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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1298**

State of Minnesota,
Respondent,

vs.

Kayvon Julian Madison,
Appellant.

**Filed July 27, 2026
Affirmed
Segal, Judge*
Dissenting, Harris, Judge**

Hennepin County District Court
File No. 27-CR-23-26000

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Considered and decided by Wheelock, Presiding Judge; Harris, Judge; and
Segal, Judge.

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

NONPRECEDENTIAL OPINION

SEGAL, Judge

In this direct appeal from the judgment of conviction for second-degree intentional murder, appellant Kayvon Julian Madison challenges the district court's decision to impose an upward sentencing departure based on the aggravating factor that Madison's conduct created a greater-than-normal danger to others. We affirm.

FACTS

The following is a summary of facts taken from the record and evidence submitted at the *Blakely* trial.¹ In December 2023, Madison and several guests attended a birthday dinner for Madison's brother, T.M., at a restaurant in a strip mall. After dinner, Madison, T.M., D.R., J.M., and one other guest left the restaurant and, while in the parking lot, took photos with each other and started saying their goodbyes. As D.R. began to leave with J.M., Madison approached D.R. In a surveillance video, Madison can be seen gesturing with his hand toward D.R., which D.R. appeared to slap away. J.M., who was standing away from Madison and D.R., then walked back so that he was standing shoulder to

¹ Under *Blakely v. Washington*, 542 U.S. 296, 303 (2004), a criminal defendant has a Sixth Amendment right to have a jury determine additional facts necessary to support an upward sentencing departure. See also *State v. Shattuck*, 689 N.W.2d 785, 786 (Minn. 2004) (applying *Blakely* in Minnesota); *State v. Rourke*, 773 N.W.2d 913, 919 (Minn. 2009) (noting that "[c]onsistent with *Blakely*, Minn. Sent. Guidelines I.D provides that a district court must afford the accused an opportunity to have jury trial on the *additional facts* that support the departure and to have the facts proven beyond a reasonable doubt" (quotation omitted)).

shoulder with D.R., on D.R.'s left side. J.M. had his right hand on D.R.'s left shoulder when Madison pulled a firearm from his waistband and shot D.R. five times.²

Madison was standing a few feet away from D.R. and testified during his plea colloquy that he was aiming at D.R.'s chest. The autopsy report noted that one of the bullets hit D.R. on the left side of his face, two bullets hit him on the left side of his neck, one bullet hit him on the left side of his shoulder, and one bullet hit him in his left upper chest. The trajectories of the bullets ranged from slightly upward to downward, with two of the bullets exiting D.R.'s body. Madison was facing D.R. when he shot him. Directly behind D.R., and thus in the direction that Madison was shooting, was the restaurant where the group had dinner. The restaurant had plate-glass windows and people were inside the restaurant at the time of the shooting. In addition, people from the birthday gathering were nearby when the shots were fired, albeit not in the direct line of fire. Three other people, who were not at the birthday dinner, are also visible in the video. They can be seen running away after the shots were fired but were also not in the direct line of fire. D.R. died as a result of the shooting.

Respondent State of Minnesota charged Madison with second-degree intentional murder. The state also gave notice of its intent to seek an upward sentencing departure on the grounds that Madison's conduct created a greater-than-normal danger to others in the general area.

² Madison had a permit to carry a firearm.

Madison pleaded guilty to the charged offense. The plea was entered as a straight plea, with the understanding that the state would seek an upward durational departure and Madison would seek a downward durational departure. Madison waived his right to have a jury trial on the aggravating factor, and the *Blakely* issues were submitted for trial to the court. At the *Blakely* trial, the state presented testimony from J.M., along with the medical examiner's autopsy report, the sheriff's forensic laboratory exam report, photographs of the crime scene, and video from surveillance cameras. The district court issued a written order, findings of fact and conclusion of law, in which it concluded that the state had proved beyond a reasonable doubt that Madison's conduct involved a "greater-than-normal danger to others in a general area."

At the sentencing stage, Madison moved for a downward durational departure, citing his lack of a criminal record, abuse he suffered as a child, cognitive impairments, and his remorse. He also argued that D.R. was the aggressor because he slapped down Madison's hand. The state moved for an upward departure, seeking the statutory-maximum sentence of 480 months, which is 113 months above the top of the presumptive range. The district court denied Madison's motion, granted the state's motion, and imposed a sentence of 403 months, which is an upward departure of 36 months above the top of the presumptive range. The district court explained that an upward departure was appropriate because Madison brought a loaded firearm into "a very public place" and placed innocent bystanders in danger by firing it "numerous times in front of other people."

