

*This opinion is nonprecedential except as provided by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
A23-1765**

State of Minnesota,
Respondent,

vs.

Terrell Joseph Salazar,
Appellant.

**Filed November 12, 2024
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-22-13246

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

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, 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 Harris, Presiding Judge; Larkin, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this appeal from a judgment of conviction for attempted second-degree murder, appellant asks us to reverse his conviction and remand for a new trial, arguing that the district court erred by admitting unnecessarily cumulative evidence. Alternatively, he

argues that the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

FACTS

The state charged appellant Terrell Joseph Salazar with second-degree attempted murder after he stabbed a man, NH, multiple times following an altercation at a party. At the ensuing jury trial, the defense claimed that Salazar was not the person who stabbed NH. A summary of the trial evidence follows.

NH testified that he first met Salazar in February 2022, and that he met him a second time around April. OM, the mother of Salazar's son, invited NH to a barbecue in May 2022. At the barbecue, NH interacted with Salazar and saw that he was wearing a dark blue Timberwolves jersey. Salazar and NH had a verbal exchange. Salazar was intoxicated and behaving aggressively, and he threw a beer can at NH. NH tried to fight Salazar, and family members attempted to separate the two. Salazar "jumped over a couple people" and hit NH twice. A melee involving other individuals ensued.

NH then followed a woman, GF, into the backyard and towards his car. NH "heard the sliding glass door slam open" and heard GF yell, "You better not stab him." NH turned around and saw Salazar running at him. NH told Salazar, "[I]t's not worth it, you got your son here, . . . go home." NH saw that Salazar was holding a red pocketknife. Salazar told NH he was "not going to leave here tonight" and proceeded to stab NH several times. GF called 911.

Officer Moua testified that he was dispatched to the scene around 10:40 p.m. and rendered aid to NH. He testified that it was “dark out.” Officer Gul testified that he followed NH to the hospital and asked him who stabbed him, and NH said it was “Terrell.”

Detective Vesey testified that he interviewed NH, and NH identified “Terrell” as the person who stabbed him. During the interview with Detective Vesey, NH explained that he had been dating OM, the mother of Salazar’s child, and that although the relationship had ended, Salazar was trying to exert some “dominance” at the party.

Officer Luckey testified that he spoke to GF after arriving at the scene, and the district court received a portion of his body-camera video into evidence. The video shows GF implicating Salazar as the perpetrator.

The state offered GF’s 911 call as evidence, and the defense objected, arguing that it would be “cumulative” to evidence introduced via Officer Luckey’s body-camera video. The district court overruled the objection and admitted a recording of the 911 call into evidence.

GF testified and implicated Salazar as the perpetrator. She testified that it was “really dark” and that she was using the flashlight on her phone to see. She testified that she saw “a figure” approaching wearing a Timberwolves jersey. She testified that the person approaching was Salazar and that she recognized his face. She testified that Salazar then stabbed NH.

After GF testified, the state moved to introduce an additional portion of Officer Luckey’s body-camera video as a prior consistent statement by GF. The defense objected to the additional evidence as cumulative, but the district court overruled that objection.

The state recalled Officer Luckey, and the district court admitted an additional portion of his body-camera video into evidence. During the video, GF gave a more detailed account of the events at the party and Salazar’s stabbing of NH. For example, she stated that she told Salazar not to “cut” her when she saw his knife with her phone’s flashlight, and she stated that she warned Salazar to go home and that he would “go to jail” if he stabbed NH.

The jury found Salazar guilty as charged. Salazar moved for a durational and dispositional sentencing departure. The district court denied his motion and sentenced him to serve 153 months in prison.

Salazar appeals.

DECISION

I.

Salazar contends that the district court erred by admitting “needlessly cumulative evidence,” specifically, the recording of GF’s 911 call and the additional portion of Officer Luckey’s body-camera video.

We review rulings regarding the admissibility of evidence for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). On appeal, a party claiming error must establish that the district court abused its discretion and that the party was thereby prejudiced. *Id.* An abuse of discretion occurs when a district court’s decision is based on an incorrect view of the law or is against logic and the facts in the record. *State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn. 2020).

Under Minn. R. Evid. 403, a district court may exclude otherwise relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” A district court does not abuse its discretion by admitting cumulative evidence that is “only marginally repetitive” and “highly probative.” *State v. Schulz*, 691 N.W.2d 474, 480 (Minn. 2005).

The central issue at trial in this case was the credibility of NH’s and GF’s nighttime identifications of Salazar as the person who stabbed NH. In the brief 911 call, GF stated that the person who had stabbed NH was Black, had gone “in the house,” and was wearing a “blue wolf jersey.” In the additional portion of Officer Luckey’s body-camera video, GF provided additional details regarding Salazar’s stabbing of NH. For example, she relayed several verbal exchanges between herself and “Terrell,” adding credibility to her claim that she was able to positively identify Salazar as the person who stabbed NH. In overruling the defense’s objection to that evidence, the district court effectively reasoned that the evidence was not unnecessarily cumulative because it refuted Salazar’s defense that he was misidentified as the perpetrator.

