

*This opinion is nonprecedential except as provided by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
A22-1144**

State of Minnesota,
Respondent,

vs.

Carlos Sharice London,
Appellant.

**Filed May 22, 2023
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge**

Anoka County District Court
File No. 02-CR-20-5228

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

David Brodie, Coon Rapids City Attorney, Sami Corlew, Assistant City Attorney, Coon Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Worke, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal, appellant Carlos Sharice London argues that his convictions for driving while impaired (DWI) and test refusal must be reversed because the district court abused its discretion when denying his motion to dismiss. Alternatively, London

argues that the district court erred by entering judgments of conviction and sentences for both DWI and test refusal. Because the district court did not abuse its discretion by denying London's motion to dismiss, we affirm in part. But because the district court improperly imposed multiple convictions and multiple sentences, we reverse in part and remand to the district court with instructions to vacate London's conviction and sentence for DWI, leaving the district court's guilty verdict intact.

FACTS

On March 14, 2020, a police officer responded to a report of male driver, later identified as London, slumped over behind the wheel of his vehicle and unresponsive to a traffic control light at a Fridley intersection. London appeared to be unconscious and did not move for two light cycles. The officer noticed a strong odor of alcohol coming from London and signs of impairment during field sobriety tests. London refused a preliminary breath test. The officer arrested London for DWI. At the police station, London refused a breath test. Two days later, the Anoka County Attorney's Office charged London with first-degree test refusal, which was enhanced to a felony based on two prior felony DWI convictions in Wisconsin.

London posted \$5,000 bail and was released with conditions, including compliance with the Intensive Supervision Alcohol Program (ISAP). After two ISAP violations alleging a positive test for alcohol and a failure to abstain from alcohol, as well as London's failure to appear for a court hearing, the district court revoked London's release with conditions. Then, on September 2, 2020, the county dismissed the felony test-refusal

charge after discovering the case did not qualify as a felony and thus the county lacked jurisdiction. London had spent a total of 45 days in custody related to the felony charge.

The day before the county dismissed the felony charge, the Fridley City Attorney's Office charged London with gross-misdemeanor test refusal (count I) under Minnesota Statutes section 169A.20, subdivision 2(1) (2018), and misdemeanor DWI (count II) under Minnesota Statutes section 169A.20, subdivision 1(1) (2018), based on the March 2020 incident. In July 2021, London moved to dismiss these charges "in the interests of justice," citing the district court's authority to dismiss under Minnesota Statutes section 631.21 (2022) and Minnesota Rule of Criminal Procedure 30.02. London argued that he was improperly deprived of his liberty and suffered financial loss because the bail and the conditions of release associated with the felony case should never have been imposed. The state opposed the motion to dismiss, and the district court denied it.

London stipulated to the state's case to obtain review of the denial of his motion to dismiss, using the procedure in Minnesota Rule of Criminal Procedure 26.01, subdivision 4. Following a bench trial, the district court found London guilty of both test refusal and DWI. The district court orally pronounced a sentence for test refusal of 365 days in jail, with credit for 45 days served and 320 days stayed. In the written sentencing order, the district court entered convictions for both test refusal and DWI and imposed sentences for both counts, adding a concurrent 90-day sentence for DWI.

This appeal follows.

DECISION

I. The district court did not err by denying London’s motion to dismiss.

London contends that the district court abused its discretion by denying his motion to dismiss the criminal charges under Minnesota Statutes section 631.21. He asks us to remand for reconsideration of that motion.¹

Under section 631.21, a district court “may order a criminal action, whether prosecuted upon indictment or complaint, to be dismissed.” The district court “may order dismissal of an action either on its own motion or upon motion of the prosecuting attorney and in furtherance of justice.” Minn. Stat. § 631.21. Because the use of the word “may” in the statute implies the exercise of discretion, we review the district court’s denial of London’s motion to dismiss for an abuse of that discretion. *See* Minn. Stat. § 645.44, subd. 15 (2022); *cf. State v. Olson*, 884 N.W.2d 395, 398 (Minn. 2016) (stating that rule 30.02’s use of “may” “connotes discretion, which means that the district court’s denial of [defendant’s] motion ‘to dismiss the complaint, indictment, or tab charge’ is reviewed only for abuse of such discretion”).

¹ We question whether Minnesota Rule of Criminal Procedure 26.01, subdivision 4, which provides for the preservation and appeal of dispositive pretrial rulings, is the proper procedural vehicle for London’s requested relief—remand for reconsideration of his motion to dismiss. *See State v. Galvan-Contreras*, 980 N.W.2d 578, 587 (Minn. 2022) (“Requiring the district court to reengage in this case on remand is not consistent with the text or spirit of Rule 26.01, subd. 4.”). Nonetheless, because the parties do not dispute that this issue is properly preserved for our review, and the record indicates that this is the dispositive issue identified in London’s waiver of his right to a jury trial, we address London’s arguments on the merits.

