STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0402

State of Minnesota,
Respondent,

vs.

David Lee Blanshan,
Appellant.

Filed March 13, 2017
Affirmed in part, reversed in part, and remanded
Johnson, Judge

Cass County District Court
File No. 11-CR-15-539

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Christopher Strandlie, Cass County Attorney, Jeanine R. Brand, Assistant County Attorney, Walker, Minnesota (for respondent)

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

Considered and decided by Tracy M. Smith, Presiding Judge; Johnson, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

A Cass County jury found David Lee Blanshan guilty of fourth-degree assault of a peace officer, obstruction of legal process, and failure to wear a seatbelt. We conclude that

the evidence is sufficient to support the conviction of fourth-degree assault of a peace officer, that the district court did not err in its evidentiary rulings, and that the prosecutor did not engage in misconduct in closing arguments. But we conclude that the district court erred by sentencing Blanshan on both the charge of fourth-degree assault of a peace officer and the charge of obstruction of legal process. Therefore, we affirm in part, reverse in part, and remand for resentencing.

FACTS

On March 29, 2015, a state trooper stopped a moving vehicle on a rural highway after observing that the front-seat passenger was not wearing a seatbelt. After approaching the vehicle, the trooper attempted to identify both the driver and the passenger. Blanshan, the passenger, identified himself with only his first name and middle name, and he interrupted the trooper several times by asking for the trooper's name and badge number. Blanshan also said to the trooper several times, "I do not choose to loiter with you." The trooper ordered Blanshan to get out of the vehicle. Blanshan did not comply. Instead, he buckled his seatbelt and locked the vehicle's doors.

The trooper called for back-up assistance and informed the dispatcher that he was dealing with a "sovereign citizen." While waiting approximately three and one-half minutes for another officer to arrive, the trooper spoke with the driver, who had exited the vehicle. The driver stated that she did not know Blanshan well and did not know his full name but that he had talked to her about his political views.

After a deputy sheriff arrived, the driver unlocked the vehicle's doors, which allowed the trooper to open the passenger door. Blanshan continued to refuse to exit the

vehicle. The trooper reached in, unbuckled Blanshan's seatbelt, and attempted to pull Blanshan out of the vehicle with both hands. Blanshan resisted by swatting or blocking the trooper's arms and by kicking the trooper's legs. After struggling with Blanshan for approximately one and one-half minutes, the trooper deployed his Taser on Blanshan's right leg to gain compliance. The trooper then pulled Blanshan out of the vehicle, and Blanshan rolled onto the ground. The trooper and deputy sheriff subdued him with wrist restraints and placed him under arrest. A backpack that the trooper had previously seen on the floor of the front-seat passenger area fell out of the vehicle during the struggle. Inside the backpack was a document entitled, "Affidavit of reservation of rights UCC 1-308/1-207," which bore Blanshan's name, signature, and fingerprint. When the trooper returned to his squad car, he noticed cuts on the knuckles of both of his hands, which he photographed.

The state charged Blanshan with one count of fourth-degree assault of a peace officer, in violation of Minn. Stat. § 609.2231, subd. 1 (2014); one count of obstruction of legal process, in violation of Minn. Stat. § 609.50, subd. 1(2) (2014); and one count of failure to wear a seatbelt, in violation of Minn. Stat. § 169.686, subd. 1(a) (2014). Blanshan was disruptive during all pre-trial appearances and was removed from the courtroom during nearly half of them. The district court appointed advisory counsel on several occasions due to Blanshan's disruptions and the concern that Blanshan was unable to validly waive his right to counsel.

The case was tried in November 2015. Blanshan was represented by appointed counsel. The state called two witnesses: the trooper and the deputy sheriff. The trooper

testified that, based on his training and his experience, he recognized Blanshan to be a sovereign citizen by his conduct and speech, and that this recognition "heightened [his] sense of security" and made him think about "what could potentially happen." The trooper testified to his understanding of the beliefs of sovereign citizens. The state also played for the jury a video-recording of the traffic stop, taken from the dashboard camera of the trooper's squad car, which showed the entire interaction between the trooper and Blanshan. In addition, the state introduced color photographs of the trooper's scraped knuckles. Blanshan did not testify and did not call any other witnesses.

