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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1287**

State of Minnesota,
Respondent,

vs.

Mohammed Abdi Dahir,
Appellant.

**Filed August 14, 2023
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-20-16471

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

Mary F. Moriarty, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his convictions of first-degree assault and attempted second-degree intentional murder, arguing that the district court abused its discretion by

(1) permitting the state to present his statement to police through an officer's testimony because the recording of the statement is the best evidence and (2) imposing an upward durational departure. In a pro se supplemental brief, appellant challenges the district court's handling of his mental-illness evaluation and the deliberating jury's request for a transcript of several witnesses' testimony. We affirm.

FACTS

In July 2020, appellant Mohammed Abdi Dahir shared an apartment with A.J., his roommate of several years, and M.J., who had been staying with them for a few months. The evening of July 24, Dahir entered A.J.'s room, telling A.J. that he paid his share of the electricity bill. He approached A.J. and asked about money he owed A.J., which A.J. did not recall. Dahir then pulled out a knife and started stabbing A.J., first in the stomach then all over his body. M.J. heard A.J. screaming from the other room and went to see what was happening. A.J. was partially obscured by the bed, but M.J. could see Dahir standing over him holding what appeared to be a metal object and moving his hand "in a downward motion." M.J. fled and called 911, reporting that two men were "fighting very bad."

Dahir continued stabbing A.J. all over, despite A.J.'s pleas for him to stop. At one point, Dahir left the room and then returned and continued stabbing A.J. After what A.J. estimated to be 20 minutes, Dahir left. A.J. struggled to call 911 because his phone was covered in blood, then struggled to speak because his mouth was full of blood. A.J. told the dispatcher that he had been stabbed and did not think he would survive.

When police arrived, M.J. pointed out Dahir, who was in his car. They detained Dahir and used his keys to enter the apartment. They discovered A.J. inside; his intestines

were protruding from his body, and he had cuts “all over.” And they found a bloody knife in a garbage can. A.J.’s injuries were extensive: an eviscerated bowel; multiple lacerations on his face and head—nose, cheek, left ear, scalp, eyebrows, eyelids, and underneath the eyes—and a fracture to underlying bone; a stab wound to his neck that fractured a vertebra; a stab wound to his right knee that exposed muscle; a stab wound to his chest that fractured a rib; a lacerated spleen and liver; and additional stab wounds to his back, chest, shoulders, elbow, arms, hands, and fingers. Several of the injuries were independently life-threatening, and A.J. required a “massive” blood transfusion and multiple surgeries. Photographs taken of Dahir in police custody reveal only minor hand injuries.

After advising Dahir of his rights, a Minneapolis Police sergeant interviewed Dahir. The recorded interview was partially in English and partially in Somali, with the assistance of an interpreter. Dahir told the sergeant that A.J. was his roommate, they got in a fight “over some type of bill” and were “pushing each other,” and he stabbed A.J. with a knife. Dahir did not know how many times he stabbed A.J. and acknowledged that A.J. did not have a weapon.

Dahir was charged with first-degree assault and attempted second-degree intentional murder. Dahir requested an examination to evaluate a possible mental-illness defense under Minn. R. Crim. P. 20.02. The evaluator did not support the defense.

At trial, A.J. and M.J. testified about the incident, and the jury heard both men’s 911 calls. A.J. described the nature and long-term effects of his injuries, and a nurse testified about the extent of A.J.’s injuries and his treatment. The sergeant testified about his interview with Dahir. Dahir objected that the state should present the full recording of the

interview under the best-evidence rule. But the district court overruled the objection, and the sergeant recounted Dahir's statements to him.

Dahir testified in his own defense. He described tension with his roommates over financial concerns in July 2020 and an incident the prior month in which A.J. lunged toward him with a knife. Regarding the incident in question, Dahir testified that A.J. initiated the altercation by yelling about paying the electric bill and grabbing him. Dahir tried to escape through the kitchen, but A.J. pursued him. Dahir picked up a knife, which he used to "pok[e]" A.J. after A.J. got a hold of him and began squeezing. When A.J. tackled him to the floor, punched him, and attacked his eyes, Dahir "scraped" the knife "along [A.J.'s] abdomen." Dahir then wanted to go to a "safe spot" and heard A.J. calling 911, so he left the apartment and went to his car to wait for police.

