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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-566**

State of Minnesota,  
Respondent,

vs.

Jonathan William Schmuhl,  
Appellant.

**Filed May 21, 2012  
Affirmed  
Hudson, Judge**

Lyon County District Court  
File No. 42-CR-10-235

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Richard R. Maes, Lyon County Attorney, Marshall, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Johnson, Chief Judge; and  
Randall, 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## UNPUBLISHED OPINION

**HUDSON**, Judge

On appeal from his conviction of first-degree test refusal, first-degree driving while impaired, and violating the conditions of a restricted license, appellant challenges the sufficiency of the evidence, in addition to arguing that the district court erred by misstating the legal standard for probable cause and lawful arrest in its jury instructions and by allowing opinion testimony from the arresting officer. Appellant also argues that the district court abused its discretion by admitting prior convictions for the purpose of impeachment. We conclude that sufficient evidence existed to prove beyond a reasonable doubt that appellant refused to submit to a breath test and drove while impaired. Further, the district court did not err in its probable-cause jury instruction or in allowing the officer's opinion testimony, and any error in the district court's lawful-arrest instruction did not affect appellant's substantial rights. Finally, the probative value of appellant's prior convictions outweighed their prejudicial effect, and accordingly, the district court did not abuse its discretion in admitting that evidence. We affirm appellant's conviction.

### FACTS

Appellant Jonathan Schmuhl was charged with first-degree refusal to submit to chemical testing, in violation of Minn. Stat. §§ 169A.20, subd. 2 (2008), 169A.24, subd. 1(1) (2008); first-degree driving while impaired, in violation of Minn. Stat. § 169A.20, subd. 1(1) (Supp. 2009); violating the conditions of a restricted license, in violation of Minn. Stat. § 171.09, subd. 1(d)(1) (2008); and failure to dim headlights, in

violation of Minn. Stat. §§ 169.61(b), 169.89, subd. 1 (2008).<sup>1</sup> At 1:14 a.m. on February 21, 2010, a Lyon County deputy sheriff was driving west on Highway 19 when appellant turned east onto the highway and drove toward the deputy. Appellant's headlights were on bright. The deputy dimmed his headlights and then flashed his high beams, but appellant did not dim his headlights. The deputy activated his squad lights, and appellant then dimmed his headlights. Appellant pulled onto the shoulder, and the deputy stopped behind appellant's vehicle. The deputy testified that he did not observe any other illegal or erratic driving behavior.

The deputy approached appellant's vehicle and asked him why he had not dimmed his high beams. Appellant stated that he did not know that his high beams had been on. The deputy took appellant's driver's license, which was a restricted license. The deputy testified that he smelled an odor of alcohol from inside appellant's vehicle and that appellant's eyes were bloodshot, glassy, and watery. The deputy also testified that appellant first denied having anything to drink but, when asked again, appellant admitted he "might have had a drink or two, or something like that—a few drinks." Appellant testified that he did not tell the deputy that he had been drinking. The deputy asked appellant to step out of the car to perform field sobriety tests. First, the deputy asked appellant to recite the alphabet, and appellant stumbled mid-alphabet on both attempts. The deputy testified that he smelled the odor of alcohol on appellant's breath when appellant attempted the alphabet test. The deputy then performed the horizontal gaze nystagmus (HGN) test, which he testified measures involuntary jerking of the eyes,

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<sup>1</sup> The state subsequently dismissed the failure-to-dim-headlights charge.

which can be a result of alcohol consumption. The deputy testified that appellant's eyes demonstrated involuntary jerking at all six test markers. The deputy then asked appellant to perform a preliminary breath test, which appellant did not take because he said he needed to use the bathroom. The deputy arrested appellant on suspicion of driving while impaired. An inventory search of appellant's vehicle turned up an empty beer can and a full beer can in the front compartment.