The jury found Blanshan guilty on all three counts. The district court imposed a stayed sentence of 13 months on the charge of fourth-degree assault of a peace officer and imposed fines on the other two charges. Blanshan appeals.

D E C I S I O N

I. Sufficiency of the Evidence

Blanshan first argues that the evidence is insufficient to prove that he is guilty of fourth-degree assault of a peace officer.

In reviewing the sufficiency of the evidence, we undertake "a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient" to support the conviction. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We seek to "determine whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Salyers*, 858 N.W.2d 156, 160 (Minn. 2015) (quotation

omitted). We "assume that the factfinder disbelieved any testimony conflicting with [the] verdict." *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (quotation omitted). "[W]e will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Ortega*, 813 N.W.2d at 100.

The statute setting forth the offense of felony fourth-degree assault of a peace officer provides as follows:

> Whoever physically assaults a peace officer . . . when that officer is effecting a lawful arrest or executing any other duty imposed by law is guilty of a gross misdemeanor . . . . If the assault inflicts demonstrable bodily harm . . . , the person is guilty of a felony . . . .

Minn. Stat. § 609.2231, subd. 1 (2014). We assume that the phrase "physically assaults," as used in this statute, means that a person commits fifth-degree assault. *See State v. Struzyk*, 869 N.W.2d 280, 285 (Minn. 2015). A person commits fifth-degree assault if he "(1) commits an act with intent to cause fear in another of immediate bodily harm or death; or (2) intentionally inflicts or attempts to inflict bodily harm upon another." Minn. Stat. § 609.224, subd. 1 (2014). The phrase "bodily harm," as used in the assault statute, means "physical pain or injury, illness, or any impairment of physical condition." Minn. Stat. § 609.02, subd. 7 (2014).

Blanshan contends that the evidence is insufficient to establish that he inflicted demonstrable bodily harm, for purposes of the charge of fourth-degree assault, because there is no evidence that the trooper experienced an impairment of physical condition.

Demonstrable bodily harm exists if the victim of an assault sustains an injury that is "capable of being perceived by a person other than the victim." *State v. Backus*, 358 N.W.2d 93, 95 (Minn. App. 1984). The state's evidence includes photographs that show slight scratches on two knuckles of the trooper's left hand and a very slight scratch on one knuckle of the trooper's right hand. The injuries depicted in the photographs appear to be minimal. But the state's evidence also includes the trooper's testimony that he had "cuts" on his knuckles and that, when he first noticed them, the cuts were bleeding. In light of the caselaw and the evidentiary record, the evidence is sufficient to prove that the trooper sustained injuries that constitute demonstrable bodily harm. *See, e.g.*, *State v. Mattson*, 376 N.W.2d 413, 414-15 (Minn. 1985) (concluding that victim sustained bodily harm because defendant's contact caused bruising); *State v. Reinke*, 343 N.W.2d 660, 662 (Minn. 1984) (concluding that victim sustained bodily harm because of visible abrasion).

Blanshan also contends that the evidence is insufficient to establish that he inflicted demonstrable bodily harm because there is no evidence that the trooper perceived pain. Bodily harm exists if the victim of an assault perceives even a "minimal amount of physical pain." *State v. Jarvis*, 665 N.W.2d 518, 522 (Minn. 2003). The state's evidence includes the trooper's testimony that Blanshan kicked him "pretty hard" and that "it hurt." The trooper's testimony was corroborated by the video-recording, which showed that Blanshan engaged in a rough, physical struggle with the trooper. Together, the trooper's testimony and the video-recording are sufficient to prove that Blanshan inflicted demonstrable bodily harm on the trooper because the trooper experienced pain. *See State v. Johnson*, 277 Minn.

230, 237, 152 N.W.2d 768, 773 (1967) (concluding that victim sustained bodily harm because he felt pain when defendant struck him).

Thus, the evidence is sufficient to support the jury's finding of guilt on the charge of fourth-degree assault of a peace officer.

