" beyond a reasonable doubt. Specifically, the court found

¹ *Blakely* refers to the requirement that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Blakely v. Washington*, 542 U.S. 296, 301 (2004).

that Ibrahim used threats, taunting language, and degrading language during the crime committed.

The district court convicted Ibrahim of count II—first-degree criminal sexual conduct in violation of Minnesota Statutes section 609.342, subdivision 1(d) (actor uses force). The court did not adjudicate Ibrahim guilty or impose a sentence on count III—first-degree criminal sexual conduct in violation of Minnesota Statutes section 609.342, subdivision 1(c)(i) (actor causes personal injury and uses coercion). Based on Ibrahim’s criminal-history score and the offense-severity level, the presumptive guidelines sentence was between 144 and 172 months. The district court imposed an aggravated durational departure of 240 months’ imprisonment. At the sentencing hearing, the court reasoned that substantial and compelling reasons supported departure because (1) “the victim was terrified,” (2) Ibrahim “used threats, degradation, and taunts,” (3) “there’s a huge cultural impact of the threats, as well as the actual act,” (4) Ibrahim “was in a position of trust,” and M. “continuously referred to him as ‘father,’” (5) “there’s a lack of remorse,” and (6) “there were multiple forms of penetration.”

Ibrahim appeals.

DECISION

Ibrahim contends that his conviction for first-degree criminal sexual conduct (actor uses force) must be reversed because the evidence was insufficient to prove the offense beyond a reasonable doubt.² Alternatively, Ibrahim argues that even if the evidence is

² Ibrahim also argues that there is insufficient evidence to support count III, first-degree criminal sexual conduct under Minnesota Statutes section 609.342, subdivision 1(c)(i)

sufficient, his aggravated sentence must be reversed and the matter remanded for resentencing for two reasons. First, he contends that he did not validly waive his right to a jury trial on the aggravated sentencing factors. Second, Ibrahim maintains that the district court abused its discretion by basing its departure decision on facts that were not noticed by the state or proven at the *Blakely* hearing. We address each argument in turn.

I. The evidence was sufficient to convict Ibrahim of first-degree criminal sexual conduct (actor uses force).

Due process requires the state to prove each element of a crime beyond a reasonable doubt. *State v. Beganovic*, 991 N.W.2d 638, 654 (Minn. 2023); *see* U.S. Const. amend. XIV; Minn. Const. art. I, § 7. Ibrahim was convicted of first-degree criminal sexual conduct under Minnesota Statutes section 609.342, subdivision 1(d), which criminalizes nonconsensual sexual penetration when “the actor uses force as defined in section 609.341, subdivision 3, clause (1).” This cross-referenced provision defines “force” as “the infliction by the actor of bodily harm.” Minn. Stat. § 609.341, subd. 3(1) (2022). The Minnesota Supreme Court recently concluded in *State v. Letourneau*, 23 N.W.3d 386, 396 (Minn. 2025), that Minnesota Statutes section 609.342, subdivision 1(d), “unambiguously criminalizes the use of force either before or during nonconsensual sexual penetration.”

(actor causes personal injury and uses coercion), because the state did not prove the personal-injury element. Because the district court did not adjudicate Ibrahim guilty or impose a sentence on this count, we do not consider this argument. *See State v. Ashland*, 287 N.W.2d 649, 650 (Minn. 1979) (refusing to consider sufficiency-of-evidence argument for charges to which defendant was found guilty but neither formally adjudicated nor sentenced).

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.* (quotation omitted). It “always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.*

Ibrahim contends that his conviction is based on circumstantial evidence. The state argues that it proved the use-of-force element with direct evidence including videos, photos, and M.’s testimony. *See State v. Blevins*, 10 N.W.3d 29, 39-40 (Minn. 2024) (stating video is direct evidence of what it shows); *State v. Williams*, 3 N.W.3d 68, 75 (Minn. App. 2024) (stating that “testimony from a complainant is direct evidence”). We agree with the state because we conclude that the challenged conviction is supported by evidence—including the videos, photos, and M.’s testimony—that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption. *See Harris*, 895 N.W.2d at 599. Accordingly, “we painstakingly review the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *Williams*, 3 N.W.3d at 74 (quotation omitted). To the extent that Ibrahim’s arguments present a question of

statutory interpretation, we review those arguments de novo. *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019).

