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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2063**

State of Minnesota,
Respondent,

vs.

Mitchell John Antil,
Appellant.

**Filed January 22, 2019
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-16-26429

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Tracy M. Smith, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Mitchell John Antil pleaded guilty to first-degree assault after admitting that he shot his girlfriend with a shotgun in the garage of the home that they shared. The district court

imposed a sentence that is an upward durational departure from the presumptive guidelines sentence. We conclude that the district court did not err by imposing an upward durational departure and, therefore, affirm.

FACTS

On the evening of October 5, 2016, law-enforcement officers responded to two calls concerning an incident at a home in the city of Maple Grove. One of the calls was from a man inside the home who identified himself as “Mitch” and later was identified as Antil. He told the 911 dispatcher that he had shot a woman twice. In addition, a neighbor reported hearing gunshots and seeing a woman on the front lawn, bleeding from her head. The woman, J.J., said to the neighbor, “Mitch shot me.” After officers arrived, Antil admitted to them that J.J. had left the house to smoke a cigarette outdoors, that he locked the door to prevent her from reentering, and that he shot her after she attempted to reenter the house through the attached garage. Antil told officers that he knew what he was doing and that he wanted to kill her.

Two days later, the state charged Antil with attempted second-degree murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2016). In February 2017, the state moved for a bifurcated trial based on its intent to prove five aggravating factors justifying an upward durational departure, including particular cruelty and psychological trauma. In April 2017, the district court granted the state’s motion.

One week later, the state and Antil entered into a plea agreement. The state agreed to amend the sole charge to allege first-degree assault, in violation of Minn. Stat. § 609.221, subd. 1 (2016). Antil agreed to waive his right to a jury trial with respect to the aggravating

factors necessary for an upward durational departure. Based on a criminal-history score of zero and an offense-severity level of nine, the presumptive range under the sentencing guidelines is 74 to 103 months of imprisonment. The parties agreed that the district court would not impose a sentence greater than 206 months of imprisonment.

The district court held a sentencing hearing in June 2017. The state presented the testimony of two medical professionals and J.J. The evidence showed that Antil shot J.J. twice, once in her face and once in her right arm. The shotgun blast to her face was in close proximity to her carotid artery, jugular veins, and airway, and caused her tongue to protrude through a large wound. Dr. Dolan, the emergency-room physician, testified that her jaw “was almost gone” when she arrived at the hospital. The shotgun blast to her right arm struck her brachial artery, which caused a large wound to the medial aspect of the arm, which resulted in a loss of approximately ten percent of her blood. Both physicians testified that J.J.’s wounds created a high probability of death and required medical intervention and that her injuries would cause permanent disfigurement and a permanent or protracted loss of function of her jaw and arm. J.J. underwent more than 20 procedures, including at least seven surgeries, in the first five weeks of her hospitalization. Dr. Kirshbaum, a physician at the rehabilitation hospital where she was a patient for months afterward, testified that he had “not seen anything worse” in his 32-year career.

In September 2017, the district court filed an order in which it concluded that the state had established the aggravating factors of particular cruelty and substantial psychological trauma. The district court imposed a sentence of 206 months of imprisonment. Antil appeals.

DECISION

Antil argues that the district court erred by imposing an upward durational departure from the presumptive guidelines sentencing range.

The Minnesota Sentencing Guidelines specify presumptive sentences for felony offenses. Minn. Sent. Guidelines 2.C (2016). For any particular felony offense, the presumptive sentence is “presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.” Minn. Sent. Guidelines 1.B.13 (2016). Accordingly, a district court “must pronounce a sentence . . . within the applicable [presumptive] range unless there exist identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent. Guidelines 2.D.1 (2016); *see also State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009). “Substantial and compelling circumstances are those demonstrating that the defendant’s conduct in the offense of conviction was significantly more or less serious than that typically involved in the commission of the crime in question.” *State v. Hicks*, 864 N.W.2d 153, 157 (Minn. 2015) (quotations omitted). The sentencing guidelines provide a non-exclusive list of aggravating factors that may justify a departure. Minn. Sent. Guidelines 2.D.3.b (2016).

