STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0042

State of Minnesota,
Respondent,

vs.

Aaron Duviaze Taylor,
Appellant.

Filed December 23, 2019
Affirmed in part, reversed in part, and remanded
Hooten, Judge

Dakota County District Court
File No. 19HA-CR-17-2162

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

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Hooten, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

In this direct appeal from the judgment of conviction for second-degree assault with a firearm, appellant argues that: (1) the evidence was insufficient to prove beyond a

reasonable doubt that he intended to cause fear of immediate death or great bodily harm in the victim; (2) the district court erred in instructing the jury on the definition of the term "brandish"; and (3) the district court abused its discretion in denying his motion for a downward sentencing departure. Appellant also argues, and the state concedes, that the warrant of commitment erroneously indicates convictions on two additional counts when the district court did not pronounce an adjudication of those counts. We affirm in part, reverse in part and remand.

FACTS

The incident resulting in appellant Aaron Taylor's convictions occurred on May 24, 2017. Four days prior to the incident, Taylor was with K.S. and two other young men watching a basketball game at Taylor's home. At the end of the night, K.S. and the two other young men left in the same car. Around midnight, K.S. suffered a mortal gunshot wound to his head. K.S.'s uncle, D.S., was frustrated with law enforcement's failure to provide his family with information about K.S.'s death. D.S. began to investigate his nephew's death on his own. He learned that K.S. was hanging out with three men who D.S. had never met, including a man named "Aaron." D.S. sought out the young men to ask questions about what happened on the night his nephew died.

On May 22, 2017, D.S. went to a convenience store in the neighborhood and asked the clerk if he knew a man named Aaron. The clerk told D.S. that he did not know an Aaron. D.S. went back to the convenience store the next day and asked a young man at the convenience store if his name was Aaron. The following day, on May 24, 2017, D.S. went back to the convenience store. The clerk told D.S. that "a guy's been asking" about

him. When D.S. walked out of the store, he saw a young man, later identified as Taylor, walking towards him with his hand inside his coat. D.S. testified that as Taylor approached him, Taylor yelled, "'You're going to get what you looking for, coming here looking for trouble or whatever.'" Taylor and D.S. began arguing, and it grew heated. D.S. saw that Taylor had a gun in the inside pocket of his coat. Taylor never took the gun out of his coat, but D.S. believed that he had his finger near the trigger.

The convenience store's clerk saw the confrontation and called 911. When Officer Dennis Brom of the South St. Paul police arrived, he told multiple men standing outside the convenience store to put their hands up. All of the men but Taylor complied, and Taylor started to walk away. When Officer Brom told Taylor to stop, Taylor immediately began running. Officer Brom pursued Taylor on foot, as Officer Todd Waters, who had arrived at the scene, drove in his squad car to get ahead of Taylor. Officer Brom saw Taylor "grabbing something in his front waistband" while running. Officer Waters saw Taylor running with his right arm tucked under his jacket. Taylor cut through the area between a garage and an apartment complex, then through an alleyway. Finally, the officers apprehended Taylor but did not find a gun on his person. Officers later found a 9mm Taurus pistol next to a garage that Taylor had run past. The pistol was registered to Taylor's aunt. Taylor told officers that he had borrowed the gun from his aunt in the past.

The state charged Taylor with second-degree assault and threats of violence. Just prior to trial, the state amended the complaint to include one count of fleeing a police officer. At the close of evidence, Taylor's counsel moved for judgment of acquittal and requested that the jury be instructed on the crime of disorderly conduct. The district court

confirmed with Taylor that he agreed that the jury could consider a fourth count of disorderly conduct.

The jury found Taylor guilty of all four counts. Because the jury found him guilty of second-degree assault with a firearm, Taylor faced a minimum sentence of 36 months. Minn. Stat. § 609.11, subd. 5(a) (2018). Acknowledging that the statute requires the jury to find possession or use of a firearm at the time of the offense, the district court presented the jury with a second special-verdict form that asked the jury to find whether Taylor possessed or used a firearm at the time of the offense. The jury answered the question in the affirmative.

