Circuit Court for Wicomico County
Case No. 22-K-16-000631

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 435

September Term, 2017

MICHAEL STROBEL

v.

STATE OF MARYLAND

Woodward C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned)

JJ.

PER CURIAM

Filed: February 7, 2018

On February 14, 2017, a jury sitting in the Circuit Court for Wicomico County convicted appellant, Michael Strobel, of theft less than $100, forgery of private documents, issuing false documents, identity fraud theft, and theft $1,000 to $10,000. He was sentenced to six years of imprisonment. He appeals, and argues that the "trial court erred in admitting appellant's prior theft conviction for impeachment purposes."

BACKGROUND

On April 20, 2016, Reeven Getrouw, the owner of Express Auto, located at 1601 North Salisbury Boulevard, in Salisbury, checked his business bank account and saw that a suspicious check had been cashed against the account. The undated check was made out to "Michael Strobel" in the amount of $1237.46, and contained a signature that he did not recognize. The signature was not his, nor did it belong to his son, the only other authorized signatory on the account. Getrouw normally placed his business checks in a sometimes locked cabinet in his office, which was not open to customers. At trial, however, he testified that he had a habit of giving a stack of blank checks to an employee who sat at the front customer counter so that she could write checks on behalf of the business. Getrouw looked through the checks, and discovered that the check, check number 4721, was missing. Getrouw looked through his transaction records and discovered that a "Michael Strobel" visited the shop on April 11, 2016, and had his car inspected on that date. The cost of the vehicle inspection was $65, which Strobel had paid on the same date. Strobel was not a vendor, nor did the business owe him any money. Getrouw then called the police to report the fraudulent check.

Detective Brandon Caton, of the Salisbury Police Department, responded to the business and began an investigation. Getrouw gave the detective appellant's name, phone number, and address, which he had on record. Detective Caton called appellant's number and spoke to a man identifying himself as "Michael Strobel." Appellant admitted to depositing the check into his own bank account, claiming he had received it in the mail and believed it to be related to a previous transaction he had made at Getrouw's business. Detective Caton testified that appellant became defensive and argumentative during the telephone conversation, and eventually hung up the phone abruptly.

Appellant testified at trial that he had gone to Reeven's Auto Service on April 11th and had his car inspected. He testified that he stood in front of the front counter while in the shop, but denied taking any checks. He admitted to depositing a check, which he stated had come in the mail to his mother's house. The check, which came in a hand written envelope bore the company name Express Auto. He testified that he was not familiar with the business name, as the place where he got his car inspected was named Reeven's Auto Service. He testified that he did not have any other transactions with the auto shop, and that he believed the check, which bore the company name, Express Auto, to have been related to a dispute he had regarding an unrelated transaction with a different business.

Appellant testified that he was in the habit of regularly reviewing his credit report, and that he had an ongoing dispute regarding an auto loan on his credit report that he was in the process of trying to settle. He testified that after he received the check in the mail, he ran his credit report again and noticed that the contested item still remained on the report, but that the amount listed as owed was approximately $1,200 less than what his credit

report had showed prior to him receiving the check at issue. He testified that this led him to believe that the check from Express Auto was intended to settle the dispute.

Appellant testified that he deposited the check the same day he received it, and that at the time he had a negative balance in his bank account. Bank records showed that appellant withdrew approximately $550 in cash from the account, and made purchases that were debited from the account in the two days after he deposited the check. Appellant testified that when Detective Caton called, he offered to return the money either to the police or to Getrouw directly.

Prior to appellant's testimony, the admissibility of his prior theft convictions was the subject of a motion *in limine*. The court denied the motion, and during the State's subsequent cross-examination of appellant, the State questioned appellant regarding his two prior theft convictions. The cross examination included the following exchange:

[THE STATE]:	You appeared in this courthouse in May of 2008; is that correct?
APPELLANT:	Yes.
[STATE]:	And were you represented by counsel?
APPELLANT:	Yes.
[STATE]:	And on that date, were you convicted of a crime?
APPELLANT:	Yes.
[STATE]:	What crime were you convicted of?
APPELLANT:	Theft.
[STATE]:	What type of theft?

APPELLANT: Theft plus $500.

[STATE]: Is that a felony?

APPELLANT: Yes.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[STATE]: How many counts were you convicted of?

