[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-11811

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CRAIG GERMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 4:20-cr-00042-RSB-CLR-1

Before WILSON, LUCK and DUBINA, Circuit Judges.

PER CURIAM:

Appellant Craig German appeals his convictions for perjury and false statements to a government agency. On appeal, he argues that the district court abused its discretion in admitting evidence of his prior conviction and the facts underlying it pursuant to Federal Rules of Evidence 608 and 609. Having read the parties' briefs and reviewed the record, we affirm German's convictions.

I.

We review for abuse of discretion a district court's decision to admit evidence of a defendant's prior convictions. *United States v. Pritchard*, 973 F.2d 905, 908 (11th Cir. 1992). However, even if the district court abused its discretion by admitting this evidence, we will not reverse an erroneous evidentiary ruling unless the error was not harmless. *United States v. Augustin*, 661 F.3d 1105, 1123 (11th Cir. 2011). An error is harmless unless, based on the entire record, there is a reasonable likelihood that the error had a substantial influence on the outcome of the proceeding. *Id.*; *see* Fed. R. Crim. P. 52(a) (an error that "does not affect substantial rights" is harmless and "must be disregarded").

A party abandons an issue on appeal by failing to raise it adequately in his brief. *United States v. Campbell*, 26 F.4th 860, 873 (11th Cir. 2022) (*en banc*) (holding that issues not properly

presented on appeal are deemed forfeited and will not be addressed absent extraordinary circumstances), *cert. denied*, 143 S. Ct. 95 (2022). Notably, "[w]e have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority." *United States v. Mosquera*, 886 F.3d 1032, 1053 (11th Cir. 2018) (quotation marks omitted).

II.

Extrinsic evidence of specific instances of conduct, except for a criminal conviction under Rule 609, is not admissible to attack or support a witness's character for truthfulness; however, specific instances of conduct may be asked about on cross-examination if they are probative of the witness's truthfulness. Fed. R. Evid. 608(b). Federal Rule of Evidence 609 permits a party to attack a witness's character for truthfulness by introducing evidence of the witness's prior conviction, subject to limitations. Fed. R. Evid. 609(a). A criminal defendant who chooses to testify places his credibility in issue as does any witness; therefore, he is subject to impeachment through evidence of prior convictions. *United States v. Vigliatura*, 878 F.2d 1346, 1350-51 (11th Cir. 1989). Rule 609(b) prohibits the admission of evidence of past convictions for impeachment purposes if more than ten years have passed since the conviction or release from confinement, whichever is later, unless: (1) the conviction's "probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and (2) the proponent gives an adverse party reasonable written notice of

the intent to use it so that the party has a fair opportunity to contest its use." Fed. R. Civ. P. 609(b).

We apply a presumption against the use of prior conviction impeachment evidence that is over ten years old, and "such convictions will be admitted very rarely and only in exceptional circumstances." *Pritchard*, 973 F.2d at 908 (quotation marks omitted). We have explained that "[t]he danger in admitting stale convictions is that while their remoteness limits their probative value, their prejudicial effect remains," because "[t]he jury, despite limiting instructions, can hardly avoid drawing the inference that the past conviction suggests some probability that defendant committed the similar offense for which he is currently charged." *Id.* (quotation marks omitted).

Likewise, the probative value of past conviction evidence can outweigh its prejudicial effect, even when a conviction is over ten years old. *See Pritchard*, 973 F.2d at 909. In *Pritchard*, we affirmed the district court's admission of a 13-year-old prior conviction for impeachment purposes, because the credibility of the witness was "[t]he crux of th[e] case." *Id.* We noted that the district court had considered: "(1) The impeachment value of the prior crime; (2) The point in time of the conviction and the witness'[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 credibility issue." *Id.*

Furthermore, we stated that the government's need for the impeaching evidence was also an important factor to consider,

noting that the defendant did not have any convictions in the ten years before trial, the prior conviction was not cumulative of other impeachment evidence, and the defendant had not been a juvenile at the time of the conviction. *Id.* We noted that the conviction "was only thirteen years old" and that other circuits had also allowed for the admittance of convictions over ten years old in cases where the previous crime was not "of a heinous nature, or of extreme age, or lack[ing] any special circumstances justifying the admission of the conviction." *Id.* at 909 n.7.

III.

The record here demonstrates that German has abandoned any argument as to the admissibility of the facts underlying his conviction under Federal Rule of Evidence 608 by failing to prominently raise the issue in his brief. Furthermore, German has failed to show that the district court abused its discretion in allowing the government to question him about his prior conviction. Because his credibility was a key issue at his trial, the conviction's probative value outweighed any prejudicial effect despite it being over ten years old. *See Pritchard*, 973 F.2d at 909. Additionally, German initially opened the door to testimony about the conviction, thereby minimizing any prejudice resulting from the use of the conviction to impeach German's testimony. *See United States v. Cooper,* 926 F.3d 718, 730 (11th Cir. 2019) ("[O]therwise inadmissible extrinsic evidence is admissible on redirect as rebuttal evidence, when defense counsel has opened the door to such evidence during cross-examination.") (quotation marks omitted).

Accordingly, based on the aforementioned reasons, we affirm German's convictions.

AFFIRMED.