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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-2394**

State of Minnesota,  
Respondent,

vs.

Edward Lee Jones,  
Appellant.

**Filed March 31, 2009  
Affirmed  
Collins, Judge\***

Ramsey County District Court  
File No. K4-07-56

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

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Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and Collins, Judge.

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

## **UNPUBLISHED OPINION**

**COLLINS, Judge**

Appellant challenges his convictions of possession of a firearm by an ineligible person, second-degree assault, and fifth-degree controlled substance crime: possession of cocaine, arguing that (1) the district court abused its discretion by ruling that he could be impeached with evidence of a prior conviction of possession of a firearm by an ineligible person if he testified and (2) the evidence was insufficient to support his conviction of second-degree assault. We conclude that the district court abused its discretion in determining that appellant's prior conviction was admissible for impeachment purposes, but because the error was harmless and because the evidence was sufficient to support appellant's conviction of second-degree assault, we affirm.

### **FACTS**

Edward Jones was charged with possession of a firearm by an ineligible person, second-degree assault, and fifth-degree possession of cocaine stemming from an incident that occurred in early January 2007. During a party hosted by Jones and his girlfriend, the two began to fight and, when guests did not immediately leave when told to do so, Jones brandished a gun. Clifford Hobbs, who was among the guests who left, testified that when he saw Jones with the gun, he left for fear of being shot. Police arrived after all of the guests were gone. One of the officers heard a sound like a car door slamming inside the garage. A handgun was later discovered under the hood of the car in the garage. A search of Jones following his arrest produced rocks of cocaine. DNA

evidence was subsequently detected on the gun that included Jones's DNA type and excluded 92.1 percent of the general population.

At trial, the district court ruled that Jones could be impeached with evidence of his prior conviction of possession of a firearm by an ineligible person. As a result of this ruling, Jones declined to testify. The jury found Jones guilty on all counts as charged, and he appeals.

## **DECISION**

### **I.**

Because Jones was tried for possession of a firearm by an ineligible person, Jones argues that the district court abused its discretion by ruling that, if he testified, Jones could be impeached with evidence of his prior conviction for the same crime. "A district court's ruling on the admissibility of prior convictions for impeachment of a defendant is reviewed under a clear abuse of discretion standard." *State v. Swanson*, 707 N.W.2d 645, 654 (Minn. 2006). In determining the admissibility of a prior conviction for impeachment purposes, the district court must weigh the probative value of the prior conviction against the prejudicial effect. Minn. R. Evid. 609(a)(1). Whether the probative value of a prior conviction outweighs its prejudicial effect lies within the discretion of the district court. *State v. Graham*, 371 N.W.2d 204, 208 (Minn. 1985). As a guideline for exercising its discretion to admit or exclude evidence of a prior conviction for impeachment, the district court is to consider five factors:

(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 (the

greater the similarity, the greater the reason for not permitting use of the prior crime to impeach), (4) the importance of defendant's testimony, and (5) the centrality of the credibility issue.

*State v. Jones*, 271 N.W.2d 534, 538 (Minn. 1978).

Here, the district court briefly analyzed the *Jones* factors before ruling that Jones's prior conviction of possession of a firearm by an ineligible person would be admissible for impeachment purposes if Jones testified. We will address each *Jones* factor in turn.

### ***Impeachment value***

"[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." *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993) (quoting *St. Paul v. DiBucci*, 304 Minn. 97, 100, 229 N.W.2d 507, 508 (1975) (citation omitted)). "Lack of trustworthiness may be evinced by [the defendant's] abiding and repeated contempt for laws which he is legally and morally bound to obey . . . ." *State v. Brouillette*, 286 N.W.2d 702, 707 (Minn. 1979). "The potential for prejudice is greater when the accused in a criminal case is impeached by past crimes that only indirectly speak to character for truthfulness or untruthfulness." Minn. R. Evid. 609 1989 comm. cmt.

The district court expressed the view that Jones's prior conviction of possession of a firearm by an ineligible person was of high impeachment value for the very fact that it was for the same offense as one for which Jones was being tried. The district court stated, "I think the jury should be given an opportunity to review the entire person here. They should not be given the misimpression that [Jones is] not capable of committing this

offense. Since obviously he has been convicted of it before.” On that basis, the district court found that the impeachment value was high.

