STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1200

State of Minnesota,
Respondent,

vs.

Jacob Elmo Larson,
Appellant.

Filed August 16, 2021
Affirmed
Bjorkman, Judge

Douglas County District Court
File No. 21-CR-18-852

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Chad M. Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

Todd V. Peterson, Todd V. Peterson, P.A., Sauk Rapids, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction and sentence for first-degree manslaughter, asserting that the district court abused its discretion by denying his motion to change venue and by imposing a guidelines sentence. Because appellant has not demonstrated actual

prejudice resulting from the denial of his motion to change venue, and we discern no abuse of the district court's sentencing discretion, we affirm.

FACTS

On the evening of May 4, 2018, appellant Jacob Larson went to the Muddy Boot—a bar in Forada—with Troy Traut and two other individuals. Surveillance footage shows Traut approaching the male victim several times throughout the night in an aggressive or agitated manner. In two separate incidents, Traut threw the victim's beer bottle against the wall and flipped over a cup in front of the victim. Traut later went outside. The surveillance video then shows Larson lighting a marijuana pipe and blowing smoke in the victim's direction. The victim stood up and escorted Larson toward the exit. As the door opened, Traut pulled the victim through and Larson placed him in a headlock.

The Douglas County Sheriff's Office received a 911 call shortly thereafter. Deputies found the victim lying on the sidewalk bleeding from his nose and one ear. He was airlifted to a St. Cloud hospital, where he was treated and released on May 11. Two days later, first responders were called to the victim's residence. They found him unresponsive and pronounced him dead at the scene. The Douglas County Medical Examiner concluded the cause of death was "complications of blunt force head injuries" he suffered outside the Muddy Boot.

The victim was a well-known first responder in Douglas County, having served in the Forada Fire Department for 28 years. His death garnered coverage in the local press. The *Echo Press*—a newspaper covering Douglas County—published four articles that May describing the incident, reporting the victim's death and funeral, and following the ongoing

investigation and criminal charges against Larson and Traut. And the *Star Tribune* published one article that month describing the reported events, stating that the victim died several days later, and that Larson and Traut faced criminal charges. The *Echo Press* published one additional article in September 2018, reporting that Larson was asking the district court to change venue.

Respondent State of Minnesota charged Larson with second-degree murder, first-degree manslaughter, fifth-degree assault, and aiding and abetting each charge. Larson moved to change venue, arguing that the victim was a well-known figure in a small community, and there was evident bias against Larson as a result of the pretrial publicity. He attached the five *Echo Press* articles and the *Star Tribune* article in support of his motion, along with an affidavit from his mother describing threats of violence against Larson and his family.

The district court denied the motion in a November 2018 order. The district court determined that the pretrial publicity was not unduly prejudicial toward Larson, that Larson did not demonstrate the potential jury pool was tainted because of the publicity, and that the passage of time since the death and the peak of the publicity likely mitigates any risk of prejudice. But the court left open the possibility that Larson could raise this argument later, stating that it "does not believe [Larson] has demonstrated a reasonable likelihood of an unfair trial at this stage."

When the case came to trial in January 2020, the district court used a jury questionnaire to aid the parties in screening potential exposure to pretrial publicity. The district court also conducted individual voir dire to avoid the possibility of a prospective

juror with strong opinions from potentially tainting the jury pool as a whole. The court ultimately called 37 potential jurors in the process of selecting 12 jurors and 2 alternates. Larson used only four of his five peremptory challenges during jury selection.

Following five days of trial, the jury found Larson guilty of first-degree manslaughter, aiding and abetting first-degree manslaughter, fifth-degree assault, and aiding and abetting fifth-degree assault. The jury found Larson not guilty of the other charges.

The district court ordered a presentence investigation, which noted that the presumptive sentence was 86 months' imprisonment with a range of 74-103 months. Larson moved for downward dispositional and durational departures. The district court denied both motions, convicted Larson of first-degree manslaughter, and imposed a 90-month prison sentence. Larson appeals.

DECISION

I. Denial of the motion to change venue does not entitle Larson to a new trial because he has not demonstrated actual prejudice due to pretrial publicity.

