

*This opinion is nonprecedential except as provided by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
A21-0321**

State of Minnesota,
Respondent,

vs.

Matthew Lynn Jansen,
Appellant.

**Filed January 3, 2022
Affirmed
Klaphake, Judge ***

Anoka County District Court
File No. 02-CR-19-1001

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

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Klaphake, Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant Matthew Lynn Jansen argues that the district court improperly imposed an upward durational sentencing departure because the zone-of-privacy factor is not satisfied here and, alternatively, if satisfied, it does not provide a substantial and compelling reason for the upward departure. Jansen also argues the district court improperly imposed the upward departure based on facts he neither admitted nor stipulated to. Because the zone-of-privacy factor is satisfied here, we conclude the district court did not abuse its discretion in imposing the upward departure. And because we conclude the district court would have imposed the upward departure absent the facts Jansen alleges are improper, we affirm.

DECISION

The Minnesota Sentencing Guidelines prescribe sentencing ranges that are presumed appropriate for the crimes to which they apply. Minn. Sent. Guidelines 1.A.6, 2.D.1. (2018). The district court can impose a departure from the guidelines “only if aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). The circumstances that underlie the departure are questions of fact for the sentencing jury or, after waiver, for the district court. *State v. Stanke*, 764 N.W.2d 824, 828 (Minn. 2009).

Here, Jansen pleaded guilty to second-degree murder in exchange for the dismissal of the first-degree murder charges. He waived his right to a *Blakely* trial on aggravating

sentencing factors and admitted facts to support the conclusion that he invaded the victim's zone of privacy. *Blakely v. Washington*, 542 U.S. 296 (2004). Jansen also stipulated to the admission of evidence that shows he shot his wife in her bedroom. At sentencing, the district court granted the state's motion for an upward durational departure because the crime was committed in the victim's zone of privacy, sentencing Jansen to 480 months in prison, which is 113 months above the top of the presumptive sentencing range. Jansen challenges the upward sentencing departure.

We review a district court's decision to impose a sentencing departure for abuse of discretion. *State v. Barthman*, 938 N.W.2d 257, 269 (Minn. 2020). But this "is a broad umbrella standard that encompasses varying degrees of deference." *Dillon v. State*, 781 N.W.2d 588, 594 (Minn. App. 2010), *rev. denied* (Minn. July 10, 2010). We review de novo whether the district court has identified proper grounds justifying a challenged departure. *Id.* at 595. We then review the district court's "decision *whether* to depart for an abuse of discretion." *Id.* Review of a district court's decision whether to depart is "extremely deferential." *Id.* at 595-96.

Jansen argues the zone-of-privacy factor is not satisfied here. Because this is a challenge to the grounds identified by the district court justifying the departure, we review this question de novo. *See Dillon*, 781 N.W.2d at 598. The invasion of the victim's zone of privacy is an aggravating sentencing factor that may provide a substantial and compelling reason to depart from the sentencing guidelines. Minn. Stat. § 244.10, subd. 5a(14) (2018). The zone of privacy encompasses a victim's home. *State v. Jones*, 328 N.W.2d 736, 738 (Minn. 1983). But within a shared home, the zone of privacy is limited

to an individual's bedroom. *State v. Mohamed*, 779 N.W.2d 93, 100 (Minn. App. 2010) (“Because [appellant] and [victim] shared a home, the zone-of-privacy aggravating factor is limited to a bedroom within their home.”), *rev. denied* (Minn. May 18, 2010). Here, Jansen repeatedly confirmed that he was stipulating to the state's exhibits that show he fired the second shot within his wife's bedroom and, though he could not remember doing so, he was not contesting that fact. The zone-of-privacy factor is satisfied because the state's exhibits show Jansen shot his wife within her bedroom of their shared home. Thus, the district court did not err in concluding the zone-of-privacy factor was satisfied.¹

Jansen next argues that the satisfaction of the zone-of-privacy factor is not a substantial and compelling reason for the upward durational departure here. This argument challenges the district court's decision whether to impose the sentencing departure. We review that question for abuse of discretion. *Dillon*, 781 N.W.2d at 594. A district court is not required to depart from the sentencing guidelines, even if valid reasons for doing so are present. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018). In *Dillon*, we recognized that the review of a district court's decision whether to depart from the sentencing guidelines is extremely deferential. *Dillon*, 781 N.W.2d at 595-96. There, in 2010, we had “found no case in which this court or the supreme court has overturned a district court's decision to depart (as opposed to its decision of the length of the departure)

