Maryland State Board of Law Examiners

**FEBRUARY 2021 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS**

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## MEE 1

### Representative Good Answer No. 1

To: Isabel Banks

From: Examinee

Date: 2/23/21

Re: Charlotte Mills Matter

Short Statement

I have been asked to analyze whether there was a contract formed between Mills and Ramble, and whether if the contract was breached, what damages Mills might be entitled to from Ramble. All elements of a valid contract were present in the oral contract that the parties entered into, and because of Rambles breach, Mills would be able to recover damages.

Discussion

I. Ramble breached the contract that was validly formed between Mills and Ramble Group

There are essential elements that need to be present for there to be a valid and enforceable contract formed. The elements that are necessary for the formation of a contract are: (1) offer, (2) acceptance, (3) the intention to create a legal relationship, and (4) consideration. Daniels v. Smith. It is important to note from the outset that if a contract is to be performed within one calendar year, then the statute of frauds does not apply and there is no requirements that the contract be in writing. Franklin Civil Code §20.

First, the contract that was to be entered into by MEM and Ramble was to be scheduled and completed within one calendar year. Ramble Group made contact with Mills in June of 2020 to plan the Springfest for April of 2021. This would mean that the entire contract from start to finish would be completed within one calendar year. Thus, there is no statute of frauds requirement that would hinder the finding of the oral contract being enforceable.

It is undisputed that there was an offer made. This is evidenced by the many conversions that that Mills and Ramble had concerning Springfest. In addition, Mills sent a written event planning proposal for Springfest To Ramble, this fact further strengthens the finding that there was an offer made. There can also be no dispute that the contract that Mills and Rambled entered into included consideration. Mills was to plan, coordinate, and run the Springfest for the price of $15,000 for the first 1,000 guests, $2 for each additional guest, and $1 for

every person just entering the fun-run. The areas of contention as to the formation of the contract are centered around whether there was acceptance and the intention to create a legal relationship.

(a) Acceptance

Acceptance of the contract is fairly clear in this case. In the email chain that Mills and Ramble sent discussing the contract and the rolls and duties that Mills would take on, Ramble signaled her agreement and acceptance to various terms within the contract. When there was a discussion as to the price that would be paid to Mills, Ramble stated the price "sounds fair" and further asked Mills to secure a venue. This further evidences that there was acceptance.

The biggest piece of evidence that points to acceptance of the contract by Ramble is the fact that Ramble submitted the deposit to Mills for her to begin work. this clearly establishes that Ramble accepted the offer.

(b) Intention to Create a Legal Relationship

There is case law in Franklin that states "if the parties intend to reduce their proposed agreement to writing before it can be considered complete, there is no contract until the formal agreement is signed." Green v. Colimon (Fr. Ct. App. 2005). Green further states that. "there is no meeting of the minds while the parties are merely negotiating as to the terms of the agreement to be entered into[.] to be final, the agreement must extend to all terms that the parties intend to introduce, and material terms cannot be left for future settlement." Id. In the contract between Mills and Ramble, the negation between the event dates, the price that Mills would charge and the work to be done was extensive. this was all done through email exchanges and phone conversations, with the absence of a writing to memorialize this. A similar situation occurred in Alexander v. Gilligan, (Fr. Sup. Ct. 2008), where the parties (through a chain of emails) agreed upon the terms of a business consulting contract, but when the contract was presented to the defendant, the defendant refused to sign it. The court in Alexander held that "the formal written contract was not the agreement of the parties but only evidence of that agreement. Green (quoting Alexander). that is what happened in this case. The written proposal that was sent to Ramble by Mills was never signed, however, the parties traded many emails, in which they agreed upon various terms of the contract including the price to be paid to Mills, dates for the event, and agreement to work on the website.

Franklin courts have held that if parties agree via email, upon all the terms and conditions of an agreement with the intent to be bound by it, the absence of a signed formal writing does not alter the validity of the agreement. Green. Between June 7, 2020 and June 9, 2020 Mills and Ramble exchanged multiple emails, the valid this without the existence of a formal writing. On an email on June 9, 2020 Ramble told Mills to "get started on the website design." This demonstrates that the parties the emails constituted the final agreement between the two parties, and the Ramble intended to be bound by the terms that they agreed to. Both Mills and Ramble intended to create the legal relationship, this is evidenced by the email chain and the various conversations that they had. The written proposal that Mills sent over to Ramble is the not the legally enforceable document that establishes the contract, it simply serves as evidence of the agreement.

