UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1361

September Term, 2016

TERRY THOMPSON

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Berger,

JJ.

Opinion by Berger, J.

Filed: August 3, 2017

A jury in the Circuit Court for Prince George's County convicted Terry Thompson, appellant, of second-degree assault. Appellant was sentenced to a term of ten years' imprisonment. In this appeal, appellant presents the following question for our review:

> Did the circuit court err in finding that appellant was previously convicted of robbery as an adult, where the State allegedly failed to carry its burden of persuasion either that the offense qualified as robbery or that he was convicted as an adult?

For reasons to follow, we answer appellant's question in the negative and affirm the judgment of the circuit court.

BACKGROUND

In September of 2015, Charles Opoku, a housing unit officer in the Upper Marlboro Correctional Facility, was at his desk in Housing Unit H-15 when an inmate, later identified as appellant, approached the officer and asked him for a pencil. After Officer Opoku told appellant that he did not have any pencils, appellant walked away. A short time later, appellant returned to Officer Opoku's desk and again asked for a pencil. The officer reiterated that he did not have a pencil. Despite Officer Opoku's insistence that he did not have any pencils, appellant returned to the officer's desk several more times.

Eventually, Officer Opoku suggested to appellant that he borrow a pencil from one of the other individuals in the housing unit. At this point, appellant "became more aggressive" and "started insulting" Officer Opoku. The officer then asked appellant to "step back in his cell," but appellant refused. When Officer Opoku indicated that he was going to have all the other inmates return to their cells so that he could deal with appellant in isolation, appellant "decided to go inside." Appellant then walked toward his cell, which

was located on the level above where the incident occurred. Officer Opoku and another correctional officer, Aeisha Haynes, followed appellant up a flight of stairs toward his cell.

As he was walking up the stairs, appellant repeatedly told Officer Opoku to "go ahead and hit me," and Officer Opoku responded by telling appellant to step into his cell. Prior to reaching the top of the stairs, appellant stopped walking, at which time Officer Opoku brushed past appellant to "stand on a different side." When Officer Opoku reached the top of the stairs, appellant said, "hit me first." The officer again responded by telling appellant to get into his cell. Appellant then struck Officer Opoku, rendering him unconscious. Officer Opoku eventually regained consciousness after being transported to an ambulance by an emergency response team. Appellant was thereafter charged with assault.

At trial, prior to opening statements, defense counsel informed the court that appellant had "some prior record," which defense counsel wanted the court to consider excluding in the event that appellant wished to testify. The court asked the State if it had anything "to seek impeachment on," and the State responded that its "records indicate [appellant] has a 2010 robbery conviction." The court ultimately determined that it would "deal with it in a while."

Later, at the close of the State's case, the court asked defense counsel if he wanted "to talk about the robbery." At this time, the following colloquy ensued:

> [DEFENSE]: Well, if the State intends, if [appellant] were to testify, the State would want to use prior robbery. My understanding the robbery, I believe it was, an adult robbery when he was 16 years old.

THE COURT: Do you have the case number, C.T.?

[STATE]: No, it's not from this county. It's out of this jurisdiction. All I have, I got it from the NCIC disposition.[1] It was in 2010, robbery, a guilty. I am sure it's an adult conviction. It wouldn't be on NCIC if it wasn't. That's the information I have about that conviction.

THE COURT: The juvenile is one thing. Is it an adult conviction?

[DEFENSE]: I have reason to believe it is initially charged as a juvenile.

THE COURT: Probably he's waived up.

[DEFENSE]: Possible.

THE COURT: Whatever. Could have been waived down. Anything else, guys?

[STATE]: No, Your Honor.

THE COURT: [Defense counsel]?

[DEFENSE]: I don't know, without a certified copy I request that that be.

THE COURT: Do you have the results of what happened?

[STATE]: I do. I have the result it was a conviction. That much I know. I don't have the certified copy, no, but I did see from the NCIC that it was a conviction.

THE COURT: Did he serve time or anything?

[STATE]: Yes, he did serve time.

THE COURT: You know what the sentencing was?

[1] The National Crime Information Center, or NCIC, is an electronic database containing a myriad of information, including criminal history records, that is accessible to law enforcement agencies across the country. https://www.fbi.gov/services/cjis/ncic.