After trial, Taylor moved for a downward sentencing departure. Following a sentencing hearing, the district court sentenced Taylor to 36 months in prison, the statutory minimum sentence for second-degree assault with a dangerous weapon. The district court's warrant of commitment entered convictions for Taylor on all four counts.

Taylor appeals.

D E C I S I O N

I. The evidence was sufficient to convict Taylor of second-degree assault.

Taylor argues that the evidence is insufficient to support his conviction for second-degree assault because the state did not prove beyond a reasonable doubt that he had specific intent to cause fear of immediate bodily harm or death. When addressing a sufficiency-of-the-evidence challenge, our review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State*

v. Webb, 440 N.W.2d 426, 430 (Minn. 1989). We assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We will not reverse a conviction for insufficient evidence if the jury, "acting with due regard for the presumption of innocence and the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that [the] defendant was proven guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Because intent is a state of mind, it is "generally proved circumstantially—by drawing inferences from the defendant's words and actions in light of the totality of the circumstances." *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). Both Taylor and the state agree that this court must employ the circumstantial-evidence test.

Reviewing courts conduct a two-step analysis to decide whether the evidence was sufficient to sustain a guilty verdict. *State v. Hayes*, 831 N.W.2d 546, 552–53 (Minn. 2013). "First, we must identify the circumstances proved, giving deference to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State." *State v. Anderson*, 789 N.W.2d 227, 241–42 (Minn. 2010) (quotation omitted). "Second, we independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt." *Id.* at 242 (quotation omitted). "Stated another way, the circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010). But "[w]e will not overturn a conviction based on

circumstantial evidence on the basis of mere conjecture." *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998).

Turning to the first step, the circumstances proved are as follows: (1) D.S. went to the convenience store on multiple occasions looking for a man named "Aaron" to find out more about his nephew's death; (2) the convenience store clerk told Taylor that a man was looking for him; (3) on D.S.'s third visit to the convenience store, he saw Taylor walking towards him with his hand inside his open coat; (4) Taylor appeared angry and yelled, "You're going to get what you looking for" at D.S.; (5) D.S. saw Taylor put his hand inside his coat pocket; (6) D.S. saw a gun in Taylor's inside coat pocket, it appeared to D.S. that Taylor's finger was near the trigger, and D.S. was afraid Taylor was going to shoot him; (7) when police arrived, Taylor fled; (8) officers found a gun in an area through which Taylor ran; and (9) the gun was registered to Taylor's aunt, and Taylor admitted that he had borrowed the gun in the past.

Turning to the second step, we must examine the reasonableness of any inferences drawn from the circumstances proved. The first reasonable inference drawn is that Taylor intended to cause D.S. fear. The circumstances proved show that Taylor approached D.S. when he saw him leaving the convenience store. From the moment Taylor began approaching D.S., Taylor yelled at D.S. and had his hand inside his coat. Although D.S. had been looking for Taylor, during the incident in question Taylor appeared to be the aggressor and further heightened the situation by holding a gun inside his coat for the duration of the argument. While Taylor never took the gun out of his pocket, it is reasonable to infer that when a person approaches another while yelling, with his hand

inside his coat apparently holding a gun with his finger near the trigger, that person intends to cause the other person fear. Intent to cause fear arises from the threat that, at any moment, Taylor could take out the gun and shoot D.S. Based upon these proven circumstances, it is reasonable to infer that Taylor intended to cause fear in D.S. of immediate bodily harm or death.

