

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1327**

State of Minnesota,
Respondent,

vs.

DeQuan Ramel Bares-Stewart,
Appellant.

**Filed June 5, 2017
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-16-2932

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

Michael O. Freeman, Hennepin County Attorney, Cheri A. Townsend, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant DeQuan Ramel Bares-Stewart appeals his conviction of unlawful possession of a firearm. Bares-Stewart argues that the district court abused its discretion

(1) by allowing the state to impeach him with two “sanitized”¹ felony convictions and (2) by sanitizing the second-degree-murder conviction used to impeach a prosecution witness. Because we conclude that the district court did not abuse its discretion in permitting impeachment of either Bares-Stewart or the prosecution witness with sanitized convictions, we affirm.

FACTS

On the morning of January 28, 2016, police executed a search warrant at Bares-Stewart’s residence, where he lived with his roommate, K.A. Police found Bares-Stewart lying in bed in the southeast bedroom. In the same bedroom, on top of a dresser, police found a lockbox containing a firearm and ammunition. On the same dresser, police found receipts bearing Bares-Stewart’s name and a wallet containing Bares-Stewart’s Minnesota ID. When police found the key to the lockbox, Bares-Stewart became noticeably nervous. He made remarks such as “back to jail I go” and “I’m just hoping for anything less than five.” Bares-Stewart was charged with unlawful possession of a firearm.²

A jury trial took place. The state moved to impeach Bares-Stewart with two felony assault convictions if he decided to testify. Bares-Stewart objected, arguing that the admission of the prior convictions would be “clearly prejudicial.” The district court

¹ A district court “sanitizes” a felony conviction when it permits a party to impeach a witness with a prior felony conviction pursuant to Minn. R. Evid. 609 but does not allow the impeaching party to offer evidence about the details or nature of the conviction. See *State v. Hill*, 801 N.W.2d 646, 650 n.1 (Minn. 2011).

² Bares-Stewart was also initially charged with fifth-degree possession of a controlled substance, but that charge was dismissed by the state.

allowed the state to impeach Bares-Stewart with the felony convictions but prohibited the state from referencing “the nature of the convictions.” Bares-Stewart did not testify.

The state called as witnesses K.A. and the police officers who executed the search warrant. Bares-Stewart moved to impeach K.A. with a 1999 second-degree-murder conviction. The state objected, arguing that the conviction was old, did not bear on his truthfulness, and would be “very prejudicial.” The district court decided that Bares-Stewart could impeach K.A. with the felony conviction but could not reveal the nature of the conviction.

The jury found Bares-Stewart guilty of unlawful possession of a firearm.

Bares-Stewart appeals.

D E C I S I O N

Prior convictions are admissible for impeaching a witness if the crime is a felony and the district court determines that its probative value outweighs its prejudicial effect. Minn. R. Evid. 609(a)(1).³ A district court must make a record of its analysis of whether the probative value of the prior conviction outweighs its prejudicial effect. *State v. Swanson*, 707 N.W.2d 645, 655 (Minn. 2006). We review a district court’s decision to allow impeachment with a prior conviction for an abuse of discretion. *State v. Hochstein*, 623 N.W.2d 617, 624 (Minn. App. 2001). And we will not reverse a conviction because of an evidentiary error unless “the error substantially influences the jury to convict.” *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981).

³ Crimes involving dishonesty are likewise admissible for impeachment purposes, Minn. R. Evid. 609(a)(2), but that provision is not relevant here.

I. The district court did not abuse its discretion by permitting the state to impeach Bares-Stewart with two sanitized felony convictions.

Bares-Stewart argues that the district court abused its discretion by allowing the state to impeach Bares-Stewart with two sanitized felony convictions because the district court improperly applied the *Jones* factors.

When the state seeks to impeach a defendant with a prior conviction, the district court must weigh the five factors outlined in *State v. Jones* to determine whether the probative value of the prior conviction outweighs its prejudicial effect:

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

271 N.W.2d 534, 538 (Minn. 1978).⁴ “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).” *State v. Hill*, 801 N.W.2d 646, 653 (Minn. 2011). In deciding whether to sanitize a felony conviction, the district court assesses (1) whether the prejudicial effect of disclosing the nature of a felony conviction outweighs its probative value, and then (2) whether the prejudicial effect of

⁴ *Jones* was decided before the adoption of Minn. R. Evid. 609(a) but has been reaffirmed as the appropriate balancing test when the state seeks to impeach a defendant with a prior conviction. *State v. Zornes*, 831 N.W.2d 609, 626-27 (Minn. 2013) (applying *Jones*).

allowing impeachment with the unspecified conviction outweighs its probative value. *Id.* at 652-53. The decision to sanitize a prior conviction is left to the district court. *Id.* at 652.