II. Character Evidence

Blanshan next argues that the district court erred by allowing the trooper to testify about the sovereign-citizen movement and his perception that Blanshan is associated with the movement, which Blanshan asserts is inadmissible character evidence.

At trial, Blanshan did not object to the trooper's testimony on the ground that it is inadmissible character evidence. In fact, it was Blanshan who first elicited evidence concerning the sovereign-citizen movement. When the trooper testified that Blanshan said, "I do not consent to loiter with you," the prosecutor asked the trooper whether he had received any training on the meaning of that phrase. Blanshan's attorney objected to the question on grounds of relevance and foundation, and he asked permission to conduct *voir dire*. Blanshan's attorney asked the trooper, "[A]re you saying that you had specific training on the word loiter?" The trooper testified, "I've had numerous training sessions I've attended that deal with sovereign citizens and the way they deal with law enforcement and their encounters with law enforcement." Blanshan's attorney did not object to the answer as being non-responsive. After completing *voir dire*, Blanshan's attorney objected to the prosecutor's line of questioning as being an improper subject for expert testimony. The district court overruled the objection on the ground that the trooper was not giving expert testimony but was merely testifying to his training.

The trooper proceeded to testify that "sovereign citizens are people we've had training about where they think that they don't have to adhere to any of our state laws" and "believe that . . . as a state trooper, . . . I have no authority to act upon them in any lawful manner." The trooper testified further, as follows: "I through my training and experience, they are known to be potentially armed and dangerous. There's been numerous trainings I've attended where [it was said that] sovereign citizens have shot and killed police officers." At that point, Blanshan's attorney objected on the ground that "[i]t's gone far beyond the initial question," and the district court sustained that objection, although Blanshan's attorney did not move to strike the testimony. The trooper later gave additional testimony about the typical beliefs of a person who identifies with the sovereign-citizen movement. In addition, the video-recording of the trooper's conversation with the driver of the vehicle includes references to the sovereign-citizen movement and Blanshan's apparent association with the movement. The state also introduced as an exhibit the document found in Blanshan's backpack that indicates his association with the sovereign-citizen movement.

Because Blanshan did not ask the district court to exclude any of the state's evidence on the ground that it is inadmissible character evidence, we apply the plain-error test to the issue that he raises on appeal. *See* Minn. R. Crim. P. 31.02; *State v. Mosley*, 853 N.W.2d 789, 796-98, 797 n.2 (Minn. 2014) (applying plain-error test to appellate argument challenging relevance after trial counsel objected on other grounds). Under the plain-error test, an appellant is entitled to relief only if (1) there is an error, (2) the error is plain, and (3) the error affects the appellant's substantial rights. *State v. Griller*, 583 N.W.2d 736,

740 (Minn. 1998). If these three requirements are satisfied, an appellant also must satisfy a fourth requirement, that the error "seriously affects the fairness and integrity of the judicial proceedings." *State v. Little*, 851 N.W.2d 878, 884 (Minn. 2014). If an appellate court concludes that any requirement of the plain-error test is not satisfied, the appellate court need not consider the other requirements. *State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012).

A.

We begin by considering the first and second requirements of the plain-error test, which ask whether the district court erred and, if so, whether the error is plain. *See Griller*, 583 N.W.2d at 740. Whether the district court erred depends on whether the state's evidence is inadmissible character evidence.

As a general rule, "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion . . . ."[1] Minn. R. Evid. 404(a). The purpose of this rule of exclusion is to ensure that the jury does not convict a defendant "to penalize him for his past misdeeds or simply because he is an undesirable person," to avoid "the danger that a jury will overvalue the character evidence in assessing the guilt for the crime charged," and to make it unnecessary

[1]As an exception to the general rule, "Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same," is admissible. Minn. R. Evid. 404(a)(1). If character evidence is admissible, there are two recognized methods of proving character: "by testimony as to reputation or by testimony in the form of an opinion" and, in certain situations, evidence of "specific instances of that person's conduct." Minn. R. Evid. 405. Because Blanshan did not put his character in issue, the exception in rule 404(a)(1) does not apply in this case.

for the defendant "to defend against immediate charges [and] disprove or explain his personality or prior actions." *State v. Loebach*, 310 N.W.2d 58, 63 (Minn. 1981).

