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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0296**

State of Minnesota,
Respondent,

vs.

Caleb John Permann,
Appellant.

**Filed April 6, 2020
Affirmed
Bratvold, Judge**

Itasca County District Court
File No. 31-CR-18-68

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Matti R. Adam, Itasca County Attorney, Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

In this direct appeal from a final judgment of conviction for first-degree driving while impaired (DWI), appellant argues that his conviction must be reversed because

(1) the evidence is insufficient to establish three qualified prior impaired driving incidents within the preceding ten years and (2) the district court abused its discretion when it admitted hearsay evidence. We affirm.

FACTS

The following summarizes testimony received during appellant Caleb John Permann's two-day jury trial for first-degree DWI. On January 5, 2018, Permann met with his probation agent at 10:00 a.m. in Grand Rapids. Permann told her that he used methamphetamine "two days prior." After telling Permann that he would be taken into custody for violating probation, the agent asked staff to contact law enforcement. Permann told the agent that "he had driven to [her] office." The agent did not see Permann driving.

Permann then asked if he could make arrangements for his sport utility vehicle (SUV) parked outside. Officer Pomplun arrived and overheard Permann say he wanted to make some phone calls to his employer and to a family member or friend to "get his vehicle." Pomplun testified that "Mr. Permann acknowledged that he had used methamphetamines in the last 48 hours and he had driven to his appointment" with his probation agent. While Permann was on the phone, Pomplun searched Permann's driving record because he thought "there's a potential for a DWI." After he determined that Permann had three qualified prior impaired driving incidents within the past ten years, Pomplun arrested Permann.

At the jail, Pomplun read Permann his Miranda rights and Permann gave a recorded statement stating he drove his black Ford Bronco to the probation agent's office for a scheduled meeting. When Pomplun asked how many DWIs he had in the past ten years,

Permann responded, “Umm, in the past 10 years I’ve had two DWI’s and one . . . DUI for driving under the influence of marijuana.” When asked if he had three DWIs in the past ten years, Permann responded, “Yes.” Police obtained a search warrant and Permann gave a urine sample, which was sent to the Bureau of Criminal Apprehension (BCA) and tested positive for methamphetamine.

The state charged Permann by complaint with DWI in violation of Minn. Stat. § 169A.20, subd. 1(7) (2016), which makes it a crime to drive, operate, or be in physical control of a motor vehicle while the person’s body contains any amount of a controlled substance, which includes a Schedule II drug. The same count also alleged that Permann violated Minn. Stat. § 169A.24, subd. 1(1) (2016), which provides that a person is guilty of first-degree DWI if the violation is within ten years of the first of three or more qualified prior impaired driving incidents (count one).¹ The complaint alleged that Permann had a 2009 driver’s license revocation and two DWI convictions from 2012 and 2015. Permann pleaded not guilty and did not stipulate to his prior convictions or license revocation.

Outside the presence of the jury on the first day of trial, the state asked the district court to rule on the admissibility of three exhibits it intended to offer to prove Permann’s driving record. The district court heard argument about the admissibility of the exhibits. Exhibit six is certified as a “true and correct copy from the records of the Driver and Vehicle Services Division” of the Department of Public Safety (DPS) of a 2009 notice and order revoking Permann’s license for DWI (2009 notice and order of license revocation).

¹ The state also charged Permann with violation of a restricted driver’s license under Minn. Stat. § 171.09, subd. 1(f)(1) (2016), but dismissed this charge on the first day of trial.

Exhibit seven is certified as “a true copy of the original record in [the] custody” of the Olmsted County Court Administrator of the September 28, 2012 court minutes showing Permann’s DWI conviction (2012 court minutes). Exhibit eight is a certified copy of a 2015 warrant of commitment from Dakota County showing Permann’s DWI conviction. Permann argued that exhibit six was inadmissible because it was the initial, not final, notice and that it was hearsay. Permann argued that exhibit seven was inadmissible because it was not a certified copy of the actual conviction and court minutes are subject to error. As for exhibit eight, Permann acknowledged that it was a certified copy of a 2015 DWI conviction, but noted that irrelevant and prejudicial information was included on the document and should be redacted. After a brief recess, the district court found that the three exhibits were “certified records, official records,” and were admissible with some redactions.²

During trial, the state offered testimony from the probation agent, Pomplun, and a BCA forensic scientist to establish the facts summarized above. The forensic scientist also testified that methamphetamine is a Schedule II drug in Minnesota.