There was sufficient evidence that both parties intended to enter into the legal relationship contemplated.

Ramble and Mills had a valid contract, and Ramble's phone call canceling the contract constituted a breach because there was a valid contract between the parties.

II. Mills would more than likely be able to recover damages because there was a clear breach of a contract.

Statutory damages for a breach of a contract include damages for all detriment "proximately caused thereby, or which, in the ordinary course of things, would likely to result therefrom." Fr. CIVIL CODE §100. the damages have to be ascertainable for them to be recoverable. Id. However, §100 has been liberally construed to prevent the defendant from avoiding the consequences of their action, so if it is clear and certain that there has been a damage, the same certainty as to the amount of the damage is not required. in Daniels, recovery was sought as to the expenses that were incurred prior to the breach, as well as the benefit of the bargain or the profit that would have been made had the other party not breached the contract. As these damages were not entirely certain, the fact that Daniels had been a contractor for 13 years, he would be able to calculate the damages.

Here, Mills has been planning events for a number of years, she plans a number of events per year. she incurred a cost of $3,000 before the time of the breach and she was set to make at least $15,000 from the event. her damages should be the $15,000 as the benefit that Mills was set to receive by the completion of the event, which includes the non-refundable deposit, as well as the $3,000 in costs that she incurred prior to the breach. Ramble could argue that there is no certain way to calculate these damages, but based on Mills years of experience, and the fact that she would not have to plead them with certainty, she would be more than likely to recover those damages.

III. Parol Evidence Rule does not apply, and if the matter goes to court, Mills could enter the email chin into evidence to establish that there was a contract formed.

If the dispute between Mills and Ramble goes to court over the formation of the contract, or over damages, the parol evidence rule would not apply. The parol evidence rule prevents a court from considering prior or contemporaneous agreements that are inconsistent with the terms in the written agreement. Thompson v. Alamo Paper Products Inc. This means that if there is a written contract between the parties, no oral agreements that are not incorporated into the agreement could be available in court.

Here, there was no written agreement that was formed. Ramble could attempt to argue since various aspects of a breach of contract claim are left to the trier of fact or that they mirror the terms that are in the written proposal that was sent to Ramble, that the email chain of correspondence could not be entered into court to determine if there was a contract formed. Because there was no written agreement that was signed by the parties, and the fact that the statute of frauds does not apply, the parol evidence would not bar Mills from introducing this evidence into court. the trier of fact is the judge for many aspects of this claim, and Mills could enter all of the emails into evidence to establish that there was contract formed.

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**FEBRUARY 2021 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS**

**Representative Good Answer No. 2**

WARREN, SANCHEZ & BANKS LLP

Attorneys at Law

2500 Washington Blvd., Suite160

Franklin City, Franklin 33075

MEMORANDUM

To: Isabel Banks

From: Examinee

Date: February 23, 2021

Re: Charlotte Mills Matter

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I've reviewed our client's (Mills) legal position with respect to a potential breach of contract by Ramble, as well as Mills' potential damages. I've prepared the following analysis:

Enforceable Contract. Contracts are governed by two separate bodies of law; the Uniformed Commercial Code (UCC) governs contracts for goods and the Common Law governs contracts for everything else. Under common law, a contract is properly formed if it has four essential elements, which are (1) offer, (2) acceptance, (3) the intention to create a legal relationship, and (4) consideration.

Offer. Generally, common law provides that an offer is a manifestation of an intent by a person to be bound by the terms an agreement communicated to another person. Here, it is undisputed that our Mills submitted her offer on June 4, 2020 in her email to Kathryn Burton at Ramble (Ramble). Specifically, Mills' offer was submitted via an emailed proposal to Ramble that outlined the terms associated with her event planning services for Ramble's Springfest 2021. Mills' emailed proposal constitutes the element of offer in a properly formed contract and satisfies element 1.

Acceptance. For an acceptance, common law also provides that a party can manifest their intent to be bound by the terms of an offer by expressing their assent within a reasonable amount of time or within the timeframe specified by the offer. On June 7, 2020, Ramble reviewed Mills' offer and responded with a question. Such a response would not generally constitute an acceptance, nor would it constitute a rejection of the offer. The parties exchanged additional email communications and on June 9, 2020, Ramble emailed Mills and accepted the offer when they said "Fantastic! Please get started on the website design. I'll get you Ramble's initial deposit by the end of this week." The email communication equates to an acceptance and meets element 2 in contract formation.

