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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0254**

State of Minnesota,
Respondent,

vs.

Galuak Michael Rotgai,
Appellant

**Filed January 21, 2014
Affirmed
Stoneburner, Judge**

Mower County District Court
File No. 50-CR-12-870

Lori A. Swanson, Attorney General, James B. Early, Assistant Attorney General,
St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, Austin, Minnesota (for respondent)

Cathryn Young Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the sufficiency of the evidence to support his conviction of attempted second-degree intentional murder and, in the alternative, challenges the upward sentencing departure imposed by the district court. We affirm.

FACTS

On the night of April 8, 2012, S.M. came to an apartment occupied by appellant Galuak Michael Rotgai and two of his roommates, T.D. and S.G. Rotgai has given multiple versions of how events unfolded once S.M. entered the apartment, but it is undisputed that shortly after S.M. arrived, he was severely injured by Rotgai, who was arrested and charged with attempted second-degree intentional murder and first-degree assault. The state gave required notice that it intended to seek an upward sentencing departure based on the particular vulnerability of the victim and the particular cruelty of Rotgai's conduct.

Based on eyewitness testimony and other evidence that Rotgai struck S.M. twice on the head with a baseball bat causing severe injuries that will require S.M. to need constant care for the rest of his life, a jury rejected Rotgai's claim of self-defense and found Rotgai guilty of attempted second-degree intentional murder and first-degree assault. The jury found, in answers to special verdict questions, that S.M. fell to the floor unconscious and helpless from the first blow struck by Rotgai; Rotgai was aware that S.M. was lying prone on the floor unconscious and helpless when he struck the second blow; and S.M.'s injuries were so severe that he would have died without medical

intervention. As a result of the injuries, S.M. will suffer extreme and permanent loss of quality of life.

The district court found that the state proved particular cruelty and particular vulnerability, aggravating factors that support an upward sentencing departure. For second-degree intentional murder, the district court sentenced Rotgai to 240 months in prison, an 87-month upward departure from the presumptive sentencing guidelines sentence. This appeal followed.

D E C I S I O N

I. The evidence is sufficient to support Rotgai's conviction.

Conviction of attempted second-degree murder requires, in relevant part, proof beyond a reasonable doubt that Rotgai acted with intent to kill S.M. Minn. Stat. § 609.19, subd. 1(1) (2010). Rotgai challenges the sufficiency of the evidence to support the jury's determination that he acted with intent to kill S.M.

Intent is a state of mind generally proved circumstantially through evidence from which the jury can draw reasonable inferences. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). The jury may infer that a person intends the natural and probable consequences of his actions, and a defendant's testimony on intent is not binding on the jury if the acts demonstrate a contrary intent. *Id.* When, as here, an element of an offense is proved entirely by circumstantial evidence, the evidence as a whole must lead "so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotations omitted).

The record shows that Rotgai raised the baseball bat over his head for the second blow and forcefully hit S.M. in the back of his head and neck, causing a spinal cord injury and a head injury. Rotgai concedes that a jury could reasonably infer from his acts that he intended to kill S.M., but he argues that a jury could also reasonably infer that he was merely trying to stop S.M. from attacking him. We disagree. The jury rejected Rotgai's assertion of self-defense and specifically found that Rotgai forcefully struck S.M. as he lay unconscious on the floor. The record shows that the degree of force involved is the amount of force usually associated with automobile accidents. No reasonable jury could infer that the second blow was delivered with any intent other than to kill S.M. *See, e.g., State v. Taylor*, 650 N.W.2d 190, 207 (Minn. 2002) (stating that the number of blows showed that defendant's acts were intentional and the use of a heavy object on the victim's head shows intent to kill). We find no merit in Rotgai's challenge to the sufficiency of the evidence to support his conviction of attempted second-degree intentional murder.

II. The district court did not abuse its discretion in sentencing.

“We review a sentencing court's departure from the sentencing guidelines for abuse of discretion.” *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003) (citation omitted). Our review of a district court's decision on a sentencing departure is “extremely deferential” in cases where the district court has identified proper grounds for departure. *Dillon v. State*, 781 N.W.2d 588, 595–96 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). The presence of a single aggravating factor is sufficient to support

an upward departure. *State v. Mohamed*, 779 N.W.2d 93, 97 (Minn. App. 2010), *review denied* (Minn. May 18, 2010).

The district court stated on the record that the aggravating factors of particular vulnerability of the victim and particular cruelty of Rotgai support an upward departure in this case. And the district court cited cases in which departure based on these aggravating factors has been upheld on appeal.

