STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1567

State of Minnesota,
Respondent,

vs.

Russell Wayne Melanson,
Appellant.

Filed January 8, 2018
Affirmed
Kirk, Judge

Anoka County District Court
File No. 02-CR-16-796

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

Anthony C. Palumbo, Anoka County Attorney, Marcy S. Crain, Kelsey R. Kelley, Assistant County Attorneys, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Kirk, Judge.

S Y L L A B U S

The district court's failure to give a limiting instruction sua sponte regarding the admission of relationship evidence was not plainly erroneous.

O P I N I O N

KIRK, Judge

In this reinstated appeal, appellant challenges his felony convictions for domestic assault and theft of a motor vehicle. Appellant asks this court to reverse and remand for a new trial, arguing that (1) the district court committed plain error that affected his substantial rights by allowing relationship evidence to be presented under Minn. Stat. § 634.20 (2014), without instructing the jury sua sponte on its proper use; (2) the state committed prosecutorial misconduct during its closing argument; and (3) the district court abused its discretion when it allowed the state to present impeachment evidence. Appellant argues that the cumulative effect was to deny him the right to a fair trial. We affirm.

FACTS

Appellant Russell Wayne Melanson was charged with felony (1) kidnapping, (2) domestic assault, (3) theft of a motor vehicle, and (4) false imprisonment, for events that took place on January 29, and 30, 2016. The matter proceeded to a jury trial in May 2016. At trial, M.B. testified that on the morning of January 29, 2016, she woke up in her bed at her home in Coon Rapids, Minnesota, and saw appellant. M.B. and appellant had previously lived together and had a sexual relationship. M.B. said that appellant put a belt around her neck and choked her.

The next thing M.B. remembered was waking up in the rear cargo space of her moving Ford Explorer. M.B. said that it was dark outside and that appellant was driving her vehicle, which she had not given him permission to do. M.B. was lying face down with her TV, clothing, and other personal items on top of her. Her arms and legs were bound with string,

and she had duct tape wrapped around her mouth and head. M.B. said that she felt dried blood in her ear, her face was heavy, her arm was numb, and she could not see out of one eye. M.B. said that she passed in and out of consciousness, but she remembered making two stops—one inside a garage adjacent to the home of an acquaintance, and the other on a dirt road. During one of the stops, M.B. said that appellant untied her and allowed her to move up to the front seat, and she told him that she needed to go to the hospital. M.B. also noticed during one of the stops that her leg was hurt. M.B. further testified that another male was present in the vehicle at some point during the drive, and that he may have also driven.

M.B. said that, on January 30, she woke up back in her bed with appellant sitting next to her. M.B. testified that appellant told her he was sorry and that he would never do that again. M.B. texted a friend, who called her phone. Appellant became angry when he heard the friend's call, and got on M.B.'s phone and argued with the friend before leaving. M.B.'s friend arrived to check on M.B., and then left and returned with another friend. The other friend called the police and took M.B. to the hospital.

A Coon Rapids police officer responded to the hospital and spoke to M.B. The officer testified at trial that M.B. had extreme bruising on both eyes, blood coming out of her ear canal, and swelling on the left part of her face. The officer took photographs of M.B.'s injuries, which were admitted into evidence. The officer acknowledged that M.B. appeared to be "out of it," but testified that M.B. told her that she remembered waking up in her bed on January 29 with appellant holding a belt over her. M.B. also told the officer that she blacked out after that. At trial, M.B. described her injuries as a broken bone in her throat, bleeding in

her brain, and cysts behind her kneecaps. M.B. said that the effects of her injuries are ongoing—she now stutters, cannot fully open her mouth, and has memory loss.

M.B. left the hospital with her friend and went home prior to being discharged. M.B. resides in the basement area of a house that she shares with a male friend and his three children. Upon returning home, M.B. discovered that her vehicle was gone, the lock was cut off of the closet in her room, her TV was gone, and other personal belongings were missing. The next day, M.B. texted appellant using her roommate's son's phone to ask where her vehicle and belongings were. Copies of the text messages were admitted into evidence. Appellant texted M.B. to say that he did not have any of her "shit" and that he left her vehicle in Robbinsdale. Law enforcement later recovered appellant's vehicle in Robbinsdale.