Legal Relationship. The intent to create a legal relationship was also created by Ramble's June 9, 2020 email wherein they said, "I agree that we really need to get going on this" and "I'm looking forward to working with you to make Springfest 2021 a huge success!" Mills responded with similar intent to create a legal relationship by emailing Ramble in response saying, "Sounds great! Once I receive your deposit, I'll take care of securing

the two potential venues and you can reimburse me later, per our agreement." Ramble's intent to be bound by a legal relationship was nearly identical to Smith's intent in the Daniels v. Smith, Franklin Court of Appeal (2011) case. In that case, the court says that "Smith's statement 'Let's get this thing rolling" made clear that both parties intended to be legally bound by their agreement." The parties intended to create a legal relationship, thereby satisfying element 3.

Consideration. Lastly, a contract must have consideration. Consideration is a bargained for legal exchange. Here Mills' event-planning services constitutes her legal consideration and Ramble's payment of $15,000 registrations and $1-$2 for additional registrations and tickets constitute their legal consideration. With consideration present, that satisfies element 4 in contract formation.

Because all four elements are present, the agreement between Mills and Ramble constitutes a contract and is enforceable as such.

Possible Ramble Defense. Ramble may try and raise the Statute of Frauds as a defense, by saying they did not accept the offer because they did not sign Mills' proposal.

However, Mills' situation is analogous Daniels v. Smith case. In Daniels the court rendered that "statute of frauds does not apply here. Under Franklin Civil Code § 20, an agreement that by its terms is not to be performed within one year from the date of its making is invalid unless it is memorialized in writing and executed by the party to be charged." Similarly, the statute of frauds does not apply here either. Mills and Ramble entered into a contract in June 2020 with the intent to complete the contract in April 2021. Because the contract is for services that will be performed in one year, the contract does not need to be deduced in writing. An orally agreed to contract is enforceable.

Damages. In Jasper Construction Co. v. Park-Central Inc., Franklin Court of Appeal (2014), the court held that "in Stark v. Huntington (Fr. Ct. App. 2003), a contract was enforced notwithstanding the defendant's assertion that "neither design specifications, nor price, nor time of performance have been agreed upon." Meaning that even that even though the total profits were not specified in the parties' agreement, there is enough information to enforce the contract and ascertain what Mills' benefit of the bargain would have been.

Generally, the non-breaching party should be given their benefit of the bargain, as if the breach had not occurred. Mills would have made profits in the realm of $18,500 which accounts for the $15,000, plus approximately $3,000 for the additional registrations, and $500 for the additional runners. Mills would also be entitled to her out-of-pocket expenses in the amount of $3,000. Damages would total $21,500 for Mills.

In Thompson v. Alamo Paper Products Inc., Franklin Court of Appeal (2017) the court holds that "Alamo is not barred by the parol evidence rule." The court further states, "The parol evidence rule prevents a court from considering prior or contemporaneous agreements that are inconsistent with the terms of the written agreement." Here, Mills is also not barred by the parol evidence rule because her contract was not deduced to a written agreement that was to be the final expression of the parties. Mills can introduce email traffic, notes from her phone calls with Ramble, copies of the deposit, and her proposal to support the terms of the parties' contract and her potential damages.

Conclusion. In sum, the four elements of a contract are present Mills' case and she does have an enforceable contract with Ramble for her event planning services for Springfest 2021. On August 10, 2020, Ramble breached this enforceable contract when they contacted Mills and stated they decided to use another event.

Their decision to use someone else constituted an anticipatory repudiation (an unequivocal manifestation not to perform the bargain). Because of their anticipatory repudiation, unless an immediate redaction of their repudiation occurs (which would have to occur before Mills relies on the cancellation), then Ramble is liable for breach of contract and Mills can immediately sue for damages in the amount of $21,500 that includes her expected profits and reimbursement for her out-of-pocket expenses.

Please let me know if I can research anything additional. I appreciate the opportunity to assist with this matter.

Thank you.

