STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1382

State of Minnesota,
Respondent,

vs.

Derrick Lemar Forest,
Appellant.

Filed May 9, 2022
Affirmed
Jesson, Judge

Hennepin County District Court
File No. 27-CR-19-32094

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Jesson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

After being stabbed in a parking lot, appellant Derrick Lemar Forest drove his sports-utility vehicle (SUV) into both the assailant and a brick wall at 16 miles per hour. The state charged Forest with first- and second-degree murder. The jury found Forest not

guilty of first-degree murder but guilty of second-degree murder.[1] Forest now appeals his conviction, arguing that he received ineffective assistance of counsel and challenging various rulings by the district court. Because Forest did not receive ineffective assistance of counsel, and because he has not otherwise shown error, we affirm.

FACTS

The charges against Forest stem from the events of a Sunday morning in December 2019.[2] Forest met a friend that morning in a parking lot by House of Charity.[3] The parking lot is almost entirely enclosed by walls or barricades except for a vehicle entrance on one side and a pedestrian entrance in a corner on the opposite side of the lot. Forest sat in the driver's seat of his SUV and his friend sat in the passenger's seat. All of a sudden, a man—the decedent—approached Forest's SUV. The decedent opened the SUV door and grabbed, punched, and repeatedly stabbed Forest with a kitchen knife.

Forest resisted the assault. He managed to get his door closed and the SUV into gear. But Forest did not leave the parking lot. Instead, he drove in a wide circle around a parked car, between two yellow markers, and attempted to strike the decedent with his SUV. Forest ended up parallel to the parked car with the decedent between the two vehicles. The decedent pounded on Forest's window with his fists. Forest backed up and

[1] The jury also found Forest not guilty of first-degree heat-of-passion manslaughter, a lesser-included offense requested by Forest's counsel.

[2] The following is summarized from the evidence produced at trial by the state.

[3] House of Charity provides housing for persons struggling with homelessness and chemical addiction.

angled his SUV towards the decedent again, but the decedent retreated to the other side of the parked car.

Forest repositioned his SUV yet again, but the decedent kept the parked car between himself and Forest. Eventually, Forest drove away from the decedent toward the parking lot exit. The decedent began to walk away from the parked car to the opposite exit. But instead of leaving the parking lot, Forest turned his SUV around and aimed it at the decedent. The decedent began to run toward the exit, but the walls prevented him from leaving the lot anywhere except the corner. Forest accelerated and struck the decedent, colliding with the wall behind him. The impact totaled Forest's SUV, knocked bricks off the wall, and inflicted injuries that caused the decedent's death. A surveillance camera in the parking lot captured most of Forest's movements.

The passenger, who broke her ankle during the crash, called 911. When police arrived, Forest showed them his stab wounds. The first officer on the scene noted that Forest was "severely bleeding." Paramedics ultimately took Forest to the hospital to treat his injuries. The decedent was also taken to the hospital and died shortly thereafter.

The state charged Forest with second-degree murder. Forest pleaded not guilty in February 2020 and requested a speedy trial, although he then agreed to a date slightly outside the usual 60-day range. But in March, the Chief Justice of the Minnesota Supreme Court suspended all jury trials that were not currently underway.[4] Over Forest's objection, the district court found good cause to continue the trial until June 2020. Separately, the

[4] *Order Continuing Operations of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency*, No. ADM20-8001 (Minn. Mar. 20, 2020).

state sought to convene a grand jury proceeding to indict Forest for first-degree murder, which was also delayed. Eventually, the grand jury returned an indictment, and the state charged Forest with first-degree premeditated murder.

At trial in June 2020, the state began by calling three eyewitnesses to testify. The first two were neighbors who observed some or all of the incident. The third was the passenger, who relayed her perception of events from inside Forest's SUV. The state played the surveillance footage from the parking lot for the jury. Then the state called police officers to testify, among them a police sergeant who reviewed the pre-crash data collected by Forest's vehicle. The sergeant explained that the airbag-control module in the SUV took internal measurements of the vehicle that went back five seconds before the airbags deployed. This pre-crash data showed that Forest began accelerating at 4.4 seconds before impact, reached a top speed of 22 miles per hour while heading towards the decedent, applied the brakes at 0.5 seconds before impact, and was traveling at 16 miles per hour at the time of the collision.

