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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1047**

State of Minnesota,
Respondent,

vs.

Derrell Ja Cori Cole,
Appellant.

**Filed April 3, 2017
Affirmed
Rodenberg, Judge**

Hennepin County District Court
File No. 27-CR-15-28032

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

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

Cathryn Middlebrook Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Derrell Ja Cori Cole challenges his conviction of aiding and abetting first-degree aggravated robbery. He argues that the district court abused its discretion when it

ruled that two unspecified felony convictions could be used to impeach his testimony. Appellant raises additional pro se arguments. We affirm.

FACTS

On July 3, 2015, appellant drove two accomplices to a residential neighborhood as part of a plan rob D.M. Appellant, who had met D.M. that morning, had told D.M. that he wished to purchase designer belts from him. When appellant arrived, his accomplice, D.B., got out of the car and pointed a gun at D.M., who was near his car. Another accomplice, R.H., got out of the car to collect D.M.'s property. Upon seeing D.M. on the ground being robbed, D.M.'s girlfriend confronted the two accomplices, whom she recognized from Facebook, and called out their names. After being confronted, D.B. fired multiple shots, striking D.M.'s girlfriend in the foot. Appellant drove the two accomplices from the scene.

Appellant was arrested and charged with aiding and abetting first-degree aggravated robbery. Appellant notified the district court and counsel that he intended to present an alibi defense, and that he may call three alibi witnesses. Before trial, the state moved to admit appellant's prior convictions, as unspecified felony convictions, if appellant testified. Appellant had been convicted of two counts of first-degree aggravated robbery in 2013 and of terroristic threats in 2014. The district court analyzed the admissibility of the convictions under the *Jones* factors and ruled that the state could admit two of the convictions, without identifying the aggravated robbery convictions by name, to impeach appellant's testimony.

At trial, D.M. and his girlfriend testified about the robbery, and D.B. testified against appellant as part of a plea agreement with the state. D.B. testified that it was appellant's

idea to rob D.M., that appellant supplied the guns, and that appellant drove the vehicle. Appellant did not testify and rested without calling any witnesses. The jury returned a guilty verdict.

This appeal followed.

D E C I S I O N

I.

Appellant argues that he is entitled to a new trial because he was unable to present his alibi defense because of the district court's ruling that he could be impeached with two prior convictions.

The state may impeach a defendant with evidence of a prior felony conviction if no more than ten years have elapsed since the date of conviction (or since he was released from confinement for that conviction), and if the district court determines that the probative value of admitting the evidence outweighs its prejudicial effect. Minn. R. Evid. 609(a)(1), (b); *State v. Zornes*, 831 N.W.2d 609, 626-27 (Minn. 2013). We review a district court's ruling on the admissibility of prior convictions under a clear abuse of discretion standard. *State v. Hill*, 801 N.W.2d 646, 651 (Minn. 2011).

Five factors guide the exercise of a district court's discretion in determining whether the balancing test of rule 609(a) is met:

'(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 . . . , (4) the importance of the defendant's testimony, and (5) the centrality of the credibility issue.'

Id. at 653 (alteration in original) (quoting *State v. Jones*, 271 N.W.2d 534, 538 (Minn. 1978)).

Appellant challenges the district court’s analysis of the *Jones* factors, specifically concerning factors three and four, and the district court’s conclusion that the probative value of admitting the convictions outweighed the prejudicial effect. He argues that the district court’s erroneous ruling hindered his ability to present a defense.

Impeachment value

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.* We agree with the district court’s conclusion that this factor weighs in favor of admission of appellant’s prior convictions.

Date of prior conviction

Convictions occurring within ten years of trial are presumptively not stale. *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993); *see also 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). Appellant’s three prior felony convictions occurred within the last ten years. We agree with the district court’s conclusion that this factor weighs in favor of admission.

Similarity of prior conviction with charged crime

“The more similar the alleged offense and the crime underlying a past conviction, the more likely it is that the conviction is more prejudicial than probative.” *State v. Swanson*, 707 N.W.2d 645, 655 (Minn. 2006). “The danger when the past crime is similar to the charged crime is that 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).

