

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A21-0010**

State of Minnesota,  
Respondent,

vs.

Jasmine Sabrea Brown,  
Appellant.

**Filed December 6, 2021  
Affirmed  
Bryan, Judge**

Redwood County District Court  
File No. 64-CR-19-241

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

Trenton Lee Dammann, Redwood Falls City Attorney, Redwood Falls, Minnesota (for respondent)

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

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Bryan, Judge.

**NONPRECEDENTIAL OPINION**

**BRYAN, Judge**

In this direct appeal of her conviction for test refusal, appellant challenges the denial of her request to continue the trial until apprehension of an anticipated defense witness. Because the district court did not abuse its discretion, we affirm the conviction.

## **FACTS**

On March 8, 2019, a Redwood Falls police officer observed a car registered to Brown stop at a stop sign for an extended period while there were no other cars in the area. The officer suspected the driver of driving while impaired (DWI), but lost sight of the vehicle as he turned his squad car around. Several minutes later, a second officer observed the vehicle parking. This officer also saw a person exit the vehicle. The second officer identified the person as appellant Jasmine Sabrea Brown. Brown showed signs of impairment during field sobriety tests and subsequently refused to take a preliminary breath test. The second officer arrested Brown, impounded and searched her car, and found small amounts of marijuana. After her arrest, Brown refused to submit to a chemical breath test. On March 11, 2019, respondent State of Minnesota charged Brown with one count of second-degree DWI test refusal in violation of Minnesota Statutes section 169A.20, subdivision 2(1) (2018); one count of driving after revocation under Minnesota Statutes section 171.24, subdivision 2 (2018); and one count of possession of a small amount of marijuana under Minnesota Statutes section 152.027, subdivision 4(a) (2018).

During pretrial proceedings, Brown's defense counsel interviewed a potential defense witness, A.G. Brown's defense counsel disclosed a written summary of the interview, which included the following factual statements from A.G.: on the date in question, he borrowed Brown's car; he eventually drove toward Brown's residence to return the car; he saw a police car, but he wanted to avoid contact with the police; he parked the car and walked to Brown's apartment building; once inside he told Brown where he left the car; Brown left her apartment and walked to the parked car to retrieve an item from

the car; A.G. was on the phone with Brown while she retrieved the item; over the phone, A.G. heard the police speak to Brown and accuse her of driving the car. The state later moved to preclude the defense from calling A.G. as an alibi witness or as part of a defense involving an alternate perpetrator. The district court denied the state's requests in a written order filed on October 17, 2019.

Brown's jury trial was initially scheduled to begin on October 16, 2019, but was continued to March 18, 2020.<sup>1</sup> On February 24, 2020, the district court held a pretrial hearing. The state again moved to exclude testimony from A.G. and to exclude any references to the statement A.G. made to defense counsel as inadmissible hearsay. In response, Brown's counsel made an oral motion for a continuance of the jury trial based on A.G.'s unavailability as a witness: "[O]ur motion would be to continue the trial on March 18th to a later date to see if we can find and secure [A.G.] as a witness." Brown's counsel explained that he had spoken to A.G. about the trial date and that A.G. refused to come to court to testify because he had two outstanding warrants and did not want to get arrested. Brown's counsel added that the only address he had for A.G. was A.G.'s mother's address and repeated the continuance request: "in considering the State's motion, Your Honor, I'd also ask the defense motion to continue the trial for some time uh, to allow us to try to secure [A.G.'s] uh, I suppose arrest and then subsequent appearance." The district court denied the continuance request and, regarding the state's motion, reserved ruling on

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<sup>1</sup> The state does not argue on appeal that prior continuances support the district court's denial of Brown's oral continuance request on February 24, 2020.

any hearsay objections pending trial. The district court concluded the hearing by reiterating that trial would begin at 8:00 a.m. on March 18, 2020.

On March 16, 2020, the district court cancelled the March 18, 2020 trial date because of the COVID-19 pandemic. The district court scheduled a pretrial hearing for August 6, 2020, and set a new trial date of August 19, 2020. At the August 6, 2020 hearing, Brown's counsel did not renew his request to continue the trial, although Brown's counsel informed the district court that A.G. was still unavailable as a defense witness because his arrest warrants were still active and because his current address was still unknown. Brown's counsel noted that after the district court's decision to deny the continuance in February, the parties discussed submitting the case as a stipulated evidence trial, preserving Brown's right to appeal the court's denial of her motion for a continuance. After the August pretrial conference, the parties agreed to proceed in this manner. On August 12, 2020, Brown waived her right to a jury trial and the parties submitted the case for a stipulated evidence trial.

Brown also submitted an affidavit attesting to her version of events on the offense date. In her affidavit, Brown made the following factual statements: on March 7, 2019, she loaned the vehicle to A.G.; late that night, she was inside her apartment "in Westfalls apartment complex" when A.G. arrived with the keys to the vehicle; A.G. told Brown that he had been driving the vehicle when he saw a police car and that he might have been followed by the police; A.G. also told Brown that he parked the car near Lakeview apartments and walked to the Westfall apartment complex; Brown got the keys and walked to the car; Brown opened the car door and retrieved some personal items; while walking

away from the car, a police officer stopped her and eventually arrested her. Brown denied driving the vehicle on the night of March 7 and through the early hours of March 8, 2019.

The district court found Brown guilty and issued written findings on September 4, 2020. Among other findings, the district court found that at 12:17 a.m., the second officer observed the vehicle as “it parked quickly near the intersection of South Minnesota Street and West 3<sup>rd</sup> Street.” The district court concluded that the second officer also “observed the lone occupant exit the driver’s side door and begin walking toward the apartment building on Minnesota Street.” According to the district court’s findings, the second officer detected indicia of intoxication when speaking with Brown and while Brown performed the field sobriety tests. In addition, the district court concluded that Brown ultimately refused to take the requested chemical breath test.

