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

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A25-1387

A25-1390

State of Minnesota,
Respondent,

vs.

Jeffrey William Boysen,
Appellant.

Filed July 27, 2026

Affirmed

Larson, Judge

Scott County District Court
File Nos. 70-CR-24-15738; 70-CR-24-5740

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

Ronald Hocesvar, Scott County Attorney, Elisabeth M. Johnson, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Wheelock, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Respondent State of Minnesota charged appellant Jeffrey William Boysen with six counts of criminal sexual conduct (CSC) for assaulting his stepson from the time stepson

was approximately four to 13 years old. Later, the state charged Boysen with 15 counts of CSC for assaulting his stepdaughter from the time stepdaughter was 13 to 18 years old. The district court joined the two cases at Boysen's request. A jury found Boysen guilty of all six counts related to stepson and guilty of nine of the 15 counts related to stepdaughter. After entering convictions for six counts for stepson, the district court sentenced Boysen to a 522-month prison term. And upon entering convictions for four of the nine counts for stepdaughter, the district court sentenced Boysen to a 372-month prison term. The district court ordered the sentences related to stepson to run consecutively to the sentences related to stepdaughter, for a total of 894 months in prison.

On appeal, Boysen challenges his convictions and sentences.¹ First, he argues that he is entitled to a new trial because the state committed prosecutorial misconduct during closing argument. Second, he argues the district court erred when it imposed sentences for certain counts. Finally, relying on his aggregate sentences, Boysen argues the district court imposed excessive and unjustifiable sentences. For the reasons set forth in detail below, we affirm.

FACTS

Boysen is married to M.B. (mother). Mother is the biological mother to K.C. (stepson) and R.C. (stepdaughter). Boysen moved into the family home when stepson was approximately four years old and stepdaughter was approximately six years old. The

¹ In August 2025, Boysen filed a notice of appeal in both cases. He then moved to consolidate his appeals since the cases were resolved in a joint jury trial. We granted Boysen's motion.

following summarizes the incidents of sexual abuse against stepson and stepdaughter that were elicited at a jury trial.

Stepson

In April 2024, a Scott County child-protection supervisor received two reports alleging that Boysen anally penetrated stepson and forced stepson to perform oral sex.² The child-protection supervisor and a law-enforcement officer went to the family home to investigate.

Shortly thereafter, Boysen was charged with one count of first-degree CSC for assaulting stepson. In January 2025, the state filed an amended complaint charging Boysen with seven counts of CSC to account for different sexual acts that took place from the time stepson was approximately four to 13 years old.

At trial, stepson testified that, beginning when he was about four years old, Boysen would rub his erect genitals between stepson's legs until Boysen ejaculated (the genital-rubbing conduct). This conduct began in the family's apartment and continued after the family moved to a different house. Stepson testified that this genital-rubbing conduct happened every other week until he was in seventh grade and would take place on the couch, in Boysen's bedroom, or in the bathroom. Stepson estimated that the genital-rubbing conduct occurred "more than a hundred times."

² Stepdaughter's abuse was not mentioned in the initial reports. At trial, stepdaughter explained that she waited to report the abuse until after she moved out of the family home. Stepdaughter moved out at age 19.

Between the time stepson was in fourth grade through seventh grade, Boysen forced stepson to perform oral sex on Boysen (fellatio conduct). Stepson stated that the fellatio conduct occurred in the bathroom and Boysen's bedroom. Stepson estimated that Boysen forced stepson to perform fellatio "around 50" times.

When stepson was in fifth or sixth grade, Boysen began anally penetrating stepson (anal-penetration conduct). Stepson testified that the anal-penetration conduct occurred in the bathroom and Boysen's bedroom. Stepson further testified that the anal penetration was painful, and one time when stepson cried during penetration, Boysen stated he would give stepson ice cream if he kept quiet. Stepson estimated that Boysen anally penetrated him "20 to 30 times."