Taylor argues that "[t]he circumstances did not eliminate a rational hypothesis of innocence that [Taylor] carried the gun in case he needed to defend himself against a potential threat" from D.S. But it is unreasonable to infer that Taylor's intent was not to cause fear, but merely to tell D.S. to leave him alone and to protect himself in case D.S. attempted to harm him. If that were the case, there would be no need for Taylor to have his hand on the gun during the argument or to reveal to D.S. that he had a gun. The act of holding a gun inside his coat, while yelling and aggressively approaching another person, demonstrates his intent to cause fear in the other person. The only reasonable inference we can draw is that Taylor intended to cause fear in D.S. We therefore affirm Taylor's conviction for second-degree assault with a firearm.

II. The district court did not abuse its discretion by providing the jury with a definition of "brandish" taken from federal law.

Taylor argues that the district court erred by providing the jury with a definition of "brandish" that is inconsistent with its ordinary dictionary definition. A district court must instruct the jury in a way that "fairly and adequately explain[s] the law of the case[]" and does not "materially misstate[] the applicable law." *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011). In a criminal case, the jury instructions "must define the crime charged and

. . . explain the elements of the offense." *State v. Ihle*, 640 N.W.2d 910, 916 (Minn. 2002). A district court has "considerable latitude in selecting language for jury instructions." *State v. Gatson*, 801 N.W.2d 134, 147 (Minn. 2011) (quotation omitted).

Accordingly, we apply an abuse-of-discretion standard of review to a district court's jury instructions. *See Koppi*, 798 N.W.2d at 361. Jury instructions must be read as a whole, and if the instructions correctly state the law in language that can be understood by the jury, there is no reversible error. *State v. Peou*, 579 N.W.2d 471, 475 (Minn. 1998).

Minnesota statutes define assault as "an act done with intent to cause fear in another of immediate bodily harm or death." Minn. Stat. § 609.02, subd. 10(1) (2016). The statutes also provide a minimum sentence for a second-degree assault when the defendant, "at the time of the offense, had in possession or used, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm." Minn. Stat. § 609.11, subd. 5(a) (2016).

Before trial began, the district court consulted counsel regarding whether the special-verdict form should define the term "brandish" as used in Minn. Stat. § 609.11, subd. 5(a). Taylor requested using a dictionary definition, while the state suggested using a definition described in federal law in *United States v. Johnson*, 803 F.3d 610 (11th Cir. 2015). In that case, the Eleventh Circuit explained that the commentary to the Federal Sentencing Guidelines provides that brandishing a firearm occurs when "all or part of the weapon was displayed, or the presence of the weapon was otherwise made known to another person, in order to intimidate that person, regardless of whether the weapon was

directly visible to that person." *Johnson*, 803 F.3d at 616. The district court found this definition compelling and instructed the jury as follows:

> The term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

Taylor makes several challenges to the district court's special-verdict instruction. He argues first that the district court should have used a dictionary definition to define brandish. He notes that when this court reviews a statutory interpretation claim, we look to the dictionary definitions of words when determining the plain and ordinary meaning of the language of a statute. *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016). While this is true, our statutory-interpretation precedent does not preclude a district court from using a different definition to define a word when instructing the jury. Neither Minnesota statutes nor the jury instructions define brandish. Under such circumstances, district courts have wide discretion in providing the jury with instructions. *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002).

Taylor argues second that the district court's definition of brandish materially misstates the law. "Whether a district court's jury instructions correctly state the law presents a question of statutory interpretation, which we review de novo." *State v. Davis*, 864 N.W.2d 171, 178 (Minn. 2015). When statutory language is unambiguous, this court applies the statute's plain meaning. *Id.*

Taylor asserts that the district court's definition allows for the inference that to brandish an object includes passive behavior, when the ordinary meaning of the word requires active conduct. Dictionary definitions aid in our analysis.

Brandished is defined as: "To wave or flourish (something, often a weapon) in a menacing, defiant, or excited way," *American Heritage College Dictionary* 224 (5th ed. 2018); or "to shake or wave (something, such as a weapon) menacingly; to exhibit in an ostentatious or aggressive manner," *Merriam Webster* (2018). The district court's definition may have expanded the ordinary meaning of brandish as it includes "mak[ing] the presence of the firearm known to another person . . . regardless of whether the firearm is directly visible to that person." Nonetheless, we do not believe that the district court's instruction misstates the law when the statute is read as a whole.