The deputy transported appellant to the law-enforcement center. The deputy read appellant the implied-consent advisory. Appellant stated that he understood the advisory and asked to contact an attorney. Appellant tried for 32 minutes to reach an attorney but was unsuccessful. The deputy then asked appellant the first of multiple times if he would take the Intoxylizer breath test. Appellant told the deputy that he wanted to make an additional phone call. The deputy reminded appellant of the implied-consent advisory, and appellant stated that the deputy had not read him the advisory. The deputy again read portions of the advisory to appellant. Appellant stated, "I recall these words now, but I did not know you were reading that." The deputy then asked appellant if he would take a breath test, and appellant stated that he would. The deputy told appellant that the test required two breath samples. Appellant provided the first breath sample. When the deputy directed appellant to provide the second sample, appellant stated, "I think it already accepted it once, and I think by law I only have to do it once." The deputy informed appellant that not providing the second breath sample constituted test refusal. Appellant stated that that was why he wanted to speak to a lawyer. The deputy again told appellant that not providing the second breath sample would be considered a refusal and

that the deputy was “going to let this machine run out,” meaning once the window for the second breath ended, the test was over. He also stated that appellant would not be able to complete his phone call to an attorney before the machine automatically ended the test.

Appellant reached an attorney and, while speaking to the attorney, appellant asked the deputy, “Would you let me blow into the machine for the second time?” The deputy replied that the machine had stopped running. Appellant did not provide a second breath sample. Appellant acknowledged in his testimony that the deputy had explained to him how the machine operated. Appellant further acknowledged that he had refused to provide the second sample because the machine had accepted the first breath sample and he therefore believed that he was not required to provide a second sample, even though he knew that when the machine stopped it would constitute a refusal.

The deputy testified that he believed that he had probable cause that appellant had been driving under the influence because of appellant’s involuntary jerking of his eyes during the HGN test, his failure to recite the alphabet, his bloodshot eyes, the odor of alcohol, and appellant’s failure to dim his headlights. However, the deputy also testified that fatigue can cause bloodshot and watery eyes but not glassy eyes. The deputy testified that the room at the police station where he attempted to give appellant the Intoxylizer test had a moderate to strong smell of alcohol, though he did not include this information in his police report.

Appellant’s brother testified that he had seen appellant replacing a floor at their father’s house on the night of February 20, at around 10 or 11 p.m. He did not observe appellant drink alcohol. Appellant’s brother also testified that he had recently driven

appellant's car and inadvertently left an empty and full beer can in the car. Appellant's girlfriend testified that appellant was sick and tired on February 20 but nonetheless went to his father's house to work. She did not observe him drink that day.

Appellant testified that on the night of February 20 he was at his father's house installing flooring to prepare for his father's return from a hospital stay. However, appellant's father was ultimately discharged from the hospital four months later, on June 17, 2010. Appellant testified that he did not feel well the night of February 20 and that he recently had been diagnosed with a stomach ulcer. Appellant denied drinking that night. Appellant testified that he had not smelled alcohol in his car. Appellant also testified that he was always tired and never got much sleep.

Over appellant's objection, the state impeached appellant with prior convictions for perjury, third-degree assault, and first-degree criminal damage to property. Appellant stipulated that he had three prior qualifying alcohol-related impaired-driving incidents and that, on February 21, 2010, he had a restricted driver's license. A jury convicted appellant of first-degree test refusal, first-degree driving while impaired, and violating the conditions of a restricted license. Appellant was sentenced to 51 months for first-degree test refusal and 90 days for violating the conditions of a restricted license, to be served concurrently. This appeal follows.

## **DECISION**

### **I**

“When reviewing a claim for sufficiency of the evidence, we are limited to ascertaining whether, given the facts in the record and any legitimate inferences that can

be drawn from those facts, a jury could reasonably find that the defendant was guilty of the charged offense.” *State v. Asfeld*, 662 N.W.2d 534, 544 (Minn. 2003) (quotation omitted). On review, it is assumed that the jury believed the state’s witnesses and disbelieved any contrary evidence, and the evidence is viewed in the light most favorable to conviction. *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988). Appellant argues that the state failed to establish beyond a reasonable doubt that (1) he refused to submit to an intoxication test and (2) he was driving under the influence.

