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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1270**

State of Minnesota,
Respondent,

vs.

William Lee Carter,
Appellant.

**Filed July 9, 2018
Affirmed
Reilly, Judge**

Washington County District Court
File No. 82-CR-16-1498

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

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Renée Bergeron, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Reilly, Judge; and Stauber, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

REILLY, Judge

On appeal from his third-degree assault conviction, appellant William Lee Carter argues that the district court (1) erred in denying appellant's request for a self-defense instruction, (2) committed prejudicial error by permitting the state to impeach appellant with his prior felony convictions, and (3) denied his constitutional right to a speedy trial. We affirm.

FACTS

In January 2016, appellant was housed as an inmate in a segregated living unit at the Oak Park Heights correctional facility. That morning, appellant entered a communal "day space" area and approached J.B., another inmate in the unit. After a brief discussion, appellant advanced upon J.B. with his fists in the air. J.B. took several steps backwards until his back was against the wall. Appellant and J.B. threw punches at each other and appellant pushed J.B. against the wall, picked him up, and slammed J.B., headfirst, to the cement floor. J.B.'s body went limp and he lost consciousness. Appellant then got on top of J.B. and delivered 25 closed-fist punches to J.B.'s head while he was unconscious.

Appellant stopped hitting J.B. when J.B. began seizing and convulsing on the floor. Prison officials transported J.B. to the hospital, where medical personnel performed emergency surgery. J.B. had "quite a few fractures of the bones on the side of his face," including "pretty much everything outside of the skull including the bones around the eye, his cheek bone, and the bones connected to the skull." Appellant was moved to another

unit for detention. Appellant told a corrections officer that he realized he “over did things,” and believed he “blackened out” during the assault.

The state charged appellant with third-degree assault, substantial bodily harm, a felony. The case was tried to a jury in May 2017. Appellant represented himself, with advisory counsel. Appellant testified in his own defense and stated that while he remembered speaking to J.B. the morning of the assault, he “[didn’t] remember anything after that,” including the fight. The jury found appellant guilty. The district court imposed a 13-month prison sentence, consecutive to the time appellant was serving at the time of the offense. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by denying appellant’s request for a self-defense jury instruction.

Appellant claims that the district court erred by declining to instruct the jury on the defense of self-defense. A defendant has the right to present a complete defense. *State v. Profit*, 591 N.W.2d 451, 463 (Minn. 1999). While a defendant may assert his theory of the case at trial, a district court “has discretion not to instruct the jury on the theory” if no evidence supports the theory. *State v. Vazquez*, 644 N.W.2d 97, 99 (Minn. App. 2002). To merit a new trial, a defendant must show that he was entitled to the jury instruction and that the district court’s failure to give the instruction was not harmless. *State v. Pendleton*, 567 N.W.2d 265, 270 (Minn. 1997). “If the defense was not prejudiced by a refusal to issue an instruction, there is no reversible error.” *State v. Hannon*, 703 N.W.2d 498, 509 (Minn. 2005). The district court is afforded “considerable latitude” when selecting language in

jury instructions and when “determining the propriety of a specific instruction.” *Alholm v. Wilt*, 394 N.W.2d 488, 490 (Minn. 1986). We review a district court’s decision to give a particular jury instruction for an abuse of discretion, *State v. Koppi*, 798 N.W.2d 358, 361 (Minn. 2011), and we review the jury instructions as a whole to determine if they accurately state the law in a manner that is understandable to the jury, *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014).

Minnesota law permits the use of reasonable force against another in certain circumstances, such as when force is used “in resisting or aiding another to resist an offense against the person.” Minn. Stat. § 609.06, subd. 1(3) (2016). The elements of self-defense are:

(1) the absence of aggression or provocation on the part of the defendant; (2) the defendant’s actual and honest belief that he or she was in imminent danger of . . . bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger.

State v. Pollard, 900 N.W.2d 175, 178 (Minn. App. 2017) (citation omitted). A defendant asserting self-defense bears the burden of producing evidence to support that claim. *State v. Penkaty*, 708 N.W.2d 185, 207 (Minn. 2006).

