MPT 1 – Sample Answer 1

To: Isabel Banks

From: Examinee

Date: February 23, 2021

Re: Charlotte Mills matter

Introduction

This memorandum evaluates: 1) whether there is an enforceable contract between our client, Charlotte Mills ("Mills), and Ramble Group ("Ramble"), and 2) what damages Mills is entitled to recover in a breach of contract suit against Ramble.

For ease of reference, Mills' event management group is referred herein as "MEM". Ramble Group's owner-operator Katheryn Burton is referred herein as "Burton." Per your instructions, this memorandum does not address the issues of promissory estoppel and specific performance.

Discussion

A. Whether an Enforceable Contract Exists between Mills and Ramble

There is an enforceable contract between Mills and Ramble. First, the statute of frauds does not apply, so the agreement may be enforceable even though it is oral. Second, all required elements for an enforceable contract are met. The terms of the agreement are sufficiently definite for a court to find a binding contract.

1. The Mills/Ramble Agreement may be oral without violating the Statute of Frauds.

As an initial matter, the statute of frauds does not apply to the agreement between Mills and Ramble. Franklin's statute of frauds requires any agreement that is not to be performed within one year from the date of its making be memorialized in writing and signed by the party against whom enforcement is sought. Franklin Civil Code 20. Here, Mills and Ramble began discussions in June 2020. Mills' performance would be complete within one year of June 2020, as it would be performed by the first or second week of April, when Springfest 2021 would be held. Because Mills could perform within one year, the statute of frauds does not apply to this matter. The agreement between Mills and Ramble does not have to be in writing to be enforceable.

2. All required elements for an enforceable contract are met.

For an enforceable contract to be formed, there must be: 1) an offer; 2) acceptance; 3) intention to create a legal relationship; and 4) consideration. (Daniels v. Smith 2011). All elements are met here.

Offer

The email exchange on June 4, 2020, between Mills and Burton constitutes an offer for performance. Mills provides a proposal to offer her professional event management services for Springfest 2021, which details the scope of work, and the responsibilities of both Mills and Burton. After

the email exchange on June 7, 2020, Mills adjusted her offer regarding her fee for the ticket price. Burton responds by saying, "That sounds fair."

In Daniels v. Smith, the court found a binding contract when the parties exchanged a plan with specifications for building a warehouse, and there was a later modification to one of the proposed terms (the price). The builder initially offered to build the warehouse for $227,000. The defendant responded by saying the job was Daniels' if he could do it for $200,000. Daniels responded by saying he accepted the offer. This is similar to the negotiations that took place here between Mills and Burton. Mills provided her initial proposal and fee structure, and Burton inquired as to whether a lower per-ticket fee was an option given the unique nature of the 5K event. Mills accepted a lower per-ticket fee at Burton's urging. At this point, Mills had made an offer that Burton could accept.

Acceptance

Burton accepted Mills' proposal by saying on June 8, 2020, "That sounds fair." in response to Mills' revised offer with the new per-ticket fee. She again reiterated her acceptance to the contract on June 9, 2020, when she said, "I agree we really need to get going on this."

This statement that they needed to "get going" on planning the event is very similar to the statement made by Smith in Daniels v. Smith, which the court determined was an acceptance. In Daniels, Smith said, "Let's get this thing rolling." in response to Daniel's modified offer. The court interpreted this statement as an intent to be bound by the agreement. A court would likely find the same intent here on Burton's part, as all her email statements to Mills in the June 8-9th exchange indicate she is okay with Mills' terms, notes the urgency of Mills getting started on the work, and asks for specific action items to take place, such as working on the website and booking venues. Because Burton's statements indicate she intended by be bound, a court will likely find an agreement.

Intent to create legal relationship

For many of the same reasons that a court will find acceptance, a court will likely find that the parties intended to create a legal relationship here. Even though several items where not included in Mills' proposal (the offer), the court will likely find that there was a meeting of the minds on all material matters. For there to be a meeting of the minds, the material terms cannot be left for future settlement. (Green v. Colimon). Once all terms and conditions are agreed upon with mutual intention, the contract becomes binding. (Alexander v. Gilligan). Whether there was sufficiently defined terms for there to be a meeting of the minds is judged from the surrounding circumstances. (Jasper Construction v. Park-Central).

