

Think A Disorderly Person Charge Doesn't Matter? Think Again

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On February 27, 2012, in [State v. Harris \(A-103-10\)](#), the New Jersey Supreme Court rendered a decision that may act to further limit those circumstances in which a criminal defendant chooses to testify.

In a criminal trial, under N.J.R.E. 609, the State may, under certain circumstances, impeach the credibility of a testifying defendant by reference to prior criminal convictions. The ability to use a prior conviction must be determined at a hearing conducted pursuant to [State v. Sands, 76 N.J. 127 \(1978\)](#) (commonly referred to as a Sands/Brunson hearing). However, the ability to impeach is limited to crimes—not disorderly persons offenses. Moreover, prior crimes may not be used to attack the credibility of a defendant where the crimes are too remote.

In [State v. Harris](#), the Supreme Court determined that although the defendant's crimes were committed in 1994, in the intervening years (1994, 1996, 2005, and 2007) he had committed several disorderly persons offenses, and, therefore, the prior convictions could be used to impeach defendant if he decided to testify at trial. In other words, the disorderly persons offenses "bridged the gap" to the potentially "remote" 1994 convictions.

So, when charged with a disorderly persons offense, think twice about just entering a plea to resolve the charges.