Stepson further testified that, on multiple occasions, Boysen forced stepson to stroke Boysen's genitals with his hands until Boysen ejaculated (the genital-stroking conduct). Stepson stated the genital-stroking conduct would occur on the couch or in Boysen's bedroom.

Stepson testified that all the sexual acts stopped when he was in seventh grade. Stepson did not report the abuse to his mother because he was uncomfortable doing so, but he eventually told stepdaughter.

Stepdaughter

In August 2024, stepdaughter—accompanied by her husband—visited the police station to make a formal complaint that Boysen sexually assaulted her. After an investigation, the state charged Boysen in a separate case file with six counts of CSC. The complaint alleged that Boysen sexually assaulted stepdaughter from the ages of 15 to 18

years old. In April 2025, the state filed an amended complaint, charging Boysen with sixteen counts of CSC for abuse relating to stepdaughter.

At trial, stepdaughter testified that, starting when she was about 13 years old, Boysen would rub his erect genitals between her legs until he ejaculated (sexual-touching conduct). Stepdaughter stated that the sexual-touching conduct occurred weekly until she was 15 years old.

When stepdaughter was 15 years old, Boysen began vaginally penetrating her (vaginal-penetration conduct). The vaginal-penetration conduct occurred in Boysen's bedroom or on the couch and continued until just after stepdaughter turned 18 years old. The last time Boysen vaginally penetrated stepdaughter was on July 13, 2023, during a family camping trip. Boysen told stepdaughter not to tell anyone about the sexual abuse, and stepdaughter stated she was too scared to report the abuse to her mother. However, stepdaughter documented the vaginal-penetration conduct that took place between April 2022 through the final incident in July 2023 on a mobile-phone app she used to track her menstrual cycle.

Throughout the time the sexual abuse occurred, Boysen also sent explicit text messages to stepdaughter. For example, in these text messages, Boysen asked stepdaughter if they could sleep naked together, and he asked stepdaughter if she wanted him "inside" her.

Stepson corroborated stepdaughter's testimony at trial, stating that he suspected Boysen was "doing stuff" to stepdaughter. Stepson recalled that, on one occasion, he

witnessed stepdaughter sitting on Boysen’s lap, facing Boysen. Stepson also testified that Boysen slept in the same bed as stepdaughter for approximately a month.

Procedural History

At first, the cases regarding stepson and stepdaughter proceeded separately. Then, just before the trial related to stepson, the district court granted the state’s *Spreigl* motion,³ allowing stepdaughter to testify at stepson’s trial about the sexual abuse she experienced. Shortly after the district court granted the state’s motion, Boysen requested that the district court join the two cases, and the district court granted his request.

Both stepson and stepdaughter testified at the joint trial consistent with the facts set forth above. Mother testified on Boysen’s behalf, and Boysen testified—denying that any sexual abuse occurred. One of the theories presented in Boysen’s defense was that stepdaughter’s husband—who is a convicted sex offender—coerced stepson and stepdaughter to fabricate their stories because Boysen disapproved of stepdaughter’s relationship with her husband. In response, during closing arguments, the state twice urged the jury not to focus on that “sex offender”—meaning stepdaughter’s husband—but this “sex offender”—referring to Boysen. Boysen did not object.

The jury found Boysen guilty on six counts⁴ related to stepson. The district court determined that none of the counts were lesser-included offenses and entered convictions

³ *Spreigl* evidence is “[e]vidence of another crime, wrong, or act” and is inadmissible “to prove the character of a person in order to show action in conformity therewith,” but it “may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b); *see also State v. Spreigl*, 139 N.W.2d 167, 173 (Minn. 1965).

⁴ The state dismissed one of the seven counts before trial.

on all six counts. The district court then imposed sentences on all six convictions, ordering the sentences on counts I, II, IV, and VI to run consecutively, and the sentences on counts III and V to run concurrently. In total, the district court imposed a 522-month prison term for the convictions related to stepson.

