STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1479

State of Minnesota,
Respondent,

vs.

Earley Romero Blevins,
Appellant.

Filed July 8, 2013
Affirmed
Chutich, Judge

Hennepin County District Court
File No. 27-CR-12-5424

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

U N P U B L I S H E D O P I N I O N

CHUTICH, Judge

Appellant Earley Romero Blevins challenges his conviction of aiding and abetting first-degree aggravated robbery, contending that (1) the evidence was insufficient to

support the conviction, (2) the district court abused its discretion in allowing the state to impeach him with evidence of seven prior convictions, and (3) the district court erred in failing to give the jury a cautionary instruction when the prior-conviction evidence was introduced. Because sufficient evidence supports the conviction, no abuse of discretion occurred in admitting the prior-conviction evidence, and the district court's error in omitting the cautionary instruction did not prejudice Blevins's substantial rights, we affirm.

FACTS

On the evening of February 21, 2012, H.K. was getting off a bus in Minneapolis when he saw two men who had harassed him in the past. Three days before, the men had pushed H.K. into traffic while he was waiting for a bus. H.K. had never spoken to the men except for some "trash talk." The men were later identified as Maurice Giles and appellant Blevins.

As H.K. got off the bus, Giles yelled, "hey, are you looking at me[?]" H.K. testified that he normally ignored such taunts, "but it happened so many times, [he] got kind of fed up and just turned around." With a retractable baton in his hand, H.K. faced the two men and began retreating into a parking lot. The men advanced and when they got close enough to touch H.K., Blevins reached around Giles and punched H.K. in the jaw.

Giles and Blevins then took turns "coming at" H.K., striking him several times in the face and torso. H.K. unsuccessfully attempted to fight the men off and they eventually knocked him to the ground. Blevins then sat on top of H.K., took H.K.'s

wallet out of his hip pocket, and handed it to Giles. Blevins and Giles argued about the wallet, which contained no money, and Giles eventually put the wallet back in H.K.'s pocket without taking anything.

Several bystanders saw the fight and called 911, and police quickly arrested Giles and Blevins. Hennepin County charged Blevins with one count of aiding and abetting first-degree aggravated robbery.

Two witnesses who observed the fight testified at trial that they saw Blevins searching H.K.'s pockets. Blevins testified in his own defense, and the district court allowed the state to impeach him with evidence of seven prior convictions. Blevins testified that he hit H.K. and that "a fight ensued." He admitted that he "went through [H.K.'s] pockets," but stated that he did not take anything and that he did not intend to rob H.K.

The jury found Blevins guilty and the district court sentenced him to 129 months in prison, the presumptive sentence for a person with Blevins's extensive criminal history. Blevins appealed.

D E C I S I O N

I. Sufficiency of the Evidence

Blevins first argues that the evidence was insufficient to convict him of first-degree aggravated robbery because he did not intend to rob H.K. Because the state need not show that Blevins intended to commit a robbery before the fight began, this argument is without merit.

In analyzing the sufficiency of the evidence, "we conduct a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict." *State v. Nissalke*, 801 N.W.2d 82, 108 (Minn. 2011) (quotation omitted). "[W]e will not disturb a guilty verdict if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that [the] defendant was proven guilty of the offense charged." *Id.* (quotation omitted).

Blevins was convicted of aggravated robbery under Minnesota Statutes section 609.245, subdivision 1 (2010), which provides that whoever "inflicts bodily harm upon another" while committing a robbery is guilty of first-degree aggravated robbery. A robbery occurs when

> [w]hoever, having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person's resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property . . . .

Minn. Stat. § 609.24 (2010). The parties do not dispute that Blevins inflicted bodily harm upon H.K. sufficient to support the aggravated charge.

