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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1470**

State of Minnesota,
Respondent,

vs.

Antonio Terrell Beasley,
Appellant.

**Filed August 5, 2019
Affirmed
Hooten, Judge**

Olmsted County District Court
File No. 55-CR-17-3966

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

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Reilly, Presiding Judge; Hooten, Judge; and Klaphake,
Judge.*

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

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges his convictions for first-degree controlled substance crime, importing a controlled substance across state borders, and failure to affix a tax stamp to a controlled substance, arguing that he should receive a new trial because he was prejudiced by inadmissible evidence at his trial. Appellant also argues that the search warrant used was invalid because it was based upon statements from an unreliable confidential informant. We affirm.

FACTS

In 2017, the Rochester Police Department conducted an investigation of appellant Antonio Beasley on suspicion that he was selling drugs. As part of the investigation, they used a confidential reliable informant (CRI) to perform five controlled buys of heroin from Beasley. On June 13, police learned that Beasley was planning to make a trip to Rockford, Illinois that day to restock his drug supply. The CRI accompanied Beasley on the trip. While Beasley went to obtain drugs in Illinois, the police obtained a search warrant in order to arrest him upon returning to Rochester and seize the drugs from his car. Beasley was arrested early the next morning, and police seized approximately 200 grams of heroin. That afternoon, an officer met with Beasley. The officer read Beasley his *Miranda* rights, and Beasley agreed to speak with the officer. The result was a nearly three-hour-long interview which the officer recorded. After about an hour of denying any wrongdoing, Beasley admitted to the officer that he sells heroin, that he went to Rockford the previous day and bought heroin, and that he had also recently purchased 450 grams of heroin in Rockford.

Olmsted County charged Beasley with one count of first-degree controlled substance crime, two counts of importing a controlled substance across state borders (one count for the June 13-14 trip to Rockford and one count for the prior trip when he bought 450 grams of heroin), and one count of failure to affix a tax stamp to a controlled substance. The case went to trial. The jury heard testimony from the CRI that he had participated in five controlled buys with Beasley and that he had gone to Rockford with Beasley on the June 13-14 trip. The prosecution played five audio recordings for the jury of interviews between the police and the CRI, conducted after each controlled buy, in which the CRI identified Beasley as the one who sold him the heroin. The prosecution also played four audio recordings and one video recording made during the controlled buys. The jury heard a portion of Beasley's interview with the police officer in which he admitted to selling heroin and purchasing heroin in Rockford, and they were allowed to read a transcript of the interview. Beasley was convicted of all of the charges except for the count of importing a controlled substance across state borders regarding the earlier trip to Rockford. This appeal follows.

D E C I S I O N

I. Inadmissible Statements

Beasley argues that his conviction should be reversed and he should be granted a new trial because inadmissible statements about his prior incarceration were put into evidence at trial. Beasley refers specifically to two statements from his interview on June 14 which were played for the jury and were included in the transcript of the interview that was provided to the jury. The first statement was the interviewing officer asking Beasley,

“When is the last time you actually had a job? I mean like a normal paycheck every two weeks type of job? I mean, has it been since you got out?” And the second statement, from later in the interview, was Beasley responding to a question from the officer by saying, “I was in prison when it happened.”

When an appellant challenges his conviction on the basis of inadmissible evidence, appellate courts apply either the harmless-error standard of review or the plain-error standard of review. *State v. Matthews*, 800 N.W.2d 629, 633–34 (Minn. 2011). When a defendant timely objects to the admission of the evidence at issue, the harmless-error standard applies. *Id.* at 633. If no timely objection is made, then the plain-error standard applies. *Id.* at 633–34.

The parties do not squarely address which standard should apply. The transcript shows that the district court sua sponte addressed the prison-related statements, saying:

I just wanted to raise one issue before we break, and that was that I heard a couple of references in the recording . . . that referred to, I want to say – there was a first reference that was a little bit cryptic about something like, maybe, “when I got out,” or something like that. And then . . . there’s a reference, “I was in prison when it happened.” And I just anticipate there may be an issue raised about that. I don’t believe I’ve made any rulings on *Spreigl* evidence or impeachment evidence that would yet admit evidence concerning prior crimes or reasons that the Defendant might have been in prison. . . . Is there a request for some action on the court’s part, based on that being in the recording?

Defense counsel responded, “I actually think [the prosecutor] was trying to not play that word when it said ‘prison.’ But I think to give a curative instruction only emphasizes it, and I’m not asking for any curative instruction.” In his brief, Beasley characterizes this

exchange as the district court “anticipat[ing] defense counsels’ objection.” But the above-quoted statement from the district court comes 32 transcript pages after the prosecution played the recording. Defense counsel also did not formally object to the recording either while it was being played or after. Accordingly, we conclude that there was no timely objection and that the plain-error standard applies.

