

*This opinion is nonprecedential except as provided by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
A23-1871**

State of Minnesota,
Respondent,

vs.

Christopher Nicholas Markgraf,
Appellant.

**Filed December 9, 2024
Affirmed in part, reversed in part, and remanded
Slieter, Judge**

Meeker County District Court
File No. 47-CR-21-1202

Keith Ellison, Attorney General, Jacob Campion, Assistant Attorney General, St. Paul, Minnesota; and

Brandi Schiefelbien, Meeker County Attorney, Litchfield, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

On direct appeal from the final judgments of conviction of felony possession of a controlled substance and misdemeanor obstructing legal process, appellant argues that the district court erred when it failed to obtain a renewed waiver of counsel after the

controlled-substance offense was amended from a gross misdemeanor to a felony. Appellant also argues that the district court erred by misstating the law when instructing the jury on obstruction of legal process.

Because the district court did not conduct an examination with appellant of the maximum penalty for the amended felony controlled-substance offense, appellant's waiver of counsel was not knowing and intelligent and his conviction must be reversed. But because appellant has not established the jury instruction provided by the district court was plain error, we affirm appellant's conviction of obstructing legal process. Therefore, we affirm in part, reverse in part, and remand.

FACTS

Respondent State of Minnesota initially charged appellant Christopher Nicholas Markgraf with (1) possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1) (2020), a gross misdemeanor, and (2) obstruction of legal process in violation of Minn. Stat. § 609.50, subd. 1(2) (2020).

At Markgraf's arraignment, the district court reviewed his legal rights, as well as the maximum penalty for a gross-misdemeanor offense, after which Markgraf waived his right to counsel. Approximately eight days later, the state amended the complaint, increasing the controlled-substance-possession charge to a felony. At no time, during two subsequent pretrial hearings or the jury trial, did the district court review with Markgraf the increased punishment of the new felony count, in order to also review with Markgraf his desire to waive counsel.

The matter proceeded to a jury trial from which the following facts derive.

In the early morning hours of December 14, 2021, a police officer observed Markgraf and another individual rummaging through a pile of tires behind a car dealership. Because numerous thefts and burglaries had recently been reported in that area, the officer stopped to investigate. The officer approached Markgraf, with whom he was not familiar, and asked for his identification. Markgraf said he did not want to provide identification. When the officer told Markgraf that he needed to identify himself, he became argumentative.

Additional officers arrived and, because Markgraf refused to provide his name, attempted to handcuff and restrain Markgraf until he would cooperate and provide identification. As officers attempted to pull Markgraf's arms behind his back to handcuff him, he pulled his arms forward to prevent being handcuffed. Markgraf refused to identify himself and, instead, stated "I have rights . . . I want a supervisor . . . you're trampling on my rights" and various other similar statements while officers attempted to handcuff him and learn his identity. Markgraf struggled with the officers for five minutes before he was successfully handcuffed. An officer then searched Markgraf and found a substance that was later tested and determined to be methamphetamine. The body-worn-camera footage of the incident was played for the jury. The jury found Markgraf guilty of both charges.

Markgraf appeals.

DECISION

I. Because Markgraf's waiver of counsel was not knowing and intelligent, he is entitled to a new trial on the count of controlled-substance possession.

At the arraignment, Markgraf was informed of his right to counsel, along with an explanation of the maximum penalty for the original gross misdemeanor controlled-substance offense. Markgraf argues that, because the district court erred by failing to obtain a renewed waiver of counsel after the amendment of the complaint more than doubled the possible punishment, the matter must be remanded for a new trial. The state agrees with Markgraf, as do we.

When the facts are not disputed, “the question of whether a waiver-of-counsel was knowing and intelligent is a constitutional one that is reviewed de novo.” *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012). Criminal defendants have the constitutional right to counsel in “all criminal prosecutions.” U.S. Const. amend. VI; Minn. Const. art. I, § 6. “A defendant may waive his right to counsel.” *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009). “The district court has a duty to ensure a valid waiver of the right to counsel.” *State v. Gant*, 996 N.W.2d 1, 6 (Minn. App. 2023).

“Minnesota Rule of Criminal Procedure 5.04, subdivision 1(4), sets forth the procedure that a district court must follow when a defendant charged with a felony wishes to waive the right to counsel.” *Id.* Generally, a defendant charged with a felony cannot expressly waive a right to counsel unless the defendant completes a written waiver form or provides the waiver on the record. *Id.*; *see also* Minn. R. Crim. P. 5.04, subd. 1(4). However, even without a formal waiver under rule 5.04, a defendant's express waiver is

still constitutionally valid if the circumstances support that they “knowingly, voluntarily, and intelligently waived [the] right to counsel.” *Gant*, 996 N.W.2d at 7. For the circumstances to establish a valid waiver, the record must reflect that the defendant waived the right to counsel “with eyes open,” meaning that the defendant is aware of the potential consequences of proceeding without representation. *Rhoads*, 813 N.W.2d at 888.

A valid waiver of the right to counsel *must* include an advisory to the defendant of the “nature of the charges,” “all offenses included within the charges,” the “range of allowable punishments,” the facts that “there may be defenses” and that “mitigating circumstances may exist,” and “all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel.” Minn. R. Crim. P. 5.04, subd. 1(4)(a)-(f).

“As a general rule” a defendant need not renew his waiver of counsel when “nothing has changed since the initial waiver.” *Rhoads*, 813 N.W.2d. at 887. However, “[A]n amended charge that *doubles* the maximum possible punishment substantially alters the consequences of a criminal conviction, . . . [and] warrants an exception to the general rule that a defendant need not renew a valid waiver-of-counsel at subsequent proceedings.” *Id.* at 888. When renewing a defendant’s waiver of counsel, the district court “should conduct a comprehensive examination of the defendant’s understanding of the increase in the maximum possible punishment.” *Id.* at 889.

Markgraf initially waived his right to counsel regarding the gross misdemeanor controlled-substance-possession charge at the arraignment. Prior to this waiver, Markgraf was informed that he was charged with fifth-degree possession of a controlled substance

as a gross misdemeanor and that the maximum penalty for the offense was one year in jail. *See* Minn. Stat. § 152.025, subd. 4(a).¹ Eight days later, the state amended the complaint and increased the controlled-substance offense to a felony with a maximum sentence of up to five years in prison. *See* Minn. Stat. § 152.025, subd. 4(b) (2020).

As a result of amending the offense to a felony, the maximum possible punishment more than doubled (from a one year maximum to a five year maximum). Therefore, the district court was required to conduct a new comprehensive discussion with Markgraf regarding his waiver of counsel by following the procedure set forth in Minn. R. Crim. P. 5.04, subd. 1(4)(a)-(f). *Rhoads*, 813 N.W.2d. at 888.

Because the district court did not advise Markgraf of the revised range of punishment or the nature of the enhanced charge, and because there is nothing in the record demonstrating Markgraf understood that the amended charge increased the maximum possible sentence, *id.* at 889, Markgraf’s waiver of counsel was not knowing and intelligent.

II. Markgraf has not established a plain error in the district court’s instruction regarding obstructing legal process.

Markgraf argues that the district court plainly erred in instructing the jury regarding the obstructing-legal-process offense. Specifically, Markgraf contends that the district court misstated the law when it instructed the jury that the “defendant acted with the intention of *detering* or interfering with [the officer].” And though the state agrees it was

¹ The maximum punishment for a gross-misdemeanor offense has since been amended to a maximum sentence of 364 days. 2023 Minn. Laws ch. 52, art. 6, §§ 6, at 105 (amending Minn. Stat. § 609.0342); 16, at 112 (amending Minn. Stat. § 609.0341).

error, we must independently consider whether error occurred. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (explaining appellate courts have a responsibility “to decide cases in accordance with law”).

