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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A25-1029**

State of Minnesota,  
Respondent,

vs.

Christian Dior Byrd,  
Appellant.

**Filed June 29, 2026  
Affirmed  
Cleary, Judge\***

Hennepin County District Court  
File No. 27-CR-23-15622

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

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney,  
Minneapolis, Minnesota (for respondent)

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Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Cleary,  
Judge.

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

## **NONPRECEDENTIAL OPINION**

**CLEARY**, Judge

In this direct appeal from the final judgment of conviction for felony domestic assault, appellant Christian Dior Byrd argues, in part, that he is entitled to a new trial because the district court violated his constitutional right to present a complete defense. The court ruled that he could not roll up his sleeves to show his tattooed arms at the counsel table during closing arguments. Defense counsel wanted the jury to compare appellant's tattoos at trial with video and photo evidence of the arms and hands of the person committing the assault and the suspect who was arrested. Appellant also contends that the trial should have proceeded only on one count of domestic assault-harm, rather than one count of domestic assault-harm and one count of domestic assault-fear, and that the district court erred by allowing the state to amend the complaint to add the count of domestic assault-fear after the first trial ended in a mistrial, in violation of the statute prohibiting serialized prosecutions. In the alternative, appellant challenges his sentence, asserting that the district court abused its discretion by basing its decision to impose an upward departure on the victim's particular vulnerability.

We affirm.

### **FACTS**

Respondent State of Minnesota charged appellant by amended complaint with second-degree assault, involving an assault with a dangerous weapon, in violation of Minnesota Statutes section 609.222, subdivision 1 (2022), and felony domestic assault, in violation of Minnesota Statutes section 609.2242, subdivision 4 (2022). The charge

description for felony domestic assault stated that “[appellant] did intentionally cause fear, *or* inflict or attempt to inflict bodily harm, upon [the victim].” (Emphasis added.)

The matter proceeded to a jury trial. When discussing proposed jury instructions with the district court, the prosecutor requested that the jury not be instructed on domestic assault-fear to avoid a potential unanimity problem. The prosecutor stated, “So I’m asking that that portion, I guess, of the complaint be stricken and that the jury only hears this version based on that comment.” The jury acquitted appellant of second-degree assault but could not reach a verdict on domestic assault-harm, so the court declared a mistrial as to that count.

Before retrying appellant for felony domestic assault, the state requested to amend the complaint to separate assault-harm and assault-fear into two distinct counts. Appellant’s attorney argued that the amendment should be barred as a serialized prosecution under Minnesota Statutes section 609.035, subdivision 2, (2022), because the state did not charge assault-harm and assault-fear separately in the first trial and ultimately proceeded just under the harm theory. After some discussion with the parties, the district court granted the state’s request. The court explained that the state’s amendment would not be serialized prosecution because “it’s the same crime, different ways of committing the same crime, either by fear or by harm.” “[T]he fact that it was originally charged as one crime with different ways of committing it, they’re not different elements, they’re different, you know, sort of means of committing the crime.”

The matter proceeded to a jury trial on one count of domestic assault-harm and one count of domestic assault-fear. Before the state rested, the prosecution requested that the

district court prevent appellant from rolling up his sleeves to expose his tattoos to the jury during closing argument. The request stemmed from the first trial, where appellant exposed his tattoos during closing argument and defense counsel argued that the man in the surveillance-video footage of the assault did not have tattoos, while appellant had tattoos on his arms and hands. According to the prosecutor, appellant had his tattoos hidden under long sleeves during the first trial until the closing argument when he rolled up his sleeves. Defense counsel argued: “Tattoos on hands and forearms. Do you see any tattoos on there? Do you see any tattoos on him? No tattoos on this video. Is that the same person with tattoos on their forearms and their hands? Take a look. Is that in the video?”

The state was concerned that appellant would be “testifying to the jury from his seat at counsel table while [defense counsel] makes that argument, and then the jury looks over at him.” Ultimately, the state was concerned that defense counsel would “comment on evidence that is not part of the testimonial record,” and then the state would not be able to offer any evidence in response, for example, that appellant could have gotten the tattoos when he was out of custody.

