**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A22-0823**

State of Minnesota,
Respondent,

vs.

Dwayne Cage,
Appellant.

**Filed March 13, 2023**
**Affirmed**
**Connolly, Judge**

Olmsted County District Court
File No. 55-CR-20-3568

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and Slieter, Judge.

**NONPRECEDENTIAL OPINION**

**CONNOLLY**, Judge

On appeal from his convictions of fourth-degree assault, third-degree driving while impaired (DWI), and obstructing legal process, appellant argues that (1) his jury-trial waiver was invalid, and (2) the district court erred by sentencing him for both assault and

obstructing legal process because the two offenses were committed as part of a single behavioral incident. We affirm.

## FACTS

Respondent State of Minnesota charged appellant Dwayne Cage with fourth-degree assault, third-degree DWI—refusal to submit to a chemical test, and obstruction of legal process.[1] Cage personally waived his right to a jury trial and the charges were tried to the bench.

At trial, the state presented evidence that, on June 21, 2020, law enforcement received a complaint concerning a vehicle being driven erratically. Officer Matthew Venteicher responded to the complaint and observed the subject vehicle swerve in and out of the lane of travel. Officer Venteicher then stopped the vehicle and identified Cage as the driver. And during his interaction with Cage, Officer Venteicher observed signs of impairment, prompting him to call for backup to further investigate the possible DWI.

Officer Madison Stearns responded to assist with the DWI investigation. When Officer Stearns approached the vehicle, Cage "immediately became defiant and . . . uncooperative" and attempted to force his way out of the vehicle. Cage also resisted when the officers attempted to place him in handcuffs. But Cage was eventually handcuffed and placed in the back seat of a squad car. Officers then searched Cage's vehicle and discovered a box of alcoholic beverages, and an empty beer can.

[1] Cage was also charged with failure to carry proof of insurance, but that charge was dismissed before trial.

After searching Cage's vehicle, the officers spoke with Cage through the open window of the squad car. Cage was asked if he would submit to field sobriety tests and he refused. He then called Officer Stearns a "punk-ass b-tch," snorted up some phlegm, and spit on Stearns through the open widow of the squad car.

The district court found Cage guilty as charged. Cage was later sentenced to (1) one year and one day in prison for fourth-degree assault; (2) 365 days in jail for third-degree DWI—test refusal; and (3) 90 days in jail for obstruction of legal process. The district court stayed execution of all three sentences. This appeal follows.

## DECISION

### I.

Cage challenges the validity of his jury-trial wavier. Whether a criminal defendant has been denied the right to a jury trial is a constitutional question that we review de novo. *State v. Kuhlmann*, 806 N.W.2d 844, 848-49 (Minn. 2011).

The United States and Minnesota Constitutions guarantee a criminal defendant the right to a jury trial. U.S. Const. amend. VI; Minn. Const. art. 1, § 6. A defendant may waive this right with approval of the court, but only if the defendant "does so personally, in writing or on the record in open court, after being advised by the court of the right to trial by jury, and after having had an opportunity to consult with counsel." Minn. R. Crim. P. 26.01, subd. 1(2)(a). A jury trial waiver must be knowing, intelligent, and voluntary. *Brady v. United States*, 397 U.S. 742, 748 (1970); *State v. Little*, 851 N.W.2d 878, 882 (Minn. 2014). Whether a defendant knowingly, voluntarily, and intelligently waives a

constitutional right depends on the facts and circumstances of the case, including the defendant's background, experience, and conduct. *Little*, 851 N.W.2d at 882.