But even if we did, to reverse Taylor's conviction, he must show that there is a reasonable probability that the jury instruction "significantly affected the verdict." *State v. Watkins*, 840 N.W.2d 21, 27 n.3 (Minn. 2013) (quotations omitted); *see also State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011). "[W]hen a defendant timely objects to a jury instruction," as Taylor did here, "we apply the harmless-error analysis to determine whether the error requires reversal." *Watkins*, 840 N.W.2d at 27 n.3.

The state argues that any error was harmless because the entire question posed to the jury was: "Did the state of Minnesota prove beyond a reasonable doubt that [Taylor] did use, whether by brandishing, *displaying*, threatening with, or otherwise employ[ing] a dangerous weapon, specifically, a firearm, at the time of the offense?" (Emphasis added). Even if the definition of brandish used by the district court expanded the ordinary meaning

of the word, the jury still could have found that the state met its burden because the jury was asked whether Taylor "display[ed]" or "threatened with" or "otherwise employ[ed]" the victim with a firearm. The inference of passive behavior that Taylor is concerned about in the instruction is essentially covered by these other terms. Therefore, the jury could have determined that Taylor's conduct fell under "display" or "otherwise employ" to find that he used the gun in the commission of the assault.

We conclude that the jury instruction did not significantly affect the jury's decision. Even if the definition of brandish was not included on the special-verdict form, the jury still could have answered the question affirmatively as Taylor showed D.S. the gun that was inside his coat pocket, with his hand on it, while the two were arguing and thus "displayed," "threatened with" or "otherwise employed" his gun during the assault. Although we do not believe an error occurred, as the jury's decision was not significantly affected by the jury instruction, we affirm his conviction.

III. The district court did not abuse its discretion by failing to grant Taylor's motion for a downward sentencing departure.

Taylor argues that the district court abused its discretion by failing to grant a downward departure from the statutory minimum sentence of 36 months. He makes three assertions to support his argument: (1) the district court relied upon incorrect facts to deny the departure; (2) mitigating factors support a dispositional departure; and (3) Taylor's behavior was significantly less serious than the typical assault with a weapon, warranting a durational departure.

We "will not generally review a district court's exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range." *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). Only in a "rare" case will we reverse a sentencing court's refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). If substantial and compelling circumstances exist, making the case "atypical," *Taylor v. State*, 670 N.W.2d 584, 589 (Minn. 2003), the district court "may depart," *Kindem*, 313 N.W.2d at 7.

A. Incorrect factual finding

Taylor argues first that the district court erred by relying on an incorrect factual finding that Taylor had illegally obtained the gun used in the assault. A district court abuses its discretion when its decision is based on insufficient evidence in the record. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016).

The district court stated:

> You got the gun illegally, you didn't do it the right way. Society has said we have too many people who don't deserve to have guns who have guns and bad things happen, point one.
>
> . . . .
>
> There's too many situations in society where that's happened, and the jury found you did both of those things, and both are wrong. Guns in our society, obtained by people who don't deserve to have guns, are not entitled to have guns, have it in their possession and then use force with it, even by showing the other side puts you in prison.
>
> Society has said that in its laws. A person who has an illegal gun on their person and uses it in a manner that's assaultive in nature, society has told the courts put that person in prison and punish them, and that's what I'm going to do today.

In sentencing Taylor, the district court considered that Taylor did not legally possess the gun. But the record is devoid of any reference to whether Taylor illegally carried or obtained the gun. The record reflects that Taylor admitted that he borrowed the gun from his aunt on prior occasions and that the gun found when Taylor fled from the police was registered to his aunt. Taylor argues that he did not illegally have the gun and therefore this court should reverse and remand for resentencing.

