

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILMA OWENS,

Defendant-Appellant.

UNPUBLISHED

July 16, 1996

No. 182193

LC No. 94-004396

Before: MacKenzie, P.J., and Markey and J.M. Batzer,* JJ.

PER CURIAM.

Defendant appeals by right her convictions of armed robbery, MCL 750.529; MSA 28.797, and assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. Defendant was sentenced to ten to twenty years' imprisonment on the armed robbery conviction and six to ten years' imprisonment on the assault conviction. We affirm.

Defendant contends that the trial court improperly admitted her prior conviction for retail fraud into evidence without first having conducted the appropriate balancing test. We disagree but would find that the error was harmless nonetheless.

The trial court's decision to allow evidence of impeachment with prior convictions is within its sound discretion and will not be reversed on appeal absent an abuse of that discretion. *People v Coleman*, 210 Mich App 1, 6; 532 NW2d 885 (1995); *People v Bartlett*, 197 Mich App 15, 19; 494 NW2d 766 (1992). A witness's credibility may be impeached with prior convictions, MCL 600.2159; MSA 27A.2159, but only if the convictions satisfy the criteria set forth in MRE 609. *People v Cross*, 202 Mich App 138, 146; 508 NW2d 144 (1993). Crimes of theft are minimally probative of truthfulness, and are admissible only if their probative value outweighs any prejudicial effect of their admission. *People v Allen*, 429 Mich 558, 595-596; 420 NW2d 499 (1988). Because the retail fraud statute, MCL 750.356c(1)(b); MSA 28.588(3)(1)(b), prohibits stealing property of the

* Circuit judge, sitting on the Court of Appeals by assignment.

store while it is open to the public, it is, in this Court's opinion, a theft offense. As such, the trial court was required to conduct the appropriate balancing test to determine whether the probative value of admitting defendant's prior conviction outweighed any prejudicial effect defendant would have suffered by its admission. *Allen, supra* at 595-596. Here, the trial court reiterated the rule, discussed its application under MRE 609(b), and generally, albeit briefly, articulated its reasons for the admission of the impeachment evidence on the record. *People v Daniels*, 192 Mich App 658, 670-671; 482 NW2d 176 (1992). Moreover, in light of the testimony of the victim, an eye witness and defendant herself, any error was harmless. The erroneous admission of prior convictions is harmless if, despite the error, the prosecutor's case was so strong that a reasonable juror would not have voted to acquit if the impeachment evidence had been suppressed. *Bartlett, supra* at 20. Here, the jury would have convicted defendant even if the evidence of defendant's prior conviction had been suppressed given the overwhelming evidence of guilt. *Bartlett, supra* at 19; *People v Reed*, 172 Mich App 182, 188; 431 NW2d 431 (1988).

Defendant next asserts that there was insufficient evidence to support her conviction of armed robbery. We disagree.

When reviewing a challenge based on the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), modified 441 Mich 1201 (1993); *People v Jackson*, 178 Mich App 62, 64; 443 NW2d 423 (1989). To establish armed robbery, the prosecution must prove an assault and a felonious taking of property from the victim while the defendant was armed with a weapon described in MCL 750.529; MSA 28.797. *Wolfe, supra*. Here, the victim testified that defendant grabbed a pair of scissors and stabbed him and then, wielding the scissors and a brick, chased him around his store, finally taking approximately \$50 out of his cash register. Accordingly, there was sufficient evidence to support defendant's conviction of armed robbery. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995); *Jackson, supra* at 64. See also *People v Newcomb*, 190 Mich App 424, 430-431; 476 NW2d 749 (1991).

Finally, defendant argues that she was denied her right to a fair trial due to the trial court's lack of impartiality. We disagree. Because defendant failed to object at trial, we will review defendant's assertion of judicial misconduct only if manifest injustice would result due to our refusal to review this issue. *People v Collier*, 168 Mich App 687, 697; 425 NW2d 118 (1988). After reviewing the record, it is the opinion of this Court that the trial court's alleged inappropriate conduct did not unduly influence the jury nor deprive defendant of a fair trial. *Id.* At 698-697; *People v Burgess*, 153 Mich App 715, 719; 396 NW2d 814 (1986).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Jane E. Markey

/s/ James M. Batzer