## MPT 2

### Representative Good Answer No. 1

I. Captions

[Omitted]

II. Statement of Facts

[Omitted]

III. Legal Argument

Under Franklin Law, there are two circumstances under which evidence of a prior criminal conviction may be used to impeach a witness. First, if a crime is punishable by death or imprisonment for more than one year, the evidence must be admitted in a criminal case in which the witness is a defendant, if the probative value outweighs the prejudicial effect. Fr. Rules of Evidence, Rule 609(a)(1)(B). Second, a witness' character for truthfulness can be attacked by evidence of a criminal conviction for any crime, if the court can determine that establishing the elements of the crime required proving, or the witness' admitting, a dishonest fact or false statement. Rule 609(a)(2). Here, the State of Franklin (State) cannot meet either of those tests to admit evidence of Bryan Kilross' (Kilross) prior robbery conviction. Thus, the evidence should be excluded.

A. Because robbery does not require a dishonest act or false statement, the prior conviction ought not to be admitted through Rule 609(a)(2).

In State v. Thorpe, the Franklin Supreme Court addressed the question of whether evidence of a prior robbery conviction can be admitted for impeachment purposes under Rule 609(a)(2). The court held that robbery does not fit the definition of "dishonesty" because it is a crime of violence, rather than deceitful taking. Thorpe. "Robbery is not a crime with an element requiring proof of dishonesty or false statement that could automatically be used to impeach a witness under Rule 609(a)(2)." Thorpe. The State would still be permitted to admit evidence of the conviction if it could prove that there was something else deceitful about the prior robbery proceeding. For instance, if the State could show in the prior indictment or in a statement from the prior proceeding that indicated deceit, the conviction could come in. In State v. Frederick, (Fr. Ct. App. 2008), in a shoplifting case, the defendant lied to the arresting officer about the contents of her backpack and the court found that such an act of deception brought the evidence within the exception to Rule 609.

As in Thorpe, Mr. Kilross' prior robbery conviction is not automatically admissible under Rule 609(a)(2). Robbery is not a crime which inherently involves dishonesty. Additionally, there is nothing specific about the prior robbery proceeding that demonstrates deceit or dishonesty. When Mr. Kilross and his accomplice, Dave, went

to the Quik Pantry, they drove in Kilross' car. Mr. Kilross did not make any statement at all to the cashier in the process of committing the robbery. Mr. Kilross held open the paper bag while Dave instructed the cashier to put money inside. Excerpt from Plea Hearing. Moreover, Kilross' actions were a mere mistake on behalf of a young person. He returned all of the money to the store. Excerpt from Plea Hearing.

Dave did make a dishonest representation in the course of the robbery by pretending he had a gun when he did not, in fact, have a gun. However, that is not a dishonest act on behalf of Kilross and should not be attributed to him. The prior robbery conviction is not admissible to impeach Kilross under 609(a)(2).

B. Because the State cannot establish that the probative value outweighs the prejudicial effect, evidence of the prior conviction may not be admitted under 609(a)(1)(B).

Under Rule 609(a)(1)(B), the State has to establish a number of things. First, it is indisputable that robbery is a crime punishable by imprisonment of more than one year. See Fr. Crim. Code Section 29(b). Evidence of such a conviction "must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant." Rule 609(a)(1)(B). Here the State seeks to introduce the evidence for impeachment against Mr. Kilross, the defendant, as a witness. Therefore, the only inquiry is whether the probative value outweighs its prejudicial effect to Mr. Kilross. The test for courts to apply is a "heightened test" and "creates a preference for exclusion." See State v. Hartwell, (Fr. Ct. App. 2014). The court must consider four factors when weighing the probative value against the prejudicial effect: (1) the nature of the prior crime involved; (2) when the conviction occurred; (3) the importance of the defendant's testimony to the case; and (4) the importance of the credibility of the defendant.

1. Because of the similarity of the crimes and the nature of the crime, the first factor weighs against admission of the conviction.

In evaluating the first factor, courts must consider the impeachment value of the prior conviction and its similarity to the charged crime. The more similar the crimes are, the more risk that the jury draws the impermissible conclusion that the defendant is the sort of person that commits this crime. See Hartwell. "Evidence of similar offenses for impeachment under Rule 609 should be admitted sparingly, if at all." Hartwell. The risk of prejudice when the offenses are too similar is very high. In Hartwell, the defendant was charged with being a felon in possession of a firearm. The State sought to impeach him with conviction of a federal offense identical to the one for which he was being tried.

Here, Kilross was previously convicted of robbery. In the present case, he is once again charged with robbery. Even some of the relevant facts are very similar. The type of store that was robbed and the behavior in the process of committing the crime is similar. This factor weighs strongly against admission of the conviction for impeachment.

2. Because Kilross' prior robbery conviction is 8 years old and he has demonstrated changed character, the second factor weighs against admission of the conviction.