In Green v. Colimon and Alexander v. Gilligan, the court noted that parties will be found to intend a binding contract unless there is a need for future negotiations on material terms. In Alexander v. Gilligan, the court determined that email exchanges about the terms for a 6 month business consulting agreement, where there was no formal written contract, was evidence of an agreement between the parties to be bound because there was nothing left for future negotiations. Furthermore, in Jasper Construction v. Park-Central, the court found that the failure to incorporate all terms of the Plans into the Lease did not mean there was a failure of a meeting of the minds on the material terms. A contract can be enforceable even when the price and time of performance is not agreed upon. (Stark v. Huntington).

Here, while there were several items missing in the offer, such as the date of the event and venue, these items were later ironed out in subsequent email exchanges between the parties. All material terms, including the services Mills would provide and how she would be compensated, where specified and agreed to by Mills and Burton in the proposal and subsequent email exchanges. There was a meeting of the minds on all material matters. Therefore, the terms become binding, even without a formal writing summarizing all terms and signed by both parties.

Consideration

There is consideration here, as there is a bargained for exchange. Mills agreed to provide her event planning services in exchange for monetary payment by Burton, of $15,000 for up to the first registrants, with additional per registration fees for general admission and 5K tickets. The monetary payment in exchange for providing services is similar to the types of consideration typically recognized in Franklin. (See, e.g., Daniels v. Smith; Jasper Construction).

B. Damages Available to Mills in Breach of Contract Suit

In a breach of contract suit, damages are available for all detriment proximately caused by the breach of contract, or which, in the ordinary course of things, would be likely to result therefore. (Daniels v. Smith; Fr. Civ Code 100.) However, unascertainable damages cannot be recovered. (Daniels v. Smith; Fr. Civ Code 100.) There must be a certainty as the nature, existence, and cause of the damages (Daniels v. Smith), but a trier of fact may determine the amount of damages if only the amount is uncertain. (Daniels v. Smith)

First, Mills should not be limited to the $2,500, as the event was not "cancelled". The event still took place, just with another organizer. Therefore, Mills should be able to seek reimbursement for her out of pocket expenses and lost profits.

Here, Mills may recover the expenses incurred as a result of the breach. This includes the $3,000 in out of pocket expenses incurred as a result of the breach. The $2,000 deposit already received from Burton should not be deducted from this amount, as the deposit was poised as a non-refundable deposit.

Mills is also entitled to pursue lost profits, either in the form of the profits lost from not being able to manage the event and gain the ticket sale fees, and/or from the fees she forego in giving up other opportunities to manage the SpringFest.

Mills needs to submit some evidence to support her contended damages, and then the trier of fact will determine what she is entitled to in the form of reasonable damages. See Jasper Construction. In Daniels v. Smith, the court took into consideration the builder's years of experience in determining whether the requested damages where reasonable. Here, Mills has less experience than the builder in Daniels, with only 3 years compared to the builder's 13. However, she had demonstrated experience hosting other events, and can point to specific value added, including obtaining the permits, having a new idea for food vendors, and increasing publicity for the event by redoing part of the website. She can also point to Burton's own statements about how 500 people registered last year, and Burton expected a double of registrations this year. She also had inquiries about other events at the same time, which she was unable to commit to as they conflicted with the SpringFest.

Mills is entitled to see the out of pocket expenses, the $15,000 base fee, $3,000 for the expected additional 1,500 general admission tickets, and $500 for the fun-run only registrations. The burden would then be on Burton to contradict this evidence. If Mills' evidence is the only thing in the record, the trier of fact would likely grant these damages as reasonable.

Conclusion

There is an enforceable contract between Mills and Burton. Mills will be able to seek reimbursement for out of pocket expenses and lost profits.

MPT 1 – Sample Answer 2

MEMORANDUM

To: Isabel Banks

From: Examinee

Date: February 23, 2021

Re: Charlotte Mills matter

Issue 1: Is there an enforceable contract between Charlotte Mills and Ramble Group?

