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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1233**

State of Minnesota,
Respondent,

vs.

Dushawn Lee Minor,
Appellant.

**Filed May 11, 2020
Affirmed
Hooten, Judge**

Olmsted County District Court
File No. 55-CR-18-103

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

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Assistant County Attorney,
Rochester, Minnesota (for respondent)

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Considered and decided by Hooten, Presiding Judge; Jesson, Judge; and Klaphake,
Judge.*

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

UNPUBLISHED OPINION

HOOTEN, Judge

In this direct appeal from a judgment of conviction for aggravated robbery, appellant Dushawn Lee Minor argues that the district court abused its discretion when it imposed an upward durational departure because the robbery, which was committed by a group of three or more active participants, did not make Minor's crime more serious than the typical aggravated robbery. We affirm.

FACTS

Late in the evening on December 18, 2017, Rochester police officers responded to a report of a robbery at a tanning salon. When police arrived at the salon, officers met with the victims, who were husband and wife. The wife, who worked at the salon, was sitting upright on the floor, crying and bleeding from her head. The husband was tending to his wife.

The victims informed the police that just past 10:30 p.m., as the wife was locking the front door of the tanning salon, two males—one carrying a large gun—rushed up to her and told her to open the door. The wife opened the salon's door and was escorted by the two males into a back office in which a safe was located. At the same time, a third male approached the husband as he sat in his car in the parking lot and waited for the wife. The third male tapped on the car's window, pointed a gun at the husband, and ushered the husband into the store. The third male kept watch over the husband in the salon's entry area. All three males wore masks.

In the back office, one of the males pointed a gun at the wife and yelled at her to open the safe. Although she knew the code, the wife's hand shook too violently to enter it correctly. The first male yelled at her again to open the safe. When she was not able to do so, the first male cracked the gun across the wife's head. Woozy from the blow, the wife continued to try to open the safe as the second male approached and yelled "we got to go." The wife told the males the code and then blacked out as the salon's alarm blared.

Without opening the safe, the first male and the second male left after taking cash and a cellphone from the wife's purse. All three males stole the husband's car and drove away. The victims did not see the faces of any of the males, yet the entire event was captured by the salon's security cameras.

At a court trial, the prosecution presented evidence that Minor was the third male who pointed a gun at the husband. In its findings of fact, the district court determined that it was reasonable to infer that Minor was the third male involved, and with the help of two other individuals—one known and one unknown—Minor was guilty of one count of aiding and abetting aggravated robbery in the first degree (with a dangerous weapon) and one count of aiding and abetting aggravated robbery in the first degree (infliction of bodily harm), in violation of Minn. Stat. § 609.245, subd. (1) (2016) and Minn. Stat. § 609.11, subd. 5(a) (2016). The presumptive sentence for these offences was 68 months.

At Minor's sentencing hearing, the prosecution requested an upward sentencing departure. The district court agreed and determined that an upward departure was warranted because Minor's crime was more onerous than the typical crime. The district court sentenced Minor to 108 months. Minor appeals.

DECISION

The district court did not abuse its discretion when it imposed an upward durational departure.

Minor argues that the district court abused its discretion when it determined that there were identifiable, substantial, and compelling circumstances that made Minor's conduct significantly more serious than the typical conduct perpetrated in a first-degree aggravated robbery. We review an upward departure from a guidelines sentence for an abuse of discretion. *Tucker v. State*, 799 N.W.2d 583, 585–86 (Minn. 2011).