Blevins argues that the evidence was insufficient to show that he "used force against [H.K.] with the *purpose* of taking any property from him" because "[t]he removal of [H.K.'s] wallet was an afterthought, and not the impetus for the encounter." Section 609.24 does not require, however, that the defendant intend to take property from the

victim before he uses or threatens force. Rather, the statute only requires the state to prove that the defendant had the "purposeful or conscious desire to bring about a criminal result" to support a robbery charge. *State v. Charlton*, 338 N.W.2d 26, 30 (Minn. 1983); *see also State v. Kvale*, 302 N.W.2d 650, 653 (Minn. 1981) (holding that the robbery statute "does not require that the use of force or threats actually precede or accompany the taking").

Viewing the evidence and testimony in the light most favorable to the verdict, the jury could reasonably conclude that Blevins took H.K.'s wallet knowing that he was not entitled to it and used force to compel H.K.'s acquiescence in the taking. Even though Blevins may not have intended to take anything from H.K. when the altercation began, and did not keep the wallet, he did reach into H.K.'s pocket and take the wallet, knowing it did not belong to him. Thus, he purposefully brought about the criminal result. *See Charlton*, 338 N.W.2d at 30. The evidence is therefore sufficient to support the aggravated-robbery conviction.

II. Prior Convictions

Blevins next argues that the district court abused its discretion in allowing the state to impeach him with evidence of seven of his 16 prior convictions. Because no abuse of discretion occurred, we affirm.

We review the district court's decision on impeachment of a defendant with prior convictions for an abuse of discretion. *State v. Hill*, 801 N.W.2d 646, 651 (Minn. 2011). Under Minnesota law, evidence of a previous conviction is admissible to impeach a defendant's credibility if the crime was a felony "and the court determines that the

probative value of admitting this evidence outweighs its prejudicial effect," or if the crime "involved dishonesty or false statement, regardless of the punishment." Minn. R. Evid. 609(a). In addition, the previous conviction must be less than 10 years old unless the court determines, "in the interests of justice," that the probative value of an older conviction outweighs its prejudicial effect. Minn. R. Evid. 609(b).

The district court admitted evidence of two crimes of dishonesty: gross misdemeanor false information to police from 1997 and misdemeanor false information to police from 2000. The district court also admitted five prior felony convictions not involving dishonesty: 2003 fourth-degree assault, 2003 sale of a simulated control substance (two convictions), 2005 theft from person, and 2008 felon in possession of a firearm.

In exercising discretion under rule 609(a), courts consider the following 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).

Lack of Findings

Blevins first argues that the district court erred in admitting the 2005 theft-from-person conviction and the 2008 felon-in-possession conviction because it did not make particularized findings on the *Jones* factors for those convictions. On-the-record findings

are a prerequisite to the admission of prior convictions. *State v. Swanson*, 707 N.W.2d 645, 655 (Minn. 2006).

The district court adequately demonstrated on the record that it considered the *Jones* factors for all of the admitted convictions. While the district court did not specifically analyze each factor for the 2005 and 2008 convictions, it referred back to its ruling on the earlier convictions on factors one, two, four, and five, which are essentially the same for all of the convictions, and discussed the third factor separately. We therefore conclude that the district court made adequate findings on the *Jones* factors for all of the prior convictions.

Impeachment Value

Under the first *Jones* factor, any prior 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 (quotations omitted). The district court correctly found that the two convictions for false information to police had impeachment value—these are clearly crimes of dishonesty that are probative of Blevins's credibility and are admissible under rule 609(a)(2). The other felony convictions also have impeachment value, as they reflect Blevins's pattern of criminal activity and "general lack of respect for the law." *Id.* at 652.

Blevins argues that the sheer quantity of the admitted convictions amounts to an abuse of discretion. We are unpersuaded by this argument because the string of convictions show Blevins's "pattern of lawlessness" and all of the convictions together are probative of his credibility. *See State v. Davis*, 735 N.W.2d 674, 680 (Minn. 2007)

("We consider recent convictions to have more probative value than older ones, and recent convictions can enhance the probative value of older convictions by placing them within a pattern of lawlessness, indicating that the relevance of the older convictions has not faded with time."). The first *Jones* factor therefore weighs in favor of admission.