Short Answer: Yes, there is an enforceable contract between Charlotte Mills because the Statute of Frauds does not apply and the contract elements of offer, acceptance, the intent to create a legal relationship, and consideration are present. Furthermore, the parol evidence rule does not bar consideration of email and oral communications outside of the formal written, unsigned agreement, and the notions of fair play and justice require the totality of the communications to be interpreted together to prove the existence of the contract.

Analysis:

a. The agreement between Mills and Ramble Group Did Not Need to be a Signed Writing to Constitute an Enforceable Contract Because the Statute of Frauds does not apply.

As an initial matter, the Statute of Frauds would not apply here, and a signed written agreement is not necessary in this instance to show an enforceable contract. Franklin Civil Code Section 20 states that 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. The initial contact between Mills and Ramble occurred on June 3, 2020, and the substance of the contract was the planning and organization of Springfest 2021, which was to take place in April 2021. Thus, the services to be performed under any agreement would necessarily take no longer than one year to perform, and there is no applicable statutory requirement that the agreement be in writing to be an enforceable contract.

b. A Contract Between Mills and Ramble was formed because the essential elements of a contract were present, namely offer, acceptance, the intention to create a legal relationship, and consideration.

The essential elements for contract formation are 1) offer, 2) acceptance, 3) the intention to create a legal relationship, and 4) consideration. Daniels v. Smith (Fr. Ct. App. 2011). Here, there is no dispute that an offer was made with Mills' written proposal to Ramble attached to her June 4, 2020 email. This proposal offered to provide Ramble with professional management services for Springfest 2021 which included event logistics, venue and course design, event consultation and guidance, and event marketing and branding. There is also no dispute that the offer contained adequate consideration in the form of payment in the amount of $15,000 for up to the first 1000 registrations or tickets sold and $2 per additional registration or ticket sold. In subsequent email communications between Mills and Ramble, this was modified to include the $15,000 base fee plus a $2 fee per general admission ticket and

$1 fee per fun-run-only ticket. Thus, the remaining issues are whether Ramble accepted the offer and whether there was intent to create a legal relationship.

Ramble accepted the offer and intended to create a legal relationship, similarly to the situation in Alexander v. Gilligan (Fr. Sup. Ct. 2008). In that case, the parties agreed upon the terms of a six-month business consulting agreement through emails and several meetings. However, when the plaintiff presented a written contract for the defendant's signature, the defendant refused to sign. In Ramble's email of June 9, 2020, Ramble representative Kathryn Burton tells Mills to "get started on the website design" and explicitly states she would provide Ramble's initial deposit by the end of the week. She ends the email by stating, "I'm looking forward to working with you to make Springfest 2021 a huge success!" Mills replies in an email of the same date that, once she receives the deposit, she would take care of securing the two potential venues, and Ramble could reimburse her later per their agreement. Importantly, Ramble's representative does not respond to this email to dispute that there is such an agreement. Furthermore, additional phone conversations took place following the June 9th emails where Mills provided regular updates to Ramble's representative, and Ramble's representative expressed no concerns. At no time did Ramble sign the written proposal provided by Mills in her June 2020 email.

In the Alexander case, the court held that the formal written contract was not the agreement of the parties, but instead only evidence of such agreement. The court relied upon previous cases that stated that, "when parties agree orally or via email, upon all the terms and conditions of an agreement with the mutual intention for it to become binding, the mere fact that the formal written agreement has yet to be prepared and signed does not alter the binding validity of the agreement." Daniels (Fr. Ct. App. 2011). Whether the parties agreed for oral or email-based agreement to be binding is to be determined by the trier of fact from the surrounding circumstances, giving effect to the mutual intention of the parties as it existed at the time of contracting. Alexander. Generally, the greater the complexity and/or the larger the size of the transaction, the more likely that informal communications are meant to be only early negotiations and not a binding contract. Haviland v. Magnolia Sec. Inc. (Fr. Ct. App. 2009); 1 CORBIN ON CONTRACTS Section 2.9, at 152 (rev. ed. 1993). Furthermore, the specificity required for an enforceable contract depends on the circumstances. Jasper Construction Co. v. Park-Central Inc. (Fr. Ct. of Appeal 2014). In certain circumstances, a contract can be enforced even where one party asserts that design specifications, price, and time of performance are not agreed upon. Stark v. Huntington (Fr. Ct. App. 2003).Here, since the total of the contract value was in the low $10,000's, it is more likely that the parties intended their email and phone communications to be binding. Additionally, since the only term remaining to be determined at the end of the written discussions was the venue location, which would be easily obtainable (Mills noted she would proceed with securing two potential venues in her June 9th email), there was an enforceable contract between Mills and Ramble.

c. The Parol Evidence Rule Does Not Apply Here and Does Not Prevent the Enforcement of the Contract Between Mills and Ramble.