With regard to stepdaughter, the jury found Boysen guilty of nine of the 15 counts and acquitted him of the remaining counts. The district court entered convictions on four counts—counts III, IV, VI, and XV—and imposed four sentences to run consecutively.⁵ In total, the district court imposed a 372-month prison term for the convictions related to stepdaughter. The district court then ordered the sentences related to stepson to run consecutively to the sentences related to stepdaughter, for a total of 894 months in prison.

Boysen appeals.

DECISION

On appeal, Boysen challenges both his convictions and sentences. With regard to his convictions, he argues that he is entitled to a new trial because the state committed prosecutorial misconduct when it called him a “sex offender” during closing argument. In the alternative, he argues the district court erred when it imposed multiple sentences, violating Minn. Stat. § 609.035, subd. 1 (2024), because certain offenses arose from the same behavioral incident. Finally, Boysen contends the district court imposed excessive and unjustifiable sentences. We address his arguments in turn.

⁵ The district court did not enter convictions for counts I and II because they are lesser-included offenses of count III. The district court did not enter a conviction for count V because count IV accounted for the same time period. The district court did not enter a conviction for counts IX and XI because they are lesser-included offenses of count XV.

I.

Boysen first argues the state committed prosecutorial misconduct when it called him a “sex offender” during closing argument. Boysen did not object during closing argument, therefore, we apply the modified plain-error test. *See State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023). Under this test, Boysen must show that the prosecutor’s conduct constituted (1) an error (2) that was plain. *Id.* An error is plain if it “contravenes case law, a rule, or a standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn 2006).

If Boysen successfully establishes plain error, “the burden then shifts to the [s]tate to demonstrate that the error did not affect the defendant’s substantial rights.” *Portillo*, 998 N.W.2d at 248 (quotation omitted). Misconduct does not affect substantial rights if “there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *Ramey*, 721 N.W.2d at 302 (quotation omitted). To determine whether a reasonable likelihood exists, “we consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions.” *Portillo*, 998 N.W.2d at 251 (quotation omitted). If the state fails to meet its burden, we “will not grant relief to correct the error unless our failure to do so will cause the public to seriously question the fairness and integrity of our judicial system.” *Pulczynski v. State*, 972 N.W.2d 347, 359 (Minn. 2022).

Boysen argues the state committed misconduct when the prosecutor stated during closing argument:

Now, the defense wants you to believe [stepdaughter's husband], the sex offender. A red herring. Don't fall for it. Don't look at this sex offender, look at this one.

Then, during rebuttal, the prosecutor proceeded to say:

All right. [Stepdaughter's husband] . . . Again, ignore this sex offender, look at this sex offender. No, we're here about this sex offender, right here. This guy, [Boysen].

We agree with Boysen that these statements constituted plain-error misconduct. In *State v. Ture*, during closing argument, the prosecutor called the defendant a “rapist and murderer” and a “predator” to attack the veracity of the defendant’s testimony. 353 N.W.2d 502, 516 (Minn. 1984). The supreme court concluded these statements were improper. *Id.* at 516-17. The statements here are analogous. By calling Boysen a “sex offender,” the state improperly attacked Boysen’s character and implied⁶ that Boysen had a previous CSC conviction, which he did not. *See Ture v. State*, 681 N.W.2d 9, 20 (Minn. 2004) (“Character attacks are improper during closing argument.”); *see also State v. Duncan*, 608 N.W.2d 551, 555 (Minn. App. 2000) (stating evidence of prior bad acts may not be used “to attack the defendant’s character or to establish a criminal propensity”), *rev. denied* (Minn. May 16, 2000). While we agree with the state that a prosecutor is “not required to make a colorless argument,” *see State v. Williams*, 586 N.W.2d 123, 127 (Minn. 1998), calling a defendant a “sex offender” in this manner is an improper character attack.

⁶ During closing, the prosecutor compared Boysen to stepdaughter’s husband, who the jury knew to be a *convicted* sex offender; thus—as Boysen argues—the prosecutor seemingly implied that Boysen was also a previously convicted “sex offender.”

