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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0597**

State of Minnesota,  
Respondent,

vs.

Darryl Donail Walker,  
Appellant.

**Filed February 19, 2013  
Affirmed  
Chutich, Judge**

Hennepin County District Court  
File No. 27-CR-11-14762

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Chutich,  
Judge.

## UNPUBLISHED OPINION

**CHUTICH**, Judge

Appellant Darryl Donail Walker challenges his convictions of felon in possession of a firearm and fifth-degree possession of a controlled substance, contending that the district court abused its discretion in admitting evidence of four previous felony convictions. Walker further argues that the district court erroneously allowed the state to introduce evidence that he was a felon after he had already stipulated to that fact. Because we conclude that the district court did not abuse its discretion in its evidentiary rulings, we affirm.

### FACTS

In May 2011, Officer Lucas Peterson of the Minneapolis Police Department was investigating suspected drugs and illegal weapons at a house located at 400 Oliver Avenue North in Minneapolis. Officer Peterson obtained a search warrant for the house, and law enforcement executed the warrant on May 19, 2011. Shortly before executing the search, Officer Peterson performed surveillance on the house and saw Walker wearing a red polo shirt.<sup>1</sup>

Because police had information that Walker had an assault rifle, they executed the search warrant with the assistance of the Special Weapons and Tactics team. While the team entered through the back door, Officer Peterson and his partner, Officer George

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<sup>1</sup> Officer Peterson testified that he had problems identifying Walker early in the investigation, since he only knew Walker's street name. A couple days before obtaining the search warrant, Peterson was patrolling the neighborhood and saw Walker in his back yard. He pulled up and asked Walker's name, and Walker voluntarily identified himself to the officer.

Peltz, watched the front of the house to ensure that nobody inside tried to flee or discard evidence. Officer Peterson saw Walker standing in a northwest corner window of the house, wearing a red polo shirt. He then watched as Walker shoved an object out of the window. Officer Peltz noted that the person dropping the object was a black, adult male wearing a red shirt or jacket. The officers recovered the discarded object and found that it was a handgun wrapped in a blue rag, later identified as a sweat pad.

In the house, police discovered a black adult male wearing dark clothing, an adult female, and a 12- or 13-year-old boy. They also observed another “black male wearing a red polo-type shirt [and] black jeans,” later identified as Walker, in the northwest bedroom. The officers found several pieces of evidence in that bedroom, including loose ammunition that matched the caliber of the previously discarded handgun and a spent shell casing from an assault rifle. They also discovered a cigarette box containing rocks of crack cocaine. In addition, police searched the house’s detached garage and found a loaded SKS assault rifle. The spent shell casing found in the bedroom matched the rifle found in the garage.

The state charged Walker with two counts of felon in possession of a firearm, one concerning the handgun and the other the assault rifle, and one count of fifth-degree possession of a controlled substance. Before trial, the district court ruled that Walker could be impeached with evidence of four prior felony convictions: (1) second-degree assault from 2000; (2) fifth-degree controlled-substance crime from 2002; (3) illegal possession of a firearm from 2005; and (4) fifth-degree controlled-substance possession from 2010.

At trial, Walker testified in his own defense. He stated that he was wearing a black t-shirt on May 19, “and prior to me being arrested, I had switched into a red T-shirt because [the other man in the house] got assaulted and there was blood on my black T-shirt.” He claimed that the police told him to take off his black shirt and put on a red shirt before they took him to the jail. Walker admitted that the northwest corner bedroom of the house was his, but denied dropping anything out of the window. He testified that the blue sweat pad, in which the handgun was wrapped, belonged to him, but denied ownership of either the handgun or the assault rifle. Further, while stating that the cigarette pack was his, Walker denied knowledge or possession of the crack cocaine.

Walker admitted to his prior felony convictions, and the state also impeached him with a recorded statement he gave to Officer Peterson after he was arrested. In that statement, Walker told the officer that no one else in the house used sweat pads and that no one else in the house was wearing a red shirt that day. The state also introduced several recorded phone calls that Walker made from jail while awaiting trial in which he tried to persuade his girlfriend to admit ownership of the firearms. During one of the calls, Walker stated: “ain’t no other way for me to get out of it unless . . . somebody say you know what I’m saying that’s not a felon, that’s their s\*\*\*, right?”