Relying on *Letourneau*, Ibrahim argues that there is not sufficient evidence to support the use-of-force element. Ibrahim argues the evidence is insufficient to support his conviction because the state “did not prove the infliction of bodily harm *accompanied, conditioned or determined* the act of sexual penetration in Ibrahim’s bedroom—which was the only penetrative act the jury found proven.” (Emphasis added.) More specifically, Ibrahim contends that the use of force did not “accompany” the act of penetration because the use of force occurred earlier, when Ibrahim hit M. in her bedroom. And Ibrahim interprets the terms “conditioning” and “determining” as used in *Letourneau* to mean that, if the use of force occurred before the act of penetration, “the state must prove the actor’s use of force caused the actor to be able to accomplish the act of penetration.” The state disagrees with Ibrahim’s interpretation of the terms “conditioning” and “determining” as contrary to *Letourneau*. The state also argues that the evidence is sufficient to meet the standard in *Letourneau* because “[t]he jury credited the direct evidence of hours of [Ibrahim’s] emotional, verbal, and physical abuse that led directly to [Ibrahim’s] act of sexual penetration in his bedroom.” We agree with the state.

Letourneau directly rejected Ibrahim’s argument that “the state must prove the actor’s use of force caused the actor to be able to accomplish the act of penetration.” In *Letourneau*, the appellant made a similar argument to Ibrahim’s argument here—that “uses force” means “bodily harm is inflicted and is then ‘used’ to commit the act of sexual penetration.” *Letourneau*, 23 N.W.3d at 394. The supreme court disagreed, reasoning that

“the meaning of the phrase ‘uses force’ in subdivision 1(d) must be considered in the context of what ‘uses force’ is establishing: a ‘circumstance.’” *Id.* The supreme court noted: “If the actor’s use of force in section 609.342, subdivision 1(d), is an ‘event accompanying, conditioning or determining’ the sexual penetration, the plain language of the statute penalizes the use of force both before (‘conditioning or determining’) and during (‘accompanying’) the sexual penetration.” *Id.* (quoting *Webster’s Third New International Dictionary* 410 (2002)). In other words, the statute criminalizes conduct when the person both engages in sexual penetration and uses force before or during that act. The actor need not use force or bodily harm to inflict the act of sexual penetration. *Id.*

Ibrahim does not dispute that he used force. Instead, as noted above, he argues that “any act of penetration that occurred in Ibrahim’s bedroom was not determined or conditioned by an earlier use of force” because the events occurred at different times, in different locations, and were separated by intervening interactions. This argument is not persuasive.

Upon our review, the record shows a continuous course of conduct involving the same afternoon, same apartment, and same victim, such that the earlier use of force “conditioned” or “determined” the later sexual penetration. *See id.* M. testified that the “whole thing” started at approximately 12:00 p.m. While M. and Ibrahim were in M.’s room, Ibrahim hit her in the face to the point that she was bleeding and spitting blood. She tried to escape, and Ibrahim followed her and held her mouth. At around 4:00 p.m., M. took pictures of her face. The photos show that M. has a black eye and swollen cheek and jaw. In short, although the initial use of force occurred in a separate room from the

penetration, the totality of the record shows that the incident occurred during one continuous period that lasted about four hours in nearby portions of the same home involving the same individuals and similar behavior. Accordingly, we conclude that the evidence of force before the sexual penetration is sufficient to establish that the use of force “conditioned” or “determined” the sexual penetration and that the evidence therefore sustains Ibrahim’s conviction.

II. Ibrahim’s *Blakely* waiver was invalid, but the error was harmless beyond a reasonable doubt.

Alternatively, Ibrahim argues that his sentence must be reversed and remanded for resentencing because he did not validly waive his right to have a jury find the facts supporting the aggravated sentence. *See Blakely*, 542 U.S. at 301. We review the validity of a defendant’s waiver of their right to a jury trial on sentencing factors de novo because the waiver presents a constitutional question. *State v. Dettman*, 719 N.W.2d 644, 648-49, 651-52 (Minn. 2006).³ After reviewing the record, we conclude that Ibrahim did not validly waive his right to a jury trial on the aggravated sentencing factors, but based on the circumstances of this case, we also conclude that the error was harmless beyond a reasonable doubt.

