STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0643

State of Minnesota,
Respondent,

vs.

Robert Alonzo Richardson,
Appellant.

Filed May 26, 2020
Affirmed
Johnson, Judge

Ramsey County District Court
File No. 62-CR-17-5695

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Kirk M. Anderson, Anderson Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Reilly, Judge.

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

JOHNSON, Judge

A Ramsey County jury found Robert Alonzo Richardson guilty of first-degree assault based on evidence that he slashed another man's face with a razor blade during an altercation on a light-rail platform. Richardson testified that he acted in self-defense, and

his attorney urged the jury to find him not guilty for that reason, but the jury returned a verdict of guilty. On appeal, Richardson makes four arguments for reversal. We conclude that the evidence is sufficient to prove that Richardson did not act in self-defense, that the district court did not err by excluding evidence of the victim's blood-alcohol concentration, that the district court did not err by giving the jury a supplemental instruction after the foreperson indicated that the jury was deadlocked, and that the district court did not err by denying Richardson's motion for a downward durational or dispositional departure from the presumptive sentencing range. Therefore, we affirm.

FACTS

This appeal arises from an incident on a light-rail platform at the Capitol/Rice Street station during the evening of January 31, 2017. A video-recording created by a surveillance camera captured the following: Richardson walked along the platform past two men who were standing under a shelter. Richardson stopped to talk with the two men for approximately one minute and then walked away, continuing in the same direction in which he previously had been walking. One of the two men, F.B., continued talking to or yelling at Richardson as he walked away. Approximately 20 seconds later, Robinson suddenly turned around and walked quickly back toward F.B. and his friend. Robinson and the two men scuffled. After approximately 30 seconds of fighting, the three men parted, and Richardson walked away while blood dripped from F.B.'s face.

The state charged Richardson with first-degree assault, in violation of Minn. Stat. § 609.221, subd. 1 (2016). The case was tried to a jury over three days in May 2018. The state introduced video-recordings into evidence and called five witnesses: F.B., two St.

Paul police officers, a Metro Transit police officer, and the physician who treated F.B. for his injuries shortly after the incident.

F.B. testified that he drank vodka on the day of the incident. He admitted that he antagonized Richardson and asked Richardson to fight him. He also admitted that he threw the first punch but said that he did so after Richardson pushed him. The Metro Transit police officer testified about his interview of Richardson after the incident. Richardson told the officer that he approached the two men and asked them where he could buy a ticket and that one of the men said that he wanted to fight him. Richardson told the officer that, while he was walking away in search of a ticket-vending machine, he turned around and walked back toward the two men "due to what they were saying, the name calling." Richardson told the officer that he removed a razor blade from his coat pocket because he was afraid of F.B. and the other man. The physician who treated F.B. testified that F.B. suffered a deep facial laceration and nerve damage. He also noted that F.B. was "incredibly drunk" when he was being treated.

During the defense case, Richardson testified that he asked F.B. and his friend where he could buy a ticket when F.B. began insulting him. He testified that, after a brief conversation, he continued walking on the platform until he saw a sign pointing in the opposite direction toward a ticket-vending machine, which caused him to turn around and walk back toward where F.B. and his friend were still standing. Richardson testified that he did not want a confrontation with the two men but anticipated it. Richardson testified that F.B. threw the first punch at him and that he swung back. He testified that F.B.'s friend joined the confrontation and hit him from behind, which made him believe that the two

men might throw him onto the light-rail tracks. Richardson testified that he had a razor blade in his pocket at the time of the altercation but did not remember when he reached for it. He testified that he used the razor blade because he was being attacked by two men and was afraid.

At Richardson's request, the district court instructed the jury on the law of self-defense. The jury began its deliberations at 3:10 p.m. on the third day of trial. On the afternoon of the following day, which was a Friday, the jury foreperson submitted a note saying that the jury was deadlocked. The district court instructed the jury to continue its deliberations. Later that day, the foreperson submitted another note saying that the jurors were still at an impasse and did not expect any change in their positions. The district court told the jurors to recess for the weekend and to continue their deliberations the following week. On the following Monday, the jury returned a verdict of guilty.