DECISION

On appeal, Madison challenges the upward sentencing departure, arguing that the state failed to meet its burden of proof to establish that the offense caused a greater-than-normal danger to others than a typical second-degree intentional murder.³ He argues that the evidence must be reviewed under the circumstantial-evidence standard and, when reviewed under that standard, “the evidence does not eliminate the rational hypothesis that [his] conduct put only D.R.—[Madison’s] intended victim—at risk.” Madison also argues that the district court committed errors of law and that the sentence was excessive because the district court failed to accord sufficient weight to mitigating factors.

Appellate courts “review a decision by the district court ‘to depart from the presumptive guidelines sentence for an abuse of discretion.’” *State v. Robideau*, 796 N.W.2d 147, 150 (Minn. 2011) (quoting *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009)). Under that standard, appellate courts are to affirm a departure “[i]f the reasons given for an upward departure are legally permissible and factually supported in the record.” *Edwards*, 774 N.W.2d at 601. Here, neither side disputes that the aggravating factor relied on by the district court—a greater-than-normal danger to others in a general area—is a legally permissible ground for an upward departure. See *State v. Fleming*, 869 N.W.2d 319, 326 (Minn. App. 2015), *aff’d*, 883 N.W.2d 790 (Minn. 2016) (“An offense may be more serious than a typical crime when a large number of people are placed at risk or more people are put in fear than in the typical case.”); *Edwards*, 774 N.W.2d at 607

³ Madison did not appeal the denial of his motion for a downward durational departure.

(noting that the supreme court has “repeatedly held that the risk to bystanders is an appropriate factor for courts to consider when determining the seriousness of a crime”). The central issue in this appeal is thus whether the evidence supports that factor.

In our analysis, we address first the issue of whether the district court’s reason for the upward departure is factually supported in the record and then address Madison’s arguments that the district court committed errors of law and failed to give proper weight to the presence of mitigating factors.

I. The aggravating factor of greater-than-normal danger to others is factually supported in the record.

To determine whether an aggravating factor is factually supported in the record, the parties agree, at least for the purposes of this appeal, that we are to apply the standard of review for sufficiency-of-the-evidence challenges to guilty verdicts. *See, e.g., State v. Cindrich*, No. A07-0261, 2008 WL 2885706, at *2 (Minn. App. July 29, 2008), *rev. denied* (Minn. Oct. 21, 2008); *State v. Welch*, No. A06-1411, 2007 WL 1470490, at *2 (Minn. App. May 22, 2007), *rev. denied* (Minn. Aug. 7, 2007).⁴ As the state notes, there are no precedential opinions articulating the standard of review for a challenge to the factual support for an upward departure, but we will assume for the purposes of this appeal that the “sufficiency-of-the-evidence” standard is the applicable standard.

Under a “sufficiency-of-the-evidence” standard, review by appellate courts is limited to a “painstaking analysis of the record to determine whether the evidence, when

⁴ Nonprecedential opinions may be cited for their persuasive value. *See* Minn. R. Civ. App. P. 136.01. subd. (1)(c).

viewed in a light most favorable to the conviction, was sufficient to permit the [fact-finder] to reach the verdict that [it] did.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (citing *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989)); see *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (providing that the same standard of review is applicable for assessing sufficiency of the evidence for court trials as jury trials). Appellate courts will thus affirm “if the fact-finder, upon application of the presumption of innocence and the [s]tate’s burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016).