The district court found that this factor weighed against admissibility with regard to the two robbery convictions, but that the prejudicial effect would be mitigated by not specifying the nature of the crimes. It concluded that, if the convictions were unspecified, the third factor would weigh in favor of admission. Appellant argues that this factor weighed in favor of excluding the convictions, and that the district court erred when it considered the conviction as unspecified before first determining whether the convictions passed the *Jones*-factor analysis.

In *State v. Hill*, the Minnesota Supreme Court discussed the admissibility of unspecified felonies under rule 609(a)(1): “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).” 801 N.W.2d at 652-53. The application of the *Jones* factors aids a district court’s consideration of the probative value and prejudicial effect of admitting the convictions, a required consideration under rule 609(a)(1). Whether to admit an unspecified felony, because specifying the nature of

the conviction would be overly prejudicial, is within the district court's discretion and part of its rule 609(a)(1) and *Jones* analysis. The district court did not abuse its discretion in implicitly concluding that the admission of the nature of the robbery convictions would be too prejudicial to appellant, but that the balancing test of rule 609(a)(1) would be satisfied if the convictions were admitted without specifying their nature.

Importance of appellant's testimony and credibility (fourth and fifth factors)

The district court found that, because appellant had other witnesses through whom he could present his alibi defense, the importance of appellant's testimony in that regard was not significant, and therefore the fourth factor favored admission of the convictions. The district court found that the fifth factor, the centrality of the credibility issues, was a neutral factor.

"A defendant has a constitutional right to present his version of events to a jury." *Zornes*, 831 N.W.2d at 628. The district court may exclude evidence of a prior felony conviction if admission of such evidence would "cause [the] defendant not to testify and if it is more important in the case to have the jury hear the defendant's version" of what happened. *Bettin*, 295 N.W.2d at 546.

Appellant argues that the district court's ruling concerning the admissibility of his prior convictions hindered his ability to present his alibi. However, at the time the district court considered this factor, appellant had given notice of an intention to call three witnesses supporting his alibi defense. Moreover, appellant's accomplice ultimately testified that appellant was present at the scene of the robbery. Appellant's subsequent testimony in his defense that he was not present at the scene of the robbery would have had

mixed persuasive value, and would put appellant's credibility at issue. *See Zornes*, 831 N.W.2d at 628 (noting that if the defendant had testified that he was with someone else at the time of the crime, when that alibi witness testified to the contrary, the defendant's testimony would have "mixed persuasive value").

When a criminal defendant intends to present an alibi defense for which his testimony is the only evidence, credibility is a central issue.¹ *Swanson*, 707 N.W.2d at 655-56. If appellant had testified that he was not present at the scene of the robbery, while three other witnesses testified that he had been present, appellant's version of the facts and his credibility would have been important issues to be decided by the jury. "If credibility is a central issue in the case, the fourth and fifth *Jones* factors weigh in favor of admission of the prior convictions." *Id.* at 655. We agree with the district court's analysis of the fourth and fifth factors.

After considering the *Jones* factors and weighing the probative value of the unspecified convictions against their prejudicial effect, the district court acted within its discretion in concluding that the probative value predominated. The district court acted within its discretion to carefully limit the impeachment evidence so as to avoid unfair prejudice to appellant, requiring that they be identified only as unspecified felonies.

¹ Appellant did not testify at trial and called no other witnesses. At the time the district court ruled on the admissibility of appellant's prior felony convictions, appellant was intending to testify. After the district court ruled that the unspecified convictions would be admissible, appellant opted not to testify.

II.

In his pro se brief, appellant additionally asserts that his speedy-trial rights were violated and that the prosecutor should not have been permitted to prepare witnesses in advance of trial. Appellant does not provide argument or citation to legal authority to support his claims, and we therefore decline to consider them unless “prejudicial error is obvious on mere inspection.” *State v. Taylor*, 869 N.W.2d 1, 22 (Minn. 2015) (quotation omitted); *State v. Krosch*, 642 N.W.2d 713, 719-20 (Minn. 2002). We have examined appellant’s pro se assertions and do not find, on mere inspection, prejudicial error caused by either trial delay, or in the state’s preparation of its witnesses.

Affirmed.