The district court received into evidence exhibits six, seven, and eight, discussed above, and also Permann’s recorded statement to Pomplun (exhibit one), and a photo of Permann’s SUV parked outside his probation agent’s office (exhibit nine). Defense counsel

² The contested exhibits were initially marked as exhibits three, four, and five, and filed as court exhibits. The transcript indicates that redacted versions of these exhibits were received into evidence and published to the jury as exhibits six, seven, and eight, respectively. While the record on appeal does not contain redacted exhibits, Permann’s brief to this court states that redacted exhibits were received into evidence.

renewed her objections to the admission of exhibits six, seven, and eight when they were offered, and the district court overruled the objections.

After the state rested and Permann waived his right to testify, he moved for a judgment of acquittal under Minn. R. Crim. P. 26.03, subd. 18(1)(a), arguing that the evidence was insufficient to establish that he had three qualified prior impaired driving incidents. The district court denied Permann's motion.

The jury found by special-verdict interrogatory that Permann had three qualified prior impaired driving incidents within the past ten years and found Permann guilty of first-degree DWI. Permann moved for downward dispositional and downward durational departures. The district court denied Permann's motions and committed him to the commissioner of corrections for 62 months with credit for 327 days served. Permann appeals.

D E C I S I O N

I. The evidence is sufficient to support Permann's conviction for first-degree DWI.

At the outset, the parties disagree about the correct standard of review. Permann argues that our review is de novo because he presents a legal issue and the facts are undisputed. The state argues that the "issue is the sufficiency of evidence, which an appellate [court] reviews in the light most favorable to the verdict."

When reviewing sufficiency of the evidence, this court conducts "a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which

they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). “A reviewing court 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.” *State v. Brandes*, 781 N.W.2d 603, 606 (Minn. App. 2010). Permann relies on *State v. Tomlin* as establishing the de novo standard of review. But *Tomlin* decided what elements the state must prove to sustain a conviction of obstructing the legal process. 622 N.W.2d 546, 548 (Minn. 2001). *Tomlin* does not require de novo review for Permann’s sufficiency challenge.³

The state must prove every element of the charged offense beyond a reasonable doubt. *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). Permann was convicted of violating Minnesota Statutes section 169A.24, subdivision 1(1):

A person who violates section 169A.20 (driving while impaired) is guilty of first-degree driving while impaired if the person:

(1) commits the violation within ten years of the first of three or more qualified prior impaired driving incidents.

A qualified prior impaired driving incident is defined as “prior impaired driving convictions and prior impaired driving-related losses of license.” Minn. Stat. § 169A.03, subd. 22 (2016). A prior impaired driving-related loss of license includes “a driver’s

³ Some caselaw holds that de novo review applies to determine whether an appellant’s conduct is a crime under the charging statute. *See State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013) (reviewing de novo whether appellant’s “conduct in this case meets the definition of a drive-by shooting”). But Permann’s sufficiency-of-the-evidence argument contends that the evidence offered to prove his qualified prior impaired driving incidents was insufficient, not that the incidents themselves were insufficient to establish qualified prior impaired driving incidents.

license suspension, revocation, cancellation, denial, or disqualification under” enumerated statutes, including sections “169A.50 to 169A.53 (implied consent law)” and section “169A.54 (impaired driving convictions and adjudications).” See Minn. Stat. § 169A.03, subd. 21(a)(1) (2016).

Permann does not challenge the sufficiency of the evidence offered to prove that he was guilty of DWI on the morning of January 5, 2018, when he met with his probation agent. Rather, Permann argues that the state failed to offer sufficient evidence establishing two of the three qualified prior impaired driving incidents committed within the ten years before his 2018 DWI. On appeal, Permann does not challenge the admissibility of exhibit eight, the 2015 warrant of commitment for a DWI, but argues that exhibits six and seven are insufficient to sustain his first-degree DWI conviction.