The jury acquitted Walker of being a felon in possession of an assault rifle, but convicted him of the other felon-in-possession count for the handgun and the fifth-degree controlled-substance count. Walker now appeals.

## DECISION

### I. Admission of Past Convictions for Impeachment

Walker first contends that the district court erred in admitting evidence of his prior felony convictions to impeach him. “We will not reverse a district court’s ruling on the impeachment of a witness by prior conviction absent a clear abuse of discretion.” *State v. Hill*, 801 N.W.2d 646, 651 (Minn. 2011) (quotation omitted). Under Minn. R. Evid. 609(a), evidence of a previous conviction that does not involve dishonesty is admissible if the crime was a felony “and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect.” Walker argues that the district court abused its discretion in concluding that the probative value of his four previous felony convictions outweighed their prejudicial effect.

In exercising discretion under rule 609(a), courts consider the following so-called *Jones* factors:

(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 [the] defendant’s testimony, and (5) the centrality of the credibility issue.

*State v. Jones*, 271 N.W.2d 534, 538 (Minn. 1978). The district court here properly made findings concerning each factor on the record. *See State v. Swanson*, 707 N.W.2d 645, 654 (Minn. 2006) (“[A] district court should demonstrate on the record that it has considered and weighed the *Jones* factors.”). We address and analyze each factor in turn.

### *Impeachment Value of the Past Crimes*

Under the first *Jones* factor, any prior felony conviction that allows the fact finder to see the “whole person” to “judge better the truth of his testimony” has impeachment value. *Hill*, 801 N.W.2d at 651 (quotation omitted). As the supreme court stated, “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. . . . [T]he mere fact that a witness is a convicted felon holds impeachment value.” *Id.* at 652.

The district court found that Walker’s prior convictions had impeachment value because they “contribute to a full view of the defendant.” We agree. Any felony conviction is probative of credibility, and the jury could better assess Walker’s credibility and the weight to give his testimony knowing that he has previously been convicted of drug crimes, assault, and illegal possession of a firearm. *See id.* at 651 (“[L]ack of trustworthiness may be evinced by [the defendant’s] abiding and repeated contempt for laws which he is legally and morally bound to obey.” (quotation omitted)). Because evidence of the convictions allows the jury to see Walker’s “whole person,” the first *Jones* factor weighs in favor of admission.

### *Dates of the Prior Convictions*

Because the previous convictions fall within rule 609(b)’s 10-year time limit, Walker concedes that the second *Jones* factor weighs in favor of admission of the convictions.

### *Similarity of Past Crimes to Charged Crimes*

Under the third *Jones* factor, the greater the similarity between the charged crime and the past crime, “the greater the reason for not permitting use of the prior crime to impeach.” *Jones*, 271 N.W.2d at 538. This factor addresses the concern that, if the crimes are similar, “the likelihood is increased that the jury will use the evidence substantively rather than merely for impeachment purposes.” *State v. Bettin*, 295 N.W.2d 542, 546 (Minn. 1980). As the state notes, however, “Minnesota courts have been liberal in admitting prior convictions for impeachment even when the prior crime is the same as the crime charged.” *State v. Stanifer*, 382 N.W.2d 213, 218 (Minn. App. 1986).

While Walker’s second-degree-assault conviction is dissimilar to the charged crimes, the convictions for controlled-substance possession and felon in possession of a firearm are not only similar, they are identical to the charged crimes. The district court properly weighed this factor in favor of admission of the assault conviction, but against admission of the three similar convictions.

### *Importance of Defendant’s Testimony and Centrality of Credibility*

Courts often analyze the fourth and fifth *Jones* factors together. These factors concern the importance of the defendant’s testimony and whether credibility was a central issue in the case. “If credibility is a central issue in the case, the fourth and fifth *Jones* factors weigh in favor of admission of the prior convictions.” *Swanson*, 707 N.W.2d at 655.

In general, if the admission of past convictions will prevent the jury from hearing a defendant’s version of events, the fourth *Jones* factor weighs against admission of the

prior convictions. *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993); *see also Bettin*, 295 N.W.2d at 546. In this case, Walker denied that the firearms or drugs found in his home belonged to him. Because no other witnesses or evidence supported his version of events, it was important for the jury to hear Walker’s testimony, which ordinarily weighs against admission of the prior convictions. Nevertheless, Walker chose to testify in his own defense, making his credibility a central issue in the case.