Because we conclude that it was plain error to repeatedly call Boysen a “sex offender,” we must determine whether the state met its burden to show the error did not affect Boysen’s substantial rights. We conclude the state met its burden.

First, the error was not pervasive. The two statements made up a small portion of the state’s closing argument, which spanned approximately 17 pages of the trial transcript.

Second, the state presented strong evidence to support Boysen’s convictions. Stepson and stepdaughter testified in detail about the abuse. Stepdaughter’s account was corroborated by text messages. And Boysen’s internet search history—which was also introduced at trial—further supported the convictions, revealing both that he looked up the punishment for a first-time child sex offender and had numerous searches for pornographic material involving stepfamilies.

Third, Boysen had an “opportunity to respond” to the improper statements because the first “sex offender” statement was made before Boysen’s closing argument. *See Portillo*, 998 N.W.2d at 251-54. And although the state repeated its improper suggestion in rebuttal, the later statement “reiterated earlier points” to which Boysen had an opportunity to respond. *See State v. Thompson*, 3 N.W.3d 257, 264 (Minn. 2024).

Finally, “[w]here the jury has acquitted the [defendant] of some counts, but convicted the [defendant] of others, we view the verdicts as an indication that the members of the jury were not unduly inflamed by the prosecutor’s comments.” *See State v. Washington*, 521 N.W.2d 35, 40 (Minn. 1994) (quotation omitted). Here, the jury did not convict Boysen on all counts; rather, Boysen was acquitted of several counts related to stepdaughter.

For these reasons, we conclude Boysen is not entitled to a new trial because the state's error did not affect his substantial rights.

II.

Boysen argues second that the district court violated section 609.035, subdivision 1, when it imposed sentences on certain offenses on the ground that they arose from the same behavioral incident. We review this issue de novo. *State v. Branch*, 942 N.W.2d 711, 713 (Minn. 2020).

Under section 609.035, subdivision 1, except under circumstances which do not apply here, “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.” The supreme court has explained that “the law generally prohibits multiple sentences, even concurrent sentences, for two or more offenses that were committed as part of a single behavioral incident.” *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016) (quotation omitted).

To determine whether two intentional crimes constitute a single behavioral incident, we evaluate the incident’s timing and location and whether the conduct aimed to achieve a single criminal objective. *State v. Bauer*, 792 N.W.2d 825, 828 (Minn. 2011). “The application of this test depends heavily on the facts and circumstances of the particular case.” *Id.* When a district court imposes multiple sentences, the state bears the burden to prove by a preponderance of the evidence that the offenses were not part of a single behavioral incident. *Bakken*, 883 N.W.2d at 270. We address Boysen’s challenges related to stepson and stepdaughter separately below.

A. Stepson

The district court imposed the following convictions and sentences with regard to stepson.

Count I	Minn. Stat. § 609.342, subd. 1(a) (2014)	First-degree CSC – penetration or contact with person under 13; actor > 36 months older	Convicted, sentenced to 144 months (consecutive)
Count II	Minn. Stat. § 609.342, subd. 1(a) (2016)	First-degree CSC – penetration or contact with person under 13; actor > 36 months older	Convicted, sentenced to 144 months (consecutive)
Count III	Minn. Stat. § 609.342, subd. 1(a) (2016)	First-degree CSC – penetration or contact with person under 13; actor > 36 months older	Convicted, sentenced to 144 months (concurrent)
Count IV	Minn. Stat. § 609.342, subd. 1(a) (2014)	First-degree CSC – penetration or contact with person under 13; actor > 36 months older	Convicted, sentenced to 144 months (consecutive)
Count V	Minn. Stat. § 609.342, subd. 1(a) (2016)	First-degree CSC – penetration or contact with person under 13; actor > 36 months older	Convicted, sentenced to 144 months (concurrent)
Count VI	Minn. Stat. § 609.343, subd. 1(h)(iii) (2014)	Second-degree CSC – contact with person under 16; significant relationship; multiple acts	Convicted, sentenced to 90 months (consecutive)

Boysen argues the district court erred when it imposed a separate sentence for count VI because the state did not prove by a preponderance of the evidence that the

behavioral incidents punished under counts I through V were also *not* used to sustain a conviction for count VI, which required proving multiple acts. The state disagrees, arguing Boysen’s argument “ignores how these charges were presented to the jury.”