Before sentencing, Richardson moved for a downward dispositional and durational departure from the presumptive sentencing range. The district court denied the motion and imposed a presumptive sentence of 122 months of imprisonment. Richardson appeals.

D E C I S I O N

I. Sufficiency of the Evidence

Richardson first argues that the evidence is insufficient to support his conviction. He does not contend that he did not assault F.B.; rather, he contends that the state's evidence is insufficient to prove beyond a reasonable doubt that he did not act in self-defense.

A person is guilty of first-degree assault if he "assaults another and inflicts great bodily harm." Minn. Stat. § 609.221, subd. 1. But a person may use reasonable force against another person "in resisting . . . an offense against the person." Minn. Stat. § 609.06, subd. 1(3) (2016). A person may use reasonable force in self-defense if four circumstances are present:

> (1) the absence of aggression or provocation by the defendant, (2) the defendant's actual and honest belief that he or another was in imminent danger of death or great bodily harm, (3) the existence of reasonable grounds for the belief, and (4) the absence of a reasonable possibility of retreat to avoid danger.

State v. Zumberge, 888 N.W.2d 688, 694 (Minn. 2017). "The degree of force used in self-defense must not exceed that which appears to be necessary to a reasonable person under similar circumstances." *State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997).

A defendant bears the burden of introducing evidence to support a claim of self-defense. *Id.* If the defendant has satisfied that burden, "the state has the burden of disproving one or more of these elements beyond a reasonable doubt." *Id.* In reviewing the sufficiency of the evidence supporting a conviction, this court undertakes "a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient" to support the conviction. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). This court "must assume the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). We will "not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the

requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Ortega*, 813 N.W.2d at 100.

Richardson contends that F.B. was drunk and that he tried to walk away from F.B. and his friend but that he needed to walk past the two men a second time to get to the ticket-vending machine. He contends that he tried to avoid the two men as he walked past but that F.B. "positioned himself" in Richardson's path and punched him. He contends that he "tried to defend himself with his hands" but was fighting with two men and feared that they might push him onto the light-rail tracks. Richardson does not specifically identify which element or elements of self-defense the state did not disprove.

In response, the state contends that the jury likely rejected Richardson's theory of self-defense for two reasons. The state first contends that Richardson could have retreated from the confrontation and avoided any injury to himself. The state also contends that Richardson did not use reasonable force because F.B. and his friend did not have weapons but Richardson used a razor blade to cause multiple, deep lacerations, which caused permanent injuries.

In analyzing the evidence, we "must assume the jury believed the state's witnesses and disbelieved any evidence to the contrary." *Caldwell*, 803 N.W.2d at 384. Accordingly, we need not credit Richardson's testimony that he believed that his life was in danger and that the only means of protecting himself was to use a razor blade on F.B.'s face. Having considered the witnesses' testimony, and having reviewed the video-recordings of the interactions between Richardson and F.B. and his friend, we have no difficulty concluding that the state's evidence is sufficient to disprove Richardson's theory of self-defense.

The evidence is sufficient to allow the jury to find that all of the elements of self-defense are not present. The surveillance video-recording shows that Richardson walked away from F.B. after their initial conversation but suddenly turned around and quickly walked back toward F.B. and his friend in a manner that clearly suggested that a physical confrontation was about to occur. The video evidence is consistent with the testimony of an investigating police officer, who testified that Richardson told him that he turned around because of "the words that were being said." The evidence does not indicate that Richardson did not engage in aggression or provocation, does not indicate that he actually and reasonably believed that he was in imminent danger of death or great bodily harm before the physical fighting occurred, and does not indicate that he had no reasonable possibility of retreat to avoid a danger of death or great bodily harm to himself. *See Zumberge*, 888 N.W.2d at 694.

Thus, the evidence is sufficient to support Richardson's conviction of first-degree assault.

II. Evidence of Blood-Alcohol Concentration

Richardson next argues that the district court erred by excluding his evidence of F.B.'s blood-alcohol concentration.

