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Beales v. State: IMPEACHMENT BY PRIOR CONVICTION PERMISSIBLE ONLY WHERE THE TRIAL COURT DETERMINES THAT THE PROBATIVE VALUE OUTWEIGHS THE DANGER OF UNFAIR PREJUDICE.

In *Beales v. State*, 329 Md. 263, 619 A.2d 105 (1993), the Court of Appeals of Maryland ruled that under Maryland Rule 1-502, evidence of a prior conviction should be admitted for impeachment purposes only if the court finds that the probative value of the evidence outweighs the danger of unfair prejudice to the witness or objecting party. The court abandoned the prior rule which permitted convictions for crimes within the last fifteen years, which are relevant to the witness' credibility, to be per se admissible. The new rule requires the trial court to ascertain the nature of the prior conviction and to perform a preliminary balancing test before ruling on the admissibility of the evidence.

William Lee Beales was charged with battery and carrying a deadly weapon with the intent to injure. On January 9, 1992, eight days after Maryland Rule 1-502 on impeachment by prior conviction took effect, he was tried by a jury in Baltimore City. At trial, the defense called Joseph Lawrence, a friend of the defendant who had witnessed the incident at issue, to testify that the defendant was not involved. During cross-examination of

Lawrence, the prosecutor asked if he had ever been convicted of a crime of dishonesty. In fact, Lawrence had been convicted of theft fourteen years before. Defense counsel objected and argued that Maryland Rule 1-502 required the court to make a preliminary determination that the probative value of the evidence outweighed the unfair prejudice. The court overruled defense counsel's objection and without conducting further inquiry, admitted the evidence.

Beales was convicted of battery and sentenced to three years in prison. He appealed to the Court of Special Appeals of Maryland and, prior to any determination by that court, the Court of Appeals of Maryland granted certiorari. The issue before the court was whether the trial judge erred in refusing to employ the balancing test under Rule 1-502 before admitting Lawrence's prior conviction as impeachment evidence. The court of appeals reversed the judgment and remanded the case to the Circuit Court for Baltimore City for a new trial.

In its analysis, the court of appeals recognized that under the prior statute, evidence of infamous crimes was per se admissible for impeachment purposes. Previously, only lesser crimes, which affected the credibility of the witness, were left to the trial court's discretion. Md. Cts. & Jud. Proc. Code Ann. § 10-905(a) (1989). The court emphasized that the adoption of Rule 1-502 did not change the definition of infamous crimes,

which includes crimes of falsity such as theft, but rather eliminated the automatic admissibility of such crimes for impeachment purposes. *Beales*, 329 Md. at 269, 619 A.2d at 108.

Next, the court examined Rule 1-502 to determine the circumstances under which the trial court would be required to employ the balancing test. The State relied on the principles of statutory construction in arguing that absent a comma in the statute, the requirement of balancing applies only to the clause immediately preceding it in the rule. Thus, the State maintained that weighing a prior conviction's probative value against its prejudice would be necessary only when the crime is relevant to the witness's credibility. *Id.* at 270, 619 A.2d at 108. The court rejected this proposition as well as the State's contention that the interpretation of the new rule should be consistent with the prior statute, which provided for the automatic admission of infamous crimes. Instead, the court adopted the defendant's argument that Rule 1-502 "requires a preliminary determination of probativeness and potentially unfair prejudice for *all* convictions used to impeach credibility." *Id.* at 270, 619 A.2d at 109 (emphasis in original).

In construing the language of the rule, the court applied two basic canons of statutory interpretation. First, it examined the plain language of the statute by assigning common meanings to the words. The court looked at the placement of punctuation and deter-

mined that the balancing test was intended to apply to both infamous crimes and crimes affecting witness credibility. *Id.* at 271, 619 A.2d at 109. Second, the court considered the legislative history underlying the adoption of the rule to determine the drafters' intent. It found that the Standing Committee on Rules of Practice and Procedure sought to replace the old, dangerously rigid rule, by establishing a "broadly-applied" balancing test to limit the admissibility of all prior convictions. *Id.*

Next, the court acknowledged the differences between the new Maryland rule and the federal rule on impeachment by prior conviction. The court noted that the federal rule provides for automatic admission of crimes of dishonesty or falsehood and is, therefore, quite inflexible. *Id.* at 273, 619 A.2d at 110 (citing Fed. R. Evid. 609(a)(2)). Alternatively, the Maryland rule requires a preliminary balancing test for all prior conviction evidence. The court concluded that requiring the trial court to use the balancing test for both types of prior convictions is more consistent with the State of Maryland's policy of permitting courts to regulate the admissibility of all evidence. *Beales*, 329 Md. at 273, 619 A.2d at 110.