“Under the plain error review standard, the defendant must establish (1) an error, (2) that was plain, and (3) that affected the substantial rights of the defendant.” *Id.* at 634. If those three prongs are established, a new trial will be ordered only if the plain error seriously affects the fairness, integrity, or public reputation of the judicial proceedings. *Id.* If the defendant is unable to show that his substantial rights were affected under the third prong, then it is unnecessary to consider the other two prongs of the analysis. *Id.* So we begin our analysis with the third prong.

Under the third prong, a plain error affects substantial rights “when there is a reasonable likelihood that the error substantially affected the verdict.” *Id.* (quotation omitted). This analysis “is the equivalent of a harmless error analysis.” *Id.* And in *Matthews*, the supreme court considered four harmless-error review factors in order to determine whether there was a reasonable likelihood that an error substantially affected the verdict: “(1) the manner in which the State presented the testimony, (2) whether the testimony was highly persuasive, (3) whether the State used the testimony in closing argument, and (4) whether the defense effectively countered the testimony.” *Id.*

As to the first factor, the statements were brief statements made in an hour-and-a-half-long interview and a 94-page-long transcript. As to the second factor, the evidence

that Beasley had served time in prison was not good for his case, but it did not go into detail explaining why he had been incarcerated. If, for example, the statement had indicated that Beasley spent time in prison for selling drugs, it would have been much more prejudicial and improperly persuasive. As to the third factor, the state made no mention in its closing argument or its rebuttal argument of the statements or Beasley ever spending time in prison. And for the fourth factor, Beasley's trial counsel did not object to the statements and then intentionally declined a curative instruction, indicating that counsel did not feel the need to counter the statements. Considering all four factors, we conclude that the statements did not substantially affect the verdict and that Beasley's substantial rights were therefore not affected.

II. Pro Se Arguments

Beasley also makes two pro se arguments claiming that the district court should have granted his motion for a new trial. We review a district court's denial of a motion for a new trial for an abuse of discretion. *State v. Gatson*, 801 N.W.2d 134, 151 (Minn. 2011).

The state asks that we decline to review "these claims because they are unsupported by the record or legal authority." "Arguments are forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred." *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017). While Beasley's pro se brief could be clearer, he does cite to United States Supreme Court cases and Minnesota cases in support of his arguments, and he attempts to apply them to his case. Accordingly, we conclude that he did not forfeit his arguments and that we should consider them.

Beasley's first pro se argument is that the district court should have granted him a new trial because the search warrant used by police was invalid as a result of the affiant relying on an unreliable CRI in his application for the search warrant. "The United States and Minnesota Constitutions provide that no warrant shall issue without a showing of probable cause." *State v. Holiday*, 749 N.W.2d 833, 839 (Minn. App. 2008); *see also* U.S. Const. amend. IV; Minn. Const. art. I, § 10. "Where a probable cause determination is based on an informant's tip, the informant's veracity and the basis of his or her knowledge are considerations under the totality test." *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998). Beasley essentially argues that CRI "004"—one of at least three CRIs mentioned in the application for a warrant—was not reliable because the police stopped using the CRI after the CRI failed to comply with probation and accrued new criminal charges. But Beasley provides no authority that supports the assertion that a CRI's accrual of criminal charges or probation violations makes him or her unreliable. And Beasley does not indicate that any of the information given by the CRI was actually false or otherwise unreliable. Accordingly, this argument fails.

Moreover, the application for the search warrant mentions two other CRIs that police used in their investigation of Beasley. While CRI "004" was the first to give officers information about Beasley, the other two CRIs gave very similar information to the police. So even if CRI "004" were unreliable for the reasons that Beasley argues, his argument would still fail because the probable cause determination was not based exclusively on that CRI and the information supplied by the supposedly unreliable CRI was corroborated by other reliable CRIs.

Beasley's second pro se argument is that the state did not timely turn over information about CRI "004" which, according to Beasley, would have demonstrated that the CRI was unreliable. Beasley claims that if he had timely received this information he could have successfully challenged the search warrant used against him because it was based on an unreliable CRI. Based on this claim, he asserts that he is entitled to a new trial because of either discovery violations or *Brady* violations. For an appellant to receive a new trial on the basis of either discovery violations or a *Brady* violation, the appellant must demonstrate that he was prejudiced by the absence of the evidence. *See State v. Scanlon*, 719 N.W.2d 674, 685 (Minn. 2006) ("Generally, without a showing of prejudice to the defendant, the state's violation of a discovery rule will not result in a new trial."); *Walen v. State*, 777 N.W.2d 213, 216 (Minn. 2010) (requiring that the evidence at issue be material, which means that "the absence of the evidence must have caused prejudice to the defendant"). In order to be prejudiced by the state's delay in disclosing the identity of CRI "004," Beasley would have to demonstrate that the search warrant was invalid. And, as explained above, Beasley is unable to do so. Accordingly, this argument also fails.

Affirmed.