Circuit Court for Baltimore City
Case No. 123094007

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2261

September Term, 2023

SANTORIO MARLO MARTIN,

v.

STATE OF MARYLAND

Leahy,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: May 7, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Baltimore City convicted appellant, Santorio Marlon Martin, of possession of a prohibited firearm and ammunition by a disqualified person. Appellant presents the following question for our review:

> "Did the court err in ruling that Appellant's prior conviction for possession of a large amount of CDS, under MD Code, Crim. Law 5-612, was admissible for impeachment?"

We shall hold that the trial court erred and shall reverse.

I.

The jury in Baltimore City convicted appellant of possession of a prohibited firearm and ammunition by a disqualified person. The court sentenced appellant to a term of incarceration of five years without parole for the firearm violation, and a term of incarceration of one year, concurrent, for possessing the ammunition.

We glean the following facts from trial. Detective Justin Oliva testified that he and his partner, Detective Columbo, of the Baltimore City Police Department observed a car parked and running on the 100 block of North Kossuth Street on March 13, 2023. Detective Routh who was patrolling in the area, joined the other detectives after Det. Oliva notified her that he was suspicious of the vehicle. The State offered Det. Oliva's body worn camera footage which showed Det. Oliva heading to the vehicle and showed the base plate of a Sig handgun on the floor of the driver's side of the vehicle.

Det. Routh's body worn camera footage, admitted by the court during her testimony, showed appellant walking up the far side of the street and entering the corner store near the

vehicle. Shortly after, appellant came out and approached the officers. After viewing the body worm camera footage of this, Det. Oliva testified as follows:

> "[PROSECUTOR]: Hard to hear for us, what is the exchange there that you have with [appellant]?
>
> [DET. OLIVA]: So he's approaching the vehicle. I ask him if this is his car. He says, at some point that it is not his car. And then he wants to know, he said, excuse me. He was said that he was told to turn it off but because I already know at this point through running the tag that he's not the registered owner, I can't—"

Det. Oliva's footage showed that appellant asked to enter the car, but Det. Oliva did not allow him to do so. He asked appellant whether he had keys to the car and after appellant said no, appellant fled. During the chase, Det. Oliva and Routh saw appellant throw an object that Det. Oliva said was a key fob. Det. Oliva apprehended appellant and arrested him.

The officers unlocked the car using a device and recovered a loaded firearm. They found appellant's identification in the case of one of two phones charging in the car. As noted above, appellant was not the registered owner of the car. During the search, other officers canvassed the area where appellant was seen throwing an object and recovered a key fob dangling from powerlines.

The defense and State stipulated that appellant had been convicted of a crime that disqualifies him from possessing a regulated firearm and ammunition under the Public Safety Article, Maryland Code §§ 5-133(c) and 5-133.1. At the close of the State's case, defense counsel moved to exclude appellant's criminal conviction for possession of a controlled dangerous substance as an impeachable offense should he choose to testify

because "CDS possession, large amount" is not an impeachable offense. Defense counsel argued as follows:

> "[DEFENSE COUNSEL]: [Appellant] was not convicted of distribution. He was not convicted of possession with intent to distribute. He was not convicted of CDS manufacture/distribute/whatever the statute is.
>
> [COURT]: I understand.
>
> [DEFENSE COUNSEL]: I don't believe and case law enumerates various and sundry different cases; infamous crimes, violent crimes, crimes of moral turpitude and I can't tell you I've done days and days of thorough review, but CDS possession large amount means that you have in your possession a numerical value of a certain amount of drug. If the State has a case that says CDS possession large amount, then I will certainly have been mistaken. But I ask the Court to find that that is not an impeachable offense.
>
> [COURT]: All right.
>
> [DEFENSE COUNSEL]: And if I elect to call my client as a witness not allow the State to impeach him with that."

