STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0618

State of Minnesota,
Respondent,

vs.

Mark Allen Sihler,
Appellant.

Filed May 5, 2009
Affirmed
Randall, Judge[*]

Becker County District Court
File No. 03-K7-07-321

Lori Swanson, Attorney General, Peter R. Marker, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael Fritz, Becker County Attorney, Becker County Courthouse, P.O. Box 476, Detroit Lakes, MN 56502 (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Stauber, 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.

U N P U B L I S H E D O P I N I O N

RANDALL, Judge

Appellant appeals his two convictions for failing to register his primary address and vehicle under the predatory offender registration statute, Minn. Stat. § 243.166 (2006), arguing (1) the district court erred in admitting evidence of a prior conviction under Minn. R. Evid. 609; (2) the district court erred in failing to instruct the jury regarding the proper use of the prior-conviction evidence; (3) the prosecutor made statements about his credibility that constituted plain error; (4) his attorney provided ineffective assistance; (5) the district court erred by permitting multiple amendments to the complaint; and (6) the jury instructions were vague and misleading. We affirm.

FACTS

Appellant Mark Allen Sihler is required to register his primary address and vehicle with law enforcement under section 243.166. In 2006, appellant moved into an independent-living home in Detroit Lakes, which was overseen by Steve Moss, an Adult Minnesota Health Initiative employee. Moss helped appellant register his address with the appropriate Becker County official. Appellant had no vehicle at that time. Appellant later acquired two vehicles, but he never registered them with law enforcement.

Around February 2, 2007, appellant left the home, stating that he was going into town to cash a social security check, but he never returned or paid rent for February and had taken most of his clothes and possessions, except for some dirty clothes and soiled linens. According to appellant, he also left a desktop computer and videogame system.

Moss called appellant's cell phone numerous times but could not reach him until the middle of February, at which time appellant explained that he was in a small town south of Chicago, that he would be back, and that he would have rent money. Appellant testified that he had been in Cleveland, Ohio, visiting a friend for a few days. After appellant failed to return by March 1, Moss told Becker County authorities about appellant's absence. Moss spoke to appellant again in March and told him that he may be in trouble in Becker County regarding his registration. Appellant explained that he was in Kansas City but still intended on returning to Detroit Lakes. Appellant stated that he was concerned about his need for a permanent address and asked if he could use the Detroit Lakes home as his address if he paid rent for February and March. Moss never received rent from appellant.

Appellant then traveled to North Dakota and sent a letter to the Becker County Sheriff, postmarked March 7, which stated that he was no longer living in Detroit Lakes, that he was removed from the home by Moss, and that he was relocating to North Dakota. The letter listed only North Dakota as his new address. He also spoke to Investigator Nguyen on the phone on March 12 and explained that he was in North Dakota, where he planned to live, but he did not have an address. Investigator Nguyen asked him to clear up the registration issue and register his new address, but appellant never returned, reregistered, or spoke to Investigator Nguyen again. He was subsequently located in Atlantic City, New Jersey, arrested, and returned to Becker County.

Before trial, a pre-plea investigation identified appellant's prior convictions, one of which was characterized as a 2003 felony "theft-by-check" conviction from North

Dakota. At a pretrial hearing, the prosecutor asked the district court to rule that, if appellant testified, the state could impeach him with the admission of two convictions: (1) a theft-by-deception conviction, and (2) the theft-by-check conviction, arguing that both were automatically admissible because they involved deception. Appellant contested the admission of the theft-by-check conviction, stating that the conviction can result from merely insufficient funds and not dishonesty. The prosecutor argued that all thefts involve deception and are thus automatically admissible. The district court responded, "For felony level thefts there [are] all kinds of cases that say they are crimes of dishonesty and felony convictions at that level are available for impeachment purposes." There was no further analysis on or argument over the admission of the conviction. A later investigation into this conviction led to its being characterized as "issuing [a] check without sufficient funds" and also revealed that the conviction led to appellant being sentenced to the North Dakota Department of Corrections for a year and a day and ordered to pay $1,484 in restitution.