In *State v. Suhon*, we concluded that, in a criminal-sexual-conduct case, the state may charge a defendant with multiple counts for each extended period of abuse, and that “the abuse . . . charged in separate counts covering different segments of the victim’s childhood is *not* a single behavioral incident.” 742 N.W.2d 16, 22-23 (Minn. App. 2007), *rev. denied* (Minn. Feb. 19, 2008) (emphasis added). And we further stated that “[m]ultiple acts against the same victim do not constitute a single behavioral incident when the individual acts are separated by time and place,” including when incidents occur “in different rooms” within the same house and “at different times.” *Id.* at 24.

Boysen contends that *Suhon* does not control the outcome here because it did not involve a charge—like count VI—that included the entire time period. We disagree.

Here, the jury instructions and pronounced convictions demonstrate that

- Count I regarded the genital-rubbing conduct between September 1, 2014, and September 1, 2016;
- Count II regarded the anal-penetration conduct between September 1, 2017, and June 1, 2019, in one location;
- Count III regarded the anal-penetration conduct between September 1, 2017, and June 1, 2019, in another location;⁷

⁷ Stepson testified that the anal-penetration conduct occurred in the bedroom and the bathroom.

- Count IV regarded the fellatio conduct between September 1, 2015, and September 1, 2016, in one location;
- Count V regarded the fellatio conduct between September 1, 2016, and September 1, 2018, in another location;⁸
- Count VI regarded the genital-stroking conduct between September 1, 2014, and September 1, 2019.

At trial, the state presented the following evidence with regard to the genital-stroking conduct. After testifying about the genital-rubbing, fellatio, and anal-penetration conduct, the state asked stepson whether Boysen did “anything else with him.” Stepson then described the genital-stroking conduct, stating “[s]ometimes [Boysen] would . . . have me jerk off his genitals.” Stepson stated that the genital-stroking conduct took place on the couch and Boysen’s bedroom. Then, during closing argument the state stressed that count VI was for when Boysen “would make [stepson] masturbate him with his hand.” At sentencing, the district court reiterated that count VI was for Boysen forcing stepson “to give [him] a hand job.”

We conclude the state established by a preponderance of the evidence that count VI was for the genital-stroking conduct, which comprised distinct behavioral incidents that were not accounted for in the other convictions and sentences. Stepson’s testimony described the genital-stroking conduct without regard to the other incidents. *See State v. Barthman*, 938 N.W.2d 257, 266 (Minn. 2020) (determining victim’s testimony supported that the two penetration incidents that occurred in the same location did not occur at

⁸ Stepson testified that the fellatio conduct occurred in the bedroom and the bathroom.

substantially the same time because victim described each incident “without any mention” of the other). Further, stepson’s testimony regarding the genital-stroking conduct alone established that Boysen committed a single act of sexual contact and multiple acts of sexual abuse,⁹ which the state needed to prove to sustain a conviction on count VI. *See* Minn. Stat. § 609.343, subd. 1(h)(iii) (2014). Accordingly, the district court did not err when it imposed a sentence for count VI.

B. Stepdaughter

The district court imposed the following convictions and sentences with regard to stepdaughter.

