STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 21, 2001
v	No. 218484 Saginaw Circuit Court
DAVID KENTON WAGNER, Defendant-Appellant.	LC No. 98-016175-FC

Before: O'Connell, P.J., and White and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions, following a jury trial, of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b.[1] The trial court sentenced defendant to a term of two to ten years' imprisonment for the assault conviction, and the mandatory consecutive two-year term for the felony-firearm conviction. We affirm.

During the evening hours of August 14, 1998, the victim, Timothy Collins, entered defendant's property with tin-snips and a shovel to retrieve a Japanese maple tree he believed was stolen from his property earlier that month. Defendant shot Collins later as he attempted to run from defendant's property. Defendant claimed that his gun accidentally discharged.

I.

Defendant first argues that the trial court erred by failing to instruct the jury on various lesser offenses. Defendant failed to preserve this issue because he did not request the instructions in the lower court. See *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994).[2]

[1] Defendant was originally charged with assault with intent to commit murder, MCL 750.83. However, the jury convicted defendant of the lesser offense, assault with intent to do great bodily harm less than murder, MCL 750.84.

[2] In his proposed jury instructions submitted to the court on January 29, 1999, defendant made reference to CJI2d 11.20, the instruction for the offense of careless, reckless or negligent use of a firearm, MCL 752.861, and CJI2d 11.23, the instruction for the offense of intentionally aiming a firearm without malice, MCL 750.233. However, during the discussions with the court regarding

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Thus, to avoid forfeiture of this unpreserved issue defendant must establish plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). A trial court is not required to instruct the jury sua sponte on lesser offenses. *People v Stephens*, 416 Mich 252, 261; 330 NW2d 675 (1982); *People v Ramsdell*, 230 Mich App 386, 403; 585 NW2d 1 (1998). Because the trial court did not err, defendant has forfeited this issue on appeal. *Carines, supra* at 763. In any event, the error is harmless as the jury rejected the option of convicting defendant of felonious assault.

II.

Defendant also raises an argument regarding the ineffective assistance of counsel. In *People v Carbin*, 463 Mich 590; 623 NW2d 884 (2001), our Supreme Court articulated the well-settled standard for reviewing ineffective assistance of counsel claims.

> A defendant seeking a new trial on the ground that trial counsel was ineffective bears a heavy burden. To justify reversal under either the federal or state constitutions, a convicted defendant must satisfy the two-part test articulated in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). See *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not performing as the 'counsel' guaranteed by the Sixth Amendment." *Strickland, supra* at 687. In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *Id.* at 690. "Second, the defendant must show that the deficient performance prejudiced the defense." *Id.* at 687. To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). [*Carbin, supra* at 599-560 (footnote omitted).]

"What arguments to make in closing, how to cross-examine witnesses, and what evidence to present all involve matters of trial strategy." *In re Ayres*, 239 Mich App 8, 23; 608 NW2d 132 (1999). Moreover, this Court refrains from second-guessing matters of trial strategy with the benefit of hindsight. *People v Williams*, 240 Mich App 316, 331-332; 614 NW2d 647 (2000).

On appeal, defendant complains that trial counsel did not communicate with him and was inadequately prepared for trial. For instance, defendant asserts that counsel was ineffective for failing to request that the trial court instruct the jury on various lesser offenses. Counsel's

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jury instructions on February 1, 1999, trial counsel, for reasons unclear from the record, informed the court that it was not seeking instructions on lesser offenses.

decision regarding what instructions to request is considered a matter of trial strategy that we will not second-guess on appeal. See *People v Sardy*, 216 Mich App 111, 116; 549 NW2d 23 (1996); *People v Robinson*, 154 Mich App 92, 94; 397 NW2d 229 (1986).