The State argued that appellant's prior conviction under Crim. Law § 5-612, was an impeachable criminal offense because the crime has the same characteristics as a conviction under Crim. Law § 5-614, possession with intent to distribute and/or importing CDS. The trial court agreed with the State and denied appellant's motion, stating as follows:

> "The, as I understand it, thank you Mr. (defense counsel) for the novelty of your argument. This has not come before me before and seldom in my tenure here have I ever seen that particular count pursued by any prosecutor. Seldom, never have I seen anybody, you know, plead to it or have a trial before me at any rate. But it seems by analogy if the ratio or the rationale for not allowing distribution amounts or possession with intent to distribute amounts, allowing convictions for such things, on the basis that you have to act, one who is guilty in such a thing is acting nefariously, dishonestly as if they're handling large amounts of contraband. If that's the same rationale for allowing CDS felonies to be used as prior convictions for impeachment

> purposes, this seems to follow. If there's an aggregate amount that the legislature has found more egregious than just simple possession and allows a—how shall I say it, an aggravating crime based on that, for the same reasons I would suggest . . . But and I may be in error, you may be right, but I'm going to side with the State in this argument and suggest, not suggest but rule, that it would be an impeachable offense were your client to take the stand."

Appellant testified as the sole witness in his defense case. At the beginning of his testimony, defense counsel asked about his prior conviction.

> "[DEFENSE COUNSEL]: I want to first ask you some questions. You were here, obviously at the trial and you saw that Mr. State and I introduced an exhibit and that exhibit said you got a record. You agree with that; don't you?
>
> [APPELLANT]: Yes, sir.
>
> [DEFENSE COUNSEL]: You have one guilty finding on your record, young man?
>
> [APPELLANT]: Yes, sir.
>
> [DEENSE COUNSEL]: What year was that?
>
> [APPELLANT]: 2017
>
> [DEFENSE COUNSEL]: 2017. What were you convicted of?
>
> [APPELLANT]: CDS large, CDS possession large amount.
>
> [DEFENSE COUNSEL]: CDS possession large amount.
>
> [APPELLANT]: Yes, sir.
>
> [DEFENSE COUNSEL]: And did you go to court for that?
>
> [APPELLANT]: Yes, sir.
>
> . . .
>
> [DEFENSE COUNSEL]: And why did you plead guilty?

> [APPELLANT]: Uh, just cause I knew I was dead wrong. I was just taking accountability for my actions, that's it."

Appellant testified about the events leading up to his arrest and stated that he did not know there was a gun in the car until he was arrested. He explained that his friend gave him a ride to his aunt's house and after he was dropped off, he realized he had left his phone in the car. This was why, he stated, he can be seen in the body worn camera footage walking up North Kossuth Street the first time he is seen. He testified that he went into the corner store to find his friend to ask to get his phone out of the car. His friend gave him the keys and when he went back out to the car, the officers refused to let him get his phone. When asked why he ran from the police, appellant testified as follows:

> "[APPELLANT]: Like I told you, I was afraid for real, for real. I just, nervous for whatever reason.
>
> [DEFENSE COUNSEL]: And you heard yourself, that's why they kept asking you, why did you throw the key.
>
> [APPELLANT]: Right.
>
> [DEFENSE COUNSEL]: That's what you told them.
>
> [APPELLANT]: Right."

The jury returned the guilty verdicts as noted and appellant was sentenced as indicated above. This timely appeal followed.

II.

Before this Court, appellant argues that his prior conviction under Crim. Law § 5-612 was not an impeachable conviction. He asserts that under Crim. Law § 5-612(a), there

are two elements required for conviction: (1) possession of the specified controlled dangerous substances and (2) the requisite quantity established by the statute. Appellant asserts the statute does not require proof of an intent to distribute. To be admissible for impeachment, appellant asserts the conviction must be one that goes toward credibility, *i.e.*, that shows a person should not be believed and its title must allow the jury to determine the precise nature of the offense. He maintains that the trial court erred in permitting appellant to be impeached with his prior conviction.

Appellant argues that this error was not harmless. Credibility was an essential part of this case and the State tried to convince the jury to not believe appellant. Appellant argues that his denial of any knowledge of the gun in the car made credibility a critical issue in the case. Because of the importance of credibility here, appellant asserts that the State cannot establish, beyond a reasonable doubt, that the error is harmless.