Count I	Minn. Stat. § 609.342, subd. 1(g) (2018)	First-degree CSC – penetration with person under 16; significant relationship	Found guilty, no adjudication
Count II	Minn. Stat. § 609.342, subd. 1(b) (2018)	First-degree CSC – penetration with person between 13-15; position of authority	Found guilty, no adjudication
Count III	Minn. Stat. § 609.342, subd. 1(h)(iii) (2018)	First-degree CSC – penetration with person under 16; significant relationship; multiple acts	Convicted, sentenced to 144 months (concurrent)
Count IV	Minn. Stat. § 609.343, subd. 1(h)(iii) (2018)	Second-degree CSC – contact with person under 16; significant relationship; multiple acts	Convicted, sentenced to 90 months (consecutive)

⁹ We have defined “sexual abuse” as either sexual penetration or sexual contact. *State v. Shamp*, 422 N.W.2d 520, 524-25 (Minn. App. 1988), *rev. denied* (Minn. June 10, 1988).

Count V	Minn. Stat. § 609.343, subd. 1(g) (2018)	Second-degree CSC – contact with person under 16; significant relationship	Found guilty, no adjudication
Count VI	Minn. Stat. § 609.344, subd. 1(a) (2022)	Third-degree CSC – penetration; coercion	Convicted, sentenced to 90 months (consecutive)
Count IX	Minn. Stat. § 609.344, subd. 1a(e) (Supp. 2021)	Third-degree CSC – penetration with person between 16-17; actor > 36 months older; position of authority	Found guilty, no adjudication
Count XI	Minn. Stat. § 609.344, subd. 1a(e) (Supp. 2021)	Third-degree CSC – penetration with person between 16-17; actor > 36 months older; position of authority	Found guilty, no adjudication
Count XV	Minn. Stat. § 609.344, subd. 1a(g)(iii) (Supp. 2021)	Third-degree CSC – penetration with person between 16-17; significant relationship; multiple acts	Convicted, sentenced to 48 months (consecutive)

Boysen argues the district court erred when it sentenced Boysen for count III because it is part of the same behavioral incident as count IV. The state argues that these counts are not part of the same behavioral incident because count III relates to the vaginal-penetration conduct and count IV relates to the sexual-touching conduct.

Here, the jury instructions and pronounced convictions demonstrate that

- Count III regarded the sexual-penetration conduct that occurred between 2018 and 2020;
- Count IV regarded the sexual-touching conduct that occurred between 2018 and 2020;
- Count VI regarded a specific instance of sexual penetration that occurred on or about July 13, 2023; and
- Count XV regarded the sexual-penetration conduct that occurred between April 21, 2022, and April 8, 2023.

At trial, the state presented the following evidence regarding the sexual-penetration and sexual-touching conduct that occurred between 2018 and 2020. Stepdaughter testified that, starting in 2018 (when she was 13 years old), Boysen would rub his erect genitals between her legs until he ejaculated. Stepdaughter stated that this conduct occurred weekly until 2020, when she turned 15 years old. At that time, Boysen began vaginally penetrating her. Stepdaughter recalled that the vaginal-penetration conduct occurred in the bathroom and Boysen's bedroom. In line with this testimony, the district court instructed the jury that for count III the jury must find that "the sexual abuse involved multiple acts of sexual *penetration* committed over an extended period of time." (Emphasis added.) And the district court instructed the jury on count IV that the jury must find Boysen "engaged in *sexual contact* with [stepdaughter]," which includes "touching by [stepdaughter] of [Boysen's] intimate parts," and that "the sexual abuse involved multiple acts committed over an extended period of time." (Emphasis added.)

We conclude the state established by a preponderance of the evidence that count III and count IV involved separate acts and comprised distinct behavioral incidents. *See*

Suhon, 742 N.W.2d at 24 (providing that “[m]ultiple acts against the same victim do not constitute a single behavioral incident when the individual acts are separated by time and place.”). Stepdaughter’s testimony described discrete conduct—penetration and sexual touching. *See Barthman*, 938 N.W.2d at 266. And stepdaughter’s testimony satisfied all the elements for both offenses. *See* Minn. Stat. §§ 609.342, subd. 1(h)(iii), .343, subd. 1(h)(iii) (2018).

