

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1856**

State of Minnesota,
Respondent,

vs.

Stephen Jade Jackson,
Appellant.

**Filed September 5, 2017
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-15-26521

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

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Schellhas, Judge; and Stauber, Judge.*

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

UNPUBLISHED OPINION

REYES, Judge

Appellant seeks reversal of his conviction, arguing that the district court abused its discretion (1) by denying appellant's request for a continuance to seek new counsel to file a motion to withdraw his guilty plea and (2) by imposing an improper sentence of 156 months in prison, which was an upward durational departure. We affirm.

FACTS

On August 25, 2015, appellant Stephen Jade Jackson was driving in southwest Minneapolis searching for his ex-girlfriend, R.A., when he saw her standing in the street with her friend T.M. and S.R.W., a man with whom appellant suspected R.A. was intimate. Appellant and R.A. have a four-year-old daughter who, at the time, was in the car with appellant. Upon seeing R.A. with S.R.W., appellant became angry and accelerated his vehicle towards them. As appellant sped towards them, C.P. was sitting in her parked car with the door open and her legs outside of the car near where R.A., T.M., and S.R.W. were standing. Appellant struck C.P. and her car at a high rate of speed, pinning her between the two cars. As a result of this collision, R.A. and T.M. were knocked to the ground. C.P. fell out of the car, and S.R.W. jumped out of the way to avoid being hit. Appellant then reversed his car, running over C.P.'s legs again. Before fleeing the scene, he stated "this is all your fault," while pointing toward R.A. C.P. suffered serious injuries and has been diagnosed as permanently disabled. R.A. suffered some injuries and was hospitalized for about a week.

Appellant was apprehended a number of weeks later. In an amended complaint, respondent State of Minnesota charged appellant with two counts of attempted murder, one count of first-degree assault, four counts of second-degree assault, one count of third-degree assault, and three counts of criminal vehicular operation.

The state filed a notice to seek an aggravated sentence on several bases, including that: (1) appellant committed the charged offense in the presence of a child; (2) C.P. was particularly vulnerable because she was sitting in her car with her legs outside of the car when appellant struck her with his car; and (3) C.P. was particularly vulnerable because she was on the ground injured when appellant struck her a second time by reversing his car.

On April 19, 2016, the parties reached a plea agreement that the district court accepted. The plea agreement's terms required appellant to plead guilty to one count of first-degree assault with a 156-month aggravated sentence, and three counts of second-degree assault each with a 21-month concurrent prison sentence. The agreement also required appellant to waive his right to a jury determination on the aggravating factors. With a criminal-history score of three, appellant's agreed-upon sentence constituted an upward durational departure.

At the plea hearing, appellant admitted, on the record, that his four-year-old-daughter was in the car with him at the time of the incident. Appellant also admitted that the injuries C.P. suffered were substantial and serious. After appellant provided sufficient facts to support his guilty plea, the district court accepted his guilty plea.

At the time of the plea, appellant was out on bail and ordered to return for sentencing on July 1, 2016, but he failed to do so.¹ Once apprehended, appellant was sentenced on August 25, 2016, pursuant to the terms of the plea agreement. At the sentencing hearing, appellant requested a continuance because he wanted to retain private counsel and to consider withdrawing his guilty plea. In making his request, appellant asked, “Your Honor, I just wanted to—I know you don’t have to, but I wanted to ask if you . . . if it was possible for you to reschedule my court date so I can hire . . . private counsel at a later time?” The state opposed appellant’s request, noting that the case had been ongoing for a year and that appellant had failed to retain private counsel during that time.

The district court denied appellant’s request. The district court noted that it would not let appellant withdraw his plea because appellant had failed to present a justifiable basis and that appellant “had plenty of time throughout this case if [he] wanted to hire [a private attorney].” The district court sentenced appellant under the plea agreement to 156 months in prison. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by denying appellant’s request for a continuance to obtain new counsel to file a motion to withdraw his guilty plea.

Appellant argues that the district court abused its discretion by denying his request for a continuance of sentencing because the district court failed to fully understand and

¹ Appellant was arrested at the airport around July 8, 2016, while with R.A.

consider his request and failed to inquire as to why appellant was seeking a new attorney or to ask the length of continuance appellant sought. We disagree.

A continuance will be granted only if, based on all the surrounding facts and circumstances, (1) exceptional circumstances exist and (2) the demand is timely and reasonable. *State v. Vance*, 254 N.W.2d 353, 358 (Minn. 1977). We review a district court's denial of a continuance for an abuse of discretion. *State v. Mix*, 646 N.W.2d 247, 250 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002). We will not reverse absent a showing of prejudice due to the denial. *Id.* A district court abuses its discretion if it "acts arbitrarily, without justification, or in contravention of the law." *Id.* The district court has broad discretion to consider whether to grant or deny a motion to continue the sentencing hearing so long as the parties have adequate time to prepare. *See* Minn. Stat. § 244.10, subd. 1 (2014).

Here, the district court denied appellant's request for a continuance, noting that appellant had plenty of time to obtain new counsel and had not yet done so. The district court also noted that appellant had previously failed to appear at sentencing, failed to offer any legitimate basis to withdraw his plea, and failed to present any legitimate basis for a delay in sentencing. Appellant has neither shown that exceptional circumstances existed to permit the continuance or that his demand was timely and reasonable. Based on this record, the district court's denial of appellant's continuance request was a proper exercise of its discretion.

