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# Recent Developments: Jackson v. State: Prior Convictions of Similar Crimes May Be Admissible for Impeachment Purposes When the Probative Value of the Evidence Outweighs the Prejudicial Effect

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*Jackson v. State:*

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In *Jackson v. State*, 340 Md. 705, 668 A.2d 8 (1995), the Court of Appeals of Maryland held that admitting a similar prior conviction to impeach an accused's testimony is within the trial court's discretion and not per se inadmissible if the probative value of the evidence outweighs any unfair prejudice to the defendant. The court also enumerated several factors that the trial judge should consider when balancing the probative value of the evidence against its prejudicial effect. In so holding, the court stressed the importance of the balancing requirement but left to the trial court's discretion the manner in which this is accomplished.

Robert M. Jackson ("Jackson") was convicted of theft of \$300 or more for stealing a computer from Lombard Hall at the University of Maryland. At trial, Edward White ("White"), a housekeeper, testified that he admitted Jackson to Lombard Hall at 5:30 p.m. and that Jackson returned to the building again at 6:00 p.m. At that time, White noticed that two University recycling boxes were missing. Later, White saw Jackson standing next to the missing boxes, which contained the computers. Jackson explained to White that he was taking the computers home to do work for his supervisor.

White subsequently identified Jackson as the person who removed the computers. When the police arrived at Jackson's home, they observed Jackson in an alley discarding boxes

bearing the University emblem. The police arrested and charged Jackson with one count of theft of \$300 or more.

Before trial in the Circuit Court for Baltimore City, Jackson filed a motion in limine to exclude evidence of two prior thefts in 1991. Although Jackson received probation before judgment for the first theft, he was convicted for the second. In response to Jackson's motion in limine, the trial court excluded the evidence of the probation before judgment. As to the conviction, the trial court stated that if Jackson testified, then the prior theft conviction would be admissible to impeach him under Maryland Rule of Evidence 5-609, because the probative value outweighed the prejudicial effect. When Jackson portrayed himself as a "stellar" individual on direct, the prosecutor introduced the prior conviction as impeachment evidence on cross-examination.

The jury convicted Jackson and the judge sentenced him to five years imprisonment. Jackson appealed to the Court of Special Appeals of Maryland. Prior to consideration by the intermediate appellate court, the court of appeals issued a writ of certiorari to determine whether the trial judge abused her discretion by admitting a prior theft conviction to impeach the credibility of a defendant charged with theft.

The court of appeals began its analysis with an historical overview of the rules governing the admission of pri-

or convictions for impeachment purposes. At common law, a person was considered incompetent to testify after being convicted of an infamous crime or a crime involving dishonesty. *Jackson*, 340 Md. at 711-12, 668 A.2d at 11 (citing *State v. Giddens*, 335 Md. 205, 214, 642 A.2d 870, 874 (1994); *Prout v. State*, 311 Md. 348, 359, 535 A.2d 445, 450 (1988)). In 1864, the Legislature removed this disqualification and stated that such a person could testify, but the prior conviction was admissible for impeachment purposes. *Jackson* 340 Md. at 712, 668 A.2d at 11-12 (citing *Prout v. State*, 311 Md. 348, 359, 535 A.2d 445, 450 (1988)).

Presently, Maryland Rule of Evidence 5-609 controls the admission of prior convictions for impeachment purposes. The rule states, in pertinent part, that prior convictions may be elicited from a witness or by public record if: (1) it was for an infamous crime or a crime relevant to the witness's credibility; and (2) the conviction is less than fifteen years old; and (3) the court finds that the probative value of the evidence as to credibility outweighs the danger of unfair prejudice to the defendant. *Id.* at 712-13, 668 A.2d at 12.

Addressing *Jackson's* motion to exclude all prior convictions similar to the crime charged, the court rejected the defendant's arguments for three reasons. *Id.* at 714, 668 A.2d at 12-13. First, Rule 5-609 does

not contain explicit language excluding similar prior convictions. Second, a per se bar on admissibility of such statements would deny trial judges needed flexibility in particular cases. Finally, such a rule would unfairly shield a defendant who specializes in certain crimes from cross-examination concerning this specialty. *Id.* at 714, 668 A.2d 13.

