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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1562**

State of Minnesota,
Respondent,

vs.

Marcus Linton Chappell,
Appellant.

**Filed August 26, 2013
Affirmed
Smith, Judge**

Stearns County District Court
File No. 73-CR-11-10818

Lori Swanson, Minnesota Attorney General, Karen B. Andrews, Assistant Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

David Merchant, Chief Appellate Public Defender, David Axelson, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

SMITH, Judge

We affirm appellant's conviction of aiding and abetting first-degree aggravated robbery because the district court did not abuse its discretion by admitting evidence of two of appellant's prior felony convictions.

FACTS

Y.A.I. left his apartment on the evening of November 28, 2011, at approximately 10:00 p.m. to report to work. As he was walking, he was confronted by two men, one of whom Y.A.I. claimed was appellant Marcus Chappell. Y.A.I. was able to identify Chappell because Y.A.I. and Chappell had spent time together socially, they were former neighbors, and from Chappell's distinctive facial tattoos. Chappell approached Y.A.I. and questioned him about his postings on Chappell's ex-girlfriend's social media webpage. Y.A.I. responded by feigning ignorance. Chappell then attempted to strike Y.A.I., and Chappell's companion chased Y.A.I. with a stun device. Y.A.I., seeking to avoid the physical altercation, ran from the men and yelled, in an effort to gain aid from any passerby. The scuffle continued, with Y.A.I. running in circles screaming, the two men chasing him, striking him, and pulling him to the ground. Each time Y.A.I. was pulled to the ground, he was able to escape, until a third man, whom Y.A.I. did not recognize, approached and held Y.A.I. down. The three men proceeded to attack Y.A.I. through a series of kicks, punches, and continued application of the stun device. The men eventually removed Y.A.I.'s shirt and coat, and rifled through his pockets. After

additional beating, the men left, taking Y.A.I.'s sweatshirt, coat, cigarettes, wallet, and two cellular telephones.

Y.A.I. reported the incident to law enforcement authorities, who arrested Chappell. Chappell was subsequently charged with one count of aiding and abetting first-degree aggravated robbery. Minn. Stat. § 609.245, subd. 1, .05, subd. 1 (2010). He denied involvement in the robbery, claiming instead to have been at home with his children during the incident.

Chappell testified at his jury trial and, in accordance with pre-trial rulings, was impeached with two of his prior felony convictions. To support his alibi, Chappell offered the testimony of two witnesses. One testified that on November 28, 2011, at 6:00 p.m., she dropped Chappell off at a friend's residence for him to assist with babysitting. She said that she picked him up from the same location the next morning. Another witness testified that she arrived at the residence to assist Chappell with babysitting at 9:45 p.m. and that he was present when she arrived. There was no motor vehicle at the residence.

The jury found Chappell guilty and he was subsequently sentenced.

D E C I S I O N

Chappell asserts that the district court abused its discretion by admitting impeachment evidence at trial. Specifically, Chappell challenges a pre-trial ruling, in which the district court held that the state could impeach Chappell with two of his prior convictions: a felony domestic assault and felony theft. However, in an effort to prevent any unfair prejudice that could result from mention of the past convictions, the district

court permitted the state to reference only that Chappell had been convicted of two felonies, and did not permit reference to what particular offenses led to those convictions.

Evidence of a previous conviction is admissible if the crime was a felony punishable by “imprisonment in excess of one year” and the district court determines “that the probative value of admitting this evidence outweighs its prejudicial effect.” Minn. R. Evid. 609(a)(1). In exercising its discretion under rule 609(a), a district court considers five factors, known as the *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). We will not reverse a district court’s decision on the impeachment of a witness by prior conviction unless the ruling constitutes a clear abuse of discretion. *State v. Hill*, 801 N.W.2d 646, 651 (Minn. 2011).

When analyzing whether to permit the state to impeach Chappell with his felony convictions, the district court properly weighed the *Jones* factors for the respective convictions in a memorandum, and concluded that some of the factors favored admission. See *State v. Swanson*, 707 N.W.2d 645, 654 (Minn. 2006) (noting that “a district court should demonstrate on the record that it has considered and weighed the *Jones* factors”). The district court concluded that both convictions were admissible but only if discussed generally as convictions. We now consider each *Jones* factor to determine if the district court abused its discretion by admitting evidence of the convictions.