#### *Test refusal*

A person commits test refusal if the person refuses to submit to a chemical test for intoxication. Minn. Stat. § 169A.20, subd. 2. Appellant acknowledges that he initially refused to give a second breath sample, but he asserts that he ultimately consented to the Intoxilyzer test by asking to give a second breath sample after discussing the test on the phone with an attorney. “This court has consistently held that a subsequent change of heart does not revoke an initial refusal, even when a relatively short period of time has elapsed . . . except for an almost immediate change of mind.” *Lewis v. Comm’r of Pub. Safety*, 737 N.W.2d 591, 593 (Minn. App. 2007) (quotation omitted).

Appellant agreed to submit to the breath test, provided the first of two required breath samples, and then refused to provide a second breath sample. Appellant was aware that he had to provide a second breath sample while the Intoxilyzer was running and that failure to do so would constitute refusal. However, appellant chose to phone an attorney during this time. During this call, appellant changed his mind. In *Schultz v. Comm’r of Pub. Safety*, 447 N.W.2d 17, 19 (Minn. App. 1989), this court concluded that

a driver did not refuse testing because his change of mind was “almost immediate” when it was not separated from his initial refusal “by any substantial time, place, or a telephone call to counsel or a friend.” In contrast, appellant’s change of mind was separated from his initial refusal by a phone call to an attorney, placing his change of mind outside the *Schultz* definition of “almost immediate.” See *Lewis*, 737 N.W.2d at 593 (“Once an officer has given the relevant information on the consequences of refusing to take a chemical test for intoxication, a driver’s clear refusal that is not immediately withdrawn constitutes a refusal and precludes a change of mind.”); *Parsons v. Comm’r of Pub. Safety*, 488 N.W.2d 500, 502–03 (Minn. App. 1992) (concluding that the driver’s initial refusal was not cured by a change of mind when the driver talked to an attorney nine minutes after refusal).

Sufficient evidence exists to sustain appellant’s conviction of test refusal.

#### *Driving while impaired*

A person commits driving while impaired when he drives, operates, or is in physical control of a motor vehicle when under the influence of alcohol. Minn. Stat. § 169A.20, subd. 1(1). Appellant asserts that these facts present the rare exception where the issue of impairment should not be left to the jury because “grave doubt” exists as to his guilt. See *State v. Housely*, 322 N.W.2d 746, 751 (Minn. 1982) (reversing guilty verdict when court’s review of record compelled it to determine “grave doubt” existed as to defendant’s guilt when prosecution failed to prove beyond a reasonable doubt that defendant’s concern for his safety was unreasonable when he shot intruder).

In support of his argument, appellant notes that the only driving conduct observed by the deputy was appellant's failure to dim his high beams and asserts that there is no evidence that he slurred his speech or lacked physical coordination. Appellant cites, as support, *City of Eagan v. Elmourabit*, 373 N.W.2d 290 (Minn. 1985), where the supreme court reversed a conviction of driving under the influence, despite evidence of an odor of alcohol, glassy eyes, speeding, and slurred speech, because the state did not prove the charge beyond a reasonable doubt. However, appellant ignores the "unique facts and circumstances" recognized in *Elmourabit*, 373 N.W.2d at 294, as well as other indications of impairment that the jury may have considered in determining that appellant was intoxicated: testimony that appellant failed the HGN test and twice could not complete the alphabet and testimony that appellant initially stated he had not been drinking but then told the deputy he had consumed as many as a few drinks. On this record and viewing the evidence in the light most favorable to conviction, a jury could reasonably find that appellant was guilty of driving under the influence. *Asfeld*, 662 N.W.2d at 544 (stating review limited to determining whether jury could reasonably find defendant guilty).

