STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0345

State of Minnesota,
Respondent,

vs.

Christopher Lee Olds,
Appellant.

Filed March 24, 2014
Affirmed
Schellhas, Judge

Dakota County District Court
File No. 19HA-CR-12-3151

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Amy A. Schaffer, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Schellhas, Judge; and Toussaint, Judge.[*]

[*] 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

SCHELLHAS, Judge

Appellant challenges his conviction of theft of a motor vehicle, arguing that (1) his conviction was not supported by sufficient evidence and (2) the district court erred by admitting evidence of his prior felony convictions without making a record of its analysis of the *Jones* factors. We affirm.

FACTS

On September 3, 2012, M.W. and A.W., her nephew, reported to police that M.W.'s red Chevy Equinox had been stolen from her garage in West St. Paul. Late in the afternoon on September 7, while driving on Wentworth towards Robert Street, A.W. believed that he saw M.W.'s Equinox traveling north on Oakdale and turn west onto Wentworth so that it was traveling behind his vehicle. A.W. slowed his vehicle so that he could "get a good look" at the driver's face, looked in his rearview and side-view mirrors, and saw an African American man in a bright red shirt and red hat in the driver's seat. A.W. called M.W. to confirm the license-plate number of her Equinox and then called 911. Although A.W. lost track of the Equinox when it turned onto Humboldt Street, he eventually found it parked in front of an apartment building. A.W. approached an off-duty police officer in a nearby parking lot and explained the circumstances. West St. Paul Police Officer Philip Windschitl arrived at the scene. A.W., A.W.'s father, and M.W. were present. A man emerged from the apartment building, whom A.W. recognized as the driver of the Equinox. When Officer Windschitl took a step toward the man, the man ran and Officer Windschitl pursued him on foot. Another officer, Officer John

Hinderscheid, apprehended the man and later identified him as appellant Christopher Olds. He wore a red shirt and red cap.

Inside a storage area behind the driver's seat in the Equinox, Officer Windschitl found a Health Partners bag that contained vials marked with Olds's name and date of birth on them and directions on how to collect a stool sample. On top of the center console, the officer found an envelope containing papers listing the name of S.D., Olds's girlfriend.

Upon questioning by Officer Windschitl, Olds provided conflicting explanations. He admitted to being in the Equinox, claiming that someone named Steve had dropped him off at S.D.'s home. When asked about Steve, Olds said that he did not want to get Steve in trouble and that he did not know Steve's last name or anything else about Steve. But he also claimed that he got to S.D.'s house by bus, exiting the bus at the corner of Logan and Robert Street in West St. Paul. S.D. testified that she and Olds went to Health Partners Clinic on September 7 before 9:00 a.m. S.D. said that, while waiting at a bus stop after leaving the clinic, Olds's acquaintance arrived in a red vehicle that was either a truck or a van. The acquaintance drove S.D. and Olds to S.D.'s job and dropped S.D. off at around 9:00 a.m. S.D. said that she did not hear Olds and the acquaintance discuss the vehicle.

The state charged Olds with theft of a motor vehicle. At the time of trial, Olds had more than 25 felony convictions and respondent State of Minnesota sought permission from the district court to impeach him with several of his prior convictions. The court allowed the state to impeach Olds with five prior felony convictions that were not more

than ten years old for theft, receiving stolen property, fleeing police in a motor vehicle, first-degree burglary, and receiving stolen property. Olds did not testify.

M.W. testified that she never gave Olds permission to drive her Equinox. The jury found Olds guilty of theft of a motor vehicle in violation of Minn. Stat. § 609.52, subd. 2(17) (2012), and the district court sentenced him to 39 months' imprisonment.

This appeal follows.

D E C I S I O N

Sufficiency of the evidence

Olds argues that (1) A.W.'s identification was insufficient evidence to show that Olds was driving, and (2) his flight and confusing statements to the police constituted insufficient evidence to show that he knew or had reason to know that the owner did not consent.