In this case, the district court determined that introducing the nature of Bares-Stewart's assault convictions would have some prejudicial effect and therefore barred the state from referencing "the nature of the convictions." *See id.* at 652-53. The district court then applied the *Jones* factors and concluded that it would not be prejudicial to allow the state to impeach Bares-Stewart with sanitized felony convictions:

First, there is impeachment value in the jury seeing the whole person and knowing one way or the other that the convictions exist or don't exist. In this case that they do.

Second, the date of the convictions and the defendant's subsequent history weighs in favor of them being admitted because they are within the ten-year period of time.

Third, the similarity of the past crimes with the charged crime is a factor that really has no bearing because I have eliminated any description other than the felony description and so that will also weigh in favor [of] them being admitted.

Lastly, factors four and five, the importance of the defendant's testimony and the centrality of the credibility issue, I can and do consider those together under the case law and I do see that if the defendant takes the stand his credibility will be very important and will be central to the jury deciding one way or the other whether he possessed or didn't possess the firearm or ammunition, and so I find those factors also weigh in favor, should the defendant testify.

The district court properly applied the *Jones* factors and followed the guidance of *Hill* in allowing the state to impeach Bares-Stewart with sanitized felony convictions. *See Jones*, 271 N.W.2d at 538; *see also Hill*, 801 N.W.2d at 652-53.

Bares-Stewart argues that the district court was required to weigh the five *Jones* factors before deciding whether to sanitize the convictions. According to Bares-Stewart, if the district court had applied the *Jones* factors before sanitizing his felony conviction, the district court should not have allowed the state to impeach Bares-Stewart with the sanitized felony convictions because the assault convictions have little impeachment value and are too similar to the firearm offense. *See Jones*, 271 N.W.2d at 538 (describing the first and third *Jones* factors).

Bares-Stewart's argument is unpersuasive. First, Bares-Stewart's suggestion that a district court can sanitize a prior conviction only if it first finds that the prior conviction would be admissible if left unsanitized is antithetical to *Hill*. *Hill* provides district courts an alternative way to allow parties to impeach witnesses with prior convictions when the district court finds that "the prejudicial effect of disclosing the nature of a felony conviction outweighs its probative value." *Hill*, 801 N.W.2d at 652-53. Sanitization is a tool for the district court to cure the prejudice that knowledge of the nature of the conviction presents. Under Bares-Stewart's argument, a district court could never sanitize a prior conviction unless it first found that the unsanitized felony conviction was admissible.

Second, Bares-Stewart's position is inconsistent with the rationale underlying the first *Jones* factor. The Minnesota Supreme Court has stated that "it is the general lack of respect for the law, rather than the specific nature of the conviction, that informs the factfinder about a witness's credibility" and that "*any* felony conviction is probative of a witness's credibility." *Id.* at 652. Bares-Stewart's assault convictions therefore have impeachment value.

Finally, the third *Jones* factor is irrelevant with respect to a sanitized felony conviction because there can be no prejudicial effect resulting from “the similarity of the past crime with the charged crime” if the jury does not know the nature of the past crime. *See Jones*, 271 N.W.2d at 538. In any event, a district court does not abuse its discretion in allowing impeachment by a past crime if only the third *Jones* factor weighs against admission of the prior conviction. *See State v. Irby*, 820 N.W.2d 30, 37-38 (Minn. App. 2012), *aff’d on other grounds*, 848 N.W.2d 515 (Minn. 2014). The district court here concluded that the four other *Jones* factors weighed in favor of allowing the state to impeach Bares-Stewart with sanitized felony convictions.

We therefore conclude that the district court did not err in allowing the state to impeach Bares-Stewart with two sanitized felony convictions. *Hill*, 801 N.W.2d at 652-53.

II. The district court did not abuse its discretion by sanitizing K.A.’s felony conviction.

Bares-Stewart argues that the district court should not have sanitized K.A.’s second-degree-murder conviction because (1) *Hill* does not apply to prosecution witnesses and (2) the district court improperly weighed the probative value versus the prejudicial effect of allowing Bares-Stewart to introduce the nature of the conviction.

