STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1838

State of Minnesota,
Respondent,

vs.

Jennifer Lynn Baldwin,
Appellant.

Filed August 14, 2023
Reversed and remanded
Reyes, Judge

Hennepin County District Court
File No. 27-CR-18-23849

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

Mary F. Moriarty, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues on appeal that the district court abused its discretion by imposing an upward durational departure to her sentence because (1) the jury did not find that she abused her position of trust or authority as a caregiver of the victim and (2) her brief delay

in calling 911 did not constitute "particular cruelty." We reverse and remand to the district court for imposition of the presumptive sentence.

FACTS[1]

Nine-month-old C.S. died after sustaining a serious head injury on March 15, 2018. On that morning, C.S.'s mother (mother) dropped C.S. off at appellant Jennifer Lynn Baldwin's house. Appellant usually took care of C.S. while C.S.'s parents were at work.

Upon arriving at appellant's home at approximately 10:25 a.m., mother handed C.S. to appellant, and C.S. cried, which was unusual. Because mother had to leave for work, she left C.S. with appellant while C.S. was still crying. But based on C.S.'s unusual response, mother asked C.S.'s father (father) to pick C.S. up from appellant's house earlier than normal that day.

At 11:39 a.m., appellant called mother stating, "You need to get here, C.S.'s eyes are rolling back in his head and he won't stop crying." Mother told her to call 911 and said that father could get there quicker than she could. Appellant called father who told her to call 911 as well. She then called 911 at 11:46 a.m. and asked the operator to send an ambulance. Police officers arrived first to the scene and saw that "C.S. was having trouble breathing, could not hold his head up, appeared lethargic and unresponsive." An ambulance arrived at 11:58 a.m. and immediately took C.S. to the hospital.

[1] The following facts are based on the record in this appeal as well as appellant's prior appeal arising out of the same incident. *See State v. Baldwin*, No. A19-1677, 2022 WL 1132049 (Minn. App. Apr. 18, 2022), *rev. denied* (Minn. July 19, 2022).

A CT scan revealed that C.S. had suffered a brain injury that caused a hemorrhage, which is a bleeding in the brain. C.S. passed away on March 20, 2018. Two doctors conducted an autopsy and found that C.S. had a serious brain injury. The doctors also noted "multiple bruises, including on the left side of C.S.'s head, the back of his right ear, his abdomen, the bicep of each arm, and his buttocks." The medical examiner's office reported the cause of death as blunt-force trauma to the head and the manner of death as homicide.

Respondent State of Minnesota charged appellant with one count of second-degree murder while committing third-degree assault involving substantial bodily harm and one count of second-degree murder while committing third-degree assault of a victim under four. Minn. Stat. §§ 609.19, subd. 2(1), .233, subd. 1, 3 (2016). Appellant pleaded not guilty, and a jury found appellant guilty on both counts.

After a *Blakely*[2] proceeding, the jury returned special-verdict forms finding that the state proved beyond a reasonable doubt that: (1) C.S. was nine months old at the time he was injured; (2) he was unable to defend himself as a result of his age; (3) he was unable to call for help; (4) he was unable to flee from the assault; (5) appellant was a caregiver for C.S. at the time of the assault; and (6) appellant failed to call 911 immediately after assaulting C.S.

The Minnesota Sentencing Guidelines provided a presumptive sentence of 150 months with a presumptive range of 128 months to 180 months. The district court

[2] *Blakely v. Washington*, 542 U.S. 296, 296 (2004) (holding that every fact that supports an enhanced sentence must be found by a jury or admitted by the defendant).

sentenced appellant to 255 months, an upward durational departure, on count two of second-degree unintentional murder while committing third-degree felony assault of a victim under four. The district court based its upward departure on the jury's *Blakely* findings. On appeal to this court, we reversed and remanded the upward departure, concluding that, because Minn. Stat. § 609.223, subd. 3, already included the victim's age as an element of the offense, "the district court erred by considering C.S.'s vulnerability due to his age as an aggravating factor." *Baldwin*, 2022 WL 1132049, at *10. On remand, the district court sentenced appellant to 255 months again, this time based on the jury's *Blakely* findings that appellant (1) was his caregiver and (2) failed to call 911 immediately after assaulting C.S. This second appeal follows.

