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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0189**

State of Minnesota,
Respondent,

vs.

Jason Alan Beckstrand,
Appellant.

**Filed March 4, 2019
Affirmed
Hooten, Judge**

Polk County District Court
File No. 60-CR-17-92

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney,
Crookston, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Rodenberg, Judge; and
Cochran, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In this appeal from a conviction of second-degree criminal sexual conduct, appellant
argues that the evidence was insufficient to support his conviction, and that the district

court committed reversible error by admitting his prior convictions to impeach his testimony. We affirm.

FACTS

At the time of the incident which gave rise to this case, appellant Jason A. Beckstrand shared custody of his two children with his ex-girlfriend, a son, who was eight years old, and a daughter, who was ten years old. Beckstrand's ex-girlfriend had primary custody of the children, and Beckstrand had custody every other weekend. Beckstrand lived with his current girlfriend and her two children.

One weekend in early January of 2017, while his son and daughter were staying with him, his son, who was sleeping on the couch, woke up frightened and went into the bed where Beckstrand and his daughter were sleeping. Once his son got into the bed, Beckstrand reached over and started touching his son's penis under his clothing for roughly five seconds, moving his hand around after putting it down his son's pants.

The state charged Beckstrand with first-degree criminal sexual conduct for this behavior and subsequently amended the charge to second-degree criminal sexual conduct. Minn. Stat. § 609.343 (2016).¹ Prior to opening arguments in the jury trial, Beckstrand objected to the state's use of his prior convictions as impeachment if he testified. The district court ruled that the prior convictions were admissible, but ordered that some of the convictions be referred to as "unspecified felonies" to avoid the potential for prejudice.

¹ The state also charged Beckstrand with two other counts of second-degree criminal sexual contact for other incidents involving his daughter and his current girlfriend's daughter. The jury found Beckstrand not guilty of those charges and they are not at issue in this appeal.

Beckstrand chose to testify and his attorney introduced the prior convictions during direct examination. The jury convicted Beckstrand of second-degree criminal sexual conduct and the district court sentenced him to an executed sentence of 150 months. This appeal follows.

D E C I S I O N

I. The evidence was sufficient to support the jury’s verdict.

Beckstrand was convicted of second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(a). A conviction under this statute requires the state to prove that a defendant engaged in “sexual contact” with a victim under 13 years of age and that the defendant was more than 36 months older than the victim. Minn. Stat. § 609.343, subd. 1(a). Under the relevant section, “sexual contact” is defined as “the intentional touching by the actor of the complainant’s intimate parts,” or “the touching of the clothing covering the immediate area of the intimate parts,” with “sexual or aggressive intent.” Minn. Stat. § 609.341, subd. 11(a)(i), (iv) (2016).

Beckstrand does not contest that his son was under 13 years of age, that he was more than 36 months older than his son, or that he actually touched his son’s penis. But Beckstrand argues that the evidence was not sufficient to support a finding that he intentionally touched his son’s penis, and that even if the evidence were sufficient to show that he did, the evidence would be insufficient to show that he committed the act with sexual or aggressive intent. Because the record contains no direct evidence of Beckstrand’s intent, i.e., he did not confess, we apply the circumstantial-evidence standard of review.

When reviewing a conviction based on circumstantial evidence, we apply a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 598–601 (Minn. 2017). The first step is to identify the circumstances proved “by resolving all questions of fact in favor of the jury’s verdict,” in deference to the jury’s credibility determinations. *Id.* at 600. “In identifying the circumstances proved, we defer to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *State v. Sterling*, 834 N.W.2d 162, 175 (Minn. 2013) (quotation omitted); *see also State v. Nissalke*, 801 N.W.2d 82, 108 (Minn. 2011) (“We construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the State’s witnesses and disbelieved the defense witnesses.” (quotation omitted)). Second, we independently consider the “reasonable inferences that can be drawn from the circumstances proved.” *Harris*, 895 N.W.2d at 601. “To sustain the conviction, the circumstances proved, when viewed as a whole, must be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.*