“Under *Blakely*, a criminal defendant has a right under the Sixth Amendment to the United States Constitution to be sentenced based solely upon factual findings made by a

³ The state contends that this court should review this issue under the plain-error standard. The state’s position is contrary to *Dettman*. Additionally, the case relied upon by the state does not involve a *Blakely* waiver. *See State v. Kuhlmann*, 806 N.W.2d 844, 851-53 (Minn. 2011) (applying the plain-error standard to a failure to obtain a waiver of a right to a jury trial).

jury.” *State v. Reimer*, 962 N.W.2d 196, 198 (Minn. 2021). Specifically, “a district court must submit to a jury the question of whether the State has proven beyond a reasonable doubt the existence of additional facts, which were neither admitted by the defendant, nor necessary to prove the elements of the offense, but which support reasons for departure.” *State v. Rourke*, 773 N.W.2d 913, 921 (Minn. 2009).

A defendant’s *Blakely* rights are violated “when a court determines ‘any disputed fact essential to increase the ceiling of a potential sentence’ . . . without the defendant waiving the right to a jury’s determination of that issue.” *Reimer*, 962 N.W.2d at 198 (quoting *State v. Derosier*, 719 N.W.2d 900, 903 (Minn. 2006)). If a defendant waives their *Blakely* rights, the waiver is valid only if it is knowing, voluntary, and intelligent. *Dettman*, 719 N.W.2d at 651. A defendant may waive their right to a jury trial on aggravated sentencing factors under *Blakely* by personally entering a knowing, voluntary, and intelligent waiver in writing or on the record in open court. *State v. Thompson*, 720 N.W.2d 820, 827–28 (Minn. 2006) (citing Minn. R. Crim. P. 26.01, subd. 1(2)(a)). A *Blakely* waiver is valid only if the defendant was advised by the court of his right to a jury trial and was given a chance to speak with counsel. *Id.*; see also Minn. R. Crim. P. 26.01, subd. 1(2)(b).

Ibrahim contends that his waiver was not knowing and intelligent because it did not comply with Minnesota Rule of Criminal Procedure 26.01, subdivision 1(2)(b). He asserts that “[he] was never accurately informed of even the basic purpose of a *Blakely* sentencing-facts jury trial before he purportedly waived his right to that jury trial.” The

state maintains that “the basic requirements of Rule 26.01, subdivision 1(2)(b) were . . . satisfied” by Ibrahim’s colloquy with counsel. We agree with Ibrahim.

Rule 26.01, subdivision 1(2)(b), provides that when the state seeks an aggravated sentence

the defendant, with the approval of the court, may waive a jury trial on the facts in support of an aggravated sentence provided the defendant does so personally, in writing or on the record in open court, *after being advised by the court of the right to a trial by jury*, and after having had an opportunity to consult with counsel.

(Emphasis added.)

The record shows that Ibrahim did not waive his right to a jury trial on the sentencing facts after being advised of the right by the court as required by rule 26.01. Instead, the record reflects that Ibrahim acknowledged that he understood that the state was seeking “a longer potential prison sentenc[e]” because “the conduct in this case was kind of . . . extra-bad, warranting a longer sentence.” Ibrahim also understood that he “could ask the jury if they do convict on the charges to make that finding that this is kind of an extra-bad case.” And Ibrahim agreed that “[w]e’ve been calling it ‘Blakely,’” recognized the word “Blakely,” and acknowledged that he had discussed the matter with his attorney and “that [this is] something [he would] rather have the judge decide.”

But the record reflects that Ibrahim was not informed by the district court that he had a right to a jury trial on the aggravated sentencing factors. Nor was he informed by

the district court about the essential elements of a jury trial.⁴ We therefore conclude that Ibrahim’s colloquy with his counsel on the record was not a valid waiver because it contravened rule 26.01, subdivision 1(2)(b).⁵ Cf. *Thompson*, 720 N.W.2d at 827-28 (concluding that appellant’s waiver was knowing, voluntary, and intelligent when the court informed appellant of right to a jury trial and was asked in open court “whether she wanted a jury or the court to decide whether there was a factual basis for a sentencing departure”).