A review of the record confirms that trial counsel's decisions regarding jury instructions were strategic in nature. During discussions with the court regarding jury instructions, the prosecutor requested instructions on the lesser offenses of felonious assault, MCL 750.82, and assault with intent to do great bodily harm, MCL 750.84, but trial counsel did not request any instructions on lesser offenses. Moreover, at trial defendant maintained that the gun discharged accidentally when he was pulling his body back into the house after leaning out the window. To the extent that the instructions defendant refers to on appeal[3] are inconsistent with his accident defense, trial counsel's decision was clearly strategic in nature.[4] We will not second-guess this strategic judgment on appeal.

Challenging trial counsel's preparation for trial, defendant also asserts that trial counsel did not inform him about his choice whether to testify. At the *Ginther*[5] hearing, trial counsel expressly stated that he told defendant of his right to not testify, and that defendant chose to testify. Conversely, defendant testified that counsel did not inform him of his right to not testify. Thus, conflicting evidence was presented on this issue. The trial court ultimately denied defendant's motion for a new trial in a nine-page written opinion, finding that counsel was adequately prepared for trial. Specifically, the court noted, "it is impossible to believe that the defense attorney did not discuss . . . this case with defendant." The trial court's conclusion that trial counsel properly communicated with defendant involved a credibility determination. We "give great deference to the superior ability of the trial court in matters relating to credibility." *People v Johnson*, 245 Mich App 243, 256-257 n 5; 631 NW2d 1 (2001). On this record, defendant has not met his burden of establishing that trial counsel's performance was deficient.

Defendant also asserts that trial counsel failed to pursue and utilize information that defendant allegedly obtained from the manager of a Home Depot store to discredit Collins' testimony that he purchased a Japanese maple tree similar to that defendant owned. Again, trial counsel's decisions regarding what evidence to present at trial is a matter of trial strategy we will not second-guess with the benefit of hindsight. *Ayres, supra.*

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[3] Specifically, defendant maintains that trial counsel should have requested that the trial court instruct the jury on the offenses of intentional discharge of a firearm without malice, MCL 750.234, careless, reckless or negligent use of a firearm, MCL 752.861, and intentionally aiming a firearm without malice, MCL 750.233.

[4] During the post-trial evidentiary hearing, trial counsel testified that he discussed the possibility of requesting lesser offenses with defendant, and that defendant rejected this suggestion, favoring an "original or nothing" defense. Counsel also indicated that instructions on lesser offense would be inconsistent with the trial defense – that defendant "had no intent to commit any murder, and no intent to do any criminal wrong."

[5] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

We share the trial court's view that defendant has not established that trial counsel was inadequately prepared for trial. A review of the *Ginther* hearing transcript, the trial transcript, and the lower court file reveal that trial counsel adequately prepared for the case, understood defendant's version of the events and was aware of key issues in the case. For example, trial counsel met with defendant on several occasions before trial to discuss the case. On one occasion, trial counsel arranged to have defendant's home photographed to present a reenactment of defendant's actions on the night of the shooting. Further, as defendant acknowledged at the *Ginther* hearing, trial counsel shared with defendant copies of the police reports, witness statements, and the preliminary examination transcript. Trial counsel also filed numerous motions before the trial court regarding, for example, the exclusion of evidence, and objecting to the prosecutor's attempt to introduce evidence pursuant to MRE 404(b).[6]

Likewise, we reject defendant's claim that counsel did not vigorously cross-examine Collins. Initially, we again note that trial counsel's cross-examination of a witness is presumed to be the product of trial strategy. *Ayres, supra*. In any event, our review of trial counsel's cross-examination of Collins indicates that trial counsel's performance in this regard was not unreasonable.

Additionally, defendant complains that trial counsel did not reveal a potential conflict of interest. At the *Ginther* hearing, trial counsel testified that his law firm represented Collins in two criminal matters in 1988 and 1992. According to trial counsel his brother, with whom trial counsel is associated, was retained by Collins, and trial counsel appeared on Collins' behalf on two separate occasions. In 1988, trial counsel attended a pretrial for Collins, but did not meet with him personally. Later, in 1992, trial counsel attended a sentencing on Collins' behalf. Trial counsel further testified that he informed defendant of his prior associations with Collins in August 1998 at the preliminary examination. In contrast, defendant maintained that trial counsel did not disclose the potential conflict until midway through trial in January 1999. In defendant's view, this potential conflict warrants reversal and a new trial. We disagree.