Doubtless, the opportunity for the jury to see the “whole person” does provide some probative value on the issue of truthfulness, but the overriding purpose of the *Jones*-factor analysis is to aid the district court in determining whether “the probative value outweighs the prejudicial effects of admitting a prior conviction for impeachment purposes.” *State v. Ihnot*, 575 N.W.2d 581, 586 (Minn. 1998) (quotation omitted). Thus, it is important that the analysis not only take into account the legitimate probative value of the “whole person” rationale, but also consider any other probative value that may derive from the prior conviction, in determining whether the prior crime’s probative value outweighs the prejudicial effect of admitting this evidence. It is well-accepted that for the purpose of assessing the veracity of a defendant-witness, different crimes have different impeachment values. *See* Minn. R. Evid. 609(a) 1989 comm. cmt. (“[N]ot all convictions reflect on the individual’s character for truthfulness. In cases where a conviction is not probative of truthfulness, the admission of such evidence theoretically on the issue of credibility breeds prejudice.”) Crimes involving a true element of dishonesty, fraud for example, inherently have greater impeachment value than those that do not. *Id.*

Minnesota courts have relied on the “whole person” reasoning when considering whether a prior conviction has impeachment value and have held that, under the “whole person” rationale, in order to have impeachment value, crimes need not involve dishonesty. *See, e.g., State v. Pendleton*, 725 N.W.2d 717, 728 (Minn. 2007) (holding

that defendant's prior convictions of fleeing peace officer and making terroristic threats were admissible in trial for first-degree premeditated and first-degree felony murder because they were important to jury's judgment of defendant-witness's credibility and helped jury see "whole person"); *Swanson*, 707 N.W.2d at 653-55 (holding that defendant's prior convictions of motor-vehicle theft, assault, criminal vehicular operation, and possession of stolen property were admissible in trial for first- and second-degree murder, first-degree felony murder, kidnapping, and false imprisonment because they were relevant under "whole person" analysis to better evaluate defendant's truthfulness).

Here, Jones was previously convicted of possession of a firearm by an ineligible person—a crime without an element of dishonesty and, as such, lacking significant impeachment value beyond the "whole person" rationale.

Of further concern to us is the district court's statement that the jury "should not be given the misimpression that [Jones is] *not capable* of committing this offense. Since obviously he has been convicted of it before." (Emphasis added.) This reasoning illustrates the danger of inordinate reliance on the "whole person" rationale as justification for the admission of the prior conviction without consideration of the extent to which the specific crime bears on the defendant-witness's credibility. The purpose of evidence of a prior conviction admitted under rule 609 must be limited to inform the jury's assessment of whether the defendant-witness is presently telling the truth, and it must not be admitted to demonstrate that the defendant's character is such that the defendant is more likely to have committed a crime for which the defendant is on trial.

Minn. R. Evid. 404(b) (stating that evidence of defendant's character for purpose of proving that defendant acted in conformity with that character is inadmissible). It is precisely this kind of unfair prejudice that weighs *against* the admission of the prior conviction. Thus, careful analysis of the impeachment value here provides only slight support for the admission of the prior conviction based, as it is, solely on the "whole person" rationale.

### ***Age of prior conviction***

The state argued before the district court that 2002 was "long enough ago to not be considered as some sort of crime spree connected with this offense. But at the same time it's recent enough to have probative value." In weighing this factor, the district court stated that the prior conviction in 2002 was a felony-level offense that was "[f]airly recent." On appeal, Jones argues that although his prior conviction was fairly recent, the fact that he has no subsequent criminal history demonstrates that there is no pattern of lawlessness, and this should have been weighed by the district court.

Convictions that are more than ten years in the past are inadmissible unless the probative value substantially outweighs the prejudicial effect. Minn. R. Evid. 609(b). The age of the prior conviction is measured to the date of the incident giving rise to the current prosecution. *Ihnot*, 575 N.W.2d at 585. The ten-year-limit provision does not imply, however, that this *Jones* factor favors the admission of evidence of all convictions falling within it, and does not obviate a weighing of the age of the conviction even when the conviction is less than ten years old.

Here, the prior conviction dates only to 2002. Further, Jones had been released from prison on the prior conviction for only two months before the current offense date. The ten-year limit should be counted from “the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date.” Minn. R. Evid. 609(b). Just as a four-and-one-half-year-old conviction has more probative value than an older one, a conviction for which the defendant has been released from prison for just two months has more probative value than an older conviction. Because the prior conviction occurred only four and one-half years before the current offense, and because Jones was released from prison only two months before the incident here, this factor weighs strongly in favor of admission of the prior conviction.