We begin by examining Blanshan's premise that the evidence he challenges on appeal is character evidence. Blanshan does not cite any caselaw on that point. Commentators describe character evidence, as contemplated by rule 404(a), as a "'generalized description of a person's disposition or of the disposition in respect to a general trait such as honesty, temperance or peacefulness.'" 11 Peter N. Thompson, *Minnesota Practice—Evidence* § 404.02, at 204 (4th ed. 2012) (quoting *McCormick on Evidence* § 195 (6th ed.)). A person's beliefs concerning government or politics, or a person's affiliation with a group espousing certain beliefs concerning government or politics, ordinarily would not bear directly on a general trait such as honesty, temperance, or peacefulness, but it may depend on the particular beliefs. The issue may be complicated by the principle that "an individual's right to join groups and associate with others holding similar beliefs" is protected by the First Amendment right of free association. *Dawson v. Delaware*, 503 U.S. 159, 163, 112 S. Ct. 1093, 1096 (1992) (concluding that evidence of defendant's membership in Aryan Brotherhood was inadmissible at sentencing hearing). Nonetheless, the supreme court has analyzed evidence of a defendant's "gang affiliation" as a form of character evidence. *State v. Yang*, 644 N.W.2d 808, 816 (Minn. 2002); *see also State v. Jackson*, 714 N.W.2d 681, 700-701 (Minn. 2006) (Hanson, J., dissenting). Similarly, this court has concluded that evidence of an offender's association with "skinheads" and his corresponding criminal conduct was relevant at sentencing "to rebut the evidence of good character presented by appellant in support of his request for a

dispositional departure." *State v. Krebsbach*, 524 N.W.2d 17, 20 (Minn. App. 1994), *review denied* (Minn. Jan. 13, 1995).

In its responsive brief, the state contends primarily that, even if the evidence at issue is character evidence, it is admissible to show Blanshan's motive and opportunity. We understand the state's brief to contend that the sovereign-citizen evidence tends to prove that Blanshan resisted the trooper's commands because Blanshan does not believe that the trooper had valid authority to give such commands. The state does not cite any caselaw in support of this argument. Motive and opportunity are two exceptions to the rule of exclusion in rule 404(b), which provides, in part:

> Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Minn. R. Evid. 404(b). Evidence of motive and opportunity may be admitted under this rule only if, among other things, a district court determines that "the probative value of the evidence" outweighs "its potential for unfair prejudice to the defendant." Minn. R. Evid. 404(b)(5); *see also State v. Grayson*, 546 N.W.2d 731, 737 (Minn. 1996) (concluding that evidence of defendant's familiarity and agreement with Malcolm X was unfairly prejudicial in guilt phase of murder trial). If the exceptions in rule 404(b) for motive and opportunity were applicable, they would allow "[e]vidence of another crime, wrong, or act." Minn. R. Evid. 404(b). It is unclear whether the evidence at issue in this case is evidence of any other "crime, wrong, or act" by Blanshan. *See id.* To the extent that the

evidence reveals conduct by Blanshan, the evidence consists primarily of his conduct during the incident that gives rise to the charged offense, not evidence of any prior conduct.[2] The evidence Blanshan challenges on appeal primarily concerns the sovereign-citizen movement, its tenets, and the conduct of other members. The nature of the state's evidence is somewhat similar to drug-courier profile evidence, which the supreme court has said "seems akin to character evidence." *See State v. Williams*, 525 N.W.2d 538, 547 (Minn. 1994) (quotation omitted). The district court did not have an opportunity to fully analyze these issues because Blanshan did not object at trial.