On appeal, defendant does not articulate any specific manner in which he was prejudiced by the potential conflict, except for his unsupported argument that trial counsel's cross-examination of Collins was deficient. In *People v Smith*, 456 Mich 543; 581 NW2d 654 (1998), our Supreme Court discussed the standard for reviewing ineffective assistance of counsel claims where the defendant alleges a conflict of interest.

> [I]n order to demonstrate that a conflict of interest has violated his Sixth Amendment rights, a defendant "must establish that an actual conflict of interest adversely affected his lawyer's performance." [*Id.* at 556, quoting *Cuyler v Sullivan*, 446 US 335, 350; 100 S Ct 1708; 64 L Ed 2d 333 (1980).]

Although a "heightened standard" is applicable to conflict of interest claims, a per se rule of prejudice does not result. *Smith, supra* at 556-557. Rather, defendant bears the burden of demonstrating "that counsel 'actively represented conflicting interests'" and that this conflict

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[6] Trial counsel also filed a motion seeking a copy of Collins' criminal record.

adversely affected counsel's representation. *Id*. at 557*;* see also *People v LaFay*, 182 Mich App 528, 530; 452 NW2d 852 (1990).

Returning to the present case, the record does not support defendant's claim that trial counsel's appearance for Collins on two occasions several years before defendant's trial compromised his representation of defendant. The record simply does not support defendant's claim that trial counsel "failed to cross-examine . . . Collins in any meaningful respect." Although trial counsel did not question Collins about prior criminal convictions, there is nothing in the record to suggest that this action was motivated by an "'active[ ] represent[ation] [of] conflicting interests.'" *Id.* at 557, quoting *Cuyler, supra*. After a thorough review of the record and the transcript of the *Ginther* hearing, we agree with the trial court that defendant failed to establish that trial counsel's performance was deficient.

III.

Defendant also complains that the trial court erred when it declined to allow the jury to hear the tape of defendant's 911 telephone call that was made following the shooting. "The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion." *People v Kris Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001), citing *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). We will not find an abuse of discretion unless "an unprejudiced person, considering the facts on which the trial court acted, would say that there was no excuse for the ruling made." *Id*, citing *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000). Moreover, a trial court's decision on a close evidentiary question cannot be an abuse of discretion. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001).

In the instant case, the trial court ruled that the 911 tape was not admissible under the excited utterance to the hearsay rule, MRE 803(2), because it was "inherently unreliable and untrustworthy." In making its ruling, the trial court acknowledged that defendant called 911 shortly after the shooting. During the call defendant reported that he had confronted the individual who was attempting to remove his Japanese maple tree, and that two similar trees were stolen from his property two to three weeks earlier. However, during the call defendant made no reference to the fact that he held a gun on the intruder, or that his gun had discharged. After a thorough and well-reasoned analysis, the trial court concluded that defendant's failure to make any mention of the gun during the call indicated that his statement was contrived.

> [I]t is clear, from a comparison of [the] tape and the undisputed facts of this case,[7] that the defendant contrived by omitting any reference to a gun being involved or a discharge of that gun.
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> * * *

[7] The trial court made its evidentiary ruling midway through trial. During his opening address to the jury, trial counsel conceded that defendant held a gun while confronting Collins, and that the gun discharged.

> [T]he Court believes that the omission of any reference to a gun being involved, a gun being held by defendant, or that the gun had discharged, was, in fact, that form of contrivance and misrepresentation which disqualifies resoundingly this statement as admissible as an excited utterance to the hearsay rule, because it is inherently unreliable and untrustworthy.