In general, this court applies an abuse-of-discretion standard of review to a district court’s imposition of a sentence. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). But a district court “has broad discretion to depart” from the sentencing guidelines “only if aggravating or mitigating circumstances are present; if aggravating or mitigating circumstances are not present, the trial court has no discretion to depart.” *State v. Best*, 449 N.W.2d 426, 427 (Minn. 1989) (emphasis omitted). Accordingly, this court applies a *de*

novo standard of review to the question whether a particular reason for an upward departure is permissible. See *Soto*, 855 N.W.2d at 308 n.1; *State v. Jackson*, 749 N.W.2d 353, 357 (Minn. 2008); *State v. Grampre*, 766 N.W.2d 347, 350 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009). If the reason for the departure is permissible, we apply an abuse-of-discretion standard of review to a district court’s decision to depart from the presumptive sentence. *State v. Robideau*, 796 N.W.2d 147, 150 (Minn. 2011).

A. Psychological Trauma

Antil argues that the district court erred by concluding that substantial psychological trauma is a valid reason for an upward durational departure in this case. Antil does *not* argue that particular cruelty is not a valid reason for an upward durational departure. He contends that reversal is necessary because “it is not clear that the trial court would have departed upward to 206 months if ‘particular cruelty’ were the only departure ground.”

Substantial psychological trauma is not included in the non-exclusive list of aggravating factors in the Minnesota Sentencing Guidelines. See Minn. Sent. Guidelines 2.D.3.b (2016). But the appellate courts have recognized that it may be a valid reason for an upward durational departure. See, e.g., *State v. Ford*, 539 N.W.2d 214, 230 (Minn. 1995); *State v. Allen*, 482 N.W.2d 228, 233 (Minn. App. 1992), *review denied* (Minn. Apr. 13, 1992); *State v. Bingham*, 406 N.W.2d 567, 570 (Minn. App. 1987).

In this case, the district court made four pages of factual findings related to aggravating factors. With respect to the state’s allegation that J.J. suffered substantial psychological trauma as a result of the assault, the district court concluded that the state

had “proved beyond a reasonable doubt that J.J. suffered substantial psychological injury as a result of the assault.”

Antil contends that the district court’s findings and conclusions are not supported by the record. Specifically, he contends that J.J.’s psychological injuries are not sufficiently “severe.” See *State v. Mortland*, 399 N.W.2d 92, 95 (Minn. 1987). He asserts that this case is like *State v. Branson*, 529 N.W.2d 1 (Minn. App. 1995), *review denied* (Minn. Apr. 18, 1995), in which this court concluded that the victim’s psychological injuries were not sufficiently severe because the record showed only that the victim was “scared a lot” and worried that “someone is behind her.” *Id.* at 5.

The record in this case contains considerable evidence of the psychological impact of Antil’s assault on J.J. Some of that evidence is direct evidence of her psychological trauma, and some is circumstantial evidence of the extent of her injuries and the difficulties associated with her treatment, recovery, and rehabilitation, which had not yet concluded at the time of the sentencing hearing. Specifically, Dr. Dolan testified that J.J. suffered life-threatening injuries that required “more than 20 medical procedures, including at least seven surgeries.” J.J. testified that, at the time of sentencing, she was unable to eat solid food because of the injuries to her face and jaw. She also testified that she was unable to use her right arm to bathe or to tie her shoes without assistance and that she has difficulty dressing herself. She testified that she wears a bandage over her face because it “is so indented that it really looks really terrible.” J.J. was hospitalized for more than five months. The district court is permitted to infer significant psychological trauma from the significant consequences of her physical injuries. In addition, the record contains evidence

specifically related to J.J.'s psychological trauma. Dr. Kirshbaum specifically testified that J.J. was "withdrawn," in "shock," "very sad," and "often very tearful." He testified that J.J. avoided looking in the mirror and was visibly frustrated when she was unable to speak because of the severity of the injuries to her face and jaw. He considered prescribing antidepressant medication but ultimately decided against it. J.J. herself described her experience as being "like a nightmare." She testified that she had not been able to return to her job, which she "enjoyed a lot," and that she has started psychotherapy. All of this evidence is sufficient to support the district court's findings and conclusions and to establish, as a matter of law, that J.J. suffered severe psychological trauma that is "significantly more . . . serious than that typically involved in the commission of the crime in question." See *Hicks*, 864 N.W.2d at 157.

