STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 17, 2005
v	No. 253797 St. Clair Circuit Court
RONALD EUGENE MARTIN, Defendant-Appellant.	LC No. 03-001572-FC

Before: Neff, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of two counts of armed robbery, MCL 750.529, and an order denying his motion for a new trial. He was sentenced as a third-offense habitual offender to concurrent terms of fifteen to forty years' imprisonment, with credit for 266 days served. The case arose when two men, one of whom struck and injured the owner with a gold-painted handgun, robbed a convenience store. We affirm.

Larry Mack testified that on the day of the robbery he was at Sierra Eagle's mother's home. Audrey Cornell[1] and Eagle's brother also lived there. Mack was talking to Eagle when defendant asked if Mack wanted to rob a convenience store, and Mack agreed. Defendant borrowed Cornell's Intrepid, and they went to defendant's house to pick up defendant's gold spray painted BB pistol. They drove to the store, and Mack went inside to see who was there.

The owner of the convenience store testified that while he was discussing business with a supplier, a customer came in and asked for a case of beer that was colder than what was at the front of the store, but then left. Mack testified that after he asked for some beer, he went back to the car, where he and defendant discussed a plan to get the owner into the cooler so defendant could grab the money and leave. According to the supplier, a few minutes later, the man returned and asked for the beer from the cooler in the back of the store. The owner accompanied the man to the cooler. Another man wearing a mask and carrying a copper-colored gun entered the store, told him to get down and not look at him, and headed toward the cooler.

[1] Audrey Cornell is also known as Audrey O'Brien.

Meanwhile, the owner testified, he gave the first man the case of beer; as he was leading him from the cooler, he noticed a man wearing a mask and pointing a gold-colored gun at him. When the owner asked the gunman why he was doing this, the gunman struck him over his left eye with the gun and told him to stay back. The first man dropped the beer, and both pushed the owner to the ground. When the men returned to the front of the store, the supplier took approximately $900 to $1,200 from his pocket, threw it at them, and asked them to take the money and leave. The first man picked up the money, and the gunman went to the cash register. Although the supplier could hear money rustling, he did not know if the register itself or a drawer underneath had been opened. The first man yelled that they had enough money and should leave before the police arrived, so the gunman jumped over the counter, and they ran out. Mack testified that they jumped a fence, and defendant threw the gun toward a swimming pool while they ran to the car. They returned to Eagle's mother's house, where they divided the money, except for fifty dollars defendant gave Cornell for use of her car and gasoline.

Port Huron Police Officer Keith A. Merrit and Detective Brian Georgia obtained a description of the suspects from the owner. Officer Christopher Bean took photographs in the store of some muddy shoeprints bearing cross-shaped lugs and a tread pattern on the heel, and photographs of a unique set of footprints in the snow outside that he believed looked as if made by someone running. After being treated at the hospital and returning to the store, the owner checked the cash register and concluded that no money was missing, but he did not check the box underneath. He stayed at a motel and ate dinner at Denny's that night. The next morning, he checked the lower box and found it empty; he estimated that less than $100 was missing. Ten-year-old Jennifer Rose Robbins testified that she and a friend found a silver or metal-colored gun near the pool in a park at the Rivertown Green apartment complex, and they took it to the office. The owner called the police, and Robbins showed the police officer where she found the gun. Port Huron Police Officer David Fajardo secured the gun as evidence and noted that it was a BB gun "painted gold over black."