> [STATE]: I know he served time. It was subsequently an escape charge there.
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> THE COURT: Escape not coming in. It's 5-609. Do you know where it's coming out of?
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> [STATE]: Your Honor, it looks like, because it is a federal charge, it looks like the District of Columbia, but at the same time – it looks like the District of Columbia, but then looks like he served his time out of state, in a different state.
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> THE COURT: Under 5-609, was it an infamous crime or other crime relevant to credibility? Robbery is one, a theft, plus a taking. Robbery is theft of a thousand types. It is within the last 15 years. There is no evidence that there was a governor or presidential pardon or vacated. It is relevant to credibility. The court determines whether the probative value outweighs the danger of unfair prejudice. There is always prejudice. The question is whether it is unfair.
>
> I think when you look at it – you know, I think when you go back in the history of it before you weren't allowed to testify at all, then you said you can testify. It's relevant to credibility who the jury should believe. It is a valid robbery conviction. It's a federal conviction. He was an adult. I think it is relevant to credibility. I think the probative value in this case, since it is basically a three-person case, I think that the probative value outweighs the prejudicial effect. I will allow it in.

Following the court's ruling, appellant decided to testify. As part of that testimony, appellant claimed that Officer Opoku threatened him, which is why appellant struck him. Appellant also admitted, as part of his direct testimony, that he was "the same Terry

Thompson that was convicted in 2008 of robbery."[2] Although the State did cross-examine appellant, it did not ask him about the robbery conviction.

Later, during closing argument, defense counsel discussed appellant's robbery conviction in greater detail:

> Now, I want to mention briefly, because at the end of having [appellant] on the stand, I said – I asked him, are you the same Terry Thompson who was convicted of robbery in 2008? He was 16 years old. And if I hadn't asked him, the State would have asked him because when you're a witness and you have a certain type of conviction, it gets to come into evidence. It was coming in anyway and I asked him that.
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> Robbery is the taking of someone's property however small, anything, by force or threat of force. So when he was 16, that's what that was about. So that was going to come into evidence. That's why I asked him right up front so that you know that. And if anybody's wondering about it, he's 24 years old now.

The State did not mention the robbery conviction at any point during its closing argument. Appellant was ultimately convicted, and this timely appeal followed.

DISCUSSION

Appellant argues that the trial court erred in making the preliminary determination that he had previously been convicted of the impeachable offense of robbery as an adult. Appellant maintains that the State's evidence of the conviction, which merely disclosed the nature of the crime, was insufficient to establish that the conviction qualified as "robbery" under Maryland law because the statutory elements of robbery in the District of Columbia,

[2] It is unclear from the record whether appellant's conviction occurred in 2008, as testified to by appellant, or in 2010, as proffered by the State during defense counsel's motion *in limine*. For the purposes of this appeal, any discrepancy in the date of the conviction is immaterial.

where the robbery allegedly occurred, differ from the statutory elements of robbery in Maryland. Accordingly, appellant argues that certain actions that could be considered the felony of robbery in the District may only constitute "petty larceny" in Maryland. Appellant also maintains that the State's evidence failed to establish that his prior conviction was an adult conviction, which appellant claims was required because "a defendant in a criminal court may not be impeached with a prior adjudication, in juvenile court, that he committed a delinquent act." Appellant concludes that the State failed to carry its burden of persuasion, as the record "does not disclose any facts, whatsoever, about the prior offense in the District of Columbia which could establish that it was the legal equivalent of the felony of 'robbery,' by an adult, in Maryland, as opposed to an eight-year-old, petty larceny, by a 16-year-old juvenile."

The State counters that the trial court recognized and followed the appropriate procedures prior to its ruling and that it properly exercised its discretion in allowing appellant to be impeached with his prior conviction. The State further contends that appellant's claims regarding the State's failure to carry its burden of persuasion are without merit. On this point, the State maintains that, even if appellant's robbery conviction only constituted "petty larceny" in Maryland, such a conviction would still be an impeachable offense under the Maryland Rules. Regarding appellant's claim that the State failed to establish that the prior offense was an adult conviction, the State notes that appellant "did not contest in the trial court that his D.C. offense was an adult conviction, and, to the contrary, acquiesced in the court's assessment that [appellant] had been adjudicated as an adult in D.C."

