

*This opinion is nonprecedential except as provided by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
A25-1267**

State of Minnesota,
Respondent,

vs.

Amanda Tracy Major,
Appellant.

**Filed July 6, 2026
Reversed and remanded
Wheelock, Judge**

McLeod County District Court
File No. 43-CR-25-46

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

Marc A. Sebor, Hutchinson City Attorney, Hutchinson, Minnesota; and

Kenneth G. Janssen, Assistant City Attorney, Gavin, Janssen & Stabenow & Moldan, Ltd.,
Glencoe, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Larson, Judge; and Harris,
Judge.

NONPRECEDENTIAL OPINION

WHEELLOCK, Judge

Appellant challenges her theft conviction, asserting that she did not validly waive her right to counsel. We reverse and remand for a new trial because the district court failed to obtain a valid waiver of her right to counsel.

FACTS

In January 2025, respondent State of Minnesota charged appellant Amanda Tracy Major with one count of misdemeanor theft pursuant to Minnesota Statutes section 609.52, subd. 2(a)(1) (2024), after a store's theft-prevention employee reported to Hutchinson police that she saw Major take multiple items from the store, proceed to the self-checkout lane, scan some but not all the items, and leave without paying for the unscanned items.

Major appeared at her arraignment hearing by video conference along with multiple other defendants. The district court provided an advisory of rights to all the defendants simultaneously, stating to the group:

One of the things that all you have here is the right to have counsel represent you. If you wish to see if you qualify for a court-appointed attorney, an application will be sent to you and you can do that process, but just let me know if that's what you would like.

The district court then began to call individual cases. When it called Major's case, the district court asked Major several questions:

Q: And you read that complaint, so you don't need me to read it to you, do you?

A: No.

Q: All right. And you understand what your rights are because you were here when I went through them with everyone earlier, correct?

A: Correct.

Q: All right. Any questions about your legal rights, right to counsel, any of that stuff right now?

A: I don't think so.

After Major indicated that she intended to plead not guilty, the district court asked, "And as far as representation, are you wanting to continue to represent yourself or you're thinking of maybe looking at private counsel, or even a court-appointed attorney. What's your thoughts about all that?" Major responded, "I'll just represent myself." At no other point in the proceedings did the district court advise Major of her right to counsel, and Major also did not raise the subject of counsel.

At her pretrial hearing, Major requested a bench trial and waived her right to a jury trial with no additional discussion of her right to counsel. At trial, the theft-prevention employee testified that she saw Major take various items from different sections of the store, proceed to a self-checkout lane, and pay for only some of the items but not all, before leaving the store with unpaid-for merchandise. The employee confronted Major after she confirmed that Major had taken items without paying. She testified that Major denied taking items without paying for them and was "combative." After Major left the store, the employee notified the police of the theft.

The police officer who responded testified that he stopped Major as she was driving away from the store after the incident and that, upon his request to see Major's receipt from

the transaction, she answered that she threw it away but later said that the wind blew it away.

The district court found Major guilty of theft. It sentenced Major to one year of supervised probation and ordered her to pay restitution to the store in the amount of \$99.27, plus a \$285 fine and surcharge.

Major appeals.

DECISION

Major argues that she did not validly waive her right to counsel, either expressly or by a course of conduct indicating waiver. We agree.

Both the United States and Minnesota Constitutions guarantee a criminal defendant's right to counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. A defendant may waive the right to counsel, but any waiver of that right must be knowing, voluntary, and intelligent. *State v. Camacho*, 561 N.W.2d 160, 172-73 (Minn. 1997). When the facts are undisputed, appellate courts review de novo whether a waiver was knowing, voluntary, and intelligent. *State v. Turner*, 32 N.W.3d 546, 553 (Minn. 2026). "The state bears the burden of proving that the waiver was valid." *State v. Brown*, 346 N.W.2d 187, 189 (Minn. App. 1984). "The denial of the right to counsel is a structural error that does not require a showing of prejudice to obtain reversal." *State v. Maddox*, 825 N.W.2d 140, 147 (Minn. App. 2013) (quotations omitted).