On the first day of deliberations, the jury sent a note to the district court requesting "testimony from" M.J., A.J., Dahir, and "police," and the police interviews with Dahir and A.J. The district court described the request as "basically [asking for] a transcript of the trial" and noted that none of the recorded police interviews were introduced in evidence. Upon the agreement of the prosecutor, defense counsel, and Dahir, the district court told the jury: "[Y]ou should rely on the evidence presented during the trial. You may rely on your recollection and the notes that you took during the trial. To the extent that you are requesting a transcript of testimony, no such transcript exists."

The jury found Dahir guilty on both counts. The state sought an aggravated sentence based on particular cruelty. Dahir waived his right to a sentencing jury, and the district court found that Dahir acted with particular cruelty as reflected in the manner and extent

of the attack. The district court sentenced Dahir to 240 months' imprisonment for the attempted-murder conviction.¹

Dahir appeals.

DECISION

I. The district court did not abuse its discretion by permitting the state to present Dahir's statements to police through testimony rather than the recording.

We will not reverse a district court's evidentiary ruling absent an abuse of discretion. *State v. Robertson*, 884 N.W.2d 864, 872 (Minn. 2016). A district court abuses its discretion if its decision is based on an error of law or is "against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). The party challenging an evidentiary ruling must demonstrate both abuse of discretion and resulting prejudice. *Dolo v. State*, 942 N.W.2d 357, 362-63 (Minn. 2020).

Under the best-evidence rule, a party seeking to introduce a writing, recording, or photograph must prove its content with "the original." Minn. R. Evid. 1002. The rule generally "prohibits the introduction of secondary evidence to establish the contents" of a writing or recording if the original is "available." *State v. DeGidio*, 152 N.W.2d 179, 180 (Minn. 1967). But in *State v. Bauer*, where an officer testified about statements the defendant made during a recorded interview, our supreme court held that the best-evidence rule does not require admission of the original recording if a witness with first-hand knowledge of the conversation is available to testify. 598 N.W.2d 352, 368 (Minn. 1999)

¹ The presumptive sentence is 130 to 183 months' imprisonment. Minn. Sent'g Guidelines 2.G.2, 4.A (2018).

(citing Minn. R. Evid. 602), *overruled on other grounds by State v. McCoy*, 682 N.W.2d 153, 160 n.6 (Minn. 2004).²

Dahir argues that *Bauer* compels admission of the recording of his police interview. He highlights a sentence that notes Bauer did not “point[] to any inaccuracies in the officers’ testimony or provide[] evidence that the testimony was in any way misleading.” *See id.* He asserts that this language means a recording is required to prove a defendant’s statements to police when the officer’s testimony about the statements is misleading. And he contends this is such a case because the interpreter had some difficulty understanding and conveying Dahir’s words. This argument is unavailing.

The sergeant testified that there were some “difficulties” with the interpreter and “back and forth about what certain words meant.” But Dahir did not object to any aspect of the sergeant’s account of the interview as inaccurate or misleading. To the contrary, he acknowledged that he was not claiming the sergeant misrepresented his statements, only that “in an ideal world” the whole recording would be played “for completeness.” And while Dahir now contends the sergeant’s testimony about the interview was misleading because it did not “capture the back-and-forth between Dahir and the interpreter,” he identifies no inaccuracies in the sergeant’s testimony. Because *Bauer* addresses this very circumstance, we discern no abuse of discretion by the district court in rejecting Dahir’s best-evidence challenge.

² Similarly, Minn. R. Evid. 106—which provides that when a party introduces part of a “recorded statement” the adverse party may seek to introduce other portions—does not apply when no part of the recording is introduced as evidence. *Bauer*, 598 N.W.2d at 368; *see Dolo*, 942 N.W.2d at 364-65.

Moreover, Dahir has not demonstrated prejudice. An erroneous evidentiary ruling is prejudicial when “there is a reasonable possibility that without the error the verdict might have been more favorable to the defendant.” *State v. Miller*, 754 N.W.2d 686, 703 (Minn. 2008) (quotation omitted). Dahir contends the jury would have been more likely to credit his claims of self-defense and lack of intent to kill had it heard the interview recording. The record defeats this contention. Dahir admitted at trial that he told the sergeant he fought with A.J., who was unarmed, and stabbed him. He did not recant those statements but claimed that A.J. was the aggressor, he merely defended himself, and the recording would prove that he relayed these facts to the sergeant. But even if the recording confirmed that he made these statements to the sergeant, we are not convinced presenting it to the jury would have yielded Dahir a more favorable verdict. The extensive and severe injuries Dahir inflicted all over A.J.’s body and Dahir’s minor hand injuries belie his claim to have acted defensively. In sum, nothing in the record persuades us that admitting the interview recording would have presented a reasonable possibility of a more favorable verdict.