Rotgai argues that the cases cited by the district court did not involve attempted second-degree murder and are therefore inapposite. But at least one of the cases cited by the district court involved second-degree murder, and reliance on the factor of a victim's vulnerability does not require a comparison of cases involving similar charges. Because only one aggravating factor is needed to support the departure, and because S.M. was particularly vulnerable when Rotgai delivered the forceful blow to the back of his head and spine, we find no merit in Rotgai's argument that the district court's upward sentencing departure is not supported by an aggravating factor.

Rotgai notes that on the second page of the departure report, filed by the district court after sentence was orally pronounced, the boxes for particular cruelty and particular vulnerability are not checked and the boxes for "victim injury/impact" and "crime more onerous than usual" are checked. Rotgai argues that "those reasons do not justify departure" in part because no notice was given for these factors. *See* Minn. R. Crim. P. 7.03 (providing that the prosecutor must give written notice at least seven days before the omnibus hearing of intent to seek an aggravated sentence and that notice must include the grounds relied on to support an aggravated sentence). Because the district court stated on

the record that the noticed aggravating factors of particular cruelty and particular vulnerability were present and described those circumstances in the written description of the reasons for departure on page one of the departure report, we conclude that any discrepancy in the boxes checked on page two of the report is harmless error that does not entitle Rotgai to relief. *See State v. Abrahamson*, 758 N.W.2d 332, 338 (Minn. App. 2008) (stating that where reasons for departure stated on the record justify the departure, the departure will be allowed).

III. Rotgai is not entitled to relief based on issues implied in his pro se supplemental brief.

Rotgai has filed a pro se supplemental brief stating, in relevant part:

[Counsel] said he would find me [an] interpreter and that he was going to get me another attorney. I waited for 2 months before I [saw] him again or talked to him again and I asked him if he had got an interpreter and he said no. I asked if he got another attorney for me and he said no. I let [counsel] know that I did not want him to work on my case anymore and that he was fired. I let the Judge know that I did not want [counsel] as my attorney and that I needed a new attorney. The judge wrote me a letter and said that I needed to talk with the managing attorney at the public defender office. So I called the Public Defender Office and talked with the manager [G.C.] and told him I do not want [counsel] as my attorney and he said OK and that he will come to the jail and talk with me about getting me another attorney and [an] interpreter, but he never showed up to see me and I was never provided with [an] interpreter who speaks my Nuer language.

The district court file reflects that an inmate request form from Rotgai was filed with the district court on June 5, 2012, requesting a “new public defender as soon as possible before June 19, 2102 [sic].” In a one-page memo attached to the form, Rotgai

opines that counsel is asking questions that should not be asked and that it looked like counsel was trying to

set me up with some words—and I don't think he gonna be able to do my case at all—and right now I am done with him . . . and my question is and I need a new public defender as soon as possible if you can help me with that request because I will not go to court with some public defender tried to lose me my case

Despite Rotgai's assertion that the district court responded with a letter, there is nothing in the record concerning the district court's response to Rotgai's request, and there is no record of any further mention of a request for substitute counsel or complaint about the failure of the district court to respond to the request prior to, during, or after Rotgai's September 2012 jury trial, at which he was represented by the originally appointed public defender.

When a defendant “voices serious allegations of inadequate representation,” the district court should conduct a “searching inquiry” before determining whether the defendant's complaints warrant the appointment of substitute counsel. *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013). But the record reflects that Rotgai did not articulate in the district court any serious allegations of inadequate representation that would trigger the required inquiry, and he has not articulated any such allegations on appeal. We generally do not consider matters not raised before the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). And issues not briefed on appeal are waived. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. 1997), *review denied* (Minn. Aug. 5, 1997). Additionally, Rotgai proceeded to trial represented by the same public defender without

further reference to his substitution request. When a defendant who has requested substitution acquiesces in counsel's continued representation, a district court does not err by not inquiring further into his substitution request. *Munt*, 831 N.W.2d at 587. On this record, we conclude that there is no merit to any implied assertion that the district court abused its discretion by failing to conduct further inquiry into the concerns Rotgai expressed in the inmate request form.

Similarly, any implied claims based on ineffective assistance of counsel or lack of an interpreter during conferences with counsel are waived by failure to brief the issues on appeal. *Butcher*, 563 N.W.2d at 780. We note that the record reflects that Nuer interpreters were used throughout the proceedings.

Affirmed.