

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

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UNITED STATES OF AMERICA,

v.

KAREEM MILLHOUSE,  
Defendant.

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**CRIMINAL NO. 06-397**

**MEMORANDUM OPINION & ORDER**

**RUFE, J.**

**May 7, 2007**

Presently before the Court is the Government's Motion *in Limine* to Introduce Evidence of Defendant Kareem Millhouse's Prior Felony Convictions for Impeachment [Doc. # 37]. Through his counsel, Millhouse opposes the admission of any of his prior felony convictions. Because the Court does not completely agree with either the Government or Millhouse, the Motion will be granted in part and denied in part.

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

The criminal prosecution that brings this matter before the Court stems from an alleged sexual assault that occurred in July 2006 at the William F. Green Federal Building (the "Green Building") in Philadelphia, Pennsylvania. At that time, Millhouse was in federal custody facing robbery and firearms charges in the Eastern District of Pennsylvania.

In May 2006, Millhouse was arrested after committing one of the bank robberies for which he was eventually indicted. At that time, he confessed to multiple bank robberies, a liquor-store robbery, and to using firearms in at least some of the robberies. Counsel, C.K., was

subsequently appointed by the Court to represent him in the robbery case.<sup>1</sup>

Millhouse chose to cooperate with the Government by agreeing to participate in proffer sessions with government agents. On June 19, 2006, Millhouse and C.K. met with Assistant United States Attorney Albert Glenn and F.B.I. Special Agent Thomas Perzichilli for an initial proffer session. The session took place without incident.

A second proffer session was scheduled for July 7, 2006, at the Green Building. Before the session began, C.K. arranged for an opportunity to discuss the case with Millhouse privately, while AUSA Glenn and Agent Perzichilli waited outside the meeting room. The Government alleges that after they were left alone and C.K. began discussing the case, Millhouse displayed a razor blade, and told her that he had not had sex for a long time and that he wanted to have sex with her, but he also wanted her to “leave alive.” The Government further alleges that when C.K. resisted and attempted to run toward the door, Millhouse approached her with the razor blade, grabbed her, and threw her over a table. Upon hearing C.K.’s screams, the law-enforcement officers re-entered the room and restrained Millhouse, who was attempting to smash a window with a chair.

In August 2006, a grand jury in the Eastern District of Pennsylvania returned a five-count indictment charging Millhouse with: (1) aggravated sexual abuse; (2) sexual abuse; (3) assault; (4) escape; and (5) possession of a dangerous weapon in a federal facility. Trial of this matter is currently scheduled for May 14, 2007. The Government has filed the instant motion *in limine* seeking the admission of certain prior convictions to impeach Millhouse’s credibility, if he testifies

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<sup>1</sup> C.K. is a female attorney who works for a Philadelphia law firm and was appointed to represent Millhouse pursuant to the Criminal Justice Act.

at trial. Millhouse has responded to the Motion through his current counsel, and the Motion is now ready for review.

## **II. DISCUSSION**

The Government moves under Federal Rule of Evidence 609 for the admission of the following convictions to impeach Millhouse's credibility to testify truthfully, if Millhouse chooses to testify at trial and make his credibility an issue:

- (1) a March 2006 federal felony conviction for (a) three counts of bank robbery; (b) two counts of armed bank robbery; (c) one count of Hobbs Act robbery; and (d) three counts of using and carrying a firearm in furtherance of a crime of violence;
- (2) an August 2003 state felony conviction for receiving stolen property;
- (3) an October 1999 state felony conviction for robbery; and
- (4) a February 1996 state felony conviction for attempted theft, renewed by a December 1997 violation of his probation related to the conviction.

Millhouse argues that none of his prior convictions should be admissible because their probative value is outweighed by the prejudicial effect that their admission would have on his defense. Specifically, Millhouse argues that if the convictions are admitted, then the jury will improperly consider the prior convictions to conclude that he has a propensity to act violently and that he must have acted in conformity with that propensity in this case. Faced with the parties' conflicting positions, the Court must now consider whether Rule 609 permits evidence of the convictions to be admissible at trial.

### **A. Federal Rule of Evidence 609**

Rule 609(a)(1) provides for the admission of evidence of a testifying criminal defendant's prior felony convictions if "the probative value of admitting this evidence outweighs its

prejudicial effect to the accused.”<sup>2</sup> Admission of such evidence is further limited by Rule 609(b), which places a time limit on the convictions that are admissible under the Rule. Under Rule 609(b), evidence of a conviction . . . is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless . . . the probative value of the conviction substantially outweighs its prejudicial effect.