The State argues that the trial court ruled correctly that appellant's prior conviction for volume possession of a controlled dangerous substance was eligible for impeachment purposes because under Rule 5-609, prior convictions for non-infamous crimes are admissible as impeachment evidence if they are categorically relevant to credibility. It is the acquisition of the requisite volume of CDS for the conviction, the State argues, that requires both premeditation regarding the acquisition and planning where to store the substance to evade detection, thus making the conviction relevant to credibility. These components, the State asserts, make volume possession of CDS inherently deceitful and admissible for impeachment purposes. The State argues that the offense of volume

possession has a well understood meaning and the factfinder should be allowed to assess its impact on appellant's truthfulness.

The State argues in the alternative that any error in admitting the conviction for impeachment purposes was harmless error. Although the State agrees that appellant's credibility was central to the case, it asserts there was minimal impact to appellant by admitting the name and date of appellant's prior conviction. Appellant nonetheless elected to testify and the conviction for volume possession was referenced only twice during the trial. The State argues that appellant's admission that he lied when asked if he had the keys to his friend's car and that he threw the keys because they were not his when he fled from the police is most fatal to his defense. In light of these facts, the State asserts, admitting the conviction had minimal, if any, impact.

III

Rule 5-609 addresses the admissibility of prior convictions for impeachment purposes. The Rules provides, in pertinent part, as follows:

> (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.
>
> (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:
>
> (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 Contendere. For purposes of this Rule, "conviction" includes a plea of nolo contendere followed by a sentence, whether or not the sentence is suspended.

Ordinarily, this Court reviews a trial court's decision as to admissibility of evidence under an abuse of discretion standard. *Taneja v. State*, 231 Md. App. 1, 11 (2016). Whether a conviction is categorically eligible for impeachment is a matter of law that we review *de novo*. *Rosales v. State,* 463 Md. 552, 562 (2019).

The Rule provides a three-part test for determining whether a prior conviction may be admitted for impeachment purposes. First, the conviction must be within the "eligible universe" of convictions that are relevant to impeach a witness's credibility. Rule 5-609(a). Second, the conviction must not have occurred more than fifteen years ago, been reversed on appeal, nor been the subject of a pardon or pending appeal. Rule 5-609(b). Third, the trial court must determine whether the probative value of admitting the conviction outweighs the danger of unfair prejudice to the witness. *King v. State*, 407 Md. 682, 700-01 (2009).

As is clear in the Rule, §(a) states a presumption of admissibility "but only if" the crime was an "infamous crime" or "other crime relevant to the witness's credibility." And,

the court determines the probative value outweighs the danger of unfair prejudice. That identifies the eligible universe—two categories.

As noted in *Giddens v. State*, 97 Md. App. 582, 588 (1993):

> "If the crime does not fall within one of those two categories, it is not eligible for admission as impeachment evidence, and no further consideration need be given to it. If the crime falls within that universe and the issue is raised, the proponent must then satisfy the conditions in sections (b) and (c) of the Rule by showing that the conviction is not more than 15 years old, that it was not reversed on appeal, and that it was the subject of neither a pardon nor a pending appeal. Finally, assuming that these conditions are satisfied (or not asserted), the court must determine that the probative value of the evidence outweighs the danger of unfair prejudice to the witness. *Beales v. State*, 329 Md. 263, 270 (1993)."

In the case before us, §(b) of the Rule is not at issue. We know that appellant's conviction is less than fifteen years old. Appellant argues that the crime of possession of CDS, large amount, is not a crime bearing on credibility.

In general, crimes admissible to impeach credibility are infamous crimes, such as treason, common law felonies, and *crimen falsi* crimes, or crimes of moral turpitude. *Carter v. State*, 80 Md. App. 686, 692 (1989). These crimes are per se admissible. *Id.* Non-infamous misdemeanors and statutory felonies, on the other hand, are lesser crimes that may or may not bear on a witness's honesty or tendency to be truthful. *Id.*

The courts in Maryland have not addressed whether a conviction for possession of large amount of controlled substance under Crim. Law § 5-612 may be used to impeach a witness. This is an issue of first impression. What is clear in Maryland is that simple possession of controlled dangerous substances is not admissible to impeach a witness. *See State v. Giddens*, 335 Md. 205, 217 (1994) (affirming simple possession of narcotics

convictions "have no bearing on credibility"). Possession with intent to distribute and distribution of controlled dangerous substances, however, are admissible to impeach the credibility of a witness. *Id.* (holding that a conviction for possessing cocaine with intent to distribute is an impeachable offense).

