STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1182

State of Minnesota,
Respondent,

vs.

Joseph Lee Bellanger,
Appellant.

Filed September 11, 2017
Affirmed
Smith, Tracy M., Judge

Becker County District Court
File No. 03-CR-15-1258

Lori Swanson, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Tammy L. Merkins, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Peterson, Judge; and Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

Appellant Joseph Lee Bellanger appeals his conviction of two counts of criminal sexual conduct, arguing that (1) the district court abused its discretion in ruling that the

state could impeach him with two prior felony convictions and (2) he is entitled to a new trial because some jurors expressed bias during voir dire. Because the evidentiary ruling was not an abuse of discretion and Bellanger waived his juror-bias challenges, we affirm.

FACTS

On May 29, 2015, 16-year-old T.J. went to an emergency room seeking treatment after a sexual assault. White Earth Police officers were dispatched to the emergency room. T.J. reported to the officers that Bellanger had sexually assaulted her early that morning, causing physical injuries. Bellanger was charged with two counts of first-degree criminal sexual conduct.

The county moved to impeach Bellanger with two prior felony convictions—motor-vehicle theft in March 2006 and domestic assault in May 2015—if he testified. At the pretrial hearing, the district court performed the required analysis and ruled that the state would be allowed to impeach Bellanger by asking him if he was convicted of motor-vehicle theft in March 2006 and of an unspecified felony in May 2015. Bellanger chose not to testify, so the jury did not receive evidence of the prior convictions.

The jury found Bellanger guilty on both counts.

Bellanger appeals.

D E C I S I O N

I. The district court did not abuse its discretion in ruling that the state could impeach Bellanger with two prior felony convictions.

Bellanger argues that the district court erred in ruling that the state could impeach him with evidence of his March 2006 motor-vehicle-theft conviction and an unspecified

felony conviction in May 2015. We will affirm a district court's ruling on the admissibility of prior convictions for impeachment absent a clear abuse of discretion. *State v. Swanson*, 707 N.W.2d 645, 654 (Minn. 2006).

A prior conviction of a felony not involving dishonesty is admissible to impeach a witness if the probative value of admitting it outweighs the prejudicial effect. Minn. R. Evid. 609(a)(1). When applying this balancing test, the district court must consider the following factors outlined in *State v. Jones*:

> (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.

271 N.W.2d 534, 538 (Minn. 1978).[1] The district court must demonstrate on the record that it has considered and weighed the *Jones* factors. *Swanson*, 707 N.W.2d at 655. It is not necessarily an abuse of discretion to admit a prior conviction if any one of the *Jones* factors weighs against admission. *See id.* at 656; *State v. Bettin*, 295 N.W.2d 542, 546 (Minn. 1980).

The district court analyzed the *Jones* factors on the record before ruling that both convictions would be admissible for impeachment if Bellanger chose to testify. With respect to the first factor, the district court found that both convictions have some impeachment value because they help show the jury Bellanger's "whole person."

[1] *Jones* was decided before the adoption of Minn. R. Evid. 609(a) but has been reaffirmed as the applicable test when the state seeks to impeach a defendant with a prior conviction under rule 609(a)(1). *State v. Ihnot*, 575 N.W.2d 581, 586 (Minn. 1998).

Bellanger argues that the probative value was "minimal" and that the convictions were not needed because there was other evidence that would allow the jury to see "what kind of person" he is. However, Minnesota cases hold that any prior felony conviction has some impeachment value because it allows the jury to see "the whole person" and thus better judge the trustworthiness of the witness's testimony. *Ihnot*, 575 N.W.2d at 586 (quotation omitted).

Bellanger argues that the second *Jones* factor should have weighed against admitting the 2006 motor-vehicle-theft conviction because it is not recent. *See Jones*, 271 N.W.2d at 538. The district court acknowledged that the conviction was nearly ten years old, but decided to admit it after noting that Bellanger was convicted of another felony in between the 2006 conviction and the current charge. This reasoning comports with *State v. Zornes*, in which the supreme court noted that, "if a witness is convicted again or sent back to prison," the later event "enhances an otherwise stale conviction's probative value." 831 N.W.2d 609, 627 (Minn. 2013) (quotation omitted). Thus, it was within the district court's discretion to conclude that the 2006 motor-vehicle-theft conviction is still probative of Bellanger's truthfulness.

Bellanger argues that the third *Jones* factor should have weighed against admitting his 2015 domestic-assault conviction because domestic assault is similar to the current crime. *See Jones*, 271 N.W.2d at 538. The district court recognized the similarity and decided to mitigate the prejudicial effect by ruling that the state could ask Bellanger if he was convicted of a felony on the relevant date but could not refer to the nature of the offense. The supreme court has upheld this practice of admitting unspecified or "sanitized"

felony convictions as a permissible way to avoid unduly prejudicing a defendant when impeaching with a conviction of a similar offense. *State v. Hill*, 801 N.W.2d 646, 650 n.1, 652-53 (Minn. 2011).

Finally, Bellanger argues that the fourth *Jones* factor should have outweighed the fifth factor in favor of excluding both prior convictions. Under the fourth *Jones* factor, a district court may exclude a prior conviction if it determines that the admission of the conviction for impeachment will cause the defendant not to testify and it is more important that the jury hear the defendant's version of the case. *Bettin*, 295 N.W.2d at 546. Under the fifth factor, if the defendant's credibility is "the central issue in the case," i.e., "if the issue for the jury narrows to a choice between defendant's credibility and that of one other person[,] then a greater case can be made for admitting the impeachment evidence." *Id.* Here, the district court considered the fourth and fifth *Jones* factors together and determined that, because the major evidence against Bellanger is T.J.'s testimony, if Bellanger decided to testify to a different version of what happened, his credibility would be "key." It was within the district court's discretion to conclude that the need to evaluate Bellanger's credibility if he testified outweighed the countervailing factors. *See id.* (noting that it was fair to impeach defendant with prior convictions where defendant and complainant were the only witnesses to alleged criminal sexual conduct and complainant's credibility had been questioned).

We conclude that the district court did not abuse its discretion in weighing the *Jones* factors, concluding that the probative value outweighs the prejudicial effect of admitting the convictions, and ruling that the state could impeach Bellanger with the 2006 motor-

vehicle-theft conviction and the sanitized 2015 conviction if he testified. *See Swanson*, 707 N.W.2d at 654.

II. Bellanger waived his juror-bias challenges.

In his pro se supplemental brief, Bellanger asserts that he is entitled to a new trial because some jurors expressed bias during voir dire. We do not consider this argument, however, because it is waived. After questioning potential jurors, Bellanger's trial counsel expressly "pass[ed] for cause" without challenging the jurors Bellanger now seeks to challenge. By stating, "I pass for cause," during voir dire, a party affirmatively waives the right to challenge prospective jurors for cause and relieves the district court of any obligation to dismiss any juror for cause. *State v. Geleneau*, 873 N.W.2d 373, 381 (Minn. App. 2015), *review denied* (Minn. Mar. 29, 2016). We will not consider on appeal whether the district court erred by not dismissing jurors sua sponte after the appellant affirmatively waived the right to assert such a challenge. *Id.* at 381-82.

Affirmed.