DECISION

I. Standard of Review

Appellant argues that the district court abused its discretion by imposing an upward durational departure to her sentence because (1) the jury did not find that appellant abused her position as a caregiver and (2) the brief delay in calling 911 did not amount to particular cruelty. We agree.

We review a district court's decision to depart from the sentencing guidelines based on permissible grounds for an abuse of discretion. *State v. Grampre*, 766 N.W.2d 347, 350 (Minn. App. 2009). "The issue [of] whether a particular reason for an upward departure is permissible is a question of law, which is subject to a de novo standard of review." *Id.* "If the reasons given for an upward departure are legally permissible and factually supported in the record, the departure will be affirmed." *State v. Edwards*, 774 N.W.2d 596, 601

(Minn. 2009). But "[i]f the reasons given are improper or inadequate and there is insufficient evidence of record to justify the departure, the departure will be reversed." *Williams v. State*, 361 N.W.2d 840, 844 (Minn. 1985).

"If a jury finds facts that support a departure from the presumptive sentence, the court may exercise discretion to depart but is not required to depart." *State v. Jackson*, 749 N.W.2d 353, 360 (Minn. 2008). "Departures from the presumptive sentence are justified only when substantial and compelling circumstances are present in the record." *Id.* (emphasis omitted). "Substantial and compelling circumstances are those showing that the defendant's conduct was significantly more or less serious than that typically involved in the commission of the offense in question." *Edwards*, 774 N.W.2d at 601 (quotation omitted). If a district court departs, it must provide written reasons "which specify the substantial and compelling nature of the circumstances, and which demonstrate why the sentence selected in the departure is more appropriate, reasonable or equitable than the presumptive sentence." *Taylor v. State*, 670 N.W.2d 584, 588 (Minn. 2003) (quotation omitted).

II. The district court abused its discretion because the jury did not find that appellant abused her position of trust or authority as a caregiver.

Appellant first argues that the jury's finding that appellant was C.S.'s caregiver does not warrant an upward departure because the jury did not find that appellant abused her position of trust or authority as a caregiver. Her argument has merit.

"Abuse of positions of trust and authority are aggravating factors justifying a durational departure." *State v. Campbell*, 367 N.W.2d 454, 460-61 (Minn. 1985). Here,

however, the jury only found that appellant was a caregiver for C.S. at the time of the assault. Nonetheless, the district court on remand stated:

> This is an upward durational departure, and though the Court of Appeals has ruled that the victim's vulnerability due to his age is not sufficient grounds for an upward departure, the jury found other aggravating factors. *The State has proven beyond a reasonable doubt that [appellant] w[as] [C.S.'s] caregiver*. I did not rely on this factor when I sentenced you in 2019 . . . *I find that at the time of the assault [C.S.'s] parents trusted [appellant] to care for him*, [appellant] w[as] responsible for his health and welfare. [Appellant] violated this position of trust and, clearly, under Minnesota law that is an aggravating factor warranting an upward departure.

(Emphasis added.)

First, the jury was not asked and did not find that appellant *abused her position of trust or authority* as a caregiver. Moreover, to rely on that aggravating factor, the facts must establish more than the simple *existence* of a position of a trust or authority; they must demonstrate that the offense involved the *abuse* of that position as well. *See State v. Lee*, 494 N.W.2d 475, 482 (Minn. 1992); *State v. Carpenter*, 459 N.W.2d 121, 128 (Minn. 1990) (emphasis added). Unless such facts are either found by a jury or the defendant waives his right to a jury's determination of those facts, the district court is not permitted to find them of its own accord or aggravate the defendant's sentence based upon them. *See State v. Dettman*, 719 N.W.2d 644, 649 (Minn. 2006) ("The district court's imposition of an upward departure was permissible only if the facts authorizing the departure were either found by a jury beyond a reasonable doubt or admitted by [appellant]."). In other words, it is *the jury* that must find facts that support a departure, not the district court. The district court erred by making independent findings.