An Anoka County Sheriff's investigator spoke to M.B. at her home on January 31 and testified at trial. The investigator observed and photographed M.B.'s injuries, M.B.'s basement living area, as well as the broken lock. The photographs were admitted into evidence. The description that M.B. gave to the investigator about what happened on January 29 and 30 was generally consistent with what she testified to at trial and what she told the police officer at the hospital. The record shows that, throughout her statements, M.B. consistently identified appellant as the person who choked her with a belt and assaulted her, and as the person who took her vehicle without her permission. However, the record also shows that there were some inconsistences in M.B.'s statements, which appellant's counsel emphasized for the jury at trial. When appellant's counsel cross-examined M.B. about the inconsistencies at trial, M.B. became agitated and said that she could not think or remember.

On February 5, detectives recovered and searched appellant's vehicle. In the trunk, they found a tool bag that belonged to M.B.'s husband, a bag containing duct tape, a black leather belt, and a navy canvas belt. A mixture of three or more individuals' DNA was found on parts of both belts, and a forensic scientist testified that M.B.'s DNA could not be excluded as a contributor to the mixtures. Appellant's counsel argued that the belts may have been included in items that M.B. acquired from Craigslist and gave to appellant, which would explain why her DNA was present on them.[1]

Prior to trial, the district court issued preliminary evidentiary rulings allowing the state to introduce impeachment and relationship evidence at trial, over appellant's objection. At trial, the state presented the relationship evidence through M.B.'s testimony without objection. Appellant did not testify, but his girlfriend K.C. testified as an alibi witness. K.C. testified that appellant was with her from 3 p.m. or 4 p.m. on January 29 until 6 a.m. or 7 a.m. on January 30. When asked why she remembered January 29 specifically, K.C. said that it was the night she and appellant first kissed. However, she also testified that she met appellant in September 2015 and that they had been in a romantic relationship since then. The state impeached K.C.'s credibility with a 2013 misdemeanor theft conviction and a 2014 misdemeanor false name to a police officer conviction; appellant did not object.

The jury found appellant guilty of domestic assault and theft of a motor vehicle and not guilty of the two remaining charges. The district court imposed a 45-month career-offender prison sentence for the domestic-assault conviction, and a concurrent 26-month

[1] M.B. testified that she regularly acquires items from Craigslist, which she then sells for a profit or gives to friends, including appellant.

prison sentence for the theft of a motor vehicle conviction. Appellant filed a direct appeal, but was granted a stay of appeal to petition for postconviction relief. In his postconviction petition, appellant argued that he was improperly sentenced as a career offender for the domestic assault. The postconviction court agreed and resentenced him to 33 months in prison, leaving his 26-month concurrent sentence in place. We reinstated this appeal.

ISSUES

I. Did the district court plainly err in allowing the state to present relationship evidence under Minn. Stat. § 634.20 without giving a limiting instruction sua sponte?

II. Did the state commit prosecutorial misconduct during its closing argument?

III. Did the district court abuse its discretion in ruling that impeachment evidence would be admissible against appellant and appellant's witness at trial?

ANALYSIS

I. The district court did not plainly err in allowing the state to present relationship evidence without giving a limiting instruction sua sponte.

At trial, M.B. testified that she first met appellant in 2009 or 2010 when they were neighbors. Between 2009 and 2012, they lived together periodically and had a sexual relationship. In 2012 or 2013, appellant moved out of the residence that he shared with M.B. for the last time. Later in 2013, appellant asked if he could move back in, and they had a falling out when M.B. told him no. M.B. testified, without objection, that after she told appellant that he could not move back in, he repeatedly climbed through her window. M.B. further testified, without objection, that during one incident appellant held a knife to her neck. A no-contact order was issued against appellant for M.B. and her children, and appellant was

convicted of terroristic threats for the incident with the knife in 2014. M.B. said that appellant reentered her life in late 2015, and that starting around January 2016, he started showing up at her home, and they would talk as friends. M.B. said that they knew the same people, and that she wanted to keep things "on an okay level."