First, Permann argues that exhibit six is insufficient to prove a qualified prior impaired driving incident because the 2009 notice and order of license revocation was appealable. Because the state failed to offer a “final notice of revocation,” Permann argues that the state failed to prove his license was revoked. The state responds that the prosecution can use “competent and reliable evidence” to prove a license revocation.

Permann cites no legal authority to support his argument that the state had to prove that his 2009 license revocation was not overturned on appeal. And Permann does not even claim that he sought judicial review of his 2009 license revocation. A license revocation is effective when the commissioner of public safety, or a peace officer acting on the commissioner’s behalf, gives the notice and order of revocation to the driver. Minn. Stat. § 169A.52, subd. 6 (2016); see also *State v. Goharbawang*, 705 N.W.2d 198, 201 (Minn.

App. 2005) (determining that license “revocation takes effect when the officer issues the notice and order of revocation”), *review denied* (Minn. Jan. 17, 2006). Even if we assume that Permann sought judicial review of his 2009 license revocation, a driver’s petition for judicial review “does not stay the revocation.” Minn. Stat. § 169A.53, subd. 2(c) (2016).

Because a notice and order of revocation is effective when the commissioner or peace officer “notifies the [driver] of the intention to revoke” his license, and a qualified prior impaired driving incident includes a “loss of license” by revocation, we conclude that exhibit six is sufficient evidence to establish that Permann had a qualified prior impaired driving incident in 2009. *See* Minn. Stat. § 169A.52, subd. 6; Minn. Stat. § 169A.03, subd. 21.

Next, Permann argues that exhibit seven, 2012 court minutes of Permann’s DWI conviction, is not “an official record of a conviction” and thus is insufficient to prove a qualified prior impaired driving incident. The state argues that the 2012 court minutes are a certified court record and thus are “competent and reliable.”

Minn. Stat. § 609.041 (2016) provides:

In a criminal prosecution in which the degree of the crime or the penalty for the crime depends, in whole or in part, on proof of the existence of a prior conviction, if the defendant contests the existence of or factual basis for a prior conviction, proof of it is established by competent and reliable evidence, including a certified court record of the conviction.

In *State v. Eller*, this court held that “section 609.041 does not mandate that only a certified record may be used to prove a prior conviction. Rather, it requires only that proof of the [prior] conviction is established by competent and reliable evidence.” 780 N.W.2d 375,

380 (Minn. App. 2010), *review denied* (Minn. June 15, 2010). *Eller* also clarified that “[t]he statute does not limit such proof to a certified court record” and held that a sworn statement in the probable-cause section of a complaint was competent and reliable evidence to establish the appellant’s prior conviction at a stipulated-facts trial. *Id.* at 380-81. We conclude that the 2012 court minutes of Permann’s DWI conviction is competent and reliable evidence and exhibit seven is sufficient to establish Permann committed a qualified prior impaired driving incident in 2012.⁴ Thus, we conclude that the evidence is sufficient to support Permann’s conviction for first-degree DWI.

II. The district court did not abuse its discretion when it admitted exhibits six and seven.

Permann argues that the district court abused its discretion when it admitted exhibits six and seven because both are inadmissible hearsay. The state argues that the district court properly admitted both exhibits under the public-records exception. *See* Minn. R. Evid. 803(8). We review a district court’s evidentiary rulings for abuse of discretion. *State v. Chomnarith*, 654 N.W.2d 660, 665 (Minn. 2003). This court will not overturn a district

⁴ This court, in other unpublished opinions, has rejected similar challenges to certified court documents received as evidence of prior convictions. Although this court’s unpublished opinions are not precedential, they have persuasive value. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993); Minn. Stat. § 480A.08, subd. 3 (2018). *See, e.g., State v. Hazelton*, No. A11-262, 2012 WL 426578, at *6 (Minn. App. Feb. 13, 2012), (observing that Minn. Stat. § 609.041 does not limit proof of a prior conviction to only a certified copy of a judgment of conviction), *review denied* (Minn. Apr. 25, 2012); *State v. Interian*, No. A12-1462, 2013 WL 1859049, at *3 (Minn. App. May 6, 2013) (determining that certified DPS driving record was “competent and reliable evidence of appellant’s prior license revocations”).

court's evidentiary ruling unless it "abused its discretion and that the abuse of discretion prejudiced the appellant." *State v. Pendleton*, 706 N.W.2d 500, 510 (Minn. 2005).