Here, in obtaining Cage's waiver of his right to a jury trial, Cage's defense attorney questioned Cage as follows:

> DEFENSE COUNSEL: Mr. Cage, you and I talked about this again this morning but, generally speaking, it is my understanding you have expressed to me that you wish to waive the jury; is that correct?
> CAGE: Yes.
>
> DEFENSE COUNSEL: You understand that today we're set for a jury trial and that what would happen is at some point this morning, I'm not really sure what the schedule would be, probably 10:30 or 11:00 the jury would come in. You can see it is all set up here. They would sit in what's called the jury box and then I would have a chance to question those jurors; [the prosecutor] would have a chance to question the jurors; the judge would also talk to the jurors. That's really a short and fully adequate probably description of the jury trial process, jury selection. But you're waiving your right to a jury, and you understand that's considered one of your fundamental rights in the constitution, correct?
> CAGE: Yes, I do.
>
> DEFENSE COUNSEL: You have an absolute right to waive the jury and try it to the judge, but you are doing this freely and voluntarily, correct?
> CAGE: Yes.
>
> DEFENSE COUNSEL: Frankly, it is your opinion that with your case, given the facts, you just think and you have told me that you think you would get a fairer shake from the judge; is that correct?
> CAGE: Yes.
>
> DEFENSE COUNSEL: And you understand that it is kind of a one-way street—not kind of, it is a one-way street—you can waive the jury here today; if, let's say, halfway through the

> process you're like, "Hey, wait a minute, I change my mind," you understand at that point it is going to be too late?
> CAGE: Yes.
>
> DEFENSE COUNSEL: And specifically when we arrived, the parking lot was pretty full, and you see all these people lingering, I guess for lack of a better term, those would be the jury. What's going to happen is they are going to tell the jurors to go home. This is it. This is your chance for a jury, and you're waiving that right here today?
> CAGE: Yes, I am.

After being examined by his defense counsel, the district court questioned Cage as follows:

> COURT: Mr. Cage, you understand that in your particular case, 12 individuals—if you had a jury trial, 12 individuals would have to unanimously find you guilty. Do you understand that?
> CAGE: Yes, I do.
>
> COURT: Okay. As opposed to having a court trial, where only myself, as the judge in your case, would review the evidence. You understand that?
> CAGE: Yes.
>
> COURT: And it is still—with that information, is it still your request to waive jury trial today?
> CAGE: Yes, it is.

The exchanges between Cage and his defense counsel and Cage and the district court demonstrate that the criteria set forth in rule 26.01, subdivision 1(2)(a) was satisfied; Cage personally waived his right to a jury trial in open court, he was advised by the district court of his right to a jury trial, and he acknowledged that he had the opportunity to consult with his attorney. *See* Minn. R. Crim. P. 26.01, subd. 1(2)(a).

Nevertheless, Cage argues that his jury-trial waiver was not knowing, voluntary, and intelligent because (1) he was not advised that he could withdraw the waiver up until the first witness was sworn; (2) he was not advised that the proper purpose of voir dire would be to exclude biased jurors and select an impartial jury; and (3) the questions during the colloquy were leading. We are not persuaded.

The Minnesota Supreme Court has explained that the district court need not make an exhaustive inquiry into why the defendant waived his or her right to a jury. *State v. Ross*, 472 N.W.2d 651, 654 (Minn. 1991). Instead, the district court must ensure that the defendant is adequately informed of his or her rights, and the district court's caution in accepting the waiver must increase with the gravity of the offenses with which the defendant is charged. *Id.* at 653. The nature and extent of the inquiry into a defendant's decision to waive a jury trial may vary with the circumstances of a particular case. *Id.* at 654. Although it is advisable, a defendant need not be told in each case that a jury consists of 12 members of the community, that a defendant may participate in selection of these jurors, that a jury's verdict must be unanimous, and that, if a defendant waives his or her right to a jury, then the judge alone will decide the defendant's guilt or innocence. *Id.* The critical question is "whether the defendant understands the basic elements of a jury trial." *Id.*

Here, the record reflects that Cage understood that he had the right to a jury trial consisting of 12 jurors and that the jurors would be questioned by both his defense counsel and the prosecutor during jury selection. Cage also acknowledged that, despite his right to a jury trial, he believed he would get a "fairer shake" in a court trial. And Cage stated that

he understood that, after he waived his right to a jury trial, he could not rescind his waiver during the trial. Although Cage was not specifically advised that he could withdraw the waiver up until the first witness was sworn, Cage cites no legal authority stating that such an advisory must be given on the record.

