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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0541**

State of Minnesota,
Respondent,

vs.

Chandan P. Hurd,
Appellant.

**Filed June 17, 2008
Affirmed
Willis, Judge**

Hennepin County District Court
File No. 06045396

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Mike Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Mary M. McMahon, Special Assistant State Public Defender, McMahon & Associates Criminal Defense, Ltd., 670 Commerce Drive, Suite 110, Woodbury, MN 55125 (for appellant)

Considered and decided by Willis, Presiding Judge; Johnson, Judge; and Muehlberg, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

WILLIS, Judge

Following his conviction of first-degree assault and attempted second-degree murder, appellant challenges the admission of his prior conviction of forgery, which the state introduced at trial for impeachment purposes. Appellant argues that the district court's decision to admit the prior conviction without first holding an evidentiary hearing to determine its admissibility violated appellant's due-process right to a fair trial. In a pro se supplemental brief, appellant also challenges the sufficiency of the evidence supporting his conviction. We affirm.

FACTS

In June 2006, L.W. was shot several times while standing near his Minneapolis home. L.W. identified appellant Chandan P. Hurd as the shooter. The state charged Hurd with first-degree assault, in violation of Minn. Stat. § 609.221, subd. 1 (2004); and attempted second-degree murder, in violation of Minn. Stat. §§ 609.19, subd. 1(1), 609.17 (2004). Hurd pleaded not guilty to the charges. At trial, L.W. testified that he had known Hurd since 1998 and that Hurd shot him after the two had argued while driving in Hurd's car. Hurd denied shooting L.W. and testified that he was not with L.W. on the day of the shooting. The state attacked Hurd's credibility by introducing evidence that Hurd had been convicted of forgery in June 2006. The jury found Hurd guilty of both charges in November 2006. This appeal follows.

DECISION

I. The district court properly admitted evidence of Hurd's prior forgery conviction.

Hurd argues that his due-process right to a fair trial was violated when the district court allowed the state to impeach him by introducing evidence of his prior conviction of forgery without first conducting a hearing to determine the admissibility of the conviction. A district court's ruling on the impeachment of a witness by prior conviction is reviewed, as are other evidentiary rulings, under a clear-abuse-of-discretion standard. *State v. Ihnot*, 575 N.W.2d 581, 584 (Minn. 1998). But if the prior conviction is for a crime involving dishonesty or a false statement, the district court has no discretion to exclude use of the evidence for impeachment purposes under Minn. R. Evid. 609(a)(2). *State v. Head*, 561 N.W.2d 182, 186 (Minn. App. 1997).

The state initially contends that Hurd waived a hearing on the admissibility of his prior conviction. We agree. "It is a well-established principle of law that a defendant may waive the protections of evidentiary rules." *State v. Blom*, 682 N.W.2d 578, 617 (Minn. 2004). Waiver is the intentional relinquishment of a known right. *Id.* It need not be explicit, and its validity depends on the facts and circumstances of the case. *Id.* At the beginning of Hurd's trial, the district court raised the issue of impeachment by prior conviction: "And it's also my understanding that we had previously talked about an agreement – or that nobody has any objection to the prior convictions to be used by either the defense or by the State?" Hurd's attorney responded, "That's correct, sir." On this

record, we conclude that Hurd voluntarily consented to the introduction of his prior conviction and, therefore, waived a hearing on its admissibility.

But even if Hurd had not consented to the introduction of his forgery conviction, its admission was proper because, under Minn. R. Evid. 609(a)(2), the district court is not required to hold a hearing before admitting evidence of a forgery conviction for impeachment purposes. The rule provides that evidence that a witness has been convicted of a crime involving “dishonesty or false statement” is admissible for “the purpose of attacking the credibility of a witness.” Minn. R. Evid. 609(a)(2). Unlike other evidentiary rules, rule 609(a)(2) does not require a balancing of probative value and prejudicial effect: “*any* crime directly involving dishonesty or false statement is automatically admissible for impeachment purposes.” *State v. Sims*, 526 N.W.2d 201, 201 (Minn. 1994); *see also Laughnan v. State*, 404 N.W.2d 326, 330 (Minn. App. 1987) (“[C]rimes directly involving dishonesty or false statement are automatically admissible . . . without balancing probative value against prejudice.”), *review denied* (Minn. June 9, 1987).

Citing *State v. Vanhouse*, 634 N.W.2d 715 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001), Hurd argues that the district court “must make a record supporting its decision to allow a prior conviction to be used as impeachment at trial.” But *Vanhouse* involved Minn. R. Evid. 609(b), which applies only to convictions that are more than ten years old and requires the district court to balance probative value against prejudicial effect. *See id.* at 718. Because Hurd’s conviction occurred less than ten years

ago, rule 609(b) does not apply. And because rule 609(a)(2) does not require a balancing of probative value and prejudicial effect, the reasoning of *Vanhouse* is inapplicable here.

Hurd also argues that the district court was required to conduct a hearing to determine whether the crime underlying Hurd's forgery conviction "is one of dishonesty." But a "forgery conviction [is] automatically admissible under Minn. R. Evid. 609 since it [is] a conviction directly involving 'dishonesty or false statement.'" *State v. Kruse*, 302 N.W.2d 29, 31 (Minn. 1981); *see also Head*, 561 N.W.2d at 187 (stating that if "dishonesty is an element of" a crime, the crime "falls within the plain language of Minn. R. Evid. 609(a)(2)").

Because a forgery conviction is automatically admissible to impeach a witness under Minn. R. Evid. 609(a)(2), the district court did not violate Hurd's due-process rights by admitting evidence of his forgery conviction without holding a hearing.

II. The evidence is sufficient to support Hurd's conviction.

In his pro se supplemental brief, Hurd essentially challenges the sufficiency of the evidence identifying him as the shooter. In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). Hurd argues that the evidence identifying him as the shooter is insufficient because "[t]here is absolutely no physical evidence whatsoever putting me at the scene of this shooting because I wasn't [there]. [L.W.]'s testimony is the only testimony stating

that I was there so how could police, judge or jury believe that [testimony] when he could be telling a lie due to him having a grudge with me.”

“[J]udging the credibility of witnesses is the exclusive function of the jury.” *Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995). While the jury could have disregarded L.W.’s testimony if it believed he was lying, this court must assume that the jurors found L.W.’s version of events to be credible, and this court is powerless to disturb that determination. *See id.*

Affirmed.