

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1812**

State of Minnesota,
Respondent,

vs.

James Lee Roper, Jr.,
Appellant.

**Filed September 22, 2025
Affirmed
Slieter, Judge**

Hubbard County District Court
File No. 29-CR-24-317

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

John Olson, Hubbard County Attorney, Park Rapids, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Frisch, Chief Judge; and Jesson, Judge.*

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

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal from a conviction of first-degree driving while impaired (DWI) involving a refusal to submit to a blood or urine test, appellant argues that the district court plainly erred by failing to instruct the jury to decide whether law enforcement had probable cause to believe that he was driving while impaired. In *State v. Torrez*, the supreme court recently held that, when a defendant is charged with refusing a blood or urine test required by a search warrant in violation of Minnesota Statutes section 169A.20, subdivision 2(2) (2024), the state is not required to prove at trial that the arresting officer had probable cause to believe the defendant was driving, operating, or in physical control of a motor vehicle while impaired. 21 N.W.3d 467, 473 (Minn. 2025).¹ Therefore, we affirm.

FACTS

The following facts derive from evidence presented at appellant James Lee Roper Jr.'s jury trial. In March 2024, an officer observed the vehicle that Roper was operating turn without signaling. After Roper parked his vehicle in the driveway of a cabin, the officer approached the vehicle, at which point he observed that Roper had “glassy,” “watery,” and “bloodshot eyes.” After conducting various field sobriety tests, the officer arrested Roper on suspicion of DWI.

¹ The relevant statutory provision has not been amended between the events underlying the offense and the supreme court's decision in *Torrez*. Compare Minn. Stat. § 169A.20, subd. 2(2) (2022) with Minn. Stat. § 169A.20, subd. 2(2) (2024).

The officer obtained a search warrant authorizing him to obtain a blood or urine sample from Roper.² The officer showed the warrant to Roper, explained that refusal to give a sample was a crime, and asked Roper to provide a sample. Roper, having initially indicated that he was willing to provide a sample, refused to provide a blood or urine sample.

Respondent State of Minnesota charged Roper with felony DWI involving refusal to submit to a chemical test as required by a search warrant in violation of Minn. Stat. § 169A.20, subd. 2(2) (2022), and driving after cancellation in violation of Minn. Stat. § 171.24, subd. 5 (2022).

The state's proposed jury instruction regarding the elements of the test-refusal count did not include a requirement that the state prove beyond a reasonable doubt that law enforcement had probable cause to believe that Roper was driving while impaired. The district court, without objection from Roper's trial counsel, provided the state's proposed instructions to the jury.³

A jury found Roper guilty of both counts. The district court entered convictions on both counts and imposed concurrent sentences of 66 months in prison on the DWI count and 364 days in county jail on the driving-after-cancellation count.

Roper appeals.

² Roper does not challenge the validity of the search warrant.

³ Roper's trial counsel acknowledged that this court's decision in *State v. Torrez*, which had been released by the time of trial, held that the state was not required to prove that the arresting officer had probable cause to believe the defendant was driving while impaired. 8 N.W.3d 674, 678, 680 (Minn. App. 2024), *aff'd*, 21 N.W.3d 467 (Minn. 2025).

DECISION

Roper argues that the district court plainly erred by failing to instruct the jury that the state was required to prove beyond a reasonable doubt that law enforcement had probable cause to believe that he was driving while impaired. Binding precedent compels our disagreement.

Because Roper did not object to the relevant instruction, we review the instruction for plain error. *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012). Under the plain-error test, Roper “must show that there was (1) an error, (2) that is plain, and (3) the error must affect substantial rights.” *State v. Matthews*, 779 N.W.2d 543, 548 (Minn. 2010). If an appellate court concludes “that any one of the requirements is not satisfied,” it is unnecessary to address the other requirements. *Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011). We consider only whether there was an error in failing to give the instruction to the jury because our resolution of this requirement is dispositive.

The DWI chemical-test-refusal statute provides:

It is a crime for any person to refuse to submit to a chemical test:

(1) of the person’s breath under section 169A.51 (chemical tests for intoxication), or 169A.52 (test refusal or failure; revocation of license); or

(2) of the person’s blood or urine as required by a search warrant under sections 171.177 and 626.04 to 626.18.

Minn. Stat. § 169A.20, subd. 2 (2022).

In *Torrez*, the supreme court considered a defendant’s challenge to the district court’s failure to instruct the jury on the test-refusal offense under Minn. Stat. § 169A.20, subd. 2(2) (2024), that the state is required to prove beyond a reasonable doubt that the

arresting officer had probable cause to believe that the defendant “was driving, operating, or in physical control of the motor vehicle while impaired.” 21 N.W.3d at 468-70. The supreme court held that

when a defendant is charged with refusing a blood or urine test required by a search warrant in violation of Minnesota Statutes section 169A.20, subdivision 2(2), the State is not required to prove that the arresting officer had probable cause to believe the defendant was driving, operating, or in physical control of a motor vehicle while impaired.

Id. at 473. The supreme court thus concluded that the district court did not abuse its discretion by failing to submit the defendant’s requested instruction to the jury. *Id.* We are bound by the supreme court’s precedent. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018).

Here, because the state was not required to prove that the arresting officer had probable cause to believe Roper was driving, operating, or in physical control of a motor vehicle while impaired, the district court did not err by declining to include an instruction regarding probable cause.

Affirmed.