Throughout the trial, the defense challenged the witnesses’ identification of Salazar. During its opening statement, the defense emphasized that it was dark and that there were no streetlights in the area. During its cross-examination of NH, the defense challenged NH’s memory of the events and his claim that he could see his attacker. During its cross-examination of GF, the defense challenged her memory of the lighting conditions and her identification of Salazar.

Given the defense’s efforts to discredit the two eyewitnesses who identified Salazar, evidence bolstering the credibility of their identifications was not unnecessarily cumulative. Instead, it was highly probative regarding the identity of the perpetrator, which was the central issue at trial. Because the evidence at issue was only marginally repetitive but highly probative, the district court did not abuse its discretion in admitting the evidence. *See Schulz*, 691 N.W.2d at 480.

II.

Salazar contends that the district court abused its discretion by denying his request for a dispositional departure.

The Minnesota Sentencing Guidelines establish presumptive sentences for criminal offenses and seek to “maintain uniformity, proportionality, rationality, and predictability in sentencing.” Minn. Stat. § 244.09, subd. 5 (2020). “Consequently, departures from the guidelines are discouraged and are intended to apply to a small number of cases.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A district court may depart from the presumptive sentence only when there are “identifiable, substantial, and compelling circumstances to support a departure.” Minn. Sent’g Guidelines 2.D.1 (Supp. 2021).

If substantial and compelling circumstances exist, the district court has broad discretion to depart, and we generally will not interfere with the exercise of that discretion. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). This court will reverse the district court’s refusal to depart from the presumptive sentence only in a “rare” case. *Id.* We will not reverse the district court’s refusal to depart “as long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a

determination.” *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

When considering a dispositional departure, the district court focuses “more on the defendant as an individual and on whether the presumptive sentence would be best for him and for society.” *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). A defendant’s particular amenability to probation can justify a downward dispositional departure from a presumptive sentence. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). The requirement of particular amenability ensures that “the defendant’s amenability to probation distinguishes the defendant from most others and truly presents the substantial and compelling circumstances that are necessary to justify a departure.” *Id.* at 309 (quotation omitted).

Relevant factors for determining whether the defendant is particularly amenable to probation include the defendant’s age, prior criminal record, remorse, cooperation, attitude in court, and support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). Even if there is evidence that the defendant would be particularly amenable to probation, a district court is not required to grant a dispositional departure. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009).

In seeking a dispositional departure, Salazar asserted that he was particularly amenable to probation. The presentence investigation report (PSI) recommended a sentence of 183 and one-half months in prison, a sentence at the top of the presumptive range, because the offense was “more significant.” The PSI noted Salazar’s prior criminal record, which included a juvenile felony-robbery offense, several adult misdemeanor

charges and convictions, and a pending felony domestic-assault-by-strangulation offense. The PSI also noted that Salazar denied responsibility for the stabbing, claimed he was innocent, and did not accept responsibility for his actions. Finally, the PSI indicated that Salazar presented a risk to community safety.

At sentencing, the district court stated that it had reviewed the PSI and the statements provided in support of Salazar, including “a family statement, a statement from Gillette’s children’s hospital and also a statement . . . from [Salazar’s] grandparents.” The court heard from Salazar and his attorney. Salazar’s attorney argued that Salazar was particularly amenable to probation because he had been successful on electronic home monitoring, had followed probation’s rules, had demonstrated a desire to remain sober, and was engaged in his son’s life.

The district court denied Salazar’s motion, explaining:

I respectfully disagree with your lawyer. This was extremely serious. You almost took [NH’s] life, and that’s what the jury found. He was stabbed numerous times. He sustained a fatal stab wound to one of his major arteries. Was it not for almost immediate medical intervention, he would have died, and we’d be here potentially considering a much, much, much longer sentence.

I don’t know what led you to do this on that day. I know that -- I believe it was [GF who] told you to just walk away, [and NH] tried to walk away. And I don’t know if you were angry or whether it was the alcohol. But you almost took someone’s life, and there has to be a consequence for that.

I, frankly, don’t see a reason for a departure. I think this is properly an attempted murder case, and I think I have to sentence that accordingly to what happened that day. And I just ask . . . that you don’t give up on yourself or your family. You have a lot to live for. You’re a young person. But there has to be a consequence for what happened to [NH] that night

Salazar asserts that the district court improperly focused “only on the severity of the offense and the need for punishment.” We disagree. The district court carefully considered the parties’ arguments for and against departure and all of the information presented, and it ultimately concluded that Salazar was not particularly amenable to probation. Although the district court emphasized the severity of the offense, it also considered Salazar as an individual and his amenability to probation, as evidenced by the court’s consideration of the PSI and the other information presented. *See Pegel*, 795 N.W.2d at 255. The district court reasonably concluded that a departure was not warranted. This is not a “rare” case in which the district court abused its discretion by imposing a presumptive sentence.

Affirmed.