



## MINNESOTA JUDICIAL TRAINING UPDATE



### IMPEACHMENT – PRIOR FELONY CONVICTIONS (THIS NEW UPDATE REPLACES UPDATE #10-19)

**NOTE:** The Minnesota Supreme Court Recently Issued A Decision Of 1<sup>st</sup> Impression On The Use Of “**UNSPECIFIED FELONIES**” Which Significantly Impacts The Use Of Prior Convictions For Impeachment Purposes. This Training Update Replaces Update #10-19, Dated October 25, 2010. The Updated Section Is On Page 2, Paragraph #3, Labeled “**NEW RULE – UNSPECIFIED FELONIES**”. *State v. Hill, AO9-1947, August 24, 2011.*

**QUESTION:** Prior To Trial The State Files A Motion-In-Limine Seeking To Impeach Defendant (Should He Decide To Testify) With Several Prior Felony Convictions, All Occurring Within The Past 10 Years And None Constituting A “Crime Of Dishonesty Or False Statement”. What Balancing Test Must The Court Apply And What 5 Specific Findings Must The Court Make (On The Record) To Properly Rule?

**Note:** Excluded from this discussion are crimes that involve dishonesty or false statement because those convictions are automatically deemed admissible under Rule 609(a)(2) (to be addressed in a future update).

**BALANCING TEST:** Pursuant to Minnesota Rule of Evidence (MRE) 609 (a) (1), for the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a ...(felony)... shall be admitted only “if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect”.

**5 SPECIFIC FINDINGS:** The Minnesota Supreme Court has listed 5 factors to consider in determining whether the probative value outweighs the prejudicial effect: The court must address each of the 5 *Jones* factors on the record. *State v Jones, 271 N.W.2d 534 (Minn. 1978).*

#### 1) **The Impeachment Value Of The Prior Crime**

Impeachment by prior conviction aids the jury by allowing it to see the whole person, and thus to better judge the truth of the testimony. Simply because a crime is not directly related to truth or falsity does not mean that evidence of the conviction has no impeachment value; such convictions allow the trier of fact to assess a witness’s general trustworthiness. *State v. Flemino, 721 N.W.2d 326 (Minn. App. 2006).*

## 2) **The Date Of The Conviction And The Defendant's Subsequent History**

Rule 609(b), sets a ten-year time limit for admissibility. It can be persuasively argued that, as each year passes, a conviction loses some probative value on the issue of credibility. But it can also be argued that the prejudicial effect of that conviction also diminishes with the passage of time. The pivotal determinant will usually be the defendant's history since the prior conviction. A history of subsequent convictions may show a "pattern of lawlessness" indicating that the passage of time has not diminished the value of the prior conviction for impeachment. *State v Ihnot*, 575 N.W.2d 581, 586 (Minn. 1998).

## 3) **The Similarity Of The Past Crime To The Charged Crime**

The greater the similarity, the greater the reason for not permitting use of the prior crime to impeach. The more similar the crimes the more likely the prior conviction will be prejudicial. *State v. Swanson*, 707 N.W.2d 645, 655 (Minn. 2006). But see *State v. Ihnot*, 575 N.W.2d 581 (Minn. 1998), the Court upheld the use of a prior conviction for crim sex conduct 3rd degree to impeach defendant charged with crim sex conduct 1st degree.

**NEW RULE – UNSPECIFIED FELONIES:** In *State v. Hill*, A09-1947, August 24, 2011, the Minnesota Supreme Court adopted a new rule that permits a party to impeach a witness with "unspecified" felony convictions. The term "unspecified" refers to a prior felony conviction without revealing the nature of the conviction. For example, instead of asking defendant if he was convicted of an "**Aggravated Robbery**" in 2007 in Anoka County, defendant is asked only if he was convicted of a "**Felony**" in 2007 in Anoka County.

**RATIONALE:** It is the general lack of respect for the law, rather than the specific nature of the conviction, that informs the fact-finder about a witness' credibility, at least with respect to convictions other than those involving dishonesty or false statements. In other words, any felony conviction is probative of a witness' credibility, and the mere fact that a witness is a convicted felon holds impeachment value.

**SUPREME COURT STANDARD:** "...The decision about what details, if any, to disclose about the conviction at the time of impeachment is a decision that remains within the sound discretion of the district court. To exercise that discretion properly, a district court must weigh the probative value of admitting the evidence against its prejudicial effect. Minn. R. Evid. 609(a). 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 balance test of Rule 609(a)(1)." *Id at page 9.*

#### 4) **The Importance Of The Defendant's Testimony**

This factor weighs against admissibility. Even a relevant prior conviction may be excluded if the judge determines that its admission for impeachment purposes will cause defendant not to testify and it is more important for the jury to hear defendant's version of the case than to have defendant remain silent out of fear of impeachment.

(a) For example, in *State v. Jones*, 271 N.W.2d 534,537 (Minn. 1978) Jones was charged with the shooting death of Carlson. He claimed self-defense. The trial court denied his motion to exclude two prior convictions, Jones elected not to testify. Reversing Jones's murder conviction, the Court observed: "In the instant case, it was extremely important that the jury hear the story of the defendant..."

(b) However, in *State v. Bettin*, 295 N.W.2d 542 (Minn. 1980) the Supreme Court held that admission of a prior rape conviction for impeachment was proper even if it may have contributed to defendant not testifying.

#### 5) **The Centrality Of The Credibility Issue**

This factor weighs in favor of admissibility. *State v. Bettin*, 295 N.W.2d 542, 546 (Minn.1980). In certain circumstances, the need for evidence of prior convictions for impeachment purposes is more compelling. When the jury has to choose between believing a defendant and believing another person, "a greater case can be made for admitting the impeachment evidence, because the need for the evidence is greater."

**NOTE: LIMITING JURY INSTRUCTION:** If a Rule 609 conviction is admitted into evidence, the trial court should give a limiting instruction, whether the accused requests one or not. *State v. Bissell*, 368 N.W.2d 281, 283 (Minn. 1985). A pattern limiting instruction is provided in Minnesota's criminal jury instruction guide as follows:

The evidence concerning a prior conviction of [the defendant] is admitted only for your consideration in deciding whether [the defendant] is telling the truth in this case. You must not consider this conviction as evidence of the defendant's character or conduct except as you may think it reflects on believability.

*See, 10 Minnesota Practice: Minnesota Jury Instruction Guides, Crimjig 2.02 (5th Ed. 2010).*