Pursuant to MRE 803(2), statements "relating to a startling event or condition made while the declarant was under the stress of the excitement caused by the event or condition" are admissible in evidence. *People v Layher*, 238 Mich App 573, 582; 607 NW2d 91 (1999), aff'd on other grounds 464 Mich 756 (2001). A statement is admissible under MRE 803(2) if "(1) there was a startling event and (2) the resulting statement was made while the declarant was under the excitement caused by that event." *Layher, supra* at 582. When determining whether a statement is admissible under MRE 803(2), a trial court should be mindful that "the lack of capacity to fabricate, not the lack of time to fabricate . . . is the focus of the excited utterance rule." *Smith*, supra at 551.

By characterizing defendant's statement as "contrived" and a "misrepresentation," the trial court implicitly concluded that defendant had the capacity to fabricate his statement when he called 911. We afford "wide discretion" to the trial court's determination that defendant was able to fabricate his statement on the 911 tape. *Id.* at 552, quoting McCormick, Evidence (3d ed), § 297, p 857.[8] On this record, we are not persuaded that the trial court's evidentiary ruling was an abuse of discretion.[9]

IV.

Defendant next challenges the sufficiency of the evidence at trial. We review de novo challenges to the sufficiency of the evidence at trial. *People v Hawkins*, 245 Mich 439, 457; 628 NW2d 105 (2001). When reviewing the sufficiency of the evidence in a criminal case, we "view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). As our Supreme Court recently observed in *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000):

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[8] In any event, defendant later testified that he called 911, and both parties stipulated to that fact.

[9] In a related argument, defendant contends that trial counsel was ineffective for failing to tell him that he could appeal an adverse evidentiary ruling on an interlocutory basis. As previously noted, the trial court found that defendant's assertion that counsel did not communicate with him about the case was not credible. Moreover, we have concluded that the trial court correctly excluded the 911 tape. Thus, trial counsel's performance was not deficient, given that counsel is not required to raise a meritless objection. *People v Kulpinski*, 243 Mich App 8, 27; 620 NW2d 537 (2000).

> The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. The scope of review is the same whether the evidence is direct or circumstantial. " ' Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.'" [*Id.*, quoting *Carines, supra* at 757.]

An individual's specific intent to do great bodily harm may be inferred from circumstantial evidence. *People v Eggleston*, 149 Mich App 665, 668; 386 NW2d 637 (1986). Particularly, the specific intent to do great bodily harm may be inferred from "the act itself, the means employed and the manner employed . . . ." *People v Leach*, 114 Mich App 732, 735; 319 NW2d 652 (1982), citing *People v Cunningham*, 21 Mich App 381; 175 NW2d 781 (1970).

Viewing the record evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence from which a rational trier of fact could conclude that defendant intended to cause great bodily harm to Collins. Rather than immediately calling the police when he observed Collins approach the Japanese maple tree, defendant grabbed a loaded gun and confronted Collins. Collins testified that defendant, leaning out of one of the windows of his house, pointed the gun directly at him. Specifically, Collins indicated that defendant had "a dead aim" on him. Defendant further instructed Collins to lie face-down, and threatened to "blow [Collins'] motherf---ing head off." According to Collins, defendant was very excitable and gave Collins the impression that he would be shot. Collins further testified that when he tried to run away, defendant shot him. In our view, this evidence was sufficient to allow a rational trier of fact to conclude that defendant intended to do great bodily harm. See *People v Buckner*, 144 Mich App 691, 696-697; 375 NW2d 794 (1985) (evidence sufficient to support conviction of assault with intent to do great bodily harm where the defendant aimed gun at the victim, the victim sought refuge in a house, and the defendant caused gun to discharge, sending bullet through door and into the victim's chest).

In a related argument, defendant contends that the trial court did not properly instruct the jury that accident is a defense to a specific intent crime. Again, defendant did not object at trial, therefore this issue is not preserved. *Grant, supra*. We have reviewed the disputed instructions and conclude that they fairly presented the issues and sufficiently protected defendant's rights. See *People v McCrady*, 244 Mich App 27, 30; 624 NW2d 761 (2000). Therefore, the trial court did not commit plain error affecting defendant's substantial rights. *Carines, supra*.

V.