Second, an upward durational departure requires the existence of compelling circumstances to show that "the defendant's conduct was significantly more or less serious than that *typically* involved in the commission of the offense in question." *Edwards*, 774 N.W.2d at 601 (emphasis added). Courts must then consider what is a "typical case" of second-degree unintentional murder predicated on a third-degree assault of a child under four. Minn. Stat. §§ 609.19, subd. 2(1), .233, subd. 3. This offense involves a defendant assaulting a child "under the age of four" and causing harm "to the child's head, eyes or neck, or otherwise cause[ing] multiple bruises to the body." Minn. Stat. § 609.223, subd. 3.

In the prior appeal, we relied on *Taylor*, a sexual-assault case, to conclude that the legislature's definition of the predicate offense and its punishment already considered the vulnerability of a child under the age of four. 670 N.W.2d at 589; *Baldwin*, 2022 WL 1132049, at *9. In *Taylor*, the Minnesota Supreme Court held that a three-year-old victim's vulnerability and *Taylor's position of authority or trust* were inappropriate bases for departure when those facts were already considered by the legislature in determining the degree of seriousness of the offense. 670 N.W.2d at 589. In that case, the state accused Taylor of sexually abusing a three-year-old child who attended the daycare operated by Taylor's wife out of their home. *Id.* at 585. The state charged Taylor with sexual contact with a person under 13 by an actor more than 36 months older in violation of Minn. Stat. § 609.342, subd. 1(a) (2002), which carried a presumptive 144-month sentence. *Id.* Following Taylor's guilty plea, the district court imposed an upward departure and sentenced Taylor to 180 months in prison based on "multiple incidents of abuse, violation

of a position of trust[,] and particular vulnerability of the victim due to age." *Id.* at 586. The supreme court concluded that, "although Taylor's conduct was reprehensible and regrettable, [the court] cannot say that it was an atypical first-degree offense warranting a durational departure." *Id.* at 589.

It also observed in a footnote that

> Experience has [] shown that courts tend to view criminal sexual assaults by strangers as more serious and aggravated, thereby justifying durational departures. [. . .] Inasmuch as the guidelines endeavor to limit departures to those circumstances that make the facts of a particular case different from a typical case, it would be difficult in most cases to reconcile departures based on both stranger sexual assaults and *the more typical position-of-trust assaults*.

Id. at 589 n.6 (emphasis added) (citations omitted).

The rationale in *Taylor* compels a similar conclusion here. The record shows that C.S. sustained multiple bruises, including on the left side of his head, the back of his right ear, his abdomen, the bicep of each arm, and his buttocks, which are contemplated by the statute and are therefore "typical" of the offense charged. *See* Minn. Stat. § 609.223, subd. 3 (a defendant must assault a child "under the age of four" and cause harm "to the child's head, eyes[,] or neck, or otherwise cause[] multiple bruises to the body"). We conclude that the district court abused its discretion because the jury's finding that appellant was C.S.'s caregiver did not warrant an upward departure when appellant's conduct, while "reprehensible and regrettable," was not "atypical" of the offense charged. *Id.*

III. The district court abused its discretion by departing upward based on particular cruelty.

Appellant also argues that "the brief delay in calling 911 did not amount to "particular cruelty." We agree.