The district court ruled that “obviously if the identity of someone and possible body markings are an issue with the case, that Mr. Byrd will not, you know, be allowed to be showing the jury or people in the courtroom his arms,” and “you can’t show everybody your tattoos, right, unless you’re going to get up and testify.” And the district court explained that defense counsel could not “make an argument that is . . . based on evidence that didn’t come in or that isn’t properly before the jury.” After the state rested, appellant

waived his right to testify and did not put on any evidence. Appellant did not further challenge the district court’s earlier ruling preventing him from showing his tattoos.

The jury found appellant guilty of both counts of felony domestic assault. The state had previously noticed its intent to seek an aggravated sentence based on the victim being particularly vulnerable and being treated with cruelty.<sup>1</sup> Because appellant waived his right to a jury trial on aggravated sentencing facts, the issue was submitted to the district court to decide. The court found that “Byrd assaulted the victim in front of a residential, multi-unit property on Broadway Avenue, a heavily traveled thoroughfare in Minneapolis, in broad daylight.” And that appellant “ripped off the victim’s shirt, leaving her naked from the waist up. Although the victim attempted to put her shirt back on immediately, Mr. Byrd prevented her from doing so, leaving her exposed while he continued to assault her.”

Based on these facts, the district court found that the victim was particularly vulnerable, as appellant “knew or should have known that the victim was less able to flee, seek help, or fight back while she was naked in a public area in broad daylight.” The court also determined that “[a]lthough pulling off the victim’s clothing appears intentionally designed to humiliate her and maximize her vulnerability,” this conduct did not meet the definition of particular cruelty outlined in the Minnesota sentencing guidelines and Minnesota Statutes section 244.10 (2022).

At sentencing, the state requested that the district court impose a 60-month sentence, which was 24 more months than the top of the presumptive guidelines range of 26 to 36

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<sup>1</sup> The state also initially included a third factor in arguing for an aggravated sentence—that the defendant violated the victim’s zone of privacy—but did not pursue it.

months, and the statutory maximum sentence. Appellant’s counsel requested a 30-month sentence, which was the middle of the presumptive guidelines range. The district court ultimately departed upward by four months from the top of the range, sentencing appellant to 40 months’ imprisonment for felony domestic assault-harm. The court explained that the sentence “is a slight upward, aggravated upward departure,” based on the court’s finding that the victim “was particularly vulnerable in this situation because [appellant] removed her clothing during the assault.” But the court also determined that the aggravating factor was not sufficient “to basically double the presumptive sentence in this case.” The district court did not adjudicate the felony domestic assault-fear count.

Byrd appeals.

## **DECISION**

### **I. Any error in the district court’s ruling preventing appellant from rolling up his sleeves to show the jury his tattooed arms was harmless beyond a reasonable doubt.**

Appellant challenges the district court’s ruling preventing him from displaying his tattooed arms during closing argument unless he testified and further ruling that defense counsel could not reference evidence that was not admitted during trial during closing arguments. He maintains that the court’s ruling denied his right to present a complete defense because the ruling effectively prohibited defense counsel from referring to appellant’s body, which appellant argues is nontestimonial evidence, and in restricting defense counsel’s closing argument “to asking the jury to compare a single photo showing only a light tattoo on the back of one forearm—not the hands, and not both arms—with the video [of the assault].”

The Due Process Clauses of the United States Constitution and the Minnesota Constitution guarantee a criminal defendant’s right to present a complete defense. U.S. Const. amend. XI, and Minn. Const. art. I, § 6; *see also State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009) (“A defendant has the constitutional right to present a complete defense.”). But the right to present a complete defense “is not absolute.” *State v. Wilson*, 900 N.W.2d 373, 384 (Minn. 2017). “Criminal defendants are bound by the rules of evidence, which are designed to assure fairness and reliability in ascertaining guilt or innocence.” *Id.* (quotation omitted). Accordingly, “courts may limit the scope of a defendant’s arguments to ensure that the defendant does not confuse the jury with misleading inferences.” *Id.* (quoting *Atkinson*, 774 N.W.2d at 589).