Applying that standard here, the question is whether the district court could reasonably have found that Madison’s conduct created a greater-than-normal danger to others than the typical second-degree intentional murder based on the evidence presented. Madison argues that, in making this determination, we must apply the formula for assessing circumstantial evidence. Under that formula, we are to “use a heightened two-step process to review the sufficiency of the evidence.” *State v. Segura*, 2 N.W.3d 142, 155 (Minn. 2024). At the first step, appellate courts “winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury’s verdict, which results in a subset of facts that constitute the circumstances proved.” *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026) (quotation omitted). And, “[a]t the second step, [appellate courts] consider whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.*

(quotation omitted). Appellate courts are to reverse “[i]f a reasonable inference other than guilt exists.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

The state maintains that the circumstantial-evidence formula is not applicable here because the state relied on direct evidence to establish the basis for the aggravating factor, including personal observations by J.M., surveillance video, crime-scene photographs, and the medical examiner’s autopsy and sheriff’s forensic laboratory exam reports. *See State v. Brazil*, 906 N.W.2d 274, 278-79 (Minn. App. 2017) (explaining that “direct evidence is based on personal knowledge or observation” and that evidence “is direct when it directly addresses the fact in dispute”).

Madison argues that the circumstantial-evidence formula is applicable because the district court was required “to draw inferences about the danger posed by Madison’s conduct.” But this argument conflates the manner of proof of the elements—direct or circumstantial—with the role of the district court in interpreting and applying the evidence presented. “That some inference is required for the fact-finder to interpret the evidence does not render otherwise direct evidence circumstantial.” *Id.* at 279; *see also Rourke*, 773 N.W.2d at 920-21 (stating that an “aggravating factor is a reason explaining why the *facts* of the case provide the district court a substantial and compelling basis for imposition of a sentence outside the range on the grid”). Madison’s argument essentially asks us to reweigh the evidence and substitute our judgment for that of the district court. That is not our role. *See State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009) (stating that appellate courts may not re-weigh evidence); *State v. Robinson*, 536 N.W.2d 1, 2 (Minn. 1995) (rejecting defendant’s request to re-weigh the evidence). As Madison acknowledges, the standard of

review of a departure decision is for an abuse of discretion. *Robideau*, 796 N.W.2d at 150. We thus conclude that the circumstantial-evidence formula is not applicable here.

We turn next to an analysis of whether the aggravating factor is factually supported in the record—i.e., whether the district court “could reasonably have found” that Madison’s conduct presented a greater-than-normal danger to others. *Griffin*, 887 N.W.2d at 263. Here, the evidence shows that Madison shot D.R. not once, but five times in rapid succession. Madison attested during his plea colloquy that he aimed his shots at D.R.’s chest, but the autopsy report details that only one of the bullets hit D.R.’s chest, specifically his left upper chest. The other four bullets hit D.R. on the left side of his face, left side of his neck, and the upper part of his left shoulder, with two of the five bullets exiting D.R.’s body. The evidence also shows that, at the time of the shooting, J.M. was standing next to D.R. on his left side, the same side where D.R. was hit with the bullets, and that J.M. had his right hand on D.R.’s left shoulder. J.M. testified that he believed he was in danger and that the shots were so close that they caused ringing in his ears. Directly behind D.R., in Madison’s line of fire and in relatively close range, was the restaurant where the group had the birthday dinner. Patrons were present in the restaurant, seated near the exterior windows. There were also people from the birthday dinner nearby in the parking lot, along with others who can be observed in the surveillance video running away from the scene.

Second-degree intentional murder requires proof only that the defendant “cause[d] the death of a human being with intent to effect the death of that person or another, but without premeditation.” Minn. Stat. § 609.19, subd. 1(1) (2022). Unlike second-degree murder involving a drive-by shooting under subdivision 1(2) of section 609.19, there is no

element of recklessness—causing danger to innocent bystanders—built into the definition of the offense. *See* Minn. Stat. § 609.19, subd. 1(2) (2022) (providing that second-degree murder based on a drive-by shooting requires proof of a reckless discharge under Minn. Stat. § 609.66, subd. 1e (2022)); *see also* *State v. Thao*, 649 N.W.2d 414, 424 (2002) (rejecting an upward departure based on the aggravating factor that the drive-by shooting was significantly more serious than a typical drive-by shooting because the element of recklessness is built into the elements of the offense). The presence of risk to others is not an inherent element of a second-degree intentional murder under subdivision 1(1) of section 609.19 and thus is not necessarily a “typical” feature of second-degree intentional murder.

While this may be a close case, we conclude that the district court could reasonably have concluded, based on the evidence presented at the *Blakely* trial, that Madison’s conduct caused a greater-than-normal danger to others. *See, e.g., State v. Mitjans*, 408 N.W.2d 824, 834 (Minn. 1987) (holding that the firing of two shots in a public bar at relatively close range, including one shot directly to the victim’s head when the victim was on the ground, “put a number of people at risk and in fear” and justified an upward departure). The aggravating factor relied on by the district court to support the upward departure is thus factually supported in the record.

