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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0183**

State of Minnesota,
Respondent,

vs.

Adam Vance Stevenson,
Appellant.

**Filed February 18, 2020
Affirmed
Bjorkman, Judge**

Kandiyohi County District Court
File No. 34-CR-17-639

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General,
St. Paul, Minnesota; and

Shane Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Bjorkman, Judge; and Slieter,
Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions for driving while impaired (DWI), refusal to
submit to chemical testing for intoxication, and driving after cancellation of his license.

We affirm because (1) the plainly erroneous admission of appellant’s unredacted driving and criminal records did not affect his substantial rights, (2) appellant did not establish that denial of his request to subpoena jail witnesses deprived him of the opportunity to present material and favorable evidence, (3) any error in the jury instructions did not affect appellant’s substantial rights, and (4) appellant waived his pro se arguments.

FACTS

At about 9:30 p.m. on July 1, 2017, Kandiyohi County Deputy Sheriff Ted Argabright was parked in his squad car when a car sped past him on County Road 10. Deputy Argabright gave chase for approximately ten miles—sometimes driving over 100 miles per hour—before stopping the car. When asked for identification, the driver, appellant Adam Vance Stevenson, rolled his window down about four inches and stated, “I reserve my Second Amendment rights.” He also said that he was fleeing from a bar in Spicer where he had been assaulted. Deputy Argabright noticed that Stevenson’s “eyes were slightly bloodshot and watery.” A records check revealed that Stevenson’s driver’s license was cancelled as inimical to public safety based on prior DWI convictions and that he had an active arrest warrant.

Deputy Argabright arrested Stevenson, handcuffed him, and placed him in the back of his squad car. During the ride to jail, Deputy Argabright smelled alcohol emanating from Stevenson in the back seat. Stevenson was extremely agitated; he screamed, swore, and threatened to kill the person he believed called the police on him. At the jail, Deputy Argabright asked Stevenson to perform field sobriety tests. Stevenson declined, but admitted that he had been drinking.

At about 11:30 p.m., Deputy Argabright read Stevenson the breath-test advisory. When offered the opportunity to contact an attorney, Stevenson instead called his then-girlfriend. During a rambling conversation, Stevenson told her, “I was drinking,” and said, “The court system has f--ked me in every way they could in this state. They deserve to die, get blown up, shot.” When his telephone time ended, Stevenson refused a breath test on the ground that he was pulled over only for speeding.¹

Stevenson was charged with felony DWI, felony DWI-test refusal, and driving after cancellation. He chose to represent himself at trial,² during which records of his complete criminal history were admitted without objection. This history includes traffic violations and eight “non-traffic convictions” comprised of DWIs, disorderly conduct, criminal sexual conduct, underage consumption, theft, and fleeing police, and a notice of a pending charge for violating an order for protection.

During trial, the district court denied Stevenson’s request for a continuance in order to subpoena jail witnesses to support his claim that he took and passed a preliminary breath test (PBT) before he was released from jail. The jury found Stevenson guilty of all charges, and he appeals.

¹ Stevenson’s conduct on the night of his arrest was captured in squad-car and jail recordings that were played for the jury.

² Stevenson discharged the assigned public defender. Standby counsel was present throughout the trial.

DECISION

I. Stevenson’s substantial rights were not affected by the plainly erroneous admission of his unredacted criminal and driving records.

Where, as here, a defendant did not object to the admission of evidence at trial, we review for plain error. *State v. Budreau*, 641 N.W.2d 919, 925-26 (Minn. 2002). A defendant asserting plain error must establish (1) error, (2) that is plain, and (3) that affects his substantial rights. *State v. Vasquez*, 912 N.W.2d 642, 650 (Minn. 2018). An error affects a defendant’s substantial rights when there is a reasonable likelihood that it had a significant effect on the jury’s verdict. *State v. Gomez*, 721 N.W.2d 871, 880 (Minn. 2006). If all three requirements are met, we assess whether reversal is required “to ensure the fairness, integrity, or public reputation of judicial proceedings.” *Peltier*, 874 N.W.2d at 799 (quotation omitted).

Stevenson challenges the admission of evidence in three categories: (1) warrants of commitment and sentencing orders related to his prior DWIs, (2) recordings that include Stevenson’s threatening statements, and (3) records of Stevenson’s numerous prior criminal convictions. We discern no error, plain or otherwise, as to evidence admitted within the first two categories. Evidence of Stevenson’s prior DWI convictions is admissible to establish the predicate offenses necessary to support the enhanced DWI charges. See Minn. Stat. § 609.041 (2016) (permitting admission of a “certified court record of [a] conviction” to prove its existence). And while the squad-car and jail recordings include Stevenson’s isolated threatening statements, the recordings and these statements were relevant to establish that Stevenson was under the influence of alcohol.