Forest did not testify or present witnesses in his defense. Forest's counsel requested that the district court give a lesser-included jury instruction of first-degree heat-of-passion manslaughter, and the court granted the request. The jury found Forest not guilty of first-degree murder and first-degree heat-of-passion manslaughter but found him guilty of second-degree intentional murder.

After the verdict, Forest moved for a downward durational departure. The state opposed the motion and argued that the district court should sentence Forest to the

maximum amount of time allowed by the presumptive range. The district court denied Forest's departure motion and sentenced him to a term of 386 months in prison.

Forest appealed, and we granted his motion to stay his direct appeal to pursue postconviction relief. The district court denied Forest's petition for postconviction relief without an evidentiary hearing. We dissolved the stay and now address Forest's appeal.

DECISION

Forest argues that he is entitled to a new trial because he received ineffective assistance of counsel in various respects. In a pro se supplemental brief, Forest further contends that his conviction is not supported by sufficient evidence, that the district court abused its discretion by excluding evidence of the decedent's intoxication, that his right to a speedy trial was violated, that the district court's jury instructions were plainly erroneous, that the prosecutor committed misconduct, and that the district court abused its discretion by denying his motion for a durational departure. We consider each claim in turn, beginning with ineffective assistance of counsel.

I. Forest did not receive ineffective assistance of counsel.

Forest's appellate counsel contends that his trial counsel was ineffective for failing to request a jury instruction on second-degree unintentional felony murder, which is a lesser-included offense of second-degree intentional murder. And Forest's counsel argues that his trial counsel was ineffective for failing to object to testimony by the passenger. In his pro se brief, Forest asserts that counsel was ineffective for failing to request a self-defense instruction, for allegedly coercing Forest into waiving his right to testify, and for requesting the first-degree heat-of-passion manslaughter lesser-included instruction.

To address these claims, we turn first to the Sixth Amendment of the United States Constitution, which guarantees criminal defendants the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984). We review claims of ineffective assistance of counsel de novo. *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016).[5] A defendant must satisfy the two-pronged *Strickland* test to prove a claim of ineffective assistance of counsel: (1) that "counsel's representation fell below an objective standard of reasonableness," and (2) that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Zumberge v. State*, 937 N.W.2d 406, 413 (Minn. 2019) (quotations omitted). If a claim does not satisfy one of the *Strickland* prongs, the claim fails and we need not reach the second prong. *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016).

The lack of an unintentional-murder instruction did not prejudice Forest.

To receive a new trial, Forest must show that his counsel's performance fell below an objective standard of reasonableness by failing to request the second-degree unintentional-murder instruction, and that there is a reasonable probability that the outcome of his trial would have been different had his counsel requested the instruction. *Zumberge*, 937 N.W.2d at 413. We analyze whether Forest has shown this reasonable probability with regard to the outcome of his trial in light of the totality of the evidence presented to the jury. *Gates v. State*, 398 N.W.2d 558, 562-63 (Minn. 1987).

[5] When an appellant stays direct appeal to pursue postconviction relief, we review the postconviction court's decision using the same standard we would apply to a direct appeal. *State v. Maurstad*, 733 N.W.2d 141, 146 (Minn. 2007).

Here, we need not decide whether Forest's trial counsel's performance fell below an objective standard of competence because our review of the evidence convinces us that Forest did not prove that, had counsel requested the second-degree unintentional-murder instruction, the result of his trial would have been different. *See Strickland*, 466 U.S. at 697 (explaining that courts need not determine whether counsel's performance was deficient before considering the prejudice actually suffered by defendant); *Gates*, 398 N.W.2d at 561-62.

We so conclude because the evidence of Forest's intent to kill the decedent is overwhelming. The surveillance-video evidence alone is highly persuasive evidence of Forest's intent to kill. It shows Forest circling the decedent in the parking lot for about two minutes in an attempt to strike him, while the decedent sought to keep a parked car between himself and Forest's SUV. This cat-and-mouse game continued until Forest suddenly accelerated toward the exit of the parking lot in an apparent retreat. But after the decedent left his position of relative safety behind the parked car, Forest spun his SUV around, aimed it at the decedent, and crashed into both him and a brick wall.

