

IMPEACHMENT OF JOELLE BYRD BY EVIDENCE OF CRIMINAL CONVICTIONS

LAW 16

PRESENTED BY LIANA HAMBARYAN

Plaintiff: Representative of deceased
Devin Frost
Defendant: Willy Freeman
Witness: Joelle Byrd

THE CASE

- Deceased Devin Frost had a gambling problem and borrowed huge amounts of money from local loan shark Lou Contralto. Also, she stole money from the business that she and her partner Willy Freeman owned. She had received oral threats from both Lou Contralto and Willy Freeman because she did not want to and could not pay back to Contralto, and had drained her and Freeman's business dry. Devin Frost was found dead frozen in a cooler.

THE WITNESS

- Joelle Byrd is 27 years old. He is from Sacramento, CA. Currently he is in jail. He has been convicted of conversion, for check deception, insurance fraud but charges were dropped, and identity theft

- According to Joelle Byrd, loan shark Lou Contralto and him knew each other since the time they encountered in casinos in Las Vegas. Lou Contralto trusted Joelle Byrd as he did not turn him in for his dealings. Lou Contralto told Joelle Byrd how he had put Devin Frost into cooler for a slow death. According to Joelle Contralto was afraid that Devin Frost would “have turned on him”. Therefore, he decided to get rid of her to avoid future complications. The other reason that Contralto told Joelle about the killing of Frost, is that he wanted Joelle spread the story about him, loan shark Contralto, in the streets so that people would fear him, pay their debts and not accuse him.

RULES THAT APPLY TO THIS CASE

- Rule 404. Character Evidence; Crimes or Other Acts
- (a) Character Evidence.
- (1) *Prohibited Uses*. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
- RULE 404 (b) (3) (b) (1), (2)
- (3) *Exceptions for a Witness*. Evidence of a witness's character may be admitted under Rules [607](#), [608](#), and [609](#)

Rule 609 impeachment by prior convictions

- **(a) In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
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 - (2) conviction of a crime involving a dishonest act or or false statement (the punishment is immaterial).
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 - Rule 609(a) (1)
 - Ordinary witness-conviction admissible unless opposing party make Rule 403 showing (probative value substantially outweighed by prejudicial effect).
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BALANCING UNDER RULE 609 (a)

- Evidence of prior convictions under (a) (1) is admissible against accused only if probative value outweighs its prejudicial effect.
- Nature of the crime
- Time of conviction and the witness's subsequent history
- Similarity among the crimes committed by the witness
- How relevant is the testimony to the issue of the case.

RULE 609 (a) (2) CRIMES REQUIRING DISHONESTY OR FALSE STATEMENT

- Evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment if the crime required dishonesty or false statement by the witness.
- **Not** subject to Rule 403 type balancing (no discretion of the judge).

The only 4 exceptions:

- **b) Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later.

- **(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:
 - **(1)** the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or
 - **(2)** the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

- **(d) Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:
 - (1) it is offered in a criminal case;
 - (2) the adjudication was of a witness other than the defendant;
 - (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and
 - (4) admitting the evidence is necessary to fairly determine guilt or innocence

- **(e) Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

CRIMES COVERED BY 609 (a) (2)

- The rule applies only when “the court can readily determine that establishing the elements of the crime required proving – or the witness’s admitting – a dishonest act and false statement.”
- The rule applies to crimes such as perjury or subornation of perjury, false statement, criminal fraud, embezzlement or false pretense, or any other offense in the nature of **crimen falsi**
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- In this case the judge cannot go back to look at transcripts to find out the crime committed by the witness. It should be evident from indictment or a set of admitted facts.
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- Joelle Byrd would be impeached as a witness because of his prior convictions: conversion, check deception, insurance fraud and identification theft.

