

*This opinion is nonprecedential except as provided by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
A25-1284**

State of Minnesota,
Respondent,

vs.

Malik Demone Tatum,
Appellant.

**Filed July 20, 2026
Affirmed in part, reversed in part, and remanded
Wheelock, Judge**

Hennepin County District Court
File No. 27-CR-24-15423

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

Christopher P. Renz, Metropolitan Airports Commission (MAC) Prosecutor, Andrew C. Case, Calvin Lee, Assistant MAC Prosecutors, Chestnut Cambronne PA, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Wheelock, Presiding Judge; Harris, Judge; and Segal, Judge.*

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

NONPRECEDENTIAL OPINION

WHEELLOCK, Judge

Appellant challenges his convictions for theft in violation of Minn. Stat. § 609.52, subd. 2(a)(1) (2022), and finding and appropriating lost property in violation of Minn. Stat. § 609.52, subd. 2(a)(6) (2022), arguing that the district court admitted improper opinion testimony. We affirm in part, but reverse in part and remand for vacation of one of the convictions pursuant to Minn. Stat. § 609.04, subd. 1 (2022).

FACTS

The following facts are taken from a jury trial that took place in July 2025. In July 2024, a Transportation Security Administration (TSA) agent was working at the Minneapolis-St. Paul International Airport. The TSA agent was on a break and was sitting on a bench next to the TSA security checkpoint area when a passenger approached him for help finding his gate. The TSA agent stood up and walked the passenger to the departure screens, leaving behind his earbud charging case that contained a single earbud. Approximately five minutes passed before the TSA agent returned to the bench and saw that his earbud and case were missing. When he could not find his missing property, the TSA agent contacted the airport police department.

The TSA agent reported his missing property to a police officer, who immediately contacted a surveillance specialist who was also on duty that day. The officer requested review of the surveillance video footage of the area where the earbud case went missing. The surveillance specialist located and reviewed the footage and saw that, after the TSA agent stood up to assist the passenger, his earbud case remained on the bench until a person

later identified as appellant Malik Demone Tatum picked up the earbud case, put it into his pocket, and left the area. The surveillance specialist sent a screenshot from the video to the officer's work phone; the screenshot showed Tatum wearing a grey sweatshirt and sweatpants.

The surveillance specialist also reported that video surveillance showed that Tatum entered a lactation room in the terminal after he left the area next to the TSA security checkpoint and that he had not yet left the room. The first officer and a second officer went to the lactation room and knocked on the door. When Tatum opened the door, the second officer told Tatum that they were looking for him because he was seen on video taking the earbuds. Tatum then unzipped a pocket in his backpack, took out the earbud case, and gave it to the second officer. Tatum said that he was not trying to steal the earbuds.

The second officer cited Tatum with theft. The officers returned the earbud case and earbud to the TSA agent, and Tatum apologized to the TSA agent for taking the case. The TSA agent testified at trial that, when he apologized to the TSA agent, Tatum said, "[A]re you going to tell me if you saw \$100 laying on the ground you wouldn't pick it up?"

The surveillance specialist testified at trial that she had worked in her role with the airport police department for nine years and that her duties include s reviewing live and historical camera footage and assisting on investigations of theft, missing property, medical emergencies, or other situations for which surveillance footage is needed. She affirmed that she has "tracked people on camera for her profession for approximately 15 years."

The district court admitted, and the jury viewed, the footage of the terminal from the day of the offense that the surveillance specialist had reviewed. The footage showed

the TSA security checkpoint and concourse leading to the door of the lactation room. During the surveillance specialist's testimony, she stated that Tatum can be seen in the footage walking through the checkpoint, turning back toward the bench where the TSA agent had been sitting, picking up the earbud case, and putting it into his pocket. The footage also captured Tatum walking through the terminal and entering the lactation room.