And the surveillance video does not stand alone. The pre-crash data recorded by the airbag-control module further corroborates Forest's intent to kill. It shows that Forest began to accelerate at 4.4 seconds before impact. By the time that he was 2.2 seconds away from impact, Forest was depressing the accelerator to around 90% of its total range. He kept the accelerator at that position until 0.8 seconds before impact, at which point he had reached a speed of 22 miles per hour. And Forest did not touch the brakes until 0.5 seconds

before impact. When Forest struck the decedent and the brick wall, he was traveling at 16 miles per hour.[6]

Finally, the passenger's testimony is powerful evidence of Forest's intent. The passenger saw the entirety of the events in the parking lot unfold, from the decedent's initial attack on Forest, through the parking-lot maneuvers, to the collision. After explaining the decedent's attack on Forest, the passenger testified that Forest was able to pull away. At the time, the passenger thought that Forest was heading for the parking lot exit. She was "shocked and confused" when Forest turned around instead of leaving. And in describing the collision, the passenger stated that Forest "went really fast and scary." She testified that Forest did not stop or swerve, "except for when he was chasing" the decedent. And when she was asked if it appeared to her that Forest hit the decedent on purpose, she replied "yes." She testified that she had no hesitation about that answer.

In sum, Forest has not shown a reasonable probability that the verdict would have been different had his trial counsel requested the second-degree unintentional-murder instruction. The evidence of Forest's intent to kill is simply too strong. *See id.* at 563 (explaining that defendant had not shown prejudice in part because the "evidence of defendant's guilt was very strong, consisting of positive eyewitness identification of him as the gunman and of strong corroborating evidence").

To persuade us otherwise, Forest argues that he was prejudiced because the jury was forced to either convict him of intentional murder or acquit him entirely, instead of

[6] Data taken by the module, as well as a physical examination of the SUV, revealed that all systems were working as normal.

convicting him for unintentional murder. In support of this contention, he cites *State v. Harris*, 713 N.W.2d 844 (Minn. 2006) and *State v. Leinweber*, 228 N.W.2d 120 (Minn. 1975). But these cases address the analysis used when a district court refuses to grant a *requested* lesser-included instruction. That analysis differs from the examination of whether a defendant was prejudiced by counsel's performance. *Compare State v. Dahlin*, 695 N.W.2d 588, 599 (Minn. 2005) (considering only instructions actually given and verdict rendered to determine prejudice from denial of requested instruction), *with Gates*, 398 N.W.2d at 563 (considering totality of evidence presented to jury to determine prejudice from allegedly ineffective representation). And the totality of the evidence produced here persuades us that Forest has not shown prejudice.

Next, Forest argues that the difference in sentence alone between second-degree intentional murder and second-degree unintentional murder proves that he was prejudiced. But the case he relies upon for this argument also addresses when a district court refuses to grant a requested instruction. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006). Further, the rule that Forest proposes—that the failure to request an instruction with a lesser presumptive sentence is always prejudicial—would run afoul of the *Strickland* court's admonition to avoid "mechanical rules" because the ultimate inquiry is about the fundamental fairness of the proceeding. 466 U.S. at 696. The difference in sentence alone, without a showing of a reasonable probability of a different verdict, is insufficient to prove that Forest was prejudiced.

In sum, we are not persuaded that Forest was prejudiced by the failure to request an unintentional-murder instruction.[7]

Counsel reasonably declined to object to the passenger's testimony.

Next, Forest contends that he should have received an evidentiary hearing on his claim that his counsel was ineffective for failing to object to the passenger's testimony that it seemed to her that Forest intentionally drove into the decedent. To receive an evidentiary hearing, an appellant must allege facts that, if proven by a fair preponderance of the evidence, would satisfy the two-pronged *Strickland* test set forth above. *Thoreson v. State*, 965 N.W.2d 295, 309 (Minn. 2021). And as before, we need not consider both prongs if one is dispositive of Forest's claim. *Swaney*, 882 N.W.2d at 217.