Because the crime at issue here, possession CDS, large amount, is a statutory felony, we must determine whether it bears on the witness' credibility. *State v. Westpoint*, 404 Md. 455, 476 (2008) (Statutory crimes "fall into the class of lesser crimes and may or may not reflect one's tendency to be truthful."). To determine credibility, the crime must identify the conduct that bears on credibility:

> "To fall into the category of 'other crimes relevant to credibility,' the crime itself, by its elements, must clearly identify the prior conduct of the witness that tends to show that he is unworthy of belief. Moreover, a crime tends to show that the offender is unworthy of belief, if the perpetrator 'lives a life of secrecy' and engages in 'dissembling in the course of [the crime], being prepared to say whatever is required by the demands of the moment, whether the truth or a lie.'"

Anderson v. State, 227 Md. App. 329, 339 (2016) (internal citations omitted).

Distribution of controlled dangerous substances is an impeachable offense. In *State v. Giddens*, the Supreme Court of Maryland held that a conviction for cocaine distribution may be used for impeachment purposes because it is "not so 'ill-defined' that a jury would have difficulty determining the precise nature of the offense." 335 Md. 205, 218 (1994). On the other hand, a conviction for simple possession of controlled dangerous substances is not an impeachable offense because it has "no bearing on credibility." *Id.* at 215.

Possession with intent to distribute is an impeachable offense. *State v. Woodland*, 337 Md. 319, 524 (1995) (holding that the crime of possession with intent to distribute

controlled dangerous substances as charged under Art. 27, § 286 constitutes an impeachable offense). Convictions for indecent exposure, sexual abuse of a minor, second degree rape, and carrying a concealed weapon are all offenses that are not impeachable offenses. *State v. Watson*, 321 Md. 47, 59 (1990) (holding a second-degree rape conviction "was irrelevant to [the defendant's] character witnesses' opinions of his character for peacefulness and non-violence"); *Ricketts v. State*, 291 Md. 701, 710 (1981) (holding indecent exposure not an impeachable offense); *Anderson v. State*, 227 Md. App. 329, 341 (2016) (holding that a conviction for carrying a concealed weapon is not an impeachable offense); *Hopkins v. State*, 137 Md. App. 200, 202 (2001) (holding that the crime of child abuse is inadmissible for purposes of impeachment).

Appellant was convicted of neither simple possession, possession with intent to distribute, nor distribution or trafficking, but instead he was convicted of the statutory crime of "CDS possession, large amount." The circuit court found that appellant's conviction for "CDS possession, large amount" was admissible for impeachment purposes. The court reasoned that because the Legislature deemed there was "an aggregate amount . . . more egregious than just simple possession," this offense is analogous to crimes for distribution and intent to distribute because "one who is guilty in such a thing is acting nefariously, dishonestly, as if they are handling large amounts of contraband." We do not agree.

We hold that § 5-612, possession of large amount, is not an impeachable offense. While the statute creates a mandatory minimum sentence for possession of certain

substances, the simple possession of the controlled substance does not make a person more likely to lie.

Crim. Law § 5-612 reads as follows:

Manufacture, distribution, dispensing, or possession of specified amounts

Unlawful amounts

(a) A person may not manufacture, distribute, dispense, or possess:

(1) 50 pounds or more of cannabis;
(2) 448 grams or more of cocaine;
(3) 448 grams or more of any mixture containing a detectable amount, as scientifically measured using representative sampling methodology, of cocaine;
(4) 448 grams or more of cocaine base, commonly known as "crack";
(5) 28 grams or more of morphine or opium or any derivative, salt, isomer, or salt of an isomer of morphine or opium;
(6) 28 grams or more of any mixture containing a detectable amount, as scientifically measured using representative sampling methodology, of morphine or opium or any derivative, salt, isomer, or salt of an isomer of morphine or opium;
(7) 5 grams or more of fentanyl or any structural variation of fentanyl that is scheduled by the United States Drug Enforcement Administration;
(8) 28 grams or more of any mixture containing a detectable amount, as scientifically measured using representative sampling methodology, of fentanyl or any structural variation of fentanyl that is scheduled by the United States Drug Enforcement Administration;
(9) 1,000 dosage units or more of lysergic acid diethylamide;
(10) any mixture containing the equivalent of 1,000 dosage units of lysergic acid diethylamide;
(11) 16 ounces or more of phencyclidine in liquid form;
(12) 448 grams or more of any mixture containing a detectable amount, as scientifically measured using representative sampling methodology, of phencyclidine;
(13) 448 grams or more of methamphetamine; or
(14) 448 grams or more of any mixture containing a detectable amount, as scientifically measured using representative sampling methodology, of methamphetamine.