The district court also reviewed the statements in Brown’s affidavit and determined that they were not credible given the “considerable distance” that separated the Westfalls apartment complex from the location of the vehicle near the Lakeview apartments on Minnesota Street. The district court did not think A.G. could have walked to the Westfalls apartments and Brown could have walked back to the car in the time that lapsed between the second officer’s observation of the vehicle parking on Minnesota Street and his observation of the lone occupant exiting the vehicle. The district court also noted that Brown’s affidavit conflicts with her statements on the patrol car video admitted as exhibit 1. Contrary to her affidavit in which Brown states she walked from her apartment to the vehicle to retrieve personal items, in the video at exhibit 1, Brown told police officers she “came to visit [her] aunt here.”

Based on its findings, the district court stayed execution of a 335-day sentence and placed Brown on probation for two years. Brown appeals the final judgment of conviction and challenges the denial of her oral continuance request on February 24, 2020.

### **DECISION**

Brown argues that the district court erred when it denied her motion for a continuance. We conclude that the district court did not abuse its discretion for the following three reasons: (1) Brown’s continuance request was open-ended and indefinite; (2) the record lacks any basis to conclude that the continuance request would result in the appearance of A.G.; and (3) the denial of the continuance did not sufficiently prejudice Brown’s ability to prepare for the August 19, 2020 trial.

When a defendant requests a continuance to locate a witness, reviewing courts look to the record for indication that defense counsel or legal authorities are taking steps that will “likely result in actually securing the witness’s presence at trial.” *State v. Stone*, 767 N.W.2d 735, 744 (Minn. App. 2009) (citing *Fitzpatrick v. Procunier*, 750 F.2d 473, 477 (5th Cir. 1985) (upholding denial of continuance when deputies could not serve arrest warrants and subpoena and record did not suggest that defendant might have been more effective in locating witness)). In addition, appellate courts look to “the circumstances surrounding the requested continuance and whether the denial was so prejudicial in the preparation of an adequate defense as to ‘materially affect the outcome of the trial.’” *State v. Miller*, 488 N.W.2d 235, 239 (Minn. 1992) (quoting *State v. Lloyd*, 345 N.W.2d 240, 247 (Minn. 1984)); *see also State v. King*, 414 N.W.2d 214, 220 (Minn. App. 1987) (observing that appellate courts evaluate whether denial would prejudice the defendant).

The decision to grant a continuance is vested in the sound discretion of the district court and will not be reversed absent an abuse of discretion. *E.g., Miller*, 488 N.W.2d at 239 (citing *Lloyd*, 345 N.W.2d at 247 and *State v. Tunipseed*, 297 N.W.2d 308, 311 (Minn. 1980)). A district court abuses its discretion when it renders a decision that contravenes logic or the factual record. *See Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

In this case, we conclude that the district court's decision to deny Brown's continuance request was not an abuse of discretion for three reasons. First, Brown's counsel requested a continuance that had no definite timeframe. Rather, it was an open-ended request "to continue the trial for some time" until after the apprehension of A.G. The district court noted the "practicalities of continuing the matter," including the fact that the trial would be continued "to an uncertain date, for an uncertain length." We see no abuse of discretion in denying a continuance motion that, if granted, would continue the trial for an indefinite period of time.

Second, Brown's counsel did not explain what specific steps would be taken in the intervening time period to apprehend A.G., convince him to change his mind and voluntarily testify, or otherwise lead to his appearance at trial. Brown's counsel stated that A.G. did not want to come to court because he had two outstanding warrants and noted the possibility that A.G. might be apprehended with the passage of time. The mere possibility of A.G.'s future arrest is insufficient, without more, to establish that a continuance will "likely result in actually securing the witness's presence at trial." *Stone*, 767 N.W.2d at 744 (citation omitted). We discern no abuse of discretion denying Brown's continuance

request in the absence of an explanation of what specific steps Brown's counsel would take during the continuance to actually secure A.G.'s presence at trial.

Third, we conclude that Brown's ability to prepare for the August 19, 2020 trial was not affected by the denial of her continuance motion on February 24, 2020. We observe that Brown supplemented the stipulated evidence with her affidavit and the district court considered her written testimony. Brown's affidavit closely resembled the summary of A.G.'s anticipated testimony that Brown's attorney provided. In this way, the district court considered the substance of what A.G. might have stated in his testimony. Although having A.G. testify at trial could have corroborated Brown's affidavit, it would not address the reasons why the district court ultimately discounted Brown's statements. The anticipated testimony of A.G. would not affect the known distance between Brown's apartment and the location of the vehicle on Minnesota Street. Nor would A.G.'s testimony shed light on the conflict between Brown's statement in her affidavit that she walked to the car to retrieve personal items and the statement that she made to the police officer that she came to the apartments on Minnesota Street to visit her aunt. In addition, because the district court ultimately continued the trial due to the pandemic, it granted Brown's requested remedy, and Brown had approximately five additional months to prepare her defense in advance of the August 19, 2020 trial date.<sup>2</sup>

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<sup>2</sup> We also observe that Brown did not renew the continuance request in August. Indeed, Brown affirmatively waived consideration of whether the circumstances present in August 2020 justified another continuance. Any prejudice caused by Brown's decision to proceed without A.G.'s testimony on August 12, 2020, is outside our scope of review.

For these reasons, we conclude that the district court did not abuse its discretion by denying the continuance request, and we affirm Brown's conviction.

**Affirmed.**