London argues that the district court improperly limited its discretion by applying the wrong standard to his motion to dismiss. Specifically, he argues that the district court erred by requiring him to prove undue delay, establish prejudice, and prove prosecutorial misconduct.

In its order denying the motion to dismiss, the district court recounted the events of the county's and the city's cases against London. It found that London had failed to demonstrate that the city attorney had unnecessarily delayed bringing the case to trial, that London had been prejudiced by the city attorney's action, or that the city attorney had acted improperly or sought an unfair advantage. The district court also characterized as "mere speculation" London's contention that he could have avoided custody had conditions never been imposed in the felony case. Finally, the district court rejected the argument that the public would not be served by further prosecution given the district court's "serious concerns" about London's use of alcohol and the danger it poses to the public. The district court concluded, "After considering all the circumstances, including the effects upon Mr. London, the prosecution, and society as a whole, the Court believes more harm than good would flow from dismissing this matter."

The plain language of Minnesota Statutes section 631.21 authorizes a district court to dismiss "on its own motion or upon the prosecutor's motion" when doing so is "in furtherance of justice." Minn. Stat. § 631.21. The Minnesota Supreme Court has "expressly decline[d] to rule on what standard" should be applied to such dismissals. *See State v. Hart*, 723 N.W.2d 254, 259 n.10 (Minn. 2006). As a result, we are not persuaded that a district court abuses its broad discretion to dismiss a case "in furtherance of justice" by

considering—as the district court did here—whether a defendant has established unnecessary delay, prejudice, or prosecutorial misconduct. The district court’s authority to dismiss a case absent those facts does not mean that a district court errs by considering whether such facts are present.

Furthermore, London’s argument mischaracterizes the district court’s order. London asserts that the district court limited its review to the requirements for a dismissal pursuant to Minnesota Rule of Criminal Procedure 30.02, which authorizes a district court to dismiss a case based on undue delay, but only if the defendant shows they have been prejudiced. *See State v. Banks*, 875 N.W.2d 338, 341, 345 (Minn. App. 2016), *rev. denied* (Minn. Sept. 28, 2016). But, as described above, the order denying London’s motion demonstrates that the district court did not so limit its analysis. To the contrary, the district court reviewed London’s arguments, the prior proceedings in both this case and the felony case, and the surrounding circumstances and decided not to dismiss the charges. London also does not identify additional facts or arguments the district court should have considered and thus has not demonstrated that the district court limited its discretion when evaluating his motion to dismiss.

In sum, the district court did not abuse its discretion by declining to dismiss the case.

II. The district court erred by imposing convictions and sentences for both DWI and test refusal.

London argues, and the state does not dispute, that the district court erred when it convicted and sentenced him for test refusal and DWI, which are both offenses under Minnesota Statutes section 169A.20 (2018).

Minnesota Statutes section 609.04 (2022) prohibits the entry of convictions for both an offense and an included offense. Minn. Stat. § 609.04, subd. 1. Whether a conviction violates section 609.04 is a legal question that appellate courts review de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

The Minnesota Supreme Court has interpreted section 609.04 to “bar[] multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident.” *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985). We have considered the application of the *Jackson* rule to convictions for both DWI and test refusal. *See State v. Bonkowske*, 957 N.W.2d 437, 443-44 (Minn. App. 2021). In *Bonkowske*, we determined that convictions for both DWI and test refusal under section 169A.20 violated section 609.04 when, within hours, the defendant “drove while intoxicated, was arrested, and, while in custody, committed the offense of test refusal,” which we concluded constituted a “single behavioral incident.” *Id.* at 444.

London’s convictions for DWI and test refusal are likewise based on different sections of that same criminal statute—Minnesota Statutes section 169A.20. In addition, as in *Bonkowske*, the offenses arose out of a single behavioral incident. *See id.* London was found unconscious in the driver’s seat of his vehicle at a traffic control light and exhibited signs of intoxication when he regained consciousness. He was then arrested for DWI and, while in custody, committed the offense of test refusal. The entry of convictions for both offenses therefore violates section 609.04.

In these circumstances, the proper procedure is to retain the guilty verdicts on both charges but adjudicate and impose a sentence formally on only one count. *State v.*

LaTourelle, 343 N.W.2d 277, 284 (Minn. 1984). Because misdemeanor DWI is the less serious offense, we reverse in part and remand to the district court to vacate the formal adjudication of the DWI conviction and related sentence. *See State v. Kebaso*, 713 N.W.2d 317, 322 (Minn. 2006) (explaining “that a defendant will be punished for the most serious offense of the offenses arising out of a single behavioral incident” (quotation omitted)).

Affirmed in part, reversed in part, and remanded.