Boysen disagrees, arguing that—without a special verdict form—the state cannot establish that the multiple acts of sexual abuse supporting one conviction were not used to support the other.¹⁰ Our nonprecedential opinion in *State v. Lufkins* is persuasive on this point. No. A19-1809, 2020 WL 4743496, at *6 (Minn. App. Aug. 17, 2020), *aff’d on other grounds*, 963 N.W.2d 205 (Minn. 2021).¹¹ There, the district court imposed sentences for four criminal-sexual-conduct offenses that occurred in the same date range. *Id.* The appellant argued that the district court erred when it imposed multiple sentences because the jury did not use a special verdict form. *Id.* We rejected this argument, reasoning that the state “only needed to show by a preponderance of the evidence . . . that [the appellant’s] convictions arose out of separate behavioral incidents.” *Id.* at *7. We concluded that a “review of the record satisfie[d] us that . . . the offenses underlying the convictions were committed as part of four separate behavioral incidents.” *Id.*

¹⁰ Boysen relies on *State v. Penn*, A15-1775, 2016 WL 4497250, at *1 (Minn. App. Aug. 29, 2016). But *Penn* involved stalking and arson charges and is, therefore, distinguishable.

¹¹ Nonprecedential opinions may be cited as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

Like in *Lufkins*, after reviewing the record, we conclude the record demonstrates that the state showed by a preponderance of the evidence that the conduct underlying count III and count IV involved separate acts that were not part of the same behavioral incident. Based upon the trial testimony and jury instructions, it is clear that count III related to the vaginal-penetration conduct and count IV related to sexual-touching conduct. Accordingly, the district court did not err when it sentenced Boysen for count III.

III.

Finally, Boysen argues the district court imposed excessive and unjustifiable sentences when it imposed a 522-month prison term for the counts related to stepson, a 372-month prison term for the counts related to stepdaughter, and then ordered the sentences to run consecutively, for a total of an 894-month prison term.

We will interfere with the district court's sentencing decision only when the sentence is "disproportionate to the offense or unfairly exaggerates the criminality of the defendant's conduct." *State v. Ali*, 895 N.W.2d 237, 247 (Minn. 2017) (quotation omitted); *see also* Minn. Stat. § 244.11, subd. 2(b) (2024) (permitting appellate review of sentence to determine if it is "unreasonable" or "excessive"). We review the district court's sentencing decision for an abuse of discretion. *State v. Fardan*, 773 N.W.2d 303, 322 (Minn. 2009). To assess whether the district court abused its discretion, we "look to past sentences received by other offenders," *id.*, and rely on our "collective, collegial experience in reviewing a large number of criminal appeals from all the judicial districts," *State v. Norton*, 328 N.W.2d 142, 146-47 (Minn. 1982).

Boysen relies on *Barthman* to argue that any sentence over 600 months is excessive and unjustifiable. 917 N.W.2d 119 (Minn. App. 2018), *aff'd on other grounds*, 938 N.W.2d 257 (Minn. 2020). There, Barthman was convicted of six counts of CSC (three first-degree and three second-degree counts) for sexually abusing his disabled daughter. *Id.* at 124. The abuse began when the victim was nine years old and continued for approximately three years. *Id.* at 123-24. Barthman touched victim's breasts and between her legs, and penetrated victim with his genitals and other objects. *Id.* at 124. The district court sentenced Barthman to consecutive 360-month prison terms on two of the first-degree charges for a cumulative 720-month prison term. *Id.* Barthman appealed, arguing his sentence was excessive. *Id.* We agreed and remanded for the district court to impose a lower sentence on one count.¹² *Id.* at 132. After resentencing, Barthman appealed again. We reversed, concluding that the 704-month sentence was excessive, and remanded with directions for the district court to impose a sentence not exceeding 600 months. *State v. Barthman*, No. A21-1121, 2022 WL 1073225, at *3, *5 (Minn. App. Apr. 11, 2022), *rev. denied* (Minn. June 29, 2022) (hereinafter, *Barthman II*).

