

*This opinion is nonprecedential except as provided by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
A22-0987**

State of Minnesota,
Respondent,

vs.

Lindsay Rae Shelltrack-Miller,
Appellant.

**Filed July 17, 2023
Affirmed
Reyes, Judge**

Stearns County District Court
File No. 73-CR-21-2557

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues in this direct appeal from a conviction of second-degree unintentional murder that (1) the state failed to prove beyond a reasonable doubt that

appellant did not act in self-defense and (2) the district court abused its discretion by denying appellant's motion for a downward durational departure. We affirm.

FACTS

Appellant Lindsay Rae Shelltrack-Miller and the deceased, Justin Berge, became romantically involved in 2019 and had a volatile relationship. During the late evening of April 18, 2021, and into the early morning hours of April 19, 2021, appellant and Berge argued by text about their relationship.¹

On the morning of April 19, Berge went to appellant's residence, where they continued to argue inside. Berge tried to leave, but upon going outside he saw that his tires had been slashed. He became upset and accused one of appellant's friends of being involved. Appellant then drove him to an auto shop to get supplies to fix his tires.

When they returned, Berge exited appellant's vehicle, slammed the door, and walked to his vehicle to fix his tires.² Appellant exited her vehicle, walked towards Berge, and they argued again. She then walked towards her duplex but stopped and turned around to speak to Berge. Appellant walked towards a garbage can located on the right side of the duplex and stepped out of the sight of the camera to retrieve the garbage can. Appellant stepped back into sight and squirted water on Berge. In response, Berge rolled up his

¹ Appellant did not sleep during this period and had used methamphetamine. Berge also had methamphetamine in his system.

² The following facts are derived from appellant's Night Owl security system video recording which depicted what occurred after appellant and Berge returned from the auto shop without sound. The security system video camera was positioned in the parking area at the rear of the duplex allowing the viewer to see appellant's vehicle parked parallel to Berge's vehicle.

sleeves and walked towards appellant away from his vehicle. Appellant splashed water backwards towards him, turned around and punched Berge with her right hand, dropped her bag, and pulled out her mace. Berge retreated to his vehicle. However, appellant continued to pursue him, so Berge ran across the alley to the neighbors' garage.

Eventually, Berge walked back towards his vehicle. Appellant engaged in conversation with and gestured at Berge. Berge kneeled by the rear driver's side wheel while appellant picked up her belongings, walked towards Berge, and poured the contents of a water bottle on him. Berge got up quickly and threw a Fix-a-Flat aerosol can at her. Appellant reached to get the Fix-a-Flat can, and Berge pushed her away, causing appellant to stagger backward. Appellant then threw a pop can at Berge. Berge picked up the pop can and threw it at appellant. The pop can hit her head and ruptured. At the same time, appellant attempted to mace Berge. Berge immediately ran towards the alley away from appellant.

As Berge ran away from appellant, she pursued Berge across the alley while still holding onto the mace. Appellant grabbed him from behind, trying to reach around his upper right shoulder and face area. Berge turned around and grabbed appellant's sweater, pulling her to the ground. At this point, Berge tried to move away and pick up his belongings that he dropped.

As Berge moved away from appellant, she began kicking him. Berge reached toward appellant and tried to grab her legs, while appellant kicked out and attempted to spray mace in Berge's face. Appellant then unzipped her pouch and reached into it with her left hand, while Berge grabbed her right arm with both hands. Berge retrieved the mace

and appeared to use it on appellant. Appellant grabbed a knife that was in her pouch and stabbed him in the left side of the chest. Berge walked towards his car, began stumbling, and fell to the ground behind his car.

An officer dispatched to respond to the reported stabbing, after arriving on scene, heard appellant's neighbor say, "[s]he stabbed him." Appellant told the officer that the knife was "on the trunk of the car." The officer asked appellant if she had stabbed Berge and she responded, "[y]es Officer." An ambulance arrived and transported Berge to a hospital where he was pronounced dead. An assistant medical examiner determined Berge's cause of death to be "a knife wound that passed through the third intercostal space, into the pericardial sac, and through the left coronary artery." The assistant medical examiner ruled out Berge's weight, heart condition, and the presence of drugs in his system as causes of death.

Respondent State of Minnesota charged appellant with second-degree unintentional murder in violation of Minn. Stat § 609.19, subds. 1, 2(1) (2020), for fatally stabbing Berge. Appellant asserted self-defense, waived her right to a jury trial, and the case proceeded to a court trial on October 25 to 29, 2021. At trial, the district court determined that appellant's claim of self-defense failed and that "the [s]tate ha[d] prove[d] beyond a reasonable doubt that, . . . [appellant] committed the offense of Murder in the Second Degree – Without Intent – Not Premeditated"

Before sentencing, appellant moved for a downward durational departure. At the sentencing hearing, the district court denied appellant's motion and sentenced appellant to prison for 128 months, the lower end of the presumptive range. This appeal follows.