Generally, a criminal case "must be tried in the county where the offense was committed." Minn. R. Crim. P. 24.01. But venue must be changed when "potentially prejudicial material creates a reasonable likelihood that a fair trial cannot be had." Minn. R. Crim. P. 25.02, subd. 3. A district court has wide discretion in deciding motions to change venue, and we will not reverse "unless there has been a clear abuse of discretion." *State v. Fratzke*, 354 N.W.2d 402, 406 (Minn. 1984) (quotation omitted). On appeal from a conviction, a defendant must demonstrate that the district court abused its discretion and

that "he suffered actual prejudice from pretrial publicity." *State v. Fairbanks*, 842 N.W.2d 297, 302 (Minn. 2014).

To establish actual prejudice resulting from pretrial publicity, a defendant must show that the pretrial publicity "influenced the specific jurors involved in the case." *Id.* Mere exposure to pretrial publicity is not sufficient; instead "the test is whether a prospective juror can set aside an impression or opinion and render an impartial verdict." *Id.* When applying this test we consider, among other things, (1) "whether the pretrial publicity was factual," (2) "the length of time between the publicity and the trial," and (3) "whether any potential prejudice was mitigated at trial, including whether the defendant had a full and fair opportunity to question prospective jurors about the publicity and challenge those not considered impartial." *Id.*; *see State v. Warren*, 592 N.W.2d 440, 448 (Minn. 1999) (affirming denial of a motion to change venue despite the fact that "[f]ourteen of the fifteen jurors chosen, including alternates, had read one or more newspaper articles or had seen accounts of the murders on television").

Larson argues that he established actual prejudice because 31 of the 37 prospective jurors had been exposed to the pretrial publicity, and several expressed opinions about whether Larson's actions caused the victim's death. Consideration of the three prejudice factors persuades us that Larson has not demonstrated actual prejudice.

First, the large majority of the pretrial publicity Larson asserts is prejudicial is factual reporting. Factual pretrial publicity is insufficient to establish prejudice because only "[o]pinions or implications of the defendant's guilt" contained within pretrial reporting prejudices a defendant. *State v. Salas*, 306 N.W.2d 832, 835 (Minn. 1981). The

Star Tribune article describes what the surveillance footage shows about the altercation between Larson and the victim, states that the victim was hospitalized and died two days after being released, and summarizes other information contained in the charging documents. The first *Echo Press* article does not identify Larson as a potential suspect, and merely reports that the victim was found outside the Muddy Boot, was treated at the hospital, and later died. Two other *Echo Press* articles report that search warrants were issued, Larson was charged in connection with the victim's death, and there was a bail hearing. And the last *Echo Press* article states that Larson asked the district court to change venue and recites the charges against him.

The only *Echo Press* article that goes beyond factual reporting is the article regarding the victim's memorial service—a well-attended event honoring the victim's many years of service as a first responder. But this article does not relate the events that led to the victim's death or identify Larson as a suspect in the criminal investigation. In short, the three articles that connect Larson to the victim are based on publicly available factual information. None of the articles contain anything that "purports to be the opinions of people who are supposed to know the facts"—the "vice" that venue change is designed to remedy. *Fratzke*, 354 N.W.2d at 407 (quotation omitted). And even factual reporting that "reveal[s] sympathy" for the victim or their family does not result in prejudice for the defendant. *Fairbanks*, 842 N.W.2d at 302-03. Because the large majority of the pretrial publicity here was purely factual reporting, the content of the articles does not establish actual prejudice.

Second, there was a substantial gap in time between the pretrial publicity and Larson's trial. Minnesota courts recognize "the lapse of time as a factor in evaluating the prejudicial effect of pretrial publicity," with longer intervals of time providing greater mitigation. *Fratzke*, 354 N.W.2d at 407; *see Fairbanks*, 842 N.W.2d at 303 (concluding no actual prejudice when most of the 119 articles defendant submitted with his motion were published 11 months or more before trial); *State v. Swain*, 269 N.W.2d 707, 720 (Minn. 1978) (concluding that six months between the one week of pretrial publicity and trial mitigated prejudice); *State v. Hogan*, 212 N.W.2d 664, 669 (Minn. 1973) (concluding that a three-month gap between pretrial publicity and trial mitigated prejudice); *cf. State v. Thompson*, 123 N.W.2d 378, 381 (Minn. 1963) (suggesting that ongoing press coverage "[o]ver a period of several months" where "hardly a day has elapsed when something has not been said or written in a news medium of one kind or another" is prejudicial). The most recent article Larson identifies was published on September 28, 2018—roughly 16 months before trial. The other articles were published in May 2018—roughly 20 months before the trial. We conclude that this gap in time substantially mitigated any potential prejudice to Larson resulting from the pretrial publicity.