Aggregation of amounts

> (b) For the purpose of determining the quantity of a controlled dangerous substance involved in individual acts of manufacturing, distributing, dispensing, or possessing under subsection (a) of this section, the acts may be aggregated if each of the acts occurred within a 90-day period.
>
> Penalty
>
> (c)(1) A person who is convicted of a violation of subsection (a) of this section shall be sentenced to imprisonment for not less than 5 years and is subject to a fine not exceeding $100,000.
>
> (2) The court may not suspend any part of the mandatory minimum sentence of 5 years.
>
> (3) Except as provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

The elements of the offense are the possession of a stated, controlled substance, in a specified amount or more, with no intent to distribute. *Carter v. State*, 236 Md. App. 456, 474-75 (2018). The crime is more akin to simple possession than to distribution or trafficking, *albeit* with an enhanced penalty beyond simple possession. Chief Judge Matthew Fader, writing for a panel of this Court, explained the elements of the offense as follows:

> "As this Court noted in *Kyler v. State*, the plain language of § 5–612(a) requires only two elements for a conviction: '(1) manufacturing, distributing, dispensing or possessing [a controlled dangerous substance]; and (2) in the requisite quantity.' Nowhere in the plain language of the statute is there any indication that an 'intent to distribute' is an element of the crime, either express or presumed. Nor . . . is there any context from the remaining provisions of the statute that would counsel a different interpretation."

Id. at 476 (internal citations omitted). The lack of an intent to distribute makes this crime more similar to possession of CDS than to manufacturing or distribution.

Crim. Law § 5-612 originated in former Article 27, § 286. Section 286(a) of Article 27 provided it was unlawful to "manufacture, distribute, or dispense, or to possess a

controlled dangerous substance in sufficient quantity to reasonably indicate under all circumstances an intent to manufacture, distribute, or dispense a controlled dangerous substance. . . .” Md. Code Ann., Art. 27, § 286(a)(1) (1957, 1992 Repl. Vol., 1993 Cum. Supp.). Section 286(f) of Article 27 contained the same elements as § 286(a) but provided for a penalty enhancement when specified amounts of particular CDS were in one’s possession. *Id.* at § 286(f).

In 2002, the General Assembly created § 5-612 as part of the codification of the Criminal Law Article, titled it “Volume Dealer,” and kept the language regarding the penalty from § 286(f) as follows:

> “(c) Enhanced penalty. (1) A person who is convicted under § 5–602 of this subtitle with respect to a controlled dangerous substance in an amount indicated in subsection (a) of this section shall be sentenced to imprisonment for not less than 5 years.”

2002 Md. Laws ch. 26, 435-36. Again, the Legislature intended for the offense to be an enhanced penalty for violation of § 5-602 of the Criminal Law Article. *Id.* at 436.

In 2005, the General Assembly repealed and reenacted Crim. Law § 5-612 in response to *Blakely v. Washington*, 542 U.S. 296 (2004). *Kyler v. State*, 218 Md. App. 196, 224 (2014). The Legislature explained that *Blakely* held that “a sentencing judge’s imposition of an enhanced penalty, based on facts that were not admitted by the defendant or found by a jury, violated the defendant’s right to a trial by jury.” S.B. 429, 2005 Sess., Fiscal and Policy Note, at 2 (Feb. 15, 2005). To comport with *Blakely*, the Committee to Revise Article 27 recommended that Crim. Law § 5-612 “be charged as its own, separate, new offense.” *Id.* at 3. The General Assembly stated that these changes were made “FOR

the purpose of altering certain provisions of law to establish new offenses in place of factual determinations that enhance penalties; … [and] establishing the offense and clarifying the penalties for manufacturing, distributing, dispensing, or possessing certain quantities of certain controlled dangerous substances; ….” 2005 Md. Laws ch. 482, 2827. The new statute removed the title “Volume Dealer” and all references to Crim. Law § 5-602, any references to “intent,” and deleted language referring to a conviction under this statute as an “enhanced penalty” connected to Crim. Law § 5-602. *Id.* at 2832-33.