Defendant next raises numerous allegations of prosecutorial misconduct. Defendant did not object to the prosecutor's conduct at trial. Thus, these issues are unpreserved and are reviewed for plain error. *Carines, supra* at 763; *People v Schutte*, 240 Mich App 713, 720; 620 NW2d 308 (2000).

First, defendant argues that the prosecutor commented on numerous matters not in evidence. We disagree. We have closely examined the comments challenged by defendant and conclude that were a proper recitation of the evidence presented at trial and reasonable inferences arising therefrom. See *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

Defendant also argues that the prosecutor improperly vouched for the credibility of two witnesses. A prosecutor is prohibited from vouching for the credibility of his witnesses "to the effect that he has some special knowledge concerning a witness' truthfulness." *Bahoda, supra* at 276. A prosecutor may, however, "argue from the facts that a witness is credible or that the defendant or another witness is not worthy of belief." *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). After closely reviewing the challenged comments, we conclude that the prosecutor did not improperly vouch for the witnesses' credibility because he did not "convey a message to the jury that [he] had some special knowledge o[f] facts indicating the witness' truthfulness." *Bahoda, supra* at 277, citing *People v Williams*, 123 Mich App 752, 755-756; 333 NW2d 577 (1983) (footnotes omitted). Rather, the prosecutor was simply arguing from the facts that the witnesses were credible. *Howard, supra* at 548.

Defendant also argues that the prosecutor improperly admitted exhibits and used demonstrative evidence. Specifically, defendant finds fault with the prosecutor's introduction of photographs of Collins' gunshot wound, and with the prosecutor's request that Collins pull up his shirt and reveal the scar from his gunshot wound while testifying. Defendant did not object to the admission of this evidence at trial. Therefore, defendant must demonstrate plain error affecting his substantial rights to avoid forfeiture of this issue on appeal. *People v Lukity*, 460 Mich 484; 596 NW2d 607 (1999).

Under Michigan's rules of evidence, all relevant evidence is admissible. MRE 402; *People v VanderVliet*, 444 Mich 52, 60-61; 508 NW2d 114 (1993), amended 445 Mich 1204 (1994). Relevant evidence is any evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. As the prosecutor notes in its brief on appeal, the challenged evidence was relevant because it bolstered the prosecution theory that Collins was not shot accidentally. A hotly contested issue at trial was whether the shooting was accidental. To discredit defendant's accident theory, the prosecutor attempted to establish that defendant intentionally aimed at Collins as he ran from defendant's property. The photographs and the demonstrative evidence were necessary to assist in this regard.

Further, "prosecutorial misconduct cannot be predicated on good-faith efforts to admit evidence." *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999), citing *People v Missouri*, 100 Mich App 310, 328; 299 NW2d 346 (1980). A prosecutor is entitled to introduce evidence that he legitimately believes will be accepted by the court, as long as such attempt does not prejudice the defendant. *Noble, supra* at 660-661. In the present case, defendant has failed to demonstrate bad faith on the prosecutor's part, or that he was prejudiced by the admission of this evidence. *Id.* at 661.

Finally, defendant argues that the prosecutor failed to comply with two of the court's evidentiary rulings. Specifically, defendant contends that the prosecutor's cross-examination of two of defendant's character witnesses exceeded the scope of questioning permitted by the trial court. John Bumsted and Eleanor Wyatt both testified that defendant was honest and truthful.

The trial court ruled that the prosecution, pursuant to MRE 405(a)[10] could test Bumsted's and Wyatt's knowledge of defendant's reputation by questioning them about whether they were aware that defendant was convicted of second-degree retail fraud, MCL 750.356d, [11] in 1993 and 1994. See *Lukity*, *supra* at 498; *People v Whitfield*, 425 Mich 116; 388 NW2d 206 (1986). However, the trial court prohibited the prosecutor from inquiring about the details of both convictions on cross-examination. Although the prosecutor went on to ask the witnesses whether their opinion of defendant changed once they became aware of these convictions, no extrinsic evidence about the convictions was introduced. Moreover, each witness acknowledged that their opinion of defendant remained the same. Thus, there is no indication that the prosecutor disregarded the trial court's ruling.

