**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-1090**

State of Minnesota,
Respondent,

vs.

James Leroy Samuelson,
Appellant.

**Filed July 13, 2020**
**Affirmed**
**Worke, Judge**

Todd County District Court
File No. 77-CR-17-689

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Charles Rasmussen, Todd County Attorney, Long Prairie, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Schellhas, Judge.*

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

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

**WORKE**, Judge

Appellant challenges his convictions for first-degree criminal sexual conduct, arguing that the district court erred by denying his motion to suppress his statement to law enforcement and abused its discretion by denying his motion for a dispositional departure. We affirm.

## FACTS

In July 2017, Sergeant Brieter received information about a possible criminal-sexual-conduct case and separately interviewed the victims, sisters D.T., E.T., and Z.T. Sergeant Brieter then went to the home of the suspect, appellant James Leroy Samuelson, and asked him to come to the police station to talk to him.

About an hour later, Samuelson arrived at the police station. Sergeant Brieter gave Samuelson the *Miranda* warning, which Samuelson indicated he understood; the interview was video recorded. Samuelson stated that the girls are his girlfriend's granddaughters, and that from 2012 through 2014 he babysat for them. Sergeant Brieter asked Samuelson if he paid the girls to do chores, and he replied that he paid them to give him massages. Samuelson stated that one time his medication had knocked him out and the girls unzipped his pants and tried to get his penis out. Sergeant Brieter stated that he was concerned that something was "missing" from Samuelson's story. Samuelson expounded on his disclosure, stating that the girls put their mouths on his penis.

Sergeant Brieter left the interview room for a short while, and when he returned, he told Samuelson that he was giving him an opportunity to tell him everything. Samuelson replied: "Well you may have to refresh my memory because this was a while ago." Sergeant Brieter revealed that the girls reported that Samuelson told them to put their mouths on his penis. Samuelson stated that the only time it happened, he "woke up and [D.T.]'s mouth was on the tip of [his] penis," and the other girls were "cheering" her on, saying "do it . . . do it."

Chief Langer then entered the interview room. Samuelson, who was acquainted with Chief Langer and called him by his first name, told Chief Langer that he did not understand what was going on. Chief Langer told Samuelson that there were "big problems" and asked Samuelson how they were going to help him through the court system if Samuelson did not cooperate. Chief Langer stated that he could tell the county attorney that Samuelson was cooperative, but if Samuelson was not cooperative he could tell the county attorney to "[t]hrow the fricking book at him."

Chief Langer reminded Samuelson that he had received his *Miranda* warning. Samuelson then admitted that the girls "took a turn" at oral sex, but eventually admitted that it happened twice. He stated that he told the girls: "Well if you want to suck on it one more time, do it." Samuelson then took a cigarette break. Following the break, Sergeant Brieter gave Samuelson the *Miranda* warning again. Samuelson again stated that the girls put his penis in their mouths two separate times. He stated D.T., the eldest, was eight or nine years old at the time.

Samuelson was charged with three counts of first-degree criminal sexual conduct. He moved to suppress his statement to law enforcement, claiming that it was not voluntary. The district court held a hearing on Samuelson's motion. The video recording of Samuelson's interview was admitted. Samuelson testified that he had taken his medications before the interview and had eaten only cookies. He testified that his medications make him feel tired. Samuelson testified that he told the officers what they wanted to hear because he felt belittled and they promised to help him. The district court denied Samuelson's motion, concluding that his statement was voluntary.

Samuelson's jury trial was held in October 2018. Fourteen-year-old D.T. testified that when she was in sixth grade, Samuelson babysat for her and her siblings. D.T. testified that Samuelson would complain that he was sore and request massages. D.T. testified that Samuelson once asked for a massage on his genital area and then made her and her sisters "suck his penis." D.T. testified that she was around nine years old at the time. Twelve-year-old E.T. testified that she massaged Samuelson on his "private area." E.T. testified that Samuelson asked her and Z.T. to put his private area in their mouths, but she did not know about D.T. E.T. testified that Samuelson put his penis in her mouth about four times. Eleven-year-old Z.T. testified that Samuelson asked for massages on his private part. Z.T. testified that Samuelson asked her to put her mouth on his penis more than one time, and that he also asked her sisters to put their mouths on his penis.

Samuelson's recorded interview was played for the jury. Samuelson testified that he fell asleep during a massage and when he "came to," the girls had exposed his penis. Samuelson stated that he "chewed them out." The jury found Samuelson guilty as charged.

Samuelson moved for a downward dispositional departure. Samuelson underwent two psychosexual assessments. The court-ordered assessment indicated that Samuelson is a low risk to reoffend, but the assessor opined that Samuelson is not amenable to treatment "due to his significant denial." The assessment ordered by Samuelson's attorney noted that Samuelson "is not yet ready to take full responsibility," but opined that Samuelson could benefit from "educational programming regarding healthy sexuality and . . . boundaries." A presentence investigation (PSI) report noted that Samuelson blamed the victims. The PSI recommended imposition of the presumptive prison sentence. Following a sentencing hearing, the district court stated that it considered the information presented regarding Samuelson's departure motion. The district court denied Samuelson's motion and imposed concurrent presumptive sentences of 144, 180, and 360 months in prison. This appeal followed.