Port Huron Police Sergeant Joseph A. Platzer testified that the Special Crimes Unit was assigned to investigate the robbery. The unit received a number of mostly anonymous telephone calls over the next few days, and "[t]he names kept coming up Ronald Martin and Larry Mack," so the unit decided to bring them in. Platzer testified that Mack was not wearing shoes when he was arrested, so Platzer sent Bean back to the apartment for them. Bean stated that the patterns on the underside of those shoes did not match the muddy prints found inside the convenience store but were consistent with the tracks in the snow. He admitted that the muddy shoeprints in the store were not distinctive enough to be traced to a particular shoe or boot. During his interview, Mack eventually agreed to cooperate in the investigation. Platzer interviewed defendant again; defendant insisted that he had been in the store with Mack and Cornell just before the robbery, but he had not been involved in it, and he, Cornell, Mack, and "C"[2] then drove to the Fairfield Inn. Defendant said he heard that "Larry Mack did it," although defendant was with Mack both beforehand and afterward. Defendant told Platzer he saw the owner at a Denny's restaurant later that evening while defendant was with some companions; one

[2] Platzer testified that Mack told him he had a cousin named Clifford LaMar, who had the nickname "C."

companion asked what happened, to which defendant replied that "mother fuckers robbed his ass tonight." Cornell stated that defendant only remarked that the person looked badly hurt and did not say who he was or whether he had been robbed.

Defendant testified that he picked Cornell up from work and took her to Eagle's home, where they "[p]retty much just hung out." Eagle, her mother, and her brother were already there; Mack showed up between 7:00 and 7:30 p.m. About twenty or thirty minutes after that, defendant drove Cornell and Mack to the convenience store to buy a twenty-two ounce beer. He then walked to his girlfriend's house to put his child to bed at about 8:30 or 9:00 p.m., and his girlfriend asked him to watch a movie. Defendant returned to Eagle's house about 10:00 p.m. Twenty or forty minutes later, he and a group of friends left to get gasoline and drove to the Fairfield Inn. They arrived about midnight. Later, he went to Denny's and saw the store owner there "looking really bad;" by that time, defendant learned from his friends that the owner had been robbed. Defendant admitted showing Cornell a gold-painted BB gun but said he did not own it, and it was not the gun admitted into evidence.

Eagle testified on rebuttal that defendant and Mack were the only people who came over the night of the robbery. Defendant and Mack left at around 8:30 and returned. Defendant later said "'I hit an old guy,'" but did not elaborate. Mack left, and a group of friends went to a hotel and to Denny's. While at Denny's, defendant pointed out the owner of the convenience store and said that he had been hit during a robbery that night. Cornell told her she received fifty dollars the night of the robbery in addition to gasoline for her car. She testified that Mack "was the only one that ever talked about the robbery."

Defendant moved to suppress evidence of his prior convictions. The court concluded that receiving and concealing stolen property involved dishonesty and was therefore admissible to test defendant's credibility. The court denied defendant's motions to see Mack's presentence investigation report, to view any non-public portion of the prosecutor's file regarding Mack's plea agreement other than the final guidelines scoring sheet, and to discover Mack's attorney's file. On the first day of trial, the prosecution moved to amend its witness list to add Eagle. The court refused to allow her in the prosecution's case in chief but allowed her as a rebuttal witness. On the third day of trial, defendant noticed Eagle was in the courtroom and moved for sequestration; the trial court denied the motion.

Defendant was found guilty of two counts of armed robbery and was sentenced accordingly. He moved for a new trial on the basis of an affidavit by Mack stating that his testimony was perjurious and the result of threats, and Mack and defendant were both innocent. Defendant again moved to discover Mack's attorney's file. The court noted that recantation testimony was traditionally untrustworthy, recalled Mack's testimony at trial and found him to be a credible witness, and found his affidavit to be self-serving and in apparent dissatisfaction with his ultimate sentence. The court concluded that Mack could have revealed the alleged involvement of third parties to the officers but failed to do so, so discovery of his attorney's work product would be pointless, and denied the motions.

Defendant first argues the trial court abused its discretion by denying defendant's motion for a new trial without holding an evidentiary hearing where Mack's affidavit provided newly-discovered, exculpatory, non-cumulative evidence that Mack committed perjury, and someone

else committed the offense. Defendant claims that this would produce a different result on retrial because Mack's testimony was the only evidence implicating defendant. We disagree.