The parol evidence rule prevents a court from considering prior or contemporaneous agreements that are inconsistent with the terms in the written agreement. Bradley v. Ortiz (Fr. Sup. Ct. 1998). In order for the parol evidence rule to apply, the evidence must indicate that the parties intended that the written agreement be the final expression of their agreement (as by both parties signing it). Thompson v. Alamo Paper Products (Fr. Ct. App. 2017). If the evidence indicates such, the written

contract will supersede all negotiations concerning its matter that preceded or accompanied the execution of the contract. Since here the parties did not both sign the agreement originally provided by Mills, and there is no merger clause or other such indication in the formal agreement itself indicating that it is a complete final expression of the parties' agreement, the court may consider both extrinsic written and oral communication to prove the terms of the contract. Thompson; Bradley.

d. Justice and Fair Dealing Compel the Enforcement of the Contract Between Mills and Ramble.

In addition to the above, the concepts of justice and fair dealing support the recognition of the enforceable agreement between Mills and Ramble. As noted in Daniels, "[o]therwise, a party who has entered into a contract through a combination of telephone conversations, in-person discussions, and email correspondence would be able to avoid the contract by claiming that the contract had not been reduced to another written form." To ensure fairness, the Court cannot permit Ramble to avoid its obligations incurred in the ordinary course of business through its refusal to sign the written proposal which memorializes the terms of Mills' and Ramble's oral and email-based agreement.

Issue 2: If there is an enforceable contract, what damages can Charlotte Mills recover?

Short Answer: Since there's an enforceable contract, Mills can recover expenses and lost profits to the extent such profits are reasonable. She is not limited to the amounts discussed in the formal written, unsigned agreement.

Analysis:

Statutory damages for breach of contract include damages for all detriment "proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom," and unascertainable damages cannot be recovered. FR. CIVIL CODE SECTION 100. However, when there is no uncertainty as to the fact of damage, the same certainty as to its amount is not required. Alexander; Daniels. One whose wrongful conduct has made it difficult to ascertain damages cannot complain because the amount of damages must be estimated as long as the estimate is reasonable. Id.

It is for the trier of fact to determine whether a Plaintiff's valuation of lost profits is fair and reasonable. Daniels. In the Daniels case, even though the Plaintiff contractor was unable to provide subcontractor bids to support his valuation of lost profits, the factfinder's holding that the lost profit valuation was reasonable was upheld as relying on the best evidence available. Here, it will be difficult to calculate lost profits because it is unknown how many tickets would be sold at Springfest 2021. Mills would be entitled to her expenses in the amount of $3000 as well as the base fee of $15,000 (minus the $2000 nonrefundable deposit). Mills may be able to recover anticipated lost profits based off the prior year's ticket sales if the factfinder determines that this is reasonable and the best evidence of what Mills' lost profits would be. Mills would likely not be limited to the provision in the Proposal since that is only evidence of the agreement between Mills and Ramble, rather than the full enforceable agreement between the two.

MPT 2 – Sample Answer 1

To: Marie Smith

From: Examinee

Date: Today

Re: Brief in Support of Pretrial Motion for State v. Kilross

Legal Argument

This Court should exclude Bryan Kilross's prior robbery conviction because the State cannot satisfy the requirements of Franklin Rule of Evidence 609 (FRE 609) concerning the use of prior convictions for impeachment. Mr. Kilross's prior robbery conviction is neither probative of truthfulness nor a crime of dishonesty. Furthermore, Mr. Kilross's prior conviction is seriously prejudicial. As a result, it should be excluded as impeachment evidence.

a. The Court should exclude Mr. Kilross's prior robbery conviction because of its prejudicial effect and lack of probative value under FRE 609(a)(1)(B).