II. The district court did not abuse its discretion by imposing the parties' agreed-upon sentence, which constituted an upward durational departure.

Appellant argues that the district court abused its discretion by upwardly departing and imposing the agreed-upon 156-month prison sentence. We disagree.

A district court may depart from the presumptive sentencing guidelines when the record contains “substantial and compelling circumstances” for the departure. *State v. Misquadace*, 644 N.W.2d 65, 69 (Minn. 2002). The sentencing guidelines provide “a nonexclusive list of factors that may be used as reasons for departure.” Minn. Sent. Guidelines 2.D.3 (2014). The defendant must admit, after a valid jury waiver, any facts used to support the departure. *State v. Stanke*, 764 N.W.2d 824, 828 (Minn. 2009). We review a district court’s departure from the sentencing guidelines for an abuse of discretion. *State v. Hicks*, 864 N.W.2d 153, 156 (Minn. 2015). We give great deference to district courts for durational departures of up to twice the presumptive sentence. *Dillon v. State*, 781 N.W.2d 588, 596 (Minn. App. 2010) (citing *State v. Thompson*, 720 N.W.2d 820, 831 n.4 (Minn. 2006)), review denied (Minn. July 20, 2010). “The shorter the departure, the greater the deference.” *Id.*

The presumptive guideline range for a conviction of first-degree assault with a criminal-history score of three is 104 to 146 months with a presumptive sentence of 122 months in prison. Minn. Sent. Guidelines 4.A (2014). Because appellant had a criminal-history score of three, the district court’s 156-month prison sentence was an upward departure of 34 months from the presumptive sentence.

Appellant first argues that he did not adequately waive a jury determination of facts that would support any of the state's enumerated aggravating factors, as required under *Blakely v. Washington*, 542 U.S. 296, 301, 303-04, 124 S. Ct. 2531, 2536-37 (2004). To be valid, a defendant's waiver of his right to a jury determination of aggravating factors must be knowing, voluntary, and intelligent. *State v. Dettman*, 719 N.W.2d 644, 651 (Minn. 2006). Appellant's contention is not supported by the record. The record demonstrates that appellant's counsel repeatedly advised him that he had a right to a contested hearing before a jury on the aggravating factors and that appellant expressly waived his right to do so. Furthermore, appellant's counsel, on the record, told appellant that admitting that a child was present in the vehicle during the charged offense could serve as an aggravating factor, which appellant acknowledged. Moreover, appellant was served with notice of the aggravating factors upon which the state intended to rely in seeking an upward departure. The record is clear that appellant understood the right he was waiving. Therefore, appellant's contention that his *Blakely* waiver was not valid is without merit.

Next, appellant argues that he did not admit any facts that established the aggravating factors that would support an upward departure in this case. First, a defendant who stipulates to a sentence greater than the presumptive sentence, as done here, is not allowed later to attack the sentence "on the grounds that he lacked notice of the [s]tate's intent to seek an upward departure." *State v. Hodges*, 784 N.W.2d 827, 833 (Minn. 2009). Additionally, as appellant acknowledged at the plea hearing, committing an offense "in the presence of a child" is an aggravating factor justifying a departure from the presumptive sentence. Minn. Stat. § 244.10, subd. 5a(a)(13) (2014); Minn. Sent. Guidelines 2.D.3.b(13)

(2014). A defendant commits a crime “in the presence” of a child if the child “saw, heard, or otherwise witnessed the offense,” *State v. Vance*, 765 N.W.2d 390, 394 (Minn. 2009), or “some portion of the commission of the offense in question.” *State v. Robideau*, 796 N.W.2d 147, 152 (Minn. 2011). “The mere presence of children in the home, absent any evidence that they saw or heard the offense, is not a substantial and compelling circumstance demonstrating that a defendant’s conduct was significantly more serious than that typically involved in the commission of the offense.” *Vance*, 765 N.W.2d at 394.

Here, appellant made sworn admissions after a valid *Blakely* waiver to the presence-of-a-child aggravating factor. When asked by his attorney, appellant acknowledged that his child was in the car with him when the incident occurred. Yet, appellant raises the possibility that his admission is insufficient because his daughter might have been sleeping during the incident, proof of which is not supported by the record. Because the district court’s reason for departure is factually supported by the record, it did not abuse its discretion.

Finally, appellant also argues that the district court cannot rely on the extensive and serious injuries C.P. suffered as an aggravating factor to justify a departure because the state failed to provide notice of it. Because appellant agreed to the upward departure under the plea agreement, we conclude that appellant had notice of the state’s intent. *See Hodges*, 784 N.W.2d at 833. Additionally, we have previously held that the district court may properly consider the extent of a victim’s injuries when determining whether an upward sentencing departure is appropriate in a first-degree-assault case. *State v. Felix*, 410 N.W.2d 398, 401 (Minn. App. 1987), *review denied* (Minn. Sept. 29, 1987). Here,

appellant admitted to the seriousness and extent of C.P.'s injuries. Appellant admitted that he reviewed the medical records that detailed C.P.'s injuries, acknowledged that she suffered life-threatening injuries, and that C.P. may never be able to walk again. Because appellant agreed to the departure and the record supports the departure, the district court did not abuse its discretion.

Affirmed.