Although Ibrahim did not enter a valid waiver, we will not reverse a *Blakely* error if we conclude that the error was harmless beyond a reasonable doubt. *Reimer*, 962 N.W.2d at 199; see also *State v. Chauvin*, 723 N.W.2d 20, 30 (Minn. 2006) (“*Blakely* errors are not structural and thus are subject to a harmless error analysis,” meaning that a reviewing court determines whether the error is harmless beyond a reasonable doubt). “A *Blakely* error is harmless if the reviewing court can ‘say with certainty that a jury would have found the

⁴ We note that a written waiver entered using “Form 32a—Waiver of Jury Trial Pursuant to Rule 26.01, subd. 1(2)(a), (b),” requires the defendant to acknowledge that they “have been advised by the court of [their] right to a trial by jury on the issue . . . of an aggravated sentence,” and that they understand the essential elements of a jury trial. In using that form, a defendant also acknowledges that, if the defendant waives a sentencing-jury, “the judge alone will determine . . . whether facts exist to support an aggravated sentence,” and that they “had an opportunity to consult with counsel.” Minn. R. Crim. P. Form 32a.

⁵ After oral argument, Ibrahim filed a motion to strike, asserting that the state argued for the first time at oral argument that we should remand for the evidentiary record to be re-opened for postconviction proceedings rather than decide the *Blakely* jury-waiver issue by reviewing the existing district court record. In his motion, Ibrahim argues that, because the state first made this contention at oral argument, we should deem it forfeited. Because our holding in this case makes it unnecessary to address the merits of Ibrahim’s motion, we deny the motion as moot. See *State v. Davis*, 773 N.W.2d 66, 68 n.2 (Minn. 2009) (“Because we do not decide this issue, Davis’ motion to strike portions of the State’s appendix and the State’s motion to strike portions of Davis’ appendix are denied as moot.”).

aggravating factors used to enhance [the defendant’s] sentence had those factors been submitted to a jury in compliance with *Blakely*.’” *State v. Essex*, 838 N.W.2d 805, 813 (Minn. App. 2013) (alteration in original) (quoting *Dettman*, 719 N.W.2d at 655), *rev. denied* (Minn. Jan. 21, 2014).

To begin, Ibrahim conceded at oral argument that our analysis is limited to the aggravated sentencing factors of threats, taunts, and degradation because these were the factors noticed by the state.⁶ *See* Minn. R. Crim. P. 7.03 (requiring the state to provide written notice of its intent to seek an aggravated sentence at least seven days before the omnibus hearing). In other words, we will not consider the additional factors that the district court mentioned at sentencing—that the victim was terrified, the cultural impact, that Ibrahim was in a position of trust, Ibrahim’s lack of remorse, and that there were multiple forms of penetration—because these factors were not noticed by the state and would not have been submitted to the jury.

During the *Blakely* phase, the state requested that the court answer three factual questions to determine the sentencing factors: (1) whether Ibrahim used threats during the crime; (2) whether Ibrahim taunted the victim during the crime; and (3) whether Ibrahim degraded the victim during the crime. The district court found in the affirmative on all three questions.

⁶ Ibrahim has also forfeited any argument about the other factors by limiting his harmless-beyond-a-reasonable-doubt argument in his appellate brief to threats, taunts, and degradation. *See State v. Allwine*, 963 N.W.2d 178, 188 n.15 (Minn. 2021).

Based on our review of the evidence, we conclude that there is no *reasonable* doubt that the result would have been different had these same factual questions been submitted to a jury. The victim's testimony and the video recordings strongly support the district court's factual findings that Ibrahim engaged in threats, taunts, and degradation. In a span of about four hours, Ibrahim, among other things, demanded that M. unpack her suitcase and questioned her about the items in her suitcase one-by-one, asked M.'s mother for permission to punish M., made M. get naked and sit on the bed, made M. provide her phone password, threatened to kill and inflict harm on M., and belittled her intelligence.