“[Appellate courts] review the evidentiary rulings of the district court for an abuse of discretion, even when it is claimed that the exclusion of evidence deprived the defendant of his constitutional right to present a complete defense.” *State v. Carbo*, 6 N.W.3d 114, 123 (Minn. 2024) (quotation omitted); *see also State v. Romine*, 757 N.W.2d 884, 892 (Minn. App. 2008) (“We review a district court’s rulings regarding the scope of arguments for abuse of discretion.”), *rev. denied* (Minn. Feb. 17, 2009). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Lyons*, 997 N.W.2d 771, 774 (Minn. App. 2023) (quoting *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017)), *rev. denied* (Minn. Feb. 28, 2024).

Appellant argues that the district court’s ruling was an abuse of discretion because it prevented him from presenting a complete defense. He asserts that he was not required

to testify for the jury to observe his body and the court's ruling prevented him from arguing to the jury that the lack of tattoos on the individual in the video of the assault as compared to appellant in the courtroom suggests that he did not commit the offense.

The court did not prohibit defense counsel from arguing that appellant did not look like the assailant in the video evidence that was submitted. What the court was apparently trying to avoid was a repeat from the first trial of appellant's long sleeves hiding tattoos during trial followed by the big reveal of the tattoos during closing argument when the sleeves were rolled up, to-wit: the display of testimonial evidence without oral testimony or cross examination.

We need not decide whether the district court's ruling was an abuse of discretion because we conclude that any error was harmless beyond a reasonable doubt and does not warrant reversal. When a district court's evidentiary error amounts to a constitutional error, such as denying a defendant the right to present a complete defense, appellate courts consider whether excluding the evidence was harmless beyond a reasonable doubt. *Carbo*, 6 N.W.3d at 123. An error is harmless beyond a reasonable doubt when the reviewing court is satisfied beyond a reasonable doubt that, "[i]f the evidence had been admitted and the damaging potential of the evidence fully realized, . . . a reasonable jury[] would have reached the same verdict." *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994) (footnote omitted).

If the district court had permitted appellant to roll up his sleeves to display his tattoos and allowed appellant's defense counsel to make a slightly more detailed closing argument that the person in the video was not appellant, we are confident that a reasonable jury would



have reached the same verdict. Put differently, appellant displaying tattoos on the day of trial, when there were no discernable tattoos on the man in surveillance video of the assault, does not reasonably undermine all the other evidence identifying appellant as the individual on the surveillance video assaulting the victim.

The 911 caller, who was a staff member at the apartment building, observed the assault on the apartment building's surveillance camera and identified "a man with a knife in front of [the] building," and saw that the man had a woman cornered, was stabbing her, and tried to get her to go with him. The caller described the individual as a skinny Black male, approximately 5'5", wearing a white tank top and blue jeans, and holding a knife. The surveillance-video footage matches this description. It shows a Black male dressed in a white tank top, light-colored pants, and sneakers, holding a long knife-like object. For about four minutes, the video shows the man hitting the victim with the object, yelling at her, pulling her shirt off, and pulling her from the building's alcove towards the sidewalk. It is undisputed that there are no discernable tattoos on the man in the surveillance footage.

When police arrived, the officer observed a person matching the description given by the 911 caller actively assaulting the victim. The officer described the suspect as a Black male with an afro, who was wearing a white t-shirt. The man saw police and ran away. After the suspect ran away, the responding officer approached the victim, who told the officer that the person who assaulted her was her boyfriend, Christian Byrd.

Other officers set up a perimeter around the address and searched the area for the suspect. The officers apprehended a man matching the description of the suspect. Once in the squad car, the suspect identified himself as Christian Byrd. And while testifying during

trial, the officers identified the person they apprehended as the defendant who was sitting at the defense counsel table. In a *Mirandized* interview, appellant admitted that he was in a relationship with the victim, agreed that he chased the victim to where she “ended up in front of that building at the front door,” and admitted to hitting the victim with a plastic piece from a tent. Collectively, this evidence overwhelmingly identifies appellant as the individual in the surveillance-video footage assaulting the victim, such that the jury would have reached the same verdict if appellant was permitted to show the jury his tattoos.

On appeal, appellant argues that the verdict could not be surely unattributable to the error because the jury in the first trial compared appellant’s tattooed arms with the person in the video and acquitted him of second-degree assault but could not reach a verdict on the domestic-assault charge. This argument is unavailing. Any explanation for the first jury ending deadlocked is speculative.<sup>2</sup> The retrial had a new judge and a new jury. And the court’s ruling did not prevent the appellant from making an identity argument to the new jury during the second trial. In arguing against the identification of appellant, defense counsel argued that an officer testified that the person arrested had tattoos on his forearms, but the tattoos were not visible in the surveillance video; that the person arrested was wearing grey sweatpants, was not wearing blue jeans like the 911 caller said and argued that witness identification is not always accurate.