Next, the court recognized that although a defendant has the right to testify in his own defense, the State also has the right to impeach the defendant with prior convictions if the evidence will assist the factfinder in assessing the defendant's credibility. *Id.* (citing *Ricketts v. State*, 291 Md. 701, 703, 436 A.2d 906, 908 (1981)). The balancing of the probative value of the evidence against the unfair prejudice to the defendant imposes a limitation on the use of prior convictions in order to avoid the admission of such evidence solely to create a negative impression of the accused. *Id.* at 716, 668 A.2d at 13. This requirement is particularly important when the prior conviction is similar to or identical to that presently charged, because a prior conviction may suggest to the jury that the defendant committed the present crime. *Id.* Due to this tendency, the trial judge must weigh the legitimate probative value against unfair prejudice to the defendant. *Id.* at 716, 668 A.2d at 14.

Since Rule 5-609 was partially derived from Federal

Rule of Evidence 609, the court looked to federal case law for guidance in interpreting the balancing prong of the rule. The court of appeals discussed the factors that the federal courts developed to guide trial judges in weighing the probative value against unfair prejudice. *Id.* at 717, 668 A.2d at 14.

The seventh circuit has established five factors for trial judges to consider when balancing probative value against unfair prejudice. *Id.* (citing *United States v. Mahone*, 537 F.2d 922, 929 (7th Cir.), cert. denied, 429 U.S. 1025 (1976)). The factors are: "(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." *Id.*

Upon approving the usage of the *Mahone* factors, the Court of Appeals of Maryland cautioned that the factors should not be considered in isolation of each other by the trial courts when balancing probative value against prejudicial effect. The court urged trial judges to explain the specific factors or considerations used in the decision. *Id.*

Applying these factors to the case at bar, the court of appeals determined that the evidence should be admitted because four of the five factors weighed in favor of admission

of Jackson's prior theft conviction. First, theft is inherently dishonest and reflects adversely on the witness's honesty. *Id.* at 721-22, 668 A.2d at 16. Second, the conviction was less than three years old, as opposed to more remote in time. *Id.* Third, since Jackson's credibility was central to the case, it was important to allow the State to present evidence of similar prior convictions for impeachment purposes. *Id.* The factor pertaining to the similarity of the charged offense to the prior conviction, however, weighed against admissibility because of the potential harm to the defendant. *Id.* at 720-21, 668 A.2d at 16.

Since the defendant in the instant case presented himself as a "stellar" individual, the court noted it would have been extremely unfair not to allow this image to remain unchallenged. *Id.* at 722, 668 A.2d at 16. Furthermore, the court stressed that the trial court lim-

ited the prejudice by instructing the jury to consider the evidence only for evaluating Jackson's credibility and the State did not attempt to misuse the evidence by overemphasizing the prior conviction. *Id.* In sum, since the court found that credibility was central to the case and that the probative value of the evidence outweighed the prejudicial effect, it concluded that the trial court did not abuse its discretion in admitting the prior conviction. *Id.*

In a dissenting opinion, Judge Bell disagreed with the majority's use of the *Mahone* factors and stated that they provided a "road map" for trial judges to find "infamous crimes and crimes affecting credibility per se admissible." *Id.* at 727, 668 A.2d at 19. In particular, Judge Bell gave more weight to the third factor, similarity of the conviction to the crime charged, leading to the conclusion that the probative value of the evidence did not outweigh its prej-

udicial impact. *Id.* at 733, 668 A.2d at 22.

In holding that evidence of prior convictions similar to those presently charged are not per se inadmissible, the Court of Appeals of Maryland in *Jackson v. State* emphasized the fundamental necessity of balancing the probative value of the evidence against the prejudicial effect. In a trial where credibility is central to the case and the probative value outweighs the prejudicial effect, a prior conviction of a similar crime may be admitted into evidence for impeachment purposes. The court further urged that trial judges should state, on the record, the specific factors or considerations employed when balancing the probative value against unfair prejudice, in order to insure efficient appellate review.

- Michele L. Katz