## II

Appellant argues that the district court committed plain error that affected his substantial rights by erroneously instructing the jury on (1) probable cause and (2) lawful arrest. Jury instructions not objected to are reviewed for plain error. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). Under the plain-error test, the appellant must show (1) an error, (2) that is plain, and (3) that affects substantial rights. *State v. Griller*, 583

N.W.2d 736, 740 (Minn. 1998). If the three prongs are satisfied, the error is addressed only if it seriously affects the fairness and integrity of judicial proceedings. *Id.*

*Probable cause*

“It is a crime for any person to refuse to submit to a chemical test of the person’s blood, breath, or urine under section 169A.51 (chemical tests for intoxication), or 169A.52 (test refusal or failure; revocation of license).” Minn. Stat. § 169A.20, subd. 2. Section 169A.20, subdivision 2, incorporates section 169A.51’s requirement that an officer may request that a person submit to a chemical test when the officer “has probable cause to believe the person was driving, operating, or in physical control of a motor vehicle” while impaired. *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011) (citing Minn. Stat. § 169A.51, subd. 1(b) (2010)). Therefore, refusing a chemical test is not a crime unless it can be proven beyond a reasonable doubt that an officer had “probable cause to believe the person was driving, operating, or in physical control of a motor vehicle” while impaired. *Id.* (quoting Minn. Stat. § 169A.51, subd. 1(b)). An instruction constitutes error if it “materially misstates the law.” *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001).

Appellant argues that the purported errors in the test-refusal jury instruction here closely align with the three errors identified in the jury instruction that warranted a reversal and new trial in *Koppi*.<sup>2</sup> In that case, the supreme court held that the district

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<sup>2</sup> Respondent argues that *Koppi* does not apply here because it was issued after appellant was convicted. Although the district court did not have the benefit of *Koppi* when it issued the instruction, under the plain-error analysis, an error may be plain if the error is shown to be plain “at the time of the appeal.” *Griller*, 583 N.W.2d at 741.

court abused its discretion in instructing the jury on the probable cause element of test refusal when it used the pattern jury instruction in 10A *Minnesota Practice*, CRIMJIG 29.28 (Supp. 2009). *Koppi*, 798 N.W.2d at 366. In *Koppi*, “the district court instructed the jury that [p]robable cause means that the officer can explain the reason the officer believes it was more likely than not that the defendant drove, operated or was in physical control of a motor vehicle while under the influence of alcohol.” *Id.* at 363.

Here, the district court instructed the jury that

[p]robable cause means that the officer, based upon the officer’s observations, information, experience, and training, can testify to the objective facts and circumstances in this particular situation that gave the officer cause to stop the Defendant’s motor vehicle and the further objective observations that led him to believe that the Defendant was driving, operating, or in physical control of a motor vehicle while under the influence of alcohol.

We note first that *Koppi* concluded that the instruction “d[id] not require the officer to recite actual observations and circumstances supporting a finding of probable cause.” *Id.* But here, the district court instructed the jury that it was to base its assessment of probable cause on the officer’s testimony regarding “objective facts and circumstances.” This portion of the instruction appears to satisfy the objectiveness requirement demanded in *Koppi*.

Second, *Koppi* concluded that the challenged instruction “fail[ed] to include the requirement that the jury evaluate the totality of the circumstances from the viewpoint of a reasonable police officer.” *Id.* The overarching concern regarding the erroneous *Koppi* instruction centers on the subjectivity of the jury’s inquiry, given that the district court

stated that the officer need only explain *his* reason for believing the defendant was impaired while driving. *Id.* Here, although the district court did not explicitly instruct the jury to evaluate the circumstances from the viewpoint of a reasonable officer, the district court did instruct the jury to take into account the objective observations of the officer. The viewpoint of a reasonable person is synonymous with objective observations. *See, e.g., State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995) (noting that “the reasonable person standard is an objective standard”); *see also* 7 Henry W. McCarr & Jack S. Nordby, *Minnesota Practice, Criminal Law & Procedure* § 3.8 (3d ed. Supp. 2011) (“The test of reasonableness is objective; that is, whether a reasonable person would find the officer’s action reasonable given all the information available to the officer.”). Therefore, by instructing the jury to examine the officer’s objective observations, we conclude that the jury was properly instructed to evaluate the circumstances from a reasonable officer’s viewpoint.

