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**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-575**

State of Minnesota,
Respondent,

vs.

David Allen McCoy,
Appellant.

**Filed February 21, 2012**
**Affirmed**
**Connolly, Judge**

Anoka County District Court
File No. 02-CR-10-7531

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Robert D. Goodell, Assistant County Attorney, Anoka, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and Huspeni, Judge.*

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

## UNPUBLISHED OPINION

**CONNOLLY**, Judge

Appellant challenges his convictions for felony domestic assault by strangulation and gross-misdemeanor domestic assault. Because there is sufficient evidence in the record to support appellant's convictions and because the district court did not err in admitting the victim's statement regarding past abuse or in not allowing the enhancement element to go to the jury, we affirm.

## FACTS

Appellant David Allen McCoy met the victim, P.D.C., in an alcohol-treatment facility. In the fall of 2009, he moved into her home, where, in September 2010, they got into an argument. At trial, P.D.C. testified that appellant (1) approached the couch where she was sitting; (2) grabbed her face, then her legs; (3) pulled her off the couch to the floor; (4) kicked her in the left thigh; (5) got on top of her, straddling her; (6) jumped on her stomach with his knees three or four times; (7) pinched and twisted her left breast; (8) repositioned her body; and (9) placed his knee on her throat. P.D.C. also testified that appellant's leg was across her neck so that she could not breathe, had trouble breathing for "seconds," and was afraid because she was unable to breathe. When appellant removed his knee from her throat, she was unable to get up because she was physically exhausted and appellant continued to hold her.

Three hours later, while appellant was in his bedroom, P.D.C. called 911. She testified that she delayed reporting the assault because she was afraid appellant would get upset. P.D.C. met the sheriff's deputy who was dispatched to the scene at the end of the

driveway and reported that appellant had jumped on her and choked her. She told the deputy that appellant had put his leg across her neck, that she could not breathe, and that she thought she was going to die. The deputy did not observe any marks on P.D.C. or see any signs of injury, but he called an ambulance because she was complaining of chest and stomach pains. The deputy testified that P.D.C. seemed very scared, and that, when he went into the house to speak with appellant, she stayed outside and hid behind some trees until the deputy told her it was safe to come out.

Later that evening, P.D.C provided a taped interview, in which she again stated that appellant had grabbed her face, pulled her from the couch, jumped on her stomach, and placed his leg or his knee across her throat. She indicated that she could not breathe momentarily, that no air was coming out, and that she was unable to say anything. When asked if she thought that the appellant intended to put his knee on her throat, she responded, "Oh, yeah. I mean, he went for it." P.D.C. then stated that appellant "held me down by my arms and then he got up and put his knee, and he deliberately did it."

When appellant was taken to jail, P.D.C. put money into his account so he could call her. Appellant made telephone contact with P.D.C. seven times on September 21-22, 2010; their conversations were taped. He repeatedly told P.D.C. that he loved her, expressed his commitment to her and to their relationship, and promised to seek chemical dependency and anger management treatment. He urged P.D.C. to tell the prosecutor that she exaggerated the charges, to drop the charges, or to not show up at court.

Appellant and P.D.C. also discussed the details of the assault. P.D.C. repeatedly told appellant that he had put his "knee all over my neck and I couldn't breathe" and that

appellant had his leg across her throat. Appellant denied that he had choked her and said that, if he did choke her, it was an accident, but P.D.C. disputed these statements. She also stated that appellant had been hitting her for a long time and that he had beaten her up once a month for the past year. The tapes of these phone calls were played at trial.

Before trial, the judge, appellant, appellant's attorney, and the prosecutor discussed appellant's prior conviction. Appellant stipulated that he had been convicted in 2006 for terroristic threats, a qualified domestic-violence related offense. They also discussed the state's motion in limine to introduce evidence of five alleged prior acts of domestic abuse by appellant against P.D.C. The first four allegations pertained to acts occurring in August 2010, May 2010, December 2009, and June 2009. The fifth allegation was that "[P.D.C.] reports that she has been with [appellant] for approximately a year and that she is assaulted about once per month."