We determine that appellant failed to produce evidence supporting his self-defense claim with respect to the third and fourth elements. Appellant failed to demonstrate that he had reasonable grounds to believe he was in imminent danger of bodily harm. “[A] person may act in self-defense if he or she reasonably believes that force is necessary and uses only the level of force reasonably necessary to prevent the bodily harm feared.” *State*

v. Devens, 852 N.W.2d 255, 258 (Minn. 2014). Generally, “whether a defendant’s use of force was reasonable is a fact question and, like all factual disputes, should be decided by the fact-finder.” *State v. Soukup*, 656 N.W.2d 424, 431 (Minn. App. 2003) (citing *Jack Frost, Inc. v. Engineered Bldg. Components Co.*, 304 N.W.2d 346, 350 (Minn. 1981)). However, “when the evidence in the record is undisputed and leads a rational fact-finder to a single conclusion, the issue becomes a question of law.” *Id.*

Such is the case here. The district court determined that the evidence did not support a self-defense instruction because a reasonable juror could not find that the use of force was reasonable. We agree. Appellant testified that he could not recall the altercation and the only reliable evidence was the testimony from the state’s witnesses and the video camera. The video evidence shows that appellant backed J.B. into a wall, lifted him off the ground, threw him to the concrete floor headfirst, and, after J.B. lost consciousness, punched him 25 times in the head until he began seizing and convulsing on the floor. Based on this evidence, the district court did not abuse its discretion by refusing to instruct the jury on self-defense where appellant failed to satisfy his burden of production on the reasonableness factor.

We further determine that appellant failed to demonstrate the absence of a reasonable possibility of retreat to avoid danger. The “castle doctrine,” as this element is known, is founded on the principle that the home is a person’s “sanctuary,” “safest place,” and “critical for the protection of the family.” *Devens*, 852 N.W.2d at 258-59. It is limited in application to “a house, an apartment or part of a structure where [one] lives and where others are ordinarily excluded—the antithesis of which is routine access to or use of an

area by strangers.” *Id.* at 259 (quotation omitted). The common area of the segregated living unit does not qualify as appellant’s “home” because other inmates had equal access to the space and appellant did not have the authority to exclude others from using it.

Because appellant failed to meet his burden of production with respect to two of the four self-defense factors, we conclude that the district court did not abuse its discretion by declining to give the requested instruction.

II. The district court did not abuse its discretion by allowing the state to impeach appellant with his prior felony convictions.

Appellant argues that the district court abused its discretion by ruling, over his objection, that the state could impeach him with evidence of three prior convictions in the event that he testified. This court reviews a district court’s ruling on the impeachment of a witness by prior conviction under an abuse-of-discretion standard. *State v. Williams*, 771 N.W.2d 514, 518 (Minn. 2009). Whether the probative value of a prior conviction outweighs the prejudicial effect is within the discretion of the district court. *State v. Graham*, 371 N.W.2d 204, 208 (Minn. 1985). A reviewing court will not reverse a district court’s decision absent a clear abuse of discretion. *Id.* at 209.

A district court may admit evidence of a defendant’s prior felony convictions for impeachment purposes if “the probative value of admitting this evidence outweighs its prejudicial effect.” Minn. R. Evid. 609(a)(1). We consider five factors in our analysis of the admissibility of a prior conviction:

(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.

State v. Jones, 271 N.W.2d 534, 537-38 (Minn. 1978).

The state sought to introduce evidence of appellant's prior convictions of felony threats of violence in 2007, unlawful possession of a machine gun or short-barreled shotgun in 2007, and felony criminal sexual conduct in 2011. Appellant objected on the ground that the evidence was overly prejudicial. The district court performed the multi-factor *Jones* test and ruled that each of the prior convictions could be admitted for impeachment purposes in the event appellant testified. We discern no abuse of discretion by the district court in reaching this conclusion.

a. Impeachment Value of the Prior Crimes

The district court determined that the first factor weighed in favor of admission because the prior convictions allowed the jury to see appellant as a whole person "and thus better to judge the truth of [his] testimony." Appellant argues that his prior convictions had no impeachment value because they were irrelevant to his truthfulness. We disagree. The admission of prior convictions to impeach a testifying witness aids the jury because it allows the jury "to see the 'whole person' and thus to judge better the truth of his testimony." *State v. Brouillette*, 286 N.W.2d 702, 707 (Minn. 1979) (citation omitted); see also *State v. Hill*, 801 N.W.2d 646, 652 (Minn. 2011) (stating that "general lack of respect for the law," rather than the nature of the conviction itself, informs the fact-finder about a witness's credibility). "[T]he fact that a prior conviction did not directly involve truth or falsity does not mean it has no impeachment value." *State v. Grassler*, 505 N.W.2d 62, 67

