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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0443**

State of Minnesota,
Respondent,

vs.

Rochelle Lynn Inselman,
Appellant.

**Filed February 18, 2014
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CR-12-11083

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Following her conviction of second-degree murder, appellant argues that the district court abused its discretion by imposing a sentence with an upward durational departure on the basis of a violation of the victim's zone of privacy. We affirm.

FACTS

Under the terms of a plea agreement, appellant Rochelle Lynn Inselman pleaded guilty to second-degree (intentional) murder, waived her *Blakely* rights, stipulated that she violated the victim's zone of privacy, and received a 480-month sentence. Pursuant to the agreement, first-degree (premeditated) murder charges were dismissed.

At her plea hearing, Inselman testified that on February 12, 2012, she went alone after dark to the home of the victim, with whom she had a previous romantic relationship. Inselman stated that she went there "to confront him," taking with her a loaded 9-millimeter handgun. She knocked on the door and the victim answered it. The victim did not know why Inselman was there and did not know that she had a handgun. He let Inselman in. They subsequently got into an argument, and Inselman pulled out the handgun and fired it nine times, hitting the victim eight times. She intended to kill him. She discarded the handgun in the same garbage can in which, a couple of days earlier, she had discarded the gun's case. Inselman agreed that the crime "happened in the victim's zone of privacy or within his house."

At sentencing, the district court accepted Inselman's plea, convicted her of second-degree murder, and sentenced her to the statutory maximum sentence of 480

months in prison, based on the parties' agreement. The district court noted that the sentence was an upward durational departure and stated, "The reasons for the departure—well, frankly, that the defendant has agreed to it through the plea negotiation process, but also that the victim invaded—the defendant invaded the victim's zone of privacy, namely, the household." The reason identified on the Minnesota Sentencing Guidelines Commission departure report form is, "[c]rime committed in victim's home or zone of privacy." This appeal follows.

DECISION

Inselman argues on appeal that the factual basis she stipulated to does not support an upward sentencing departure based on a zone-of-privacy violation. She contends that in order to violate another's privacy, a defendant must deliberately trespass into the victim's zone of privacy and the victim must be likely to experience future fear in his home. We disagree.

We generally review an upward departure from a presumptive sentence for an abuse of discretion. *State v. Jackson*, 749 N.W.2d 353, 356-57 (Minn. 2008). The question of whether the district court's reason for departure is proper is, however, a legal issue that we review de novo. *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). If the reasons given by the district court justify the departure, the departure will be allowed. *Williams v. State*, 361 N.W.2d 840, 844 (Minn. 1985). If the reasons given are improper or inadequate and there is insufficient evidence to justify the departure, the departure will be reversed. *Id.* A district court need not make factual findings in support of its decision to depart when the factual basis for departure is

established by defendant's post-waiver, sworn admissions. *State v. Yaritz*, 791 N.W.2d 138, 144 (Minn. App. 2010), *review denied* (Minn. Feb. 23, 2011).

The sentencing guidelines contain a nonexclusive list of aggravating factors that may justify a departure. Minn. Sent. Guidelines II.D.2.b (2010). A district court may impose an upward departure when the facts support a finding that a defendant committed a crime within a victim's zone of privacy. *State v. Kindem*, 338 N.W.2d 9, 17-18 (Minn. 1983). The victim's zone of privacy includes a victim's home and the home's curtilage. *State v. Thao*, 649 N.W.2d 414, 421 (Minn. 2002). Here, the district court identified the invasion of the victim's zone of privacy as the reason for the upward sentencing departure.¹

We are not persuaded by Inselman's argument that a defendant must have deliberately trespassed into the victim's zone of privacy before committing a crime there. Violation of a victim's zone of privacy justifies an upward sentencing departure because the crime happens in a place "where of all places a person should feel secure from outside harm." *State v. Back*, 341 N.W.2d 273, 276 (Minn. 1983). In many murder cases in which a zone-of-privacy departure has been affirmed, there is little, if any, discussion of how the defendant accessed the victim's home or curtilage. *See id.* at 274, 277 (victim killed on front porch by drive-by shooter—no indication that the defendant entered the property); *Kindem*, 338 N.W.2d at 11, 17 (defendants waited for victim to arrive home