II. The district court did not abuse its discretion by imposing an aggravated sentence.

A district court must impose a sentence within the Minnesota Sentencing Guidelines’ presumptive range unless it finds substantial and compelling circumstances to depart. *State v. Barthman*, 938 N.W.2d 257, 270 (Minn. 2020). A durational departure must be based on factors that reflect the seriousness of the offense. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). It cannot be based on facts already accounted for as elements of the offense. *State v. Meyers*, 869 N.W.2d 893, 897 (Minn. 2015). We will

affirm an upward departure if the district court's reasons for the departure are legally permissible and factually supported. *State v. Hicks*, 864 N.W.2d 153, 156 (Minn. 2015).

Treating a victim with “particular cruelty” is a recognized basis for an upward sentencing departure. Minn. Sent’g Guidelines 2.D.3.b(2) (2018); *Barthman*, 938 N.W.2d at 270. A violent offense like murder or attempted murder “is by nature a cruel act.” *State v. Schroeder*, 401 N.W.2d 671, 674 (Minn. App. 1987), *rev. denied* (Minn. Apr. 23, 1987). Such an offense is distinguished as particularly cruel only when “the cruelty associated with the crime . . . is of a kind not usually associated with the commission of the offense in question.” *Tucker v. State*, 799 N.W.2d 583, 587 (Minn. 2011) (quotation omitted); *see also State v. Cox*, 343 N.W.2d 641, 645 (Minn. 1984) (stating that an offense is particularly serious when it involves “gratuitous cruelty which was unjustified within the context of the crime”). An attempted murder is particularly cruel when the defendant “did more than attempt to murder the victim,” such as by “inflicting unusual pain and injury.” *Schroeder*, 401 N.W.2d at 674.

Dahir contends the district court abused its discretion by imposing an aggravated sentence because its finding of particular cruelty was based on “the same facts . . . used to prove the element of intent to kill.” Dahir is correct that a district court may not impose an aggravated sentence for attempted murder based on intent to kill because that fact is already accounted for as an element of the offense. *See Meyers*, 869 N.W.2d at 897. But he identifies no caselaw precluding a district court from finding that evidence that a defendant inflicted extensive and serious injuries, several of which were independently life-threatening, proves not only the element that the defendant intended to kill but also the

additional fact that the defendant went well beyond what was necessary to achieve that end and inflicted gratuitous pain and violence.

The district court recognized this distinction by aptly noting that “cruelty is a matter of degree.” And its findings reflect its determination that Dahir’s attack on A.J. was not a typical attempted murder; it was particularly cruel in two ways. First, the court noted that Dahir stabbed A.J. “multiple times, left, came back and stabbed him some more.” Second, it noted that Dahir inflicted injuries along “multiple planes of the body,” including “the C1 vertebrae was fractured, the spleen and liver were lacerated,” and there were “injuries to the face, back of the scalp, face fractures, neck, chest, rib fractures, shoulders, both arms, right knee, left knee, stomach, and cuts on the eyelids,” causing extensive blood loss and “permanent and serious” damage. Dahir does not dispute any of these findings.

In sum, because the facts of Dahir’s attack on A.J. are undisputed and support the district court’s determination that Dahir inflicted gratuitous pain and violence, beyond that typical in an attempted murder, the district court did not abuse its discretion by imposing an aggravated sentence for the attempted-murder conviction.

III. Dahir is not entitled to relief based on his pro se arguments.

In his pro se supplemental brief, Dahir assigns two additional errors: (1) denial of the court-appointed evaluator’s request for additional evidence in conducting her rule 20.02 examination and (2) denial of the jury’s request for a transcript. We address each in turn.

Rule 20.02 Evidence

At Dahir’s request, the district court appointed an evaluator under Minn. R. Crim. P. 20.02 to assess Dahir’s mental state at the time of the offense. After interviewing Dahir

with an interpreter and reviewing the police reports and investigative materials, the evaluator asked to interview A.J. and M.J. because “she did not feel that she had sufficient information to make a determination.” She acknowledged that she had never made such a request during her 20 years of practice, but felt it was justified because of “interpreter issues” and a witness’s statement that “led [her] to think that there was incomplete information.” The district court denied the request as exceeding the scope of a rule 20.02 evaluation. The evaluator thereafter submitted a report opining that Dahir knew what he was doing and knew right from wrong at the time of the offense.

