

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY L. BROWN,

Defendant-Appellant.

UNPUBLISHED

June 6, 2000

No. 213428

Wayne Circuit Court

LC No. 97-001949

Before: Hoekstra, P.J., and Holbrook, Jr. and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his conviction after a jury trial for second-degree criminal sexual conduct, MCL 750.520c(1)(b); MSA 28.788(3)(1)(b). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court abused its discretion in admitting a stale conviction for armed robbery for impeachment purposes under MRE 609. We disagree.

A witness's credibility may be impeached with prior convictions only if the convictions satisfy the criteria set forth in MRE 609. *People v Nelson*, 234 Mich App 454, 460; 594 NW2d 114 (1999). A trial court's decision to admit this evidence is reviewed for abuse of discretion. *Id.* The rule provides in part:

(a) For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross examination, and

(1) The crime contained an element of dishonesty or false statement, or

(2) the crime contained an element of theft, and

(A) the crime was punishable by imprisonment in excess of one year or

death under the law under which the witness was convicted, and

(B) the court determines that the evidence has significant probative value on the issue of credibility and, if the witness is the defendant in a criminal trial, the court further determines that the probative value of the evidence outweighs its prejudicial effect.

Crimes of theft are minimally probative, and are thus admissible only if the probative value outweighs the prejudicial effect. *People v Allen*, 429 Mich 558, 595-596, 605-606; 420 NW2d 499 (1988). MRE 609(b) provides:

(b) For purposes of the probative value determination required by subrule (a)(2)(B), the court shall consider only the age of the conviction and the degree to which a conviction of the crime is indicative of veracity. If a determination of prejudicial effect is required, the court shall consider only the conviction's similarity to the charged offense and the possible effects on the decisional process if admitting the evidence causes the defendant to elect not to testify. The court must articulate, on the record, the analysis of each factor.

Because robbery contains an element of theft, it is admissible under MRE 609 if it satisfies the *Allen* balancing test. *People v Cross*, 202 Mich App 138, 146; 508 NW2d 144 (1993). Although the trial court failed to explicitly apply the balancing test required by the rule, there is no showing that the admission of the evidence was an abuse of discretion. Defendant's prior conviction was relatively old, but it was within the range of time permitted by MRE 609(c). The dissimilarity between the prior conviction for armed robbery and the present CSC charge diminished the prejudicial effect of the prior conviction. *Cross, supra*, 147.

Defendant minimized the impact of the prior conviction by pointing out his age at the time of the prior crime, and testifying that he learned from his experience. There is no indication that defendant was convicted because the jury believed that the prior conviction established that he was a bad person. Any error would be harmless where it is highly probable that the evidence of the prior conviction did not contribute to the verdict. *Nelson, supra*, 463-464.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra