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## *Sessoms v. State*

### Test for Admitting Other Crimes into Evidence in Criminal Proceedings Does Not Apply to Crimes, Wrongs, or Acts Committed by Witness who Testifies at Trial

By Kristin E. Blumer

In a four to three decision, the Court of Appeals of Maryland held that the test for admitting evidence of other crimes into criminal proceedings does not apply to crimes, wrongs, or acts committed by anyone other than the defendant. *Sessoms v. State*, 357 Md. 274, 744 A.2d 9 (2000). The court found that the other crimes evidence rule, a court-created standard, is intended to protect a defendant from being convicted based on a reputation or propensity to commit crimes. Although the rule protects the defendant from undue prejudice, the court held that it does not exclude acts committed by other people.

On December 24, 1996, Tracy Dillon ("Tracy") was walking through an alley when a man who was later identified as James Sessoms ("Sessoms") attacked and raped her twice at knife point. When her attacker released her, Tracy ran towards home. En route, she saw her brother, Kelly Dillon ("Kelly"), and his friend, Antonio Shields ("Shields"), on a street corner. Kelly later testified that when he saw his sister, she was crying and dirty, with leaves in her hair and blood on her hands. The three of them found Sessoms on a street corner and confronted him. Once Kelly determined that Sessoms had attacked Tracy, he and Shields then beat Sessoms nearly unconscious.

When Officer Edward Marshall ("Officer Marshall") arrived at the scene, he found Tracy, hysterical, standing about fifteen feet from Sessoms, who was lying unconscious in the street. Kelly and Shields had fled the scene. Tracy told Officer Marshall that Sessoms had raped her and that he had been assaulted by two unknown men. A nurse at Mercy Hospital found injuries consistent with non-consensual sex; however, no semen was found. Tracy admitted to the nurse that she knew who had attacked Sessoms, but refused to reveal their names.

Officer Francis Shipp ("Officer Shipp") drove Tracy home from the hospital early in the morning hours of December 25, 1996. At that time, Tracy identified Kelly as her brother to the officer. Minutes later, Tyrone Pitman ("Pitman") ran up to the police car and told Officer Shipp that he had just been robbed by "that man," and referred to Kelly. Upon hearing this statement, Tracy said, "I ain't saying it is my brother or isn't my brother."

Sessoms was tried in the Circuit Court for Baltimore City on a seven-count indictment alleging rape, assault, assault with intent to rape, and sexual offenses. *Sessoms*, 357 Md. at 276, 744 A.2d at 10. The State filed a motion in limine to exclude the testimony of Officer Shipp alleging that Kelly had robbed Pitman. *Id.* at

279, 744 A.2d at 12. Defense counsel argued that the testimony was relevant when considered in light of Tracy's inconsistent statements concerning her brother's identity and Sessoms' claim of a robbery. *Id.* at 279-80, 744 A.2d at 12. The trial judge granted the State's motion, holding that the "highly prejudicial" evidence should be excluded. *Id.*

At trial, Sessoms testified on his own behalf, stating that he did not touch Tracy. *Id.* at 278, 744 A.2d at 12. He said that while he was walking down Baltimore Street to purchase lottery tickets, he was approached by two men, one of whom accused him of robbing his sister. *Id.* Sessoms denied the robbery, and was beaten unconscious by the two men. *Id.* Afterwards, he noticed that money and two lottery tickets, which had been in his possession prior to the attack, were missing from his pants pockets. *Id.*

The jury convicted Sessoms of third-degree sexual offense and acquitted him of the remaining charges; the court imposed a ten-year sentence. *Id.* at 281, 744 A.2d at 11. Sessoms appealed to the Court of Special Appeals of Maryland, which affirmed his conviction in an unreported opinion. *Id.* The Court of Appeals of Maryland granted a writ of certiorari to determine whether the test for admitting other crimes

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evidence should apply to evidence offered not against the defendant, but against a witness to establish a defense. *Id.* at 277, 744 A.2d at 11.

The court began its analysis by noting that the rule prohibiting introduction of evidence of other crimes was established to protect defendants from undue prejudice at trial. *Id.* at 282, 744 A.2d at 13 (citing *Boyd v. United States*, 142 U.S. 450 (1892)). The court cited three policy reasons for the rule:

(1) the strong tendency to find the accused guilty of the charge merely because of his or her history of committing such acts; (2) the tendency to condemn the accused not because of guilt, but because he or she escaped punishment from previous offenses; and (3) the injustice of unfair surprise.