Dahir now contends the district court “violated Rule 20.02, subd. 2,” by denying the evaluator’s request to interview the two witnesses. This argument calls for interpretation of the rule, which presents a question of law that we review de novo based on the rule’s plain language. *State v. Lugo*, 887 N.W.2d 476, 482 (Minn. 2016).

Rule 20.02 provides that the court-appointed examiner’s role is “to examine the defendant and report to the court on the defendant’s mental condition.” Minn. R. Crim. P. 20.02, subd. 2. Likewise, if a party retains an examiner, that examiner’s role is simply to “observe” the court-appointed examiner’s examination and “examine the defendant.” *Id.* Nothing in the plain language of the rule authorizes an examiner to interview witnesses. Dahir does not identify and we have not discovered any caselaw that permits a rule 20.02 examiner to interview witnesses as part of assessing the defendant’s mental condition.

Moreover, any error in denying the request was harmless and therefore does not require reversal. Minn. R. Crim. P. 31.01. Dahir contends the additional interviews might have led the examiner to conclude he has a mental illness. But even if that were the case,

he does not claim that he did not know his actions were morally wrong, let alone that the requested interviews would have established that required element of a mental-illness defense. *See State v. Roberts*, 876 N.W.2d 863, 868 (Minn. 2016). Accordingly, Dahir has not demonstrated that he is entitled to relief based on the district court’s denial of the examiner’s request to interview A.J. and M.J.

Transcript

Dahir argues that the district court erred by denying the jury’s request for a transcript of the witnesses’ testimony and instructing the jurors that no transcript exists. “If the jury requests review of specific evidence during deliberations, the court may permit review of that evidence after notice to the parties and an opportunity to be heard.” Minn. R. Crim. P. 26.03, subd. 20(2)(a). Where, as here, the appellant did not object to or acquiesced in the district court’s decision, we review only for plain error. *State v. Young*, 710 N.W.2d 272, 284 (Minn. 2006). Under the plain-error standard, an appellant must demonstrate (1) error, (2) that is plain, and (3) that affects their substantial rights. *State v. Davis*, 864 N.W.2d 171, 176 (Minn. 2015). An error is plain if it is “clear or obvious,” such as if it “contravenes case law, a rule, or a standard of conduct.” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). If the appellant demonstrates plain error, we “may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Davis*, 864 N.W.2d at 176 (quotation omitted).

Minn. R. Crim. P. 26.03, subd. 20(2)(a), provides that a district court “may” grant a jury’s request to review “specific evidence.” The rule does not require the district court to do so under any circumstance. And the only controlling authority Dahir cites in support of

his argument, *State v. Spaulding*, does not impose such a requirement; it simply requires a district court to exercise its discretion rather than preemptively precluding any review of testimony. 296 N.W.2d 870, 878 (Minn. 1980). *Spaulding* also is distinguishable because that case involved a request to review the 35 pages comprising the defendant’s testimony, *id.*, while the request here was for testimony amounting to more than 200 transcript pages. The supreme court “has made it clear that, when the jury requests review of numerous pages of transcript, the trial court may deny the request.” *Young*, 710 N.W.2d at 284-85 (quotation omitted). Given the language of the rule and applicable caselaw, Dahir has not demonstrated that the district court committed plain error by instead providing the agreed-upon instruction reminding the jurors to rely on their notes and recollections.

Moreover, the record confirms that the decision did not impair Dahir’s substantial rights. The jury requested the transcript on the first day of deliberations and did not indicate that a transcript was needed to recall certain matters or to help resolve a deadlock. *Cf. Spaulding*, 296 N.W.2d at 877 (noting that jury requested testimony because they were deadlocked). With the parties’ agreement, the district court denied the request the next day. The jury returned a verdict later that same day, showing that the jury did not struggle to reach a verdict without being reminded of the requested testimony. This result makes sense. The overwhelming evidence against Dahir—including his admission to fighting with and stabbing an unarmed A.J., and the evidence of A.J.’s extensive, life-threatening injuries—belies Dahir’s claim to have acted defensively. On this record, Dahir has not demonstrated that he is entitled to relief.

Affirmed.