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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1655**

State of Minnesota,
Respondent,

vs.

Brian Keith Jourdain,
Appellant

**Filed August 28, 2017
Affirmed
Worke, Judge**

Beltrami County District Court
File No. 04-CR-15-444

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Annie P. Claesson-Huseby, Beltrami County Attorney, Bemidji, Minnesota (for
respondent)

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Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Klaphake,
Judge.*

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

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his sentence for second-degree unintentional murder, arguing that the district court abused its discretion by denying his motion for a downward durational departure. We affirm.

FACTS

In February 2015, passersby noticed K.F. lying on the ground near a Bemidji mall. K.F. was bleeding profusely and saying, “Help me. I don’t want to die.” She was taken to the hospital and pronounced dead. She had been stabbed multiple times and died of the resulting blood loss. The femoral vein in one of her legs was punctured, causing a massive hemorrhage.

Police reviewed surveillance video showing appellant Brian Keith Jourdain leaving the mall with K.F. shortly before she was discovered on the ground bleeding. Police went to the home of Jourdain’s mother. She agreed to call Jourdain while police listened. Jourdain admitted to stabbing K.F. When asked why he did it, he said, “I don’t know, because she pissed me off. I got her, I got her two times on the side, I got her once in the stomach and I got her in the back of the leg and I got her in the front of the leg.”

Police later discovered that Jourdain had fled the scene of the stabbing by paying a stranger for a ride. He also called the hospital where K.F. was taken using *67, which conceals the caller’s identity by blocking caller-identification services.

After he was arrested, Jourdain was interviewed by police. He initially denied being with K.F. that evening. When confronted with the surveillance video, however, he

admitted that he was at the mall with K.F., but claimed that upon leaving the mall they were confronted by two individuals and he fled.

Jourdain was charged with second-degree intentional murder and second-degree unintentional murder. He moved for a competency evaluation under Minn. R. Crim. P. 20.01. The district court granted the motion and ordered the evaluation.

The evaluation indicated that Jourdain had been found incompetent in multiple prior cases. He has an IQ of 67, which is in the “extremely low range . . . that would signify mild intellectual disability.” Jourdain, however, “scored significantly higher on a number of subtests that assess non-verbal visual-spatial reasoning,” causing the evaluator to opine that his “general intelligence, as it is practically expressed in the day-to-day, is likely to be higher than the 67 IQ score would imply.” The evaluator diagnosed Jourdain with a mild intellectual disability. The evaluator concluded that Jourdain was not competent to proceed but that he could likely be restored to competence through individualized treatment.

At the state’s request, the district court ordered a second evaluation. The second evaluator agreed with the first that Jourdain has a mild intellectual disability. The evaluator concluded, however, that Jourdain was competent to proceed.

The district court found Jourdain competent. At his jury trial, Jourdain conceded that he killed K.F. and was guilty of second-degree unintentional murder. He claimed, however, that he did not intend to kill K.F. The jury agreed, finding Jourdain guilty of second-degree unintentional murder and not guilty of second-degree intentional murder.

At sentencing, Jourdain moved for a downward durational departure. He argued that as a result of his “intellectual disability, [he] lacked the substantial capacity for

judgment at the time that the offense was committed.” Jourdain admitted in his presentence-investigation interview that he knew that K.F. was “hurt bad.” Despite that, he fled the scene by paying a stranger for a ride. The state pointed to this, and Jourdain’s other efforts to conceal his crime, as evidence that he knew what he was doing.

The district court denied Jourdain’s motion and sentenced him to 150 months in prison, which was in the middle of the presumptive sentencing range. The district court acknowledged that it is “clear” that Jourdain “has a mental impairment” and “there is support for the conclusion that he is less culpable, given his impairment.” The district court, however, determined that a “departure is not appropriate under the facts of this case.” Specifically, the district court identified the fact that Jourdain “left [K.F.] to bleed out on a night where the temperatures were well below zero and she had to crawl into the street to hail down passersby for help.” This appeal followed.

D E C I S I O N

The district court must impose the presumptive sentence provided under the Minnesota Sentencing Guidelines unless there are “substantial and compelling circumstances” that justify a departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). “The general issue that faces a sentencing court in deciding whether to depart durationally is whether the defendant’s conduct was significantly more or less serious than that typically involved in the commission of the crime in question.” *State v. Cox*, 343 N.W.2d 641, 643 (Minn. 1984). The district court may depart from the guidelines when “[t]he offender, because of . . . mental impairment, lacked substantial capacity for judgment when the offense was committed.” Minn. Sent. Guidelines 2.D.3.a.(3) (2014); see *State v.*

Martinson, 671 N.W.2d 887, 892 (Minn. App. 2003) (affirming downward durational departure based on mental impairment that affected the defendant’s actions at the time of the offense), *review denied* (Minn. Jan. 20, 2004). But the impairment must be “extreme to the point that it deprives the defendant of control over his actions.” *State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007) (quotation omitted).

The district court has great discretion in sentencing and may be reversed only for an abuse of that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). This court will reverse a district court’s refusal to depart only in a “rare” case. *Kindem*, 313 N.W.2d at 7. “[A]s long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination,” this court will not interfere with the district court’s decision to impose the presumptive guidelines sentence. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

Jourdain argues that the district court abused its discretion by failing to depart on the basis of his substantial mental impairment. There is, however, no evidence that this impairment rose to the “extreme” level that would justify a downward departure. See *McLaughlin*, 725 N.W.2d at 716. Jourdain suffers from a “mild intellectual disability.” While this disability may have had an impact on his ability to understand the court proceedings against him, there is no indication in the record that it affected his ability to control his actions at the time of the offense. See *id.* Jourdain did not suffer from the type of psychosis that has justified a downward departure based on mental impairment in previous cases. See *Martinson*, 671 N.W.2d at 891-92 (affirming downward durational departure for a defendant who suffered from paranoid schizophrenia that, at the time of the

offense, caused psychotic delusions); *see also State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984) (modifying upward departure to presumptive sentence because defendant was schizophrenic and lacked substantial capacity for judgment at time of offense). In fact, Jourdain’s conduct immediately following the offense indicates that he fully understood his actions: he fled the scene; he concealed his identity by using the *67 feature when he called the hospital where K.F. was taken; he described the stabbing in detail to his mother; he told his mother that he stabbed K.F. because she “pissed [him] off”; and he repeatedly lied to police in an effort to cover up his involvement in the offense. Although the district court recognized that Jourdain has a mental impairment, that impairment did not rise to the extreme level that would justify a departure.

Even if Jourdain’s mental impairment would have justified a downward departure, the presence of a mitigating factor does not require the district court to depart from the presumptive sentence. *See Wall*, 343 N.W.2d at 25. The district court showed that it carefully considered Jourdain’s argument by acknowledging his impairment. *See Pegel*, 795 N.W.2d at 255 (explaining that the district court does not abuse its discretion when the record shows that it “carefully evaluated” the information presented before making a decision). It determined, however, that a departure was not appropriate given the severity of the offense. *See Cox*, 343 N.W.2d at 643 (indicating that the severity of the offense is the primary consideration in determining whether to grant a motion for a durational departure). The district court did not abuse its discretion by denying Jourdain’s motion for a downward durational departure and imposing a presumptive sentence.

Affirmed.