According to FRE 609(a)(1)(B), a crime that is punishable by death or by imprisonment for more than one year 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. This rule reflects a heightened balancing test and creates a serious preference for exclusion. The Court must consider four factors when weighing the probative value of admitting a prior conviction against the prejudicial effect of its admission under this heightened test. Those four factors are as follows: (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. See State v. Hartwell (2014). Here, the Court must analyze whether the probative value of Mr. Kilross's prior robbery conviction outweighs its prejudicial effect to Mr. Kilross. The Court will find that it does not.

To first evaluate the "nature of the prior crime" courts consider the impeachment value of the prior crime and its similarity to the charged crime. "Impeachment value" is how probative the prior conviction is of the witness's character for truthfulness. See Hartwell. According to the court in Hartwell, crimes of violence have lower probative value in weighing credibility. The prosecution seeks to have Mr. Kilross's prior conviction of robbery admitted into evidence. Yet, the nature of that crime does not go to truthfulness. Honesty and truthfulness is not mentioned in Fr. Crim. C. Section 29, the statute defining robbery. While the prosecution may argue that "theft" is a predicate offense to robbery, the court in State v. Thorpe held that "deception is not an essential element of theft" and therefore robbery is not a crime requiring proof of "dishonesty or false statement . . . ." Furthermore, the more similar a prior crime is to a current charge, the greater the "danger that prior convictions will be misused as character evidence." Id. Mr. Kilross's prior robbery conviction is extremely similar to the current charge of armed robbery. Therefore, this factor weighs against admission of the past conviction.

Additionally, Mr. Kilross's prior conviction is 8 years old. Although the State may argue that only convictions more than 10 years old are excludable, "even for convictions less than 10 years old, the passage of time can reduce the convictions' probative value, especially where other circumstances suggest a changed character." Hartwell. The circumstances of this case undeniable suggest a changed

character. In the past eight years, Mr. Kilross has stayed away from crime. His worst offenses are two speeding tickets, both of which he pled guilty to and paid the fines for. Mr. Kilross is gainfully employed, having worked his way up to shift supervisor at a warehouse where he loads and unloads trucks. Mr. Kilross has demonstrated a changed character from the person he was eight years ago. Even eight years ago, he demonstrated serious regret and remorse for his crime. Given the age of the prior conviction and the change in Mr. Kilross, this factor weighs in favor of excluding Mr. Kilross's past conviction.

The third factor to consider is the importance of the defendant's testimony to the case. See Hartwell. Here, the entire case rests on the testimony of Benjamin Grier, the store clerk who was on duty the night of the robbery at the Pack 'N Go, and the potential testimony of Mr. Kilross should he choose to take the stand. "If the defendant's only rebuttal comes from 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, severely undercutting his ability to present a defense." Id. In Hartwell, where the defendant's companion chose not to testify, the defendant had only his own testimony to support his theory at trial. Similarly, Mr. Kilross only has his own testimony to support his assertion that he did not commit the robbery at the Pack 'N Go. Ms. Janice Malone last spoke with Mr. Kilross well before 6:30pm and therefore cannot testify as to where he was at the time the crime was committed at 6:24pm (per the store's video feed showing the robbery). To impeach Mr. Kilross would be tantamount to severely undercutting his defense. For that reason, this factor also weighs against admitting Mr. Kilross's prior conviction.

Finally, the Court must weigh 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." Mr. Kilross's credibility is certainly important to this case. Despite its important, though, the other three factors weight against use of Mr. Kilross's prior conviction. Like in Hartwell, where the first three factors weighed against use of the prior conviction and it was therefore excluded, this Court should find that the prosecution has failed to meet its burden of establishing that the probative value of the prior offense for impeachment purposes outweighs its prejudicial impact.