At trial, appellant testified that he only planned to be gone from Detroit Lakes on an approximately two-week vacation to Cleveland, but he ran into car trouble and bad weather, which caused him to have to stop and stay in several places, including Chicago and then Kansas City. While in Kansas City, he changed his mind about returning to Detroit Lakes and instead went to look for a place to live in Fargo and Bismarck, but he was unable to find a place. He then left North Dakota for New Jersey, where he had lived from 1990 to 1997. Appellant admitted he never registered a new address in North Dakota or New Jersey.

During cross-examination of appellant, the prosecutor asked about the two convictions. Appellant conceded the theft-by-deception conviction but denied having a theft-by-check conviction, stating the conviction was instead for "NSF check; nonsufficient funds." The prosecutor never asked for further clarification about the convictions, and, though the prosecutor mentioned the theft-by-deception conviction in his closing argument, he did not mention the theft-by-check conviction.

During closing arguments, after the prosecutor argued that the evidence was sufficient to support convictions on both counts, the prosecutor told the jury, "What have we also learned? We also learned that the Defendant was not truthful. We know he is not truthful." The prosecutor noted several discrepancies between appellant's testimony and the other evidence. While discussing these discrepancies, the prosecutor rhetorically asked whether appellant's story was "believ[able]," "truthful," or "reasonable."

The jury convicted appellant of both counts, and he was sentenced to a 24-month term of imprisonment. This appeal follows.

D E C I S I O N

I.

The first issue is whether the district court abused its discretion by ruling that, for impeachment purposes, the state could introduce evidence of a felony conviction from 2003 characterized by the prosecutor as theft by check and appellant as nonsufficient funds. There is considerable discretion in a district court's rulings on evidentiary issues. We review its determinations regarding whether to admit prior-crimes evidence to impeach a defendant or a witness for a clear abuse of discretion. *State v. Swanson*, 707

N.W.2d 645, 654 (Minn. 2006) (citing *State v. Ihnot*, 575 N.W.2d 581, 584 (Minn. 1998)); *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993).

Under the rules of evidence, evidence that a defendant has been convicted of a crime involving dishonesty or false statement is automatically admissible to attack a defendant's credibility as a witness without regard to the seriousness of the punishment and without any required balancing of probative value against prejudicial effect. Minn. R. Evid. 609(a)(2); *see State v. Sims*, 526 N.W.2d 201, 201 (Minn. 1994) (stating that any crime involving dishonesty or false statement is automatically admissible for impeachment purposes). However, "dishonesty or false statement" applies only to those crimes involving untruthful conduct, Minn. R. Evid. 609 1989 comm. cmt., and it is not intended to include all crimes indicating a lack of values, or all forms of theft or robbery. *See Sims*, 526 N.W.2d at 202 (concluding that aggravated robbery is not a crime of dishonesty); *State v. Darveaux*, 318 N.W.2d 44, 48 (Minn. 1982) (holding misdemeanor theft by shoplifting is not a crime of dishonesty or false statement). Appellant argues and respondent concedes that the district court erred in concluding that any felony-theft conviction is admissible automatically.

Evidence that a defendant has been convicted of a felony *not* involving dishonesty or false statement also may be admitted for impeachment purposes, so long as it is less than ten years old and it is determined "that the probative value of admitting this evidence outweighs its prejudicial effect." Minn. R. Evid. 609(a)(1), (b). To determine whether the probative value of admitting a prior criminal conviction outweighs its prejudicial effect, the following factors must be considered:

> (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 appears to have determined that appellant's prior theft-by-check conviction was admissible automatically under Minn. R. Evid. 609(a)(2) without engaging in a *Jones* balancing test.

The Minnesota Supreme Court has recognized that "it is error for a district court to fail to make a record of its consideration of the *Jones* factors, though the error is harmless if it is nonetheless clear that it was not an abuse of discretion to admit evidence of the convictions." *State v. Davis*, 735 N.W.2d 674, 680 (Minn. 2007) (citing *Swanson*, 707 N.W.2d at 655); *see also State v. Vanhouse*, 634 N.W.2d 715, 719 (Minn. App. 2001) (stating the error is harmless if the conviction could have been admitted after proper analysis of the *Jones* factors), *review denied* (Minn. Dec. 11, 2001).

