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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0564**

State of Minnesota,
Respondent,

vs.

Justin Guy Adams,
Appellant.

**Filed February 18, 2020
Affirmed in part, reversed in part, and remanded
Segal, Judge**

Dakota County District Court
File No. 19HA-CR-18-1977

Keith Ellison, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Segal,
Judge.

UNPUBLISHED OPINION

SEGAL, Judge

Appellant challenges his convictions of first-degree burglary, second-degree
burglary, and being an ineligible person in possession of a firearm, based on his claims that

the district court abused its discretion in determining that a prosecution witness could only be impeached with *unspecified* prior felony convictions and that the district court improperly entered convictions for both first-degree and second-degree burglary. We affirm in part, reverse in part, and remand.

FACTS

On February 9, 2018, M.Y. discovered that one of his houses had been burglarized. The back door appeared to have been pried open and the contents of the home were scattered about both inside and outside the house. M.Y. was not living at the residence at the time, so he was unsure of exactly when the burglary occurred. While he was examining the contents scattered outside, his neighbor, appellant Justin Guy Adams, approached him. M.Y. asked Adams if he had seen anything suspicious, and Adams responded that he had seen a white van that seemed out of the ordinary. Adams walked away before M.Y. could ask him any follow-up questions.

M.Y. contacted the South St. Paul Police Department to report the burglary. A sergeant responded and took photos of the residence. The sergeant asked M.Y. to make a list of the items that were stolen. M.Y. reported that scrap metal, tools and several firearms were missing. A detective was assigned to investigate the case. As contained in the trial testimony, M.Y. informed the detective that his neighbors, M.B. and D.D., had information about the burglary. D.D. told the detective that he saw Adams leaving M.Y.'s residence early one morning and that he appeared to be carrying items. M.B. similarly reported that she had seen Adams leaving M.Y.'s residence and that she recognized him by his voice.

The detective later spoke with Adams. When the detective informed Adams that he was a suspect in the burglary and there was a witness who had seen him leaving M.Y.'s residence, Adams responded that the witness had recently had surgery and was a "looney tune." The detective had not told Adams the identity of the witness. He asked Adams who he was referring to and Adams answered, "D.D." M.Y. later informed the detective that he had located some of the stolen tools at a pawn shop. The detective searched the automated pawn system and discovered that, in early February, Adams pawned several of the stolen items. He also discovered that Adams had recently scrapped copper and brass, which M.Y. had reported as being stolen during the burglary. The detective asked Adams where he got the items, and Adams claimed that he found the items in a bag in the alleyway behind M.Y.'s home. He denied entering M.Y.'s residence or stealing the items.

Adams was charged with first-degree burglary, second-degree burglary, and being an ineligible person in possession of a firearm. At the jury trial, M.B. and D.D. both testified about having seen Adams early that morning, leaving the victim's home. The detective testified about his investigation and his discovery that Adams had pawned several of the stolen items and scrapped metal. Finally, B.H. testified that Adams sold one of the stolen guns to his roommate in March 2018. The jury found Adams guilty on all counts. The district court entered convictions for all three counts: first-degree burglary, second-degree burglary, and being an ineligible person in possession of a firearm. Adams was then sentenced to 68 months in prison for first-degree burglary and 60 months in prison for being an ineligible person in possession of a firearm. The district court imposed no sentence for the second-degree burglary count. This appeal follows.

DECISION

I. The district court did not abuse its discretion by admitting D.D.'s prior convictions as unspecified felonies.

Adams argues that the district court abused its discretion by determining that D.D. could be impeached with prior, unspecified felony convictions, but could not disclose the actual nature of the convictions, which were for burglary and possession of burglary tools. Evidence of prior convictions may be admitted to impeach the credibility of a witness if the district court determines that the probative value of admitting the evidence outweighs its prejudicial effect. Minn. R. Evid. 609(a)(1). When the conviction does not involve “dishonesty or false statement,” the district court has the discretion to restrict the use of the prior conviction. *State v. Lanz-Terry*, 535 N.W.2d 635, 639 (Minn. 1995). We will not reverse a district court’s ruling on the impeachment of a witness absent a clear abuse of discretion. *State v. Hill*, 801 N.W.2d 646, 651 (Minn. 2011).

D.D., the prosecution witness who testified that he saw Adams leaving M.Y.’s house, has four prior convictions for burglary and possession of burglary tools. Prior to trial, defense counsel indicated that he wished to impeach D.D. with his prior convictions. Defense counsel requested that he be permitted to specify that the convictions were for burglary, but the prosecutor argued that the convictions should only be admitted as prior, unspecified felony convictions. The district court ruled that defense counsel could only refer to the convictions as felonies generally. At trial, defense counsel asked D.D. if he had three prior convictions for burglary. The state objected and the district court held a discussion outside the presence of the jury. Defense counsel again requested that he be

permitted to specify that D.D.'s convictions were for burglary-related offenses, but the district court did not change its ruling.