The decision whether to grant a new trial on the basis of recantation testimony is discretionary and will not be reversed absent a clear abuse of discretion. *People v Canter*, 197 Mich App 550, 560; 496 NW2d 336 (1992). Deference is given to the court's "superior opportunity to appraise the credibility of the recanting witness and other trial witnesses." *Id*. This Court has explained:

> A motion for a new trial based on newly discovered evidence may be granted upon a showing that: (1) the evidence itself, not merely its materiality, is newly discovered, (2) the evidence is not merely cumulative, (3) the evidence is such as to render a different result probable on retrial, and (4) the defendant could not with reasonable diligence have produced it at trial. [*Canter, supra* at 559.]

However, if the newly discovered evidence consists of recantation testimony, it is generally considered untrustworthy. *Id*. See also *People v Van Den Dreissche*, 233 Mich 38, 46; 206 NW 339 (1925).

The trial court here noted that Mack's trial testimony was credible, whereas the affidavit was self-serving. The trial court has a greater ability to evaluate credibility. *Canter*, *supra* at 561. Moreover, a false confession is "one that does not coincide with established facts." *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003). Mack's testimony about the events that occurred in the convenience store was generally corroborated by both the owner and the supplier. His testimony about defendant throwing the gun toward the pool after the robbery was corroborated by a ten-year-old witness, Officer Fajardo, and a gun that looked like the weapon described by the owner and the supplier. In contrast, there was no mention of a third party at trial, and Mack's affidavit does not state how he knows that the third party was the true perpetrator. Because Mack's testimony at trial coincided with established facts, while his affidavit did not, his trial testimony was more reliable than the affidavit. Mack's affidavit also states that he agreed to testify in part because he expected a significantly more lenient sentence, but even at trial he stated that his plea agreement deal "wasn't good enough" because he was "still in prison." This Court has noted that Michigan courts are especially loath to grant new trials on the basis of witnesses having changes of heart while incarcerated. *People v Pulley*, 66 Mich App 321, 331; 239 NW2d 366 (1976).

Defendant next argues that his due process rights were violated when the trial court denied his request for discovery of Mack's attorney's file because it prevented defendant from impeaching Mack and revealing that Mack's testimony was perjured. We disagree.

A trial court's decisions regarding discovery requests are reviewed for an abuse of discretion. *People v Fink*, 456 Mich 449, 458; 574 NW2d 28 (1998). However, this Court reviews de novo issues concerning due process violations. *People v Izarraras-Placante*, 246 Mich App 490, 493; 633 NW2d 18 (2001). Constitutional issues are likewise reviewed de novo. *People v Pitts*, 222 Mich App 260, 263; 564 NW2d 93 (1997). A defendant has a due process right to access evidence in the prosecutor's possession if it is exculpatory. *People v Stanaway*, 446 Mich 643, 666; 521 NW2d 557 (1994). However, "when a discovery request is made disclosure should not occur when the record reflects that the party seeking disclosure is on 'a

fishing expedition to see what may turn up.'" *Id*. at 680, quoting *Bowman Dairy Co v United States*, 341 US 214, 221; 71 S Ct 675; 95 L Ed 879 (1951). A generalized claim that the requested records might contain evidence useful to impeach on cross-examination is insufficient. *Stanaway*, *supra* at 681. Neither motion contained more than a generalized assertion that the requested records contained useful impeachment evidence. It is unnecessary to reach the constitutional ramifications of the trial court's denial of this discovery request because it fails to show "a reasonable probability that the records are likely to contain material information necessary to the defense." *Id*. at 677. The motions were appropriately denied.

Defendant next argues the court abused its discretion when it permitted a witness – whom the prosecutor moved to endorse the first day of trial – to testify on rebuttal regarding matters not properly the subject of rebuttal, and it denied his motion to sequester the witness. We disagree.