The Minnesota Rules of Criminal Procedure provide different waiver requirements depending on whether a defendant is charged with a felony or misdemeanor. *State v. Bonkowske*, 957 N.W.2d 437, 441 (Minn. App. 2021). Where, as here, a defendant is

charged with a misdemeanor, the defendant “must waive counsel in writing or on the record.” Minn. R. Crim. P. 5.04, subd. 1(3). A district court “must not accept the waiver unless the court is satisfied that it is voluntary and has been made by the defendant with full knowledge and understanding of the defendant’s rights.” *Id.* Though a district court may provide a group advisory of constitutional rights to multiple defendants, “each defendant must be asked individually . . . whether the defendant heard and understood the rights as explained earlier.” Minn. R. Crim. P. 5.03. Group advisories “must be supplemented by individual questioning to [e]nsure that defendants understand which portions of the warnings apply to them” because of the increased potential for confusion they pose. *Brown*, 346 N.W.2d at 189.¹ In the context of group advisories, “individual questioning on the record is crucial to determining whether an accused has knowingly and voluntarily waived [their] constitutional rights.” *State v. Grunewald*, 378 N.W.2d 55, 58 (Minn. App. 1985). And reviewing courts “closely scrutinize the record when an uncounseled defendant allegedly waived constitutional rights after receiving a group warning.” *State v. Foncesa*, 505 N.W.2d 370, 372 (Minn. App. 1993).

¹ We note that some of the caselaw we cite and some authority that the parties cite in their briefing refer to group advisories given prior to guilty pleas pursuant to Minn. R. Crim. P. 15.02-.03, whereas, here, Major did not plead guilty and instead proceeded to trial. We find those cases instructive as they apply to waivers following group advisories in the context of first appearances pursuant to rule 5.03 because the rights that a district court must confirm were waived with “full knowledge and understanding” for a defendant in a misdemeanor case, Minn. R. Crim. P. 5.04, subd. 1(3), are the same rights “requiring full understanding before a plea is entered in a misdemeanor case” that “are specified in Minn. R. Crim. P. 15.02.” *State, City of Minneapolis v. Edwards*, 361 N.W.2d 90, 91 (Minn. App. 1985).

Major argues that she never expressly waived her right to counsel and that the district court made no finding as to waiver. Our review of the record reveals no express waiver of the right to counsel by Major. Her statements were limited to, “I’ll just represent myself,” when asked about her thoughts on representation and, “I don’t think so,” when asked whether she had questions about her rights. “Where there is no record of a defendant’s waiver of counsel, it is impossible to determine upon appellate review whether a waiver was knowing and intelligent.” *State v. Hawanchak*, 669 N.W.2d 912, 915 (Minn. App. 2003). This is so “even if appellant chose to defend [them]self” because “it [is] the duty of the district court to ensure that appellant’s waiver of counsel was knowing and intelligent.” *Id.* We conclude that Major’s brief statements here are insufficient to establish a valid waiver. *See State v. Hanson*, 360 N.W.2d 460, 461 (Minn. App. 1985) (“Appellant was asked if he desired to see an attorney and he gave a one word answer, ‘no.’ That question and answer does not satisfy the minimum requirements of Rule 15.03 . . .”).

The state attempts to convince us otherwise by citing *State v. Motl*, 337 N.W.2d 664 (Minn. 1983). In *Motl*, the district court provided a group advisory of rights to a group that included Motl, a defendant pleading guilty in a misdemeanor case. The court stated:

You have a right to counsel; that is, to an attorney at this stage of the proceeding and at every stage of the proceedings, including police lineups and interrogations. If you’re financially unable to afford counsel, an attorney will be appointed to represent you upon completion of an application for court-appointed counsel approved by myself. You have a right to communicate with your attorney, and a continuance will be granted to you, if necessary, to enable you to obtain an attorney or to speak to your attorney.