Markgraf did not object to the jury instructions. When there is no objection to jury instructions at trial, the appellate court has discretion to consider a claim of error on appeal “if there was plain error affecting substantial rights or an error of fundamental law in the jury instructions.” *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001) (quotation omitted). Under the plain-error standard, an appellant must demonstrate: (1) there was error; (2) the error was plain; and (3) the error affected the appellant’s substantial rights. *State v. Taylor*, 869 N.W.2d 1, 15 (Minn. 2015). An error is plain if it “contravenes a rule, case law, or a standard of conduct, or when it disregards well-established and longstanding legal principles.” *State v. Scruggs*, 822 N.W.2d 631, 642 (Minn. 2012).

A plain error affects a defendant’s substantial rights if it was prejudicial, meaning there is a reasonable likelihood that it had a significant effect on the jury verdict. *Id.* (quotation omitted). However, “an appellate court may correct the error *only* when it seriously affects the fairness, integrity, or public reputation of judicial proceedings,” undermining the integrity of the judicial system as a whole. *Pulczynski v. State*, 972 N.W.2d 347, 356 (Minn. 2022).

A district court has “broad discretion and considerable latitude in choosing the language of the jury instructions.” *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012). Jury instructions are proper when they fairly and adequately define the crime charged and identify its elements. *Id.*

The district court instructed the jury regarding obstructing legal process as follows:

First, [the officer] was a peace officer engaged in the performance of official duties. [The officer], a Litchfield Police Officer, is a peace officer.

Second, Defendant physically obstructed, resisted, or interfered with [the officer] in the performance of official duties. “Physically obstructed, resisted, or interfered with” means the words and acts of Defendant must have the effect of substantially frustrating or hindering the officer in the performance of the officer’s duties.

Third, Defendant acted with the intention of deterring or interfering with [the officer].

Fourth, Defendant’s act took place on or about December 14, 2021, in Meeker County.

Markgraf contests only the third element and claims that the district court misstated the law because it “added language to the statute” by telling the jury he must have “acted with the intention of deterring or interfering with [the officer].” We are not persuaded.

Section 609.50, subdivision 1(2), states that “[w]hoever intentionally . . . obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties” is guilty of obstructing legal process. We construe the statute narrowly, requiring the state to prove that the defendant acted intentionally. *See State v. Ihle*, 640 N.W.2d 910, 915-16 (Minn. 2002) (reiterating that Minn. Stat. 609.50 is construed narrowly and is focused on whether the defendant acted with intent). A person physically obstructs or interferes when they “substantially frustrat[e] or hinder the officer in the performance of his duties.” *State v. Krawsky*, 426 N.W.2d 875, 877 (Minn. 1988).

The instruction provided by the district court in element three complies with this law. The district court instructed the jury that obstruction of legal process requires that “the Defendant acted with the intention of deterring or interfering with the [officer].” This

instruction is a “fair[] and adequate[]” description of the crime, *Milton*, 821 N.W.2d at 805, which requires that the state prove that the defendant acted with intent. Minn. Stat. 609.50, subd. 1(2); *see also Ihle*, 640 N.W.2d at 915-16 (noting that the statute is construed narrowly). And although model jury instructions are not law, we note that the instruction provided by the district court mirrored the model instruction effective at the time. *State v. Valdez*, 997 N.W.2d 557 (Minn. App. 2023), *rev. granted* (Minn. Jan. 16, 2024), *aff’d*, 12 N.W.3d 191 (Minn. 2024); 10A *Minnesota Practice*, CRIMJIG 24.26 (2015).² Markgraf has not established that the district court plainly erred with its instruction, and we therefore need not consider the remaining factors of the plain-error standard.

In sum, we reverse Markgraf’s felony controlled-substance-possession conviction and remand for a new trial. We affirm Markgraf’s obstruction-of-legal-process conviction.

Affirmed in part, reversed in part, and remanded.

² The obstruction-of-legal-process model jury instruction has since been slightly modified. 10A *Minnesota Practice*, CRIMJIG 29.39 (2023) (changing the third element from “acted with intention” to “intentionally (obstructed, hindered, or prevented) (interfered with) (deterred or interfered with) (____)”).