Because appellant's conviction was less than ten years old and was a felony that carried a sentence of more than one year, the question is whether, through a weighing of the *Jones* factors, this court determines that the probative value of allowing the admission of the impeachment evidence outweighed its prejudicial effect.

A. Impeachment Value of Prior Crime

The first *Jones* factor is the impeachment value of the prior crime. *Jones*, 271 N.W.2d at 538. Even crimes that do not directly involve truth or falsity have impeachment value by allowing the jury "to see the whole person and thus to judge better

the truth of his testimony." *Gassler*, 505 N.W.2d at 67 (quotation omitted); *but cf. State v. Leecy*, 294 N.W.2d 280, 282 (Minn. 1980) (holding that an aggravated-assault conviction had "nothing to do with defendant's credibility"). Appellant's conviction is apparently related to writing checks from a bank account with insufficient funds, and, because of a limited record which provides no underlying facts related to the conviction, this crime was not necessarily a crime of dishonesty or false statement. Yet, the conviction sheds some light on a defendant's character. By writing bad checks, a perpetrator seems willing to break an implicit promise held by members of a community that checks are a means of transferring money actually held by the transferor and that a signed check is *as good as* money. The perpetrator of such a crime typically acts in a dishonest manner and misleads the community into believing he has honorable intentions when he actually is planning to defraud people. By disclosing this crime committed by a witness, we inform the jury about the witness's attitudes toward society. This enables the jury to judge better the truth of the witness's testimony. *See Swanson*, 707 N .W.2d at 655-56 (allowing the admission of prior assault, theft, possession of stolen property, and criminal vehicular operation convictions in part because they assisted the jury in assessing the defendant's credibility). Appellant cites nothing to suggest that this finding would be inappropriate; thus, we find that this factor weighs in favor of admission.

B. Staleness/History

The second *Jones* factor is staleness and the defendant's intervening conduct. *Jones*, 271 N.W.2d at 538. If a conviction is less than ten years old, its date does not weigh against its admission. *See Swanson*, 707 N.W.2d at 655. Appellant was convicted

of this offense and theft by deception in 2003 and was sentenced to the North Dakota Department of Corrections for one year and one day. He subsequently was convicted of felony-level failing to register as a sex offender in 2004 in Clay County, Minnesota, and two other felonies, third-degree aggravated assault and theft by deception, in 2007 in Atlantic City, New Jersey. The intervening criminal conduct gives the 2003 conviction greater currency. Consequently, this factor weighs in favor of admission.

C. Similarity

Under the third *Jones* factor, "[t]he more similar the alleged offense and the crime underlying a past conviction, the more likely it is that the conviction is more prejudicial than probative." *Swanson*, 707 N.W.2d at 655 (citing *Jones*, 271 N.W.2d at 538). The prior conviction and the current offense are obviously very different crimes; therefore, this factor does not support exclusion.

D. Importance of Appellant's Testimony &
E. Centrality of Credibility

Appellate courts generally analyze the fourth and fifth *Jones* factors together and have held that, "[i]f credibility is a central issue in the case, the fourth and fifth *Jones* factors weigh in favor of admission of the prior convictions." *Swanson*, 707 N.W.2d at 655; *see also Ihnot*, 575 N.W.2d at 587 (stating that the fourth and fifth *Jones* factors are satisfied when the "thrust" of the defendant's testimony is to deny the allegations because credibility becomes the central issue in the case). Under the fourth factor, however, if admission of the conviction would cause a defendant to not testify, if it is important for the jury to hear defendant's version of the case, and if the defendant cannot introduce his

theory of the case without testifying, admission of the prior criminal record is more prejudicial and the district court should exclude the prior conviction. *Cf. State v. Heidelberger*, 353 N.W.2d 582, 590 (Minn. App. 1984) (noting, however, that, if the defendant's defenses and version of the case can be brought out through cross-examination of witnesses, the calling of witnesses, and argument, the defendant's version of the case can be heard without his testimony), *review denied* (Minn. Sept. 12, 1984).