DECISION

I. The state proved beyond a reasonable doubt that appellant did not act in self-defense because appellant was the initial aggressor, and she did not revive her right to act in self-defense.

Appellant argues that her actions were insufficient to make her the first aggressor and that the district court's findings on the revival of self-defense contradicted the law. We are not persuaded.

Because appellant challenges the district court's determination that she did not establish a self-defense claim, this court reviews this issue for sufficiency of the evidence. *See State v. McKissic*, 415 N.W.2d 341, 344 (Minn. App. 1987) (reviewing defendant's argument that state failed to disprove that they acted in self-defense for sufficiency of evidence). Appellate courts use the same standard of review in court trials and in jury trials when evaluating the sufficiency of the evidence. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). "[A]ppellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [fact-finder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). "The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict." *Id.* Witness testimony "is direct evidence when it reflects a witness's personal observations and allows the jury to find the defendant guilty without having to draw any inferences." *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). A video may also be direct

evidence. *See State v. McCormick*, 835 N.W.2d 498, 507 (Minn. App. 2013) (stating that defendant’s reenactment video was direct evidence of what defendant did).

Minnesota law allows a person to use reasonable force against another when the person reasonably believes force is necessary to resist an offense against them. Minn. Stat. § 609.06, subd. 1(3) (2020). The elements of self-defense include:

- (1) the absence of aggression or provocation on the part of the defendant;
- (2) the defendant’s actual and honest belief that he or she was in imminent danger of death or great bodily harm;
- (3) the existence of reasonable grounds for that belief; and
- (4) the absence of a reasonable possibility of retreat to avoid the danger.

State v. Basting, 572 N.W.2d 281, 285 (Minn. 1997) (citations omitted). “The degree of force used in self-defense must not exceed that which appears to be necessary to a reasonable person under similar circumstances.” *Id.* (citations omitted). “A defendant has the burden of going forward with evidence to support a claim of self-defense.” *Id.* (citation omitted). “Once it is raised, the state has the burden of disproving one or more of these elements beyond a reasonable doubt.” *Id.* (citation omitted). The “state need only disprove beyond a reasonable doubt at least one of the elements of self-defense.” *State v. Radke*, 821 N.W.2d 316, 324 (Minn. 2012). A person is the initial aggressor if they “began or induced the incident” by engaging in activity that is a “good deal greater than mere conversation.” *State v. Carridine*, 812 N.W.2d 130, 145 (Minn. 2012) (quotation omitted). “An aggressor in an incident has no right to a claim of self-defense.” *Bellcourt v. State*, 390 N.W.2d 269, 272 (Minn. 1986).

At trial, the district court heard testimony from appellant, the responding officers, and appellant's neighbor. It also received into evidence the surveillance video provided by appellant that showed the stabbing incident. The district court first found that appellant met her burden of production of self-defense. The burden then shifted to the state to disprove at least one element of self-defense. The district court determined that the state had disproved both the absence of aggression or provocation by defendant and the absence of a reasonable possibility of retreat to avoid the danger. Appellant disputes only those two elements of self-defense.

The district court determined that the state had proved "beyond a reasonable doubt that appellant was the initial aggressor." It explained that appellant "fueled the conflict by escalating the confrontation beyond mere conversation." The record shows that appellant began the incident by repeatedly throwing water at Berge, provoking him, and repeatedly pursuing him. Appellant was also the first to present a weapon by trying to mace Berge while pursuing him. In her own words, appellant was feeling "ballsy" at that time

Appellant's neighbor and the surveillance video provided direct evidence that appellant was the initial aggressor. Appellant's neighbor testified at trial that he observed appellant both "dumping water" on Berge and "chasing him" and became concerned. The neighbor further testified that, as he saw appellant chase after Berge and observed Berge "running away from her in a panic," the neighbor ran outside to break them up. Once outside, he saw Berge "lying on his back." The neighbor asked appellant "what's wrong with him" twice and appellant admitted, "well, I stabbed him." Moreover, the district court received into evidence the surveillance video which depicted the incident, and which

supports the finding that appellant began the incident with Berge. Sufficient evidence therefore shows that appellant first elevated the conflict to significantly more than mere words. *See Carridine*, 812 N.W.2d at 145.

Appellant also argues the district court's findings that her right to self-defense was not revived because appellant could not physically withdraw due to Berge's size and strength, and because he pinned her to the ground. Her argument is misguided. When a defendant "is the original aggressor in an incident giving rise to h[er] self-defense claim, an instruction on self-defense will be available to h[er] only if [s]he actually and in good faith withdraws from the conflict and communicates that withdrawal, expressly or impliedly, to h[er] intended victim." *Bellcourt*, 390 N.W.2d at 272. That did not happen here.