Impeachment value

The district court found that the impeachment value of the convictions weighed in favor of admission because, although the offenses did not directly involve dishonesty, they permitted the jurors to see the “whole person.” The Minnesota Supreme Court has held that “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.” *Hill*, 801 N.W.2d at 652. “In other words, *any* felony conviction is probative of a witness’s credibility, and the mere fact that a witness is a convicted felon holds impeachment value.” *Id.*

The purpose of admitting evidence of prior convictions for impeachment purposes is to permit the fact-finder to see “the whole person” in order to “judge better the truth of his testimony.” *State v. Brouillette*, 286 N.W.2d 702, 707 (Minn. 1979) (quotations omitted). A defendant’s lack of trustworthiness may be demonstrated by “abiding and repeated contempt for laws which he is legally and morally bound to obey.” *Id.* Admitting evidence of Chappell’s two convictions better informed the jury of Chappell as a whole person by demonstrating the severity of his prior conduct and instances of his disregard for the laws of society.

Chappell argues that commentators and courts in foreign jurisdictions have criticized the whole-person rationale, noting that jurors tend to misuse prior convictions as propensity evidence. Nevertheless, admission of prior convictions for impeachment purposes under the whole-person rationale remains within the district court’s discretion. *See Swanson*, 707 N.W.2d at 655 (assigning impeachment value to prior convictions under whole-person rationale). It is not the role of this court to review decisions of the

supreme court. *State v. Ward*, 580 N.W.2d 67, 74 (Minn. App. 1998). The district court did not err by finding that, under the whole-person rationale, Chappell's prior convictions had impeachment value. The first factor favors admission.

Dates of convictions and prior history

Chappell received the two felony convictions at issue in 2011. Convictions occurring within ten years of trial are presumptively not stale. *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993). Therefore, this factor favors admission. See *State v. Williams*, 757 N.W.2d 504, 509 (Minn. App. 2008) (stating that, because the convictions occurred within the past ten years, the second *Jones* factor "weigh[ed] in favor of admission"), *aff'd*, 771 N.W.2d 514 (Minn. 2009).

Similarity of the past offenses to the charged offense

Chappell was charged with aiding and abetting first-degree aggravated robbery, which he had not been convicted of previously. The district court determined that this factor weighed against admission of Chappell's two felony offenses because both convictions were "somewhat similar to the charged offense." The district court noted that domestic assault and the charged offense are both assaultive in nature. When comparing the theft conviction and the charged offense, the district court said the convictions are somewhat similar because both involve taking property that is not one's own. Notably, the dissimilarities between the prior offenses and the charged offense minimized the potential unfairly prejudicial effect of admitting the prior convictions, but the district court did not abuse its discretion by determining that this factor weighed against admission.

Importance and credibility of defendant's testimony

Courts frequently consider the fourth and fifth *Jones* factors together. See, e.g., *Gassler*, 505 N.W.2d at 67. “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.

The district court noted that Chappell’s testimony would be important if he chose to testify and that credibility would be at issue. The district concluded that the importance of the testimony weighed against admission of the convictions, but the centrality of credibility weighed in favor of admission.

The district court’s conclusion regarding the fifth factor (credibility) was not an abuse of discretion. This is especially so because, as Chappell’s brief notes, there was inconsistent and disputed testimony among the trial witnesses, and conflicting events described by Y.A.I. and Chappell.

However, the district court’s determination that the fourth factor weighed against admission was error in light of the supreme court’s directive that “[i]f credibility is a central issue in the case, the fourth and fifth *Jones* factors weigh in favor of admission of the prior convictions.” *Id.* The district court here found credibility to be a central issue, but concluded that only the fifth factor weighed in favor of admission. However, to the extent that the district court erred in weighing this factor, the result was harmless because weighing the fourth factor in the manner described by the supreme court would have led to the same conclusion that the district court eventually reached. *State v. Lund*, 474 N.W.2d 169, 172 (Minn. App. 1991) (holding that a district court’s error regarding

admission of a conviction for impeachment is harmless if the conviction could have been admitted after proper application of the *Jones*-factor analysis). Therefore, both the fourth and fifth factors weigh in favor of admission.

The district court did not abuse its discretion when, after carefully weighing the *Jones* factors, it admitted evidence of Chappell's two prior felony convictions for impeachment purposes under Minn. R. Evid. 609(a)(1).

Affirmed.