

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
March 26, 2013

v

BRIAN LEE SNYDER,

No. 310208  
Van Buren Circuit Court  
LC No. 11-017954-FH

Defendant-Appellant.

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Before: STEPHENS, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant was convicted by a jury of larceny in a building, MCL 750.360. He appeals by right. For the reasons set forth below, we remand the case for further proceedings consistent with this opinion and retain jurisdiction.

**I. BASIC FACTS**

Defendant visited William Lesterhouse's antique store in Mattawan on October 30, 2011, close to closing time. After the store closed, defendant had a sandwich and a drink with Lesterhouse and Lesterhouse's sister. According to Lesterhouse, defendant did not appear to have any purpose in his visit that day. The next day, Lesterhouse discovered four silver pieces were missing, and reported this to the Mattawan Police Department. Lesterhouse went with Chief of Police Donald Verhage to Scott's Coin and Jewelry in Portage and located the silver pieces along with Lesterhouse's gold watch, which Lesterhouse had not realized was missing. Defendant had sold the silver items and the gold pocket watch to Scott's. Lesterhouse testified that defendant did not have permission to take the items and was not given the items. The silver items were worth approximately \$1,650 and the watch was worth approximately \$750.

Defendant testified that Lesterhouse gave him two of the silver bowls in exchange for some arrowheads and a stone tool, worth approximately \$800. According to defendant, Lesterhouse gave defendant the two additional silver pieces and the gold watch. Defendant claimed that after the store closed and they ate sandwiches, Lesterhouse made sexual advances towards defendant, which defendant rejected. Defendant testified that he took the box of silver items and the watch and left.

Before trial, defendant moved to prevent evidence of his prior conviction for larceny in a building from being admitted pursuant to MRE 609. At the hearing on defendant's motion, defendant explained that his prior conviction occurred in 2010 and that the prior conviction involved defendant taking cash from his mother's workplace. The trial court declined to make any findings on the record with regard to the admissibility of defendant's prior conviction and took the matter under advisement. The court issued an opinion subsequently in which it made no findings and concluded as follows:

Upon review of this matter the court finds the defendant's prior conviction of larceny in a building is not prejudiced by the prosecutor's use of this conviction to impeach the defendant. Therefore the defendant's motion to preclude the conviction [sic] use for impeachment is denied.

## II. STANDARD OF REVIEW

This Court reviews for an abuse of discretion a trial court's decision whether to admit or exclude evidence. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). "A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes." *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007).

## III. ANALYSIS

The rules of evidence are interpreted according to the principles of statutory interpretation. See *People v Caban*, 275 Mich App 419, 422; 738 NW2d 297 (2007) (footnote omitted). Accordingly, if the plain language of a rule of evidence is unambiguous, we "must enforce the meaning expressed, without further judicial construction or interpretation." *People v Phillips*, 468 Mich 583, 589; 663 NW2d 463 (2003).

MRE 609 governs the admissibility of evidence of prior conviction for a specific purpose: impeachment of a witness' credibility. The Supreme Court has recognized the danger that "a jury will misuse prior conviction evidence by focusing on the defendant's general bad character, rather than solely on his character for truth-telling." *People v Allen*, 429 Mich 558, 569; 420 NW2d 499 (1988). Accordingly, MRE 609 creates a presumption that prior convictions are inadmissible to impeach a witness' credibility. MRE 609(a) ("[E]vidence that the witness has been convicted of a crime *shall not be admitted unless . . .*") (emphasis added). That presumption can be overcome, however. First, if the prior conviction "contained an element of dishonesty or false statement," it is admissible with no further analysis required. MRE 609(a)(1). Second, if the prior conviction "contained an element of theft," it may be admissible if certain conditions are met. Which conditions need be met are in part a function of whether the witness is the defendant himself.