The parties' appellate briefs and our own research reveal that there is no clear rule as to whether the state may introduce evidence of a criminal defendant's affiliation with the sovereign-citizen movement and evidence about the nature of the movement. We need not discuss the issue further because we are reviewing Blanshan's argument only for plain error. Under the plain-error test, Blanshan must show not only that the district court erred but also that the district court's error is plain. *See Griller*, 583 N.W.2d at 740. An error is "plain" if it is clear or obvious, and an error is clear or obvious if it "contravenes a rule, case law, or a standard of conduct, or when it disregards well-established and longstanding legal principles." *State v. Brown*, 792 N.W.2d 815, 823 (Minn. 2011). Because there is no caselaw that clearly and obviously prohibits the state from introducing evidence of a

[2]It might have been more appropriate for the state to rely on the immediate-episode exception to rule 404(b) to justify the evidence of Blanshan's conduct that tends to show his association with the sovereign-citizen movement. *See State v. Riddley*, 776 N.W.2d 419, 424-27 (Minn. 2009); *State v. Wofford*, 262 Minn. 112, 118, 114 N.W.2d 267, 271 (1962).

criminal defendant's beliefs concerning government or politics or a defendant's association with such an organization, the district court did not plainly err by allowing the state to introduce evidence concerning the sovereign-citizen movement and Blanshan's association with the movement without *sua sponte* excluding the evidence.

Thus, Blanshan cannot establish the second requirement of the plain-error test. This conclusion is sufficient to resolve Blanshan's argument that the district court erred by allowing the state to introduce character evidence.

B.

We next consider, in the alternative, whether, if the district court plainly erred, that error would have affected Blanshan's substantial rights. *See Griller*, 583 N.W.2d at 740. A plain error affects a defendant's substantial rights "if the error was prejudicial and affected the outcome of the case." *Id.* at 741. An appellant bears a "heavy burden" in seeking to satisfy the third requirement. *State v. Davis*, 820 N.W.2d 525, 535 (Minn. 2012).

The state contends that the evidence concerning sovereign citizens was not prejudicial. The state points to other evidence that, it asserts, adequately demonstrated Blanshan's guilt. Specifically, the trooper testified that Blanshan refused to produce identification, interrupted him, displayed a tense and hostile attitude and aggressive body language, refused to exit the vehicle, and hit and kicked him. Importantly, the trooper's testimony was corroborated by the video-recording that was created by the trooper's dashboard camera, which was pointed forward, directly at the vehicle in which Blanshan was a passenger. The video-recording captured the entire incident and, thus, allowed the jury to hear Blanshan's tone in speaking with the trooper and to see his physical struggle

with the trooper. We are convinced that all of that evidence, by itself, would have caused the jury to find Blanshan guilty of assault of a peace officer and obstruction of legal process, even without evidence concerning the sovereign-citizen movement and Blanshan's association with the movement.

Thus, Blanshan cannot establish the third requirement of the plain-error test. This conclusion also is sufficient to resolve Blanshan's argument that the district court erred by allowing the state to introduce character evidence.

III. Prosecutorial Misconduct

Blanshan next argues that the prosecutor engaged in misconduct in her closing argument by making reference to the sovereign-citizen movement and Blanshan's association with it.

Blanshan concedes that he did not object to the prosecutor's closing argument at trial. Accordingly, this court must apply a modified plain-error test. *State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012). To prevail, Blanshan first must establish that there is an error and that the error is plain. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). If Blanshan were to satisfy that burden, the state would need to show that the error did not affect the appellant's substantial rights, *i.e.*, that "there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *Id.* (quotations omitted).

The right to due process of law includes the right to a fair trial, and the right to a fair trial includes the absence of prosecutorial misconduct. *Spann v. State*, 704 N.W.2d 486, 493 (Minn. 2005); *State v. Ferguson*, 729 N.W.2d 604, 616 (Minn. App. 2007), *review*

denied (Minn. June 19, 2007). A prosecutor has "an affirmative obligation to ensure that a defendant receives a fair trial, no matter how strong the evidence of guilt." *Ramey*, 721 N.W.2d at 300. A state's closing arguments must be "based on the evidence produced at trial, or the reasonable inferences from that evidence." *State v. Porter*, 526 N.W.2d 359, 363 (Minn. 1995). A closing argument is improper if it "could have only been intended to inflame the jury's passions and prejudices" and is a "blatant attempt to impinge on juror independence." *Id.* at 364.