Appellant objected to the introduction of any of this evidence. The district court allowed the state to introduce evidence of the two most recent incidents and excluded the evidence of the other allegations, deeming them irrelevant, too distant in time, or unfairly prejudicial. But P.D.C.'s statement that appellant beat her up once a month was admitted when the tapes of the phone conversations were played for the jury. Appellant's counsel made no objection.

The defense called P.D.C. to testify during its case in chief. When asked if she thought that appellant put his knee on her throat intentionally, P.D.C. said "no." She stated, "I don't believe that was his intention. I don't believe that he meant to do that." When asked if she thought it was accidental, she stated "yes" and explained, "[I]t's not

his nature to do that, and he may have just tried to reposition." In response to the prosecutor's questions, P.D.C. testified that she still had strong feelings for appellant, she loved him, and she wanted to continue their relationship if he got help.

The jury found appellant guilty of felony domestic assault by strangulation and gross-misdemeanor domestic assault. He was sentenced to prison for 24 months for the felony domestic-assault-by-strangulation conviction; no sentence was imposed for the gross-misdemeanor assault conviction.

Appellant challenges his convictions, arguing that: (1) the evidence was insufficient to support his conviction of domestic assault by strangulation because the state failed to prove beyond a reasonable doubt that he intentionally impeded the victim's breathing by applying pressure to her throat; (2) the district court erred by admitting the victim's inadmissible claim that appellant beat her up once a month for a year; (3) the evidence was insufficient to convict him of domestic assault when the state did not prove that the instant case occurred within ten years of a previous qualified domestic-violence-related offense conviction against a family or household member; and, in the alternative, (4) the district court erroneously removed the enhancement element from the jury's consideration without securing appellant's personal waiver of a jury trial on that element.

**D E C I S I O N**

## I. Evidence Supporting Domestic Assault by Strangulation

In reviewing a conviction for sufficiency of the evidence, this court must 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. Harris*, 589 N.W.2d 782, 791 (Minn. 1999) (quotation omitted). In doing so, this court assumes that the jury believed the state's witnesses and disbelieved contrary evidence. *Id.* On review, we are limited to determining whether the jury could reasonably conclude that the appellant was guilty based on the facts in the record and legitimate inferences made from those facts. *Id.*

The state attempted to prove by circumstantial evidence that appellant assaulted a household member by strangulation. Appellant argues that the circumstantial evidence presented to the jury was insufficient to support his conviction. Specifically, he argues that the state failed to prove beyond a reasonable doubt that he intentionally impeded P.D.C.'s normal breathing or circulation by applying pressure to her throat or neck and that P.D.C.'s testimony that appellant did not intentionally strangle her was consistent with a rational theory other than guilt.

A person is guilty of assault by strangulation who "assaults a family or household member by strangulation . . . ." Minn. Stat. § 609. 2247, subd. 2 (2010). An "assault" means "an act done with intent to cause fear in another of immediate bodily harm or death . . . ."[1] Minn. Stat. § 609.02, subd. 10(1) (2010). "'Strangulation' means intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person." Minn. Stat. § 609.2247, subd. 1(c) (2010). "'Intentionally' means that the actor either has a purpose

[1] "Assault" is also defined as "the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10(2) (2010). However, the jury instructions given in this case referenced the first definition of "assault."

to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(3) (2010).

Assault, particularly an assault involving the intent to cause fear of imminent bodily harm, is a specific-intent crime. *State v. Vance*, 734 N.W.2d 650, 656 (Minn. 2007). "Specific intent means that the defendant acted with the intent to produce a specific result." *Id.* Domestic assault by strangulation is a specific-intent crime that requires that the defendant acted with the intent to produce the specific result of "impeding normal breathing." *See* Minn. Stat. § 609.2247, subd. 1(c). Accordingly, the state was required to prove that appellant intentionally placed his leg or knee on P.D.C.'s throat and that he did so with the specific intent to impede her ability to breathe. "Intent may be inferred from events occurring before and after the crime and may be proved by circumstantial evidence." *State v. Rhodes*, 657 N.W.2d 823, 840 (Minn. 2003).