Prior to trial, the state filed a motion to introduce appellant's 2014 terroristic-threats conviction as impeachment evidence under Minn. R. Evid. 609. Appellant objected, and the district court found that admitting the conviction as impeachment evidence would be extremely prejudicial and denied the request. Alternatively, the state argued that the underlying facts of the terroristic-threats conviction should be admitted as relationship evidence under Minn. Stat. § 634.20, which provides that:

> Evidence of domestic conduct by the accused against the victim of domestic conduct . . . is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

The court issued a preliminary ruling allowing the state to introduce evidence of the underlying facts of the 2014 terroristic-threats conviction as relationship evidence at trial. But the state was not allowed to inform the jury that appellant was convicted of a felony as a result. The court stressed that the underlying incident involved a prior assault of the same victim, for which appellant was convicted, and that it was relevant relationship evidence that the jury needed to hear. The court found that the high probative value of the evidence substantially outweighed any risk of unfair prejudice. *See State v. McCoy*, 682 N.W.2d 153, 156, 161 (Minn. 2004) (finding that the district court did not abuse its discretion in admitting

relationship evidence where the probative value of the evidence was not substantially outweighed by the danger of its unfair prejudice).

When M.B. testified about appellant's behavior leading up to and during the incident with the knife, appellant did not object. Appellant did not request a limiting instruction when M.B. testified, or as part of the district court's final jury instructions. As such, the district court gave no limiting instruction, and the jury heard the relationship evidence without an instruction about its proper use. Because the district court's preliminary ruling on the relationship evidence was not definitive and appellant did not request a limiting instruction or object to the lack of a limiting instruction at trial, our review is under the plain-error standard. Minn. R. Crim. P. 31.02; *see State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (applying Minn. R. Crim. P. 31.02); *see also State v. Word*, 755 N.W.2d 776, 782 (Minn. App. 2008) (applying the plain-error standard of review where the appellant raised a pretrial objection to relationship evidence, the district court made a preliminary ruling, and the appellant failed to object or request a limiting instruction when the evidence was later introduced at trial); *State v. Meldrum*, 724 N.W.2d 15, 19-20 (Minn. App. 2006) (same), *review denied* (Minn. Jan. 24, 2007).

"[B]efore an appellate court reviews an unobjected-to error, there must be (1) error; (2) that is plain; and (3) the error must affect substantial rights." *Griller*, 583 N.W.2d at 740. "If those three prongs are met, we may correct the error only if [(4)] it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002) (quoting *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001) (quotation omitted)). "Plain error exists when the district court commits an obvious

error that affects the defendant's substantial rights." *State v. Barnslater*, 786 N.W.2d 646, 653 (Minn. App. 2010) (citing *State v. Ihle*, 640 N.W.2d 910, 917 (Minn. 2002)), *review denied* (Minn. Oct. 27, 2010). "An error affects a defendant's substantial rights if it was 'prejudicial and affected the outcome of the case.'" *Id.* (quoting *Ihle*, 640 N.W.2d at 917).

On appeal, appellant argues that the district court committed plain error that affected his substantial rights in allowing the state to present the relationship-evidence testimony without providing a limiting instruction to the jury sua sponte, and that reversal is required. The state maintains that even if the district court plainly erred, the error did not affect appellant's substantial rights, and that the probative value of the relationship evidence outweighed any risk of unfair prejudice. As a preliminary matter, we note that both parties agree that the district court's failure to give a limiting instruction sua sponte regarding the relationship evidence was plain error, and on appeal, they do not dispute that prongs one and two of the plain-error analysis are met. However, we disagree with their concession based on our reading of the Minnesota Supreme Court's decision in *State v. Taylor*, 869 N.W.2d 1 (Minn. 2015), as applied to relationship-evidence cases.

In *Meldrum*, a relationship-evidence opinion by this court, we recognized that "[u]pon admittance of relationship evidence, even in the absence of a request from counsel, the district court should provide a cautionary instruction when the evidence is admitted, and again during its final charge to the jury." 724 N.W.2d at 21. We reached this conclusion, in part, by analogizing relationship evidence to *Spreigl* evidence. *Id.* at 17. Although we noted that relationship evidence is not *Spreigl* evidence, we said that it is used for a similar purpose, and that courts "typically apply a *Spreigl*-type analysis to relationship evidence." *Id.* at 20. We

concluded that because the risk presented by both types of evidence to a fair trial is significant, a precautionary limiting instruction should be given in relationship-evidence cases, as it is in *Spreigl*-evidence cases. *Id.* at 17. We went on to say, however, that a lack of a limiting instruction regarding relationship evidence, where none is requested, does not "*automatically* constitute plain error," particularly if other evidence at trial supports the conviction, the relationship evidence is not used for an improper purpose, and the other strong evidence at trial negates the risk of prejudicial impact from the relationship evidence. *Id.* at 22.