Blanshan contends that the prosecutor's closing argument was "designed only to inflame the passions of the jury." Blanshan's contention is based on this excerpt:

> [The trooper has] got an individual who's taken on a fighting stance, and he has an individual who now has recited some words that cause him even greater concern.
>
> "I do not consent to loiter with you." [The trooper], based on his training and experience, knew that he was dealing with a sovereign citizen. You heard the tape itself, on the video immediately he calls for back-up saying, "I'm dealing with a sovereign citizen," a person who has by reputation, by the generality based on his training is a person who is saying I do not comply, I do not adhere to the laws of Minnesota.

Contrary to Blanshan's contention, this portion of the prosecutor's closing argument hews closely to the trooper's trial testimony and the reasonable inferences from his testimony. The closing argument does not even approach the limits of permissible "dramatic characterizations" of the testimony. *See State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010). In addition, the statements do not appear to be a "blatant attempt to impinge on juror independence." *Porter*, 526 N.W.2d at 363-64.

Thus, the prosecutor did not engage in misconduct during closing arguments.

IV. Impeachment Evidence

Blanshan next argues that the district court erred by not ruling on the admissibility of evidence of a prior conviction before he waived his right to testify.

In general, "Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b). But evidence of a defendant's prior conviction is admissible for impeachment purposes if the crime is punishable by more than one year in prison and the probative value of the evidence outweighs its prejudicial effect. Minn. R. Evid. 609(a); *State v. Williams*, 771 N.W.2d 514, 518 (Minn. 2009). A district court must consider the five *Jones* factors when determining whether the probative value of impeachment evidence outweighs its prejudicial effect: "'(1) the impeachment value of the prior crime, (2) the date of the conviction and the defendant's subsequent history, (3) the similarity of the past crime with the charged crime . . . , (4) the importance of the defendant's testimony, and (5) the centrality of the credibility issue.'" *State v. Hill*, 801 N.W.2d 646, 653 (Minn. 2011) (alteration in original) (quoting *State v. Jones*, 271 N.W.2d 534, 538 (Minn. 1978)). A defendant "is entitled to have the district court make a determination of the Rule 609(a) issue outside the presence of the jury before the accused decides whether to testify." *State v. Tscheu*, 758 N.W.2d 849, 862 (Minn. 2008) (quotation omitted).

In this case, the state requested a ruling before jury selection on the admissibility of its evidence of Blanshan's prior conviction. Before the state's request, Blanshan had requested permission to be absent from the courtroom during trial. The district court judge presiding over the trial had presided over all pretrial hearings and, thus, was familiar with

Blanshan's pattern of being disruptive in court. The district court reserved its ruling on the state's request, to await additional information as to "if and when Mr. Blanshan chooses to testify." Blanshan's attorney did not object to the district court's reservation of its ruling on the state's request.

During trial, after the state rested and before a lunch recess, the district court stated to Blanshan that "the choice of whether you testify or not is completely yours" and advised him to take the lunch recess as "an opportunity for you to consult with and get advice from [your attorney] about the advantages and disadvantages if you testify so that you can make a knowing and intelligent decision with respect to that." After the lunch recess, Blanshan waived his right to testify. His attorney did not request a ruling on the admissibility of the state's evidence of a prior conviction.

The state argues that the district court did not err by not ruling on the admissibility of its impeachment evidence because a district court is not absolutely required to make such a ruling before a defendant waives the right to testify, because Blanshan did not object to the district court's reservation of its ruling on the state's request, and because Blanshan did not make his own request for a ruling before waiving the right to testify. We agree. In light of the circumstances known to the district court at the outset of trial, the district court reasonably refrained from ruling until it could be determined whether Blanshan would be present during the defense case. When the state rested, Blanshan consulted with counsel and decided to waive his right to testify, without requesting a ruling on the admissibility of the state's evidence of a prior conviction. Although a defendant is "entitled to have the district court make a determination of the Rule 609(a) issue . . . before [he] decides whether

to testify," *Tscheu*, 758 N.W.2d at 862, he must take steps to enforce that entitlement by prompting the district court to make a ruling. By not making such a request before waiving his right to testify, Blanshan forfeited his entitlement to a ruling on admissibility of the state's impeachment evidence before waiving his right to testify. *See State v. Beaulieu*, 859 N.W.2d 275, 278 (Minn. 2015).