During the surveillance specialist's testimony, the prosecutor asked if her role included tracking theft suspects on a regular basis, and she responded affirmatively. The prosecutor and the surveillance specialist then had the following exchange:

PROSECUTOR: And over the course of that experience, do you see any trends or tendencies about people who you observe take items?

SPECIALIST: Yes. Generally, if somebody is going to pick up an item that doesn't belong to them, they are then going to locate an area off camera where they can sit and inspect the item. A lot of times they'll pick up something without a chance to actually fully inspect it.

TATUM'S COUNSEL: Objection; speculation.

THE COURT: Overruled. Go ahead.

SPECIALIST: They'll pick up an item, not really fully inspecting it yet, take it with them, find an area off camera where they can fully inspect what it is they've picked up.

When the prosecutor asked what areas are "off camera" in the terminal, the surveillance specialist identified restrooms, dog-relief areas, and lactation rooms as possibilities.

On cross-examination, Tatum's counsel noted the surveillance specialist's testimony about someone going into a private area after a theft to inspect the item and queried, "[T]hat's not the only thing that people do when you see people engaging in a

theft; is that correct?” The surveillance specialist replied, “Not the only thing, but it’s a very common occurrence.” Tatum’s counsel asked, “But they don’t always go to a private area to inspect an item?” The surveillance specialist responded, “No. Sometimes they’ll just keep it in their pocket and then possibly go to their gate. But other times they will go find this small, quiet area, out of the way.”

During Tatum’s testimony, he stated that he had been walking towards the bathroom when he noticed the earbuds sitting on the bench. Tatum testified that he could not find any TSA agents to whom he could return the earbuds, so he decided to go to the bathroom to “[a]djust [his] clothes” and get comfortable before he came back and returned the earbuds. When the bathroom was occupied, he decided to go into the lactation room to make some phone calls, send some text messages, and charge his phone. Tatum testified that he did not use the earbuds or connect them to his phone and that, after he “made [him]self comfortable,” he “was going to go back and talk to TSA.”

During Tatum’s cross-examination, the prosecutor played a portion of the footage that showed Tatum right after he picked up the earbud case in front of the TSA security checkpoint. Tatum stated that he did not see the agent standing in front of him; however, in the video, Tatum walks directly past a TSA agent who is standing only a few feet away from the bench, looks into the TSA security checkpoint area where approximately 12 agents can be seen, and continues walking.

During closing arguments, the prosecutor pointed out that a TSA agent was standing directly in front of Tatum after he picked up the earbud case, yet Tatum failed to turn in

the lost property. The prosecutor referenced the surveillance specialist's testimony twice during the state's closing argument:

And we know, from [the surveillance specialist]'s testimony, that it is common for people who steal items to haul away in a camera-less location so they can take stock of the item and identify it and look at it. And there he is, on his way in, smiling about what he's just done before he enters the lactation room.

. . . .

Then he takes off to find this private place, originally a bathroom, then a lactation room, both camera-less, both areas that [the surveillance specialist] testified are often used by theft suspects.

During Tatum's closing argument, his counsel rebutted the surveillance specialist's testimony, saying it was "speculation." Tatum's counsel also stated:

[The surveillance specialist] testified that she's seen other thefts involve individuals go to private areas to conceal large items discreetly. She ignored the fact that the [earbud] case, whose small size you can see, can be easily concealed in a pants or shirt pocket, and it already was.

She ignored the fact that Mr. Tatum openly interacted with the case in the heavily surveilled concourse area and stood with it for over a minute right next to security. She ignored the fact that it would not take 17 minutes to conceal an object so minimal.

Why? Because she is brought in to look for a specific purpose in theft investigations and did not engage with Mr. Tatum's intentions.

Tatum argued that his intent was always to return the earbuds and that the state's evidence was not sufficient to prove otherwise.

After deliberation, the jury found Tatum guilty of both theft charges. The district court then entered convictions on both charges and sentenced Tatum to 30 days in jail, stayed for one year, on only the conviction for appropriating lost property. The district court stated that, instead of serving time in jail, Tatum could choose between seven days of Sentence to Service or 56 hours of community work service.