First, Bares-Stewart argues that *Hill* does not permit a district court to sanitize a prosecution witness’s felony convictions because *Hill* addresses only a defendant’s convictions. It is true that *Hill* concerns impeachment of a defendant and not a prosecution witness. *Hill*, 801 N.W.2d at 648. But *Hill* does not preclude sanitization of a prosecution

witness's prior conviction. *Id.* Sanitization of a prosecution witness's prior conviction affords the defendant the opportunity to impeach the witness while remedying concerns that the prior conviction may embarrass the witness, confuse the jury, or unnecessarily prolong the trial. *See State v. Lanz-Terry*, 535 N.W.2d 635, 639-40 (Minn. 1995) (describing these concerns). Just as a district court does not abuse its discretion by sanitizing a defendant's prior conviction, see *Hill*, 801 N.W.2d at 684, we conclude that a district court does not abuse its discretion by sanitizing the felony conviction of a prosecution witness.

Next, Bares-Stewart argues that the district court abused its discretion by concluding that the prejudicial effect of allowing evidence about the nature of the offense outweighed its probative value. *See* Minn. R. Evid. 609(a)(1). We disagree. When a court fails to weigh the probative value versus the prejudicial effect on the record, appellate courts apply the relevant factors to determine whether the prior conviction would be admissible for impeachment purposes. *See Swanson*, 707 N.W.2d at 655 (applying the *Jones* factors to assess the impeachment value of the defendant's prior conviction when the district court did not). As noted above, the Minnesota Supreme Court described factors relevant to allowing impeachment of a prosecution witness in *Lanz-Terry*, 535 N.W.2d at 639-40.

Under *Lanz-Terry*, the district court should consider whether introducing the prior conviction could confuse and mislead the jury. *Id.* Bares-Stewart's brief on appeal suggests that "the court's impeachment ruling limited Appellant's ability to fully cast doubt on [K.A.'s] testimony that he knew nothing about a gun or ammunition in the house." Bares-Stewart's argument suggests that revealing the second-degree-murder conviction

could have led the jury to believe that K.A. *did* know about the gun or ammunition. In effect, Bares-Stewart argues that the nature of the conviction could have suggested that K.A. was an alternative possessor of the firearm. Minn. R. Evid. 609(a)(1) is appropriate for impeachment only—not substantive evidence. Revealing that K.A. had been convicted of second-degree murder may have “confused and misled” the jury. *See Lanz-Terry*, 535 N.W.2d 639-40. The district court’s decision to sanitize K.A.’s prior conviction afforded Bares-Stewart the opportunity to impeach K.A. while remedying the concerns expressed in *Lanz-Terry*. The district court thus did not abuse its discretion in concluding that sanitizing K.A.’s second-degree-murder conviction was necessary to prevent prejudice.

In any event, a reviewing court will not reverse a conviction based on an evidentiary error unless “the error substantially influences the jury to convict.” *Loebach*, 310 N.W.2d at 64. In conducting this analysis, the reviewing court examines whether the jury’s verdict is “surely unattributable” to the district court’s error. *State v. King*, 622 N.W.2d 800, 811 (Minn. 2001).

Substantial evidence shows that the jury’s verdict is “surely unattributable” to whether the jury found K.A. credible. *Id.* K.A. testified that he lived with Bares-Stewart and that the southeast bedroom belonged to Bares-Stewart. K.A. also testified that nothing in the southeast bedroom was his and that he had never seen Bares-Stewart with a gun. The state referenced K.A.’s testimony in closing arguments to demonstrate that Bares-Stewart occupied the southeast bedroom. But other evidence supported the conviction and established that Bares-Stewart resided at the searched address in the southeast bedroom. The state introduced documents that listed Bares-Stewart’s name and residential address.

When the police entered Bares-Stewart's residence, they found Bares-Stewart lying in bed in the southeast bedroom. The lockbox with the firearm and the key to the lockbox were found on a dresser in the southeast bedroom. On the same dresser, police found receipts bearing Bares-Stewart's name and Bares-Stewart's wallet containing his Minnesota ID. An investigating officer also testified that Bares-Stewart became nervous once the lockbox was found and that Bares-Stewart made incriminating comments, such as "back to jail I go." The verdict thus is "surely unattributable" to the district court's decision to sanitize K.A.'s felony conviction. *Id.*

Moreover, Bares-Stewart was still afforded the opportunity to impeach K.A. It is K.A.'s general lack of respect for the law that gives the second-degree-murder conviction impeachment value, not the nature of the conviction. *Hill*, 801 N.W.2d at 652. The district court's decision preserved Bares-Stewart's right to impeach K.A. with the prior conviction and provided the jury with the opportunity to see K.A.'s "whole person" and assess his credibility. *Id.* at 651 (quotation omitted).

Because the district court did not abuse its discretion by allowing the state to impeach Bares-Stewart with two sanitized felony convictions, or by sanitizing K.A.'s second-degree-murder conviction, we affirm.

Affirmed.