[DEFENSE COUNSEL]: Objection

THE COURT: Overruled.

APPELLANT: Two.

DISCUSSION

Appellant argues that the "trial court erred in allowing the cross-examination and in admitting the prior theft conviction[s] into evidence for impeachment purposes." He asserts that the age of the convictions, and the fact that they were for the same type of offense he was on trial for, "weighs heavily against admissibility." He further argues that the manner in which his prior convictions were introduced was improper.

As noted, prior to appellant's testimony, the admissibility of his prior theft convictions were the subject of a motion *in limine*. The two theft over $500 convictions occurred in 2008. Counsel for appellant objected to their admission for impeachment purposes, arguing that they were old, and that because appellant was on trial for theft, their prejudicial value outweighed their probative value. The court denied the motion, finding that the impeachment value of the theft conviction was "high" as appellant's credibility and honesty were "central" to the case.

We review a trial court's admission of a prior conviction pursuant to Maryland Rule 5-609 for abuse of discretion. *Calloway v. State*, 141 Md. App. 114, 121 (2001). "An appellate court gives great deference to the trial court's exercise of discretion." *Id.* Rule 5-609 provides that a prior conviction may be admitted for impeachment purposes if no more than fifteen years has elapsed since the date of the conviction, and "only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party." "[A] crime of theft is directly relevant to credibility." *Calloway*, 141 Md. App. at 122.

When balancing the probative value of impeachment evidence with the danger of unfair prejudice, a court must consider the following factors:

> (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the defendant's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the defendant's credibility.

Jackson v. State, 340 Md. 705,717 (1995). Here, the prior conviction, a theft, was, as we held in *Calloway, supra*, 141 Md. App. at 122, "directly relevant to credibility." Appellant argues, however, that the prior conviction which was admitted, was too remote, as it was seven years old at the time of the trial in this case. This prior conviction, however, was within the fifteen years required under Rule 5-609. The defendant in *Calloway, supra*, was on trial for robbery and theft, which arose from a dispute over an auto repair. We considered the admission of the defendant's twelve year old prior conviction for auto theft

and held that, the prior conviction, "despite the remoteness is still probative because it directly relates to credibility." *Id.* at 122.

Appellant also contends that the court erred in admitting his prior theft convictions because of their similarity to the charge of theft for which he was on trial. Indeed, the "similarity between the past crime and the charged crime" is a factor that must be considered when determining whether the probative value of the impeachment evidence outweighs the potential of unfair prejudice. The similarity between the charged offense and the prior conviction, however, is just one factor to consider. "Where credibility is the central issue, the probative value of the impeachment is great, and thus weighs heavily against the danger of unfair prejudice." *Jackson, supra*, 340 Md. at 721. Prior convictions for the same offense may be admissible, particularly where the defendant's credibility is of central importance. *Summers v. State*, 152 Md. App. 362, 370-72 (2003).

Here, appellant's credibility was of central importance for the fact finder. The State alleged that appellant, a customer of the auto shop, saw a blank check at the front desk, stole it, made it payable to himself, and fraudulently deposited it into his bank account. Appellant testified that he received the check in the mail, and thinking it was properly sent to him to settle an unrelated dispute, deposited it in his bank account. Clearly, the jury had to decide which version of the events was the truth, and assessing appellant's credibility would have been critical to making that determination. Accordingly, we hold that the trial court did not abuse its discretion in admitting appellant's prior theft convictions.

Finally, appellant contends that the trial court erred "when it allowed the prosecutor, over objection, to inquire after appellant about whether the crime was a 'felony' and 'how

many counts' he was convicted of." He argues that the "manner of inquiry was inappropriate in this case, and this information was unnecessary and prejudicial."

The Court of Appeals has made clear that "only the name of the conviction, the date of the conviction, and the sentence imposed may be introduced to impeach a witness." *State v. Giddens*, 335 Md. 205, 222 (1994). As a result, the court erred in allowing the State to elicit that appellant's prior convictions for "theft plus $500" were felonies. That error, however, was harmless. An error is harmless when the reviewing court is "satisfied that there is no reasonable possibility that the evidence complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict." *Dorsey v. State*, 276 Md. 638, 659 (1976). Here, the jury heard the actual offense for which appellant had been convicted: theft plus $500. We are satisfied that the admission that the convictions were a felony would not have contributed to the rendition of the guilty verdict.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.