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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0361**

State of Minnesota,  
Respondent,

vs.

Joseph Thomas Saari,  
Appellant.

**Filed February 4, 2013  
Affirmed in part and reversed in part  
Hudson, Judge**

St. Louis County District Court  
File No. 69DU-CR-11-2639

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Charles F. Clippert, Special Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Chutich, Judge.

**UNPUBLISHED OPINION**

**HUDSON**, Judge

Appellant challenges his conviction of fourth-degree assault of a peace officer, arguing that the district court abused its discretion by declining to instruct the jury with a

definition of “demonstrable bodily harm,” a required element of the offense. We conclude that the district court did not abuse its discretion by declining to give the requested instruction. But we also conclude that appellant’s additional sentence for obstructing legal process arose from the same behavioral incident and must be reversed and that the district court erred by imposing no-contact orders because the statutes under which appellant was convicted did not authorize such orders. Accordingly, we affirm in part and reverse in part.

### **FACTS**

A jury found appellant Joseph Thomas Saari guilty of one count of third-degree assault in violation of Minn. Stat. § 609.223, subd. 1 (2010), two counts of fourth-degree assault on a peace officer in violation of Minn. Stat. § 609.2231, subd. 1 (2010), and one count of obstructing legal process in violation of Minn. Stat. § 609.50, subs. 1(1), 2(2) (2010). At appellant’s jury trial, a Duluth neighborhood resident testified that he noticed appellant driving a car fast and erratically through the neighborhood and confronted appellant when he stopped. Appellant exited the car and hit the resident in the face. The resident’s wife called the police, and appellant went to the porch of his parents’ home a few doors away.

Officer Matthew Hendrickson testified that when he responded to the scene, appellant took a fighting stance and threatened to fight if the officer came closer. Officer Hendrickson testified that he pulled at appellant’s arm, they both fell off the porch, and appellant landed on top of him, punched him in the face, and clawed at him. Appellant attempted to put Officer Hendrickson in a headlock, and the officer felt his ribs and arms

collapse; he finally hit appellant with a flashlight. Another responding officer observed the fight and attempted to subdue appellant, who was finally taken into custody. A third officer testified that appellant was actively fighting Officer Hendrickson and was “very aggressive.” When that officer transported appellant in the squad car, he heard a spitting noise, felt the back of his hair move, and believed that appellant was trying to spit blood on him.

Officer Hendrickson testified that he sought medical treatment and discovered that he had a deep bruise or contusion of his rib cartilage, which caused him to miss several days of work and have pain for six to eight weeks. He testified that with such an injury it is hard to breathe, to sit up, or put on a bulletproof vest, and that he was unable to exercise. An emergency-room physician who reviewed Officer Hendrickson’s medical records testified that they revealed an abrasion to one finger and pain in the right anterior lower ribs, which was likely a contusion. He testified that an abrasion was almost always visible to the naked eye, but that a contusion was not always visible.

The district court instructed the jury that in order to find appellant guilty as to fourth-degree assault of Officer Hendrickson, it was required to find that appellant inflicted demonstrable bodily harm, and that if a word or phrase is not defined in the jury instructions, it “should apply the common, ordinary meaning of that word or phrase.” 10 *Minnesota Practice*, CRIMJIG 3.29 (Supp. 2010). During deliberations, the jury sent a note to the district court asking for a definition of demonstrable harm. The district court declined to further instruct the jury and answered the jury’s question by re-reading its prior instruction.

The jury found appellant guilty of third-degree assault as to the neighborhood resident; fourth-degree assault of a peace officer as to Officer Hendrickson, with a special verdict that appellant had inflicted demonstrable bodily harm; fourth-degree assault as to the third officer resulting from the spitting; and obstructing legal process. The district court imposed three consecutive sentences for the three assaults. The district court also imposed, concurrent to those sentences, a one-year sentence for gross-misdemeanor obstructing legal process. Finally, the district court imposed no-contact orders prohibiting appellant from contacting the neighborhood resident, his wife, and all three officers. This appeal follows.

## DECISION

### I

District courts are allowed “considerable latitude” in the selection of language for jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). The refusal to give a particular jury instruction lies within the district court’s discretion “and no error results if no abuse of discretion is shown.” *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996).

“An instruction is in error if it materially misstates the law.” *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001). It is desirable for a district court to explain to the jury the elements of the charged offense, rather than simply reading the relevant statute. *Id.* But “detailed definitions of the elements to the crime need not be given in the jury instructions if the instructions do not mislead the jury or allow it to speculate over the meaning of the elements.” *Peterson v. State*, 282 N.W.2d 878, 881 (Minn. 1979).

“Words of common usage need not be defined by the court.” *State v. Backus*, 358 N.W.2d 93, 95 (Minn. App. 1984).

