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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2141**

State of Minnesota,
Respondent,

vs.

Bremer Lee Glidden,
Appellant

**Filed September 3, 2013
Affirmed
Stauber, Judge**

Cottonwood County District Court
File No. 17CR12161

Lori Swanson, Attorney General, John B. Gallus, Assistant Attorney General, St. Paul, Minnesota; and

Nicholas A. Anderson, Cottonwood County Attorney, Windom, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Melissa Sheridan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this appeal from his conviction of one count of conspiracy to commit first-degree controlled substance crime, appellant argues that the district court abused its

discretion by admitting evidence of two of appellant's prior convictions for impeachment purposes. Because the district court did not abuse its discretion in so allowing, we affirm.

FACTS

Appellant Bremer Lee Glidden was discovered in the backseat of a car in which Francisco Mendez, the subject of an undercover drug investigation, arrived to sell drugs to an undercover special agent with the Minnesota Bureau of Criminal Apprehension. Mendez was attempting to sell the agent two ounces of methamphetamine for \$4,000. Two other people in the car with Glidden were also arrested.

The driver of the car told investigators, and testified at trial, that she was acting as the "middle person" between Glidden and Mendez, who did not know one another. Glidden asked her if she knew anyone who needed drugs and she contacted Mendez. She said that Mendez and Glidden communicated via text messages through her. The jury saw photos of the text messages. In its closing argument, the state characterized the text messages as a negotiation on price for the methamphetamine, and this is a reasonable conclusion based on the photos.

The other passenger told investigators that she was at a house in Windom with Glidden and that she saw him with methamphetamine on the morning of the day they were arrested. She did not know where the methamphetamine came from because Glidden was just released from jail the day before. She then told investigators that she and Glidden went to Mendez's house and weighed the methamphetamine in the basement and that she understood from the conversation that they were going to sell the drugs. At

trial, she testified that she did not remember seeing any drugs or scales or hearing Glidden talk about drugs because she was high on methamphetamine at the time.

Glidden was charged with conspiracy to commit a first-degree controlled substance crime (sale of 10 grams or more of methamphetamine), in violation of Minn. Stat. §§ 152.021, subd. 1(1), .096, subd. 1, and .021, subd. 3(b) (2010). On June 29, 2012, the state filed a notice of intent to impeach Glidden with two convictions from 2011, one for fifth-degree possession of a controlled substance and one for sale of a simulated controlled substance. The district court allowed the state to use Glidden's prior convictions as impeachment evidence, but restricted references to the fifth-degree controlled substance crime as just a felony, while allowing some inquiry into whether Glidden was convicted of sale of a simulated substance. At trial, Glidden testified about both prior convictions and also that he had been released from jail around 4:30 the day before his arrest. At the end of Glidden's testimony and then again in its final jury instructions, the district court gave a cautionary instruction to the jury regarding the testimony about his prior convictions.

Glidden specifically denied having anything to do with setting up the deal to sell drugs that day. He specifically denied supplying the methamphetamine for sale to the agent, as well as participating in any planning to sell methamphetamine.

The jury found Glidden guilty of one count of conspiracy to commit a first-degree controlled substance crime. The district court sentenced him to 120 months in prison. This appeal followed.

DECISION

Glidden's only challenge on appeal is that the district court committed reversible error by allowing the state to impeach him using evidence of two of his prior convictions. A district court's ruling on the impeachment of a witness by prior conviction is reviewed under a clear abuse of discretion standard. *State v. Ihnot*, 575 N.W.2d 581, 584 (Minn. 1998). Whether the probative value of the prior convictions outweighs their prejudicial effect is a matter within the discretion of the district court. *State v. Graham*, 371 N.W.2d 204, 208 (Minn. 1985). The district court's decision will not be reversed absent a clear abuse of discretion. *Id.* at 209.

I. Minn. R. Evid. 609

Minn. R. Evid. 609 governs the impeachment of a witness through evidence of his prior convictions. *See* Minn. R. Evid. 609(a) ("For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted only if the crime (1) was punishable by . . . imprisonment in excess of one year . . . and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect, or (2) involved dishonesty or false statement, regardless of the punishment."). And evidence of a conviction "is not admissible if a period of more than ten years has elapsed since the date of the conviction." Minn. R. Evid. 609(b).

II. The *Jones* factors

In *State v. Jones*, 271 N.W.2d 534 (Minn. 1978), the Minnesota Supreme Court developed a five-factor test that the district courts must apply when considering the admissibility of prior convictions for impeachment purposes. The factors are:

(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.

