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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1673

State of Minnesota,
Respondent,

vs.

Sam Horace Meeks,
Appellant.

Filed September 17, 2012
Affirmed in part, reversed in part, and remanded
Ross, Judge

Anoka County District Court
File No. 02-CR-10-9002

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

Anthony C. Palumbo, Anoka County Attorney, M. Katherine Doty, Assistant County Attorney, Anoka, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jodie L. Carlson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Hooten, 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

ROSS, Judge

Sam Meeks and two accomplices broke into an apartment and robbed a family of three at gunpoint. Police arrested Meeks hours later in a stolen car, and one of the victims, who recognized Meeks from prison, identified him as one of the robbers. The state charged Meeks with two counts of first-degree burglary, two counts of first-degree aggravated robbery (one for each adult victim), and three counts of second-degree assault (one for each victim). A jury found Meeks guilty. The district court imposed consecutive prison sentences totaling 252 months. Meeks appeals, arguing that the district court abused its discretion by excluding impeachment evidence and by allowing testimony that one of the victims recognized him from prison. He also challenges his convictions and sentences because the verdict form signed by the jury indicated only second-degree aggravated robbery and some of his offenses are lesser-included offenses of others. And he argues that the district court's sentence unfairly exaggerates the criminality of his conduct. We affirm the district court on all of Meeks's claims of trial error, but we reverse and remand for the district court to amend his convictions to comport with the verdict form signed by the jury and to avoid lesser-included offenses, and to sentence him anew based on these convictions.

FACTS

On November 9, 2010, J.B. and his wife S.K. were in their Anoka apartment with S.K.'s eight-year-old son K.K. when three men broke in and began pistol whipping J.B. One of the men grabbed S.K. around her neck and demanded money. He also demanded

jewelry and drugs. S.K. told him that she had about $800. She led him into the bedroom where she kept her money and where K.K. was sleeping.

S.K. gave the robber $800. He slapped her, pointed his gun at her, and told her to give him more. She told him there was no more. The other two robbers brought J.B. into the bedroom and tied him up with a computer cord. K.K. woke up. The robbers continued to hit J.B. and demand money. One of the men put his gun against K.K.'s head and warned that the child would be the first to die if the adults didn't cooperate.

The assailants demanded S.K.'s cell phone, so she took K.K. and walked out of the bedroom to get it. But she realized that none of the men had followed her, so she left the apartment with K.K. She ran yelling to a neighbor's apartment and dialed 911. The robbers heard S.K. yelling for help, and they fled in a black car.

When police arrived, J.B. told them one of the attackers was Sam Meeks, whom J.B. recognized from his time in prison ten years before. He told the officers that he also knew one of the other men as "Duce," whose real name was Jerome Peters, but he did not know the third man. J.B. also picked Meeks in a photo lineup prepared by police.

Prison records corroborated J.B.'s recognition of Meeks; they had shared a cell block in Stillwater in July and August 2000, and their time at the prison overlapped thirteen months. J.B.'s prison time also overlapped with Maurice Meeks, Sam Meeks's brother, for about twenty months. J.B. recognized Sam Meeks because Maurice Meeks's cell was next to J.B.'s, and Sam Meeks would often come to talk to his brother.

Police learned that, shortly before the robbery, Chidi Egbujor had allowed Peters, Sam Meeks, and Thomas Chriss to borrow his girlfriend's black 2007 Chevrolet Impala.

After the robbery, Peters called Egbujor and told him to meet him in North Minneapolis. When Egbujor arrived, he found Peters, Meeks, and Chriss waiting in the Impala. Egbujor saw guns on the car's floor and two one-hundred dollar bills in the driver's door compartment. Meeks suddenly grabbed the guns, and robbed all the men. Egbujor called police.

Hours later police located the stolen Impala and gave chase until the car lost control and crashed. Meeks fled on foot but the officers caught him. Police found no guns or money in the car. Meeks denied being in Anoka and denied knowing Peters or Chriss.

The state charged Meeks with two counts of first-degree burglary, two counts of first-degree aggravated robbery (one for each original adult victim), and three counts of second-degree assault (one for each original victim). *See* Minn. Stat. §§ 609.582, subd. 1(b), 609.101, 609.05, 609.11, subd. 5, 609.245, subd. 1, 609.222, subd. 1 (2010). Before trial, the district court denied Meeks's motion to preclude testimony that J.B. recognized him from prison. It also prohibited Meeks from introducing certain evidence of prior convictions of J.B. and S.K.