Regardless of whether the witness is the defendant himself, the court is required to determine that the proffered prior theft crime conviction has "*significant* probative value on the

issue of credibility.”<sup>1</sup> MRE 609(a)(2)(B) (emphasis added). “For purposes of [this] probative value determination . . . the court shall consider only the age of the conviction and the degree to which the conviction of the crime is indicative of veracity.” MRE 609(b). Regarding the age of the conviction, as a general matter, the older a conviction, the less probative it is. See *People v Meshell*, 265 Mich App 616, 636; 696 NW2d 754 (2005). Regarding “the degree to which a conviction of the crime is indicative of veracity,” our courts have not held that theft crimes are inherently of “*significant* probative value on the issue of credibility.” MRE 609(a)(2)(B) (emphasis added). Rather, our courts have held that “[t]heft crimes are minimally probative on the issue of credibility,” *Meshell*, 265 Mich App at 635, or, at most, are “moderately probative of veracity.” *Allen*, 429 Mich at 611.

Where, as here, the witness is the defendant himself, a further step is required. Specifically, “if the witness is the defendant in a criminal trial, the court [must] further determine[] that the probative value of the evidence outweighs its prejudicial effect.” MRE 609(a)(2)(B). For purposes of assessing prejudicial effect, “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.” MRE 609(b). With regard to the prior conviction’s similarity of the charged offense, this Court has explained that where, as here, the prior conviction is identical to the charged offense, it is highly prejudicial because “the risk is high that a jury would convict the defendant of this offense because it knew he was guilty of the identical offense.” *People v Minor*, 170 Mich App 731, 736-737; 429 NW2d 229 (1988). Moreover, the Supreme Court has explained that “prejudice . . . escalate[s] with . . . increased importance of the [defendant’s] testimony to the decisional process.” *Allen*, 429 Mich at 606.

Finally, when the trial court conducts its analysis weighing the prejudicial effect of the prior conviction against its probative value, the trial court is required to “articulate, on the record, the analysis of each factor” relevant to that test. MRE 609(b). The plain language of the final sentence of MRE 609(b) is mandatory, not permissive, and this Court has held in the past that a trial court errs by failing to articulate its analysis on the record as required by the plain language of MRE 609(b). See, e.g., *People v McDaniel*, 256 Mich App 165, 168; 662 NW2d 101 (2003), *abrogated on other grounds by People v Francisco*, 474 Mich 82 (2006).

In this case, the prosecution used defendant’s prior conviction for larceny in a building to impeach defendant at trial. Prior to trial, the trial court heard arguments at a motion hearing with regard to the admissibility of defendant’s prior larceny conviction. The issue of probative value was addressed at the hearing but not in the written opinion. We are mindful of the time constraints on a trial judge, but because the trial judge failed to conduct any analysis regarding why defendant’s prior conviction was admissible, we have no basis to analyze the trial court’s

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<sup>1</sup> The other requirement that must be met regardless of whether the witness is the defendant himself is that the prior theft crime conviction must have been one that “was punishable by imprisonment in excess of one year or death . . .” MRE 609(a)(2)(A). There is no dispute that this requirement is met in this case; defendant’s prior conviction was for larceny in a building, which is a felony. MCL 750.360.

decision in this case. We therefore conclude that the trial court abused its discretion by failing to follow the plain language requirement of MRE 609(b), *McDaniel*, 256 Mich App at 168, and remand the case to the trial court for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Cynthia Diane Stephens

/s/ Joel P. Hoekstra

/s/ Amy Ronayne Krause

**Court of Appeals, State of Michigan**

**ORDER**

People v Brian Lee Snyder

Cynthia Diane Stephens  
Presiding Judge

Docket No. 310208

Joel P. Hoekstra

LC No. 11-017954-FH

Amy Ronayne Krause  
Judges

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Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

As stated in the accompanying opinion, the trial court shall conduct the analysis required by MRE 609. Specifically, the trial court shall conduct an analysis regarding whether defendant's prior larceny conviction was of "significant probative value on the issue of credibility," MRE 609(a)(2)(B), and whether the prejudicial effect of the conviction outweighed the probative value. MRE 609(b).

This matter shall be given priority in the trial court and shall be concluded within 56 days of the Clerk's certification of this order.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

**MAR 26 2013**

Date

  
Chief Clerk