

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1981**

State of Minnesota,
Respondent,

vs.

Hunter Jay Parker,
Appellant.

**Filed November 17, 2009
Reversed and remanded
Klaphake, Judge**

Mille Lacs County District Court
File No. 48-CR-08-895

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

Janice S. Kolb, Mille Lacs County Attorney, Courthouse Square, 635 Second Street SE, Milaca, MN 56353 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Stauber, Presiding Judge; Klaphake, Judge; and Minge, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Hunter Jay Parker challenges his convictions of first-degree refusal to submit to testing in violation of Minn. Stat. §§ 169A.20, subd. 2 (2006), first-degree driving while impaired in violation of Minn. Stat. §§ 169A.20, subd. 1(1); .24, subd. 1(1) (2006), and gross misdemeanor driving after cancellation in violation of Minn. Stat. § 171.24, subd. 5 (2006). He claims that the district court abused its discretion by admitting, over his objection, evidence of his unspecified prior felony conviction for impeachment purposes. Because the district court erred in admitting the evidence of the prior felony conviction and such error was not harmless where appellant's identity as the driver of the vehicle was in doubt, we reverse and remand for a new trial.

DECISION

Appellant was a passenger or driver of a vehicle that came to an abrupt stop on Highway 169 in front of Eddy's Resort on Lake Mille Lacs on April 4, 2008. Both offenses of which appellant was later convicted required him to be the driver or operator of the vehicle. *See* Minn. Stat. §§ 169A.20 (requiring that DWI or test refusal offender "drive, operate, or be in physical control" of a motor vehicle); 171.24, subd. 5 (requiring that gross misdemeanor driving after cancellation offender "operat[e]" a motor vehicle). At trial, Grand Casino Mille Lacs security guard James Caza, was the only person to identify appellant as the driver or operator of the vehicle.

Appellant claims that the district court abused its discretion by admitting for impeachment purposes evidence of his 2007 conviction for felony domestic assault. The

jury was not informed of the particular offense--only that he had a felony conviction in 2007. Generally, a felony conviction is admissible for impeachment purposes if its probative value outweighs its prejudicial effect. Minn. R. Evid. 609(a)(1). This court reviews a district court's ruling allowing impeachment of a witness by a prior conviction under the abuse of discretion standard of review. *State v. Ihnot*, 575 N.W.2d 581, 584 (Minn. 1998).

A district court must apply the *Jones* factors when determining whether to admit impeachment evidence; those factors 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 (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.

Ihnot, 575 N.W.2d at 586 (quoting *State v. Jones*, 271 N.W.2d 534, 538 (Minn. 1978)); *State v. Stone*, 767 N.W.2d 735, 742 (Minn. App. 2009).

This court recently addressed the admissibility of an unspecified prior felony for impeachment purposes in *State v. Utter*, 773 N.W.2d 127 (Minn. App. 2009). There, we held that "the district court's admission of appellant's unspecified prior felony conviction for impeachment purposes was error[.]" *id.* at 132, stating "that to allow the admission of unspecified prior convictions would render meaningless our long line of cases emphasizing the importance of admitting only those convictions that assist the factfinder in measuring a witness's credibility and veracity." *Id.* The court also concluded that the error in admitting the evidence was not harmless because the issue of the defendant's

credibility was “critical to the verdict,” that any prejudice to the defendant was increased “because the jury’s ability to make credibility determinations depends on the nature of the conviction,” and that “admission of the unspecified prior conviction raised the possibility that the jury might assume the worst.” *Id.*

Likewise here, we conclude that the district court improperly allowed appellant’s unspecified felony conviction to be used for impeachment purposes. We similarly conclude that the error was not harmless because credibility was central to appellant’s case. Appellant claimed that he was not the driver of the stopped vehicle, and Caza’s testimony, which was inconsistent in several respects, was the only testimony that identified appellant as the driver. Thus, the error in admitting testimony that undermined appellant’s credibility was especially prejudicial to appellant and therefore not harmless.

Reversed and remanded.