Third, Larson was afforded a "full and fair opportunity to question prospective jurors about the publicity and challenge those not considered impartial." *Fairbanks*, 842 N.W.2d at 302. The district court used a jury questionnaire, which mitigates potential prejudice. *See id.* at 303. And the court conducted individual voir dire, allowing Larson's counsel to fully question each prospective juror to uncover potential bias without tainting the jury pool. Larson was afforded the opportunity to challenge jurors for cause and only

exercised four of his five peremptory challenges. That he did not utilize all of his peremptory challenges weighs against a finding of actual prejudice. *See Warren*, 592 N.W.2d at 448 (stating that defendant's failure to use three of his peremptory challenges "suggests that [the defendant] was satisfied that the jurors selected would be unbiased").

Ultimately, each sworn juror affirmed under oath that they could be fair and impartial. Two jurors also affirmed that they had not been exposed to any of the pretrial publicity Larson claims was prejudicial. On this record, Larson has not demonstrated actual prejudice caused by the pretrial publicity.

II. The district court did not abuse its discretion by imposing a guidelines sentence.

A district court must impose a sentence within the Minnesota Sentencing Guidelines "unless there exist identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent. Guidelines 2.D.1 (Supp. 2017); *see also State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (stating a district court may only depart from the guidelines if there is a substantial and compelling reason to do so). We review a sentencing decision for an abuse of discretion. *Soto*, 855 N.W.2d at 307-08. And we will only disturb the imposition of a guidelines sentence in a rare case. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Larson argues that the district court abused its sentencing discretion by declining to impose a probationary sentence or a shorter prison sentence. We address each argument in turn.

Larson first contends that the district court abused its discretion by not departing dispositionally because he is particularly amenable to probation. A defendant's particular

amenability to probation is a valid ground for a dispositional departure. *Soto*, 855 N.W.2d at 308-09. There are "[n]umerous factors" that may establish a particular amenability to probation, "including the defendant's age, his prior record, his remorse, his cooperation, his attitude in court, and the support of friends and/or family." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). But the existence of valid departure grounds does not require the district court to deviate from the sentencing guidelines. *See State v. Evenson*, 554 N.W.2d 409, 412 (Minn. App. 1996) ("Even assuming [the defendant] is exceptionally amenable to treatment, his amenability does not dictate the result."), *review denied* (Minn. Oct. 29 1996). And a district court does not have to explain why it chose to impose a guidelines sentence so long as the record reveals that it considered the defendant's departure motion. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

During the sentencing hearing, the district court specifically stated that it had reviewed Larson's departure motion and other submissions, listened to the arguments of counsel for both Larson and the state, and considered the presentence investigation report. Moreover, the court expressed its opinion that the manner in which Larson committed the offense—as the culmination of an entire night spent aggravating the victim—favored a prison sentence. We see no reason to disturb the district court's denial of a dispositional departure on this record.

Larson next argues that he is entitled to a durational departure. Substantial and compelling circumstances for a downward durational departure are those which demonstrate a defendant's conduct was "significantly . . . less serious than that typically involved in the commission of the crime in question." *State v. Rund*, 896 N.W.2d 527, 532

(Minn. 2017) (quotations omitted). The district court's comments suggested that Larson's conduct was more—not less—serious than that typically involved in a first-degree manslaughter offense. The district court noted that Larson assaulted the victim following a prolonged period of time during which Larson and others aggravated the victim, and that Larson chose not to remove himself from the situation despite ample opportunities to do so. The evidence supports this assessment.

In sum, we are satisfied that this is not one of those rare cases in which we would disturb the imposition of a guidelines sentence.

Affirmed.