In subsequent relationship-evidence cases, we reiterated the strong preference that a limiting instruction be given at the time relationship evidence is admitted and again during final jury instructions, even if none has been requested. *Barnslater*, 786 N.W.2d at 653-54; *Word*, 755 N.W.2d at 785. Given the facts presented in *Barnslater* and *Word*, we held that, in those cases, the district court's failure to provide a limiting instruction sua sponte was plain error, but that the error was not prejudicial and did not affect the defendants' substantial rights so as to constitute reversible error under the plain-error test. *Barnslater*, 786 N.W.2d at 654; *Word*, 755 N.W.2d 785-86.

In *Taylor*, the Minnesota Supreme Court analogized prior-conviction impeachment evidence to *Spreigl* evidence, as the supreme court previously did in *State v. Bissell*, and as we did with relationship evidence in *Meldrum*. *Taylor*, 869 N.W.2d at 18 (discussing *State v. Bissell*, 368 N.W.2d 281, 283 (Minn. 1985)). The *Taylor* court relied on several *Spreigl* cases where the supreme court recognized the preference that a cautionary instruction be given when *Spreigl* evidence is admitted and again during final jury instructions, but where the court ultimately held that absent a request to do so, a district court's failure to provide such an

instruction sua sponte was not reversible error under the plain-error test. *Id.* (discussing *State v. Forsman*, 260 N.W.2d 160, 169 (Minn. 1977) (other citations omitted)).

The *Taylor* court held that, "[b]ecause *Bissell* and analogous *Spreigl* cases do not require a limiting instruction to be given sua sponte, the district court did not err, much less plainly err," in failing to provide a limiting instruction for prior-conviction impeachment evidence. *Taylor*, 869 N.W.2d at 18. In doing so, the supreme court used its analysis of *reversible* error under the plain-error test in *Spreigl*-evidence cases to conclude that a lack of sua sponte instruction was not *plain* error for prior-conviction impeachment evidence in *Taylor*. We believe that *Taylor's* analogy to *Spreigl* evidence is even more apt in the context of relationship evidence, as we previously recognized in *Meldrum*.

Like *Taylor*, appellant was represented by counsel, no limiting instruction was requested at the time the relationship evidence was admitted, and no objection was made to the lack of a limiting instruction in the final jury instructions. At the pretrial hearing, the district court performed a preliminary analysis of the probative value versus prejudicial effect of admitting the evidence as relationship evidence, and found that its high probative value outweighed the risk of unfair prejudice. The district court's preliminary analysis was sound and supported by the record. Based on this record, and our application of the holding in *Taylor*, we conclude that the district court did not plainly err in failing to provide a limiting instruction sua sponte to the jury regarding the admission of relationship evidence.

We acknowledge that reasonable legal minds may differ, but we believe that our analysis of the *Taylor* holding is dispositive here. There are three ways that other-crimes evidence is admitted where a cautionary instruction should be considered, both at the time of

its admission and again in the final instructions—these include *Spreigl* evidence, prior-conviction impeachment evidence, and relationship evidence. To read *Taylor* in a different way would, in effect, impose a different plain-error standard on district courts for admitting other-crimes evidence, depending on the evidentiary basis for its admission. Further, even if we were to agree that the district court plainly erred in this case, we would still conclude, based on this record, that the error did not affect appellant's substantial rights or prejudicially impact the outcome of appellant's case. *See Taylor*, 869 N.W.2d at 18-19 (holding that a lack of sua sponte limiting instruction was not plain error, but that, regardless, it also was not prejudicial and did not affect appellant's substantial rights under the plain-error test).

Here, the relationship testimony by M.B. was brief, its scope was limited, neither party placed undue emphasis on it, and the record contained other strong evidence of appellant's guilt. While it is somewhat concerning that the district court did not provide *any* limiting instructions to the jury about the proper use of prior bad acts, relationship, or impeachment evidence, the supreme court has previously recognized that district courts are justifiably hesitant in giving cautionary instructions sua sponte because "an instruction may draw additional attention to potentially prejudicial issues" and because "a defendant may choose not to request an instruction for strategic reasons." *State v. Vance*, 714 N.W.2d 428, 442-43 (Minn. 2006) (holding that it is not ordinarily plain error for the district court to fail to give a cautionary instruction sua sponte).