Appellant's defense was that, though he left his Detroit Lakes home with a vehicle he owned and with most of his possessions, he intended to return until he was held up by car trouble or weather and then, after he believed he was no longer welcome at his Detroit Lakes home, he sought to relocate in North Dakota and then New Jersey. This defense was presented adequately through an opening statement and the testimony and cross-examination of Moss and Investigator Nguyen and argued in closing argument; thus, appellant's testimony was not critical to his defense. At the same time, by taking the stand and asking the jury to believe that, instead of viewing his two months of travel as Kerouac-esque meandering, it was a well-intentioned vacation, fraught with misfortune, that transformed into a well-intentioned effort to move.

Clearly, appellant's testimony went directly to the centrality of credibility. The district court permitted introduction of the conviction, and appellant testified. The focus of his testimony was to deny the characterization of his conduct as failing to register; he did not deny the underlying evidence of his travels that the state presented. Because testimony and cross-examination of the other witnesses was detailed and specific, appellant's personal testimony was not essential to presenting his version of the case.

By asking the jury to accept his theory of the events and not the state's theory, appellant put his credibility at issue; the central issue of the case became whether the jury should believe appellant or the state's witnesses. *See State v. Pendleton*, 725 N.W.2d 717, 729 (Minn. 2007) (finding that credibility was critical because the defendant's "wrong place, wrong time" defense contradicted the consistent story of the state's witnesses). Because appellant's credibility became a central issue, there was greater justification for admitting the 2003 conviction. Thus, we conclude that both factors four and five weigh in favor of admitting the evidence.

After individually considering and weighing the *Jones* factors, we conclude that the factors support admission of the 2003 conviction and that, had the district court considered the *Jones* factors, the district court would not have abused its discretion by permitting admission of the conviction. We strongly emphasize that conducting an on-the-record analysis of the *Jones* factors is mandatory before permitting introduction of a conviction under Minn. R. Evid. 609(a)(1). However, in appellant's case, we recognize that a *Jones* analysis was not completed because the district court erroneously believed that the conviction was automatically admissible under Minn. R. Evid. 609(a)(2). Because the *Jones* factors do not "unfavor" admission of the conviction and because the conviction was not emphasized by the prosecutor at trial, on this record, we find that it was de minimis error for the district court to permit the introduction of this conviction without engaging in analysis of the *Jones* factors.

II.

The second issue is whether it was error for the district court to not give a cautionary instruction to the jury when the prosecutor asked appellant about his prior conviction. Appellant argues that such an instruction is required. On several occasions, we have emphasized that the risk of the jury misusing impeachment evidence is diminished by cautionary instructions, *State v. Flemino*, 721 N.W.2d 326, 329 (Minn. App. 2006), but have never held that such an instruction was required under Minn. R. Evid. 609. The committee comment to Minn. R. Evid. 609(a) provides: "If the conviction is admitted, the court *should* give a limiting instruction to the jury whether or not one is requested." Minn. R. Evid. 609(a) 1989 comm. cmt. (emphasis added). And according to *State v. Bissell*, "the [district] court, on its own, *should* give a limiting instruction both when the evidence is admitted and as part of the final instructions to the jury." 368 N.W.2d 281, 283 (Minn. 1985) (emphasis added). By receiving a limiting instruction at the time the evidence is introduced, "the jury will probably get a clearer picture of the interrelation between the evidence and the factual issues to which they are relevant." *Id*. (quotation omitted). This language is permissive rather than mandatory (should lean toward mandatory). It is prudent for the district court to provide instructions when the evidence is introduced to avoid this reoccurring issue. We find only that the failure to do so was not per se reversible error.

We further note that appellant failed to propose any limiting instruction when the evidence was introduced. "A defendant's failure to propose specific jury instructions or to object to instructions before they are given to the jury generally constitutes a waiver of the right to appeal." *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). There was no surprise that these convictions would be introduced if appellant testified, and appellant was given an opportunity to explain that the theft-by-check conviction amounted to nothing more than a case of insufficient funds. The district court had the discretion to allow the accused to mitigate the impeachment evidence by explaining the circumstances of the prior conviction. *Flemino*, 721 N.W.2d at 329. Appellant was given this opportunity, and the prosecutor never referred to the conviction again. We conclude the district court's failure to sua sponte give a limiting instruction was not reversible error per se.