Thus, the district court did not err by not ruling on the admissibility of the state's evidence of a prior conviction before Blanshan waived his right to testify.

V. Multiple Adjudications and Sentences

Blanshan last argues that the district court erred by adjudicating him guilty and sentencing him on all three counts. He argues that the district court should have adjudicated him guilty and sentenced him only on count 1.

A.

We begin by considering Blanshan's arguments concerning the interplay between the first charge, assault of a peace officer, and the second charge, obstruction of legal process.

Blanshan contends that the district court erred by adjudicating him guilty on both the first charge and the second charge. A defendant "may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2014). Accordingly, a defendant "may not be convicted of both the crime charged and '[a] crime necessarily proved if the crime charged were proved.'" *State v. Bertsch*, 707 N.W.2d 660, 664 (Minn. 2006) (quoting Minn. Stat. § 609.04, subd. 1(4)); *see also State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). To determine whether one charge is included in

another charge, a court must compare the elements of the offense. *Bertsch*, 707 N.W.2d at 664. A person commits fourth-degree assault of a peace officer if he "physically assaults [a peace] officer" who is "effecting a lawful arrest or executing any other duty imposed by law" and "inflicts demonstrable bodily harm." Minn. Stat. § 609.2231, subd. 1. A person commits obstruction of the legal process if he "intentionally . . . obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties." Minn. Stat. § 609.50, subd. 1(2) (2014). Based on the plain language of the statutes defining the two offenses, it is possible to commit each one without committing the other. Thus, the district court did not err by adjudicating Blanshan guilty on both count 1 and count 2. *See State v. Cogger*, 802 N.W.2d 407, 409 (Minn. App. 2011) (assuming propriety of adjudications of assault of peace officer and obstruction of legal process), *review denied* (Minn. Mar. 28, 2012).

Blanshan also contends that the district court erred by sentencing him on both the first charge and the second charge. Generally, "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 (2014). Whether conduct constitutes more than one offense requires that we determine whether the underlying conduct involved "a single course of conduct." *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014). "Offenses are part of a single course of conduct if the offenses occurred at substantially the same time and place and were motivated by a single criminal objective." *Id.* Blanshan contends that his assault of the trooper and his obstruction of legal process were part of a single course of conduct. The state agrees and concedes that the district court erred by sentencing Blanshan

on both count 1 and count 2. We agree as well. The conduct underlying the assault offense and the obstruction offense "occurred at substantially the same time and place and were motivated by a single criminal objective." *See id.* The appropriate remedy for the district court's error is a vacatur of the sentence on count 2 and the corresponding entry of an amended warrant of judgment and commitment. *See Jones*, 848 N.W.2d at 537-38 (vacating sentence imposed in violation of section 609.035).

B.

We also consider Blanshan's arguments concerning the interplay between the first charge, assault of a peace officer, and the third charge, failure to wear a seatbelt.

Blanshan contends that the district court erred by adjudicating him guilty on both the first charge and the third charge. It is possible to commit a fourth-degree assault without violating the statute that requires a passenger in a vehicle to wear a seatbelt. *Compare* Minn. Stat. § 609.2231, subd. 1, *with* Minn. Stat. § 169.686 (2014). Accordingly, Blanshan was not convicted of "'[a] crime necessarily proved if the crime charged were proved.'" *Bertsch*, 707 N.W.2d at 664 (quoting Minn. Stat. § 609.04, subd. 1(4)). Thus, the district court did not err by adjudicating Blanshan guilty on both count 1 and count 3.

Blanshan also contends that the district court erred by sentencing him on both the first charge and the third charge. The state disagrees. The evidentiary record shows that the seatbelt offense did not occur at "substantially the same time" and place as the assault offense and was not motivated by the same "criminal objective." *See Jones*, 848 N.W.2d at 533. Thus, the district court did not err by imposing sentences on both count 1 and count 3.

In sum, we affirm in part, reverse in part, and remand to the district court. On remand, the district court shall vacate the sentence on count 2 and enter an amended judgment.

Affirmed in part, reversed in part, and remanded.