Hearsay is "an oral or written assertion" that is "offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(a), (c). Hearsay is not admissible unless it falls under an enumerated exception. Minn. R. Evid. 802. The public-records exception in Minn. R. Evid. 803(8) provides that public records and reports are *not* excluded by the hearsay rule under certain circumstances:

Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases and petty misdemeanors matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings except petty misdemeanors and against the State in criminal cases and petty misdemeanors, factual findings resulting from an investigation made pursuant to authority granted by law.

First, Permann argues that exhibit six was not admissible because the 2009 notice and order of license revocation is an initial, preplea notice and results from "matters observed" by police officers. The state responds that the district court properly admitted exhibit six because it relates to the revocation of a driver's license, "which is an activity that is the responsibility of DPS." See Minn. Stat. § 171.17 (2016) (identifying the circumstances that require DPS to revoke a driver's license). The state also argues that exhibit six was not offered to prove the truth of any matter observed by law enforcement, but is a DPS record.

DPS certified that the 2009 notice and order of license revocation was “a true and correct copy from the records of the Driver and Vehicle Services Division of the Department of Public Safety.” On appeal, Permann has not offered reasons why exhibit six lacks trustworthiness. We determine that the district court did not abuse its discretion in admitting exhibit six under rule 803(8), the public-records exception, because the 2009 license revocation notice is a record of a public agency’s activity, the DPS.

Second, Permann argues that exhibit seven, 2012 court minutes, was not admissible under the public-records exception because court minutes “are subject to error, subject to the clerk’s entry of those minutes” and “indicate a lack of trustworthiness.” The state argues that exhibit seven was admissible under the public-records exception.

Permann identifies no errors in the 2012 court minutes, nor does he allege that the minutes are inaccurate. The 2012 court minutes are the certified public records of the Olmsted County court, a public office, thus exhibit seven records “the activities” of a public office. *See* Minn. R. Evid. 803(8); *see also State ex rel. McGuire v. Tahash*, 109 N.W.2d 762, 763 (Minn. 1961) (“The minutes of the trial court are kept pursuant to law and, as such, are prima facie evidence of the facts required or permitted by law to be so recorded.”) (footnote omitted).

The state relies on *State v. Romine*, in which this court determined that “[p]ublic records, such as an affidavit from a district court file, are admissible as an exception to the hearsay rule.” 757 N.W.2d 884, 893 (Minn. App. 2008), *review denied* (Minn. Feb. 17, 2009). In *Romine*, we considered whether the district court abused its discretion by admitting an affidavit of service as a trial exhibit. *Id.* We concluded that the affidavit did

not appear to lack trustworthiness and was a certified copy of a public record, so its admission was within the district court's discretion. *Id.* Here, the 2012 court minutes are like the affidavit of service in *Romine* because there is no indication that the minutes lack trustworthiness and the certified minutes "are a true copy of the original record." We conclude that the district court did not abuse its discretion when it admitted exhibit seven under rule 803(8).⁵

Even if we were to determine that the district court abused its discretion by admitting one or both of the exhibits, Permann must then show that he was prejudiced by the erroneous admission. *See Pendleton*, 706 N.W.2d at 510. Permann argues the jury could not have found that he committed three qualified prior impaired driving incidents in the last ten years without exhibits six and seven. We are not persuaded because the jury heard Permann's recorded statement admitting that he had three DWI convictions in the last ten years. We conclude that even if the district court abused its discretion in admitting exhibits six and seven, Permann was not prejudiced because the record includes other evidence establishing that Permann had three qualified prior impaired driving incidents in the ten years before his 2018 DWI.

Affirmed.

⁵ The parties also argue whether another exception to the hearsay rule applies, rule 803(22). Because we affirm admission under rule 803(8), we do not consider the parties' arguments under rule 803(22).