Jones, 271 N.W.2d at 538; *State v. Swanson*, 707 N.W.2d 645, 654 (Minn. 2006). The district court must “demonstrate on the record that it has considered and weighed the *Jones* factors.” *Id.* at 655. If the district court fails to do so, this court may conduct its own review of the factors to determine whether the district court's failure to conduct the analysis was harmless. *See id.* (conducting the five-factor analysis where the district court did not do so). Because the district court failed to analyze the *Jones* factors on the record, this court now conducts that analysis.

A. Impeachment value of the prior crime

Glidden argues that the impeachment value of his prior convictions was “essentially zero” because they did not reflect on his truthfulness. But, that “a prior conviction did not directly involve truth or falsity does not mean it has no impeachment value” because “impeachment by prior crime aids the jury by permitting it to see the ‘whole person’ of the testifying witness and therefore to better judge the truth of his testimony.” *State v. Williams*, 771 N.W.2d 514, 518 (Minn. 2009) (citations omitted).

Glidden argues that, because the jury was told that he was incarcerated until the day before his arrest for the charged crime, the state did not need to admit evidence of his prior convictions to create a picture of his “whole person” for the jury. But other than being told that Glidden was sent to the Saint Cloud Correctional Facility following a car

accident in January 2012 because there was a warrant out for his arrest, the jury had no information regarding the reason for Glidden's incarceration. It is clear from the record that the mere information that Glidden was in prison until the day before his arrest was not sufficient to paint a picture of Glidden's "whole person," but that the added evidence of two of Glidden's prior convictions did allow the jury to see his "whole person." The impeachment value of these prior convictions is sufficient such that this factor weighs in favor of admission of the evidence.

B. Date of the conviction and the defendant's subsequent history

The prior convictions both occurred within a year before Glidden was arrested and charged with conspiracy. The dates are well within the ten-year limitation in Minn. R. Evid. 609(b). This factor weighs in favor of admissibility.

C. Similarity of the past crime with the charged crime

Glidden argues that the information about the simulated controlled-substance sale conviction was "overly prejudicial" because of its similarity to the charged crime. "In general, the greater the similarity between the prior offense and the present offense, the greater the reason for not allowing use of the prior conviction for impeachment purposes." *State v. Kissner*, 541 N.W.2d 317, 324 (Minn. App. 1995) (citing *Jones*, 271 N.W.2d at 538). That the prior convictions here were for felonies related to the sale or possession of drugs, which is similar to the charge in this case, suggests that this factor weighs against admissibility.

Minnesota courts, however, have often allowed impeachment by prior conviction of similar crimes. *See e.g. Ihnot*, 575 N.W.2d at 588 (finding no abuse of discretion in

admitting a third-degree criminal-sexual-conduct conviction for impeachment in a trial for first-degree criminal sexual conduct). Here, the prejudicial effect of the evidence of the prior convictions was minimized: the facts underlying the fifth-degree controlled-substance conviction were not put into evidence so the jury would not have known that it was another drug conviction, and only minimal information was given regarding the nature of the sale of simulated controlled-substance conviction and the facts underlying that conviction were not discussed. Also, the district court gave a cautionary instruction to the jury twice: once after Glidden testified about the prior convictions and again in its final jury instructions before deliberation. “[A]ny risk that the jury would improperly use the prior-conviction evidence would have been reduced by cautionary instructions, . . . which we must presume that the jury follows.” *State v. Stone*, 767 N.W.2d 735, 743 (Minn. App. 2009), *aff’d* 784 N.W.2d 367 (Minn. 2010). This factor does not weigh against admission, and the district court’s cautionary instruction mitigated any undue prejudice stemming from the similarity of the convictions to the charged crime.

D. Importance of defendant’s testimony

Glidden’s testimony was important to his defense. Because the district court’s decision to allow the state to impeach him with evidence of his prior convictions did not prevent him from testifying, this factor does not weigh against admission of the prior convictions. *See State v. Bettin*, 295 N.W.2d 542, 546 (Minn. 1980) (explaining that “a judge might exclude even a relevant prior conviction if he determines that its admission

for impeachment purposes will cause defendant not to testify and if it is more important in the case to have the jury hear the defendant's version of the case”).

E. Centrality of the credibility issue

The parties agree that Glidden’s credibility was a central issue in his defense. When a defendant’s credibility is central to his defense, this factor weighs in favor of admitting the prior convictions. *Swanson*, 707 N.W.2d at 655. This factor weighs in favor of admitting Glidden’s prior convictions for the purposes of impeachment.

Although the district court erred in not engaging in an analysis of the *Jones* factors on the record, this court’s analysis shows that the district court did not abuse its discretion by allowing the state to impeach Glidden using evidence of his prior convictions. The district court’s error was therefore harmless.

Affirmed.