

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL NO. 06-173</b>
	:	
v.	:	
	:	
<b>STANLEY SANDERS</b>	:	

**MEMORANDUM AND ORDER**

GENE E.K. PRATTER, J.

NOVEMBER 30, 2006

**I. INTRODUCTION**

Stanley Sanders is charged with two counts of bank robbery in violation of 18 U.S.C. § 2113(a). Mr. Sanders has three prior state felony convictions,<sup>1</sup> and there is no dispute that these convictions (or his release from imprisonment) on all three convictions occurred less than ten years ago. Mr. Sanders's jury trial is scheduled to commence on December 5, 2006. The defense has filed a motion *in limine* pursuant to Federal Rule of Evidence 609 to preclude introduction at trial of evidence of Mr. Sanders's prior convictions. The Government opposes the motion, but states that it intends only to use evidence of Mr. Sanders's criminal convictions record for cross-examination purposes in the event Mr. Sanders testifies at his upcoming trial.

In light of the nature of the charges to be tried, the Government's proposed limited use for such evidence and the results of weighing the four factors delineated by the Third Circuit Court of Appeals for evaluating such proposed evidence under Rule 609, the Court denies the Motion

---

<sup>1</sup> In 2003 Mr. Sanders was convicted of and imprisoned for felony theft by receiving stolen property and unauthorized use of a vehicle; in 1996 he was found to be guilty of felony retail theft and imprisoned in 2001 for violating his probation for this crime; and in 1996, Mr. Sanders was again convicted of a separate felony retail theft.

*In Limine* and will permit introduction at trial of the evidence of Mr. Sanders's prior conviction(s) under the conditions set forth in this Memorandum and the accompanying Order, subject to the Court's subsequent determination following a hearing immediately prior to the start of the trial as to which conviction(s) may be used for this purpose and what may be said about such conviction(s) at the time of the proposed use.

## **II. DISCUSSION**

Federal Rule of Evidence 609(a)(1) provides, in relevant part, that:

For the purpose of attacking the credibility of a witness, . . . evidence that an accused has been convicted of [a felony] shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused . . . .

Fed. R. Evid. 609(a)(1). Our Court of Appeals has held that "Rule 609 is premised on 'the common sense proposition that one who has transgressed society's norms by committing a felony is less likely than most to be deterred from lying under oath.'" Walden v. Georgia Pacific Corp., 126 F.3d 506, 523 (3d Cir. 1997) (citation omitted), cert. denied, 523 U.S. 1074 (1998). Thus, "Rule 609 evidence is admitted to inform the jury about the character of witnesses whose testimony the jury is asked to believe." Id. (citation omitted). A defendant who elects to testify at trial places his credibility directly at issue. United States v. Murphy, No. 05-1501, 2006 U.S. App. LEXIS 7827, at \*5 (3d Cir. Mar. 30, 2006); United States v. Beros, 833 F.2d 455, 463-64 (3d Cir. 1987). Indeed, the Court of Appeals has reiterated that it has "held that 'there is no question that, given a proper purpose, [such as impeachment under Rule 609(a)(1)], [even] drug convictions are admissible [even] in a trial where the defendant is charged with a drug offense.'" Murphy, 2006 U.S. App. LEXIS 7827, at \*5 (citation omitted). Accordingly, this Court

commences consideration of Mr. Sanders's motion with the recognition that case law "firmly establishes that it is proper to admit evidence of the type of felony involved in a prior conviction used for impeachment under Fed. R. Evid. 609(a)(1)." United States v. Jacobs, 44 F.3d 1219, 1224 n.6 (3d Cir. 1995), cert. denied, 514 U.S. 1101 (1995).

However, admissibility is by no means a foregone conclusion. The Court of Appeals has enumerated four factors that the trial court should weigh in making a Rule 609(a)(1) determination: (1) the kind of crime involved; (2) when the prior conviction occurred; (3) the importance of the witness's testimony; and (4) the importance of the credibility of the defendant. Gov't of the Virgin Islands v. Bedford, 671 F.2d 758, 761 n.4 (3d Cir. 1982). Here, Mr. Sanders has two prior retail theft convictions from 1996, and a conviction in 2003 for receiving stolen property and unauthorized use of a vehicle. As the cases cited above hold, it is appropriate to view felony convictions as probative of Mr. Sanders's credibility. Indeed, even the probative value of earlier drug convictions has been found to be sufficient in the face of countervailing potential prejudice where the defendant is on trial for narcotics charges. See e.g., United States v. Cordoba, 104 F.3d 225, 229 (9th Cir. 1997); United States v. Borrone, No. 97-224, 1997 WL 786436, at \*3 (E.D. Pa. Dec. 3, 1997), aff'd, 166 F.3d 1206 (3d Cir. 1998).

With respect to the factors that focus on qualitative considerations, if Mr. Sanders testifies at trial, his testimony – like that of all defendants who make this decidedly serious and fundamental voluntary choice – will be important, and his credibility instantly will become a central issue at trial. What Mr. Sanders has to say in the face of what the witnesses to be called by the Government will testify is certain to capture the attention of the jury, and the jury deserves to have as complete a picture of the believability of Mr. Sanders as can be gained under the

circumstances. See e.g., United States v. Rosato, No. 98-343, 1999 WL 58577, at \*3 (E.D. Pa. Jan. 26, 1999). See also Walden v. Georgia Pacific Corp., 126 F.3d 506, 523 (3d Cir. 1997).