We review for an abuse of discretion a court's decision whether to allow a late endorsement of a witness. *People v Gadomski*, 232 Mich App 24, 32-33; 592 NW2d 75 (1998). Likewise, its decision to sequester witnesses is reviewed for an abuse of discretion. *In re Jackson*, 199 Mich App 22, 29; 501 NW2d 182 (1993). On the first day of trial, the prosecution moved to endorse Eagle as a witness. The trial court denied the motion but reserved the possibility that she might be allowed as a rebuttal witness. The underlying purpose of MCL 767.40a is to provide notice to the accused of potential witnesses. *People v Callon*, 256 Mich App 312, 327; 662 NW2d 501 (2003). The statute is not intended to bar admission of relevant evidence or to allow a defendant to engage in "gamesmanship." *Id*. at 328. Instead, it is intended to prevent unfair prejudice to a defendant. *Id*. at 328-329. Therefore, noncompliance does not require dismissal if the defendant is not prejudiced. *People v Williams*, 188 Mich App 54, 58-60; 469 NW2d 4 (1991).

Defendant claims on appeal that he was prejudiced by Eagle's damaging testimony. "Prejudice," in this context, does not merely mean unfavorable to the objecting party, but rather prejudicial to that party's ability to prepare his or her case and to test the evidence. *People v Taylor*, 159 Mich App 468, 486-487; 406 NW2d 859 (1987). At trial, defense counsel claimed defendant was prejudiced because counsel was unable to prepare for the witness. However, a trial court must fairly balance "the interests of the courts, the public, and the parties" and should exclude otherwise admissible evidence "only in the most egregious cases." *Id*. at 487 In our opinion, this is not one of those most egregious cases.

First, the record indicated that the prosecutor came across Eagle's statement to police when preparing for the instant case; the statement was contained in a supplement attached to another police report involving defendant in another crime. As soon as the prosecutor realized that Eagle's statement could be relevant to the instant case, she contacted her office and had the office notify defense counsel. To the extent that the prosecutor's failure to discover the statement earlier could have been considered negligence, "[m]ere negligence of the prosecutor is not the type of egregious case for which the extreme sanction of precluding relevant evidence is reserved." *Callon*, *supra* at 328. Further, defense counsel received the statement on Friday morning, and the trial did not start until Tuesday. When asked by the court whether he had tried to contact Eagle, defense counsel acknowledged that he had not contacted her. Moreover, during the motion hearing, the prosecutor offered to make the witness available to defense counsel before presenting her testimony. Defendant has not indicated how additional time would have

helped to prepare a better defense against this witness. See *People v Hawkins*, 245 Mich App 439, 455-456; 628 NW2d 105 (2001) (In the context of MRE 404(b) notice).

In *Taylor*, this Court found no prejudice in admitting a letter written by the defendant because the defendant had written it himself and knew of it independent of discovery. *Id*. at 487-488. Here, the defense had a statement from Eagle contained in a police report that it could have used to impeach any inconsistent testimony, so defendant was not completely unaware of the subject matter of her testimony. Moreover, defendant's and Eagle's mutual friends Cornell and Mack were called to testify; Eagle's brother was listed as a prosecution witness; and defendant himself testified that he was at Eagle's mother's house along with Eagle, her mother, her brother, Cornell, and Mack before the robbery. Therefore, defendant should have been aware that Eagle was a potential witness.[3] The trial court's decision to allow her to testify only in rebuttal rather than in the case in chief seems to be a fair balancing of "the interests of the courts, the public, and the parties" without resorting to unwarranted exclusion of otherwise admissible evidence. *Taylor, supra* at 487. Thus, the court did not abuse its discretion by allowing her to testify in rebuttal.

Defendant also contends that Eagle's rebuttal testimony was improper because it constituted evidence that should have been raised in the prosecution's case in chief. Our Supreme Court has explained that "the test of whether rebuttal evidence was properly admitted is not whether the evidence could have been offered in the prosecutor's case in chief, but, rather, whether the evidence is properly responsive to evidence introduced or a theory developed by the defendant" *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996), citing *People v Bettistea*, 173 Mich App 106; 434 NW2d 138 (1988). Defendant's theory of defense was that he was not present when the robbery occurred. Eagle's testimony that defendant told her he "hit an old guy," and at Denny's defendant identified the owner as the person from the convenience store who "had been hit earlier that night in the robbery that had taken place," tended to rebut defendant's theory. Thus, the testimony was proper rebuttal.