(Minn. 1993). Moreover, the rules of evidence sanction the use of felonies “not directly related to truth or falsity for purposes of impeachment, and thus necessarily recognizes that a prior conviction, though not specifically involving veracity, is nevertheless probative of credibility.” *Brouillette*, 286 N.W.2d at 708. The district court did not abuse its discretion by determining that appellant’s prior convictions had impeachment value because they allowed the jury to view appellant as a whole person.

b. Date of Conviction and Defendant’s Subsequent History

Under the second factor, a prior conviction is admissible if the conviction occurred within ten years of the offense for which the defendant is currently on trial. Minn. R. Evid. 609(b). Appellant’s convictions occurred in 2007 and in 2011. The district court determined that this factor weighed in favor of admissibility because the convictions “establish a general pattern of lawlessness.” On appeal, appellant argues that the convictions are stale and should not have been admitted for impeachment purposes. Generally, “recent convictions [are considered] to have more probative value than older ones. . . .” *State v. Davis*, 735 N.W.2d 674, 680 (Minn. 2007). However, “if a witness is convicted again or sent back to prison, then the witness’s ‘history of lawlessness’ enhances an otherwise ‘stale’ conviction’s probative value.” *State v. Zornes*, 831 N.W.2d 609, 627 (Minn. 2013), *cert. denied*, 134 S. Ct. 700 (2013); *see also Davis*, 735 N.W.2d at 680 (“[R]ecent 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.”). Appellant has been continuously incarcerated since his most recent conviction. The district court did not abuse its discretion in determining that the

conditions established a general pattern of lawlessness, which was not diminished because appellant was incarcerated during the intervening years. This factor weighs in favor of admission.

c. Similarity of the Past Crime to the Charged Crime

We have held that “if the prior conviction is similar to the charged crime, there is a heightened danger that the jury will use the evidence not only for impeachment purposes, but also substantively.” *Grassler*, 505 N.W.2d at 67. However, the potential for the jury to misuse the prior conviction is substantially reduced if the past crimes are sufficiently different from the crime charged. *State v. Ihnot*, 575 N.W.2d 581, 586-87 (Minn. 1998). There is little similarity between appellant’s past crimes, threats of violence, unlawful possession of a machine gun or short-barreled shotgun, and criminal sexual conduct, and the crime charged in this case, third-degree assault. Therefore, the prejudicial concern is lessened and this factor weighs in favor of admission.

d. Importance of Defendant’s Testimony and Centrality of Credibility

Minnesota courts often consider the fourth and fifth *Jones* factors together. *State v. Swanson*, 707 N.W.2d 645, 655 (Minn. 2006). “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.* Credibility is generally a critical issue in the case if “the issue for the jury narrows to a choice between defendant’s credibility and that of one other person. . . .” *Ihnot*, 575 N.W.2d at 587. Appellant argues that credibility “wasn’t really an issue” because he “blacked out” during the assault and could not remember the altercation. But as we recognized in *State v. Leutsch*, “credibility is a broader concept than truthfulness versus

lying” and encompasses broader aspects of the events in question such as a witness’s “faulty recall.” 759 N.W.2d 414, 422 (Minn. App. 2009), *review denied* (Minn. Mar. 17, 2009). The district court did not abuse its discretion by concluding that these factors were neutral or weighed in favor of admission because the prior convictions permitted the jury to consider “the whole story” of appellant’s credibility.

We determine, based upon our review of the *Jones* factors, that the district court did not abuse its discretion by ruling that the state could impeach appellant with his three prior felony convictions in the event he testified at trial.