Tatum appeals.

DECISION

Tatum challenges his convictions, arguing that the surveillance specialist's testimony was inadmissible because it was expert testimony and the record did not establish her as an expert with adequate knowledge to assist the jury with understanding evidence or a fact in issue in the case, it did not explain a phenomenon beyond the understanding of the jury, and it was based on watching Tatum's actions on a video the jury could review itself and make determinations about Tatum's intentions in picking up the earbud case. The state contends that Tatum's argument fails because the prosecutor offered the surveillance specialist's testimony as lay, not expert, opinion testimony and her testimony was admissible. We first address the parties' arguments, then we address sua sponte whether the district court erred by convicting Tatum of both charges because section 609.04 bars multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident.

I. It was not plain error for the district court to admit the surveillance specialist's testimony because it was admissible as lay opinion testimony.

“We review evidentiary rulings, including those related to the admissibility of expert testimony, for an abuse of discretion.” *State v. Thao*, 875 N.W.2d 834, 840 (Minn. 2016). The admission of expert testimony is an abuse of discretion when the district court’s ruling is “based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Heller*, 12 N.W.3d 452, 466 (Minn. 2024) (quotation omitted). However, appellate courts generally “will not consider a challenge to the admission of evidence ‘unless . . . a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context.’” *State v. Rossberg*, 851 N.W.2d 609, 617-18 (Minn. 2014) (quoting Minn. R. Evid. 103(a)(1)). In cases in which an appellant objected to the admission of evidence on one ground and appeals the admission of the evidence on another ground that was not apparent from the objection’s context, appellate courts apply the plain-error test. *See id.*

At trial, Tatum objected to the surveillance specialist’s testimony on only the ground of speculation; he concedes that he did not object on the ground that the testimony constituted improper expert opinion evidence. “If a defendant does object to the admission of evidence, such an objection ‘preserves review only for the stated basis for the objection or a basis apparent from the context of the objection.’” *State v. Martens*, 18 N.W.3d 752, 757 (Minn. 2025) (quoting *State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018)).

Appellate courts review claims of unpreserved evidentiary error under the plain-error doctrine. *Id.* “Under the plain-error doctrine, the appellant must establish (1) an

error, (2) that is plain, and (3) that affects the appellant's substantial rights." *Id.* (quotation omitted). "If these three requirements are met, [an appellate court] may correct the error only when it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* (quotation omitted). If an appellate court concludes that any requirement of the plain-error test is not satisfied, the appellate court need not consider the other requirements. *State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012).

Applying the plain-error test, we first determine whether the district court's admission of the surveillance specialist's testimony was error. A lay witness may testify to

opinions or inferences which are (a) rationally based on the perception of the witness; (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Minn. R. Evid. 701.

Minnesota law recognizes two categories of lay opinion testimony. First, "as a matter of necessity, witnesses may testify in the form of a generalized opinion about common matters they observed such as speed, size, distance, how they felt or how others appeared, intoxication, mental ability and numerous other subjects, if helpful." Minn. R. Evid. 701 2016 comm. cmt. The second category "involves testimony from a skilled layman" that is "not based on specialized knowledge, but based on 'particularized knowledge' developed in day-to-day affairs." *Id.* The determination of whether a lay witness is competent to give opinion evidence "is peculiarly within the province of the [district court], whose ruling will not be reversed unless it is based on an erroneous view of the law or clearly not justified by the evidence." *Muehlhauser v. Erickson*, 621 N.W.2d

24, 29 (Minn. App. 2000) (quotation omitted). Lay opinion testimony of a surveillance video's contents may be helpful to a jury when it is used to explain the context of a police investigation. *State v. Ali*, 855 N.W.2d 235, 249-50 (Minn. 2014).