III.

The third issue is whether the prosecutor's unobjected-to statements during closing argument about appellant's credibility amount to reversible plain error. Under *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006), this court reviews a prosecutor's unobjected-to statements in closing argument under the plain-error standard set forth in *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). To meet *Griller*'s three-prong test, there must be: (1) error; (2) that is plain; and (3) the error must affect appellant's substantial rights. *Id.* *Ramey* modified the *Griller* standard by holding that, when there is an accusation of prosecutorial error, the prosecution should bear the burden of persuasion on the third prong. *Ramey*, 721 N.W.2d at 302. If all three prongs are met, this court must

determine whether "it should address the error to ensure fairness and the integrity of the judicial proceedings." *Griller*, 583 N.W.2d at 740. When reviewing a closing argument, we look at it "as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence." *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993).

While an attorney may argue about a particular witness's credibility, the attorney "may not interject his or her personal opinion so as to personally attach [ ] himself or herself to the cause which he or she represents." *Ture v. State*, 681 N.W.2d 9, 20 (Minn. 2004) (quotation omitted). This prohibition against expressing personal opinions—or "vouching"—is especially relevant when discussing the credibility of witnesses. *See State v. Patterson*, 577 N.W.2d 494, 497 (Minn. 1998). A prosecutor "may not throw onto the scales of credibility the weight of his own personal opinion." *State v. Ture*, 353 N.W.2d 502, 516 (Minn. 1984). This personal-opinion rule helps prevent "exploitation of the influence of the prosecutor's office." *State v. Everett*, 472 N.W.2d 864, 870 (Minn. 1991). Nonetheless, a prosecutor has an opportunity to face the jurors during closing argument and "may argue that particular witnesses were or were not credible." *State v. Lopez-Rios*, 669 N.W.2d 603, 614 (Minn. 2003). A prosecutor has "a right to analyze the evidence and *vigorously argue* that the state's witnesses were worthy of credibility whereas [the] defendant and his witnesses were not." *State v. Googins*, 255 N.W.2d 805, 806 (Minn. 1977) (emphasis added); *State v. Booker*, 348 N.W.2d 753, 755

(Minn. 1984) (stating "the prosecutor had a right to urge the jury to consider defendant's interest in the outcome in assessing his credibility).[1]

In appellant's case, near the beginning of his closing argument, the prosecutor stated, "Now, the Court has just instructed you on believability or credibility of witnesses and what you could consider. And remember, ladies and gentlemen, that you are the sole judge of whether a witness is to be believed." After discussing several discrepancies between appellant's testimony and the evidence, the prosecutor stated, "All of these factors, these inconsistent statements, you can use when you are judging the credibility of what the Defendant has to say." On several other occasions, the prosecutor asked the jury to apply their "common sense," "good judgment," and "experience in life" to evaluate the credibility of appellant's characterization of events. In claiming reversible prosecutorial error, appellant identifies the following statement by the prosecutor: "[T]he defendant was not truthful. We know he is not truthful." Appellant also notes that the prosecutor's argument was "peppered" with rhetorical questions about his credibility, such as "Was he being truthful?"

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[1] In a recent law review article, Morrow and Larson conducted an extensive review of Minnesota caselaw to determine when a prosecutor's statement constitutes an impermissible personal opinion. James A. Morrow & Joshua R. Larson, *Without a Doubt, a Sharp and Radical Departure: The Minnesota Supreme Court's Decision to Change Plain Error Review of Unobjected-to Prosecutorial Error in* State v. Ramey, 31 Hamline L. Rev. 353, 357 (2008). They found that the caselaw is unclear—and possibly self-contradictory—about whether interjection of a personal pronoun such as "I" or "We" in a phrase such as "We know he is credible" is plain error. *Id.* at 381-85. They recommend avoiding a test based on "magic words" and focusing instead on whether the prosecutor's words express an attempt at bolstering the state's case with information other than the evidence admitted at trial. *Id.* at 384.