The circumstances proved establish that: Beckstrand’s son got into bed with Beckstrand because he was scared, Beckstrand moved his hand to touch his son’s penis, he placed his hand under his son’s clothes, once his hand was down his son’s pants, “he kept moving it around,” this continued for approximately five seconds, and Beckstrand was pretending to be asleep but was really awake during this encounter. While Beckstrand testified that, if he did touch his son’s penis, he had no sexual intent, the jury convicted Beckstrand of second-degree criminal sexual conduct, effectively rejecting his defense

testimony. Therefore, we take as proven the circumstance that Beckstrand was motivated by sexual intent when he touched his son's penis. The alternate hypotheses that the touching was accidental or was not sexually motivated are foreclosed by these circumstances, as is any other reasonable hypothesis other than guilt.

As Beckstrand notes, under Minnesota law, “[s]exual intent must be established to avoid criminalizing contact that is accidental or that serves an innocuous, non-sexual purpose.” *State v. Austin*, 788 N.W.2d 788, 792 (Minn. 2010), *review denied* (Minn. Dec. 14, 2010). But this was not a case where there was some plausible, innocuous purpose for Beckstrand's actions. Beckstrand points to caselaw where there were statements by a defendant that were indicative of sexual intent, and argues that because he did not make such statements, the evidence is insufficient.² This argument is meritless. Because the circumstances proved are inconsistent with anything other than an intentional touching that was sexually motivated, the absence of confessed sexual intent is not fatal to the jury's verdict. *See, e.g., State v. Vick*, 632 N.W.2d 676, 691 (Minn. 2001) (evidence of appellant's actions was sufficient to support element of sexual intent); *State v. Kraushaar*, 470 N.W.2d 509, 510–11 (Minn. 1991) (same); *State v. Christopherson*, 500 N.W.2d 794, 798 (Minn. App. 1993) (same).

² While there is no direct evidence of Beckstrand's intent to touch his son's penis or that he was sexually motivated, such evidence is not required to support a jury's verdict. *See State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997) (“In reaching its conclusion, the jury may infer that a person intends the natural and probable consequences of his actions and a defendant's statements as to his intentions are not binding on the jury if his acts demonstrated a contrary intent.”).

We therefore hold that the evidence was sufficient for the jury to find Beckstrand guilty of second-degree criminal sexual conduct.

II. Admission of Beckstrand’s adult convictions was not an abuse of discretion, and admission of his juvenile adjudication was harmless error.

Beckstrand also argues that the district court committed reversible error in ruling that his prior convictions, including a felony-level juvenile adjudication, were admissible to impeach his testimony if he chose to testify. Beckstrand claims: (1) the district court abused its discretion by improperly applying the *Jones* factors; (2) his juvenile adjudication was erroneously admitted because it was not an adult conviction; and (3) that these errors were not harmless.

“The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion.” *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn. 1997) (quotation omitted). Absent an erroneous application of the law, a district court abuses its discretion when it acts arbitrarily or capriciously. *Id.* at 46.

When a witness is testifying, evidence of a prior conviction may be admissible to impeach that witness’s credibility when it was a felony and “the court determines that the probative value of admitting this evidence outweighs its prejudicial effect.” Minn. R. Evid. 609(a). In determining whether the probative value of a prior conviction outweighs its prejudicial effect, district courts are obliged to consider “(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.” *State v. Hill*, 801 N.W.2d 646, 653 (Minn. 2011) (quoting *State v. Jones*, 271 N.W.2d 534, 538 (Minn. 1978)).

If there is an objection to the admission of evidence at trial, its admissibility is reviewed on appeal under the harmless-error standard. *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011). Under this standard, an appellant “who alleges an error that does not implicate a constitutional right must prove that there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Id.* (quotation omitted). But, if the evidence is admitted without objection at trial, the admission of such evidence is reviewed for plain error. *Id.* at 633–34. Under the plain-error standard, an appellant must show that the admission of the evidence by the district court was (1) error; (2) that is plain; and (3) the error affected his substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). “If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings.” *Id.* “An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct.” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). “The court’s analysis under the third prong of the plain error standard of review is the equivalent of a harmless error analysis.” *Matthews*, 800 N.W.2d at 634.