Those circumstances quite properly include evidence of one, or possibly more, of Mr. Sanders's prior felony convictions, lest the jury be under the wholly erroneous impression that Mr. Sanders's credibility is unassailable by any recognized undermining element such as an earlier felony conviction.

The Court is not unmindful that Mr. Sanders is concerned that the potential prejudice to him will be great if evidence of even one of his prior convictions is disclosed at trial. Nothing uniquely inflammatory or unduly prejudicial about any of his prior convictions, however, has been brought to the Court's attention. Prejudice sufficient to override the legitimacy of using such evidence to impeach a testifying defendant must be something demonstrably more than the understandable discomfiture a defendant experiences with the concept of the jury knowing this kind of background detail about the defendant's past. As the Government points out, Mr. Sanders's prior convictions are dissimilar from the charges for which he is on trial now. Therefore, there is no inherent danger that the jury will draw an improper inference of guilt from the impeachment use of the prior conviction evidence here as there might be if the prior convictions had involved bank robberies.

In order to further guard against what would be legally recognized as prejudicial, i.e., the jury's substantive use of the prior conviction(s) for some purpose other than to evaluate Mr. Sanders's credibility, the Court will instruct the jury, both in advance of the introduction of the

evidence and in the final charge, as to the limited permitted use of such evidence.<sup>2</sup> In order to further reduce the risk of prejudice to the Defendant, the Court is also prepared to address during a hearing immediately prior to trial the questions of whether the Government will be limited at trial to using less than all three of the subject prior convictions and what specific information may be used regarding such conviction(s).<sup>3</sup>

### **III. CONCLUSION**

For all the foregoing reasons, the Court finds that, if Mr. Sanders testifies, the Government may introduce in cross-examination the fact, date and specific nature of Mr.

---

<sup>2</sup> Juries are expected and presumed to adhere to such instructions. Richardson v. Marsh, 481 U.S. 200, 211 (1987) (“The rule that juries are presumed to follow their instructions is a pragmatic one, rooted less in the absolute certitude that the presumption is true than in the belief that it represents a reasonable practical accommodation of the interests of the state and the defendant in the criminal justice process.”); United States v. Urban, 404 F.3d 754, 776 (3d Cir. 2005) (“We presume that the jury follows such instructions . . . .”); United States v. Newby, 11 F.3d 1143, 1147 (3d Cir. 1993) (“[W]e presume that the jury will follow a curative instruction unless there is an ‘overwhelming probability’ that the jury will be unable to follow it and a strong likelihood that the effect of the evidence would be ‘devastating’ to the defendant.”) (citations omitted), cert. denied, Barber v. United States, 511 U.S. 1087 (1994); Newby v. United States, 513 U.S. 834 (1994). The Court specifically encourages counsel for Mr. Sanders to propose an appropriate instruction if defense counsel objects to the language of the instruction proposed by the Government in its Memorandum. (See Government Mem. 10 n.8.)

<sup>3</sup> Although the Court has broad discretion as to the timing of the ruling relating to admissibility of a defendant’s prior convictions, Diggs v. Lyons, 741 F.2d 577, 579-582 (3d Cir. 1984), cert. denied, 471 U.S. 1078 (1985), it also is aware of the desirability of making such a ruling in advance of trial if feasible so that the Defendant can make an informed decision as to whether to testify. For this reason, the Court declines to follow the Government’s suggestion that a ruling could follow the Defendant’s direct testimony. See Luce v. United States, 469 U.S. 38, 41-42 (1984). In the Court’s view, where it is feasible to do so, it is a mark of fairness to provide a defendant with a meaningful opportunity to weigh the competing considerations and to have a sufficient opportunity to consult with counsel in order to have the benefit of counsel’s dispassionate professional judgment. In addition, the Court believes that a pretrial decision will maximize the opportunity for all counsel to present appropriate opening statements to the jury that may anticipate the particular issue, if counsel so chooses to make reference to it.

Sanders's prior conviction(s), the specific one or ones of such convictions to be determined immediately prior to the start of trial.

An appropriate Order consistent with this Memorandum follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL NO. 06-173</b>
	:	
<b>v.</b>	:	
	:	
	:	
<b>STANLEY SANDERS</b>	:	

**ORDER**

AND NOW, this 30<sup>th</sup> day of November, 2006, upon consideration of Defendant Stanley Sanders's Motion to *In Limine* to Preclude Evidence of Prior Convictions (Docket No. 48) and the Government's Response thereto (Docket No. 51), it is hereby ORDERED that the Motion is DENIED to the extent that, if Defendant Sanders testifies, the Government may introduce in cross-examination the fact, date and specific nature of one or more of Defendant Sanders's prior convictions, with the determination of which such prior conviction(s) may be so used to be made following a hearing to be held immediately prior to trial. The Court will instruct the jury, both in advance of the introduction of the evidence and in the final charge, as to the limited permitted use of such evidence.

BY THE COURT:

\_\_\_\_\_  
GENE E.K. PRATTER  
United States District Judge