To the extent that the remaining testimony challenged by defendant – Eagle's statement that Cornell told her defendant gave her $50 – was improper rebuttal testimony because it impeached the credibility of a prosecution witness, it is preserved, nonconstitutional error. *People v Humphreys*, 221 Mich App 443, 448; 561 NW2d 868 (1997). Preserved, nonconstitutional error does not require reversal unless a defendant can demonstrate it was more probable than not that the error undermined the reliability of the verdict in light of the untainted evidence. *People v Whittaker*, 465 Mich 422, 427; 635 NW2d 687 (2001), citing *People v Elston*, 462 Mich 751, 766; 614 NW2d 595 (2000). Here, the untainted evidence consisted of the accomplice's testimony, which was well-corroborated by the testimony of the convenience store owner and the supplier, as well as the appearance and location of the gun and anonymous tips

[3] Defense counsel was arguably actually aware that Eagle would testify; during cross examination, counsel attempted to impeach her testimony with a letter she had written to another inmate. This would indicate that counsel was not unprepared to challenge Eagle's testimony.

received by the police department.[4] Thus, we find that defendant has not demonstrated that Eagle's statements undermined the reliability of the verdict.

Defendant next argues that the trial court abused its discretion in refusing to sequester Eagle and that he was prejudiced by Eagle's ability to hear the testimony of the other witnesses. The Seventh Circuit has held that "[s]equestration of witnesses is a great aid in eliciting the truth, but disqualification of the offending witness absent particular circumstances is too harsh a penalty on the innocent litigant." *US v Schaefer*, 299 F 2d 625, 631 (CA 7, 1962), cited with approval by this Court in *People v Nixten*, 160 Mich App 203, 209 n 7; 408 NW2d 77 (1987). The trial court exercised its discretion to refuse to sequester on the ground that doing so would serve no purpose when none of the other witnesses had been sequestered. Because defendant has failed to point to a single instance in which Eagle's testimony was arguably colored by that of previous witnesses, defendant has not demonstrated that he suffered any prejudice, and reversal is not required. See *People v King*, 215 Mich App 301, 309; 544 NW2d 765 (1996); *In re Jackson*, *supra* at 29.

Defendant next argues he was denied a fair trial by the court's admission of his previous conviction of receiving or concealing stolen property without balancing its probative value and prejudicial effect as required by MRE 609. We agree that failure to perform the proper analysis was error, but disagree that the admission of the conviction denied defendant a fair trial.

The trial court's decision whether to admit evidence is generally discretionary, but preliminary legal questions are reviewed de novo, and the trial court abuses its discretion if it admits legally inadmissible evidence. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). Under MRE 609, a conviction containing an element of dishonesty or false statement is automatically admissible. *People v Parcha*, 227 Mich App 236, 241; 575 NW2d 316 (1997), citing *People v Allen*, 429 Mich 558, 605; 420 NW2d 499 (1988). However, if the conviction merely contains an element of theft, the court must determine whether the offense "was punishable by more than one year in prison, and, if the witness is a criminal defendant, whether the probative value of the offense outweighs its prejudicial effect." *Parcha*, *supra* at 242, citing *Allen*, *supra* at 605-606. When analyzing the probative value and prejudicial effect, the court may only consider (1) the age of the conviction, (2) the degree to which the conviction indicates truthfulness, (3) the similarity between the conviction and charged offense, and (4) whether admission of the offense causes the defendant not to testify. MRE 609(b).