To analyze Forest's argument, which involves a lay person's opinion, we turn to our evidentiary rules. Those provide that a lay witness can testify about an opinion that is rationally based on the witness's perception and helpful to the determination of a fact in issue, so long as the opinion is not based on specialized knowledge. Minn. R. Evid. 701. And such opinion testimony is not inadmissible just because it relates to an ultimate issue in the case. Minn. R. Evid. 704. In analyzing the admissibility of lay opinion testimony,

[7] In a related pro se argument, Forest contends that his conviction is not supported by sufficient evidence because the evidence does not prove that he acted intentionally. An intentional killing is supported by sufficient evidence if a reasonable jury could conclude that the only reasonable conclusion from the evidence, viewed in the light most favorable to the state, is that the killing was intentional. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). Here, viewing the video, the pre-crash data, and the passenger's testimony in the light most favorable to the state, a reasonable jury could conclude that the only reasonable conclusion was that Forest intended to kill the decedent. Accordingly, sufficient evidence supports his conviction.

the emphasis is on whether the witness personally knows the information, and whether the testimony will assist the jury. *State v. Post*, 512 N.W.2d 99, 101 (Minn. 1994).

Here, Forest has not shown that his counsel's failure to object to this lay testimony fell below an objective level of reasonableness for two reasons. First, the passenger's testimony was admissible because it was based on her perception from inside Forest's SUV. *Id.* at 101-02; Minn. R. Evid. 701. That her opinion touches on the issue of Forest's intent does not make it inadmissible. Minn. R. Evid. 704. Counsel does not act unreasonably by failing to make an objection that would not succeed. *State v. Bobo*, 770 N.W.2d 129, 138 (Minn. 2009). Second, the decision of whether to object to testimony is a matter of trial strategy. *Id.* We generally do not review claims of ineffective assistance that implicate matters of trial strategy. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). Because Forest's counsel did not act unreasonably by failing to object to this testimony, Forest has not shown that he was entitled to an evidentiary hearing.

Forest has not otherwise shown that his trial counsel's performance was unreasonable.

Finally, we consider Forest's additional assertions of ineffective assistance of counsel. First, Forest argues that his counsel was ineffective for failing to request a self-defense instruction. But Forest's counsel concluded that the instruction was not supported by the evidence. To receive a self-defense instruction, the defendant must show four elements: (1) the absence of aggression or provocation on the defendant's part, (2) an actual and honest belief that the defendant was in imminent danger of death or great bodily harm, (3) reasonable grounds for that belief, and (4) the absence of a reasonable possibility

of retreat. *Johnson*, 719 N.W.2d at 629. Forest cannot show the fourth element because, after getting the decedent out of his car, Forest could have retreated. He did not.

Second, Forest alleges that his counsel coerced him into waiving the right to testify in an "off the record communication." But the record shows that Forest decided to waive his right to testify after being given an additional hour to consult with counsel. When the record reflects that the defendant decided to waive his right to testify after consulting with counsel, an after-the-fact claim of coercion fails. *State v. Thomas*, 590 N.W.2d 755, 759 (Minn. 1999). Forest has not shown that his counsel coerced him into not testifying.

Third, Forest contends that counsel was ineffective for requesting a lesser-included instruction of first-degree heat-of-passion manslaughter because he contends that the evidence does not support the instruction. But the evidence provided a rational basis to support the instruction. *Dahlin*, 695 N.W.2d at 598. A heat-of-passion defense requires proof that defendant killed in the heat of passion, meaning that the killing was provoked by the acts of another that would provoke a person of ordinary self-control under the circumstances. *Johnson*, 719 N.W.2d at 626. Here, the decedent's sudden assault of Forest could provoke a person of ordinary self-control. Accordingly, Forest has not shown that his counsel's performance fell below an objective level of reasonableness because the evidence does not support a self-defense instruction but supports the heat-of-passion instruction, and because the record contradicts Forest's assertion that he was coerced into not testifying.

In sum, Forest did not receive ineffective assistance of counsel. Assuming, without deciding, that Forest's counsel erred by not requesting the unintentional-murder

instruction, Forest has not shown a reasonable probability of a different outcome. And Forest's counsel did not perform unreasonably in declining to object to the passenger's testimony, not requesting a self-defense instruction, counseling Forest about his right to testify, or by requesting the heat-of-passion-manslaughter instruction.

II. The district court did not abuse its discretion by excluding evidence of the decedent's intoxication.

Forest argues that the district court should have let him present evidence of the victim's intoxication to the jury. A district court has wide discretion to determine whether evidence is relevant. *State v. Hallmark*, 927 N.W.2d 281, 298 (Minn. 2019). Evidence is relevant when it has any tendency to make a material fact more or less likely to exist. Minn. R. Evid. 401.