We are concerned about the use of any rhetorical device that may align jurors with the state, and the use of the inclusive "we" has that effect. The statement "We know he is not truthful" *is out*; it is impermissible from the start. Whether it is reversible error by itself is the issue. On this record, we do not come to that conclusion. The prosecutor never stated that he "personally believed" appellant was unbelievable or a "liar," so the state managed to sidestep reversible error. The prosecutor discussed the evidence at trial and argued that the evidence should help the jury to make specific inferences about appellant's credibility. Examining the totality of the prosecutor's closing argument, we do not find reversible error.

IV.

The fourth issue is whether appellant received ineffective assistance of counsel. Appellant claims his attorney was ineffective because his cross-examinations were not "probative enough." The right to effective assistance of counsel forms a part of the Sixth Amendment right to a fair trial under the United States Constitution. U.S. Const. amend. VI; *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). A postconviction decision regarding a claim of ineffective assistance of counsel involves mixed questions of fact and law and is reviewed de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004).

> [Appellant] must affirmatively prove that his counsel's representation "fell below an objective standard of reasonableness" and "that there is a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different. . . . A reasonable probability is a probability sufficient to undermine confidence in the outcome."

Gates v. State, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2068 (1984)). "The reviewing court considers the totality of the evidence . . . in making this determination . . . [and] need not address both performance and prejudice prongs if one is determinative." *Rhodes*, 657 N.W.2d at 842 (citation omitted).

Appellant does not appear to cite any specific errors of law made by trial counsel during cross-examination, and he is not arguing that his attorney failed to cross-examine witnesses. He is simply second-guessing his attorney's strategies. A strong presumption exists "that a counsel's performance falls within the wide range of 'reasonable professional assistance.'" *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986). In hindsight, reviewing courts do not review counsel's tactical decisions involving trial strategy. *State v. Miller*, 666 N.W.2d 703, 717 (Minn. 2003). "Strategic decisions should be left to the discretion of [defense] counsel. . . ." *Sanderson v. State*, 601 N.W.2d 219, 226 (Minn. App. 1999), *review denied* (Minn. Mar. 28, 2000); *see ABA Standards for Criminal Justice: Prosecution Function and Defense Function*, Standard 4-5.2(b) (3d ed. 1993) ("Strategic and tactical decisions should be made by defense counsel . . . . Such decisions include . . . what trial motions should be made, and what evidence should be introduced.").

Appellant is second-guessing trial strategy, and because his attorney did, in fact, cross-examine the state's witnesses regarding pertinent matters, we conclude that, because appellant cannot meet his burden under the first prong of *Strickland*, his argument that he received ineffective assistance is not persuasive.

V.

The fifth issue is whether the district court committed reversible error by permitting the prosecutor to amend the complaint several times, including just before trial. The matter of allowing an amendment to a complaint is within the district court's discretion and will not be reversed absent abuse of that discretion. *See Gerdes v. State*, 319 N.W.2d 710, 712 (Minn. 1982). The district court is free to permit amendments charging additional or greater offenses so long as jeopardy has not attached and the district court allows a continuance where needed. *State v. Bluhm*, 460 N.W.2d 22, 24 (Minn. 1990). "Generally, jeopardy attaches once a jury is impaneled and sworn." *State v. Olson*, 609 N.W.2d 293, 299 (Minn. App. 2000), *review denied* (Minn. July 25, 2000).

In this case, the amendments made to the complaint related to selecting different subdivisions of the registration statute and to amending the dates relevant to the alleged law violations. We cannot find unfair surprise from these changes. The district court was within its discretion to permit changes to the complaint. We find no error.

VI.

The sixth issue is whether the district court gave misleading jury instructions that misstated the law regarding count I, failure to register in violation of Minn. Stat. § 243.166, subds. 3(b), 5(a)(c) (2006). Appellant has quoted the portions of the instructions he finds erroneous in his brief. After reviewing the jury instructions, it is clear the district court specifically instructed the jury as to count I, consistent with the Minnesota District Court Judges Association's Jury Instruction Guidelines, 10 *Minnesota*

Practice, CRIMJIG 12.100 (2006). These instructions were consistent with the applicable law and the elements establishing appellant's crime.

Affirmed.