Here, the surveillance specialist testified about her observations, over her 15-year professional tenure, of the behavior of individuals who commit theft and the steps they take afterwards, commonly looking for a private area to inspect the stolen item. This testimony did not contain legal analysis or a mixture of law and fact; rather, it was based on the surveillance specialist's perceptions and was helpful to determine a fact in issue at trial—why Tatum locked himself in the lactation room after taking the earbuds. Thus, we conclude that the surveillance specialist's testimony was that of a skilled layperson based on “particularized knowledge,” not scientific, technical, or other specialized knowledge. Minn. R. Evid. 701 2016 comm. cmt.

Tatum argues that this testimony invaded the province of the jury; however, Minnesota Rule of Evidence 704 states that “[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” Minn. R. Evid. 704. A comment to the rule clarifies:

In determining whether or not an opinion would be helpful . . . a distinction should be made between opinions as to factual matters, and opinions involving a legal analysis or mixed questions of law and fact. Opinions of the latter nature are not deemed to be of any use to the trier of fact.

Minn. R. Evid. 704 1977 comm. cmt; *see also State v. DeWald*, 463 N.W.2d 741, 744 (Minn. 1990) (determining that an officer's opinion testimony that the defendant killed the victim was admissible because it was “factual rather than legal”). The surveillance

specialist testified that she had been employed in her role with the airport police department for nine years and that her career in surveillance spanned 15 years. She explained that her general duties included video work with the police department, reviewing live and historical surveillance footage to assist with investigations of incidents such as theft, missing property, and medical emergencies and to track people captured in the footage. Based on the surveillance specialist's extensive knowledge of video surveillance and her direct involvement with viewing the surveillance footage and directing officers to Tatum's location in the lactation room on the day of the offense, the district court did not abuse its discretion in determining that the surveillance specialist had particularized knowledge as a skilled layperson and admitting her testimony at trial. *See* Minn. R. Evid. 701 2016 comm. cmt. The surveillance specialist was opining about her general observations, including that, based on her many years of experience, she has observed that people who commit theft often move to a private area to inspect the stolen item. Because the surveillance specialist's testimony did not involve legal conclusions or legal analysis and was helpful to the jury as to a fact issue, it did not invade the province of the jury and was admissible.

Because we discern no error in the district court's decision to admit the surveillance specialist's testimony, we need not consider the additional prongs of the plain-error test. *See Brown*, 815 N.W.2d at 620.

II. The district court erred by entering convictions for two charges under the same statute because they arose out of the same behavioral incident.

In addition to the arguments asserted by Tatum, we consider an issue not raised on appeal. *See State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (stating that

appellate courts “decide cases in accordance with law, and that responsibility is not to be diluted by counsel’s . . . failure to specify issues” (quotation omitted)). The district court entered convictions for both theft and finding and appropriating lost property after the jury returned guilty verdicts. The district court erred in doing so.

“Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1. The supreme court has “consistently held that section 609.04 bars multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident.” *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985); *e.g.*, *State v. Sanchez Cruz*, 997 N.W.2d 537, 556 (Minn. 2023) (remanding, sua sponte, a duplicative second-degree intentional murder conviction to be vacated when the defendant was also convicted of first-degree felony murder for the same killing); *State v. Holmes*, 778 N.W.2d 336, 340 (Minn. 2010) (explaining that section 609.04 “generally forbids two convictions of the same offense . . . on the basis of the same conduct” (quotation omitted)).

Because the district court acknowledged, and we agree, that Tatum’s convictions arose from “the same behavioral incident,” we reverse and remand for the district court to vacate one of the convictions, but otherwise leave the guilty verdicts in place. *See State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984) (“[W]hen the defendant is convicted on more than one charge for the same act [the district court is] to adjudicate formally and impose sentence on one count only. . . . If the adjudicated conviction is later vacated . . . , one of the remaining unadjudicated convictions can then be formally adjudicated . . .”).

Affirmed in part, reversed in part, and remanded.