Third, the erroneous instruction in *Koppi* required “that an officer believe a driver was more likely than not driving while impaired, a standard that is at odds with case law on probable cause requiring only an honest and strong suspicion of criminal activity.” *Koppi*, 798 N.W.2d at 363. Here, appellant argues that the instruction was likewise erroneous because it did not instruct the jury as to the standard required to find that probable cause existed: “an honest and strong suspicion” that a crime has been committed. *Id.* We disagree. Rather than instructing the jury to rely on a subjective assessment of probable cause, the district court instructed the jury to evaluate “the objective facts and circumstances” that “gave the officer cause” to stop appellant for

driving while impaired. Accordingly, the district court did not err in its probable-cause instruction, eliminating the need for an examination of whether any alleged error was plain or affected appellant's substantial rights.

*Lawful arrest*

An officer may request chemical testing if there is probable cause to place a person under arrest for impaired driving and the person has been lawfully arrested. Minn. Stat. § 169A.51, subd. 1(b)(1) (2008). Whether probable cause exists is an objective inquiry based on the totality of the circumstances. *Mell v. Comm'r of Pub. Safety*, 757 N.W.2d 702, 708 (Minn. App. 2008). The district court instructed the jury that it must determine whether “the peace officer placed the Defendant under lawful arrest for driving while impaired. An arrest is ‘lawful’ when the officer has reason to believe the Defendant is in violation of the law and the officer can explain the reason.”

An error is plain when it “contravenes case law, a rule, or standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Instructing the jury that an arrest may be lawful if based on the officer's belief that the defendant violated the law was plain error because the instruction focuses on the officer's subjective reasons for making the arrest, rather than the requisite objective standard. *See Koppi*, 798 N.W.2d at 363. Therefore, we must determine if the error affected appellant's substantial rights, which occurs when there is a reasonable likelihood that the error had a significant effect on the verdict. *Griller*, 583 N.W.2d at 741. Here, any error in the lawful-arrest instruction did not significantly affect the verdict because the record contained other objective evidence to allow the jury to find that the arrest was lawful. These objective facts included the

deputy's testimony regarding an odor of alcohol in appellant's car and on his breath, appellant's failure of the HGN test, his inability to complete the alphabet, and testimony that appellant told the officer that he had consumed as many as a few drinks. The district court's plain error in its lawful-arrest instruction did not affect appellant's substantial rights.

### III

We next address appellant's argument that the district court committed reversible error by allowing into evidence the officer's testimony that it was his opinion that appellant "was definitely intoxicated." Appellant did not object to admission of this evidence. We therefore review its admission under the plain-error standard. *State v. Medal-Mendoza*, 718 N.W.2d 910, 919 (Minn. 2006). As previously discussed, appellant must show that admission of the testimony constituted (1) an error, (2) that was plain, and (3) that affected appellant's substantial rights. *Griller*, 538 N.W.2d at 740.

Expert testimony is admissible if it will assist the jury in understanding the evidence or in determining a fact in issue. Minn. R. Evid. 702. "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of fact." Minn. R. Evid. 704. But, generally, an expert should not address a mixed question of law and fact or provide legal analysis. *State v. Collard*, 414 N.W.2d 733, 736 (Minn. App. 1987), *review denied* (Minn. Jan. 15, 1988). Expert opinion testimony is not helpful if the testimony is within a lay jury's knowledge and experience, and the expert's testimony will not add precision or depth to the jury's ability to reach conclusions about the subject within their experience. *State v.*

*Moore*, 699 N.W.2d 733, 740 (Minn. 2005). Thus, if testimony “would merely tell the jury what result to reach,” a district court may exclude it. *State v. Lopez–Rios*, 669 N.W.2d 603, 613 (Minn. 2003).