## D E C I S I O N

### *Statement*

Samuelson first argues that the district court erred by denying his suppression motion because his statement was not voluntary. The voluntariness of a confession is a question of law that this court reviews de novo. *State v. Farnsworth*, 738 N.W.2d 364, 373 (Minn. 2007). A district court's factual findings are reviewed for clear error. *Id.*

In determining whether a statement was voluntary, courts examine whether the defendant's will was overborne at the time he made the statement. *Haynes v. Washington*, 373 U.S. 503, 513, 83 S. Ct. 1336, 1343 (1963). A defendant's will is overborne when police action, combined with other circumstances, is "so coercive, so manipulative, so

overpowering that [the defendant] was deprived of his ability to make an unconstrained and wholly autonomous decision to speak as he did." *State v. Pilcher*, 472 N.W.2d 327, 333 (Minn. 1991). The other relevant circumstances include factors such as "the defendant's age, maturity, intelligence, education, experience and ability to comprehend; the lack of or adequacy of warnings; the length and legality of the detention; the nature of the interrogation; and whether the defendant was deprived of physical needs or denied access to friends." *Id.*

Samuelson argues that he said what the officers wanted to hear because he was 59 years old, had no criminal record, was subjected to a two-hour interview, ate little food that morning, was tired due to his medications, and he did not understand what was going on. He also claims that Chief Langer was deceptive in telling him that he would "help" him, and that Chief Langer yelled that the "fricking book" would be thrown at him if he did not cooperate.

But our review of the record supports the district court's conclusion that Samuelson's statement was voluntary. First, Samuelson was Mirandized before and during his interview, and he indicated that he understood the warning. Samuelson went to the interview of his own accord and was allowed to bring coffee and his cell phone into the interview room. He took a cigarette break. He never stated that he was hungry or that he was tired due to his medication. In fact, it appears that Samuelson had followed his regular routine in eating cookies in the morning with his medication before driving to the police station.

And although Samuelson claims that Chief Langer yelled at him and belittled him, Samuelson never appeared to be in fear of Chief Langer. The record also belies these claims because Samuelson called Chief Langer by his first name and engaged in casual conversation with him about topics unrelated to the case. Moreover, Samuelson made incriminating statements to Sergeant Brieter before Chief Langer entered the interview room and allegedly engaged in his offensive tactics. Based on this record, we cannot conclude that Samuelson's will was overborne, causing him to make statements that he otherwise would not have made. Accordingly, the district court did not err by denying Samuelson's motion to suppress his statement.

***Dispositional departure***

Samuelson also argues that the district court abused its discretion by denying his request for a dispositional departure because he is particularly amenable to probation. The district court imposed presumptive guidelines sentences. A sentence that is prescribed under the sentencing guidelines is "presumed" appropriate. *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014). A district court may depart from a presumptive sentence only if "identifiable, substantial, and compelling circumstances" warrant a departure. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). Appellate courts "afford the [district] court great discretion in the imposition of sentences and reverse sentencing decisions only for an abuse of that discretion." *Soto*, 855 N.W.2d at 307-08. "[I]t would be a rare case which would warrant reversal of the refusal to depart." *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

When a defendant moves for a dispositional departure, a district court's focus is on the defendant and whether he is particularly amenable to probation. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). A district court is not required to depart from a presumptive sentence even if the record shows that the defendant would be amenable to probation. *State v. Olson*, 765 N.W.2d 662, 664-65 (Minn. App. 2009).

Samuelson claims that application of the *Trog* factors shows that he is particularly amenable to probation. *See* 323 N.W.2d at 31 (stating that in assessing whether a defendant is particularly amenable to probation, a district court may consider age, prior record, remorse, cooperation, attitude in court, and support of friends/family). Samuelson argues that he was 60 years old when he was sentenced and had no criminal record. He claims that his psychosexual testing showed that he is at a low risk to reoffend. He claims that he took responsibility for his part and should have received probation in order to receive sex-offender treatment; he asserts that he will not be offered sex-offender treatment in prison, which is of no benefit to anyone.

Samuelson also claims that because a different district court judge sentenced him than the district court judge who presided over his trial, the district court was not aware that Samuelson was cooperative, he participated in two psychosexual evaluations, he abided by the conditions of release, he requested permission before changing residences, and he always appeared and never spoke out of turn.

The district court considered the *Trog* factors. In denying the motion, the district court stated that Samuelson's version of events was not believable and that his continued denial and victim blaming were "troublesome to say the least." The district court stated

that a low risk to reoffend "does not necessarily mean amenability to probation," and that Samuelson's refusal to take accountability impacted his amenability to treatment. Based on the record reflecting the district court's thoughtful consideration of Samuelson's motion, we conclude that the district court did not abuse its discretion by denying Samuelson's request for probation.

**Affirmed.**