***Similarity of the past crime to the crime charged***

The district court acknowledged the significance of the similarity between the prior conviction and one of the current charges, then noted that, although this factor caused the court some concern, it was “difficult for [the court] to consider that it’s fair to allow the defendant to take the stand here and to deny an offense for which he had been previously convicted.” The question pertinent to the *Jones* analysis, however, is not whether the defendant should be allowed to deny an offense of which he was previously convicted; rather, the telling inquiry is whether the prior offense is so similar to the charged offense as to increase its prejudicial effect.

“[T]he greater the similarity [between the impeachment crime and the charged crime,] the greater the reason for not permitting use of the prior crime to impeach.” *Jones*, 271 N.W.2d at 538. Here, the prior conviction is not only similar, it is identical to



the crime of possession of a firearm by an ineligible person for which Jones was on trial. Thus, this factor weighs very heavily against admission of the evidence for impeachment purposes.

***Importance of defendant's testimony***

The district court found that Jones's testimony was not critical because the defense had other witnesses who would testify and provide the defense version of events. However, Jones asserts that he chose not to testify because the district court ruled that the impeachment evidence would be admissible, and he argues that, although there were other defense witnesses, in order for the jury to have the complete picture of what happened, his testimony was necessary. "[A] judge might exclude even a relevant prior conviction if he determines that its admission for impeachment purposes will cause [a] defendant not to testify and if it is more important in the case to have the jury hear the defendant's version of the case." *State v. Bettin*, 295 N.W.2d 542, 546 (Minn. 1980).

Jones's girlfriend testified that Jones did not have a firearm, but she could not provide Jones's version of what happened throughout the relevant timeframe. Jones is the only person who could fully describe his version of the events in order to refute the testimony of the state's witnesses. Thus, Jones's testimony to counter the evidence of his handling of a firearm is important to his defense. Although this is a close call, this factor weighs slightly against admission of the prior conviction for impeachment purposes.

### *Centrality of credibility*

The district court found that if Jones testified, his credibility would be critical because jurors are very focused on what a defendant has to say and how he or she explains what happened.

[T]he general view is that if the defendant's credibility is the central issue in the case—that is, if the issue for the jury narrows to a choice between [a] defendant's credibility and that of one other person—then a greater case can be made for admitting the impeachment evidence, because the need for the evidence is greater.

*Id.*

The district court's finding that Jones's credibility would be central because of the jury's focus on him is apt, but the district court did not expand on why this would be more true here than in other cases. This case is unlike *Bettin*, in which the defendant's credibility would be tested against that of only *one* other witness. Although Jones's credibility would be central to his defense because his assertion of innocence would be weighed against the words of the series of witnesses who testified against him, the jury was also presented with significant inculpatory physical evidence in the form of the gun and DNA evidence. On balance, however, the state relied heavily on the testimony of its witnesses, and Jones's credibility as a witness is, therefore, equally important.

Further, although two witnesses testified on Jones's behalf, only one of them, Jones's girlfriend, was a fact witness. The other witness, a defense investigator, was called to impeach one of the state's witnesses who had told the investigator that Jones did not have a gun. Even granting that the testimony of Jones's girlfriend would have

corroborated that of Jones, it is likely that the jury would perceive her as biased because she is his girlfriend. The district court aptly noted that the jury would have watched Jones closely as he testified, and the jury's assessment of Jones's credibility would have been critical to the case. This factor, therefore, weighs strongly in favor of admitting the prior conviction evidence.

### ***Balancing the Jones factors***

The *Jones* factors provide a useful tool when assessing the probative value of prior conviction impeachment evidence on one hand and the possible prejudicial effect on the other. *Jones*, 271 N.W.2d at 538. Therefore, the *Jones* analysis logically requires a weighing of the component factors respectively, and the question goes to what degree each factor weighs for or against admission. *See State v. Hochstein*, 623 N.W.2d 617, 625 (Minn. App. 2001) (noting that district court can assign greater weight to certain factors than to others, and it is not “simply to add up the factors and arrive at a mathematical result”).