*Id.* at 283, 744 A.2d at 14 (citing 1A John Henry Wigmore, Evidence § 58.2, at 1215). The court emphasized that none of these policy considerations applied to anyone other than the defendant. *Id.* The standard was adopted by Maryland in *State v. Faulkner*, 314 Md. 630, 552 A.2d 896 (1989). *Id.* at 277, 744 A.2d at 11. Accordingly, the rule was later codified as Maryland Rule 5-404(b), using language derived from Fed. R. Evid. 404(b). *Id.* at 285, 744 A.2d at 15.

The court observed that it had been afforded many opportunities to evaluate the other crimes evidence rule and had consistently held that use of the test in criminal proceedings was limited to acts committed by the

defendant. *Id.* at 283, 744 A.2d at 14. The court stated that an extension of the rule to parties other than the defendant would “broaden[] it beyond the type of prejudice that this rule was designed to prevent.” *Id.* at 285, 744 A.2d at 15. This interpretation of the rule was supported by a majority of federal court interpretations of Fed. R. Evid. 404(b). *Id.* at 287, 744 A.2d at 16. The court of appeals adopted the majority rule that “when evidence of other crimes, wrongs, or acts committed by a third party is proffered by the defendant, the risks of prejudice against the defendant normally are not present.” *Id.* at 291, 744 A.2d at 18.

On appeal, the State argued that since Maryland Rule 5-404(a) distinguished the “use of character evidence based on whether the character at issue is of the accused, the victim, or a witness,” Rule 5-404(b), which uses the general word “person,” indicated that the rule was intended to apply to persons other than the defendant. *Id.* at 286, 744 A.2d at 16. The court rejected this argument, noting that in *Wynn v. State*, 351 Md. 307, 718 A.2d 588 (1998), the court interpreted Rule 5-404(b) along with Maryland case law, and held that Rule 5-404(b) only excluded evidence of wrongs committed by the defendant. *Id.* at 286-87, 744 A.2d at 16. The court found that to expand the scope of the rule to persons “other than the defendant would turn the purpose of this rule on its head.” *Id.* at 287, 744 A.2d at 16. The court reasoned that evidence of wrongs committed by a

witness does not impute to the defendant a propensity to commit a crime. *Id.*

The court determined that the excluded evidence regarding Pitman’s alleged robbery by Kelly might have been relevant to Sessoms’ defense, especially when considered in light of Tracy’s inconsistent statements. *Id.* at 291, 744 A.2d at 18-19. The court stated that the evidence related to Sessoms’ defense that he was robbed by Kelly, that Tracy had concocted the rape to cover for her brother, and that the suppression of this evidence denied Sessoms an opportunity to fully present the basis of his defense. *Id.* at 292, 744 A.2d at 19. The court of appeals held that exclusion of this evidence on other crimes evidence grounds was erroneous. *Id.* The court further stated that exclusion of this evidence denied Sessoms an opportunity to impeach Tracy’s credibility by introducing her inconsistent statements, and to show that Tracy and Kelly “had bias, prejudice, interest, or other motive to testify falsely.” *Id.* at 294, 744 A.2d at 20.

The dissent, authored by Judge Wilner, criticized the majority for reaching out to decide an issue that was not present in the case. *Id.* at 295, 744 A.2d at 21. He found that Pitman’s accusation that Kelly had robbed him was properly excluded because it was hearsay, and highly prejudicial. *Id.* at 296, 744 A.2d at 21. He agreed with the majority that the rule against admitting evidence of other crimes should be limited to evidence admitted against the defendant in a criminal case, but

stressed that such evidence should not “be freely admissible in all other circumstances.” *Id.* at 301-02, 744 A.2d at 24.

The Court of Appeals of Maryland’s conclusion that the bar against admission of evidence of other crimes applies only to defendants is troublesome from a practical standpoint. The limitation of this rule opens the door to allowing such evidence to be introduced at trial against witnesses in criminal proceedings, thereby putting those individuals on trial. Admission of such evidence presents a fact-finder with evidence that is irrelevant to the issues in the case. As noted by the dissent in the instant case, other evidence was properly admissible to impeach the State’s witnesses. Use of evidence that someone other than a defendant has committed crimes or bad acts should be introduced in a criminal trial only in very limited circumstances.

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