Adult felony convictions

While the state does not contest that appellant objected to the admission of his prior convictions at trial, it argues that because Beckstrand did not make the same arguments on

appeal that he made to the district court, these arguments should only be reviewed for plain error. However, because we find that there was no error in the introduction of Beckstrand's adult convictions, we need not rule on whether his objections at trial were made with the requisite specificity to avoid forfeiture and thus review under the plain-error standard.

Beckstrand argues that the district court erred in admitting his prior adult convictions for two reasons. First, he contends that the district court erred by not considering each of his nine prior adult felony convictions independently. Second, he asserts that the district court erred by understating the combined prejudicial effect of the amount of his prior convictions.

The state contends that the district court sufficiently considered each of Beckstrand's prior adult felony convictions, and that the district court did not err by not considering the cumulative prejudicial effect of those convictions. Beckstrand responds that the district court erred in not considering each of his prior convictions independently under the *Jones* factors.

But the district court did consider these factors for each conviction. And notably, only two of the five *Jones* factors are even subject to individual analysis when multiple convictions are admitted in a single trial. See *Jones*, 271 N.W.2d at 538. While the district court did not create a record applying the *Jones* factors to each conviction individually, that is not what Minnesota law requires. The law requires that district courts "demonstrate on the record that [they have] considered and weighed the *Jones* factors." *Swanson*, 707 N.W.2d at 655. There is no requirement that courts create a detailed record analyzing exactly how each factor applies to each conviction.

And here the district court clearly considered the requisite factors. In over four pages of transcript, the district court analyzed the factors as applied to Beckstrand's convictions. The district court explicitly demonstrated that it considered each conviction individually when it noted the following:

And I do believe, for some of these prior convictions, that the prejudicial impact outweighs the probative value. And so I'm going to go through these and I'm going to make a determination about those convictions that are going to be referred to . . . as unspecified felonies.

The remainder of the four pages of analysis also supports the conclusion that the district court appropriately considered the individual convictions.

Furthermore, *State v. Irby* provides an excellent illustration of what Minnesota law requires of district courts when applying the *Jones* factors to multiple convictions. 820 N.W.2d 30, 36–37 (Minn. App. 2012), *aff'd on other grounds*, 848 N.W.2d 515 (Minn. 2014). There, Irby challenged the sufficiency of the district court's consideration of his two prior convictions. *Id.* at 36. The district court's analysis in that case consisted of the following:

[C]onsidering the *Jones* factors, I'm finding that the impeachment value as felonies, and indicative of seeing Mr. Irby as a whole, that I'm going to allow him to be impeached with the 2000 agg robbery and the DUI, given the fact that they're of recent dates, he has a subsequent history of criminal activity, they're not similar to what he's charged with, his testimony is important and they go to his credibility and allows the jury to see the whole person and assess his general trustworthiness.

Id. at 36–37. This court reviewed the analysis and held it was sufficient. *Id.* at 37. Given that this paragraph-long analysis was sufficient, the district court's analysis here surely

was, when it went through all five factors and extensively weighed them over the course of four pages in the transcript.

Beckstrand next argues that the district court erred in not considering the prejudicial effect of multiple felony convictions. It is true that the district court did not consider the potential prejudice from the admission of Beckstrand's many previous convictions. But he cites to no authority requiring that a district court consider this. *Contra Jones*, 271 N.W.2d at 538 (laying out the five factors courts must consider in admitting prior felony convictions for impeachment purposes). Thus, he has failed to meet his burden of establishing error in the district court's decision. *See Griller*, 583 N.W.2d at 740.

We conclude that the district court did not abuse its discretion in allowing Beckstrand's prior adult convictions to be admitted for the purpose of impeaching his testimony.

Juvenile adjudication

Beckstrand argues that the Minnesota Rules of Evidence prohibit the introduction of his juvenile adjudication. The state concedes this point. Appellant did object to the admission of his juvenile adjudication at trial.