A conviction may be based on circumstantial evidence, and circumstantial evidence is entitled to the same weight as other evidence. *State v. Denison*, 607 N.W.2d 796, 799 (Minn. App. 2000), *review denied* (Minn. June 13, 2000). However, where a jury verdict is based on circumstantial evidence, the conviction warrants a higher standard of review. *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). This heightened scrutiny requires us to consider "whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). The circumstances proved must form "a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any

reasonable inference other than guilt." *Id.* (quotation omitted). Nonetheless, because the jury is in the best position to evaluate circumstantial evidence, a jury verdict is entitled to deference. *State v. Smith*, 619 N.W.2d 766, 769 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001).

Here, the circumstances formed a chain that led directly to appellant's guilt so as to exclude any reasonable inference other than guilt. P.D.C.'s consistent descriptions of the assault to the 911 dispatcher, to the responding officer, to the investigating detective, and to the jury all support the inference that appellant intentionally impeded her breathing. She testified that appellant was angry with her and physically assaulted her, then repositioned her body and put his knee or leg on her throat so that she could not breathe for several seconds. "[A] jury may infer that a person intends the natural and probable consequences of his actions . . . ." *State v. Gillam*, 629 N.W.2d 440, 454 (Minn. 2001) (quotation omitted). Appellant's repositioning P.D.C.'s body, placing his knee or leg on her neck, and exerting enough force on her neck so that she could not breathe support the inference that he intended to impede her normal breathing.

The jury also heard evidence of appellant's two assaults of P.D.C. prior to this incident. Evidence of a defendant's relationship with the victim is often admitted in domestic-abuse cases to put the alleged criminal conduct in context and to help the jury in assessing the defendant's intent. *State v. Henriksen*, 522 N.W.2d 928, 929 (Minn. 1994). The evidence of the three assaults demonstrated a pattern of abuse that the jury could reasonably conclude culminated in the intentional impairment of P.D.C.'s breathing. The jury also heard evidence that P.D.C. was afraid of appellant. The state

presented evidence that P.D.C. waited three hours to report the assault because she did not want appellant to hear her make the call, that she appeared scared when she met the responding officer outside, and that she hid until appellant was safely under arrest.

Finally, the jury heard the taped jail phone calls between appellant and P.D.C., in which appellant admitted he has anger management issues, P.D.C. repeatedly asserted that appellant had choked her and impeded her breathing, and appellant attempted to convince P.D.C. to recant, minimize her allegations, or not appear in court.

Appellant argues that P.D.C.'s testimony to the contrary supported the reasonable inference that he did not intentionally choke her and could support the inference that he was repositioning her to end the conflict and accidentally impeded her breathing. But the jury was not required to believe P.D.C.'s testimony that appellant did not intentionally impede her breathing. Particularly in light of the evidence provided by the jail phone tapes, this testimony of P.D.C. was unreliable. The circumstantial evidence, taken as a whole, makes appellant's theory that he was merely repositioning P.D.C. in an attempt to end their struggle and accidentally put pressure on her neck unreasonable. When viewed in a light most favorable to the conviction, the evidence presented by the state was sufficient for the jury to reasonably conclude that appellant intentionally put his knee on P.D.C.'s throat with the specific intent to impede her breathing. This court must "defer, consistent with [the] standard of review, to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State." *State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010) (quotation omitted).

## II. Admissibility of Victim's Statement

"[Relevant evidence] may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Minn. R. Evid. 403. Generally, evidence of other crimes or misconduct is not admissible to prove a defendant's character in order to show that the defendant acted in conformity with that character. Minn. R. Evid. 404(a). However, evidence of similar prior domestic abuse by the defendant may be admitted unless the probative value is substantially outweighed by the danger of unfair prejudice. Minn. Stat. § 634.20 (2010). Evidence of prior domestic abuse against the alleged victim is evidence of prior conduct between the accused and the alleged victim and may be offered to illuminate the history of the relationship. *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004).