An individual commits theft of a motor vehicle if he "takes or drives a motor vehicle without the consent of the owner or an authorized agent of the owner, knowing or having reason to know that the owner or an authorized agent of the owner did not give consent." Minn. Stat. § 609.52, subd. 2(17). "When reviewing the sufficiency of the evidence leading to a conviction, [appellate courts] will view the evidence in the light most favorable to the verdict and assume that the factfinder disbelieved any testimony conflicting with that verdict." *State v. Chavarria-Cruz*, 839 N.W.2d 515, 519 (Minn. 2013) (quotation omitted). Appellate courts "will not disturb the jury's verdict if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a

defendant was proven guilty of the offense charged." *State v. Hanson*, 800 N.W.2d 618, 621 (Minn. 2011) (quotation omitted).

"'Direct evidence' is '[e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.'" *Bernhardt v. State*, 684 N.W.2d 465, 477 n.11 (Minn. 2004) (quoting *Black's Law Dictionary* 596 (8th ed. 2004)). Olds agrees in his brief that A.W.'s identification testimony that Olds was the person he saw driving the Equinox on September 7 was direct evidence to which we apply the traditional standard of review of sufficiency-of-the-evidence claims.

A.W.'s Identification

"Identification is a question of fact for the [fact-finder] to determine." *State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998). "An identification need not be positive and certain to support a conviction—it is sufficient if a witness testifies that in his belief, opinion, and judgment the defendant is the one he saw commit the crime." *State v. Landa*, 642 N.W.2d 720, 725 (Minn. 2002). "[A] conviction may rest on the testimony of a single credible witness." *Miles*, 585 N.W.2d at 373. "The trustworthiness of an identification must necessarily be judged by the opportunity the witness has had for a deliberate and accurate observation of the accused while in his presence." *State v. Gluff*, 285 Minn. 148, 151, 172 N.W.2d 63, 65 (1969).

A.W. saw his aunt's Equinox on the road, and it traveled directly behind him. A.W. slowed his vehicle and looked in his rearview and side-view mirrors and observed that the driver of the Equinox was an African American man in a bright red shirt and red

hat. A.W. later twice identified Olds: once when Olds exited the apartment building and again when the police apprehended Olds.

Olds argues that we should take judicial notice that the distance over which A.W. traveled in front of Olds on Wentworth is seven-tenths of a mile, and he argues that the distance is too short for a person to make an identification while also driving and making phone calls. "Judicial notice of adjudicative facts is normally limited to facts of common knowledge not in dispute, and those for which neither expertise nor foundation is needed." *State v. Pierson*, 368 N.W.2d 427, 434 (Minn. App. 1985). "Criminal cases are not normally the appropriate setting for judicial notice, particularly of disputed facts." *Id.* But, here, no dispute exists about the distance on Wentworth between Oakdale and Humboldt. Further, "[g]eography has long been peculiarly susceptible to judicial notice for the obvious reason that geographic locations are facts which are not generally controversial." *United States v. Piggie*, 622 F.2d 486, 488 (10th Cir. 1980), *cert. denied*, 101 S. Ct. 169 (1980); *see State v. Trezona*, 286 Minn. 531, 532, 176 N.W.2d 95, 96 (1970) (concluding that it was proper for district court "to take judicial notice that the intersection of Buffalo Street and Highway No. 61 and the Benson Airport are located within the county"); *see also Brisco v. Ercole*, 565 F.3d 80, 83 n.2 (2d Cir. 2009) (taking judicial notice of a distance while citing Yahoo Maps), *cert. denied*, 130 S. Ct. 739 (2009). We therefore take judicial notice that the distance on Wentworth between Oakdale and Humboldt is seven-tenths of a mile.

> Although it is commonly stated that uncorroborated eyewitness identification testimony of a single witness is sufficient to support a guilty verdict, . . . not all single

> eyewitness cases are the same and . . . when the single witness'[s] identification of a defendant is made after only fleeting or limited observation, corroboration is required if the conviction is to be sustained.

State v. Walker, 310 N.W.2d 89, 90 (Minn. 1981). Here, we reject Olds's arguments that A.W.'s identification is not reliable because of the short period of observation and the method of observation through mirrors while driving and making phone calls. A.W. was able to provide a detailed description of the driver of the Equinox and his identification was corroborated both by the items found in the vehicle and by Olds's presence near the vehicle wearing clothing described by A.W. A.W.'s observation of Olds was neither fleeting nor limited and his identification was corroborated. *See State v. Lloyd*, 345 N.W.2d 240, 244 (Minn. 1984) (concluding that sufficient identification evidence supported identification of eyewitness who observed suspected murderer at night for a "minute or minute and a half" from approximately 85 feet away when circumstantial evidence corroborated identification).