II. The district court did not abuse its discretion when it imposed an upward sentencing departure of 36 months above the top of the presumptive range.

Madison also argues that the district court abused its discretion (1) because it committed errors of law in its *Blakely* findings of fact and conclusion of law and (2) by

imposing an excessive upward departure because the court failed to give adequate weight to mitigating circumstances, including his argument that D.R. was the aggressor. We address each in turn.

Errors of Law

In support of his argument that the district court committed errors of law, Madison cites to two different statements in the memorandum accompanying the district court's *Blakely* order. First, Madison points to the following statement: "The argument that compelling reasons must be present to overcome the presumption in favor of the sentencing guidelines is not relevant because the Sentencing Guidelines themselves place factors general in nature outside the purview of the guidelines."⁵ Madison relies on this statement to argue that the district court applied a lower standard for imposing an upward departure than the "substantial and compelling" standard. We are not persuaded.

The section of the memorandum that contains the quoted sentence addresses the issue of whether courts are limited by the sentencing guidelines to the elements of the offense such that, with second-degree intentional murder, the factor of intent to cause the death of a person precludes reliance on a "greater than normal danger to others" as a factor. The quoted sentence thus does not relate to the general standard for imposing an upward departure. And, in the very next sentence to the one quoted, the district court cites to a page in *State v. Blanche*, in which the supreme court sets out the controlling standard that

⁵ This sentence appears to reference a comment in the Minnesota Sentencing Guidelines that "[t]he Commission rejects factors that are general in nature, and that could apply to large numbers of cases, such as intoxication at the time of the offense." Minn. Sent'g Guidelines cmt. 2.D.301 (2022).

“[a]n upward sentencing departure requires substantial and compelling circumstances in the record . . . which demonstrate that the defendant’s conduct was significantly more or less serious than that typically involved in the commission of the crime in question.” 696 N.W.2d 351, 378 (Minn. 2005) (quotations omitted). Thus, when viewed in context, the quoted sentence does not support Madison’s argument that the district court applied an incorrect legal standard.

The second assignment of error relates to a statement in another section of the memorandum to the effect that second-degree intentional murder does not require proof of a specific intent. We agree that the district court’s comments to this effect are erroneous, but we conclude that it constitutes a harmless error because it did not alter the result. The misstatement appears in a section addressing whether the facts being relied on by the state for the upward departure constitute an element of the crime. *See, e.g., Robideau*, 817 N.W.2d at 185 (noting that “[d]epartures cannot be based on elements of the underlying crime”). The district court ultimately concludes in this section of the memorandum that the facts relied on to establish the aggravating factor are not elements of the offense of second-degree intentional murder, a conclusion with which we agree as discussed above. Thus, the district court’s misstatement is just that—a misstatement—and constitutes a harmless error. *See* Minn. R. Crim. P. 31.01 (stating that any error that does not affect substantial rights must be disregarded); *State v. Harvey*, 932 N.W.2d 792, 810 (Minn. 2019) (stating that error is harmless if “there is no reasonable possibility” it influenced the outcome).

Excessive Upward Sentence

For his final argument, Madison contends that the 36-month upward departure imposed by the district court constitutes an abuse of discretion because it fails to reflect mitigating circumstances and thus unfairly exaggerates the criminality of Madison's conduct. A review of the sentencing transcript, however, shows that the district court carefully considered the mitigating circumstances Madison brought forward. For example, at the sentencing hearing, the district court referenced the "horrible acts" that Madison suffered as a child and that, despite his "hard life," he had no criminal record.

The district court also considered Madison's argument that D.R. was the aggressor. At the sentencing, the district court noted that D.R. "was trying to leave" when Madison pointed his finger at him and D.R. slapped his hand away. The district court reasoned that the "worst case scenario was that [they] would have maybe had a fistfight, maybe a further argument," not that Madison would, "in an instant," grab a gun and fire five shots where others were present. In addition, the upward departure imposed by the district court was 36 months, compared to the 113-month upward departure sought by the state. This underscores the consideration given by the district court to Madison's mitigation arguments.

