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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1260**

State of Minnesota,
Respondent,

vs.

Michael Anthony Ray Brown,
Appellant.

**Filed October 7, 2008
Affirmed
Toussaint, Chief Judge**

Olmsted County District Court
File No. 55-CR-06-7761

Lori Swanson, Attorney General, Tibor M. Gallo, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Lawrence Hammerling, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Chief Judge;
and Worke, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Michael Anthony Ray Brown challenges his conviction of third-degree controlled-substance crime, arguing that the district court erred by admitting for impeachment purposes evidence of his prior convictions. Because the district court did not abuse its discretion in admitting the evidence, we affirm.

DECISION

The district court admitted, for impeachment purposes, evidence of appellant's two prior convictions, for which he was imprisoned from 2003 to 2006. The convictions were for first-degree burglary and second-degree controlled-substance crime.

Minn. R. Evid. 609(a)(b), allows a felony conviction to be admitted for impeachment purposes provided that ten or fewer years have elapsed since the conviction and that the probative value of the evidence outweighs its prejudicial effect. The district court's ruling on the impeachment of a witness by prior conviction is reviewed under a clear-abuse-of-discretion standard. *State v. Ihnot*, 575 N.W.2d 581, 584 (Minn. 1998); *see also State v. Graham*, 371 N.W.2d 204, 208 (Minn. 1985) (stating that whether probative value outweighs prejudicial effect is committed to district court's discretion). The factors to consider when determining whether probative value outweighs prejudicial effect are known as the *Jones* factors and include: (1) the impeachment value of the prior crime; (2) the date of the conviction and the defendant's subsequent history; (3) the similarity of the past crime with the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. *Ihnot*, 575 N.W.2d at 586

(quoting *State v. Jones*, 271 N.W.2d 534, 537-38 (Minn. 1978)).

After extensive argument by both the prosecutor and defense counsel, the district court weighed the *Jones* factors and, without making specific findings on each factor, determined that the prior convictions could be used for impeachment purposes. But a conviction may be upheld despite insufficient findings on the *Jones* factors if appellate review of those factors shows that the error was harmless. *State v. Swanson*, 707 N.W.2d 645, 654 (Minn. 2006).

Appellant concedes that the second factor, the date of conviction and subsequent history, favors admission because the current offense occurred just over a month after appellant was released from prison for the prior offenses, but he claims the other factors weigh against admission.

Appellant argues that the first factor, impeachment value of the prior crimes, weighs against admission because controlled-substance convictions do not involve dishonesty. But “[Minn. R. Evid. 609] clearly sanctions the use of felonies . . . not directly related to truth or falsity for purposes of impeachment, and thus necessarily recognizes that a prior conviction, though not specifically involving veracity, is nevertheless probative of credibility.” *State v. Brouillette*, 286 N.W.2d 702, 708 (Minn. 1979). “Lack of trustworthiness may be evinced by [an] abiding and repeated contempt for laws [that one] is legally and morally bound to obey . . .” *Id.* at 707 (quotation omitted). “[I]mpeachment by prior crime aids the jury by allowing it to see the whole

person and thus to judge better the truth of his testimony.” *Id.* (quotations omitted).¹

The first factor does not weigh against admission.

As to the third factor, similarity to the crime charged, because the prior controlled-substance crime was also a sale offense, this factor weighs against but does not preclude admission. *See State v. Hochstein*, 623 N.W.2d 617, 624-25 (Minn. App. 2001) (stating that this factor weighed against admission when prior methamphetamine possession crime was nearly identical to charged crime but affirming admission based on other factors). The burglary was a dissimilar crime, so this factor supports the admission of that prior conviction.

The fourth factor, importance of a defendant’s testimony, supports admission because appellant testified. *See State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993) (stating that, if admission of prior convictions would prevent jury from hearing defendant’s version of events, this weighs against admission of prior convictions). Finally, the fifth factor supports admission because appellant’s credibility was a central issue. *See State v. Bettin*, 295 N.W.2d 542, 546 (Minn. 1980) (stating that, if defendant’s credibility is central issue in case, greater case can be made for admitting impeachment evidence because need for evidence is greater).

The district court did not abuse its discretion in admitting appellant’s prior convictions for impeachment purposes. *See Hochstein*, 623 N.W.2d at 624-25 (affirming

¹While the whole-person rationale has been criticized, it is still a basis for admitting evidence. *See, e.g., Swanson*, 707 N.W.2d at 655 (applying whole-person rationale); *see also State v. Flemino*, 721 N.W.2d 326, 329 (Minn. App. 2006) (noting that, despite widespread criticism of “whole person” rationale, rule 609 reflects broader credibility concept and court of appeals lacks authority to alter rule adopted by supreme court).

admission of prior conviction when first *Jones* factor was neutral, second and third factors weighed against admission, and fourth and fifth factors weighed in favor of admission).

Moreover, even if the district court erred in admitting the prior convictions, appellant is entitled to reversal of his conviction only if there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994). The inquiry is not whether the jury could have convicted the defendant without the testimony, but rather, what effect the testimony had on the jury's verdict, "and more specifically, whether the jury's verdict is 'surely unattributable' to the testimony." *State v. King*, 622 N.W.2d 800, 811 (Minn. 2001) (quoting *State v. Juarez*, 572 N.W.2d 286, 292 (Minn. 1997)).

Appellant's conviction resulted from a controlled buy by an informant who had been working for the Rochester Police Department for nine or ten years. The informant testified that (1) appellant instructed the informant to walk with appellant across a courtyard to a carport area; (2) the informant gave appellant \$100 and appellant took a very small package out of his pocket and gave it to the informant, who then walked down the block to where a police officer was waiting; and (3) from the time the informant left the officer's vehicle until he returned, about three or four minutes, he did not meet with anyone other than appellant. The substance inside the package field-tested positive for cocaine.

Appellant argues that the informant's testimony was inconsistent with the testimony of other witnesses. But these inconsistencies go to relatively minor details, and

there was strong evidence regarding the actual controlled buy. The informant's testimony was corroborated by the fact that he arranged the buy with appellant, by appellant's presence at the designated location, by the before and after searches of the informant and his personal effects, and by the short amount of time that elapsed from when the informant left the officer until he returned. The informant's testimony was also corroborated by the officers' observations of appellant engaging in what appeared to be a drug transaction shortly before the informant approached appellant and of the informant approaching appellant and walking away with him. When officers had the informant in sight, they did not see him meet with anyone else.

Considering the strength of the evidence regarding the controlled buy, the admission of the prior convictions could not have significantly affected the verdict.

Affirmed.