The Franklin Rules of Evidence exclude convictions that are more than 10 years old. However, there is a sliding scale that makes convictions more recent than 10 years less probative as they approach the 10-year mark. An important factor in this inquiry is whether the defendant has changed for the positive since the prior conviction. In Hartwell, the defendant's conviction was 6 years old and he had not had any other convictions since then. Hartwell.

Mr. Kilross' prior robbery conviction is 8 years old, which is a full two years older than Hartwell's prior conviction which the court excluded. Since his conviction, Mr. Kilross has no other convictions. He has a good job at a warehouse, where he has received promotions up to a supervisory level. Kilross Interview Tr. Mr. Kilross does

have two speeding tickets after the conviction, but such ordinary instances should not weigh against him in this case. He pled guilty to both tickets and paid the fines. Kilross Interview Tr.

3. Because Mr. Kilross' defense relies solely on his own testimony, the third factor weighs in favor of excluding the prior conviction.

If the defendant's only rebuttal comes from his own testimony, the court must consider whether the impeachment evidence would prevent the defendant from testifying. Hartwell. However, if the defense can be established by other evidence, impeachment would have a smaller impact on the case.

Mr. Kilross' primary defense is that he was not at the store when he allegedly committed the robbery. Additionally, there is little other evidence to establish that defense. Although the store has video which will be introduced in evidence, the video does not help in making an identification of the robber. The man in the video generally matches the description of Kilross, so that evidence does not assist in his defense. As part of his recounting of the night of the robbery, Mr. Kilross called Janice Malone (Malone) about their plans that night. Investigator's Summary of Evidence (Summary). In the Summary, it is confirmed that Malone had to cancel their plans, but that evidence alone is insufficient to establish that Kilross was not at the store at the time of the robbery. Mr. Kilross could have been on his cell phone outside of the store when Malone cancelled their plans together. As a result, Kilross cannot rely on any evidence likely to be presented except his own testimony.

4. Because Kilross' credibility is central to the case, the fourth factor weighs in favor of admission of the prior conviction.

If the defendant's credibility is the focus of the trial, the significance of admitting impeachment evidence is heightened. Hartwell. As a result, the State has a strong interest in testing the defendant's credibility. Kilross does intend to testify that he was not at the store at the time of the robbery. That is the primary defense theory. As a result, his testimony goes right to the heart of the case.

Although the fourth factor weighs in favor of the State being able to introduce the prior conviction, the other three elements weight strongly against the admission. The charged offense is virtually identical to the offense in the prior conviction. The prior conviction is 8 years old and Kilross has been an upstanding, contributing member of Franklin society since that childhood mistake. Kilross' testimony is also the only evidence he has to present his defense. The "probative value of the prior conviction for attacking the defendant's credibility is low" and it is decreased further by the above factors. The State cannot prove that the probative value of the conviction outweighs the high risk of its prejudicial effect and the conviction should not be admitted impeaching the defendant.

## Representative Good Answer No. 2

III. Legal Argument

Franklin Rule of Evidence 609 states that:

(a) In General, The following rules apply to attaching a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that was punishable by death or by imprisonment for more than one year, the evidence . . .

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant: and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving - or the witness's admitting - a dishonest act or false statement.

A. The court should refuse to admit the defendant's prior conviction of felon robbery for impeachment under Rule 609(a)(2) because the crime of robbery does not require proof of a dishonest act or false statement.

In Thorpe, the Franklin court determined that "dishonestly" or "false statement" should be interpreted narrowly as "deceitful behavior, or a disposition to lie, cheat or defraud." Furthermore, the Franklin court specifically stated that robbery does not fit this definition because it is a crime of violent and not deceitful taking.

The prosecution, however, is likely to rely on the State's recent revisions to establish that the defendant's prior conviction should be admitted. This revision permits the use of a prior conviction for impeachment if the facts in the record establish an act of dishonesty. The record includes the language in the indictment as well as facts admitted by the witness during the hearing of a guilty plea. In Fredrick, the defendant was charged with theft and admitted to placing the stolen item in her backpack and lying to a security officer when asked about it. This was sufficient to prove act of deception to use the prior crime to impeach the defendant under Rule 609. Here, neither the language of the indictment nor the facts admitted by the defendant during the hearing to his guilty plea. The only possible deception involved in the prior crime was the defendant admitted that his accomplice used a fake gun in the robbery. The use of a fake gun instead of a real gun. This misrepresentation while intentional, likely does not rise to level of deception necessary to be sufficient to admit the defendant's prior conviction for impeachment under Rule 609.