The trial court allowed evidence of defendant's prior convictions of receiving and concealing stolen property and attempted possession of a stolen credit card under MRE 609(a)(1) on the ground that the crimes involved dishonesty, not theft.[5] Clearly, receiving or concealing stolen property is a theft-related offense. *People v Griffis*, 218 Mich App 95, 101-102; 553

[4] Defendant's argument on appeal that Eagle's testimony was crucial because she "was the last witness to testify" is incorrect. The trial court allowed defendant to surrebut Eagle's testimony. He testified that he said nothing about hitting an old man, even in jest.

[5] Defendant does not challenge on appeal the admission of his prior conviction of attempted possession of a stolen credit card to impeach his testimony.

NW2d 642 (1996).[6] Nevertheless, our Supreme Court has noted that particular theft offenses, like larceny by false pretenses, may also contain elements of dishonesty. *Parcha, supra* at 244 n 3, citing *Allen, supra* at 596 n 17.

> [Crimes of dishonesty can] be identified by the fact that they [do] not merely imply dishonesty on the part of the perpetrator, but incorporate[ ] a dishonest act, such as active deceit or falsification, as an element of the offense itself." [*Parcha, supra* at 243, citing *Allen, supra* at 595-596.]

Our Supreme Court has indicated that "dishonesty or false statement" should be strictly construed to require lying, deceit, misrepresentation, untruthfulness, falsification, or a lack of veracity as an actual element of the crime. *Allen, supra* at 593 n 15. To convict a defendant of receiving or concealing stolen property, MCL 750.535, the prosecutor must prove, "'(1) that the property was stolen; (2) the value of the property; (3) the receiving, possession or concealment of such property by the defendant with the knowledge of the defendant that the property had been stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty constructive or actual knowledge of the defendant that the property received or concealed had been stolen.'" *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996), quoting *People v Hooks*, 139 Mich App 92, 96; 360 NW2d 191 (1984).

Conceal is defined as "'to hide; cover or keep from sight' or 'to keep secret; avoid disclosing or divulging.'" *People v Owen*, 251 Mich App 76, 80; 649 NW2d 777 (2002), quoting *Random House Webster's College Dictionary* (2d ed, 1997). As Justice Markman noted, receipt of stolen property is not necessarily dishonest. *People v Ferrier*, 463 Mich 1007-1008; 624 NW2d 736 (2001) (Markman, J., dissenting). In the context of retail fraud, a conviction could be admissible in instances when the crime was committed with deceit such as altering a price tag, but not when the offense was committed "'through stealth or surreptitious activity.'" *Parcha, supra* at 246, quoting 28 *Federal Practice & Procedure*, § 6514, p 74, n 47.

In the context of a double jeopardy analysis of multiple punishments for the same offense, this Court concluded that convictions of receiving or concealing, MCL 750.535(1), and concealing or misrepresenting the identity of a motor vehicle with intent to mislead, MCL 750.415(2), was not multiple punishment for the same offense because neither offense had a single element in common. *Griffis, supra* at 97. MCL 750.415(2) specifically provides that the person must intend to mislead another regarding the identity of the vehicle and must conceal or misrepresent the identity of the vehicle by altering the identification number. Again, this Court

[6] Defendant cites *People v Kyllonen*, 402 Mich 135, 149; 262 NW2d 2 (1978) for the proposition that the offense of receiving or concealing stolen property is not a theft crime. *Kyllonen* was decided before the 1979 amendment to MCL 750.535(1). *People v Hastings*, 422 Mich 267, 268; 373 NW2d 533 (1985). The *Hastings* Court determined that 1979 PA 11 was enacted in response to *Kyllonen*, and it amended MCL 750.535(1) to permit prosecution of thieves for receiving or concealing. *Hastings, supra* at 271-272. Because a defendant could not be convicted of MCL 750.535(1) unless the property was stolen and the defendant knew the property was stolen, *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996), we conclude that MCL 750.535(1) contains an element of theft.

distinguished between merely concealing property and altering property with the intent to falsify or mislead. Therefore, we conclude that the offense of receiving or concealing stolen property does not contain an element of dishonesty.

However, defendant is not entitled to relief based on any error in this regard under the applicable test for preserved nonconstitutional error.[7] To obtain relief for this type of error, a defendant must show that it "is more probable than not that the error was outcome determinative." *People v Phillips*, 469 Mich 390, 396; 666 NW2d 657 (2003), quoting *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). As previously indicated, although the weight of the untainted evidence against defendant was not overwhelming, it was substantial. In contrast, defendant acknowledged pleading guilty in 1997 to a felony charge of receiving or concealing stolen property in excess of $100.[8] Receiving or concealing stolen property in excess of $100 was punishable by more than one year in prison. *People v Hastings*, 422 Mich 267, 270; 373 NW2d 533 (1985), citing MCL 750.535(1). Therefore, the requirement of MRE 609(a)(2)(A) was met.

Receiving or concealing stolen property is moderately indicative of veracity and, thus, moderately probative. *People v Clark*, 172 Mich App 407, 419; 432 NW2d 726 (1988). However, the age of the conviction – seven years – lowered the conviction's probative value. See *Allen*, *supra* at 606 n 32. MCL 750.535 is considered a crime against property, MCL 777.16z,[9] while armed robbery, MCL 750.529 is considered a crime against a person, MCL 777.16y. Therefore, the offenses were not similar, and the prejudicial effect was minimal. Defendant was aware before he testified that the conviction would be admissible to impeach his testimony, and it did not prevent him from testifying. Thus, the admission of the conviction did not cause defendant not to testify. Hence, while the probative value of the conviction was low, so was its prejudicial effect. Had the court conducted the preceding analysis, it would have been within its discretion to admit the conviction pursuant to MRE 609.

---

[7] While defendant asserts in conclusory fashion that the admission of his prior receiving and concealing stolen property conviction for impeachment purposes violated his constitutional due process rights, he presents no meaningful argument as to why this issue allegedly involved *constitutional* error. Rather, defendant provides an extended analysis of nonconstitutional evidentiary law. Thus, defendant has abandoned any claim of constitutional error regarding this issue by failing to meaningfully argue its merits because "[i]nsufficiently briefed issues are deemed abandoned on appeal." *Blackburne & Brown Mortgage Co v Ziomek*, 264 Mich App 615, 619; 692 NW2d 388 (2004), quoting *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001).

[8] MCL 750.535 was amended by 1998 PA 311 to provide that receiving or concealing stolen property worth less than $200 was a misdemeanor. However, in 1997, when defendant pleaded guilty to receiving or concealing stolen property in excess of $100, the offense was a felony. 1979 PA 11.

[9] Until 2000, MCL 750.535 was simply listed as one classification under MCL 777.16z. See 1998 PA 317. However, MCL 777.16z was amended by 2000 PA 279 to reflect only the felonies enumerated under MCL 750.535. MCL 777.16z has been amended several times since, but the subsequent amendments are not relevant to our analysis because, as previously noted, defendant was convicted of MCL 750.535 in 1997 when it was considered a felony.

Nevertheless, we conclude that failure to conduct the analysis was not outcome determinative. The prosecutor merely asked whether defendant had committed the offenses, and defendant simply replied yes. The prosecutor noted during closing argument that defendant's convictions could be used to weigh his credibility but not for any other purpose; the prosecutor further noted that Mack's previous convictions could be used for the same purpose. And the court instructed the jury on the proper use of defendant's previous convictions. Given the amount of evidence against defendant, the close evidentiary question with respect to probative value and prejudicial effect, the fact that the prosecutor did not expand on defendant's prior convictions, and the prosecutor's and the court's instructions to the jury about the proper use of the convictions, the admission of the receiving or concealing stolen property conviction did not affect the outcome of defendant's case.

Affirmed.

/s/ Janet T. Neff
/s/ Donald S. Owens
/s/ Karen M. Fort Hood