A district court must impose a sentence within the presumptive sentencing range unless there are “identifiable, substantial, and compelling circumstances” to warrant an upward departure. Minn. Sent. Guidelines 2.D.1 (Supp. 2017). “Substantial and compelling circumstances,” also called aggravating factors, “are those showing that the defendant’s conduct was significantly more . . . serious than that typically involved in the commission of the offense in question.” *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009) (quotation omitted); *see also* Minn. Sent. Guidelines 2.D.3.b (providing a nonexclusive list of aggravating factors used to justify an upward departure). Importantly, a district court need only find one aggravating factor to support an upward durational departure. *State v. Solberg*, 882 N.W.2d 618, 624 (Minn. 2016); *see also* Minn. Stat. § 244.10, subd. 5a(b) (2016) (“[T]he court may order an aggravated sentence beyond the range specified in the sentencing guidelines grid based on any aggravating factor arising from the same course of conduct.”).

One aggravating factor identified in the sentencing guidelines is when an offender commits a crime “as part of a group of three or more offenders who all actively participated.” Minn. Sent. Guidelines 2.D.3.b.(10). In this case, the district court concluded that an upward departure was warranted based on the fact that Minor’s crime was “more onerous than the typical crime; three or more offenders participated in the crime, including strategic planning to commit [the] robbery; and the traumatic physical and psychological harm caused to the victims.” Accordingly, the district court sentenced Minor to 108 months in prison, which was an upward durational departure from the presumptive sentence of 68 months.

Minor does not challenge the district court’s finding that Minor participated in a robbery with two other individuals. Indeed, this determination was supported by the victims’ testimony and video footage from the scene. Instead, Minor only challenges the district court’s upward durational departure. Yet, as an offender committing a crime “as part of a group of three or more offenders” is explicitly identified as an aggravating factor, Minn. Sent. Guidelines 2.D.3.b.(10), and an upward departure may be imposed based on the finding of a single aggravating factor, *Solberg*, 882 N.W.2d at 624, we conclude that the district court was justified in imposing an upward departure based on this finding alone. Thus, the district court did not abuse its discretion when it imposed an upward durational departure.

Two additional substantial and compelling circumstances identified by the district court were the “excessive force used to accomplish the robbery,”¹ and “the traumatic physical and psychological harm caused to the victims.”

The record shows that this was not merely an armed robbery. Rather, one of the three males held a gun at the husband and another male held a gun at, and subsequently hit, the wife’s head during the course of the robbery, causing her to lose consciousness. Adding to the trauma of the crime, the husband was kept away from his wife while she was trapped in the office with two other masked males. Prior to getting hit with the gun, the wife was so scared that she could not physically open the safe despite knowing the code. The wife indicated that as a result of her physical injuries and the trauma of the incident, she continues to suffer from headaches and anxiety. The husband also indicated that his wife obtained a serious brain injury and suffers from constant headaches and memory problems.

As the district court is not constrained by the sentencing guidelines’ identified aggravating factors when imposing an upward durational departure, *see* Minn. Sent. Guidelines 2.D.3.b (providing a nonexclusive list of aggravating factors used to justify an upward departure), we hold that the district court did not abuse its discretion when it also relied on the force used in the commission of the robbery and the resulting physical and psychological harm caused to the victims to further justify Minor’s sentence.

¹ Regardless of whether Minor held a gun or inflicted pain, as he was convicted of aiding and abetting armed robbery, he is criminally liable for the actions of the other males as if he had personally undertaken those actions. *See* Minn. Stat. § 609.05, subd. 1 (2016) (noting that an individual is “criminally liable for a crime committed by another” if the individual “intentionally aids . . . the other to commit the crime”).

Given that the robbery was committed by three or more individuals, and the district court determined that additional substantial and compelling circumstances existed to justify Minor's sentence, the district court did not abuse its discretion when it imposed a 108-month sentence.²

Affirmed.

² Although Minor's 108-month sentence is longer than the presumptive sentence of 68 months, as his sentence is less than twice the presumptive sentence, we need not consider whether severe aggravating circumstances existed so as to justify the departure. *See Dillon v. State*, 781 N.W.2d 588, 596 (Minn. App. 2010) (noting that a greater than double upward departure is warranted only in the rare case where severe aggravating circumstances exist), *review denied* (Minn. July 20, 2010).