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Recent Developments: State v. Giddens: Distribution of Narcotics Conviction Admissible to Impeach Credibility of Witness

Pamela J. Aud

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State v. Giddens:

**DISTRIBUTION
OF NARCOTICS
CONVICTION
ADMISSIBLE TO
IMPEACH
CREDIBILITY OF
WITNESS.**

In a decision reversing the court of special appeals, the Court of Appeals of Maryland in *State v. Giddens*, 335 Md. 205, 642 A.2d 870 (1994), held that a prior conviction for distribution of cocaine is relevant to credibility and therefore admissible for impeachment purposes under Maryland Rule 1-502.

Dale Giddens was charged with assault in 1992 and was tried by a jury in the Circuit Court for Kent County. At trial, the victim, James Coleman, testified to the events surrounding the alleged assault. After the State's case, Giddens notified the court of his intention to testify, which would have consisted of a complete denial of the occurrence. Thus, the issue before the jury would be one of credibility. At that point, the State made clear its intention to impeach Giddens' credibility with a 1989 conviction for distribution of cocaine. Over Giddens' objection, the court determined that the conviction was admissible for impeachment purposes under Rule 1-502. Giddens then testified to the conviction on direct examination. The jury found Giddens guilty and he appealed to the court of special appeals.

The Court of Special Appeals of Maryland overruled the trial court, finding the conviction inadmissible under Rule 1-502 for impeachment purposes. The State petitioned for and was granted certiorari by the court of appeals.

Before discussing the facts of the case before it, the

court of appeals examined the three steps under Maryland Rule 1-502 to determine whether a prior conviction is admissible for impeachment purposes. Step one looks to see if the conviction falls into the categories set out in subsection (a) of the rule. If it does, then the second step requires the proponent to establish that the conviction is no more than 15 years old, has not been reversed on appeal, and is not subject to a pardon or a pending appeal. Finally, the third step requires the court to balance the probative value of the conviction against the danger of unfair prejudice to the witness or objecting party. *Id.* at 213-14, 642 A.2d at 874.

In beginning its analysis, the court noted that this case focuses on the first step under Rule 1-502, which is the threshold question for admissibility. *Id.* at 213, 642 A.2d at 874. The two categories of crimes admissible for impeachment under subsection (a) are infamous crimes and "other crimes relevant to the witness' credibility." *Id.* "Infamous crimes include treason, common law felonies, and other offenses classified generally as *crimen falsi*." *Id.* (citations omitted). Since distribution of cocaine does not fall within the first category, the court turned to the second category.

Looking to other crimes involving narcotics, the court of appeals observed that prior convictions of simple possession of narcotics are not relevant to credibility. *Id.* at 215, 642 A.2d

at 875. See *Morales v. State*, 325 Md. 330, 600 A.2d 851 (1992) (possession of PCP); *Lowery v. State*, 292 Md. 2, 437 A.2d 193 (1981) (possession of barbiturates). On the other hand, a prior conviction for drug manufacturing is admissible to impeach. *Id.* at 216-17, 642 A.2d at 875 (citing *Carter v. State*, 80 Md. App. 686, 566 A.2d 131 (1989)). In *Carter*, the court of special appeals stated that drug manufacturing "requires several steps involving premeditation and conscious violation of the law . . ." and does bear on a witness' tendency to tell the truth. *Giddens*, 335 Md. at 217, 642 A.2d at 875-76 (quoting *Carter*, 80 Md. App. 686, 693, 566 A.2d 131, 134).

After examining case law in other jurisdictions regarding the present issue, the court stated its belief that "an individual convicted of cocaine distribution would be willing to lie under oath." *Id.* at 217-20, 642 A.2d at 876-77. A drug trafficker "lives a life of secrecy" and is "prepared to say whatever is required by the demands of the moment, whether the truth or a lie." *Id.* (quoting *United States v. Ortiz*, 553 F.2d 782, 784 (2nd Cir. 1977)). Therefore, the court held that the crime of distribution of cocaine is admissible to impeach under Rule 1-502. *Id.*

Giddens contended that the definition of distribution of a controlled dangerous substance may include acts which have little to do with credibility, such as passing a marijuana cigarette

to a friend. *Id.* at 217-18, 642 A.2d at 876. Although agreeing with this concern, the court felt that the majority of convictions for this crime would almost always be of "'drug dealers' in the traditional sense . . ." *Id.* at 218, 642 A.2d at 876.

The court also reasoned that the crime is not so ill-defined that the jury would not be able to determine the precise nature of the offense. *Id.* The crime of distribution of cocaine "has a well understood meaning within the community" and each juror can assess the relevance this crime has on a witness' credibility. *Id.* at 219, 642 A.2d at 876-77. This is unlike indecent exposure, where the jury could speculate as to what conduct the witness was actually convicted for. *Id.* at 218-19, 642 A.2d at 876 (citing *Ricketts v. State*, 291 Md. 701, 436 A.2d 906 (1981)).

Turning briefly to the second step under Rule 1-502, the court noted that the prior conviction in this instance was only three years old. *Id.* at 220, 642 A.2d at 877. The conviction was also not reversed on appeal nor subject to a pending appeal or pardon. *Id.*

Next, the court of appeals examined the trial court's actions with regard to balancing the probative value against the danger of unfair prejudice. An important factor in that test is whether the prior conviction is similar to the crime being charged in the present situation since it tends "to suggest to the jury that if the defendant did it

before he probably did it this time." *Id.* at 221, 642 A.2d at 878 (quoting *Prout v. State*, 311 Md. 348, 535 A.2d 445 (1988)). The court noted that the lower court used that factor in its analysis and found that the court properly applied the balancing test. *Id.* at 220-21, 642 A.2d at 877-78.

Finally, the court restated its position with regard to what information concerning the prior conviction should be admitted for impeachment purposes. "Only the name of the conviction, the date of the conviction, and the sentence imposed may be introduced to impeach a witness." *Id.* at 222, 642 A.2d at 878. In determining admissibility, the underlying circumstances of the conviction should never be looked into in a manner that would cause separate mini-trials. *Id.*

In *State v. Giddens*, the court widens the door of impeachment under Rule 1-502, allowing more convictions to be admitted into evidence. Furthermore, this case loses none of its significance with the adoption of the new rules, in that new Rule 5-609 is virtually identical to the old rule. Under either rule, this decision will affect whether a defendant or witness testifies in court. The proponent of the witness must carefully decide whether to admit to the prior drug distribution conviction on direct examination or take the blow on cross. While these issues have had to be faced for other convictions, the effect of a prior drug distribution con-

viction on credibility may be
harsher due to the current ha-
tred in our society towards drugs

and those who deal in them.

- Pamela J. Aud

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