See State v. Olson, 887 N.W.2d 692, 700 (Minn. App. 2016) (approving admission of defendant’s erratic behavior to prove impairment).

The state concedes that the third category of evidence, unredacted records of Stevenson’s criminal conduct and unrelated driving violations, was erroneously admitted and that the error was plain. We agree. This evidence was prejudicial in nature and irrelevant to the charged offenses. *See State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014) (assuming plain error in the admission of testimony that defendant may have been a drug dealer, but concluding that the defendant’s substantial rights were not affected because the testimony was limited, and the evidence of guilt was overwhelming).

Accordingly, we consider whether admission of this evidence had a significant effect on the jury’s verdict. To determine this, we “review the strength of the state’s case, the pervasiveness of the error, and whether the defendant had an opportunity to respond.” *State v. Noor*, 907 N.W.2d 646, 657 (Minn. App. 2018), *review denied* (Minn. Apr. 25, 2018). And we note that the defendant bears a “heavy” burden of persuasion on the third plain-error prong. *State v. Word*, 755 N.W.2d 776, 782 (Minn. App. 2008).

We are not persuaded that Stevenson has met that burden. A person commits a DWI offense if he “drive[s], operate[s], or [is] in physical control of” a vehicle while “under the influence of alcohol.” Minn. Stat. § 169A.20, subd. 1(1) (2016). A person commits a test-refusal offense if he refuses to submit to a chemical test of his breath as requested by an officer who has probable cause to lawfully arrest him for driving while under the influence of alcohol. *See* Minn. Stat. §§ 169A.20, subd. 2(1), .51, subd. 1(b)(1) (2016 & Supp. 2017). On appeal, Stevenson does not dispute that he was driving a vehicle, refused a breath test

following his arrest, and had prior DWI convictions to support the enhanced DWI charges. Accordingly, we consider the strength of the state's case as to Stevenson's impairment.

The record is replete with evidence that Stevenson drove his vehicle while under the influence of alcohol. Deputy Argabright saw Stevenson's vehicle speed by, prompting a ten-mile high-speed chase. When he finally brought his vehicle to a stop, Stevenson made an odd remark about his Second Amendment rights. Deputy Argabright noted Stevenson's bloodshot and watery eyes and detected an odor of alcohol. Stevenson exhibited highly emotional, erratic behavior during the jail transport, and admitted to Deputy Argabright and his girlfriend that he had been drinking. We have found similar evidence indicative of impairment. See *Olson*, 887 N.W.2d at 700 (defendant's erratic behavior); *State v. Driscoll*, 427 N.W.2d 263, 265 (Minn. App. 1988) (standard physical indicia and driving conduct); *Swapinski v. Comm'r of Pub. Safety*, 368 N.W.2d 322, 324 (Minn. App. 1985) (speeding and other "unlawful driving conduct"), review denied (Minn. July 26, 1985); see also *State v. Carver*, 577 N.W.2d 245, 248 (Minn. App. 1998) ("An officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence." (quotation omitted)). Deputy Argabright's testimony was corroborated by the recordings of the chase, stop, and jail conversations.

Moreover, the prosecutor did not emphasize the erroneously admitted evidence during closing argument. And Stevenson was given the opportunity to respond to the evidence but did not do so. Based on our careful review of the record, we conclude that the plain error in admitting evidence of Stevenson's past crimes did not affect Stevenson's substantial rights. See *Noor*, 907 N.W.2d at 657 (ruling that state's "improper reference"

to the defendant's past convictions during trial on DWI-related charges did not affect his substantial rights when the references were not "pervasive" and the state's case was "strong" and included testimony on impairment from a police officer, the driver of another vehicle, and a witness who observed the defendant drinking, as well as in-squad and detention-center recordings).³

II. Stevenson's compulsory-process rights were not violated.

Stevenson argues that the district court violated his constitutional right to compulsory process by failing to issue subpoenas for his girlfriend and the "captain of the jail" to substantiate his claim that a PBT he took before he was released demonstrates that he was not under the influence of alcohol. *See* U.S. Const. amend. VI; Minn. Const. art. I, § 6 ("The accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor . . ."). He asserts that he sought to subpoena both witnesses at his pretrial hearing, reiterated the request at trial, and had no ability to obtain a subpoena without the court's assistance.