To convict appellant of felony fourth-degree assault on Officer Hendrickson, the state was required to prove beyond a reasonable doubt that appellant “inflict[ed] demonstrable bodily harm” on Officer Hendrickson. Minn. Stat. § 609.2231, subd. 1 (2010). Appellant argues that, based on *Backus*, the district court abused its discretion by refusing to instruct the jury with a definition of “demonstrable bodily harm.” In *Backus*, this court approved the district court’s jury instruction defining “demonstrable” harm as harm “capable of being perceived by a person other than the victim.” 385 N.W.2d at 95. We concluded that “there is no error in the [district] court defining [the term] as it did,” but we also noted that “‘demonstrable’ is a word of common usage.” *Id.*<sup>1</sup>

We conclude that, although it may have been preferable for the district court to provide a more specific definition of “demonstrable harm” to the jury, it did not abuse its discretion by failing to do so. As we recognized in *Backus*, “demonstrable” is a word of common usage. *Id.* at 95. The district court’s failure to define that term here did not mislead the jury or encourage it to speculate over the meaning of an element of the

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<sup>1</sup> We observed in *Backus* that the version of the jury-instruction guide then in effect suggested that “demonstrable” was a word of common usage. *Backus*, 358 N.W.2d at 95 (citing CRIMJIG § 13.21, n.3). Since *Backus*, the jury instruction relating to fourth-degree assault on a peace officer has been modified to include a definition of “demonstrable bodily harm” as “bodily harm that is capable of being perceived by a person other than the victim.” 10 *Minnesota Practice*, CRIMJIG 13.22 (2006). But the newer jury-instruction-guide comment retains a cite to *Backus*. *Id.*, cmt. And in any event, we recognize that jury instruction guides are “not precedential or binding” on this court. *State v. Kelley*, 734 N.W.2d 689, 695 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

offense. *See Peterson*, 282 N.W.2d at 881 (concluding that the failure to instruct the jury on a definition of “great bodily harm,” required for conviction of first-degree criminal sexual conduct, was not erroneous or prejudicial when its commonly understood meaning “was sufficient to convey the essentials of the element to the jury”).

And even if we were to conclude that the district court abused its discretion by failing to define the term for the jury, any such error was harmless. *See Kuhnau*, 622 N.W.2d at 558–59 (stating that error in instructing jury is not harmless if “it cannot be said beyond a reasonable doubt that the error had no significant impact on the verdict”). The record shows that, as a result of the assault, Officer Hendrickson sustained two injuries: an abrasion to his finger and a rib contusion. Appellant presented no evidence, and the state’s medical expert provided unrebutted testimony that, even if a contusion would not always be visible, an abrasion would be. Therefore, it can be said beyond a reasonable doubt that the district court’s failure to provide the jury with the definition of “demonstrable harm” cited in *Backus*—an injury capable of being perceived by another person—would not have had a significant impact on the verdict, and appellant is not entitled to a new trial.

## II

Appellant argues that the district court erred by imposing separate sentences for the crimes of obstructing legal process and fourth-degree assault because those offenses arose from a single behavioral incident. When facts are not in dispute, whether multiple offenses are part of a single behavioral incident is a question of law reviewed de novo. *State v. Ferguson*, 808 N.W.2d 586, 590 (Minn. 2012).

“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.” Minn. Stat. § 609.035, subd. 1 (2010). This statute protects criminal defendants from multiple prosecutions and multiple sentences for offenses resulting from the same behavioral incident. *State v. Schmidt*, 612 N.W.2d 871, 876 (Minn. 2000). Courts are prohibited from imposing “multiple sentences . . . for two or more offenses that were committed as part of a single behavioral incident.” *State v. Norregaard*, 384 N.W.2d 449, 449 (Minn. 1986). This rule applies even when the single behavioral incident results in multiple crimes. *State v. Williams*, 608 N.W.2d 837, 841 (Minn. 2000).

When conducting a single-behavioral-incident analysis for two intentional crimes, Minnesota courts consider (1) whether the conduct shares a unity of time and place and (2) whether the conduct was motivated by an effort to obtain a single criminal objective. *Williams*, 608 N.W.2d at 841; *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997). A district court may impose separate sentences for separate crimes committed in a single behavioral incident against multiple victims if the sentences do not unfairly exaggerate the criminality of the defendant’s conduct. *State v. Skipinthe day*, 717 N.W.2d 423, 426 (Minn. 2006). “But a defendant may not be sentenced for more than one crime for each victim when the defendant’s conduct is motivated by a single criminal objective.” *Ferguson*, 808 N.W.2d at 590 (quotation omitted).

The district court imposed a separate sentence for appellant’s crime of obstructing legal process after it had imposed sentences for his crimes of fourth-degree assault against two peace officers. It is undisputed that the obstructing-legal-process offense was

committed as part of the same behavioral incident as the assaults and that it stemmed from a single criminal objective: appellant's attempt to resist the officers as they were attempting to question and then arrest him. Therefore, the district court erred by imposing separate sentences for these crimes, and we reverse appellant's sentence imposed for obstructing legal process.

### III

Appellant challenges the no-contact orders that were imposed as part of his sentence. A court may "correct a sentence not authorized by law" at any time. Minn. R. Crim. P. 27.03, subd. 9. We review a criminal sentence "to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court." Minn. Stat. § 244.11, subd. 2(b) (2010). "[A] district court may not impose a no-contact order as part of an executed sentence unless the order is expressly authorized by statute." *State v. Pugh*, 753 N.W.2d 308, 311 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008).

Appellant received an executed sentence, but the statutes which appellant was convicted of violating do not authorize the imposition of a no-contact order. *See* Minn. Stat. § 609.223, subd. 1 (stating penalty for third-degree assault as imprisonment for not more than five years or payment of a fine of not more than \$10,000 or both); Minn. Stat. § 609.2231, subd. 1 (stating penalty for felony fourth-degree assault of a police officer as imprisonment for not more than three years and/or payment of a fine of not more than \$6,000); Minn. Stat. § 609.50, subd. 2(2) (stating penalty for gross-misdemeanor

conviction of obstructing legal process, if act was accompanied by force or violence or threat thereof, as imprisonment for not more than one year or payment of a fine of not more than \$3,000). Therefore, the district court erred by imposing no-contact orders in connection with appellant's sentencing, and we reverse those orders.

**Affirmed in part and reversed in part.**