We hold that the State has failed to meet its burden of establishing that the defendant's prior crime was one that involved the elements of dishonesty or false statement.

B. The court should refuse to admit the defendant's prior conviction of felony robbery for impeachment under Rule 609(a)(1)(B) because the probative value of the evidence is outweighed by its prejudicial effect.

The Franklin Court considers four factors when weighing the probative value against the prejudicial effect: (1) the nature of the prior crime involved, (2) when the conviction occurred, (3) the importance of the defendant's testimony to the case, and (4) the importance of the credibility of the defendant. (Hartwell).

1. the nature of the prior crime involved

When evaluating this factor, the court should consider the impeachment value of the prior conviction and the similarity of the prior conviction to the crime charged. The impeachment value refers to how probative the prior conviction is of the witness's character for truthfulness. (Hartwell). The Franklin court has stated, crimes of violence generally have a lower probative value in weighing credibility while crimes that by their nature imply some dishonesty have a much higher impeachment value. As discussed in section A, the Franklin courts do not consider the crime of robbery to be a crime that by its nature implies some dishonesty.

When evaluating the similarity of the prior crime to the present charge, the more similar the prior crime is to the present charge, the stronger the grounds for exclusion of the prior crime. The Franklin court's policy is that admission of evidence of a similar offense can lead the jury to draw the impermissible inference that, because the defendant was convicted before, it is more likely that he committed the present offense. Moreover, the Advisory Committee Notes to Rule 609 state, "the danger that prior convictions will be misused as character evidence is particularly acute when the defendant is impeached."(Hartwell). In this case, the defendant have

previously been convicted of felony robbery and here he is charged with felony armed robbery. The previous conviction involved the defendant wearing a ski mask with his accomplice. The accomplice used a fake gun in the robbery and the defendant retrieved the money. The defendant is presently accused of using a gun to rob a liquor store while wearing a stocking over his head. These to crime are so similar, almost identical, and thus admitting the defendant's prior conviction would maximize the risk of prejudice.

2. the age of the prior conviction

The Franklin Rules presumptively exclude convictions more than 10 years old. However, even for convictions less than 10 years old, the passage of time can reduce the conviction's probative value, especially where other circumstances suggest a changed character, such as when the defendant has maintained a spotless record since the prior conviction. (Hartwell). Here, the defendant's prior conviction is only 8 years old, thus not barred by the 10-year rule. However, the defendant has maintained a spotless record since his conviction, the only issue the defendant has with the law is two traffic tickets.

3. The importance of the defendant's testimony

If the defendant's only rebuttal comes form his own testimony, the court should consider whether impeachment with a prior conviction would prevent the defendant from taking the stand on his own behalf. (Hartwell). Here, the defendant only has his own statement to confirm where he was when the robbery took place. The defendant has no other evidence to establish his defense.

4. The importance of the defendant's credibility

Where the defendant's credibility is the focus of the trial, the significance of admitting a prior conviction is heightened. (Hartwell). Here, the defendant's credibility is the central focus. The only evidence being offered is the testimony of the defendant and the testimony of the prosecutions witness.

The fourth factor falls in favor of admitting the defendant's prior conviction for impeachment under Rule 609(a)(1)(B). However, all of the other factors favor the exclusion of the defendant's prior conviction. The probative value for the defendant's prior conviction is low because it was not a crime involving dishonesty and the conviction occurred 8 years ago and, besides for two traffic tickets, the defendant has not been in any legal trouble since. Furthermore, the past conviction is very similar to the present offense and creates a heightened risk of prejudice, one that has a significant impact on the central theory of the defendant's case since the only evidence the defendant has to offer is his testimony.

We hold that the State has failed to meet its burden of establishing that the probative value of the prior offense for impeachment purposes outweighs its prejudicial impact.

C. The court should refuse to admit the defendant's prior conviction of felony robbery for impeachment under Rule 609(a)(1) because the crime was not punishable by death or imprisonment for more than one year.

The defendant was convicted of felony robbery which under Franklin law is punishable by at least one year imprisonment. However, the defendant was only sentenced to six months imprisonment. The defendant's punishment, therefore, does not fit the crime of felony robbery but instead is indicative of a punishment for theft under Franklin law. If the defendant's previous conviction is theft and not robbery, section B of this [End of answer]