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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1366**

State of Minnesota,
Respondent,

vs.

Arturo Andres Rocha-Campiz,
Appellant.

**Filed June 13, 2011
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-09-32910

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Toussaint, Presiding Judge; Connolly, Judge; and
Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his sentence, arguing that the district court erred by sentencing him to an upward departure on the ground that appellant committed second-degree intentional murder in the victim's zone of privacy. Because the district court did not err, we affirm.

FACTS

On July 2, 2009, the state charged Arturo Andres Rocha-Campiz with second-degree intentional murder in violation of Minn. Stat. §§ 609.19, subd. 1(1), .11 (2008). The complaint alleged that Rocha-Campiz stabbed J.R. to death in J.R.'s Minneapolis apartment. J.R.'s family and friends found his body in the apartment. His body had multiple stab wounds to the chest, stomach, and neck. Police investigators searched J.R.'s cell phone and discovered that the most recent text messages were sent between J.R. and Rocha-Campiz on June 26, 2009. Investigators also discovered that Rocha-Campiz had used J.R.'s credit cards to buy merchandise at two stores. When investigators arrested Rocha-Campiz they recovered receipts matching the purchases charged on J.R.'s credit cards, along with J.R.'s credit cards and identification. Rocha-Campiz told investigators that he knew J.R. and that they had exchanged text messages on June 26.

In August 2009, a grand jury in Hennepin County indicted Rocha-Campiz on one count of first-degree murder in violation of Minn. Stat. §§ 609.185(a)(3), .11 (2008). The

indictment states that Rocha-Campiz stabbed J.R. with the intent to kill him “while committing or attempting to commit the crime of aggravated robbery.”

In April 2010, Rocha-Campiz pleaded guilty in Hennepin County District Court to second-degree intentional murder. Second-degree intentional murder carries a presumptive sentence of 306 months in prison. Rocha-Campiz agreed to plead guilty to this charge because the state had dismissed the indictment for first-degree murder. He further agreed that the district court could depart from the presumptive sentence and impose imprisonment of 440 months, if the court concluded that he committed second-degree intentional murder in J.R.’s zone of privacy. Rocha-Campiz then waived his right to a *Blakely* trial in which a jury would determine whether he committed the crime in J.R.’s zone of privacy.

In response to questions at the plea hearing, Rocha-Campiz said that he stabbed J.R. multiple times with a knife intending to kill him in J.R.’s apartment. Rocha-Campiz answered in the affirmative to the state’s question that J.R. “had a right to . . . feel safe in his apartment and free from being harmed in his own home.”

In May 2010, the district court concluded at a sentencing hearing that an upward departure was proper because Rocha-Campiz murdered J.R. in his apartment, which constituted J.R.’s zone of privacy. The district court sentenced Rocha-Campiz to 440 months in prison, which included 134 months for the upward departure based on a zone-of-privacy aggravating factor.

Rocha-Campiz appeals.

DECISION

Rocha-Campiz argues that the district court erred by imposing an upward departure based on the ground that he stabbed J.R. to death in J.R.'s zone of privacy. This court reviews de novo whether a district court had a permissible reason to depart from a presumptive sentence. *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010), review denied (Minn. July 20, 2010). We review a district court's decision to impose a sentencing departure for abuse of discretion. *Id.* at 594. 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 the interior of a victim's home and the home's curtilage. *State v. Thao*, 649 N.W.2d 414, 421 (Minn. 2002).

Rocha-Campiz contends that the district court must find a defendant entered a victim's zone of privacy without permission as a prerequisite to impose an upward departure on the ground that the defendant committed a crime in the victim's zone of privacy. Rocha-Campiz deems this the "deliberate trespass" element of the zone of privacy aggravating factor. He asserts that the district court did not find that he deliberately trespassed into J.R.'s zone of privacy and that the record does not indicate that he entered the zone without J.R.'s permission. Therefore, Rocha-Campiz urges this court to reverse the district court's imposition of the upward departure and instead impose only the presumptive sentence for second-degree intentional murder.

Caselaw analyzing the zone of privacy determination focuses on whether the defendant committed the crime in the victim's zone of privacy, not how the defendant

came to commit the crime in the zone of privacy. In *State v. Van Gorden*, a defendant's sexual assault of a woman in her own home was held to violate the woman's zone of privacy because "her home is no longer the island of security that she perhaps thought it was." 326 N.W.2d 633, 635 (Minn. 1982). *Van Gorden* refers only to the fact that the defendant committed the crime in the woman's home; it does not say that the defendant used force to enter the home. *Id.* Similarly, in *State v. Copeland*, 656 N.W.2d 599, 603 (Minn. App. 2003), *review denied* (Minn. Apr. 29, 2003), the defendant argued that the zone-of-privacy aggravating factor should not apply because the victim's roommate gave him access to the home where he assaulted the victim. "[But the fact that the roommate] invited [the defendant] into the residence while [the victim] slept upstairs does not negate the fact that this offense occurred in [the victim's] home where, by virtue of the zone of privacy, he had a reasonable expectation of security that was shattered by [the defendant's] violent assault." *Id.* at 603-04; *see also Thao*, 649 N.W.2d at 422 ("Although we have clearly recognized the commission of a crime in the victim's 'zone of privacy' as justifying a more severe punishment, . . . we have with equal clarity rejected the inclusion of a public park in that zone."); *State v. Gist*, 358 N.W.2d 664, 667 (Minn. 1984) ("We have held that it is more serious to rob or rape people in their home or in the zone of privacy surrounding the home."); *State v. Jones*, 328 N.W.2d 736, 738 (Minn. 1983) (stating that the "robbery occurred in the victim's home and therefore involved invading the zone of privacy that surrounds the victim's home."). Thus, caselaw indicates that the zone-of-privacy determination focuses on where the defendant committed the crime, not how the defendant gained access to that location.

Further, upward departures based on a zone-of-privacy aggravating factor have been affirmed in cases in which the facts do not suggest the defendant entered the victim's zone of privacy by a deliberate, unwelcomed trespass into the victim's zone of privacy. *See, e.g., State v. Johnson*, 450 N.W.2d 134, 135 (Minn. 1990) (defendant who entered apartment where 14-year-old victim was babysitting and spoke with her for 15 minutes before he pulled a knife, attempted to kiss her, and fondled her "in effect invaded what was temporarily the victim's zone of privacy"); *State v. Bates*, 507 N.W.2d 847, 850 (Minn. App. 1993), *review denied* (Minn. Dec. 27, 1993) (defendant, the eight-year-old victim's gymnastics coach, who fondled the victim's penis on two occasions while living in the victim's home was found to have invaded the victim's zone of privacy).

In sum, Rocha-Campiz's argument that the zone of privacy aggravating factor has a "deliberate trespass" requirement is contradicted by caselaw that focuses on whether the defendant violated the victim's zone of privacy, not on whether the defendant entered the zone with the victim's permission. Evidence in the record supports the finding that Rocha-Campiz committed second-degree intentional murder by stabbing J.R. to death in J.R.'s zone of privacy. Rocha-Campiz stated at his plea hearing that he killed J.R. in J.R.'s own apartment. Therefore, we conclude that the district court did not err by imposing an upward departure on the ground that Rocha-Campiz committed second-degree intentional murder in J.R.'s zone of privacy.

Affirmed.