Before trial, Richardson filed a motion *in limine* seeking permission to introduce F.B.'s medical records, which showed that, on the day of the incident, he had a blood-alcohol concentration of 0.24 grams per deciliter. The state opposed the motion on the ground of lack of relevance. At the outset of trial, the district court denied the motion and ruled that Richardson could not introduce the medical records pertaining to F.B.'s blood-

alcohol level. The district court reasoned that the medical records, which measured F.B.'s blood-alcohol concentration in grams per deciliter, were likely to confuse the jury because jurors likely are more familiar with the more commonly used measurement of grams per milliliter. But the district court stated that Richardson was not otherwise limited in introducing evidence that F.B. was intoxicated at the time of the incident.

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. With some exceptions, "[a]ll relevant evidence is admissible," and "[e]vidence which is not relevant is not admissible." Minn. R. Evid. 402. Furthermore, relevant evidence "may be excluded 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." Minn. R. Evid. 403. This court applies an abuse-of-discretion standard of review to a district court's weighing of relevance and undue prejudice. *State v. Morrow*, 834 N.W.2d 715, 726 (Minn. 2013); *State v. Schulz*, 691 N.W.2d 474, 477 (Minn. 2005).

Richardson does not challenge the district court's reasoning that the evidence at issue, by itself, could be confusing. Rather, Richardson contends only that any such confusion could have been avoided. He contends that the physician who testified for the state about F.B.'s injuries "or some other witness" could have explained the measurement shown in F.B.'s medical records and how it relates to other means of measurement. In response, the state contends that Richardson did not proffer any other evidence that might

have explained the medical records in the way that Richardson now contends could have been done. But Richardson's trial attorney suggested to the district court that the physician who treated F.B. could explain the medical records, presumably on cross-examination. In any event, the district court did not abuse its discretion by determining that the probative value of the medical records was outweighed by "the danger of unfair prejudice, confusion of the issues, or misleading the jury." *See* Minn. R. Evid. 403. Furthermore, evidence of F.B.'s intoxication was introduced into evidence in other ways. F.B. admitted to drinking the day of the incident, and he appears unsteady in the video-recording. And the physician who testified for the state about F.B.'s injuries said that F.B. was "incredibly drunk." Consequently, it appears that the introduction of the medical records would not have had any impact on the jury's verdict.

Thus, the district court did not err by denying Richardson's motion *in limine* for leave to introduce F.B.'s medical records.

III. Supplemental Jury Instruction

Richardson also argues that the district court erred by giving the jury a supplemental instruction that misstated the applicable law concerning a jury's duty to continue deliberating when it is deadlocked.

This issue arose on the second day of deliberations, when the jury foreperson submitted a note to the district court saying that the jury was deadlocked. In a conference with counsel, the district court proposed to repeat one of the jury instructions that previously was given and, in addition, to give an instruction that the district court borrowed from a Florida jury instruction guide. *See* Fla. Std. Jury Instr. (Crim.) 4.1. Richardson

objected and urged the district court to use only the Minnesota pattern jury instruction that previously had been given. The district court overruled that objection and gave the following supplemental instruction:

> So, members of the jury, I know that you all have worked hard to try to reach a verdict in this case. And as you know, we are all aware that it's legally permissible for a jury to disagree. And there are two things a jury can lawfully do: Agree on a verdict or disagree on what the facts of the case may truly be.
>
> There is nothing to disagree about on the law. The law is as I told you. If you disagree over what you believe the evidence showed, then only you can resolve this conflict if it is to be resolved.
>
> And so I am going to send you back to continue discussing this case and I want to remind you, you should discuss this case with one another and deliberate with a view toward reaching agreement, if you can do so without violating your individual judgment.
>
> You should decide the case for yourself but only after you have discussed the case with your fellow jurors and carefully considered their views. You should not hesitate to reexamine your views and change your opinion if you become convinced that they are erroneous. But you should not surrender your honest opinions simply because other jurors disagree or merely to reach a verdict.
>
> And with those rules in mind, members of the jury, I am going to send you back to continue your discussions and that you – you may now retire with the bailiff and continue.