¹ The district court also noted that the length of the sentence was negotiated by the parties. A plea agreement on its own does not provide substantial and compelling circumstances to support a departure from the presumptive guidelines sentence. *State v. Misquadace*, 644 N.W.2d 65, 72 (Minn. 2002). But the agreement is a factor that may be considered by the district court in sentencing. *See id.* at 71.

from work, then robbed and beat him to death in his back yard); *State v. Esler*, 553 N.W.2d 61, 63 (Minn. App. 1996) (victim shot through window of group home where she worked), *review denied* (Minn. Oct. 15, 1996); *State v. Bock*, 490 N.W.2d 116, 119, 121 (Minn. App. 1992) (victim lured outside and killed in front yard), *review denied* (Minn. Aug. 27, 1992). Rather, the analysis focuses on the presence of the victim in a place that should have been a safe haven for the victim, which makes the commission of the crime significantly more serious than a “typical” murder.

This focus on the location of the victim—as opposed to whether the defendant entered the victim’s zone of privacy with permission—is consistent with the language of the sentencing guidelines and the sentencing departure form. The sentencing guidelines provide that an “offense . . . committed in a location in which the victim had an expectation of privacy,” presents an aggravating factor supporting an upward departure. Minn. Sent. Guidelines II.D.2.b.(14). The departure report form describes this factor as “[c]rime committed in victim’s home or zone of privacy.”

Inselman cites *State v. Bock* in support of her deliberate-trespass argument. In *Bock*, we stated, “Violation of the victim’s zone of privacy does not focus on only the victim’s future fear but also encompasses the fact that the violator deliberately trespassed in a place where the victim felt particularly safe.” 490 N.W.2d at 121 (citing *Back*, 341 N.W.2d at 277). But in *Bock*, the defendant did not break into the victim’s home. He lured the victim out of his house and attacked him in the front yard. 490 N.W.2d at 119, 121; *see also State v. Jackson*, 596 N.W.2d 262, 267 (Minn. App. 1999) (affirming zone-of-privacy departure when the defendant “tricked [the victim] into trusting him enough to

let him into her home”), *review denied* (Minn. Aug. 25, 1999). We also note that for its “deliberate trespass” proposition, *Bock* cites *Back*, in which the defendant did not set foot onto the property but shot the victim from the street. *See Bock*, 490 N.W.2d at 121; *Back*, 341 N.W.2d at 274, 277.

In many of the cases that Inselman relies on, this court concluded that the crime did not happen in a place in which the victim had a relevant expectation of privacy. *See State v. Mohamed*, 779 N.W.2d 93, 99-100 (Minn. App. 2010) (in malicious punishment of a child case, no zone of privacy in common areas of the home), *review denied* (Minn. May 18, 2010); *State v. Hagen*, 679 N.W.2d 739, 741 (Minn. App. 2004) (victim’s zone of privacy in her house did not extend to defendant’s apartment in the basement); *State v. Johnston*, 390 N.W.2d 451, 452-53, 457 (Minn. App. 1986) (no zone of privacy when the defendant and victim were both guests in the home, defendant had earlier assaulted the victim in the home, and homeowner wanted the victim to move out), *review denied* (Minn. Aug. 27, 1986); *State v. Saharath*, 355 N.W.2d 312, 313-14 (Minn. App. 1984) (no zone of privacy when defendant and victim encountered each other in common hallway of victim’s apartment building). Here, the victim was in his own home, and Inselman was an unexpected visitor.

We cannot conclude that the victim gave up all expectation of privacy in his own home when he opened the door and allowed Inselman to enter. The victim did not invite Inselman to his home, did not know that she was there to confront him, and did not know that she had a loaded handgun. Their interaction before the murder was limited to an argument. Inselman shot the victim in his own home, killing him. On this record, we

conclude that the district court acted within its discretion in imposing an upward departure from the presumptive sentence on the basis of a zone-of-privacy violation.

Affirmed.