Chief Judge Fader noted the significance of these changes, explaining as follows:

> “[T]he General Assembly made clear that its intent was . . . to establish a new crime: the manufacture, distribution, dispensing, or *possession of certain quantities* of controlled dangerous substances. . . . Moreover, the General Assembly could hardly have been clearer in removing any hint of an intent requirement from the statute. The Legislature removed from the statute the only express mention of intent to distribute, which had appeared in subsection (b), as well as the references in subsections (a) and (c) to the crime of possession with the intent to distribute.”

Carter, 236 Md. App. at 479-80. We conclude that the Legislature intended to create a new crime as described in the statute and departed from its origins without including any intent to distribute. Without this specific intent, a conviction for “CDS possession, large amount” does not fall within the reasoning of our jurisprudence on credibility.

Finding that appellant’s prior conviction was not admissible for purposes of impeachment, we consider whether this error was harmless. An error is harmless only when a reviewing court “is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict.” *Dorsey v. State*, 276 Md. 638, 659 (1976). The State bears the burden of showing affirmatively that the error was not prejudicial. *Id.* at 658-59. Where

credibility is at issue in a criminal case, "an error affecting the jury's ability to assess a witness' credibility is not harmless error." *Dionas v. State*, 436 Md. 97, 110 (2013).

Appellant's credibility was an issue in this case. Appellant denied knowing there was a gun in the car and stated that he returned to the car intending to retrieve his phone after he was dropped off by his friend at his aunt's house. In closing argument, the State asked the jury not to believe appellant's account of the events when making their determination of his guilt.

We cannot say beyond a reasonable doubt that the jury was not influenced by learning of appellant's prior conviction. Appellant was charged with unlawful possession of a firearm. He denied knowing the firearm was in his vehicle. The jury heard that appellant had a prior conviction for possession of a large amount of controlled dangerous substances. Many cases in Maryland state that firearm charges are admissible and relevant in drug cases, because "there is a nexus between drug distribution and guns, observing that a person involved in drug distribution is more prone to possess firearms than one not so involved." *Whiting v. State,* 125 Md. App. 404, 417 (1999); *Banks v. State,* 84 Md. App. 582, 591 (1990) ("Possession and indeed use of weapons, most notably firearms, is commonly associated with the drug culture; one who is involved in distribution of narcotics, it is thought, a fortiori, would be more prone to possess and/or use, firearms or other weapons than a person not so involved."). Here, the prejudicial effect of the prior conviction, along with the improper attack on his credibility, is that the jury may misuse the conviction to conclude that because appellant possessed a large amount of controlled

drugs in the past, he must have possessed a gun.[1] The error was not harmless beyond a reasonable doubt.

JUDGMENTS OF CONVICTION IN THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED TO THAT COURT FOR A NEW TRIAL. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.

[1] Rule 5-609 requires the trial court to conduct a three-step analysis. First, to determine the nature and eligibility of the offense, second, to determine the age of the conviction, i.e., less than 15 years if not an infamous crime, and third, to balance the probative value against unfair prejudice. Although the record does not reflect any balancing process by the trial judge, and no specific reference to any balancing or unfair prejudice, we presume the trial judge knew the law and engaged in the requisite balancing. *See, e.g.*, *Abrishamian v. Barbely*, 188 Md. App. 334, 350 (2009) (stating "[w]e presume that a trial judge correctly exercised discretion, knows the law, and performed his or her duties properly"). We point out, however, in making the requisite analysis under Rule 5-609, the better practice is for the trial judge to explain on the record a consideration of the recommended factors to determine prejudice versus probative value. *Jackson v. State*, 340 Md. 705, 717 (1995).