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<sup>2</sup> The state maintains that if the jury at the first trial concluded that the state failed to prove identity it would have acquitted appellant of domestic assault in addition to second-degree assault.

Accordingly, any error in the district court's ruling preventing appellant from showing his tattoos to the jury unless he testified was harmless beyond a reasonable doubt.

**II. The additional count in the amended complaint did not violate appellant's statutory protection against serialized prosecution under Minnesota Statutes section 609.035.**

Appellant also asserts that the district court erred when it granted the state's request to add an additional count of domestic assault to the complaint after the first trial. He contends that because the state's amendment added new charges, it violated his statutory protection against serialized prosecution under Minnesota Statutes section 609.035.

Typically, we review a district court's decision to amend the complaint for an abuse of discretion, *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. App. 2004), while we review a district court's sentencing decision under section 609.035 de novo. *State v. Williams*, 3 N.W.3d 68, 79 (Minn. App. 2024). Relying on *State v. Schmidt*, 612 N.W.2d 871, 876 (Minn. 2000), appellant contends that this court should review his serialized-prosecution argument de novo; the state appears to agree with appellant's suggested standard of review.

The relevant portion of section 609.035 states:

If a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them. All the offenses, if prosecuted, shall be included in one prosecution which shall be stated in separate counts.

Minn. Stat. § 609.035, subd. 1 (2022). Section 609.035 "limit[s] punishment to a single sentence where a single behavioral incident results in the violation of more than one criminal statute[,] and "protect[s] against exaggerating the criminality of a person's

conduct and to make both punishment and prosecution commensurate with culpability.” *State v. Bilbro*, 24 N.W.3d 827, 838-39 (Minn. 2025) (quotations and citation omitted). “The statute does not protect a constitutional right; instead, it is a legislatively created rule for sentencing that generally *limits* the punishment an offender can receive.” *Id.* And “while a prosecutor cannot file a new indictment or complaint to begin prosecution of any new charge following a trial that resolved a charge arising from that same behavioral incident, charges tried but unresolved are subject to retrial.” *State v. Sater*, 588 N.W.2d 512, 514 (Minn. App. 1998), *rev. denied* (Minn. Feb. 18, 1999).

Appellant argues that the amended complaint charged an additional offense in violation of section 609.035 because the prosecutor voluntarily dismissed assault-fear from the first complaint before the jury reached a verdict, which resolved that charge. Because, according to appellant, the assault-fear charge was resolved, it was impermissible for the state to add assault-fear to the amended complaint before the retrial. Appellant asserts that, unlike in *Schmidt* where the number of counts remained the same, here “the math didn’t add up,” because the number of counts went from one to two.

We disagree with appellant that the amended complaint charged an additional new offense. The state amended the complaint to add an additional count to charge domestic assault-fear and domestic assault-harm separately. Under the facts here, the second count was not an “additional offense” but an alternative way to commit domestic assault. *See State v. Patzold*, 917 N.W.2d 798, 811–12 (Minn. App. 2018) (concluding that appellant could not be convicted and sentenced for both assault-fear and assault-harm because both counts were based on the same conduct), *rev. denied* (Minn. Nov. 27, 2018);

*State v. Nowels*, 941 N.W.2d 430, 442 (Minn. App. 2020) (stating that in *Patzold* “the defendants were charged with two counts of the same crime, but each count was a different means of committing the same crime”), *rev. denied* (Minn. June 16, 2020). The amendment did not charge appellant under a provision with greater penalties, appellant was not adjudicated guilty or sentenced on domestic assault-fear, and appellant does not allege that the amendment was retaliatory. *Schmidt*, 612 N.W.2d at 878. For these reasons, we conclude that the district court did not err by granting the state’s request to amend the complaint between the two trials.

**III. The district court acted within its discretion in imposing an upward sentencing departure based on the victim’s particular vulnerability.**

Alternatively, appellant challenges the district court’s decision to impose an upward sentencing departure based on the victim’s particular vulnerability. Appellate courts 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).