Likewise, defendant's claim that the prosecutor improperly cross-examined him regarding the guns seized from his home during a police search is without merit. As defendant notes, the trial court precluded the prosecutor from asking defendant about the substantial number of guns found in his home, holding that the probative value of this evidence was substantially outweighed by the potential prejudice to defendant. MRE 403. However, in response to the prosecutor's query about questioning defendant with regard to his use of guns in general, the trial court stated:

> Now, that's a different issue. Yes, you may ask him about his knowledge and familiarity of guns, in general, including the particular weapon that was used here.
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> But I'm not going to allow you to elicit that seized from his house were 33 guns, or a cache of knives, or anything to that effect. You can question him on his knowledge of the use of the specific weapon, how long he's had it, and his general knowledge of the use, and his use of firearms, without eliciting specific testimony as to the number of guns that were taken out of the house.

A review of the prosecutor's cross-examination of defendant confirms that the prosecutor adhered to this ruling, confining his questioning to defendant's knowledge and use of guns in general without reference to the guns seized in his home.

VI.

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[10] MRE 405(a) provides:

> In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into reports of relevant specific instances of conduct.

[11] The record on appeal does not contain express references to the particular statute defendant was convicted of violating. From the references that do exist, we infer that defendant was convicted of the specific crime set forth in the text of this opinion.

Finally, defendant argues that the trial court abused its discretion in allowing the prosecutor to cross-examine defendant's character witnesses about their knowledge of his 1993 and 1994 second-degree retail fraud convictions. Defendant argues that MRE 609 and *People v Parcha*, 227 Mich App 236; 575 NW2d 316 (1997), precluded the prosecutor from asking the witnesses about their knowledge of defendant's prior convictions. We disagree.

Initially, we note that defendant's reliance on MRE 609 and *Parcha, supra*, is misplaced. Pursuant to MRE 609, an individual's criminal conviction is not admissible "[f]or the purpose of attacking the credibility of [the] witness," MRE 609(a), unless certain requirements are met. For example, the crime must contain an element of dishonesty or false statement, MRE 609(1), or an element of theft, MRE 609(2). In *Parcha, supra*, the prosecutor sought to impeach the defendant directly with two misdemeanor theft convictions. *Id.* at 240. The present case is therefore distinguishable from *Parcha, supra*, because defendant is not asserting that the prosecutor impeached him directly with evidence of his prior convictions.

In the instant case, the prosecutor did not attempt to impeach Wyatt's or Bumsted's credibility directly with evidence of a criminal conviction. Rather, the prosecutor's purpose in questioning Wyatt and Bumsted about defendant's prior convictions was to "'test [their] knowledge and candor'" about defendant's character. *People v Champion*, 411 Mich 468, 471; 307 NW2d 681 (1981), quoting *People v Rosa*, 268 Mich 462, 465; 256 NW 483 (1934). "The valid purpose of such impeachment is to test the credibility of the character witness by challenging the witness' good faith, information and accuracy." *Whitfield, supra* at 131-132; see also *People v Vasher*, 449 Mich 494, 508 n 2; 537 NW2d 168 (1995) (Cavanagh, J., dissenting). Therefore, the prosecutor was authorized, pursuant to MRE 405(a), to ask the witnesses whether they "ha[d] heard of specific acts of misconduct [by defendant]." *Champion, supra* at 471, quoting *Rosa, supra*; see also *Lukity, supra* at 498. Accordingly, we reject defendant's claim that MRE 609 and *Parcha, supra*, prohibited the prosecutor from pursuing this line of questioning.[12]

Affirmed.

/s/ Peter D. O'Connell
/s/ Helen N. White
/s/ Michael R. Smolenski

[12] In its final instructions to the jury the trial court also gave a limiting instruction "concerning the limited purpose of the impeaching questions." *Whitfield, supra* at 134.