Here, the state moved the district court to prohibit Forest's counsel from introducing evidence of the decedent's intoxication. Forest's counsel argued that the decedent's intoxication was relevant to show that the decedent—allegedly acting erratically because he was under the influence of controlled substances—ran into the way of Forest's vehicle. But the district court, after reviewing the video of the incident, rejected defense counsel's characterization of the events, and concluded that the decedent's toxicology report was not relevant.

Forest has not shown that the district court abused its discretion by so concluding. The surveillance video clearly shows the decedent walking in a straight line, and then running to avoid the SUV before Forest strikes him. It does not depict the decedent running

into the path of Forest's SUV. Because the decedent did not run into his path, Forest has not shown that the evidence of the decedent's intoxication was relevant to a material fact.

III. Forest's right to a speedy trial was not violated.

Forest contends that his right to a speedy trial was violated in two respects: his trial was delayed from the original date of April 27, 2020, until June 22, 2020, and his indictment for first-degree murder was delayed in violation of Minnesota Rule of Criminal Procedure 8.02. To resolve these claims, we turn to our precedent interpreting the speedy-trial right.

A criminal defendant is entitled to a speedy trial under both the Sixth Amendment to the United States Constitution and Article 1, Section 6, of the Minnesota Constitution. We review de novo whether a defendant's right to a speedy trial has been violated. *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015). To answer this question, we consider four factors: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of the right to a speedy trial, and (4) the prejudice to the defendant as a consequence of the delay. *State v. Mikell*, 960 N.W.2d 230, 245 (Minn. 2021). Finally, we balance the above factors to determine whether Forest's speedy-trial right was violated.

First, we consider the length of the delay. A defendant must be tried within 60 days of a speedy-trial demand following a not-guilty plea "unless the court finds good cause for a later trial date." Minn. R. Crim. P. 11.09(b). As a result, a delay of more than 60 days is presumed to be prejudicial. *Mikell*, 960 N.W.2d at 246.

Here, Forest pleaded not guilty to the charge of second-degree murder on February 5, 2020. But Forest agreed to a trial date of April 27, 2020, which was more than

60 days after his not-guilty plea. The parties then agreed to a new date of June 8, 2020, subject to Forest's waiver of his speedy-trial right. Forest objected to the delay, but the district court found good cause to continue the trial. And the court, because of the requirements for conducting a jury trial under the pilot program during the pandemic, had to continue Forest's trial once more to June 25, 2020. Accordingly, Forest's trial was delayed for 124 days from his not guilty plea. This delay is presumptively prejudicial. *Id.*

Second, we determine whether the delay is attributable to the state or the defendant. *Id.* at 250-51. Recently, we concluded that when the delay is "solely attributable to the COVID-19 pandemic," the delay "is not attributable to either party." *State v. Jackson*, 968 N.W.2d 55, 61 (Minn. App. 2021), *rev. granted* (Minn. Jan. 18, 2022). Forest does not identify a reason for the delay other than the pandemic. Accordingly, this factor does not weigh in his favor.

Third, we consider how the defendant asserted his right to a speedy trial. *Mikell*, 960 N.W.2d at 252. Forest inconsistently asserted this right. Although he asserted the right upon pleading not guilty, he agreed to a date outside of the 60-day deadline at the same hearing. And Forest did not renew his speedy-trial demand until June 5, 2020. Inconsistent assertions of the right to a speedy trial dilutes the impact of an initial demand in the balancing of the speedy-trial factors. *Id.* at 253. Thus, this factor does not weigh in Forest's favor.

Fourth, we determine whether the defendant was prejudiced by the delay, considering three interests: "(1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) preventing the possibility

that the defense will be impaired." *Id.* (quotation omitted). Impairment to the defense generally consists of memory loss or witness unavailability. *Id.* Forest does not specifically assert *how* he was prejudiced by the delay. Because Forest did not present any evidence in his defense, he has not shown any impairment. And while Forest undoubtedly suffered anxiety while awaiting trial, the usual stress and anxiety experienced by anyone who stands trial is insufficient to show prejudice. *State v. Friberg*, 435 N.W.2d 509 (Minn. 1989). Accordingly, this factor also does not weigh in Forest's favor.