Before trial, the state moved under Minn. Stat. § 634.20 to introduce evidence that "[P.D.C.] reports that she has been with the defendant for approximately a year and that she is assaulted about once per month." Appellant objected, and the district court held the evidence inadmissible. However, an equivalent statement was admitted at trial when the jury heard a taped jail telephone call in which P.D.C. told appellant, "[Y]ou treated me like sh-t and you've beaten me up at least once a month for over a year."

Before trial, when the prosecution planned to play only 40 minutes of the approximately 90 minutes of tape, appellant's counsel said, "[I]f you are going to play any [of the tapes], I think it should all be played." The prosecution did not object to

playing all the tapes "if that's the preference of the defense." When the tape was played, appellant's counsel made no objection.

Now, appellant argues that the prosecutor committed misconduct by offering this evidence, that the district court erred by admitting it, and that this error was prejudicial. "The invited error doctrine prevents a party from asserting an error on appeal that he invited or could have prevented in the court below." *State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007). Appellant's counsel specifically requested that the prosecution play *all* of the tapes. A defendant cannot on appeal raise his own trial strategy as a basis for reversal. *Id.* Moreover, at the time the tapes were played, appellant's counsel did not object to the statement of which appellant now complains. Because appellant's counsel requested that the tapes be played in full, the invited-error doctrine bars him from complaining that the district court erred by admitting P.D.C.'s taped statement that appellant beat her up every month for a year.[2]

## III. Evidence Supporting the Enhancement Element

Appellant argues that the evidence is insufficient to support the enhancement element in his conviction of gross-misdemeanor domestic assault. "In considering a claim of insufficient evidence, our review is limited to a careful analysis of the evidence to determine whether the jury, giving due regard to the presumption of innocence and the state's burden of proof, could reasonably find the defendant guilty." *State v. Wright*, 679 N.W.2d 186, 189 (Minn. App. 2004), *review denied* (Minn. June 29, 2004). In doing so,

[2] Appellant's argument that the state was responsible for ensuring that the tapes conformed to the court's admissibility rulings is without merit. The prosecution did not improperly elicit the evidence that the defense specifically requested be played.

this court assumes that the jury believed the state's witnesses and disbelieved contrary evidence. *Id.*

Domestic assault is normally a misdemeanor. Minn. Stat. § 609.2242, subd. 1 (2010). To establish gross-misdemeanor domestic assault, the state must prove that a defendant committed a misdemeanor domestic assault within ten years of a previous qualified domestic-violence-related-offense conviction against a family or household member. *Id.*, subd. 2 (2010). A terroristic-threats conviction is a qualified domestic-violence-related offense. Minn. Stat. § 609.02, subd. 16 (2010. Appellant stipulated that he was convicted of terroristic threats in 2006 and he does not challenge the sufficiency of the evidence regarding the current misdemeanor domestic assault. Instead, he argues that his in-court stipulation was insufficient to prove beyond a reasonable doubt the enhancement element–the qualified domestic-violence-related-offense conviction of terroristic threats–of his gross-misdemeanor conviction.

The only evidence in the record of appellant's previous conviction is his pre-trial, in-court stipulation.

> THE COURT: But first of all, as to priors, Count 2 is an assault that's based upon a prior adjudication of delinquency or a prior qualified domestic violence conviction. [Defense Counsel], have you talked to your client about stipulating to that prior so we're basically trying a misdemeanor assault?
> [DEFENSE COUNSEL]: Your Honor, I have so talked to Mr. McCoy. He will stipulate to the prior conviction, the prior domestic assault qualifying offense of terroristic threats.
> THE COURT: Okay. So Mr. McCoy, you understand that?
> THE DEFENDANT: Yes.
> THE COURT: So what that means then is you are agreeing that you do have a prior conviction for terroristic threats such that if you are convicted of a misdemeanor assault, then, by

