This opinion is nonprecedential except as provided by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
A21-1074

State of Minnesota,
Respondent,

vs.

Lance Jeffery Johnson,
Appellant.

Filed June 27, 2022
Affirmed
Halbrooks, Judge*

St. Louis County District Court
File No. 69VI-CR-20-308

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

Kim Maki, St. Louis County Attorney, Christopher Florey, Assistant County Attorney, Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Halbrooks, Judge.

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

In this direct appeal from a final judgment of conviction for driving while impaired—test refusal, appellant argues that his conviction must be reversed because the district court's jury instructions did not specify which chemical test the state had to prove he refused when he refused both a breath test and a urine test. Appellant also makes additional arguments in a pro se supplemental brief. Because the jury instructions, when read in context, fairly explain the law and because appellant's additional arguments are unavailing, we affirm.

FACTS

After a witness reported concerns about appellant Lance Jeffery Johnson's driving, an officer approached Johnson's vehicle in a parking lot. The officer's body camera was not working. The officer observed Johnson drink from a bottle of what appeared to be liquor, but Johnson placed the bottle under a backpack when the officer knocked on his window. The officer saw that Johnson's eyes were bloodshot and watery and that he was unsteady on his feet. Around this time, a second officer, who was wearing a working body camera, arrived at the scene.

Johnson refused field sobriety tests and was subsequently arrested for driving while impaired (DWI). At the police station, the first officer read Johnson the breath-test advisory and asked him to provide a sample of his breath. Johnson declined. The first officer, without obtaining a warrant, also asked Johnson to submit to a urine test. He again declined.

Johnson was charged with felony DWI—refusal to submit to a breath test in violation of Minn. Stat. § 169A.20, subd. 2(1) (2018). He was later additionally charged with felony DWI in violation of Minn. Stat. § 169A.24, subd. 1(2) (2018). A jury found Johnson guilty of both charges, but the district court only convicted him of felony DWI—refusal to submit to breath test. The district court sentenced Johnson to 42 months of imprisonment, the presumptive guidelines sentence. Minn. Sent. Guidelines 4.A (Supp. 2019). This appeal follows.

DECISION

Johnson argues that his conviction for test refusal must be reversed because the district court's jury instructions did not specify which chemical test the state had to prove Johnson refused when he refused both a breath test and a urine test. Johnson did not object to the jury instructions at trial. Absent a trial objection, we review the district court's jury instructions for plain error. *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012). Under a plain-error analysis, we consider whether the jury instructions contained "an (1) error (2) that was plain and (3) that affected the defendant's substantial rights." *Id.* "If these three prongs . . . are met, we then decide whether we must address the error to ensure fairness and the integrity of the judicial proceedings." *Id.* (quotation omitted).

When reviewing jury instructions for plain error, appellate courts review them "in their entirety to determine whether the instructions fairly and adequately explain the law of the case." *Id.* (quotation omitted). "[J]ury instructions must define the crime charged and explain the elements of that crime to the jury," but the district court has "broad discretion and considerable latitude in choosing the language of jury instructions." *Id.*

(quotations omitted). Appellate courts will not reverse a district court's decision on jury instructions absent an abuse of discretion. *Id.* District courts abuse their discretion if the instructions "confuse, mislead, or materially misstate the law," *State v. Taylor*, 869 N.W.2d 1, 14-15 (Minn. 2015) (quotation omitted), or if the instructions omit an element of the charged offense, *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019).

Once an officer has (1) probable cause to believe that the person was driving while impaired, (2) placed the person under lawful arrest for DWI, (3) requested that the person take a breath test, and (4) read the person the breath-test advisory, Minn. Stat. § 169A.51, subds. 1(b)(1), 2 (2018), "[i]t is a crime for any person to refuse to submit to a chemical test . . . of the person's breath." Minn. Stat. § 169A.20, subd. 2(1).

However, a person cannot be prosecuted for refusing to submit to an unconstitutional warrantless blood or urine test. *State v. Thompson*, 886 N.W.2d 224, 234 (Minn. 2016).

Here, the district court instructed:

> First, a peace officer had probable cause to believe that the defendant drove, operated, or was in physical control of a motor vehicle while under the influence of alcohol. . . .
> Second, the peace officer placed the defendant under lawful arrest for driving while impaired. . . .
> Third, the defendant was given the breath-test advisory by the peace officer.
> Fourth, the defendant was requested by the peace officer to submit to a chemical test of the defendant's breath.
> Fifth, the defendant refused to submit to the test.

Johnson contends that because the fifth element of the jury instructions failed to specify which test the state had to prove Johnson refused and instead merely said "the test,"

the jury was not properly instructed that Johnson could only be convicted if he refused the breath test, not the urine test. Johnson asserts that the instructions should have specified "breath test" or the district court should have given a limiting instruction.

The district court used language nearly identical to the language in the jury-instruction guides, including identical language as to the fifth element. *See* 6 *Minnesota Practice*, CRIMJIG 29.22 (2021) ("Fifth, the defendant refused to submit to the test.").

The jury instructions given by the district court included all elements of the offense and fairly explained the law. *Milton*, 821 N.W.2d at 805. When read "in their entirety," it is clear that the fifth element was referring to a breath test. *Id.* The contested sentence—"Fifth, the defendant refused to submit to the test"—immediately followed two sentences that listed the "[t]hird" and "[f]ourth" elements of the offense and included "breath test" and "test of the defendant's breath." The first sentence of the instructions also stated that "whoever refuses to submit to a chemical test of the person's breath . . . is guilty of a crime." There was no reference to a urine test in the jury instructions. Thus, when the fifth element is read in context, the jury instructions did not "confuse, mislead, or materially misstate the law." *Taylor*, 869 N.W.2d at 14-15 (quotation omitted). Consequently, under the plain-error analysis, the district court did not err in its jury instructions. We therefore do not need to discuss the other prongs of the plain-error analysis. *See Milton*, 821 N.W.2d at 805.

In his pro se supplemental brief, Johnson makes several additional arguments: because the first officer was not wearing a body camera, anything prior to the arrival of the second officer can be disputed; the officer's testimony was misleading and contradicted

the probable-cause reports; the officer's lights were not on; Johnson was not given a field sobriety test; testimony proves this was not a traffic stop; and the first officer should have waited for the second officer with the functioning body camera to arrive. As presented, we construe these arguments as a sufficiency-of-the-evidence challenge.

To determine whether there was sufficient evidence, "appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). Appellate courts view the evidence "in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict." *Id.* Appellate courts will not overturn the verdict "if the fact-finder, upon application of the presumption of innocence and the State's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense." *Id.*

After a thorough examination of the record, we conclude that there was sufficient evidence of each element of DWI—test refusal and thus for the jury to find Johnson guilty of refusal to submit to a breath test. The first officer testified at trial that she believed that Johnson was driving under the influence of alcohol because he had "bloodshot watery eyes," "impaired balance," there was the smell of alcohol, and she had received information from dispatch about his driving conduct, which involved swerving and driving at a slow speed. The officer also testified that she observed Johnson drinking from a bottle that looked like it contained alcohol. Thus, there was sufficient evidence of probable cause of

DWI, a necessary element. The officer lawfully arrested Johnson for DWI, another necessary element. After the officer and Johnson arrived at the police station, the officer read Johnson the breath-test advisory and requested that he take the breath test, both necessary elements. The officer also testified that Johnson refused multiple requests to take a breath test, the final necessary element. Johnson's arguments in his pro se supplemental brief therefore lack merit.

Affirmed.