Maryland Rule 5-609 provides the procedures by which a witness, including a defendant, may be impeached by evidence of a prior conviction:

> **(a) Generally**. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.
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> **(b) Time Limit**. Evidence of a conviction is not admissible under this Rule if a period of more than 15 years has elapsed since the date of the conviction, except as to a conviction for perjury for which no time limit applies.
>
> **(c) Other Limitations**. Evidence of a conviction otherwise admissible under section (a) of this Rule shall be excluded if:
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> (1) the conviction has been reversed or vacated;
>
> (2) the conviction has been the subject of a pardon; or
>
> (3) an appeal or application for leave to appeal from the judgment of conviction is pending, or the time for noting an appeal or filing an application for leave to appeal has not expired.
>
> **(d) Effect of Plea of Nolo Contendre**. For purposes of this Rule, "conviction" includes a plea of nolo contender followed by a sentence, whether or not the sentence is suspended.

Md. Rule 5-609.

Appellate review of a trial court's ruling made under Rule 5-609 involves a three-part inquiry:

> First, subsection (a) sets forth the "eligible universe" for what convictions may be used to impeach a witness's credibility. This universe consists of two categories: (1) "infamous crimes" and (2) "other crimes relevant to the witness's credibility." Infamous crimes include treason, common law felonies, and other offenses classified generally as *crimen falsi*. If a crime does not fall within one of the two categories, then it is inadmissible and the analysis ends. This threshold question of whether or not a crime bears upon credibility is a matter of law. If a crime falls within one of the two categories in the eligible universe, then the second step is for the proponent to establish that the conviction was not more than 15 years old, that it was not reversed on appeal, and that it was not the subject of a pardon or a pending appeal. Finally, in order to admit a prior conviction for impeachment purposes, the trial court must determine that the probative value of the prior conviction outweighs the danger of unfair prejudice to the witness or objecting party. This third step is clearly a matter of trial court discretion.

Cure v. State, 421 Md. 300, 324 (2011) (quoting *State v. Westpoint*, 404 Md. 455, 477-78 (2008)).

Here, appellant does not claim that the State failed to establish that his prior conviction met the requirements of Maryland Rule 5-609(b) or (c), nor does he claim that the trial court erred in finding that the probative value of his prior conviction outweighed the danger of unfair prejudice.[3] The sole question raised by appellant is whether sufficient evidence was presented in the trial court to enable it to make a preliminary determination

[3] Although appellant does claim that the court's admission of his prior conviction was "unfairly prejudicial," appellant makes this claim as part of his argument that the trial court's error in admitting the prior conviction was not harmless. In other words, appellant does not claim that the court erred in finding that the probative value of the prior conviction was not outweighed by the danger of unfair prejudice; rather, appellant claims that the court erred in concluding that, based on the evidence, he had previously convicted of an adult robbery. In light of this "error," appellant then alleges that he was prejudiced.

that appellant had, in fact, been previously convicted of an impeachable offense, namely, the adult crime of robbery.

We begin our analysis by looking at the procedure by which a trial court makes a preliminary ruling of admissibility under Rule 5-609:

> The mechanism by which a party may request a preliminary ruling on various matters, including the admissibility of prior convictions for purposes of impeachment, is set forth in Maryland Rule 4-252 and the analogous Federal Rule of Criminal Procedure 12. The Maryland Rule requires that the trial judge make a pretrial determination as to whether the request is capable of being decided either before trial or before the receipt of certain evidence. If the issue is one of law, or if the issue is such that sufficient factual context exists for the trial judge to exercise his or her discretion, *e.g.*, a proffer of evidence, the trial judge should then proceed to exercise discretion and make a ruling. If, on the other hand, there is an insufficient factual basis for the trial judge to exercise discretion, he or she should so determine and advise the parties. If the trial judge rules on the motion, he or she should, whenever practicable, state for the record the reasons for the ruling.

Williams v. State, 110 Md. App. 1, 32 (1996).

Although Rule 4-252 does not require a hearing in every instance, "when a trial judge is faced with an objection to the admissibility of prior criminal convictions for impeachment of a witness, including a defendant, the trial judge . . . if presiding over a jury, must conduct a hearing on the matter out of the jury's presence." *Id.* In *Jackson v. State*, 340 Md. 705 (1995), the Court of Appeals noted the following recommended procedure for such a hearing:

> The hearing need not be extensive. Bearing in mind that Rule 609 places the burden of proof on the government, the judge should require a brief recital by the government of the

> circumstances surrounding the admission of the evidence, and a statement of the date, nature and place of the conviction. The defendant should be permitted to rebut the government's presentation, pointing out to the court the possible prejudicial effect to the defendant if the evidence is admitted.

Id. at 718 (quoting *United States v. Mahone*, 537 F.2d 922, 929 (7th Cir. 1976)) (internal footnote omitted).