> virtue of your agreeing that you have that prior terroristic threats, it would become a gross misdemeanor conviction.
> THE DEFENDANT: I understand now. Thank you.
> [THE PROSECUTOR]: Just to be clear, Your Honor, that would be, as [Defense Counsel] mentioned, a conviction for terroristic threats. A plea to that was entered on October 4 of 2006, and that is Hennepin County District Court File 27-CR-06-040360.
> THE COURT: And the conviction was January 7, 2008; correct?
> [THE PROSECUTOR]: I believe that's the day the conviction was entered, yes, Your Honor.

Appellant argues that the state failed to prove that his terroristic-threats conviction had been committed "against a family or household member as defined in section 518B.01, subdivision 2." Minn. Stat. § 609.2242, subd. 2. The state argues that the stipulation was adequate because appellant's counsel told the court that he had advised appellant and appellant stated on the record that he understood the ramifications of his stipulation. We agree.

Appellant cites a number of unpublished opinions where the court has reversed or reduced convictions where the stipulations were insufficient to satisfy the elements of the charged offenses. *See State v. Roberson*, No. A09-1024, 2010 WL 2265618 (Minn. App. June 8, 2010); *State v. Behr*, No. A07-2166, 2009 WL 233844 (Minn. App. Feb. 3, 2009); *State v. Kessler*, No. A08-1275, 2009 WL 2225558 (Minn. App. July 28, 2009); *State v. Leino*, No. A04-1495, 2005 WL 1804359 (Minn. App. Aug. 2, 2005). These cases are distinguishable because they all involved deficient stipulations that were read to the jury. Where the jury is instructed on a stipulation, the stipulation must closely follow the statutory elements of the crime in order to comply with the requirement that the state

prove every element of the offense. Here, however, the stipulation removed the enhancement element from the jury, which benefits the defendant by removing the potential for unfair prejudice. *See State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

The record demonstrates that appellant was adequately informed of the terroristic-threats conviction to which he was stipulating and that by so stipulating, the terroristic-threats conviction qualified as a prior domestic-assault offense that served to enhance the charge to a gross misdemeanor. Appellant's attorney stated that his client was willing to "stipulate to the prior conviction, the prior domestic assault qualifying offense of terroristic threats," and appellant indicated that he understood this stipulation. The court went on to confirm that appellant understood that, by stipulating to the terroristic threats conviction, a misdemeanor conviction for domestic assault would become a gross-misdemeanor conviction. The prosecutor then cited the case file number of the conviction and the date the plea was entered.

While appellant did not specifically stipulate to the fact that his terroristic-threats conviction was against a family or household member, he did state that he understood that his stipulation would enhance the conviction from a misdemeanor to a gross misdemeanor, which is possible only if the domestic assault occurs within ten years of a previous qualified domestic-violence-related-offense conviction against a family or household member. *See* Minn. Stat. § 609.2242, subd. 2. Therefore, sufficient evidence supports appellant's conviction of domestic assault.

## IV. Removal of Enhancement Element from Jury

In the alternative, appellant argues that, because he did not personally waive his right to a jury trial on the previous-conviction element, his conviction for gross-misdemeanor domestic assault must be reversed. We agree that the district court erred by failing to elicit a valid jury-trial waiver from appellant, but conclude that the error is not reversible.[3]

The United States and Minnesota constitutions guarantee the right to a jury trial to a defendant in a criminal case. *Wright*, 679 N.W.2d at 191 (citing U.S. Const. amend. VI; Minn. Const. art. I, § 6; and Minn. R. Crim. P. 26.01, subd. 1(a)). This right "includes the right to be tried on each and every element of the charged offense." *Id.* This is true even if the evidence relating to these elements is uncontradicted. *State v. Carlson*, 268 N.W.2d 553, 560 (Minn. 1978) (per curiam). A defendant may waive the right to a jury trial on an element of the charged offense by stipulating to that element. *Wright*, 679 N.W.2d at 191. When, as here, a prior conviction is an element of the charged offense, a defendant's stipulation to the existence of that conviction removes potentially prejudicial evidence from the jury's consideration. *State v. Berkelman*, 355 N.W.2d 394, 397 (Minn. 1984); *State v. Hinton*, 702 N.W.2d 278, 282 n.1 (Minn. App. 2005) (noting that, because of the prejudicial nature of previous convictions, district courts should accept a defendant's stipulation to previous convictions unless they are