337 N.W.2d at 665. The district court subsequently called Motl's case and asked him individual questions:

[Q]: You're Allen David Motl?

[A]: Right.

[Q]: Mr. Motl, you're charged with driving while under the influence and over ten percent ethel (sic) alcohol concentration on Highway 10 on January 9th, 1982. You're aware of your constitutional rights?

[A]: Yes.

[Q]: Any questions about them?

[A]: No.

Id. at 666. The supreme court upheld this exchange as a valid waiver of the right to counsel.

Id. The state contends that the facts in Major's case are similar to the facts in Motl's and that Major's responses to the district court's individual inquiries constitute a valid waiver of her right to counsel.

We first observe that the supreme court in *Motl* stated that the district court's questioning was "the absolute bare minimum" necessary to obtain a valid waiver and declared that "trial courts . . . should be more specific in their questions, particularly in determining whether the defendant waives [their] right to counsel." *Id.* Based on these statements, we have observed that "it is clear that the supreme court did not hold out the questioning used by the court in *Motl* as either complete or recommended." *Hanson*, 360 N.W.2d at 461. We further noted that, "although that conviction was upheld, the logical inference to be drawn from *Motl* is that the specific individual questions asked in

Motl should be expanded to [e]nsure that a defendant’s waiver of his right to an attorney is an intelligent and knowing waiver.” *Id.* at 462. And we stressed the importance of clarity in individual questioning following a group advisory because “[t]he most dangerous combination” of circumstances related to a waiver of constitutional rights that “calls for the closest scrutiny of the record is when the defendant does not have an attorney and is given the group advisory.” *Id.* In *Hanson*, we emphasized that it is not enough for a defendant simply to confirm that they do not wish to see an attorney without further individual questioning sufficient to ensure that they understood their constitutional rights. *Id.* at 461-63.

In addition, we conclude that *Motl* is distinguishable. One key difference is that the group advisory regarding the right to counsel that was given to Major was far less comprehensive than the group advisory in *Motl* because the district court in *Motl* included two specific statements required by the rules of criminal procedure that the district court here failed to provide to Major. 337 N.W.2d at 665. Minnesota Rule of Criminal Procedure 5.04 states that “the court *must* advise the defendant . . . that [1] the court will appoint the district public defender if the defendant has been determined to be financially unable to obtain counsel . . . [and 2] that the defendant has the right to request counsel at any stage of the proceedings.” Minn. R. Crim. P. 5.04, subd. 1(1) (emphasis added).² But

² Rule 15.02, applicable to guilty pleas, also requires a district court to inform a defendant in a misdemeanor case of their right to an attorney “at every stage of the proceedings.” Minn. R. Crim. P. 15.02, subd. 1. It likewise provides that the district court must advise a defendant in a misdemeanor case that “defense counsel will be appointed for a defendant unable to afford counsel.” *Id.*

the district court's group advisory here did not include either required statement. Specifically as to the first required statement, the district court said only that, if the defendants "wish[ed]" to apply for a court-appointed attorney, they had the option to do so. This stands in contrast with the group advisory the district court in *Motl* gave, which specified: "If you're financially unable to afford counsel, an attorney will be appointed to represent you." 337 N.W.2d at 665.

Another key difference is that Major did not confirm that she had no questions about her rights, as the appellant in *Motl* did, answering only, "I don't think so," in response to the district court's inquiry. In *Hanson*, we explained that a defendant's confirmation that they fully understand their rights is necessary to establish the "absolute bare minimum" for a valid waiver. 360 N.W.2d at 461-62. The defendant in *Hanson* answered, "No," when the district court asked if he wished to see an attorney, but the district court never asked him individually if he understood the constitutional rights it read during the group advisory. *Id.* at 461. We held that there was no valid waiver, distinguishing *Motl* because the district court did not confirm with "the individual question relative to awareness of constitutional rights" that the appellant understood his rights, despite the appellant's confirmation that he wanted to represent himself. *Id.* at 462. Because a group advisory issued to an unrepresented defendant is subject to the "closest scrutiny," *id.*, we conclude that the district court's failure to include mandatory statements about the right to counsel, combined with its minimal individual questioning of Major, falls short of the "absolute bare minimum" identified in *Motl* to establish a valid waiver of the right to counsel. "[C]losely