In conducting such a hearing, the best practice is for the trial court to accept a proffer of the prior conviction and make an *in limine* ruling of admissibility before the defendant elects to testify. *Dallas v. State*, 413 Md. 569, 586 (2010). "For example, a court may hear admissions that the defense makes during the defense's opening statement, or the court may accept a proffer of the defendant's direct testimony." *Id. See also Vogel v. State*, 315 Md. 458, 467-68 (1989) ("The preferred method for submitting any evidence of other crimes to the court during trial would be by way of a proffer to the trial judge outside the presence or hearing of the jury.") (internal citations omitted).

Nevertheless, a trial court must bear in mind that "Maryland law does not permit the proponent of prior conviction evidence to proffer anything more than the name of the crime and the date of the conviction[.]" *In re Gary T.*, 222 Md. App. 374, 385 (2015). *See also State v. Giddens*, 335 Md. 205, 222 (1994) ("[W]e reiterate that only the name of the conviction, the date of the conviction, and the sentence imposed may be introduced to impeach a witness."). Thus, "[a] trial court should never conduct a mini-trial by examining the circumstances underlying the prior conviction." *Giddens*, *supra*, 335 Md. at 222. As explained in the Reporter's Note accompanying a draft of former Maryland Rule 1-502, from which Rule 5-609 was derived:

> The Subcommittee intends that the offenses be viewed categorically and that the court *not* examine the specific facts underlying the prior conviction. The marginal gain in probative value on the question of credibility in a particular case [is] likely to be substantially outweighed by the expenditure of judicial resources necessary to examine the facts underlying prior convictions in every case.

Id. (Emphasis in original) (internal quotations omitted).

In light of the above considerations and based on the record before this court, we hold that the trial court acted within the confines of the law in accepting the parties' proffer as to the fact of appellant's prior conviction for robbery. When defense counsel first informed the court of appellant's "prior record" and sought to have it excluded, the State proffered that appellant had "a 2010 robbery conviction" and that "if he were to testify, the State would seek to impeach him by using that conviction." Defense counsel did not argue with the State's characterization of appellant's conviction, and the court ultimately determined that it would "deal with it in a while."

Later, when the court readdressed the issue prior to appellant's testimony, defense counsel explained that appellant's prior conviction was "an adult robbery when he was 16 years old." When the court asked for more information about the conviction, the State informed the court that the conviction was "out of this jurisdiction," that it was "in 2010, robbery, a guilty," and that the State was "sure it's an adult conviction." Again the court asked for more details, and defense counsel stated that he had "reason to believe it is initially charged as juvenile," but that it was "possible" that appellant was "waived up." The State responded that it "knew" the result "was a conviction," that the conviction

stemmed from "a federal charge" in the District of Columbia, and that appellant "served his time out of state."

Based on this proffer, the court concluded that appellant's conviction was "a valid robbery conviction" and that appellant "was an adult." At no time did either defense counsel or appellant argue, or even suggest, that the State's or the court's characterization of the conviction was erroneous or that the conviction was actually a juvenile adjudication. In fact, appellant all but confirmed the accuracy of the court's ruling when he testified on direct examination that he was "the same Terry Thompson that was convicted in 2008 of robbery." Defense counsel also confirmed the accuracy of the court's ruling by explaining, during closing argument, that he asked appellant about the robbery conviction because, even though appellant was 16 years old at the time of the conviction, "when you're a witness and you have a certain type of conviction, it gets to come into evidence."

For these reasons, appellant's argument that his robbery conviction may have been a juvenile adjudication is without merit. As part of that argument, appellant makes several erroneous claims, including: that the adult conviction was "speculation," which the court needed to "verify;" that the State's proffer that appellant was 16 years old at the time of his conviction was "challenged by the defense;" that the only evidence of the conviction was "a contested statement by the prosecutor;" and, that the State presented insufficient evidence of "disputed facts." None of these claims are supported by the record. To the contrary, the record reveals that the facts of appellant's adult conviction were undisputed and unchallenged by both defense counsel and appellant. Accordingly, the court did not err in accepting and relying on these undisputed facts when ruling on the admissibility of

appellant's prior conviction. *See Dallas*, *supra*, 413 Md. at 573 n. 3 (recognizing that the defendant, "by not arguing to the contrary, evidently acknowledged that [his] prior convictions satisfied the requirements of Rule 5-609(a) and (b)[.]").