Olds also argues that A.W.'s later identifications of Olds were not reliable. Because Olds did not raise this issue before the district court, we need not address it. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) ("This court generally will not decide issues which were not raised before the district court."). Nevertheless, we do address it. At the apartment building in front of which A.W. saw the Equinox parked, A.W. identified Olds from a distance of about 50 yards after Olds exited the building. After Officer Hinderscheid apprehended Olds and returned him to the apartment complex, A.W. again identified Olds as the man who A.W. saw driving the Equinox. Given A.W.'s

earlier identification and the short time between his initial observation of Olds, his first identification, and his two confirmations of Olds's identity, we reject Olds's claim that A.W.'s two confirmations of Olds's identity were not reliable.

We conclude that sufficient evidence supports A.W.'s identification of Olds.

Whether Olds Knew or had Reason to Know Owner did not Consent

Olds argues that the state's evidence on the element of "knowing or having reason to know" that the owner of the Equinox did not consent was entirely circumstantial. "'Circumstantial evidence' is defined as '[e]vidence based on inference and not on personal knowledge or observation' and '[a]ll evidence that is not given by eyewitness testimony.'" *Bernhardt*, 684 N.W.2d at 477 n.11 (quoting *Black's Law Dictionary* 595 (8th ed. 2004)). We review the sufficiency of circumstantial evidence with "closer scrutiny" to determine whether the evidence "form[s] a complete chain that, as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *Hanson*, 800 N.W.2d at 622. We "first identify the circumstances proved. Consistent with our standard of review, we defer to the jury's acceptance of the proof of these circumstances as well as to the jury's rejection of evidence in the record that conflicted with the circumstances proved by the State." *Id.* (citations omitted). We next "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt." *Id.* (quotation omitted).

Olds argues that his flight and confusing statements to the police are insufficient evidence to show that he knew or had reason to know that the Equinox owner did not

consent. We disagree. A "[d]efendant's lack of a satisfactory explanation for his possession of the stolen property is evidence that he knew it was stolen. This alone is enough evidence to take the issue to the jury." *State v. Carter*, 293 Minn. 102, 105, 196 N.W.2d 607, 609 (1972) (quotation omitted); *see also State v. Bagley*, 286 Minn. 180, 188, 175 N.W.2d 448, 454 (1970) ("[U]nexplained possession of stolen property within a reasonable time after a burglary or theft will in and of itself be sufficient to sustain a conviction."). The circumstances proved in this case offer no explanation for why Olds drove and possessed the Equinox four days after it went missing from M.W.'s garage. Olds's unexplained possession of the Equinox supports a reasonable inference that he knew the vehicle was stolen.

Additionally, Olds's flight from the police suggests his consciousness of guilt. *State v. McDaniel*, 777 N.W.2d 739, 747 (Minn. 2010) (stating that "evidence of flight suggests consciousness of guilt" (quotation omitted)). And Olds harmed his credibility by giving the police inconsistent statements about the events leading up to his apprehension. *See State v. Jones*, 753 N.W.2d 677, 693 (Minn. 2008) (noting that defendant's "credibility was seriously undermined by the inconsistent statements he made to police and his admission that he perjured himself in the first trial").

Based on the circumstances proved, the only reasonable inference that the jury could make is that Olds knew or had reason to know that M.W. did not consent to Olds driving the Equinox. We reject Olds's argument that the evidence was insufficient to support his conviction of motor-vehicle theft.

Impeachment evidence

The district court ruled that five convictions that were not more than ten years old could be used by the state to impeach Olds. The district court disallowed two of Olds's convictions for motor-vehicle theft due to their similarity with the charged offense and a controlled-substance conviction because their probative value was outweighed by their prejudicial effect. These convictions included convictions of theft, receiving stolen property, fleeing police in a motor vehicle, and first-degree burglary. Olds argues that the district court erred by allowing the admission of prior convictions without conducting an on-the-record *Jones* analysis and that the error was not harmless.