scrutiniz[ing]” the record, *Foncesa*, 505 N.W.2d at 372, we are also persuaded that *Motl* is distinguishable and does not support that there was a valid waiver here.

Our conclusion that Major did not provide a valid waiver is bolstered by a persuasive nonprecedential case, *State v. Kramer*. No. A22-0093, 2022 WL 17958564 (Minn. App. Dec. 27, 2022).³ In that case, which is factually similar, we reversed after determining that no valid waiver of counsel occurred. *Id.* at *5. *Kramer* also involved a challenge to a waiver of counsel after a district court administered a group advisory of rights to a group that included a defendant in a misdemeanor case. *Id.* at *1. During individual questioning, the district court asked the unrepresented defendant if he wanted to apply for a public defender, and the defendant declined. *Id.* The district court then asked the defendant if he wanted to represent himself; the defendant responded, “Sure.” *Id.* At a later settlement conference, the district court asked the defendant, “And you’re representing yourself . . . and you want to continue to represent yourself?” *Id.* at *2. The defendant answered, “Yes.” *Id.* The district court then asked, “And you understand you have the right to an attorney, and if you can’t afford one, you can apply for a public defender?” *Id.* The defendant again said, “Yes.” *Id.* As in Major’s case, the district court never again inquired about the defendant’s right to counsel. *Id.* On these facts, we reversed because “the district court’s bare inquiry did not ensure that [the defendant’s] waiver was knowing and intelligent.” *Id.* at *4. These facts are not distinguishable from those present here.

³ We may cite nonprecedential opinions of this court for their persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).

The state next contends that, even if there was no express waiver, Major's conduct supports a finding of a valid waiver because she never asked for an attorney. "[A] district court's failure to conduct an on-the-record inquiry regarding waiver does not require reversal when the particular facts and circumstances of the case demonstrate a valid waiver." *Bonkowske*, 957 N.W.2d at 442 (quotation omitted). We consider "the particular facts and circumstances surrounding [the] case, including the background, experience, and conduct of the accused." *Id.* (quotation omitted). We also "may consider the defendant's familiarity with the criminal justice system and whether [they were] represented by counsel prior to the waiver." *Id.*

Nothing indicates that Major had familiarity with the criminal justice system, and the record does not show that she was previously represented by counsel at any point. The state cites no authority that a defendant's mere failure to request an attorney amounts to conduct from which we may infer a valid waiver of the right to counsel. Though a reviewing court may infer a waiver of the right to counsel by conduct, this applies when a defendant engages in dilatory tactics or otherwise affirmatively indicates that they are rejecting their rights. *See Maddox*, 825 N.W.2d at 147; *State v. Worthy*, 583 N.W.2d 270, 276 (Minn. 1998) (inferring waiver after defendants fired their court-appointed attorneys); *State v. Krejci*, 458 N.W.2d 407, 412-13 (Minn. 1990) (inferring waiver from the "[d]efendant's interaction with 12 different judges, his letters to those judges, his various conversations with two different public defenders, and his refusal to accept representation from the public defender's office" and concluding that "the defendant was fully aware of the consequences of proceeding pro se"). Our review of the record reveals no such conduct

on Major's part. Accordingly, we discern no basis from which to infer a waiver absent an express waiver on the record.

We conclude that, because Major did not waive her right to counsel expressly or by her conduct, she is entitled to a new trial. *See Hawanchak*, 669 N.W.2d at 915.

Reversed and remanded.