We again reiterate the strong preference that a district court give a limiting instruction for relationship evidence at the time it is admitted and again during final jury instructions. However, based on our reading of *Taylor*, we conclude that the district court's failure to do

so here was not plain error and that the lack of instruction did not prejudicially impact the jury's verdicts or deny appellant a fair trial so as to warrant reversal.

II. The record does not support appellant's claims of prosecutorial misconduct.

Appellant next argues that the state committed prosecutorial misconduct during its closing argument. Appellant did not object to the alleged prosecutorial misconduct at trial, and as such, we apply a modified plain-error standard of review. *State v. Ramey*, 721 N.W.2d 294, 299-300 (Minn. 2006). If an appellant establishes that the misconduct is plain error, the burden is on the state to show that it did not affect an appellant's substantial rights. *Id.* at 302.

Appellant alleges that the state committed prosecutorial misconduct during its closing argument because it: (1) misled the jury about the evidence by suggesting that it was "absolutely" possible that one of the belts found in appellant's car could have been used around M.B.'s neck, and that the other belt could have been used to tie her hands; (2) disparaged the defense's trial tactics and motives by calling defense counsel's cross-examination of M.B. an "attack" and by stating that, if M.B. had "been able to tell [the jury] every little detail in its entirety, then [the defense would] be claiming that she's making it up because she knows it too well"; and (3) mischaracterized appellant's motive for going to trial by suggesting that there was additional inadmissible evidence, and by stating, "If this were a slam-dunk case and everything were presented, we would not be here."

The prosecutor "may present all legitimate arguments on the evidence and all proper inferences that can be drawn from that evidence" during closing argument. *State v. Pearson*, 775 N.W.2d 155, 163 (Minn. 2009). It is prosecutorial misconduct to mischaracterize a defendant's reason for going to trial or to suggest an ulterior motive by a defendant for doing

so. *State v. Peltier*, 874 N.W.2d 792, 804 (Minn. 2016). In reviewing whether reversible error has occurred, "[appellate] courts must look at the closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence." *State v. McDaniel*, 777 N.W.2d 739, 751 (Minn. 2010) (quotation omitted).

Our review of the record shows that appellant's argument has taken the state's statements out of context. The state made reasonable inferences during its closing argument based on inconsistent evidence in the record. When the state's closing argument is read as a whole, it is clear that the statements appellant challenges were not at risk of misleading the jury, disparaging the defense's trial strategy, or mischaracterizing appellant's motives for going to trial. Instead, they were an attempt to address the inconsistencies and weaknesses in the state's case, and to alleviate potential juror bias against M.B. based on what the state perceived as her lack of likeability. Appellant's prosecutorial-misconduct challenge fails.

III. The district court did not abuse its discretion in holding that impeachment evidence would be admissible against appellant and appellant's witness at trial.

Whether the probative value of prior convictions outweighs their prejudicial effect is a matter within the discretion of the district court. *State v. Graham*, 371 N.W.2d 204, 208 (Minn. 1985). A district court's ruling on the impeachment of a witness by prior conviction is reviewed, as are other evidentiary rulings, for a clear abuse of discretion. *State v. Hill*, 801 N.W.2d 646, 651 (Minn. 2011). Under Minn. R. Evid. 609(a), evidence of a witness's prior conviction is admissible to attack the witness's credibility if the crime (1) is a felony and the district court finds that its probative value outweighs its prejudicial effect, or (2) involves dishonesty or a false statement.

Here, before trial, the state sought to impeach appellant with five prior felony convictions if he testified at trial. Appellant objected. The district court said that a 2009 assault conviction and a 2013 fleeing conviction would be admissible for impeachment purposes as "unspecified felony convictions" under 609(a)(1), and that a 2006 felony motor vehicle theft conviction would be admissible as a crime of dishonesty under 609(a)(2). The court also held that a 2006 burglary conviction and the 2014 terroristic-threats conviction would not be admissible against appellant for impeachment purposes.