Under Third Circuit decisional law, a court conducting the balancing test under Rule 609(a) should consider several important factors, including: (1) the kind of crimes and the general impeachment value of the crimes involved; (2) when the conviction occurred; and (3) the importance of the defendant’s testimony and credibility to the case.<sup>3</sup> Upon weighing these factors, the decision to admit evidence of the defendant’s prior convictions is within the Court’s discretion.<sup>4</sup>

## **B. Balancing Probative Value Against Prejudicial Effect**

### 1. Kinds of Crimes and General Impeachment Value of the Crimes

The Government seeks admission of evidence of prior convictions for robbery, use of a firearm during the commission of a robbery, attempted theft, and receiving stolen property. Millhouse argues that evidence of these types of convictions has little to no probative value because they do not demonstrate dishonesty or a lack of veracity. Additionally, he argues that evidence of these types of convictions is highly prejudicial because the jury may misuse the evidence to

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<sup>2</sup> Additionally, Rule 609(a)(2) provides for the admission of evidence that a witness has been convicted of any crime regardless of the associated punishment “if it can be readily determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.” The Government does not rely on Rule 609(a)(2) in its Motion.

<sup>3</sup> See, e.g., Gov’t of V.I. v. Bedford, 671 F.2d 758, 761 n.4 (3d Cir. 1982); United States v. Butch, 48 F. Supp. 2d 453, 464 (D.N.J. 1999); United States v. D’Agata, 646 F. Supp. 390, 391 (E.D. Pa. 1986) (also noting the factors outlined in United States v. Mahone, 537 F.2d 922 (7th Cir. 1976)).

<sup>4</sup> See, e.g., United States v. Johnson, 302 F.3d 139, 152 (3d Cir. 2002).

determine that Millhouse has a propensity to commit violent crimes.

On this factor, the Court cannot agree with Millhouse. While the crimes for which he has previously been convicted may not be specifically classified as *crimen falsi* crimes in the Third Circuit,<sup>5</sup> they nonetheless demonstrate some degree of dishonesty, an unwillingness to respect the authority of the law, and an inability to abide by the law. Repetitive disregard for the law evidences a likelihood that the person will be less willing to abide by the law when called upon to do so in the future. If Millhouse chooses to testify in the instant case, then he will be asked to take an oath not to perjure himself. His unwillingness to respect and abide by the law in the past reflects on his potential unwillingness to do so when required by the law to tell the truth on the witness stand. This is especially true here because all of his convictions involve stealing from others, which is inherently dishonest conduct. Whether or not the crimes may be characterized as *crimen falsi* crimes, they still reflect Millhouse's disregard for the importance of honesty in dealing with others. As such, although the convictions may not have the same impeachment value as convictions for crimes involving communicative or verbal dishonesty, they nonetheless have substantial impeachment value.

As for the potentially prejudicial effect of the convictions for these specific types of crimes, the Court understands Millhouse's concern that the jury may be inclined to misuse the information. However, the Court is not convinced that evidence of the convictions is unduly prejudicial because they are not convictions for the same crimes charged in this case. Crimes such as receiving stolen property and robbery are not substantially similar to the assault and escape

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<sup>5</sup> See Walker v. Horn, 385 F.3d 321, 333–34 (3d Cir. 2004). To qualify as a *crimen falsi* crime under Rule 609(a)(2) in the Third Circuit, the crime must involve expressive or communicative dishonesty. See id. at 334. Robbery is specifically excluded from this definition by the court of appeals' decision in Walker. Id.

charges in the instant case. That the armed robberies are, by their nature, violent crimes and may cause the jury to improperly rely upon Millhouse's prior violent conduct to convict on the instant charges does not weigh as heavily as Millhouse argues in his opposition to the Motion. The Court is confident that it can eliminate or greatly minimize any potential prejudice by including a limiting instruction in its charge that restricts the jury's consideration of the evidence to Millhouse's credibility only.

## 2. When the Convictions Occurred

Technically, all of the convictions that the Government proposes for admission fall within the ten-year limit provided by Rule 609(b). The recent federal convictions and the state convictions for receiving stolen property and robbery clearly occurred within the last ten years. While Millhouse's state conviction for attempted theft occurred over ten years ago, he violated his sentence and was re-incarcerated within the ten-year period. Consequently, the Government seeks its admission. While there is some decisional support for the Court's ability to admit the conviction under Rule 609,<sup>6</sup> the Third Circuit has not yet considered whether re-incarceration upon a parole or probation violation constitutes confinement for the original conviction, thus bringing the conviction under Rule 609(b).<sup>7</sup> Even if the conviction satisfies the time limit of Rule 609(b), however, the Court has the discretion to consider the probative value of the conviction, which occurred over 11 years ago, and weigh it against the prejudicial effect of admitting the conviction.