"[C]riminal defendants have the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt." *Burrell v. State*, 858 N.W.2d 779, 786 (Minn. 2015) (quotation omitted). But when a defendant claims a compulsory-process violation, he "must at least make some plausible showing of how the testimony would have been both

³ Likewise, there is ample evidence to support Stevenson's conviction for driving after cancellation under Minn. Stat. § 171.24, subd. 5 (2016). The state presented unchallenged evidence that Stevenson knowingly drove his vehicle after receiving notice that his license was cancelled as inimical to public safety.

material and favorable to his defense.” *Id.* (quotation omitted). Stevenson has not made this showing. To challenge the state’s evidence of impairment, Stevenson sought to introduce evidence that he was required to take and pass a PBT before he was released from jail, and that his girlfriend witnessed him do so. But Stevenson did not post bond and secure his release until July 3—more than 24 hours after his arrest. We are not persuaded that the evidence he sought to obtain through compulsory process was in any respect material or relevant to his defense. He has not established that his compulsory-process rights were violated.

III. Any error in the jury instructions did not affect Stevenson’s substantial rights.

Jury instructions, when reviewed in their entirety, must fairly and adequately explain the law. *Peltier*, 874 N.W.2d at 797. District courts are given “considerable latitude” in selecting jury instruction language, *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002), and we ordinarily review for abuse of that discretion, *State v. Mahkuk*, 736 N.W.2d 675, 682 (Minn. 2007). But because Stevenson did not object to the instruction given, we review for plain error. *Peltier*, 874 N.W.2d at 799.

Stevenson argues that the test-refusal instruction was erroneous because it suggests a subjective, rather than objective, standard applies to the probable-cause element.⁴ If he

⁴ The challenged jury instruction states:

Probable cause means that the officer, based upon his observation, information, experience and training can testify to the objective facts and circumstances in the particular situation that gave that officer cause to stop the defendant’s motor vehicle and further objective observations that led him to

cannot show that the challenged instruction affected his substantial rights, we need not address the first two plain-error prongs. *State v. Robertson*, 884 N.W.2d 864, 875 (Minn. 2016). Generally, an erroneous jury instruction does not have a significant effect on a jury verdict if there was strong evidence to convict. *See State v. Kelley*, 855 N.W.2d 269, 283-84 (Minn. 2014) (ruling erroneous jury instruction did not have a significant effect on the jury’s verdict because “there [was] considerable evidence of [the defendant’s] guilt”). As discussed above, evidence of Stevenson’s guilt on the test-refusal charge was strong. Stevenson’s driving conduct, physical indicia of impairment, and erratic behavior during the traffic stop and arrest process amply support probable cause to arrest for DWI. *See Gomez*, 721 N.W.2d at 881 (commenting that jury-instruction error did not affect the defendant’s substantial rights when the jury would not have reached a different verdict without the error). Any error in the jury instructions does not warrant reversal of his conviction because he cannot show that the jury’s verdict would have been different without the claimed error.⁵

believe that the defendant was driving or operating a motor vehicle while under the influence of alcohol.

The district court separately defined probable cause for the jury and told them to “consider [the] instructions as a whole and regard each instruction in the light of all the others.” Stevenson does not object to these instructions.

⁵ We also reject Stevenson’s argument that his convictions should be reversed because of cumulative trial errors. *See In re Welfare of D.D.R.*, 713 N.W.2d 891, 903 (Minn. App. 2006) (stating that an “[a]ppellant is entitled to a new trial if the errors, when taken cumulatively, had the effect of denying [the] appellant a fair trial”). The errors in this case are more limited than Stevenson suggests, not pervasive, and do not mandate reversal for cumulative error. *See, e.g., State v. Mayhorn*, 720 N.W.2d 776, 779 (Minn. 2006) (finding cumulative error when 12 trial errors deprived the appellant of a fair trial); *State v.*

Finally, in a pro se supplemental brief, Stevenson appears to contest the basis for his stop, the effectiveness of his lawyer, the events surrounding his arrest, and various other aspects of the case. He does not cite the record or make specific legal arguments. And his version of the facts in several instances is either outside of or unsupported by the district court record. As such, Stevenson's arguments are forfeited. *See State v. Taylor*, 869 N.W.2d 1, 22 (Minn. 2015) ("We deem arguments waived on appeal if a pro se supplemental brief contains no argument or citation to legal authority in support of the allegations." (quotation omitted)).

Affirmed.

Peterson, 530 N.W.2d 843, 849 (Minn. App. 1995) (finding cumulative error when there were multiple and varied trial errors).