In deciding that appellant's motor vehicle theft conviction would be admissible for impeachment, the district court alluded to the balancing test required under 609(a)(1) and discussed some of the *Jones* factors regarding whether the evidence was more probative than prejudicial, but failed to complete a *Jones*-factors analysis so as to admit the conviction under 609(a)(1).[2] Instead, the court admitted the theft as a crime of dishonesty under 609(a)(2). In doing so, the court failed to analyze the underlying details of the theft conviction, which is problematic because a theft conviction is not automatically a crime of dishonesty. *See State v. Sims*, 526 N.W.2d 201, 202 (Minn. 1994) (explaining that whether a theft is a crime of dishonesty depends on what kind of theft it was, for example shoplifting does not directly involve dishonesty, but theft by swindle does).

[2] In deciding whether to admit impeachment evidence, the district court balances five *Jones* factors, which include: "(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, 538 (Minn. 1978).

Appellant argues that the district court plainly erred in holding that the state could impeach him with his theft conviction if he testified at trial, that the ruling prejudicially impacted his right to testify, and that it denied him the opportunity to present his version of the case—namely that an alternative perpetrator committed the crimes alleged. Appellant also contends that if the district court had fully addressed the *Jones* factors under 609(a)(1), the court would have excluded his theft conviction as unduly prejudicial. Appellant asserts that his convictions must be reversed unless the error was harmless.

"A defendant has a constitutional right to present his version of events to a jury." *State v. Zornes*, 831 N.W.2d 609, 628 (Minn. 2013). However, a defendant's decision not to testify is "not critical" if the defendant's theory of the case is presented to the jury by other means. *State v. Lund*, 474 N.W.2d 169, 173 (Minn. App. 1991). We have previously held that a district court errs by failing to place its analysis of the *Jones* factors on the record. *State v. Vanhouse*, 634 N.W.2d 715, 719 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001). And in determining whether a court's failure to address the *Jones* factors under rule 609(a)(1) was harmless, we have performed an independent analysis of the factors. *See Vanhouse*, 634 N.W.2d at 719 (finding that the error was harmless where the appellate court concluded that the conviction was alternatively admissible under the *Jones* factors).

Here, we need not perform an independent analysis of the *Jones* factors under 609(a)(1) because, even if the district court erred in holding that appellant's motor vehicle theft conviction could be introduced at trial for impeachment purposes, we are unpersuaded that appellant's decision not to testify kept him from presenting his theory of the case. At the pretrial hearing, the district court ordered that appellant could present his alternative-

perpetrator defense at trial, and nothing in the record shows that he was prevented from doing so. Appellant's counsel cross-examined M.B. and the state's other witnesses about inconsistencies in their statements in order to present appellant's theory of the case. Additionally, the jury heard K.C.'s testimony that appellant was with her on January 29 and 30. On this record, we cannot conclude that the district court prejudicially erred in failing to conduct the *Jones*-factors analysis, or in failing to consider the underlying facts of appellant's theft of motor vehicle conviction.

Appellant also challenges the district court's admission of K.C.'s prior misdemeanor conviction for theft as impeachment evidence under Minn. R. Evid. 609(a)(2). Again, before allowing the state to impeach K.C. with her theft conviction as a crime of dishonesty, the court did not consider the underlying facts of the theft. When K.C. testified at trial, she was impeached with the misdemeanor theft conviction, as well as a misdemeanor false name to a police officer conviction. Appellant did not object, but it is undisputed that K.C.'s false name to a police officer conviction was properly admissible under 609(a)(2).

Although the court should have considered the underlying facts of K.C.'s theft conviction before admitting it, we see no prejudicial error from failing to do so. Given the strong evidence of appellant's guilt in the record, any impact of impeaching K.C. with two misdemeanor convictions as opposed to one was slight. Further, because K.C.'s prior theft conviction was not a felony, the *Jone*s-factors analysis under 609(a)(1) is inapplicable. We conclude that district court did not abuse its discretion in issuing its impeachment-evidence rulings, and that even if the rulings were erroneous, any error was harmless. Appellant failed to establish prejudicial error, and he is not entitled to reversal.

D E C I S I O N

Appellant is not entitled to a new trial because: (1) the district court did not plainly err by not instructing the jury sua sponte on the proper use of the relationship evidence; (2) the prosecutor did not commit prosecutorial misconduct; and (3) the district court's impeachment-evidence rulings did not prejudice the outcome of the trial and were harmless.

Affirmed.