Appellant also erroneously relies on several cases that are inapposite to the case at hand. For example, appellant cites to *Sullivan v. State*, 29 Md. App. 622 (1976), for the proposition that the State's proffer did not constitute evidence or proof and was insufficient to establish the existence of a prior adult conviction. In that case, we held that a statement by the prosecutor outlining the facts of a prior conviction was, by itself, insufficient proof of the existence of the prior conviction such that a defendant may then be sentenced to an enhanced punishment as a "subsequent offender." *Id.* at 631. We later explained this holding by noting that when a defendant is faced with an increased punishment based on a prior conviction, "the State carries the additional burden of proving the allegations of prior offenses and incarceration beyond a reasonable doubt." *Ford v. State*, 73 Md. App. 391, 402 (1988) (quoting *Teeter v. State*, 65 Md. App. 105, 113-14 (1985)) (emphasis removed). We further noted that "to meet that burden, the State must prove [the prior conviction] with competent evidence." *Id.* (emphasis removed). Consequently, the prosecutor's statement in *Sullivan* was insufficient under this standard because "competent evidence requires actual evidence" and "a statement by the prosecutor to the effect that his records showed a particular prior conviction did not qualify as evidence to prove the bases for an enhanced punishment." *Id.*

In the present case, to the contrary, we are not dealing with an enhanced punishment requiring actual evidence and proof beyond a reasonable doubt. Rather, we are concerned

with the admission of a prior conviction for impeachment purposes, which, as previously discussed, merely requires a proffer by the party seeking to have the prior conviction admitted. That the record, as alleged by appellant, "fails to disclose any details of the prior offense" is immaterial given that the State's proffer was unchallenged and later confirmed by appellant at trial. In fact, details such as the value of the property taken, whether the offense involved "violence" or "stealth," and whether such an offense would have been tried in a Maryland "adult" court, all of which appellant claims were lacking, are the types of "specific facts underlying the prior conviction" that a trial court need not consider, particularly when the conviction itself is unquestioned by either party.

Moreover, although Rule 5-609 does not expressly indicate the precise standard of proof under which a prior conviction should be admitted, appellant fails to note, and we could not find, any case in which a party was required, pursuant to Rule 5-609, to prove a prior conviction beyond a reasonable doubt. As a result, applying such a heavy standard of proof in the instant case would be inappropriate. Instead, in our view, the more appropriate standard is the one applicable to determinations of admissibility made under Maryland Rule 5-404, which governs the admission of "other crimes" evidence generally. *Id.* Under that Rule, other crimes evidence cannot be admitted unless "the accused's involvement in the other crimes is established by clear and convincing evidence." *Emory v. State*, 101 Md. App. 585, 621 (1994) (internal citations omitted). Thus, the question in the present case is not, as was the case in *Sullivan*, whether the State proved the facts of appellant's prior conviction beyond a reasonable doubt; instead, the question is whether the State's proffer was clear and convincing. *See Harris v. State*, 324 Md. 490, 498 (1991)

(discussing the applicability of the clear and convincing standard "[w]hen evidence of other bad acts is relevant for reasons other than general criminal propensity[.]").

The Court of Appeals has defined clear and convincing evidence "as more than a preponderance of the evidence and less than evidence beyond a reasonable doubt." *Vogel*, *supra*, 315 Md. at 470. Evidence is "clear" if "it is certain, plain to the understanding, and unambiguous[.]" *Id.* at 470-71 (internal citations and quotations omitted). Evidence is "convincing" if "it is so reasonable and persuasive as to cause you to believe it." *Id.* "This Court has explained, however, 'it self-evidently is the trial judge who must be thus persuaded [clearly and convincingly]' that the prior act occurred, and on appellate review, this Court does not determine whether we would be persuaded that the act occurred, but only 'the legal question of whether there was some competent evidence which, if believed, could persuade the fact finder as to the existence of the fact in issue.'" *Page v. State*, 222 Md. App. 648, 665 (2015) (internal citations omitted).

Under this less onerous standard, we are persuaded that the State met its burden of proof. The State's undisputed and unchallenged proffer as to the nature of appellant's prior conviction clearly established that appellant had previously been convicted of robbery as an adult. Moreover, the only "evidence" even remotely suggesting that appellant was prosecuted as a juvenile was defense counsel's statement that he "believed" the case was "initially charged as a juvenile." This statement, however, could hardly be considered sufficient to render the State's proffer uncertain or ambiguous, particularly given that appellant later testified that he had, in fact, been previously convicted of robbery, which

defense counsel then confirmed was an impeachable offense. Hence, appellant's reliance on *Sullivan* is misplaced.