As Ibrahim himself acknowledged in his memorandum opposing an aggravated sentence, "[t]he question is not whether threats, taunts, or degradation exist." On appeal, Ibrahim argues that any threats, taunting, and degradation were separate from the offense of which he was convicted because the threats, taunts, and degradation occurred before the penetration and in a separate bedroom. We reject this argument because, as discussed above, the record strongly reflects that the threats, taunts, and degradation were part of an ongoing course of conduct by Ibrahim that included sexual penetration during the afternoon of December 15. Because we can say with certainty that a jury would have found the aggravating factors of taunts, threats, and degradation used by the district court to enhance Ibrahim's sentence, we conclude that the *Blakely* error was harmless beyond a reasonable doubt.

III. The district court acted within its discretion by imposing an upward sentencing departure.

Ibrahim also argues that the district court abused its discretion by imposing an upward sentencing departure when it relied on legally impermissible reasons to support the departure. We are not persuaded.

The Minnesota Sentencing Guidelines exist to “maintain uniformity, proportionality, rationality, and predictability in sentencing.” Minn. Stat. § 244.09, subd. 5 (2022). Accordingly, the sentencing guidelines establish presumptive sentences for felony offenses that are “presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.” Minn. Sent’g Guidelines 1.B.13 (Supp. 2023). A district court can depart from this presumptive sentence when there are “identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (Supp. 2023). “Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case.” *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985).

Relevant here, a durational departure is a sentence shorter or longer than the presumptive range established by the sentencing guidelines. Minn. Sent’g Guidelines 1.B.5.b (Supp. 2023). And an aggravated durational departure “occurs when the court pronounces a prison duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid.” Minn. Sent’g Guidelines 1.B.5.b(1). The sentencing guidelines provide a nonexclusive list of aggravating factors that district courts may use to justify such a departure. Minn. Sent’g Guidelines 2.D.3.b &

cmt. 2.D.301 (Supp. 2023). When a district court imposes an upward sentencing departure, it must provide “(1) a factual finding that there exist 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.” *Rourke*, 773 N.W.2d at 919. And the court must disclose in writing or on the record the reasons for the departure and file a departure report with the Sentencing Guidelines Commission. Minn. Sent’g Guidelines 2.D.1.c.

We review a district court’s decision to depart from the presumptive sentencing range for an abuse of discretion. *State v. Vanengen*, 3 N.W.3d 579, 582 (Minn. 2024). “A district court abuses its discretion when its reasons for departure are not legally permissible or when the evidentiary record is insufficient to justify the departure.” *Id.* Conversely, “[i]f the reasons given for an upward departure are legally permissible and factually supported in the record, the departure will be affirmed.” *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009). “When a reviewing court concludes that a district court based a departure on both valid and invalid factors, a remand is required unless it determines the district court would have imposed the same sentence absent reliance on the invalid factors.” *State v. Vance*, 765 N.W.2d 390, 395 (Minn. 2009) (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)).

Here, based on the state’s notice and the parties’ arguments, the district court found in its *Blakely* order that Ibrahim “used threats, taunting language, and degrading language during the crime committed.” The district court referenced several examples from the videos in evidence and concluded that Ibrahim “engaged in that conduct for a lengthy

period of time before, during, and after the assault occurred.” The district court noted that “it seems wholly incorrect based on the law as established by the courts of this state to claim that the factor of threats, taunts, and degradation may not alone result in an upward durational departure.”

But at sentencing, the district court mentioned more facts to support the upward departure than threats, taunts, and degradation. The court explained:

I will find that there are substantial and compelling factors to support the upward departure: That the victim was terrified; that Mr. Ibrahim used threats, degradation, and taunts; there’s a huge cultural impact of the threats as well as the actual act; he was in a position of trust, using that she continuously referred to him as “father”; there’s a lack of remorse; and there were multiple forms of penetration.