Here, the state asked the officer numerous questions regarding his experience and training as a police officer, including questions that elicited testimony regarding the officer’s training related to how alcohol affects a person and driving-while-intoxicated enforcement. Police officers may provide expert testimony on subjects that fall within their law-enforcement expertise. *State v. Carillo*, 623 N.W.2d 922, 926 (Minn. App. 2001), *review denied* (Minn. June 19, 2001). These subjects include whether a driver was intoxicated. *State v. Peterson*, 266 Minn. 77, 80, 82, 123 N.W.2d 177, 180–81 (1963) (allowing experienced officers to offer opinions that defendant showed signs of intoxication and, over objection, was intoxicated). The jury was charged with evaluating whether appellant met the legal definition of driving “under the influence of alcohol,” a category of “driving-while-impaired.” Minn. Stat. § 169A.20, subd. 1(1). The officer’s testimony regarding signs of intoxication, such as the odor of alcohol, could assist the jury and therefore was permissible. But the officer’s testimony that appellant “was definitely intoxicated” may have been improper.<sup>3</sup> Because the jury was to determine if

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<sup>3</sup> We acknowledge differing approaches to characterizing the kind of testimony provided here by the police officer. Opinion testimony that tells the jury what decision to reach is not helpful and should not be admitted. *State v. Saldana*, 324 N.W.2d 227, 229–31 (Minn. 1982). However, the distinction between fact and opinion can be difficult to delineate. Minn. R. Evid. 701, 1977 comm. cmt.; *see also State v. Pak*, 787 N.W.2d 623, 629 (Minn. App. 2010) (allowing responding officer in assault case to testify as to lay witness opinion that victim was assaulted).

appellant was driving under the influence, this testimony comes very close to telling the jury “what result to reach.” *Lopez-Rios*, 669 N.W.2d at 613.

Nonetheless, we conclude that the district court’s sua sponte failure to exclude the officer’s testimony was not plain error affecting appellant’s substantial rights. Even if the officer had not testified that appellant “was definitely intoxicated,” additional evidence demonstrated appellant’s intoxication, including the odor of alcohol, appellant’s failure of the HGN test and inability to finish the alphabet, his watery and red eyes, and telling the officer that he had consumed as many as a few drinks. Further, appellant exercised his right to testify and presented two witnesses to support his theory that he was not intoxicated on the evening of his arrest. Any error in admitting the officer’s opinion testimony did not have a significant effect on the verdict and, therefore, did not affect appellant’s substantial rights. *See Griller*, 583 N.W.2d at 741 (stating that error affects substantial rights when prejudicial and affects outcome of case).

#### IV

Appellant argues that the district court abused its discretion when it ruled that the probative value of appellant’s two prior convictions of third-degree assault and first-degree criminal damage to property outweighed their prejudicial effect. A defendant’s prior convictions may be admitted for purposes of impeachment if the crime is punishable by more than one year of imprisonment and “the court determines that the probative value of admitting this evidence outweighs its prejudicial effect.” Minn. R. Evid. 609(a)(1). District courts are afforded great discretion in determining, under rule 609(a)(1), what convictions are admissible. *State v. Gassler*, 505 N.W.2d 62, 67 (Minn.

1993). A ruling on the admissibility of prior convictions for purposes of impeachment is reviewed for an abuse of discretion. *State v. Swanson*, 707 N.W.2d 645, 654 (Minn. 2006).

In weighing the probative value of prior-conviction impeachment evidence against its prejudicial effect, courts consider five factors: (a) the impeachment value of the prior crimes; (b) the date of conviction and defendant's subsequent history; (c) similarity of the past crime with the charged crime; (d) the importance of the defendant's testimony; and (e) whether credibility is a central issue. *State v. Jones*, 271 N.W.2d 534, 537–38 (Minn. 1978). The district court addressed the five *Jones* factors and determined only the fourth factor—the importance of appellant's testimony—weighed against admission of the two prior convictions for impeachment purposes.

*Impeachment value of the prior crimes*

Impeachment by prior conviction aids the jury by allowing it to see the “whole person” and to better evaluate whether testimony is true or false. *State v. Williams*, 771 N.W.2d 514, 519 (Minn. 2009). Appellant argues that admission of his assault and damage-to-property convictions offered no impeachment value because they were not crimes involving dishonesty or false statements. Additionally, appellant argues the two admitted convictions were not necessary to allow the jury to see the “whole person” because admission of appellant's perjury conviction provided the jury a complete basis on which to evaluate appellant's testimony.

