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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0433**

State of Minnesota,
Respondent,

vs.

Medi Okugn Opiew,
Appellant.

**Filed December 31, 2018
Affirmed
Reilly, Judge**

Blue Earth County District Court
File No. 07-CR-17-2145

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Florey, Judge; and Kalitowski,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

REILLY, Judge

Appellant argues that his convictions and sentences for fifth-degree assault and disorderly conduct must be reversed because his jury-trial waiver was invalid. We affirm.

FACTS

In 2017, appellant Medi Okugn Opiew attended a large event in Mankato, known as the “Blue Earth Blackout.” A fight broke out at the event, and a witness testified that appellant kicked a man in the face while the man was on the ground. Appellant acknowledged that he “raise[d] [his] leg” at the man in anger, but denied actually kicking the victim. The state charged appellant with third-degree riot, two counts of fifth-degree assault, and disorderly conduct. Following a bench trial, the district court adjudicated appellant guilty of one count of fifth-degree assault and one count of disorderly conduct. Appellant was acquitted of the remaining two charges. The district court imposed a stayed jail sentence, and this appeal follows.

DECISION

Appellant challenges the validity of his jury-trial waiver. A defendant “has the constitutional right to a jury trial for any offense punishable by incarceration.” *State v. Fluker*, 781 N.W.2d 397, 400 (Minn. App. 2010); *see also* Minn. R. Crim. P. 26.01, subd. 1(1)(a). A defendant may waive the right to a jury trial. *State v. Kuhlmann*, 806 N.W.2d 844, 848 (Minn. 2011). With the court’s approval, a defendant

may waive a jury trial on the issue of guilt provided 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). Whether a waiver is valid is a constitutional question subject to de novo review. *State v. Shattuck*, 704 N.W.2d 131, 135 (Minn. 2005).

Appellant argues that his jury-trial waiver was invalid. Appellant does not contest that his waiver was done personally and on the record in open court, or that he had an opportunity to consult with counsel. Instead, appellant argues that his jury-trial rights were frustrated because the district court failed to *ask* appellant whether he had the opportunity to consult with counsel.

We reject this argument. The record plainly shows that appellant's counsel was present with him during the omnibus hearing and represented appellant's interests. Defense counsel stated at the beginning of the hearing that he "had contact with [appellant] last week," and later stated that appellant would enter a not guilty plea and "would be waiving a jury and asking for a court trial."

Furthermore, the following colloquy occurred at the omnibus hearing:

COURT: All right and then with regard to this matter, Mr. Opiew, you understand that you have the right to have a trial by jury?

DEFENDANT: Yes—ye—yes, Your Honor.

COURT: And these are gross misdemeanor or the highest count is a gross misdemeanor so you'd have the right to have a jury of six citizens—

DEFENDANT: Yeah.

COURT: —make a determination?

DEFENDANT: Yes, Your Honor.

COURT: And you understand if you waive your right to— well, and if you have a trial to six citizens the state, um, obviously needs to prove your guilt beyond a reasonable doubt before you could be found guilty whether it is a court trial or a jury trial. With a jury trial those six citizens would have to have a unanimous verdict. Do you understand that?

DEFENDANT: Yes, Your Honor.

COURT: And if you waive that right it would be myself hearing the evidence—

DEFENDANT: Yes, Your Honor.

COURT: And that is what you wish to do, is waive—

DEFENDANT: Yes, Your Honor.

COURT: —your right to a jury trial? And you are nodding yes?

DEFENDANT: Yes, Your Honor.

COURT: All right anything else on the jury versus court trial issue?

[DEFENSE COUNSEL]: No, Your Honor.

Appellant's claim that the district court violated his jury-trial rights is flatly negated by the record, and we conclude that the district court did not err by accepting appellant's waiver of his jury-trial rights.

Affirmed.