Madison further argues, citing *Edwards*, that the departure unfairly exaggerated the criminality of Madison's offense. In *Edwards*, the supreme court identified several factors that are improper grounds to rely on in granting an upward departure because they would unfairly exaggerate the criminality of an offense. See *Edwards*, 774 N.W.2d at 602. Those improper grounds include relying on factors that (1) constitute an element of the offense,

(2) were contemplated by the legislature in defining the offense, or (3) are based on a separate offense. *Id.* The district court concluded, and we agree, that none of these are present here.⁶

District courts are accorded significant discretion in sentencing, including the weight to be accorded to mitigating and aggravating factors. *See, e.g., Dillon v. State*, 781 N.W.2d 588, 596 (Minn. App. 2010) (noting that “[t]he shorter the departure, the greater the deference given to the district court’s discretion” and that “[d]epartures that enhance a sentence to a term that falls between the presumptive sentence and twice the presumptive sentence invite the greatest deference”). The record supports that the district court considered the mitigating circumstances, and we discern no abuse of discretion by the district court in imposing a 36-month upward sentencing departure.

Affirmed.

⁶ Madison also cites several nonprecedential cases involving offenses that he maintains were more serious than his offense but where the district court did not impose upward departures. The decision to depart, however, is permissive; the presence of mitigating or aggravating factors does not require a district to depart from imposing a sentence from within the presumptive range. *See, e.g., State v. Benniefield*, 668 N.W.2d 430, 437 (Minn. Ct. App. 2003), (“A district court is not *obligated* to depart downward from the guidelines, even if a mitigating factor is present.”) *aff’d*, 678 N.W.2d 42 (Minn. 2004). Thus, the imposition of a guidelines sentence in any given case, does not render improper an upward departure in another case.

HARRIS, Judge (dissenting)

I respectfully dissent because the record does not establish beyond a reasonable doubt that Madison’s conduct created a greater-than-normal danger to the safety of persons other than the intended victim.¹ Because the district court’s aggravating-factor finding lacks sufficient evidence, I would reverse the upward durational departure and remand for imposition of a presumptive guidelines sentence.

The Minnesota Sentencing Guidelines provide a nonexclusive list of aggravating factors that may support an upward durational departure. Minn. Sent’g Guidelines 2.D.3.b & cmt.2.D.301 (2022). The sole aggravating factor submitted by the state was that Madison’s conduct “caused a greater-than-normal danger to the safety of other people.” *See State v. McClay*, 310 N.W.2d 683, 685 (Minn. 1981) (permitting an upward departure on a conviction arising out of a bank robbery because people present during the robbery feared for their safety). Here, the district court found that the state met its burden to prove beyond a reasonable doubt that Madison created a “greater-than-normal danger to others in a general area.” The majority concludes that sufficient evidence supports that finding. I respectfully disagree.

The district court’s decision to depart from the sentencing guidelines is “reviewed for an abuse of discretion.” *State v. Robideau*, 817 N.W.2d 180, 185 (Minn. App. 2012), *rev. denied* (Minn. Sept. 25, 2012). But here, Madison challenges the underlying facts that

¹ The loss of D.R.’s life is a profound tragedy. Nothing in this dissent should be read to diminish that loss. The significance of that loss and the tragic facts of this case do not alter our obligation to ensure that the sentence complies with the law. And in my view, Madison’s sentence does not.

support the aggravated sentence. We consider whether “the reasons given for an upward departure are legally permissible and factually supported in the record.” *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009). There must be proof beyond a reasonable doubt of any fact that is necessary to support an aggravated sentence. *State v. Rourke*, 773 N.W.2d 913, 919 (Minn 2009). “It is an abuse of discretion for the district court to base an upward departure on an improper factor or one not factually supported by the record.” *Robideau*, 817 N.W.2d at 185.

The majority correctly frames the question presented: whether the evidence supports a finding that Madison’s conduct “caused a greater-than-normal danger to the safety of other people.” The majority concludes that the direct-evidence standard of review governs because the state introduced surveillance footage, eyewitness testimony, photographs, forensic laboratory exam reports, and an autopsy report. But that does not adequately distinguish between direct and circumstantial evidence. “[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence, by contrast, is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted). “[C]ircumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.* Whether evidence is direct or circumstantial depends not on its form, but on the proposition for which it is offered. *See State v. Blevins*, 10 N.W.3d 29, 39-40 (Minn. 2024) (stating a surveillance video is direct evidence of what it shows).