"A district court may base a sentencing departure on a defendant's particularly cruel treatment of a victim." *State v. Turrubiates*, 830 N.W.2d 173, 180 (Minn. App. 2013), *rev. denied* (Minn. Jul. 16, 2013) (citing Minn. Sent. Guidelines II.D.2.b.(2) (2010)). "Particular cruelty involves the gratuitous infliction of pain and cruelty of a kind not usually associated with the commission of the offense in question." *Id.* (quoting *Tucker v. State*, 799 N.W.2d 583, 586 (Minn. 2011)). "A district court may evaluate the degree of cruelty inflicted on a child victim based on the nature and extent of the physical damage and the treatment necessary to repair the injury." *Id.* (quotation omitted). "[A]lthough the failure to aid is relevant to whether a person convicted of a crime has acted in a particularly cruel manner, [the supreme court] h[as] never affirmed a departure for particular cruelty based solely on the failure to render medical aid." *Tucker*, 799 N.W.2d at 587.

At the sentencing hearing, the district court determined that appellant acted with particular cruelty based on the jury's finding that appellant failed to call 911 immediately following the assault. But, as noted above, failure to render medical aid alone cannot support an upward departure based on particular cruelty. *See id.*

The state argues that *Turrubiates* supports the upward departure, but that case is factually distinguishable from this one. 830 N.W.2d. In *Turrubiates*, the defendant was caring for a 19-month-old child, T.M., who died under his care after suffering multiple

traumatic injuries to at least seven impact sites including T.M.'s head. *Id.* at 180. In that case, T.M. fell off a rug, causing a burn on her head, the defendant kicked a dresser and a 200-pound television fell off the dresser and hit T.M. on the forehead causing T.M. to fall backwards and bump the back of her head on a little table. *Id.* at 176. The television also fell forward onto T.M.'s chest. *Id.* After T.M. was injured, the defendant failed to contact either parent or call 911. *Id.* Even when T.M.'s mother arrived seven to ten minutes later, the defendant did not inform her about T.M.'s injury but instead told her that T.M. was sleeping. *Id.* The defendant watched television with T.M.'s mother before he went to the restroom, and called out to T.M.'s mother saying that "something 'serious' was wrong with T.M." *Id.* T.M.'s mother called 911. *Id.* Before the police arrived, the defendant threw T.M.'s blood-stained clothes into the dumpster to hide the evidence. *Id.* (quotations omitted). The defendant's inaction delayed medical care by at least 45 minutes. *Id.* at 181. The state charged the defendant with second-degree felony murder with an underlying felony of child endangerment resulting in substantial harm to any person under the age of 18. Minn. Stat. §§ 609.378, subd. (1)(b)(1), .376, subd. 2 (2010). *Id.* at 175-78. The district court departed upward based on the aggravating factors of particular vulnerability and particular cruelty. *Id.* at 176-77. This court upheld the upward departure, given the number of injuries T.M. suffered and the defendant's failure to seek medical care for at least 45 minutes. *Id.* at 181-82.

Here, unlike the defendant in *Turrubiates*, appellant contacted both parents, notified them of C.S.'s symptoms, did not hide C.S.'s symptoms, and called 911, all within seven minutes. Moreover, C.S.'s injuries did not suggest multiple impact sites as in *Turrubiates*.

The *Turrubiates* case is therefore not analogous to our set of facts. We conclude that the district court abused its discretion by determining that the jury's finding that appellant failed to call 911 immediately after assaulting C.S. warranted an upward departure.

To conclude, an upward departure is appropriate only when facts supporting an aggravating factor are found by a jury or an appellant waives his right to a jury's determination of those facts. *Dettman*, 719 N.W.2d at 649. If the jury finds that the state proved those facts beyond a reasonable doubt, then the district court can rely on those facts to determine whether they support a substantial and compelling reason to depart from the presumptive guideline sentence. *Jackson*, 749 N.W.2d at 360. Here, the jury did not find facts to support an aggravating factor, and the record does not support a substantial and compelling reason to depart from the presumptive guideline sentence. *Williams*, 361 N.W.2d at 844. We therefore reverse and remand to the district court for imposition of the presumptive sentence.

Reversed and remanded.