Adams argues that the district court abused its discretion in determining that D.D. could only be impeached with prior, unspecified felony convictions. He argues that the district court erred by failing to address the *Jones* factors on the record and that an analysis of those factors supports allowing D.D. to be impeached with his prior convictions for burglary, rather than with unspecified felonies. In *State v. Jones*, our supreme court identified five factors for the district court to consider when determining whether a defendant can be impeached with a prior conviction. 271 N.W.2d 534, 537-38 (Minn. 1978). The factors are the impeachment value of the prior conviction, the date of the conviction and defendant's subsequent history, the similarity of the past crime with the charged crime, the importance of the defendant's testimony, and the centrality of the credibility issue. *Id.*

The state argues that the *Jones* factors do not apply because D.D. was a prosecution witness, not the defendant. We agree. In *Lanz-Terry*, the supreme court addressed the impeachment of a prosecution witness with evidence of a prior conviction. 535 N.W.2d at 639. The supreme court observed that “[w]hen evaluating whether to admit a prior conviction of a prosecution witness, the major concerns are to protect the witness from being harassed and unduly embarrassed, the jury from being confused and misled, and everyone involved (court, jury, parties) from having to endure an unnecessarily prolonged trial.” *Id.* The supreme court then analyzed the impeachment of the prosecution witness without addressing the *Jones* factors. *Id.* at 639-41. Accordingly, the district court was

not required to analyze the *Jones* factors when determining whether D.D. could be impeached with his prior convictions.

Adams argues that he nonetheless should have been permitted to specify that D.D.'s convictions were for burglary because the probative value of the convictions outweighed any prejudicial effect. We disagree. Prior to trial, the district court asked defense counsel why the nature of the convictions was relevant to impeach D.D.'s credibility. Defense counsel argued that the nature of the convictions was relevant because Adams was on trial for burglary and D.D. had prior convictions for burglary. During trial, defense counsel again argued that the nature of the conviction was relevant because "there is a burglar living across the street who's been convicted of four felonies in the last ten years for burglary or possession of burglary tools" and D.D. was "testifying about a man who is on trial for burglary." But the district court observed that Adams explicitly stated that he was not presenting an alternative-perpetrator defense. The district court reasoned that because there was not an alternative-perpetrator defense, the probative value of the prior felony convictions was limited to impeaching D.D.'s credibility. The district court stated:

I don't view that this impacts directly on somebody's credibility as a witness, the ability to tell the truth. I don't know why there is not an alternative perpetrator, but there isn't. Everybody admits that. This would appear to me to do indirectly what you chose not to do directly, and I don't know anything about that choice. I don't want to know anything about that choice. But if the defense here was an alternate perpetrator, then I would allow the thing. If it's just as it goes to [D.D.'s] credibility as a witness, I don't think the fact that he was convicted of burglary is relevant.

Caselaw supports the district court's determination. In *Hill*, the supreme court observed that "it is the general lack of respect for the law, rather than the specific nature of the conviction, that informs the fact-finder about a witness's credibility, at least with respect to convictions other than those involving dishonesty or false statements." 801 N.W.2d at 652. Here, the probative value of the prior convictions was limited to informing the jury about D.D.'s credibility. And based on the reasoning in *Hill*, the nature of the convictions was not relevant for this purpose. Indeed, allowing evidence that the convictions were for burglary had the potential to confuse or mislead the jury because, as the district court stressed, Adams was not presenting an alternative-perpetrator defense. See *Lanz-Terry*, 535 N.W.2d at 639 (stating that when evaluating whether to allow the impeachment of a prosecution witness with a prior conviction one of the "major concerns" is the jury "being confused and misled"). On this record, the district court did not abuse its discretion by determining that D.D. could be impeached with prior, unspecified felony convictions, but could not identify the actual nature of the prior convictions.

II. The conviction for second-degree burglary must be vacated.

Adams argues that the district court erred by entering convictions for both first- and second-degree burglary. "Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both. An included offense may be . . . a lesser degree of the same crime." Minn. Stat. § 609.04(1) (2018). We look to the official judgment of conviction to determine if a defendant has been convicted of multiple offenses. *State v. Pflepsen*, 590 N.W.2d 759, 767 (Minn. 1999). The jury found Adams guilty of both first- and second-degree burglary. Because second-degree burglary is a

lesser-included offense of first-degree burglary, the proper procedure was for the district court to make a determination of guilt as to both offenses, but only formally convict Adams of the more serious offense. *Id.* at 766. This would allow the district court to retain jurisdiction over the lesser-included offense and later formally convict Adams if the first-degree burglary conviction was vacated. *Id.* The warrant of commitment indicates that the district court convicted Adams of both first- and second-degree burglary. The state agrees that this was error and that the conviction for second-degree burglary must be vacated. We, therefore, reverse and remand to the district court to vacate the conviction for second-degree burglary.

Affirmed in part, reversed in part, and remanded.