The video shows that Madison fired multiple shots directly at D.R. during a matter of seconds and that each shot struck its intended target. What the video does not show is whether the bullets traveled toward restaurant patrons or otherwise endangered individuals inside the restaurant. Although the surveillance video directly depicted the shooting, it did not show the path of the bullets after they entered D.R.'s body. Likewise, the photographs did not establish the trajectory of the rounds after impact, and the autopsy report did not demonstrate where any exiting bullets traveled or whether the bullets retained sufficient velocity to strike another person. Instead, the district court was required to infer that because two bullets exited D.R.'s body, those bullets could have traveled into the restaurant and endangered patrons inside. Those additional inferences were necessary to establish the greater-than-normal-danger aggravating factor. Likewise, the district court relied on the fact that the shooting occurred outside of a restaurant while other people were generally present nearby. However, the existence of people in the vicinity, by itself, does not establish that those individuals were placed in real and significant danger. Because the state relied on circumstantial evidence from which the factfinder was asked to determine whether the shooting created a danger to restaurant patrons, I would conclude that the circumstantial-evidence standard of review applies.

For the circumstantial-evidence test, “we use a heightened two-step process to review the sufficiency of the evidence.” *State v. Segura*, 2 N.W.3d 142, 155 (Minn. 2024). We begin by identifying the circumstances proved by the state. *Id.* In doing so, we “winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury’s verdict, which results in a subset of facts that constitute the circumstances

proved.” *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026) (quotation omitted). Then, “we consider whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* (quotation omitted). “If a reasonable inference other than guilt exists, then we will reverse the conviction.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

We begin by identifying the circumstances proved. When viewing the facts in the light most favorable to the guilty verdict, we are left with the following subset of facts as circumstances proved by the state: (1) several guests attended a birthday dinner for T.M.; (2) after dinner, Madison, D.R., T.M, J.M., and one other guest exited the restaurant and took photos in the parking lot; (3) the parking lot of the strip mall contained multiple businesses; (4) a tan colored Toyota Camry was located nearest the businesses; (5) Madison approached D.R. as he was trying to leave; (6) Madison and D.R. engaged in a verbal dispute; (7) Madison pointed a finger in D.R.’s face and D.R. slapped Madison’s hand away; (8) J.M. was standing next to D.R. with his hand on D.R.’s shoulder; (9) D.R. took two steps away from Madison as Madison pulled a firearm from his waistband; (10) Madison aimed his firearm directly at D.R. and shot him five times; (11) J.M. and T.M. immediately restrained Madison; (12) bystanders walking behind Madison heard the shots and quickly ran to their vehicles; (13) D.R.’s body was located adjacent the Toyota Camry; (14) the autopsy report notes entry wounds from bullets to the lateral left neck, lateral left face, posterior left neck, left shoulder, left upper chest; (15) the autopsy report documents exit wounds opposite some of these entry wounds from the right lateral face

and right upper back, respectively; (16) the autopsy report lists the trajectory of these paired wounds as slightly downward and downward, respectively; and (17) four cartridge casings were recovered between the parked cars and the businesses.

Turning to the next step, “we consider whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Firkus*, 31 N.W.3d at 478 (quotation omitted). The circumstances proved, when viewed as a whole, support a rational hypothesis that Madison fired multiple shots directly at D.R. during a matter of seconds and that each shot struck its intended target. The surveillance footage shows Madison standing within arm’s length of D.R. when Madison pulled his firearm from his waistband and shot D.R. five times.

These facts, however, do not resolve the dispositive question: whether Madison’s conduct placed other individuals in a greater-than-normal danger beyond that inherent in the commission of the offense. Other individuals were present in the vicinity. However, Madison aimed specifically at D.R., away from occupied vehicles and individuals present in the parking lot. And the bystanders in the parking lot were walking behind Madison when he fired the shots. As for the other party-goers in the group, they were also positioned behind Madison when the shots were fired. The mere presence of other attendees gathering in their vehicles within the parking lot or standing near Madison at the time of the shooting does not, by itself, establish beyond a reasonable doubt that Madison’s conduct exposed

others to a real and significant danger. *See State v. Fleming*, 883 N.W.2d 790, 797 (Minn. 2016).