The probative value of Mr. Kilross's prior robbery conviction is minute compared with its substantial prejudicial value. Mr. Kilross's prior conviction was not a crime imputing his honesty. Moreover, Mr. Kilross's prior conviction is similar to the current charge of armed robbery, putting it at risk of being used as character evidence. Mr. Kilross's prior conviction is 8 years old, and since then he has changed his life in numerous positive ways. Furthermore, Mr. Kilross's testimony is highly important to this case. He only has his own testimony to support his assertion that he did not commit the armed robbery he has been charged with. While the prosecution will argue that Mr. Kilross's credibility is a central issue in this case because we are relying on his testimony and his truthfulness, the other factors weigh heavily in favor of excluding Mr. Kilross's past conviction. As such, this Court should find in favor of Mr. Kilross and exclude his past conviction as impeachment evidence.

b. The Court should exclude Mr. Kilross's prior robbery conviction because robbery is not a crime requiring evidence of a dishonest act or false statement and the circumstances of Mr. Kilross's prior conviction do not show he is dishonest.

Mr. Kilross's prior robbery conviction is not a crime requiring evidence of a dishonest act or false statement. Therefore, the law does not require its admission into evidence for impeachment purposes. FRE 609(a)(2) states that, "evidence must be admitted if the court can readily determine that establishing the elements of the crime require proving - or the witness's admitting - a dishonest act or false statement." In State v. Thorpe, the court analyzed what "dishonesty" means in the context of this law. The court found that, as is evidenced by the legislative history of the statute, "dishonesty" means "deceitful behavior, or a disposition to lie, cheat, or defraud." The court very specifically held that Franklin's definition of robbery does not include a requirement that the prosecution prove an act of dishonesty or false statement to obtain a conviction. See Fr. Crim. Code Section 29; see also Thorpe ("Therefore, we hold that the crime of robbery is not a crime with an element requirement proof of dishonesty or false statement that could automatically be used to impeach a witness under Rule 609(a)(2)."). Under this analysis, a prior conviction of robbery need not come in as impeachment evidence. It is not a crime involving dishonesty and therefore is not required to be admitted for impeachment purposes.

The court in Thorpe continued its inquiry by looking beyond the statutory definitions to the factual circumstances underlying the prior offenses. In doing so, the court considered the record and whether it established that the defendant "engaged in any act of deception or false statement" when he committed to unarmed robberies. The court referenced another case, State v. Frederick, as an example. Where a defendant admitted that she had placed unpurchased items in a backpack and then lied about its contents to a security officer, the court held that the prosecution had sufficiently proved acts of deception to use the prior crime to impeach the defendant under Rule 609. Mr. Kilross's case is like that of Thorpe and not that of Frederick. The prosecution can point to nothing in the record that establishes that Mr. Kilross engaged in acts of deception or false statement when he committed robbery 8 years ago. While the prosecution may argue that the use of a toy gun during that robbery was an act of deception, it was Mr. Kilross's friend - Dave - and not Mr. Kilross who had possession of and used the toy gun. It was his friend who pretended to have a gun in his jacket. Mr. Kilross himself did nothing to lead this court to scrutinize his honesty. The prosecution has failed to meet its burden of showing that the circumstances underlying his prior robbery conviction demonstrate that Mr. Kilross was dishonest or deceitful. At best, the prosecution may argue that Mr. Kilross's friend omitted the nature of the gun during the robbery. This is not enough, though. Mr. Kilross himself did nothing deceptive and therefore his prior robbery conviction should be excluded as impeachment evidence.

Given the nature of his past robbery conviction, the Court should exclude Mr. Kilross's prior conviction for its use as impeachment evidence. Robbery is not a crime involving dishonesty or deceit, and the circumstances of Mr. Kilross's particular conviction do not show dishonesty or deceit by Mr. Kilross.

MPT 2 – Sample Answer 2

III. Legal Argument

Kilross's 8-year-old robbery conviction should not be admitted because the prosecution cannot meet the requirements of Rule 609(a)(2) or Rule 609(a)(1)(B).

In a criminal trial in Franklin, impeachment by evidence of a prior criminal conviction is only admitted in limited circumstances because the courts recognize the potential prejudicial effect such evidence may have on the defendant. Under Rule 609(a)(2), conviction of a crime, regardless of the punishment, may be admitted only if the evidence in the prior record establishes that an element of the old crime involved a dishonest act or false statement. Under 609(a)(1)(B), conviction of a crime punishable by imprisonment for more than one year is only admissible if the probative value outweighs the prejudicial effect to the defendant. In this case, the prosecution cannot establish that either of these tests are met. Therefore, this court should preclude admission of Kilross's 8-year-old conviction for armed robbery to ensure he receives a fair trial on the current indictment.

