



## MARTINE LAW TRAINING UPDATE



### Calculating Criminal History Scores In-State vs. Out-of-State Convictions

**This is a Legal Landmine for Both the State and Defense**

*State v. Johnson, A25-0094 (Minn. App. Jan. 20, 2026)*



Minn Rule of Evidence 1005 requires that the contents of an out-of-state conviction record be proven by a certified or authenticated copy, or—if such a copy cannot be obtained with reasonable diligence—by other reliable evidence. **General Rule:** a PSI alone is never enough to prove out-of-state convictions—Rule 1005 proof is required unless the defendant admits the conviction on the record. The big question is whether the defense objected?

**State v. Johnson, A25-0094 (Minn. App. Jan. 20, 2026)****FACTS**

The defendant in *State v. Johnson* was convicted in Minnesota district court of first-degree aggravated robbery and related offenses. Prior to sentencing, a Presentence Investigation Report (PSI) was prepared that assigned the defendant criminal history points for three prior Illinois convictions.

The PSI contained detailed information about each out-of-state conviction, including offense descriptions, statutory citations, case numbers, sentencing information, and purported Minnesota felony equivalents. However, no certified copies of the Illinois conviction records were introduced, no witness testified to authenticate or verify those records, and no other evidence was offered to establish the defendant's identity as the person convicted or to satisfy Minn. R. Evid. 1005.

At sentencing, the defense did not object to the inclusion of the three out-of-state convictions in the criminal history score. Relying solely on the PSI, the district court included the convictions in calculating the defendant's criminal history score and imposed a presumptive guidelines sentence.

On appeal, the defendant challenged the sentence, arguing that the State failed to meet its burden of proof under Rule 1005 to justify inclusion of the out-of-state convictions in the criminal history calculation when the only evidence supporting them was the PSI.

**ISSUE**

Whether the State may satisfy its burden to include out-of-state convictions in a defendant's criminal history score by relying solely on a Presentence Investigation Report (PSI) that does not comply with Minn. R. Evid. 1005, and—critically—how a defense objection at sentencing affects the scope of relief on appeal.

**RULING**

**NO!**

The Court of Appeals held that the State does not meet its burden to justify inclusion of out-of-state convictions by relying solely on a PSI that fails to meet Rule 1005 standards. The district court therefore abused its discretion.

Because the defense did not object at sentencing, the case was reversed and remanded to allow the State to further develop the sentencing record. The court expressly tied this remedy to the lack of a defense objection.

## ANALYSIS

### **1. The State's Burden at Sentencing and the Role of Rule 1005:**

At sentencing, the State bears the burden to prove—by a **fair preponderance of the evidence**—that any out-of-state conviction used to calculate a defendant's criminal history score is properly included. The State must establish:

1. The existence and validity of the out-of-state conviction
2. That the defendant is the person convicted
3. That the offense would constitute a felony under Minnesota law
4. That the sentence imposed meets Minnesota's felony threshold

Because Minnesota courts may not take judicial notice of foreign convictions, proof of out-of-state convictions must comply with Minn. R. Evid. 1005, which governs how the contents of official records may be established. Under Rule 1005, acceptable proof includes:

- Certified copies of judgments of conviction
- Copies verified as accurate by a witness who compared them to the original
- Other reliable evidence, but only if certified copies cannot be obtained despite reasonable diligence

A **PSI, standing alone, is not sufficient evidence** to meet the State's burden unless it independently complies with Rule 1005 or is supported by admissible proof such as certified records, authenticated copies, or testimony establishing the contents of the foreign conviction records. In *Johnson*, the PSI referenced out-of-state convictions but did not produce or authenticate the underlying records, did not establish identity, and did not

otherwise satisfy Rule 1005. As a result, the PSI failed as competent evidence to support inclusion of the out-of-state convictions in the criminal history score.

**Importantly, the State's burden may also be satisfied if the defendant admits the existence and validity of the out-of-state convictions on the record**, such as during a guilty plea or sentencing proceeding. In that circumstance, the defendant's admission supplies the necessary proof, and Rule 1005 does not require additional documentary evidence.

## **2. Why the Sentence Was Still Reviewable on Appeal:**

Even though the defense did not object, the error was reviewable because:

- A sentence based on an incorrect criminal-history score is an illegal sentence
- Illegal sentences are correctable “at any time” under Minn. R. Crim. P. 27.03, subd. 9

This preserves appellate review—but does not guarantee the most favorable remedy for the defense.