To support its argument that Madison's behavior placed other individuals in a greater-than-normal danger, the state relied on several cases affirming upward departures where a gun is fired in the presence of other people.

In *Fleming*, the supreme court affirmed the imposition of an upward durational departure following a shooting at an outdoor basketball court. *Id.* at 792. There, several individuals were playing basketball at a public park filled with children. *Id.* After a disagreement ensued between the defendant and a player on the opposing team, the defendant retrieved a handgun and fired six times in the direction of the player, who was fleeing the scene. *Id.* None of the bullets struck the intended target, but the shots were fired in the direction of the children. *Id.* The supreme court concluded that firing a gun in a park filled with children created a greater-than-normal danger to the safety of others. *Id.* at 797.

In *State v. Blanche*, 696 N.W.2d 351, 379 (Minn. 2005), the defendant indiscriminately fired ten bullets in a residential area in an attempt to kill a rival gang member. One bullet hit and killed an 11-year-old child. *Id.* The supreme court concluded that "the spray of bullets" that were directed toward the neighborhood and ultimately killed an unintended victim showed "a degree of recklessness that justify[d] departure." *Id.*

And in *State v. Anderson*, 463 N.W.2d 551, 553 (Minn. 1990), *rev. denied* (Minn. Jan. 14, 1991), the defendant fired 13 shots in a mixed residential and commercial area, with at least six people in the immediate vicinity. Two victims were shot and one was

severely injured. *Id.* We concluded that the defendant's conduct was "particularly serious and represented a greater than normal danger to the safety of other people" considering the number of shots fired and the number of people in the area. *Id.*

Fleming, Blanche, and Anderson are distinguishable to the facts before us. In each case, the aggravating circumstance arose from conduct that substantially expanded the zone of danger beyond the intended victim, such as firing indiscriminately into a group of people or into a residential neighborhood. But here, Madison aimed his firearm directly at D.R.'s chest while standing at arm's length. Madison did not point his firearm at any bystanders in the parking lot or toward the restaurant. And although J.M. was standing next to D.R. with his hand on D.R.'s shoulder when Madison shot D.R., J.M. was not Madison's intended target or in his direct line of fire.

The state argues that Madison's conduct was particularly dangerous because the restaurant patrons were in Madison's direct line of fire. The state asserts that Madison and D.R. were located only a few paces away from the restaurant and that D.R.'s back was to the restaurant when he was shot. The state also asserts that the bullets from D.R.'s exit wounds could have passed through D.R. and hit an innocent bystander inside the restaurant.

As an initial matter, the surveillance footage of the incident does not depict Madison's proximity to the restaurant or the location of the restaurant's main entrance to properly determine whether bystanders were in Madison's direct line of fire. The surveillance video captures only the restaurant's parking lot. The district court found that "the facts here show [a] greater than normal risk of bodily harm to others because the shootings happened in a general area where others could be." The district court appears to

have adopted an impermissibly broad formulation of the aggravating factor, concluding that a greater-than-normal danger exists whenever a shooting occurs in a place where others “could be” or where multiple people “may be.”² The state argues that Madison’s proximity to the restaurant can be demonstrated by comparing the surveillance footage with photos of where D.R.’s body came to rest. Notably, the state offers no forensic evidence to support its contention that the bullets from D.R.’s exit wounds could have reached the restaurant. The autopsy revealed that the gunshots D.R. sustained were fired at a “downward” angle. But there is no evidence to support the bullets’ trajectory after exiting D.R.’s body or how far the bullets could have traveled. The circumstances proved do not support a rational hypothesis that the restaurant patrons were in Madison’s direct line of fire. The district court also found that the evidence supports the conclusion that Madison’s conduct caused J.M. to feel a disproportionate amount of fear. The circumstances proved are that when