Finally, we consider, in light of the above factors, whether the state brought the defendant to trial quickly enough that the values protected by the speedy-trial right are not endangered. *Mikell*, 960 N.W.2d at 255. Here, the state brought Forest to trial quickly enough. While the 124-day delay is presumptively prejudicial, the delay is not attributable to the state, Forest inconsistently asserted his right, and he has not shown prejudice. In sum, his speedy-trial right was not violated by the delay.[8]

IV. The district court did not plainly err by not giving an accomplice instruction to the jury.

Forest contends that the district court should have given an accomplice instruction to the jury regarding the passenger. A conviction may not be based solely on the uncorroborated testimony of an accomplice. Minn. Stat. § 634.04 (2020). District courts

[8] Forest also asserts that the delay in his indictment violated his speedy-trial rights. Because Forest did not object before the district court, we review this claim for plain error, meaning that Forest must show a plain error that affected his substantial rights. *State v. Hayes*, 826 N.W.2d 799, 807 (Minn. 2013). A plain error affects a defendant's substantial rights if it affected the outcome of the case. *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017). Because Forest was not found guilty of first-degree murder, any error in the indictment process did not affect his substantial rights. *Id.* Accordingly, he has not shown plain error.

must instruct juries on accomplice testimony when it is reasonable to consider the witness to be the defendant's accomplice. *State v. Horst*, 880 N.W.2d 24, 37 (Minn. 2016). When the defendant does not request an accomplice instruction, appellate courts review the lack of such an instruction for plain error. *Id.* at 38. Under the plain-error standard, Forest must show (1) an error, (2) that is plain, and (3) that affected his substantial rights. *Id.*

Here, Forest has not shown plain error. Forest alleges that the passenger was an accomplice of the *decedent* and lured him to the parking lot. But Forest has not shown that the passenger was an accomplice of his killing of the decedent. *Id.* at 37. Accordingly, the district court did not plainly err by not giving an accomplice instruction to the jury.

V. The prosecutor did not commit misconduct.

Next, Forest argues that the prosecutor disparaged his defense and misrepresented evidence to the jury. Prosecutors have an affirmative obligation to ensure the fairness of criminal trials, and misconduct may deny a defendant that right. *State v. Ramey*, 721 N.W.2d 294, 300 (Minn. 2006). This court reviews claims of unobjected-to prosecutorial misconduct for plain error. *Id.*

Again, Forest has not shown plain error. First, he does not explain how the prosecutor disparaged his defense and a review of the trial transcript shows that the prosecutor did not do so. Second, Forest's claims of misrepresentation of the evidence are not persuasive. He claims that the state misrepresented the evidence by saying that he could have called 911 instead of striking the victim with his car, that he could have driven away once he got his car door closed, and that the passenger testified that he intentionally

struck the decedent without hesitation. All of these statements are supported by testimony at trial. Thus, Forest has not shown that the prosecutor committed misconduct.

VI. The district court did not abuse its discretion by denying Forest's motion for a durational departure.

Finally, Forest argues that the district court should have granted his motion for a downward durational departure. We review this claim for an abuse of the "great discretion" given to district courts in the imposition of criminal sentences. *State v. Rund*, 896 N.W.2d 527, 532 (Minn. 2017) (quotation omitted). And only rarely would we interfere with a term that is within the presumptive sentence range. *State v. Kangbateh*, 868 N.W.2d 10, 14 (Minn. 2015).

Here, Forest moved for a durational departure because the decedent was the initial aggressor, and he asserted that he lacked capacity at the time of the offense because he was in shock. The district court denied Forest's motion because it did not find any substantial or compelling reasons to give him a departure. The court found that Forest was the aggressor in the second, fatal, altercation because he could have driven away, and the court did not credit his claim that he was not at full capacity during the offense. Accordingly, the district court sentenced Forest to the presumptive term of 386 months.

Forest has not shown that the district court abused its discretion. While the decedent indisputably assaulted Forest, the district court was not persuaded that this fact was a substantial and compelling reason to depart because Forest had the opportunity to retreat safely. Instead, he pursed the decedent with his vehicle before striking and killing him.

The district court was well within its discretion to sentence Forest to a term of imprisonment within the presumptive sentencing range.

Affirmed.