In applying its interpretation of Rule 1-502 to the facts before it, the court of appeals recognized the strong presumption in favor of upholding the trial court's decision. Nevertheless, after reviewing the record as a whole, the court decided that the trial judge had failed to adequately weigh the probative value against the risk of unfair prejudice in admitting the evidence of Lawrence's prior conviction for theft, as required by Rule 1-502. *Id.* at 274, 619 A.2d at 110. The trial judge had demonstrated his unawareness of the new rule by

alluding to the prosecutor's "right" to impeach by prior conviction and by failing to inquire about the date of the theft conviction. *Id.*

Finally, the court of appeals found that the trial judge's error was not harmless. It held that because of the factual nature of the arguments from both parties, the jury's verdict depended primarily on its perception of the witnesses' credibility. *Id.* at 275, 619 A.2d at 111. Furthermore, it noted that due to the difficulty in determining credibility, harmless error analysis would require the court to speculate as to what weight the jury assigned to Lawrence's testimony. The court, therefore, could not find beyond a reasonable doubt that the trial judge's error was harmless. Accordingly, it remanded the case to the circuit court for a new trial.

Beales v. State represents the first attempt by the Court of Appeals of Maryland to interpret the new Maryland Rule 1-502 governing impeachment of witnesses by prior conviction. As interpreted, Rule 1-502 gives the trial court considerably broader discretion in ruling on the admission of this type of impeachment evidence. Because the trial judge hears all the testimony and experiences witness demeanor first hand, this discretion will probably lead to more equitable results. Moreover, although a bright-line rule may provide notice as to the admissibility of prior convictions for impeachment of witnesses, this rule will give opponents of the impeachment evidence greater capacity to argue against its admissibility. As a result of this decision, Rule 1-502 will lead to increasing amounts of testimony and greater weight given to the testimony of witnesses or parties with prior criminal convictions.

-Kelly A. Casper

Rosenberg v. Helinski: A WITNESS MAY REITERATE THE SUBSTANCE OF HIS TESTIMONY TO JOURNALISTS OUTSIDE A COURTROOM, AND HIS REMARKS REMAIN LEGALLY PRIVILEGED.

In *Rosenberg v. Helinski*, 328 Md. 664, 616 A.2d 866 (1992), the Court of Appeals of Maryland addressed a case of first impression regarding the issue of whether remarks made to reporters outside a courtroom by a witness are privileged. The court held that the psychologist's remarks concerning his expert testimony at a child abuse hearing, even though defamatory to the father's personal reputation, are absolutely privileged, and the psychologist is protected from liability.

The instant case arose out of a divorce hearing before the Circuit Court for Baltimore County wherein Mr. Helinski requested unsupervised visitation with his two-year old daughter. Mrs. Helinski opposed his request, alleging that Mr. Helinski had sexually abused the child. As evidence of the abuse, Mrs. Helinski offered the expert testimony of a pediatrician at Baltimore's Mercy Hospital, who testified that the child had a well-healed scar which was diagnostic of a sexual abuse injury. Holding that there was no connection linking the child's injury to Mr. Helinski, the trial court granted the divorce, and allowed Mr. Helinski unsupervised visitation with his daughter.

Despite the court's ruling, Mrs. Helinski denied visitation of the child to Mr. Helinski, and the couple appeared again in a hearing before the Circuit Court for Baltimore County. At this hearing, Mrs. Helinski offered the testimony of Leon Rosenberg, Ph.D., a child psychologist and associate professor of medical psychology and pediatrics at Johns Hopkins University School of Medicine. Dr. Rosenberg's testimony was offered to prove that the abuse had occurred, and as a result, Mr. Helinski should not have unsupervised visitation

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