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[3] Appellant did not raise this issue in district court, but the Minnesota Rules of Criminal Procedure allow this court to review errors not raised below if they affect substantial rights. Minn. R. Crim. P. 31.02; *see also Vance*, 734 N.W.2d at 655 (stating that "failure to object [to jury instructions] will not preclude appellate review if the instructions constitute plain error affecting substantial rights or an error of fundamental law.").

relevant to a disputed issue), *review denied* (Minn. Oct. 26, 2005). The defendant must make the waiver personally on the record in open court either orally or in writing. Minn. R. Crim. P. 26.01, subd. 1(2)(a). It cannot be delegated to defendant's counsel. *Wright*, 679 N.W.2d at 191.

There exists a strong presumption against finding a waiver of fundamental constitutional rights. *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 1023 (1938). Thus, the waiver rule is strictly construed by the courts. *State v. Halseth*, 653 N.W.2d 782, 784 (Minn. App. 2002). The validity or existence of a waiver of the right to a jury trial is reviewed de novo. *State v. Tlapa*, 642 N.W.2d 72, 74 (Minn. App. 2002), *review denied* (Minn. June 18, 2002). By not obtaining a complete waiver from appellant in compliance with the requirements of Minn. R. Crim. P. 26.01, subd. 1(2)(a), the district court erred.

Where a defendant does not object to the district court's failure to obtain a personal waiver of the right to a jury trial on the previous-conviction element of a charged offense when it accepts a stipulation to those elements, that failure is reviewed for plain error. *State v. Kuhlmann*, 806 N.W.2d 844, 852 (Minn. 2011). Under the plain-error analysis, "[f]irst, we ask (1) whether there was error, (2) whether the error was plain, and (3) whether the error affected the defendant's substantial rights . . . ." *State v. Jenkins*, 782 N.W.2d 211, 230 (Minn. 2010). An error is plain if it is clear or obvious, which is shown "if the error contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). When assessing whether substantial rights are affected, we look to "whether the error was prejudicial and affected the

outcome of the case." *Vance*, 734 N.W.2d at 659. If these three criteria are met, the court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings. Jenkins, 782 N.W.2d at 230.

We conclude that the plain-error standard is not met because the error did not affect appellant's substantial rights. It did not affect the jury's verdict because appellant's prior conviction of terroristic threats was never presented to the jury. In fact, the whole point of the stipulation was to protect appellant from the jury's speculation about his criminal history by keeping this information from the jury. *See Kuhlmann*, 806 N.W.2d at 853 ("Kuhlmann's stipulation to the previous-conviction elements had the effect of protecting Kuhlmann from the possibility that the jury might improperly use his previous convictions as evidence that he committed the current offenses."); *Davidson*, 351 N.W.2d at 11 (noting that stipulating to the enhancement offense benefits the defendant by removing the potential for unfair prejudice).

Moreover, the failure to obtain appellant's personal waiver of his right to a jury trial did not affect the outcome of the case. Appellant does not challenge the existence of his previous conviction or contend that the conviction fails to meet the enhancement element for his subsequent gross-misdemeanor conviction, and his prior conviction could have been easily proved by public records. *See Kuhlmann*, 806 N.W.2d at 853 ("Because the State could have readily proven the conviction-based elements of the charged offenses, it was in [the defendant's] interest to stipulate to his previous convictions and

remove the previous-conviction elements from the jury's consideration."). Therefore, the error did not affect appellant's substantial rights.

**Affirmed.**