## **3. This is the key lesson of *Johnson* for defense attorneys:**

The Court of Appeals explicitly allowed the State to supplement the record because the defense did not object at sentencing. The court relied on prior cases recognizing that, when no objection is made, fairness permits the State a second opportunity on remand.

Strong implication of the decision:

- If the defense does object at sentencing based on Rule 1005
- And the State fails to supplement the record
- And the district court overrules or ignores the objection

→ The State has already had its chance.

In those circumstances, appellate courts are far more likely to remand for resentencing using a corrected criminal-history score that excludes the out-of-state convictions, rather than allowing the State a second chance to rebuild the record.

**CONCLUSION**

*Johnson* establishes two critical principles:

1. **The State may not** rely solely on a PSI that fails to meet Rule 1005 to include out-of-state convictions in a criminal-history score.
2. **A timely defense objection** at sentencing is strategically decisive, as it increases the likelihood that resentencing on appeal will exclude the out-of-state convictions, rather than giving the State a second chance to prove them.

For defense attorneys, sentencing is the moment where appellate leverage is either preserved—or lost.

**Best Practices for Prosecutors, Defense Attorneys and Presiding Judges****A. BEST PRACTICES FOR PROSECUTORS:**

**Core Principle:** *Out-of-state convictions must be proven, not presumed.*

**DO:**

- Assume Rule 1005 applies to every out-of-state conviction
- Obtain certified judgments or authenticated records in advance
- Be prepared to prove identity and Minnesota felony equivalency
- At the plea hearing, ask defendant to confirm all out-of-state convictions
- Cure deficiencies immediately if the defense objects

**DON'T:**

- Rely solely on a PSI or sentencing worksheet
- Ignore a defense objection and hope for a do-over on appeal

**Warning:** If the defense objects at sentencing and the State fails to supplement the record, the State may lose the ability to supplement the record later.

**B. BEST PRACTICES FOR DEFENSE ATTORNEYS:**

**Core Principle:** *Object now—or give the State a second chance later.*

**DO:**

- Scrutinize every out-of-state conviction in the PSI
- Ask: *Where is the Rule 1005-compliant proof?*
- Make a **clear, on-the-record objection at sentencing based on Rule 1005**
- Advise your client NOT to admit to any out-of-state convictions. Defense counsel should be aware that an unqualified admission during a plea colloquy can eliminate otherwise viable Rule 1005 objections at sentencing.

**DON'T:**

- Assume the PSI is “good enough”
- Stay silent because the guidelines range seems acceptable

**Key Takeaway:** If you don’t object, the State often gets a do-over. If you do object and the state fails to supplement the record, they likely won’t get a second chance.

**Sample objection script:** *“Your Honor, the State has not presented Rule 1005-compliant proof of these out-of-state convictions, and we object to their inclusion in the criminal history score.”*

**C. BEST PRACTICES FOR PRESIDING JUDGES:**

**Core Principle:** *Sentencing is an evidentiary determination, not a ministerial act.*

**DO:**

- Confirm that the State has met its burden for out-of-state convictions
- Ask what evidence supports Rule 1005 compliance
- Address defense objections explicitly on the record
- Require the State to cure deficiencies before sentencing proceeds

**DON'T:**

- Treat the PSI as presumptively sufficient for out-of-state convictions
- Assume silence equals proof
- Defer evidentiary problems to appellate courts

**Judicial Perspective:** Correcting the issue at sentencing avoids reversal, remand, and unnecessary resentencing hearings.

**FINAL SYSTEM-WIDE TAKEAWAY**

**Proof matters. Objections matter. Silence has consequences.**

- Prosecutors must **prove**
- Defense attorneys must **object**
- Judges must **ensure the burden is met**

**Rule at a Glance:** Out-of-state convictions require Rule 1005-compliant proof unless the defendant admits them on the record. No certified records + no admission + no Rule 1005 compliance = object.

*State v. Johnson* is now essential reading for anyone involved in Minnesota sentencing.

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Alan F. Pendleton, Of Counsel, Martine Law Firm; Director of Mentorship and Education, Former District Court Judge; alan@xmartinelaw.com; [Minnesota Judicial Training & Education Website](#)