The district court is not required to provide a defendant with an explanation when it refuses to impose a downward departure from a presumptive sentence. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013); *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985). "Although the trial court is required to give reasons for departure, an explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence." *Van Ruler*, 378 N.W.2d at 80. As long as the record shows that the "sentencing court carefully evaluated all the testimony and information presented before making a determination," the reviewing court must not interfere. *Id.* at 80–81; *see also State v. Curtiss*, 353 N.W.2d 262, 263 (Minn. App. 1984).

While the district court may have relied on a fact not supported by the record, the district court's denial of his motion for a departure was justified by other facts supported by the record. The district court focused on the fact that when police arrived at the scene, with a report that someone had a gun, Taylor fled. Additionally, the district court noted that the legislature has made it clear that an assault with a gun warrants a minimum sentence

that is higher than provided in the sentencing guidelines because we, as a society, recognize the dangers associated with unauthorized individuals having guns. Thus, the district court carefully evaluated the testimony and information before making a determination and sentenced Taylor to the statutory minimum sentence.

B. Downward dispositional departure

Taylor also argues that the district court failed to take into account offender-related mitigating factors to warrant a downward dispositional departure.

The Minnesota Sentencing Guidelines provides a nonexclusive list of mitigating factors that may be used as reasons for a departure, including (1) the victim was an aggressor and (2) the offender is particularly amenable to probation. Minn. Sent. Guidelines 2.D.3.a (2016). In *State v. Trog*, the supreme court ruled that "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family" are also relevant factors in determining whether a dispositional departure is justified. 323 N.W.2d 28, 31 (Minn. 1982).

Taylor asserts that the following mitigating factors support a downward dispositional departure: (1) he is particularly amenable to probation, (2) he is young, (3) he was respectful in court, (4) he had no prior felony convictions, (5) he has the support of his family, and (5) he showed remorse. The district court did not address these factors in making its determination. But, as mentioned above, when sentencing a defendant to the presumptive sentence, the district court need not provide an explanation of the reasons for doing so, as long as the record shows that the sentencing court carefully evaluated all of the evidence in making its determination. *Van Ruler*, 378 N.W.2d at 80.

We are satisfied that the district court evaluated all of the evidence in making its determination. Because the district court was not required to explain its reasons for sentencing Taylor to the statutory minimum, and the mitigating factors, when taken as a whole, do not support a downward dispositional departure, the district court did not abuse its discretion in sentencing Taylor to the statutory minimum sentence.

C. Downward durational departure

Taylor further argues that the district court should have granted a downward durational departure because his crime was significantly less serious than a typical second-degree assault with a firearm. "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." *Solberg*, 882 N.W.2d at 624 (quotation omitted). Taylor argues that because he never pulled out the gun, his crime was less serious than a usual second-degree assault with a firearm. While this argument has some merit, this court affords the district court considerable deference in sentencing determinations. *Delk*, 781 N.W.2d at 428. Here, the district court considered Taylor's conduct in light of the legislature's imposition of a minimum sentence when a person uses a firearm in the commission of the crime. It also considered the legislature's intent to punish the crime of assault with a firearm with prison time. We therefore affirm the district court's sentence.

IV. The warrant of commitment erroneously entered convictions on counts that were not pronounced by the district court.

Taylor argues, and the state concedes, that the warrant of commitment erroneously entered convictions on all four of Taylor's counts.

A district court's unambiguous oral pronouncement on sentencing controls. *State v. Staloch*, 643 N.W.2d 329, 331 (Minn. App. 2002). At the sentencing hearing, the district court pronounced that Taylor was convicted of, and sentenced on, second-degree assault with a firearm and fleeing a police officer. The district court declined to convict Taylor on threats of violence and disorderly conduct. But the warrant of commitment listed convictions on all four counts.

Because the district court unambiguously only entered convictions on second-degree assault with a firearm and fleeing a police officer, and the state concedes as such, we reverse and remand for the district court to correct the warrant of commitment to reflect convictions on only those offenses.

Affirmed in part, reversed in part, and remanded.