The jury found Meeks guilty of all charges, but it did so using a verdict form that indicated second-degree aggravated robbery, instead of first-degree robbery. The district court, unaware of the mistake on the verdict form, entered a judgment of conviction on all seven counts as charged and imposed a 78-month prison sentence for count one of first-degree burglary, a consecutive 60-month prison sentence for count five of second-degree assault against K.K., a consecutive 57-month prison sentence for count six of first-degree aggravated robbery against J.B., and a consecutive 57-month prison sentence for

count seven of first-degree aggravated robbery against S.K. Meeks's prison sentence totaled 252 months.

Meeks appeals.

D E C I S I O N

I

Impeachment Evidence

Meeks contends that the district court abused its discretion by prohibiting him from presenting evidence of J.B.'s and S.K.'s prior convictions. The admissibility of prior convictions for impeachment is within the broad discretion of the district court. *State v. Swanson*, 707 N.W.2d 645, 654 (Minn. 2006). We will not reverse the district court's decision absent a clear abuse of that discretion. *State v. Ihnot*, 575 N.W.2d 581, 584 (Minn. 1998).

Meeks argues for an application of the admissibility factors listed in *State v. Jones*, 271 N.W.2d 534, 537–38 (Minn. 1978), for the evidence of J.B.'s felony failure-to-register conviction. But the *Jones* factors are directed at managing the jury's perception of a *defendant's* testimony, not a nondefendant *witness's*. *See id.* We hold that the district court did not abuse its discretion by excluding evidence of J.B.'s failure-to-register conviction. The jury heard substantial evidence of J.B.'s criminal past and this evidence would have been merely cumulative with no apparent additional bearing on his credibility. The contested conviction (failure to register as a sex offender) did not arise from J.B.'s dishonesty; he had provided a valid registration address. The conviction resulted instead because he failed to include every place where he was living and did not

disclose that he was not always present at the registered address. *See generally* Minn. R. Evid. 609(a) (providing for admission of prior conviction involving dishonesty or false statement). The district court acted within its discretion by excluding evidence of the conviction.

The district court similarly did not abuse its discretion by excluding S.K.'s 1997 and 1999 convictions for issuing dishonored checks. Impeachment evidence of a conviction is not admissible "if a period of more than ten years has elapsed since the date of the conviction . . . unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect." Minn. R. Evid. 609(b). And when the specific circumstances of a crime are not shown, evidence of stale convictions is not appropriate for impeachment. *State v. Hoffman*, 549 N.W.2d 372, 376 (Minn. App. 1996), *review denied* (Minn. Aug. 6, 1996). Meeks concedes that S.K.'s convictions are outside the ten-year limitations period and that he failed to provide the district court with specific circumstances of S.K.'s crimes. The district court did not abuse its broad discretion by not allowing Meeks to impeach S.K.'s testimony with the stale convictions.

Prison-Identification Evidence

Meeks argues that the district court abused its discretion by allowing evidence that J.B. knew Meeks from prison. But the district court correctly ruled that the prison-identification evidence was relevant to a critical fact issue. Evidence of the defendant's prior crimes or bad acts is not admissible to prove that he acted in conformity with his character, but this type of evidence is admissible to prove other things, such as identity.

Minn. R. Evid. 404(b). Because Meeks defended on the ground of mistaken identity, evidence of the prior relationship was relevant to allow the state to explain why J.B.'s identification of Meeks was credible. Relevant evidence should nevertheless be excluded if its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Minn. R. Evid. 403. And evidence that includes references to the defendant having served time in prison does have a great potential for unfair prejudice. *See State v. Hjerstrom*, 287 N.W.2d 625, 628 (Minn. 1979). But the probative value of this evidence to establish identity may outweigh the potential for unfair prejudice. *See State v. Halverson*, 381 N.W.2d 40, 43–44 (Minn. App. 1986), *review denied* (Minn. Mar. 23, 1986).

The district court weighed the probative value against the potential for unfair prejudice here and came to a decision well within its discretion. The state had the right to respond to Meeks's challenge to the credibility of J.B.'s identification, and setting out the environment of the men's previous interaction was essential to the response. The district court also limited any potential undue prejudice by carefully controlling how the evidence was presented to the jury. Particularly, the jurors never learned why Meeks was in prison, and J.B. testified only that he knew Meeks because Meeks would visit his brother's cell. The district court did not abuse its discretion by allowing the evidence that J.B. knew Meeks from their overlapping time in prison.