An appellate court "will not reverse a district court's ruling on the impeachment of a witness by prior conviction absent a clear abuse of discretion." *State v. Hill*, 801 N.W.2d 646, 651 (Minn. 2011) (quotation omitted).

> Five factors guide the exercise of a district court's discretion under Rule 609(a): "(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 defendant's testimony, and (5) the centrality of the credibility issue."

Id. at 653 (quoting *State v. Jones*, 271 N.W.2d 534, 538 (Minn. 1978)). "[I]t 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).

Here, on two separate occasions, the district court addressed the admissibility of the convictions and discussed some of the *Jones* factors but did not discuss all of the

Jones factors on any of the occasions.[1] We need not determine whether the district court erred by not making a more complete record of its consideration of the *Jones* factors because any error was harmless based on the following analysis. *See id.* ("[E]rror is harmless if it is nonetheless clear that it was not an abuse of discretion to admit evidence of the convictions.").

1. Impeachment value of prior crimes

"[*A*]*ny* felony conviction is probative of a witness's credibility, and the mere fact that a witness is a convicted felon holds impeachment value." *Hill*, 801 N.W.2d at 652. This factor weighs in favor of admissibility.

2. Date of convictions and defendant's subsequent history

Evidence of a prior conviction is generally not admissible "if a period of more than ten years has elapsed [between] the date of the conviction or the release of the witness from the confinement imposed for that conviction, whichever is the later date," Minn. R. Evid. 609(b), and "the date of the charged offense," *State v. Ihnot*, 575 N.W.2d 581, 585 (Minn. 1998). Here, more than ten years had not elapsed. This factor weighs in favor of admissibility.

3. Similarity of past crimes to charged crime

"[T]he greater the similarity, the greater the reason for not permitting use of the prior crime to impeach." *Jones*, 271 N.W.2d at 538. "[I]f the prior conviction is similar to the charged crime, there is a heightened danger that the jury will use the evidence not

[1] On a third occasion, the prosecutor discussed each of the *Jones* factors "to make a record of the factors that the Court has considered as laid out in the *Jones* case."

only for impeachment purposes, but also substantively." *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993). We conclude that none of Olds's prior convictions deemed admissible by the district court was so similar to the charged offense that the court abused its discretion. *See id.* at 64, 66−67 (upholding district court's ruling on admissibility of prior second-degree attempted-murder conviction in first-degree murder trial); *State v. Frank*, 364 N.W.2d 398, 399 (Minn. 1985) (upholding district court's ruling on admissibility of prior rape convictions in case of first-degree criminal sexual conduct).

4. Importance of defendant's testimony and the centrality of credibility

Appellate courts may consider the fourth and fifth *Jones* factors together. *See State v. Swanson*, 707 N.W.2d 645, 655 (Minn. 2006) (grouping the fourth and fifth factors together). "[I]f the defendant's credibility is the central issue in the case . . . , then 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). Credibility is central to the case "if the issue for the jury narrows to a choice between defendant's credibility and that of one other person." *Id.* "If 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.

Although Olds claims on appeal that "[h]ad he testified, he could have explained the events of the day, provided a timeline of Steve's involvement and clarified the statements he made to police," he did not make an offer of proof in the district court. The defendant bears "the responsibility of . . . mak[ing] an offer of proof as to what would have been the substance of the testimony, had it been provided." *Ihnot*, 575 N.W.2d at

587 n.3. "[A]ppellate courts do experience difficulty in evaluating the effect of any abuse of discretion in this area without knowing the substance of any possible testimony." *Id.* On this record, we cannot evaluate the effect of any abuse of discretion by the district court in admitting Olds's prior convictions.

Olds also argues that credibility was not a central issue in this case and that the fifth factor therefore weighs against admission of the prior convictions. But if Olds had testified and not been impeached by his prior convictions, the jury would have been prevented from seeing Olds's whole person to judge better the truth of his testimony. *See Hill*, 801 N.W.2d at 651. In view of Olds's attack on A.W.'s credibility, we cannot conclude that the district court abused its discretion in ruling that Olds's prior convictions were admissible for impeachment purposes.

Our analysis of the *Jones* factors leads us to the conclusion that the district court did not abuse its discretion by ruling that Olds's prior convictions were admissible under Minn. R. Evid. 609(a)(1).

Affirmed.