Here, the “whole person” rationale lends relatively weak support for admission under the first factor, impeachment value, particularly given that the prior conviction was not for a crime of dishonesty. The second factor, the age of the prior conviction, and the fifth factor, the centrality of Jones's credibility, weigh more strongly in favor of admission given that the prior conviction is relatively recent and his credibility is important because of the testimony of the other witnesses. But the third factor, the similarity of the crime charged, weighs very heavily against admission due to the degree to which Jones would be prejudiced by the admission of evidence of his prior conviction

that is not merely similar, but identical, to one of the charged offenses. The nature and severity of this potential prejudice is illustrated by the district court's misguided reliance on the proposition that the prior conviction would demonstrate that Jones was "capable of" the current crime. And the importance of the defendant's testimony, the fourth factor, also weighs slightly against the admission of this impeachment evidence.

Although the first, second and fifth factors support admission of the prior conviction, the weight of these three factors does not overcome the impact of the third and fourth factors, which weigh heavily against admission of the prior conviction evidence. Because our balancing of the *Jones* factors demonstrates that the probative value of the prior conviction is outweighed by its possible prejudicial effect, we hold that the district court abused its discretion by ruling that this evidence would be admissible if Jones were to testify.

### ***Harmless error***

An error or defect in the proceeding that does not affect the substantial rights of the defendant must be disregarded. Minn. R. Crim. P. 31.01. If the district court erred by admitting evidence, the reviewing court determines "whether 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). Generally, the erroneous introduction of evidence of prior convictions for impeachment purposes does not necessitate reversal unless there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *State v. Vanhouse*, 634 N.W.2d 715, 721 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001).

Here, the ruling that the prior conviction would be admissible for impeachment resulted in Jones's choice to not testify. Thus, the question is whether there is a reasonable possibility that the jury would have reached a different verdict had Jones testified and his credibility not been attacked with his prior conviction. The jury was presented with substantial evidence of Jones's guilt, including testimony that Jones brandished a gun while screaming at everyone to leave the house; the gun that was discovered under the hood of the car in the garage; and DNA evidence linking Jones's DNA type to the gun and excluding all but 7.9 percent of the general population. Jones argues that, because of the district court's ruling, "the jury in this case was deprived of the opportunity to hear [Jones] testify that he was innocent. To have given the jury the complete picture of the incident, [Jones] needed to testify in his own defense." But other than his naked assertion of innocence, Jones does not reveal any aspect of his testimony that would have had a significant impact on the jury's deliberations. Therefore, based on our careful review of the record and the weight of the evidence supporting the jury's verdict, we conclude that there is not a reasonable possibility that the verdict was significantly affected by the district court's error in ruling Jones's prior conviction admissible for impeachment purposes. Thus, the error is harmless and does not warrant reversal of Jones's convictions.

## **II.**

Jones was convicted of second-degree assault for assaulting Clifford Hobbs with a dangerous weapon. Jones argues that the evidence presented was insufficient to satisfy the intent element necessary for an assault conviction under Minn. Stat. § 609.222, subd.

1 (2006). Jones bases his argument on these facts: (1) Hobbs did not testify that the gun was ever pointed at him; (2) Hobbs did not appear upset about the incident; (3) Jones and Hobbs have known each other since childhood; and (4) Hobbs's sister (Jones's girlfriend), was present during the incident. According to Jones, "[t]he gun was clearly there for emphasis; to inform all present that [he] was serious in his desire for them to leave," rather than to cause fear of bodily harm or death.

When considering a challenge to the sufficiency of the evidence, our review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

"'Assault' is: (1) an act done with intent to cause fear in another of immediate bodily harm or death; or (2) the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10 (2006). "'Intentionally' means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result." *Id.*, subd. 9(3) (2006).

Here, Jones left the room in the course of a heated argument and then returned waving a gun around while yelling and ordering everyone to leave, including Hobbs. Preferring not to be shot, Hobbs fled. Whether Hobbs did not appear upset or may not have reacted with fear based on his relationship with Jones is not relevant to Jones's intent to instill fear. "The crime is in the act done with intent to cause fear, not in whether the intended result is achieved." *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). Jones retrieved and brandished the gun for the admitted purpose of inducing all of the guests to leave, a goal likely to be achieved only if Jones expected that the guests would fear that the gun actually might be used against them.

Based on our review of the record, the evidence presented to the jury was sufficient to satisfy each of the elements of the offense, supporting the conviction of second-degree assault as charged.

**Affirmed.**