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<sup>6</sup> See United States v. Gray, 852 F.2d 136, 139 (4th Cir. 1988); United States v. McClintock, 748 F.2d 1278, 1288–89 (9th Cir. 1984); United States v. Brewer, 451 F. Supp. 50, 52–53 (E.D. Tenn. 1978).

<sup>7</sup> At least one court, the Ninth Circuit Court of Appeals, has held that re-confinement based on a parole or probation violation will only renew the conviction for purposes of Rule 609(b) if the conduct for which the defendant is re-incarcerated is substantively related or parallel to the crime for which he or she was originally convicted. United States v. Wallace, 848 F.2d 1464, 1472–73 (9th Cir. 1988). Only in that instance will the re-incarceration constitute "confinement imposed for [the original] conviction" under Rule 609(b).

As the Government notes in its brief, the relevancy and probative value of a prior conviction is enhanced by its recency. Conversely, the remoteness of a conviction detracts from its probative value. This is especially true when introduction of other more recent convictions will allow the Government to sufficiently question the defendant's credibility. Moreover, the Court is unaware of the reason(s) for which Millhouse was re-incarcerated on the original attempted-theft charge. Millhouse may have been re-incarcerated based on a technical violation of his sentence, as opposed to a substantive violation such as the commission of a similar or related crime. Without knowledge of the specific violation, the Court cannot find that the violation restores the probative value of a conviction that is over ten years old. Considering the remoteness of the conviction and the existence of other more recent convictions, the probative value of Millhouse's 11-year-old attempted-theft conviction is significantly diminished.

### 3. Importance of the Defendant's Testimony and Credibility to the Case

If Millhouse testifies in the instant case, it is expected that he will directly contradict the testimony offered by the Government's key witness, C.K., regarding what Millhouse said and did on July 7, 2006. Accordingly, his testimony will be a direct attack on the foundation of the Government's case, and likely will be the most important aspect of the defense case. Therefore, his credibility will be a central issue. When the testimony and credibility of a criminal defendant is a central issue in the case, evidence of prior convictions has increased probative value.<sup>8</sup> In this case, Millhouse's credibility may be the key factor upon which the case will turn either for or against the Government, and therefore his prior convictions have substantial probative value.

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<sup>8</sup> See United States v. Causey, 9 F.3d 1341, 1344-45 (7th Cir. 1993); United States v. Jackson, 627 F.2d 1198, 1210 (D.C. Cir. 1980).

#### 4. Conclusion

After considering all of the relevant factors and weighing probative value against prejudicial effect in accordance with Rule 609, the Court concludes that all but one of Millhouse's prior convictions will be admissible to impeach his trial testimony, if he decides to testify. The probative value of Millhouse's prior convictions for robbery, firearms offenses, and receiving stolen property outweighs the prejudicial effect of their admission, especially considering the Court's ability to minimize any potential prejudice by giving an appropriate limiting instruction. On the other hand, Millhouse's state conviction for attempted theft, which is sufficiently remote to convince the Court that its probative value is substantially diminished, will be inadmissible to impeach Millhouse at trial.

### **III. CONCLUSION**

For the foregoing reasons, the Government's Motion *in Limine* will be granted in part and denied in part. If Millhouse testifies at trial, the Government will be precluded from offering evidence of his 1996 state conviction for attempted theft, but may offer evidence of the other prior convictions identified in the Motion *in Limine*.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
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**CRIMINAL NO. 06-397**

**ORDER**

**AND NOW**, this 7<sup>th</sup> day of May 2007, upon consideration of the Government's Motion *in Limine* to Introduce Evidence of Defendant Kareem Millhouse's Prior Felony Convictions for Impeachment [Doc. # 37] and Defendant Millhouse's Response thereto [Doc. # 40], it is hereby **ORDERED** that the Motion is **GRANTED IN PART** and **DENIED IN PART** as follows:

- (1) Evidence of the following convictions **WILL BE ADMISSIBLE** under Federal Rule of Evidence 609 should Defendant testify at trial:
  - (a) The March 2006 felony conviction in the Eastern District of Pennsylvania for (a) three counts of bank robbery; (b) two counts of armed bank robbery; (c) one count of Hobbs Act robbery; and (d) three counts of using and carrying a firearm in furtherance of a crime of violence;
  - (b) The August 2003 state felony conviction for receiving stolen property; and
  - (c) The October 1999 state felony conviction for robbery.
- (2) Evidence of the February 1996 state felony conviction for attempted theft **WILL NOT BE ADMISSIBLE** at trial.
- (3) The Court will include a limiting jury instruction in its charge that reiterates that any evidence admitted pursuant to this ruling is to be considered for

impeachment purposes only.

It is so **ORDERED**.

**BY THE COURT:**

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**CYNTHIA M. RUFÉ, J.**