Cage also cites no legal authority stating that leading questions are discouraged or prohibited during a jury trial waiver. Rather, the critical question is "whether the defendant understands the basic elements of a jury trial." *Id.* The record here provides no indication that Cage did not understand these basic elements. In fact, the record indicates that Cage had ample opportunity to consult with his attorney regarding the jury-trial-waiver issue. And the record indicates that Cage has an extensive history dealing with the court system, which is reflected by Cage's presentence-investigation report that shows a prior record consisting of 11 gross-misdemeanor offenses and eight felony offenses. Cage's criminal history demonstrates his familiarity with his legal rights, including his jury-trial rights. *See id.* (stating that a defendant's familiarity with the judicial system, such as through past convictions, and the extent of the defendant's opportunity to consult with his attorney can justify a less probing colloquy). Moreover, Cage does not allege that he was coerced or was under any sort of duress when he waived his right to a jury trial. Accordingly, Cage cannot demonstrate that his jury trial waiver was invalid.

**II.**

Cage also contends that the district court erroneously sentenced him for both fourth-degree assault and obstruction of legal process because those two offenses arose out of the same behavioral incident. When the facts are not in dispute, the determination of whether

multiple offenses are part of a single behavioral incident presents a question of law that is reviewed de novo. *State v. Ferguson*, 808 N.W.2d 586, 590 (Minn. 2012).

Under Minn. Stat. § 609.035, subd. 1 (2018), "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." The statute prohibits multiple sentences, including concurrent ones, for offenses that were committed as part of a single behavioral incident. *Ferguson*, 808 N.W.2d at 589.

The district court's determination of whether multiple offenses arise from a single behavioral act involves an examination of all the facts and circumstances of the case. *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997). "In making this determination, the district court considers whether the conduct (1) shares a unity of time and place and (2) was motivated by an effort to obtain a single criminal objective." *State v. Cogger*, 802 N.W.2d 407, 411 (Minn. App. 2011) (quotation omitted), *rev. denied* (Minn. Mar. 28, 2012). The state bears the burden of proving, by a preponderance of the evidence, that multiple offenses did *not* arise from a single behavioral incident. *State v. Barthman*, 938 N.W.2d 257, 266 (Minn. 2020)

In *State v. Fischer*, the defendant "swung and hit" one of his arresting officers. 354 N.W.2d 29, 32 (Minn. App. 1984), *rev. denied* (Minn. Dec. 20, 1984). The officers restrained, eventually calmed down, and temporarily released the defendant. *Id.* The defendant "later became upset again and reached out with his fists clenched," at which time the officers handcuffed the defendant and carried him away, "kicking and struggling." *Id.* This court affirmed the district court's imposition of sentences for both assault and

obstructing justice, concluding that adequate time separated both acts, and that the assault and obstruction resulted from separate motivations. *Id.* at 35; *but see Cogger*, 802 N.W.2d at 412 (concluding that, because the defendant spit on the officer while he was resisting arrest, he could not be sentenced for both obstruction of legal process and fourth-degree assault).

Here, similar to *Fischer*, the assault and obstruction offenses were separated by time and location, as well as a separate objective. The record reflects that the facts depicting the obstruction offense occurred when Cage was standing by his vehicle and resisted arrest by "locking up his arms" and not placing them behind his back. Conversely, the assault occurred approximately ten minutes later while Cage was sitting in the back seat of the squad car and spat on the officer. In between the time of the obstruction offense and the assault offense, the officers conferred with each other and searched Cage's vehicle.

Moreover, the two offenses are motivated by two separate criminal objectives. The objective of the obstruction offense is resisting or avoiding arrest. In contrast, the assault offense involved Cage spitting on the officer after he called her a "punk-ass b-tch." The facts of the assault offense involve an attempt to intentionally assault the officer by transferring bodily fluids onto the officer.

Because the obstruction offense and the assault offense were motivated by separate criminal objectives and were separated by time and place, the offenses were not part of the same behavioral incident. Accordingly, the district court did not err by sentencing Cage for both obstructing legal process and fourth-degree assault.

**Affirmed.**