Boysen contends his sentences must be reversed and remanded to impose lower sentences because his aggregated sentences are significantly longer than the maximum 600-month prison term that we approved in *Barthman II*. We are not persuaded.

¹² The supreme court affirmed this case on other grounds but notably agreed with our conclusion that that the sentence “unduly exaggerated the criminality of Barthman’s conduct.” *See Barthman*, 938 N.W.2d at 275 n.6.

Here, Boysen’s argument urges us to evaluate his aggregate sentences in light of *Barthman II*. But, unlike *Barthman II*, this case involves *two* victims.¹³ Moreover, considering the facts of stepson’s case alone, the sentence complied with *Barthman II*. While stepson was not disabled—like the child in *Barthman II*—the abuse against stepson involved more acts, continued for a longer period of time, and began when the stepson was a younger age. And regarding stepdaughter, like in *Barthman II*, the sexual abuse involved numerous instances of both sexual contact and penetration; but Boysen received a lower sentence in stepdaughter’s case than in *Barthman II*, even though the abuse spanned a longer time period—five years. *See Fardan*, 773 N.W.2d at 322 (providing we look to past sentences received by other offenders to assess whether an abuse of discretion occurred).

We must also consider our “collective, collegial experience” when evaluating whether these sentences exaggerate Boysen’s criminality. *See Norton*, 328 N.W.2d at 146-47. While the district court imposed long aggregate sentences, we must evaluate these sentences in context. *See State v. Hough*, 585 N.W.2d 393, 397 (Minn. 1998) (“A [district] court’s decision regarding permissive, consecutive sentences will not be disturbed unless the resulting sentence unfairly exaggerates the criminality of the defendant’s conduct.”).

¹³ Boysen cites only one case, *State v. Kindred*, that involved two victims to support that his sentences are excessive. No. A14-2212, 2016 WL 22239, *1 (Minn. App. Jan. 4, 2016). There, the defendant abused the two victims “on multiple occasions over the course of approximately ten years.” *Id.* The defendant was convicted on two counts of first-degree CSC (one for each victim), and he received sentences for two 144-month prison terms, which the district court ran consecutively for a total of 288 months in prison. *Id.* Thus, *Kindred* is consistent with the district court’s decision in this case to impose consecutive sentences for two different victims. And the difference in the length of sentences is attributable to the number of convictions—two for Kindred and ten for Boysen.

This case involves a trial where *two* different cases were joined *at the defendant's request*. The jury found that the defendant committed extensive and prolonged sexual abuse against *two* different victims. And the district court imposed sentences for the *two* different cases—a 522-month prison term for the counts related to stepson and a 372-month prison term for the counts related to stepdaughter—both of which are consistent with the Minnesota Sentencing Guidelines and our prior single-victim caselaw.¹⁴ And Boysen offers no case—and we find none in our review—to support that the cumulative length of his aggregate sentences are comparatively excessive under factually similar circumstances. The district court did not impose excessive and unjustifiable aggregate sentences simply because Boysen elected to have the two cases joined. Accordingly, we conclude the length of sentences imposed was within the district court's discretion and did not unduly exaggerate his criminality under these circumstances.

Affirmed.

¹⁴ These sentences are in line with *State v. Rakowiecki*, No. A24-1040, 2026 WL 797064, at *1 (Minn. App. Mar. 23, 2026) (ordering a sentence not to exceed 504-months in prison), *rev. granted in part on other grounds and stayed, rev. denied in part* (Minn. June 17, 2026), and *State v. Kellogg*, No. A03-16, 2004 WL 422703, at *4 (Minn. App. Mar. 9, 2004) (ordering a sentence of 537-months in prison), *rev. denied* (Minn. May 18, 2004). Both *Rakowiecki* and *Kellogg* involved a single victim.