II

Meeks argues that the district court erred by imposing sentences for first-degree aggravated robbery when the jury was mistakenly given and signed a verdict form for second-degree aggravated robbery. Meeks concedes that he did not object to the error before the district court, so we conduct a plain-error analysis to see if Meeks's substantial rights were affected. *See State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001). An error is plain if it was clear or obvious. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). A plain error affects substantial rights if it has a significant effect on the jury's verdict. *State v. Young*, 710 N.W.2d 272, 281 (Minn. 2006); *State v. Gunderson*, 812 N.W.2d 156, 162 (Minn. 2012). If all elements of the test are met, this court has discretion to correct the error if it "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Crowsbreast*, 629 N.W.2d at 437 (quotation omitted).

We are sure that relying on a verdict form indicating second-degree aggravated robbery to enter a conviction for first-degree aggravated robbery is plain error. Meeks was charged with two counts of first-degree aggravated robbery and second-degree robbery was not added as a lesser-included offense. After signing the verdict form for second-degree aggravated robbery, the jurors were polled and unanimously affirmed the guilty verdict as stated on the form. The mistake went unnoticed even at sentencing.

The plain error affected Meeks's substantial rights because, although the jury's written and oral findings indicated only that it found him guilty of second-degree aggravated robbery, the district court entered judgment of conviction for first-degree aggravated robbery and sentenced Meeks to the presumptive sentence for that more

serious offense. The state does not offer any precedent allowing the district court to enter a judgment of conviction and sentence a defendant for a greater offense than the one of which the jury expressly convicted him, or for us to overlook the error as an excusable clerical blunder. It does cite an unpublished Ohio case, which we do not discuss because its facts are materially dissimilar to these circumstances.

A defendant has the constitutional right to a jury trial, and a district court cannot rely on its reasonable assumption that the jury intended to convict the defendant of the more serious crime argued rather than the less serious crime stated in the jury's signed verdict and in its oral verification. *Cf. State v. Holbrook*, 305 Minn. 554, 557 n.1, 233 N.W.2d 892, 894–95 n.1 (1975) (noting that the jury has the "power to find a defendant guilty of a lesser offense even though the evidence is such that the defendant, if guilty at all, is guilty of the greater offense"). The only expression we have of the jury's finding is its signed verdict form and its oral statement in open court, both indicating guilt for second-degree aggravated robbery. We cannot overlook this.

We must reverse and remand for the district court to amend the judgment to reflect convictions of second-degree aggravated robbery. The current sentence cannot stand because it would constitute an upward departure from the presumptive guidelines sentence for the crimes of which Meeks was convicted, and given the unusual circumstance, the state had no reason to move the district court for an upward departure and the court had no reason to assess whether departure factors are present. In resentencing Meeks based on the amendment to the judgment of conviction, the district court is free to entertain any arguments or motions from the parties in its discretion as to

the appropriate sentence. We offer no opinion as to what that sentence should be and deem the present sentencing arguments on appeal premature.

The district court also erred by entering convictions of two counts of first-degree burglary. "[A] defendant cannot be convicted twice of the same offense (*e.g.*, burglary) based on the same act or course of conduct. Thus, normally a defendant may not be convicted of two burglaries for burglariously entering one apartment on a single occasion." *State v. Hodges*, 386 N.W.2d 709, 710 (Minn. 1986). Meeks was charged with two counts of first-degree burglary—the first count alleged that during the burglary he assaulted a person within the apartment and possessed a firearm during the commission of the crime, while the second count alleged that he used or possessed a firearm during the commission of the crime. *See* Minn. Stat. 609.582, subd. 1(b), (c) (2010). Both burglaries allege the same conduct that Meeks burglarized a single apartment. Meeks therefore cannot be convicted of two counts of first-degree burglary, and on remand the district court should vacate Meeks's conviction for the second count of first-degree burglary. It does not appear that the district court sentenced Meeks for the conviction that it should vacate, but given the need for overall resentencing for the reasons we have already stated, we need not consider this sentencing issue.

Affirmed in part, reversed in part, and remanded.