Appellant argues that, by telling Berge that she had a knife on her, she withdrew from the conflict. The district court determined that "[appellant's] right to claim self-defense was not revived because she did not clearly manifest a good-faith intention to withdraw from the conflict." The surveillance video shows that after Berge pulled appellant to the ground, he tried to move away and pick up his belongings, but appellant started kicking him. Appellant showed no outward expression that the conflict was over, nor did she discard the mace or any other weapon in her possession. Therefore, Berge had no reason to believe that the conflict was over. The Minnesota Supreme Court has noted that the defendant is at fault and must accept the consequences "[i]f the circumstances are such that it is impossible for [her] to communicate the withdrawal." *Bellcourt*, 390 N.W.2d at 272. Here, appellant created the circumstances that made it impossible for her to

communicate her withdrawal and she did not in good faith withdraw from the conflict. As a result, the evidence was sufficient to disprove self-defense beyond a reasonable doubt.³

II. The district court acted within its discretion by denying appellant’s motion for a downward durational departure and imposing a sentence at the low end of the presumptive range.

Appellant argues that the district court abused its discretion by failing to apply the Military Veteran’s Restorative Justice Act to grant her motion for a downward durational departure. We are not persuaded.

Appellate courts “review a district court’s decision to depart from the presumptive guidelines sentence for an abuse of discretion.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). But issues regarding statutory interpretation are reviewed de novo. *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002). “If the plain language of a statute is clear and free from ambiguity, the court’s role is to enforce the language of the statute and not explore the spirit or purpose of the law.” *Nelson v. Nelson*, 866 N.W.2d 901, 903 (Minn. 2015) (quotation omitted).

“A reviewing court may not interfere with the sentencing court’s exercise of discretion, as long as the record shows the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *State v. Pegel*, 795

³ Because the state is only required to disprove one element of self-defense and the state disproved the “absence of aggression or provocation on the part of the defendant,” we need not address element four of the “absence of a reasonable probability of retreat to avoid the danger of self-defense.” See *Radke*, 821 N.W.2d at 324. Even if we were to address the fourth element, the district court found that appellant had several opportunities to retreat and failed to do so. It found that appellant could have (1) walked away while Berge repaired the tire; (2) gone inside her duplex after the first exchange; (3) walked down the alley away from Berge instead of chasing him; or (4) driven away.

N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). Moreover, the district court need not provide an explanation when it imposes a sentence within the presumptive guidelines range. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. Ct. App. 1985); *see also State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *rev. denied* (Minn. Jul. 20, 2010).

A district court may depart from the guidelines sentence “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) (quotations omitted). “[A] durational departure is a sentence that departs in length from the presumptive guidelines range.” *Solberg*, 882 N.W.2d at 623. “A durational departure must be based on factors that reflect the seriousness of the offense, not the characteristics of the offender.” *Id.* “A downward durational departure is justified only if the defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.” *Id.* (quotation omitted).

The Military Restorative Justice Act (the Act) allows a district court to consider sentencing departures for members or veterans of the United States military found guilty of certain crimes. Minn. Stat. § 609.1056, subd. 4 (2020). To apply the Act, appellant must first show, as a threshold matter, that she engaged in substantial rehabilitative efforts. *Id.* Appellant then must prove by clear and convincing evidence the following three factors: (1) she “suffer[ed] from an applicable condition at the time of the offense”; (2) “the applicable condition was caused by service in the United States military”; and (3) “the offense was committed as a result of the applicable condition.” *Id.*

Here, the sentencing worksheet calculated a presumptive sentence of 150 months with a presumptive range of 128 months to 180 months. The district court sentenced appellant to the lower end of 128 months. Regarding first the application of the Act, appellant did not provide any evidence that she engaged in any rehabilitative efforts. As a result, appellant's argument fails because she cannot meet this threshold statutory requirement. Second, appellant failed to show that she committed the stabbing offense as a result of the trauma that she experienced in the military. Third, the statutory language states that the "[district] court *may* determine that the defendant is particularly amenable to probation and order a mitigated durational or dispositional sentencing departure." Minn. Stat. § 609.1056, subd. 4 (emphasis added). In other words, the district court can consider whether to order a mitigated durational departure but it is not required to do so under this statute.

Finally, the district court noted that it carefully considered the record, including the three escalations that appellant caused with Berge and that each of those escalations was an "independent choice and opportunity to disengage." It also considered appellant telling an officer that she was feeling "ballsy" at that time, appellant's history of trauma, and that a life was lost from this incident. The district court therefore carefully weighed all the evidence and did not abuse its discretion by denying appellant's motion.

Affirmed.