

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BROOKE ANGEL LOWREY,

Defendant-Appellant.

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UNPUBLISHED

March 9, 2006

No. 255962

St. Joseph Circuit Court

LC No. 03-011860-FH

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant appeals by right her jury conviction of uttering and publishing, MCL 750.249. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant attempted to cash two checks in two days at the same bank. The checks were written on the account of William Carr, the former husband of defendant's aunt. A bank teller testified that defendant cashed the first check for \$400, and returned the next day with another check for a substantial amount. Carr's account contained insufficient funds at that time. Carr was eventually contacted. He testified that he had not given defendant permission to cash the check, and that he had not signed the check.

Defendant's boyfriend, Daniel Keifer, was implicated in this crime, although he was not charged. He testified that defendant told him that she had obtained the checks by entering Carr's house through a window after traveling to the house with friends. At trial, defendant acknowledged that she had tried to cash the checks, but maintained that she had received them from Keifer, who told her that her uncle had wanted to help her purchase a car.

Defendant had a prior conviction for breaking and entering. Before trial, the trial court indicated that it would not allow the prosecutor to use the conviction to impeach defendant's testimony pursuant to MRE 609 because the instant case also involved an alleged breaking and entering. However, during defendant's testimony, she was asked whether she had provided a different story to the police. Defendant acknowledged that she had not told the investigating officer what had actually occurred because she was pregnant and feared losing her child. During redirect examination, defendant reiterated this rationale and gave the additional answer that she had "had other bad experiences with cops." During recross examination, the prosecutor asked defendant to explain this comment, and she replied that she had been in trouble as a minor. The prosecutor then asked her about her adult behavior:

Q. And that's all juvenile. Could you explain what happened as an adult?

A. As an adult, I was convicted for a B & E.

Q. Convicted of B & E. Were you sentenced on April 5<sup>th</sup> of 2002?

A. I'm not for sure of the date.

Q. But that was for breaking and entering a building with intent, correct?

A. Yes.

After the prosecutor indicated that she had no further questions, defense counsel moved for a mistrial. The trial court found that the questions by defense counsel opened the door to a subsequent general inquiry, and that defendant's subsequent answers led to an appropriate further question about the nature of her prior conviction.

Defendant maintains that she is entitled to a new trial because evidence of her prior conviction was inadmissible under MRE 609. Defendant argues that the trial court incorrectly found that her answers on redirect examination had opened the door to this line of inquiry, and that at most, the prosecutor should have been able to question her further on her reasons for initially lying to the police. The trial court's decision to allow impeachment with prior convictions falls within its sound discretion and will not be reversed on appeal, absent an abuse of that discretion. *People v McDaniel*, 256 Mich App 165, 167; 662 NW2d 101 (2003).

Generally, prior convictions may be used to impeach a witness' credibility only if the convictions satisfy the criteria set forth in MRE 609. *People v Nelson*, 234 Mich App 454, 460; 594 NW2d 114 (1999). Crimes involving theft are minimally probative and, therefore, usually are admissible only if the probative value of evidence of the crime outweighs the prejudicial effect of the evidence. *People v Allen*, 429 Mich 558, 595-596; 420 NW2d 499 (1988). However, MRE 609 does not apply to all uses of prior convictions. In *People v Taylor*, 422 Mich 407; 373 NW2d 579 (1985), our Supreme Court held that evidence of the defendant's prior conviction for assault with intent to rob while armed was admissible to rebut his testimony that he became hysterical at the sight of a gun being pointed at him. *Id.* at 411-413, 415-420. The *Taylor* Court noted that even when evidence qualifies as inadmissible for general impeachment of credibility purposes under MRE 609, it remains admissible to rebut specific statements of the defendant who testifies at trial. *Id.* at 415, citing *United States v Johnson*, 542 F2d 230, 234-235 (CA 5, 1976). This rule rests on the premise that federal "Rule 609 was crafted to apply in those cases where the conviction is offered only on the theory that people who do certain bad things are not to be trusted to tell the truth." *Johnson, supra* at 234-235.

In the instant case, we find that, despite defendant's argument to the contrary, her prior conviction was not introduced for the purpose of impeaching her general credibility. Instead, it was introduced for the purpose of rebutting her specific testimony concerning why she initially told a different story to the police. A natural implication of defendant's assertion that she had "had other bad experiences with cops before" would be that she had been treated unfairly or improperly by police officers in the past. The prosecutor's questioning was designed to refute this assertion and show that defendant's "bad experiences" stemmed instead from her own past

unlawful behavior. Defendant cannot show that the trial court abused its discretion when it allowed the prosecutor to question her about this specific assertion.

Affirmed.

/s/ Jessica R. Cooper

/s/ Kathleen Jansen

/s/ Jane E. Markey