Antil also contends that the district court improperly considered factors that are incorporated into the elements of the offense. Specifically, he challenges the district court's application of this court's opinion in *State v. Felix*, 410 N.W.2d 398 (Minn. App. 1987), *review denied* (Minn. Sept. 29, 1987), and, perhaps, *Felix* itself. In that case, the defendant pleaded guilty to first-degree assault, and the district court imposed a double upward durational departure. *Id.* at 399. The victim had suffered extensive trauma to her head and face and suffered emotional trauma as a result of the assault. *Id.* at 399-400. On appeal, the defendant argued that the district court erred by relying on certain factors that were, by definition, present in any first-degree assault. *Id.* at 401. In affirming the district court, this court reasoned that the assault "did not simply involve one of the factors defining 'great bodily harm;' it involved *all* of them." *Id.* Antil's contention is misplaced because

the district court relied on *Felix* only with respect to its finding of particular cruelty, not with respect to its finding of severe psychological trauma. As stated above, Antil does not argue on appeal that the district court erred by finding particular cruelty. Accordingly, we need not consider whether the district court erred in its application of *Felix*. In any event, our analysis of the evidence supporting the upward departure is focused on J.J.’s psychological trauma, not on her physical injuries, which are the facts relevant to the elements of the offense.

Thus, substantial psychological trauma is a valid reason for an upward durational departure from the presumptive guidelines range in this case.

B. Exaggeration of Criminality

Antil also argues that the district court erred on the ground that his 206-month sentence unfairly exaggerates the criminality of his offense.

Antil cites *State v. Norris*, 428 N.W.2d 61 (Minn. 1988), in support of this argument. In that case, the supreme court considered “whether a sentence of life imprisonment plus five consecutive terms of 60 months each unduly exaggerates the criminality of appellant’s conduct.” *Id.* at 70. The district court in *Norris* imposed sentences within the presumptive guidelines ranges. *See id.* Antil has not cited any caselaw applying *Norris* to an upward durational departure.

As a general rule, an upward durational departure that is otherwise proper will not be reversed so long as it is no more than “double the presumptive sentence length.” *State v. Evans*, 311 N.W.2d 481, 483 (Minn. 1981). In this case, the presumptive range is 74 to 103 months. Minn. Sent. Guidelines 4.A (2016). The parties agreed that the district court

could impose a sentence of between 74 months and 206 months. The district court imposed a sentence of 206 months, which is within the general rule of *Evans*. Antil urges us to consider whether the general rule of *Evans* still is appropriate in light of his assertion that the sentencing guidelines now provide for more-severe sentences than when the *Evans* opinion was issued in 1981. We decline to engage Antil's argument because any reconsideration of the *Evans* opinion must be undertaken, if at all, by the supreme court, not this court. See *State v. Ward*, 580 N.W.2d 67, 74 (Minn. App. 1998) (stating that court of appeals is "not in position to overturn established supreme court precedent"). We also note that the supreme court declined to address a similar argument 10 years ago. See *Jackson*, 749 N.W.2d at 359-60.

Thus, the district court's imposition of a double upward durational departure does not exaggerate the criminality of Antil's offense.

Before concluding, we note that Antil filed a *pro se* supplemental brief in which he discusses the reasons why he assaulted J.J., the quality of his representation in the district court, and the law-enforcement investigation, among other things. After carefully reviewing his *pro se* brief, we conclude that it does not contain any grounds for reversal.

In sum, the district court did not err by sentencing Antil to 206 months of imprisonment.

Affirmed.