Appellant also erroneously relies on *Temoney v. State*, 290 Md. 251 (1981), and *Bowman v. State*, 314 Md. 725 (1989), for the proposition that the State's proffer was "patently insufficient" in establishing "that the underlying facts of the prior case in the District of Columbia may in fact have been equivalent to what the State must show to prove robbery, in Maryland." In those cases, the Court of Appeals held that proof of a conviction of robbery under the law of the District of Columbia, which by way of statute includes thefts that involve stealth, was insufficient to prove beyond a reasonable doubt that a defendant committed a "crime of violence," such that the defendant could be sentenced to an enhanced punishment under Maryland law. *See*, *e.g.*, *Bowman*, *supra*, 314 Md. at 733; *Temoney*, *supra*, 290 Md. at 263-64. As discussed *infra*, these holdings are inapplicable under the facts of the instant case.

Under Rule 5-609, a defendant may be impeached with a prior conviction if, notwithstanding other considerations, "the crime under consideration is either 'an infamous crime or other crime relevant to the witness's credibility.'" *Hopkins v. State*, 137 Md. App. 200, 204 (2001) (internal citations omitted). "'Infamous crimes include treason, common law felonies, and other crimes classified as *crimen falsi.*'" *Anderson v. State*, 227 Md. App. 329, 339 (2016) (internal citations omitted). In Maryland, "[t]he common law felonies were murder, manslaughter, robbery, rape, burglary, larceny, arson, sodomy and mayhem." *Robinson v. State*, 4 Md. App. 515, 523 n. 3 (1968). "Crimes historically classified as *crimen falsi* include crimes in the nature of perjury, false statement, criminal fraud,

embezzlement, false pretense, or any other offense involving some element of deceitfulness, untruthfulness, or falsification bearing on the witness's propensity to testify truthfully." *Beales v. State*, 329 Md. 263, 269-70 (1993).

Consequently, unlike the Court of Appeals in both *Bowman* and *Temoney*, we are not concerned with whether appellant's robbery conviction in the District of Columbia would qualify as "a crime of violence" under Maryland law such that appellant could be sentenced to an enhanced punishment. Our concern here is whether, as a matter of law, appellant's conviction qualified as an "infamous crime," *i.e.* a common-law felony or other crime classified as *crimen falsi*, such that the conviction could be used to impeach appellant.

On this point, we are persuaded that appellant's robbery conviction qualified as an infamous crime. In both Maryland and the District of Columbia, the crime of "robbery" remains a common-law crime and retains its common-law elements. *See Lattimore v. U.S.*, 684 A.2d 357, 359 (D.C. 1996); *Peters v. State*, 224 Md. App. 306, 355 (2015). Thus, although appellant was convicted of robbery under the law of the District of Columbia, which has a more expanded statutory definition of robbery than Maryland, appellant was nevertheless convicted of the common-law crime of robbery. That the circumstances underlying appellant's robbery conviction may have constituted mere "petty larceny" under Maryland law is immaterial because, as previously discussed, Rule 5-609 is concerned with the crime, categorically, not with the facts or circumstances underlying the conviction. *See Hopkins*, *supra*, 137 Md. App. at 204-05 (In deciding whether a prior

conviction constitutes an infamous crime, "the court must limit its focus to 'the name of the crime.'") (internal citations omitted).

Moreover, even if we accept appellant's contention that his robbery conviction may have only constituted "petty larceny" in Maryland, such a crime would still constitute theft. *See* Md. Code (2002, 2012 Repl. Vol.), § 7-104 of the Criminal Law Article. As a result, appellant's prior conviction would still be admissible as a *crimen falsi*. *See Beales*, *supra*, 329 Md. at 270 ("As it is the embodiment of deceitfulness, theft is among the *crimen falsi*."). In short, any alleged discrepancies in the statutory definition of robbery between Maryland and the District of Columbia is, under the facts of this case, a distinction without a difference, as any form of robbery under the law of the District of Columbia would be an impeachable offense under Maryland law.[4] Accordingly, and for all the reasons stated, we hold that the trial court did not err in ruling that appellant's prior conviction for robbery in the District of Columbia constituted an impeachable offense under Rule 5-609.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[4] Section 22-2801 of the District of Columbia Criminal Code provides, in pertinent part: "Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery[.]" *Id.*