In general, a district court must instruct a 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). If a jury appears to be deadlocked, it

"may be discharged without a verdict if the court finds there is no reasonable probability of agreement." Minn. R. Crim. P. 26.03, subd. 20(4). Accordingly, a district court may not instruct a jury that it must continue deliberating if there is no reasonable probability of agreement. *See id.*

> If a trial court believes a jury is unable to agree, it "may require the jury to continue their deliberations and may give or repeat an instruction. . . . The court shall not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals." *State v. Kelley*, 517 N.W.2d 905, 909 (Minn. 1994) (quoting A.B.A. Standards for Criminal Justice § 15-4.4(b) (1986)). "[I]t is reversible error in Minnesota to coerce a jury towards a unanimous verdict. A court, therefore, can neither inform a jury that a case must be decided, nor allow the jury to believe that a 'deadlock' is not an available option." *State v. Jones*, 556 N.W.2d 903, 912 (Minn. 1996) (citations omitted).

State v. Buggs, 581 N.W.2d 329, 337-38 (Minn. 1998) (alterations in original). This court applies an abuse-of-discretion standard of review to a district court's supplemental instruction concerning a jury's obligation to continue deliberating if it may be deadlocked. *State v. Cox*, 820 N.W.2d 540, 550 (Minn. 2012).

The district court's supplemental instruction in this case does not violate the principles summarized above. The supplemental instruction reiterated the earlier-given instruction that jurors should "deliberate with a view toward reaching agreement" but without "violating [their] individual judgment" or "surrender[ing] [their] honest opinion simply because other jurors disagree or merely to reach a verdict." *See* 10 Minnesota Dist. Judges' Ass'n, *Minnesota Practice—Jury Instruction Guides*, § 3.04, at 42-43 (6th ed. 2015). The supplemental instruction also informed the jury that "it's legally permissible

for a jury to disagree" and that jurors could either "[a]gree on a verdict or disagree on what the facts of the case may truly be." The supplemental instruction informed the jury, "If you disagree over what you believe the evidence showed, then only you can resolve this conflict if it is to be resolved." Nothing in the supplemental instruction "require[d] or threaten[ed] to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals," tended "to coerce a jury towards a unanimous verdict," informed the jury "that a case must be decided," or "allow[ed] the jury to believe that a 'deadlock' is not an available option." *See Buggs*, 581 N.W.2d at 338 (quotations omitted).

Richardson also contends that the district court erred by not declaring a mistrial after the jury foreperson indicated for a second time that the jury was deadlocked. The district court instructed the jury to recess for the weekend and to continue their deliberations the following week. But, contrary to Richardson's argument on appeal, his trial attorney did not ask the district court to declare a mistrial. In the absence of any request for a mistrial, we review only for plain error. *See* Minn. R. Crim. P. 31.02; *State v. Pak*, 787 N.W.2d 623, 629 (Minn. App. 2010). The question is whether the district court's decision to instruct the jury to recess for the weekend and return on Monday instead of *sua sponte* declaring a mistrial is plainly and obviously inconsistent with the applicable law. Under the applicable law, a jury "may be discharged without a verdict if the court finds there is no reasonable probability of agreement." Minn. R. Crim. P. 26.03, subd. 20(4). At the time of the jury's second note concerning a possible deadlock, it had been deliberating for the equivalent of approximately one full day. The record does not plainly indicate that

there was no reasonable probability of juror agreement. In fact, the jury reached an agreement on the following business day.

Thus, the district court did not err by giving a supplemental instruction concerning the jury's duty to continue deliberating and by not *sua sponte* declaring a mistrial.

IV. Motion for Sentencing Departure

Richardson last argues that the district court erred by denying his motion for a downward departure from the presumptive sentencing range.