"Evidence of juvenile adjudications is not admissible under this rule unless permitted by statute or required by the state or federal constitution." Minn. R. Evid. 609(d). We agree with the parties that it was error for the district court to admit Beckstrand's juvenile adjudication for impeachment purposes. However, we will only reverse his conviction if this error was prejudicial. *See State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) ("On appeal, the appellant has the burden of establishing that the trial court abused

its discretion and that appellant was thereby prejudiced.”). On appeal, Beckstrand has the burden of establishing the prejudicial effect of any errors. *Id.* “An error is harmless if there is no reasonable possibility that it substantially influence[d] the jury’s decision.” *State v. Taylor*, 869 N.W.2d 1, 14 (Minn. 2015) (quotation omitted).

Beckstrand claims that these errors were not harmless because: (1) of the volume of evidence; (2) the importance of Beckstrand’s credibility; and (3) that the jury had some doubt about the charges against him because the jury only found him guilty of one charge. The state disputes Beckstrand’s claims by asserting: (1) any potential errors were mitigated by the district court’s two cautionary instructions; (2) any prejudice arising from the prior convictions was “sanitized” by referencing them only as “unspecified felonies”; and (3) the fact that the jury convicted him of one charge but acquitted him of the other two demonstrates that they carefully considered the evidence and only convicted him of the charge that they believed he was guilty of beyond a reasonable doubt.

Beckstrand’s first argument is one sentence long and is a conclusory statement that so many convictions were admitted that “the jury was not going to miss this evidence given its volume.” Beckstrand cites to no authority to support this argument,³ and does not consider a circumstance where this court concludes that not all of his convictions were erroneously admitted. And as we have determined, the only conviction that was erroneously admitted was Beckstrand’s juvenile adjudication. Because Beckstrand’s

³ In fact, Beckstrand does not cite to any authority other than the standard of review in this section of his brief.

argument is premised on this court first finding that the district court erred in admitting more than one of his prior convictions, and we reject this premise, his argument fails.

Beckstrand's next two arguments are that his credibility was important in this case,⁴ and that this was a close case because the jury only convicted him of one out of three counts. Again, Beckstrand cites to no authority to support either argument.

Logically, both of these arguments fail simply because nine out of the ten convictions used to impeach Beckstrand were properly admitted. There is no reasonable possibility that the jury would have been set to acquit Beckstrand after his testimony was impeached by nine prior adult felony convictions, but then convicted him after hearing about an unspecified juvenile felony that took place in 2002. *See Taylor*, 869 N.W.2d at 14. And Minnesota jurisprudence is filled with cases where courts have found harmless error when one or more prior convictions were erroneously admitted because of a backdrop of other prior convictions. *See, e.g., State v. Darveaux*, 318 N.W.2d 44, 48–49 (Minn. 1982); *State v. Swinger*, 800 N.W.2d 833, 838 (Minn. App. 2011), *review denied* (Minn. Sept. 28, 2011); *State v. Hofmann*, 549 N.W.2d 372, 376 (Minn. App. 1996), *review denied* (Minn. Aug. 6, 1996).

Beckstrand also argues that the district court's cautionary instructions were insufficient, but makes no attempt to explain why, other than stating that "given these circumstances," the evidence was not harmless. As the state correctly points out, the

⁴ Beckstrand was facing three separate charges for three different minor victims. The fact that Beckstrand was convicted of this one charge but acquitted of the other two suggests that each individual victim's credibility was of central importance to the jury concerning each charge.

district court properly instructed the jury multiple times about the probative uses of prior convictions, and juries are presumed to follow instructions. *See Hill*, 801 N.W.2d 658 (“We presume that the jury followed the instructions given by the court.”).

Finally, as respondent notes, the district court sanitized the convictions that seemed too prejudicial, including the juvenile adjudication. As Minnesota law holds, referring to “unspecified felony” convictions can serve to reduce any potential prejudice from those convictions. *See id.* at 652–53 (allowing for the use of unspecified felony convictions even in cases where the use of the underlying felony would be too prejudicial, so long as the unspecified felony conviction satisfies the requirements of Minn. R. Evid. 609(a)(1)).

We therefore hold that, although it was error for the district court to rule that Beckstrand’s juvenile adjudication could be used for impeachment purposes, that error was harmless because there is no reasonable possibility that it influenced the jury’s verdict.

Affirmed.