¹ Jansen takes issue with *Mohamed* and the line of Minnesota cases holding the zone of privacy extends to a victim's bedroom in a shared residence. But we are bound by our own published opinions. *State v. Chauvin*, 955 N.W.2d 684 (Minn. App. 2021), *rev. denied* (Minn. Mar. 10, 2021). Thus, Jansen's argument fails.

when adequate departure grounds exist.” *Id.* at 596. A single aggravating factor is sufficient to support an upward departure. *Mohamed*, 779 N.W.2d at 97.

Here, Jansen does not dispute the length of his departure. And he cites to no caselaw—and we have found none—that overturns a district court’s decision to impose an upward durational sentencing departure when adequate grounds for the departure exist. *Cf. State v. Parker*, 901 N.W.2d 917, 927-28 (Minn. 2017) (reversing our decision that the zone-of-privacy factor did not support an upward departure where no additional rationale provided substantial and compelling circumstances for the departure and affirming the district court’s imposition of the upward departure based solely on the zone-of-privacy factor). Therefore, the existence of the zone-of-privacy factor is sufficient to support the district court’s decision to impose an upward durational sentencing departure here. Thus, the district court did not abuse its discretion in so doing.

Finally, Jansen argues the district court imposed the upward departure for three reasons: because Jansen (1) killed his wife in her bedroom (the zone-of-privacy factor), (2) killed her on the night before she was moving out, and (3) killed her on the day she buried her mother. Because he neither admitted nor stipulated to the latter two facts, he argues the district court improperly based the departure on facts in violation of *Blakely*. Jansen asserts we must remand because the record does not show that the district court would have imposed the departure on the first reason alone.²

² This is how we interpret Jansen’s argument on appeal. To whatever extent Jansen argues that the second and third factors are not proper aggravating factors because they are not listed in the sentencing statute as aggravating factors, we would apply the same standard and, thus, reach the same conclusion.

As noted above, we review de novo whether the district court has identified proper grounds justifying a challenged departure. *Dillon*, 781 N.W.2d at 595. Improper grounds include facts not admitted by the defendant or proved to a jury beyond a reasonable doubt, or to the district court if the defendant waives their right to a jury. *State v. Rourke*, 773 N.W.2d 913, 920 (Minn. 2009) (citing *Blakely*). When a district court relies on a combination of proper and improper grounds in making its sentencing decision, we “must determine whether the district court would have imposed the same sentence absent reliance upon the improper aggravating factors.” *Mohamed*, 779 N.W.2d at 100 (quotation omitted). To do so, we evaluate “the weight given to the invalid factors and whether any remaining factors found by the court independently justify the departure.” *Id.* Then, “only if we can conclude from the record that the district court would have imposed the same sentence absent its reliance on the improper aggravating factors,” will we affirm the sentence imposed by the district court. *Id.*

We conclude the district court would have imposed the same upward departure here regardless of its reference to the factors Jansen argues were improper. The record shows the focal point of the sentencing agreement and sentencing proceedings was the zone-of-privacy factor. At the sentencing hearing, the district court concluded Jansen invaded his wife’s zone of privacy based on the facts and exhibits stipulated to by Jansen in the sentencing agreement. After doing so, the district court returned to respond to several victim-impact statements. And only after that did the district court state it found the crime “as something significantly more serious than a general second-degree murder” and list the three reasons, two of which Jansen alleges are improper. This is significant for two reasons.

First, it shows the district court's initial and primary reason for imposing the upward departure was the zone-of-privacy factor. Second, it shows the district court did not base its analysis of the zone-of-privacy factor on any allegedly improper facts, which means the zone-of-privacy factor is fully supported by facts Jansen properly admitted or stipulated to, as discussed above. Taking these two reasons together, it is clear the district court assigned little weight to the allegedly improper factors and significant weight to the remaining, proper zone-of-privacy factor. Thus, we conclude that the district court would have imposed the same sentence absent its reliance on the allegedly improper factors. *Cf. Mohamed*, 779 N.W.2d at 100 (remanding because this court could not “discern the weight given to the invalid factors as compared to the valid factor”).

Affirmed.