Date of Convictions

The district court admitted evidence of two false-information-to-police convictions outside of the 10-year time limit. These older convictions are still admissible, however, if the district court finds that their probative value outweighs any prejudice. Minn. R. Evid. 609(b). Here, the district court properly found that these "are clearly crimes of dishonesty and would be very relevant . . . and are not outweighed by any unfair prejudice to the defendant." The other five convictions were within rule 609(b)'s 10-year time limit. The second *Jones* factor thus weighs in favor of admission.

Similarity of Past Crimes to Charged Crime

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 the jury may improperly use the evidence of the past crimes as substantive evidence of the defendant's guilt on the current charge. *State v. Bettin*, 295 N.W.2d 542, 546 (Minn. 1980).

The district court found that all of Blevins's past convictions were dissimilar to the charged crime, with the exception of the 2005 theft-from-person conviction. To erase any similarity concerns, however, the district court "sanitized" that conviction and

ordered the parties to refer to it at trial only as an unspecified felony conviction. This ruling was within the district court's discretion. *Hill*, 801 N.W.2d at 652–53 ("If a court finds that the prejudicial effect of disclosing the nature of a felony conviction outweighs its probative value, then it may still allow a party to impeach a witness with an unspecified felony conviction if the use of the unspecified conviction satisfies the balancing test of Rule 609(a)(1)."). The third *Jones* factor weighs in favor of admission of the prior convictions.

Importance of Defendant's Testimony

If the admission of prior convictions will prevent the jury from hearing a defendant's version of events, the fourth *Jones* factor generally weighs against admission. *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993); *see also Bettin*, 295 N.W.2d at 546. The district court found that Blevins's testimony was not particularly important because other witnesses testified that Blevins took H.K.'s wallet, a point he did not dispute. This finding is not clearly erroneous and the admission of the prior convictions did not ultimately prevent Blevins from testifying. Thus, the fourth *Jones* factor weighs in favor of admission.

Centrality of Credibility

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 655–56. This case did not come down to Blevins's word versus that of another witness. Rather,

Blevins did not dispute that he took H.K.'s wallet out of his pocket. This factor therefore weighs against admission of the prior convictions.

Considering all of the *Jones* factors, we conclude that the district court did not abuse its discretion in determining that the probative value of Blevins's seven prior convictions outweighed their prejudicial effect. The district court did not err in allowing the state to impeach Blevins with evidence of those convictions.

III. Cautionary Instruction

Finally, Blevins contends that the district court erred by failing to give the jury a cautionary instruction when the prior convictions were admitted. Blevins did not object to the failure to give the instruction at trial, and we therefore apply plain-error review. *State v. Irby*, 820 N.W.2d 30, 38 (Minn. App. 2012), *review granted on other grounds* (Minn. Nov. 20, 2012). "Under plain error analysis, we must determine whether there was error, that was plain, and that affected the defendant's substantial rights." *State v. Kuhlmann*, 806 N.W.2d 844, 852 (Minn. 2011).

This court recently held that the failure to sua sponte provide a cautionary instruction when admitting prior-conviction evidence is plain error, but "does not prejudice a defendant's substantial rights if the district court provides a limiting instruction . . . to the jury at the end of the trial and the state makes little use of the evidence." *Irby*, 820 N.W.2d at 38 (alteration in original) (quotation omitted).

Thus, the district court plainly erred in not giving the instruction sua sponte when Blevins testified about his prior convictions. This error did not, however, prejudice Blevins because the district court gave a limiting instruction at the end of trial. Further,

the record reflects that the state did not heavily emphasize Blevins's prior convictions. In closing argument, the prosecutor even reminded the jury that they were to defer to the district court's instructions on the proper use of the prior-conviction evidence for impeachment purposes only. The district court's error in omitting a cautionary instruction during trial did not affect Blevins's substantial rights.

Affirmed.