Concerning the fifth *Jones* factor, “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, because the need for the evidence is greater.” *Bettin*, 295 N.W.2d at 546; *see also Swanson*, 707 N.W.2d at 655. Walker’s testimony about the events leading up to his arrest, particularly concerning whether he dropped the handgun out of the window, was directly opposite to the testimony of the police officers. Walker’s testimony raised credibility issues that were central to the jury’s consideration of the case, and the district court properly weighed the fourth and fifth *Jones* factors in favor of admission.

### *Conclusion*

“Because the [district] court is in a unique position” to assess and to weigh the *Jones* factors, “it must be accorded broad discretion.” *State v. Hochstein*, 623 N.W.2d 617, 625 (Minn. App. 2001). The district court thoroughly addressed and ruled on each factor, and concluded that four of the five factors weighed in favor of admission. Further, the district court gave the jury a cautionary instruction, which “adequately protects [a] defendant against the possibility that the jury would convict him on the basis of his

character rather than his guilt.” *State v. Brouillette*, 286 N.W.2d 702, 708 (Minn. 1979). The district court acted within its broad discretion in determining that the probative value of Walker’s prior convictions outweighed their prejudicial effect and allowing their admission.<sup>2</sup>

## II. Jail-Call Statement

Walker next argues that the district court erred by allowing the jury to hear the jailhouse call in which he implicitly refers to himself as a felon. He claims that admission of this evidence is prejudicial error because he stipulated before trial to his felony convictions that rendered him ineligible to possess a firearm. We review the district court’s evidentiary ruling concerning the jail calls for an abuse of discretion. *State v. Hokanson*, 821 N.W.2d 340, 350 (Minn. 2012).

To be admissible, evidence must be relevant and its probative value should substantially outweigh the danger of unfair prejudice. Minn. R. Evid. 401–403.

Concerning stipulations, the supreme court has stated:

[T]he general rule [is] that a criminal defendant’s judicial admission or offer to stipulate [does] not necessarily take away the state’s right to offer evidence on a point but that cases may arise where unduly prejudicial evidence, which is without relevance beyond the defendant’s judicial admission,

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<sup>2</sup> Even if admission of the three similar prior convictions was improper, Walker cannot show the required prejudice for several reasons. *See* Minn. R. Crim. P. 31.01 (“Any error that does not affect substantial rights must be disregarded.”). First, impeachment evidence was going to be heard by the jury because all of the *Jones* factors weighed in favor of admission of the dissimilar and serious conviction of second-degree assault. Second, even without the evidence of prior conviction, the evidence of Walker’s guilt was strong. Finally, the jury acquitted Walker of one of the felon-in-possession counts, suggesting that it did not improperly use the prior convictions as substantive evidence of his guilt. *See State v. Lee*, 322 N.W.2d 197, 199 (Minn. 1982).

should not be received. The reason for the general rule is that a defendant should not be able to unilaterally control the issue of the need for relevant evidence by offering to stipulate, particularly where the evidence sought to be excluded would bear in any way upon any other issues not covered by the stipulation.

*State v. Davidson*, 351 N.W.2d 8, 10 (Minn. 1984) (quotations and citation omitted).

Even if a defendant has stipulated to a fact, therefore, the state may still introduce evidence concerning that fact if it is also relevant to another issue in the case.

The question of whether Walker possessed the assault rifle and handgun was a key issue “not covered by the stipulation.” The jailhouse calls were thus relevant and probative because they showed that Walker tried to persuade someone else to admit to ownership of the guns. The state appears to have introduced the calls primarily to establish that Walker did, in fact, possess the firearms, and not to improperly present evidence on a fact to which Walker had already stipulated. We therefore find no clear abuse of discretion in admitting the call in which Walker referred to himself as a felon.

### **III. Pro Se Argument**

Finally, Walker argues in his pro se brief that the evidence was insufficient to convict him because he testified, contrary to the testimony of the officers, that the police told him to change from a black shirt to a red shirt after his arrest, and the black shirt was never introduced at trial. We find no merit to this argument, as it simply presents an issue of witness credibility. The jury listened to the officers’ testimony and that of Walker, and implicitly concluded that Walker was not being truthful when he claimed

that he changed shirts. Witness credibility is an issue for the jury, and we defer to the jury's credibility determinations. *State v. Scruggs*, 822 N.W.2d 631, 645 (Minn. 2012).

**Affirmed.**