The Minnesota Sentencing Guidelines provide for presumptive sentences for felony offenses. Minn. Sent. Guidelines 2.C (2016). For any particular offense, the presumptive sentence is "presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics." Minn. Sent. Guidelines 1.B.13 (2016). Accordingly, a district court "must pronounce a sentence of the applicable disposition and within the applicable [presumptive] range unless there exist identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent. Guidelines 2.D.1 (2016); *see also State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). "Substantial and compelling circumstances are those demonstrating that the defendant's conduct in the offense of conviction was significantly more or less serious than that typically involved in the commission of the crime in question." *State v. Hicks*, 864 N.W.2d 153, 157 (Minn. 2015) (quotations omitted).

The guidelines recognize two different types of departures: dispositional and durational. The supreme court summarized the two as follows:

> A dispositional departure places the offender in a different setting than that called for by the presumptive guidelines sentence. Minn. Sent. Guidelines 1.B.5.a. For example, a downward dispositional departure occurs when the presumptive guidelines sentence calls for imprisonment but the district court instead stays execution or imposition of the sentence. Minn. Sent. Guidelines 1.B.5.a.(2). A dispositional departure typically focuses on characteristics of the defendant that show whether the defendant is "particularly suitable for individualized treatment in a probationary setting." *State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981); *see also State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (citing the "defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family" as relevant factors that may justify a dispositional departure).
>
> By contrast, a durational departure is a sentence that departs in length from the presumptive guidelines range. Minn. Sent. Guidelines 1.B.5.b. A durational departure must be based on factors that reflect the seriousness of the *offense*, not the characteristics of the offender. *State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995). 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." *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985). The requirement that aggravating or mitigating factors must relate to the seriousness of the offense—and not to the characteristics of the offender—narrows the range of factors that may justify a durational departure.

State v. Solberg, 882 N.W.2d 618, 623-24 (Minn. 2016) (first two citations altered).

The guidelines provide non-exclusive lists of mitigating and aggravating factors that may justify a departure. Minn. Sent. Guidelines 2.D.3 (2016). If a district court departs from the presumptive sentence, the district court is required to state the reason or reasons for the departure. Minn. Sent. Guidelines 2.D.1.c. But if the district court does not depart, the district court is not required to state reasons for imposing 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). This court generally applies an abuse-of-discretion standard of review to a district court's denial of a defendant's motion for a downward departure. *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011); *see also State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). Only a "rare case" will warrant reversal of a district court's refusal to depart from the sentencing guidelines. *Kindem*, 313 N.W.2d at 7.

In this case, Richardson moved in the alternative for both a dispositional departure and a durational departure. In support of his argument for a dispositional departure, Richardson relied on his amenability to probation and individualized treatment, his remorse and acceptance of responsibility for his conduct, and his assertion that the victim was the aggressor and that he attempted to defend himself. *See* Minn. Sent. Guidelines 2.D.3.a.(1), .(5), .(7). In support of the durational departure, Richardson relied on some of the same reasons as well as his assertion that his offense was less onerous than usual considering the victim's injuries and vulnerability. *See* Minn. Sent. Guidelines 2.D.3.a.(1), .(5). In denying Richardson's motion, the district court acknowledged that the jury struggled with the issue of self-defense but stated that Richardson did not appear to be particularly amenable to probation because he had failed to appear for sentencing when it first was scheduled.

Richardson contends that the district court erred by disregarding multiple mitigating factors. He acknowledges that his failure to appear for sentencing "could have an effect on whether the district court felt he was amenable to probation" but contends that "it should

not have any effect on the other issues involved in the motions." Richardson repeats some of the arguments he made to the district court. He also contends that the district court erred by ignoring his need for chemical-dependency and mental-health treatment. Richardson has not identified any reason why this court should question the district court's denial of his request for a departure. The mere fact that mitigating factors may exist does not mean that the district court abused its discretion by not departing from the presumptive sentencing range. This case is not the "rare case" that justifies intervention with the district court's exercise of discretion. *See Kindem*, 313 N.W.2d at 7.

Thus, the district court did not err by denying Richardson's motion for a downward departure from the presumptive sentencing range.

Affirmed.