Ibrahim contends that the district court abused its discretion by citing these additional facts and factors to support the aggravated departure because any fact that a district court relies on to support an aggravated departure must be proven at a *Blakely* trial. *See State v. Shattuck*, 704 N.W.2d 131, 141 (Minn. 2005) (explaining that under *Blakely*, other than a prior conviction, the jury must determine any additional facts, other than those reflected in the jury verdict or admitted by the defendant, that the court relies on to determine an aggravating factor applies and impose an upward sentencing departure). He also emphasizes that the additional factors were not noticed by the state. *See Minn. R. Crim. P. 7.03*; *see also State v. Barthman*, 938 N.W.2d 257, 271 n.3 (Minn. 2020) (declining to consider facts that the jury was not asked to make findings about when considering whether the district court imposed an upward durational departure based on particular cruelty).

We agree with Ibrahim that the district court should not have relied on factors that were not noticed by the state or facts that were not litigated during the *Blakely* proceeding. *See Rourke*, 773 N.W.2d at 919, 921 (explaining the district court must afford the accused an opportunity to have a jury trial on additional facts that support an aggravated departure, but whether the facts provide a reason to depart is a question for the district court). In other words, the district court should not have relied on facts other than threats, taunts, and degradation to support the aggravated durational departure.

The state concedes that the district court relied on certain impermissible aggravating factors. But the state maintains that “[t]he lengthy and detailed order by [the district court] identifying the many instances of threats, taunting, and degradation supports a conclusion that [the district court] would have imposed the same sentence even absent consideration of any invalid ‘factor’ or ‘facts.’”⁷ We agree with the state.

Although the district court did not expressly weigh the factors it mentioned at the sentencing hearing, we are satisfied that the district court would have imposed the same sentence based on the extremely serious conduct of threats, taunts, and degradation that it found in its written *Blakely* order to support the aggravated sentence. The district court

⁷ The state relies on *State v. Adell*, 755 N.W.2d 767, 772 (Minn. App. 2008), *rev. denied* (Minn. Nov. 25, 2008), to support its argument and contends that the district court’s comments that “the victim was terrified” and about the cultural impact are associated comments that do not justify reversal. We are unpersuaded by *Adell*. In *Adell*, the district court mentioned aspects of the appellant’s case, but appellant did not show that the district court relied on them when imposing an aggravated sentence. *Adell*, 755 N.W.2d at 772. The district court separately described factors that were part of the offense and the aggravating factors. *Id.* By contrast, here, the district court did not distinguish any of the factors during its statement at sentencing.

ultimately concluded in its written order that an upward departure was warranted because the evidence showed that Ibrahim “engaged in that conduct for a lengthy period of time before, during, and after the assault occurred.” The new facts that the court mentioned at sentencing appear to be an afterthought and not a primary consideration, as the facts were adopted from the state’s argument at the sentencing hearing.

Ibrahim’s use of threats, taunts, and degradation was the only factor included in the state’s notice, the parties’ briefing, and the district court’s *Blakely* order. And the district court recognized in its order that an upward departure based on threats, taunts, and degradation may be influenced by the presence of extra factors not present here, such as the presence of a weapon. The court also stated that “in none of [the cases cited by the state] does either the Supreme Court or Court of Appeals state that threats, taunts, and degrading language may only result in an upward departure where accompanied by other factors.”

Moreover, the district court imposed less than a double upward departure. Based on Ibrahim’s criminal-history score and the offense-severity level, the presumptive guidelines sentence was between 144 and 172 months. The district court imposed an aggravated durational departure of 240 months’ imprisonment, 48 months less than the state’s requested sentence. We therefore conclude based on the procedural posture of this case and language in the district court’s order that a remand for resentencing is unnecessary. The district court would have imposed the same sentence absent consideration of the improper factors, which include the victim being terrified, the cultural impact, that Ibrahim was in a position of trust, Ibrahim’s lack of remorse, and that there

were multiple forms of penetration. *See State v. Weaver*, 796 N.W.2d 561, 575 (Minn. App. 2011) (concluding remand is unnecessary when district court relied on one invalid factor and did not make an express statement regarding the relative weight of each factor because the sentence was consistent with precedent, valid reasons independently supported the departure, and the district court consistently viewed appellant's offense as significantly more serious than the typical offense), *rev. denied* (Minn. Jul. 19, 2011).

Affirmed; motion denied.