² A district court may depart from the presumptive sentence under the sentencing guidelines only when the record establishes “substantial and compelling circumstances” supporting the departure. *State v. Misquadace*, 644 N.W.2d 65, 69 (Minn. 2002). Such circumstances are facts that significantly distinguish the case from the typical offense, making it atypical. *State v. Peake*, 366 N.W.2d 299, 301 (Minn. 1985); *State v. Back*, 341 N.W.2d 273, 276 (Minn. 1983). Because departures are reserved for exceptional cases, the aggravating factors supporting them must meaningfully distinguish the case from the ordinary offense. A rule permitting an upward departure whenever an intentional shooting occurs in a public place where other persons happen to be present would apply to a substantial number of homicide prosecutions. Such a rule would transform an aggravating factor intended for exceptional cases into a routine basis for departure, contrary to the purpose of the sentencing guidelines. The cases recognizing a greater-than-normal danger do not adopt such an expansive rule. They require evidence that the defendant’s conduct created a materially greater risk to persons other than the victim than ordinarily accompanies the underlying offense. That evidence is absent here.

Madison shot D.R., J.M. lunged *toward* Madison to restrain him. J.M. testified that his initial instinct was to get Madison away from D.R. The circumstances proved do not support a rational hypothesis that Madison’s conduct caused J.M. to feel a disproportionate amount of fear.

Next, the district court concluded that considerations relating to “specific intent” were unavailable because second-degree intentional murder is not a specific-intent offense. In doing so, the district court disregarded the targeted nature of the shooting, asserting that whenever a firearm is used in an intentional murder, the defendant necessarily points the weapon at the intended victim. Second-degree intentional murder is, by statute and precedent, a specific-intent crime. Minn. Stat. § 609.19, subd. 1(1) (2024) (stating that second-degree intentional murder requires the state to prove beyond a reasonable doubt that the defendant “cause[d] the death of a human being with intent to effect the death of that person or another, but without premeditation”); *see State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012) (stating a specific intent crime “requires an intent to cause a particular result”). Here, the question before the district court was not whether Madison specifically intended to kill D.R.; it was whether the manner in which he committed the offense created an extraordinary risk to persons other than D.R. The undisputed evidence that Madison directed every shot exclusively at D.R. bears directly on that inquiry.

Even assuming the more deferential direct-evidence standard of review applies, the evidence does not permit a rational factfinder to conclude beyond a reasonable doubt that Madison’s conduct created a greater-than-normal danger to others. The district court found that the facts show a greater-than-normal risk of bodily harm to others because the

shootings happened in a general area where others could be. As it relates to the restaurant patrons, the record contains no testimony establishing the trajectory of any bullet beyond D.R.'s body. No witness testified that a bullet traveled toward occupied portions of the restaurant. No forensic witness reconstructed the bullets' paths. No expert testified that an exiting bullet would have retained sufficient speed to strike patrons inside the building. Instead, the district court needed to infer that because the restaurant was located behind D.R., the bullets necessarily endangered those inside the restaurant. That inference is unsupported by the evidence.

The same deficiency pervades the reliance on the autopsy report. The autopsy report establishes only where bullets entered and exited D.R.'s body. It says nothing about where those bullets traveled afterward, whether they struck another object, or whether they retained sufficient force to injure anyone else. The state could have introduced expert testimony addressing those questions. But it did not. The record establishes only that two bullets exited D.R.'s body and injured no one else. Moreover, the number of shots fired does not distinguish this case from the ordinary second-degree intentional murder case. Madison fired each shot at a single intended victim and struck only that victim. This case is distinguished from cases where Minnesota appellate courts have affirmed departures based on indiscriminate gunfire directed toward crowds, multiple victims, or random bystanders. *See, e.g., Fleming*, 883 N.W.2d at 797; *Blanche*, 696 N.W.2d at 379; *Anderson*, 463 N.W.2d at 553. Those cases involved conduct that objectively expanded the zone of danger to uninvolved persons. This record does not.

The record establishes that Madison intentionally shot and killed D.R. But the issue before us is not whether the murder was intentional, it is whether the state proved beyond a reasonable doubt that the manner in which Madison committed the offense created a greater-than-normal danger to people other than D.R. The evidence does not support that conclusion. The district court's finding rests on speculation that bullets *may* have endangered restaurant patrons or that the mere presence of other people in the vicinity transformed this offense into an exceptional case. The sentencing guidelines reserve upward departures for cases that are meaningfully distinguishable from the ordinary offense. Because the district court's aggravating-factor finding is unsupported by legally sufficient evidence, I would reverse the upward durational departure and remand for imposition of a presumptive-guidelines sentence.