A. The prosecution cannot meet the requirements of Rule 609(a)(2) because there is no evidence in the prior record establishing a dishonest act or false statement.

Kilross's prior conviction is admissible under Rule 609(a)(2) only if the evidence of the prior conviction establishes that the crime involved a dishonest act or false statement. Kilross's prior conviction at issue here is one of robbery. The Franklin Supreme Court has previously held that, for purposes of Rule 609, "dishonesty" is interpreted narrowly, and robbery is not a "dishonest act". (State v. Thorpe). By Franklin's own statutory definition, robbery does not require proving as an element of the underlying crime a dishonest or false statement was made. (Fr. Crim. Code 29; State v. Thorpe). Further, there is nothing in the record of Kilross's prior conviction that establishes that Kilross made a dishonest act or false statement.

In State v. Thorpe, the defendant was indicted for robbery, and the prosecution sought to admit evidence of his two prior unarmed robbery convictions. However, there was no evidence in the record that the defendant in Thorpe made a false statement or engaged in "dishonesty" for Rule 609 purposes. The Franklin Supreme Court therefore refused to allow the introduction of the defendant's prior convictions. In contrast, in State v. Federick, the court allowed the introduction of an earier shoplifting plea under Rule 609(a)(2) because there was evidence in the record that the defendant lied during the commission of the crime.

The record in this case is similar to that at issue in Thorpe, and dissimilar to that of Federick, and the court should therefore disallow the introduction of Kilross' prior conviction. There is nothing in the one-page indictment that demonstrates Kilross made a false statement during the commission of the previous conviction. There is no witness testimony in the record that proves dishonesty, either. The prosecution was not required to prove a falsity occurred in securing the previous conviction. Unlike the defendant in Federick that made an affirmative statement of fact that was not true regarding items in his book bag, there is nothing in the record in Kilross's conviction that the prosecution can point to that was an affirmative, express, direct lie made by Kilross.

While courts may look to the surrounding circumstances of the previous crime to determine whether it involved dishonesty, Kilross' actions did not involve such misrepresentation or deceit to

change the prior robbery from anything other than a taking by a threat of violence. Kilross' accomplice used a toy gun. However, by brandishing what appeared to be a deadly weapon, Kilross and his accomplice carried out the robbery by a threat of a use of force and violence. Such threat of violence is the exact type of crime that the Franklin court deemed to not involve dishonest or false statement. (See Thorpe). Therefore, even though it involved a toy gun, the prior crime was one of violence, and not deceit. Because there is no evidence the prior crime involved a dishonest act or false statement, this court should not allow the conviction into evidence here.

B. The prosecution cannot meet the requirements of Rule 609(a)(1)(B) because the probative value of the prior conviction is outweighed by its prejudicial effect on Kilross.

Conviction of a crime punishable by more than one year in prison is admissible only if the probable value of the evidence outweighs its prejudicial effect on the defendant. Rule 609(a)(1)(B). This is a heightened balancing test, and Franklin courts prefer to exclude such evidence. (State v. Hartwell 2014). Even though Kilross was only imprisoned for six months for his prior robbery conviction, Rule 609(a)(1)(B) and its preference of excluding prior convictions applies because Kilross was punished for a total of eighteen months, via a combination of imprisonment and probation. Kilross only obtained a lighter sentence because of a plea deal, as the crime is punishable by "not less than 1 nor more than 20 years." Fr. Crim. Code 29.

In evaluating the admission of prior criminal convictions under this prong of 609, the court must consider 4 factors: 1) the nature of the prior crime; 2) the age of the prior conviction; 3) the importance of the defendant's testimony to the present trial; and 4) the importance of the defendant's credibility to the present trial. (State v. Hartwell). These factors overwhelming weigh in favor of not admitting Kilross's prior conviction, and are discussed in turn below.