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 (2022). 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 (2022). “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).

An upward durational departure is a sentence longer than the presumptive range established by the sentencing guidelines. Minn. Sent’g Guidelines 1.B.5.b (2022). 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 (2022). One aggravating factor is that “[t]he victim was particularly vulnerable due to . . . reduced physical or mental capacity and the offender knew or should have known of this vulnerability.” Minn. Sent’g Guidelines 2.D.3.b(1).

When a district court imposes an upward sentencing departure, it must provide “(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). 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. (2022).

Here, appellant waived his right to a jury trial on the aggravated sentencing facts and consented to judicial fact-finding.<sup>3</sup> The district court found that “Byrd assaulted the victim in front of a residential, multi-unit property on Broadway Avenue, a heavily traveled thoroughfare in Minneapolis, in broad daylight.” And that appellant “ripped off the victim’s shirt, leaving her naked from the waist up. Although the victim attempted to put her shirt back on immediately, Mr. Byrd prevented her from doing so, leaving her exposed while he continued to assault her.” Based on these facts, the district court found that the victim was particularly vulnerable, as appellant “knew or should have known that the victim was less able to flee, seek help, or fight back while she was naked in a public area in broad daylight.”

Appellant argues that the departure must be reversed, and the matter remanded for imposition of a presumptive sentence because “[the victim] was not ‘particularly vulnerable’ to support a departure because her nudity was an effect of the offense and not something that Byrd exploited to commit.” He maintains that “a departure based on the victim being particularly vulnerable is about the victim’s pre-established vulnerability as well as the defendant’s exploitation of it; it is not about the victim being rendered particularly vulnerable as a result of the offense.” Therefore, “the particularly vulnerable

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<sup>3</sup> Unless waived, “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.” *Rourke*, 773 N.W.2d at 920-21, explaining that the additional facts (i.e., the defendant sprayed the handcuffed victims with chemicals), are found by the jury, but whether the facts provide a reason to depart is a question for the district court.

victim departure factor does not apply because [the victim] was not suffering a particular vulnerability that [he] exploited to commit the offense.” Under the facts here, we disagree with appellant’s assertion that the district court erred by determining that the victim was particularly vulnerable.

A victim’s particular vulnerability “impairs the victim’s ability to seek help, fight back, or escape harm.” *State v. Mohamed*, 779 N.W.2d 93, 98 (Minn. App. 2010), *rev. denied* (Minn. May 18, 2010). And we have explained that the district court is not precluded from considering nudity as a basis for an upward departure because the victim was particularly vulnerable. *See State v. Rabold*, 935 N.W.2d 902, 906 (Minn. App. 2019). In *Rabold*, the perpetrators forced the victims to undress at gunpoint during a robbery after breaking into their home in the middle of the night. *Id.* at 908. We concluded: “Rabold and his accomplice not only created the vulnerability but used it to further manipulate the situation to rob the victims in the privacy of their home, causing a psychological disadvantage in the victims and limiting their ability to seek help or fight back.” *Id.*

Appellant contends that *Rabold* is distinguishable based on the timing and purpose of the nudity. He maintains that in *Rabold* the defendant forced the victims to remove their clothes before and for the purpose of committing the robbery. But we do not find any meaningful distinction between the facts of *Rabold* and of this case as it relates to the vulnerability of the victim.

The record supports the district court’s determination that appellant created the vulnerability by removing the victim’s clothes and then used the victim’s nudity to keep manipulating the situation and assaulting the victim, as the nudity in the public setting



impaired the victim's ability to fight back, seek help, or escape harm. And appellant's argument that he "pulled [the victim's] shirt off during the assault, he did not do it so that he could commit the assault," is unsupported by the record. The surveillance video shows appellant dragging the victim from the building alcove towards the sidewalk, by her shirt, and pulling her shirt off completely exposing her naked body and then continuing to beat her. Under these circumstances, appellant did not just remove the victim's shirt during the assault but exploited the victim's nudity to keep assaulting her. *See Mohamed*, 779 N.W.2d at 98. The district court properly focused on the mental and physical capacity of the victim, rather than the nudity itself, and acted within its discretion by imposing a four-month upward departure, as the victim's particular vulnerability was a legally permissible reason to depart.

**Affirmed.**