III. Appellant’s speedy-trial rights were not violated.

Appellant argues that his speedy-trial rights were violated. The United States and Minnesota Constitutions guarantee a criminal defendant a right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. In Minnesota, “trial is to commence within 60 days from the date of the demand unless good cause is shown . . . why the defendant should not be brought to trial within that period.” *State v. Hahn*, 799 N.W.2d 25, 29-30 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Aug. 24, 2011); *see also* Minn. R. Crim. P. 11.09(b). We use a four-factor balancing test to determine whether a delay in a case violated the speedy-trial right and consider “(1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted his or her right to a speedy trial; and (4) whether the delay prejudiced the defendant.” *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (citing *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972)). “None of these factors is either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together

with such other circumstances as may be relevant.” *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015) (quotation omitted). A claim that the right to a speedy trial was violated is a constitutional question reviewed de novo. *Id.*

a. Length of Delay

“The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.” *Barker*, 407 U.S. at 530, 92 S. Ct. at 2192. “A defendant must be tried as soon as possible after entry of a plea other than guilty. On demand of any party after entry of such plea, the trial must start within 60 days unless the court finds good cause for a later trial date.” Minn. R. Crim. P. 11.09(b). A delay of more than 60 days from the date of the speedy-trial demand is presumptively prejudicial and triggers a review of the remaining three factors. *Windish*, 590 N.W.2d at 315-16. The state concedes that the trial began more than 60 days after appellant’s speedy-trial demand, triggering appellate review of the remaining *Barker* factors.

b. Reason for Delay

The “key question” under this factor is whether the government or the defendant is “more to blame” for the delay. *Taylor*, 869 N.W.2d at 19 (quotation omitted). In this case, while both the state and appellant bear some responsibility for the trial delays, the delays weigh more heavily against the state.

On the first day of the scheduled trial date in December 2016, the state requested a continuance of the trial date due to witness unavailability. Appellant agreed to the continuance request and invoked his speedy-trial rights. The trial court granted the state’s

continuance request and set a trial date for January 2017. The parties appeared in January for the scheduled jury trial. At that time, appellant discharged his public defender and sought a continuance to prepare himself for trial as a self-represented litigant. The district court granted the request over the state's objection and continued the trial to February. Two days later, the state requested a continuance due to the unavailability of its medical witness. The district court granted the request and rescheduled the trial for March. Appellant did not object. In March, the district court explained that other cases took priority over appellant's case and moved the trial to the court's April calendar. In April, the state sought a continuance because the prosecutor was unavailable. The case ultimately proceeded to trial in May 2017.

Although both the state and appellant requested continuances, the delays are more attributable to the state. However, we note that some of the delays, such as those caused by witness unavailability and congestion of the court's calendar, were not deliberate attempts at delay by the state. *See Hahn*, 799 N.W.2d at 30 (noting that "delays are assigned different weights in assessing whether a defendant's speedy-trial right has been violated" and deliberate attempts weigh heavily against the state while "overcrowded courts" are weighed "less heavily"). On balance, this factor weighs in favor of appellant.

c. Assertion of Right

A defendant's assertion of his speedy-trial right "is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker*, 407 U.S. at 531-32, 92 S. Ct. at 2192-93. Because appellant asserted his right to a speedy trial, this factor weighs in his favor.

d. Prejudice Caused by the Delays

We assess prejudice “in the light of the interests of defendants which the speedy trial right was designed to protect,” namely “(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.” *Id.* at 532, 92 S. Ct. at 2193. When, as here, a defendant is incarcerated during the delay on an unrelated charge, only the possibility of prejudicing the defense is relevant. *Windish*, 590 N.W.2d at 318. Prejudice is “obvious” if a witness dies or disappears during the delay, or if defense witnesses “are unable to recall accurately events of the distant past.” *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193. These concerns are not present here. Appellant did not call any witnesses, and testified that he “blacked out” and could not remember the altercation. The delay in time is not responsible for appellant’s faulty recollections and did not prejudice the presentation of his defense. Moreover, because appellant was incarcerated on another matter, he did not suffer prejudice due to oppressive pretrial incarceration for the charged assault.

In light of all the *Barker* factors, we determine that appellant was not deprived of his speedy-trial right. While the reason for the delay tips slightly in appellant’s favor, the evidence does not suggest that the state intentionally delayed the trial to frustrate appellant’s speedy-trial rights. Moreover, the final factor—prejudice—weighs heavily against appellant because the delay did not impair his ability to present a defense. Because the delays did not harm appellant’s defense and he did not suffer pretrial incarceration, we discern no speedy-trial violation. *See, e.g., State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989) (stating that “[t]he only prejudice attested to . . . was the stress, anxiety and

inconvenience experienced by anyone who is involved in a trial” and concluding that defendants were not denied right to speedy trial). On balance, we conclude that the state did not violate appellant’s speedy-trial right.

Affirmed.