1. Nature of the Prior, Substantially Similar Crime has Low Impeachment Value

In evaluating the nature of the prior crime, the court must consider the impeachment value of the prior conviction, and the similarities of the prior conviction and the charged crime.

a. Impeachment value

Crimes of violence offer lower probative value for impeachment because they do not imply dishonesty. (State v. Hartwell). As discussed above, the prosecution was not required to show that Kilross was dishonest in committing the prior robbery. Allowing into evidence his prior conviction in no way comments on his propensity for telling the truth. Like firearm possession in Hartwell, committing a robbery does not inherently involve dishonesty, as it is an act of violence, and not one involving deceit, misrepresentation, or false pretenses. Therefore, the introduction of the evidence has a low probative value.

b. Similarity between crimes

The more similar the prior crime, the stronger the grounds are for exclusion. (State v. Hartwell). Here, the prior crime is of the exact same nature as Kilross's prior conviction--robbing a convenience store through threat of force. In Hartwell, the prior conviction was also virtually identical as to the one currently charged. In prohibiting the introduction of the prior conviction there, the court noted that there was a high risk that the fact finder would use the prior conviction as character evidence rather

than as impeachment. (State v. Hartwell). That same risk is present here. This high risk for prejudice, combined with the low probative value, weighs against allowing the introduction of the prior conviction.

2. Prior Conviction is Too Old to be Probative of Current Character

The passage of time renders a prior conviction less probative in value. While Kilross's conviction is less than 10 years old, it is stale evidence of his current character. The conviction is 8 years old, and he has had no other major run-ins with the law. In State v. Hartwell, the court prohibited the introduction of a conviction less old than Kilross' (6 years old compared to Kilross's 8 years), noting that the defendant's conduct over time can reflect a change in character from the time of the first conviction. Here, Kilross has had no other major criminal charges and has not been in jail since his 6 month sentence for the prior robbery. He has a steady job, which shows his dedication to providing for himself through legal means and hard work. he has even worked his way up to a supervisory position. His two traffic tickets in no way show dishonesty. Such tickets are common and in no way comment on his ability to be a productive member of society. These tickets should not be held against him. And, even if considered, they must be viewed in relation to the entire situation, including Kilross' near-decade of legal conduct and the remorse shown after his first conviction. Because the prior conviction is several years old and is not indicative of a pattern of behavior, it should not be considered by this court.

3. Importance of the Defendant's testimony

Where the defendant is the only rebuttal witness, the impeachment via a prior criminal conviction would severely undercut his ability to present a defense by taking a stand, by forcing the defendant to choose between not testifying for risk of introducing the prior conviction, or testifying and allowing the fact finder to hear extremely prejudicial evidence of his prior conviction. (State v. Hartwell). Here, there is very limited evidence available to Kilross to contradict the store clerk's testimony without taking the stand. The video from the store does not show Kilross's face, and it only shows the perpetrator wearing very common clothes that Kilross admits to wearing--the jeans and jean jacket. Malone's testimony alone does not provide Kilross an alibi. As in Hartwell where there was a lack of other evidence supporting the defendant's position, here the only way for Kilross to adequate rebut the store clerk's version of events, and give the fact-finder evidence for finding him not guilty, is by taking the stand. Impeaching him with the prior conviction severely undercuts his ability to take the stand and rebut the charges against him.

4. Importance of Defendant's credibility

Where credibility is the focus of the trial, the significance of admitting the prior conviction is heighten. In Hartwell, credibility was the central issue, as it was the defendant's testimony against the arresting officer. Admittedly, Kilross' credibility of central importance, as, like in Hartwell, it is the defendant's testimony against one other person's. However, the court must consider all factors together. The other factors strongly weigh against allowing the conviction into evidence. The fact-finder can still assess Kilross's testimony live, and evaluate his credibility based on how he compares to the store clerk. Therefore, given all four elements, this court should not allow the introduction of the prior conviction.

The prosecution cannot meet its burden of establishing that the probative value of the prior offense for impeachment purposes outweighs its prejudicial impact. Therefore, this court should not

admit Kilross's prior robbery conviction into evidence. This court should also refuse to admit the prior robbery conviction because robbery is not a crime that involves a dishonest or false representation.