However, the “whole person” analysis recognizes that “abiding and repeated contempt for laws [that one] is legally and morally bound to obey” demonstrates a lack of

trustworthiness. *State v. Brouillette*, 286 N.W.2d 702, 707 (Minn. 1979) (quotation omitted). Further, “any felony conviction is probative of a witness’s credibility, and the mere fact that a witness is a convicted felon holds impeachment value.” *State v. Hill*, 801 N.W.2d 646, 652 (Minn. 2011). Therefore, the admission of appellant’s crimes of third-degree assault and first-degree criminal damage to property, in addition to the perjury conviction, aided the jury in evaluating appellant as a whole person. In addition, appellant’s credibility was a central issue, which also favored admission. Therefore, this factors weighs in favor of admitting the convictions for impeachment purposes.

*Date of conviction and defendant’s subsequent history*

A prior conviction is not admissible if more than ten years has elapsed since the date of conviction. Minn. R. Evid. 609(b). Here, convictions for the prior crimes of third-degree assault and first-degree criminal damage to property occurred in 2008. Both therefore fall well within the ten-year time limit. Appellant argues that not all crimes within the ten-year limit are automatically admissible, and the analysis should instead focus on what bearing each offense had on appellant’s credibility. But this argument goes instead to the first factor—the impeachment value of the prior crimes. Further, appellant provides no caselaw to support this assertion. Appellant additionally argues that the date appellant’s plea was accepted in 2006, rather than the date of conviction in 2008, is the appropriate date from which to measure appellant’s conviction. But 2006 is also within ten years of the prosecution at issue and, ultimately, appellant concedes that this factor was neutral or slightly favored the state.

*Similarity of past crime with charged crime*

“[I]f the prior conviction is similar to the charged crime, there is a heightened danger that the jury will use the evidence not only for impeachment purposes, but also substantively.” *Gassler*, 505 N.W.2d at 67. Appellant concedes that this factor weighed in favor of admitting the prior convictions for the purpose of impeachment.

*Importance of defendant’s testimony*

If a defendant’s version of facts is “centrally important” to the jury’s result, the admission of impeachment evidence is disfavored if admission would lead to the defendant’s version of events not being heard by the jury. *Id.* The district court recognized that appellant’s testimony was important and, therefore, this factor weighed against admitting the two convictions. Because appellant offered testimony that differed from the officer’s testimony on key points, such as whether an odor of alcohol existed and whether appellant admitted to drinking, appellant’s testimony was important to the jury’s determination. Therefore, this factor weighs against admission.

*Whether credibility is a central issue*

If the issue for the jury presents a choice between the defendant’s and another’s credibility, “a greater case can be made for admitting the impeachment evidence, because the need for the evidence is greater.” *State v. Bettin*, 295 N.W.2d 542, 546 (Minn. 1980). Here, the jury was in the position of choosing between defendant’s and the officer’s version of events. Therefore, this factor weighs in favor of admission.

Because four of the five factors establish that the probative value of appellant's two prior convictions outweighed their prejudicial effect, the district court did not abuse its discretion in admitting the convictions for impeachment purposes.

Finally, appellant argues in his supplemental pro se brief that (1) the deputy "broke the law" by flashing his high beams at appellant and, therefore, lacked probable cause to stop appellant; (2) his right to counsel was violated, warranting reversal; and (3) there was insufficient evidence to convict appellant for driving while impaired and driving with a restricted license. Appellant provides no caselaw to support his probable-cause and sufficiency arguments and has therefore waived them. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519–20, 187 N.W.2d 133, 135 (1971) (concluding that argument based on mere assertion and not supported by authority is waived, unless prejudicial error is obvious). Additionally, appellant misstates the law as to the standard required for a vehicle stop and presents a sufficiency argument largely addressed in his attorney's brief. As to appellant's right-to-counsel argument, we find no support in the record that appellant was denied the opportunity to consult an attorney.

**Affirmed.**