

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	
	:	
JOHNNIE CORLEY	:	Criminal No. 03-775

MEMORANDUM AND ORDER

Schiller, J.

March 1, 2004

Presently before the Court are Defendant Johnnie Corley's motion to preclude the Government from introducing evidence of his prior convictions under Federal Rule of Evidence 609 and the Government's motion to admit one such conviction under Rule 404(b). For the reasons set out below, the Court grants Defendant's motion and denies the Government's motion.

I. EVIDENCE OF PRIOR CONVICTIONS UNDER RULE 609

Defendant is charged with armed bank robbery, conspiracy to commit armed bank robbery, use of a firearm during a crime of violence, and aiding and abetting each of these offenses. Within the last ten years, he has been convicted of four crimes that he seeks to exclude from evidence: receiving stolen property; criminal conspiracy related to drug trafficking; possession of a controlled substance with intent to distribute; and carrying a firearm without a license.¹

¹ Although Defendant has been convicted of additional felonies, the Government does not seek to introduce these convictions because they occurred more than ten years ago.

Federal Rule of Evidence 609 provides that evidence of a prior felony conviction within the preceding ten years may be used to impeach a defendant-witness “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). In addition, any conviction for a crime that “involved dishonesty or false statement” is per se admissible for impeachment purposes. FED. R. EVID. 609(a)(2).

Defendant argues that the four convictions at issue are inadmissible under both 609(a)(2) and 609(a)(1) because these crimes were not *crimen falsi* and their prejudicial value outweighs their probative value. In response, the Government does not attempt to argue that any of the prior convictions are admissible under Rule 609(a)(2);² rather, the Government maintains that the convictions are probative of Defendant’s credibility and should therefore be admitted under Rule 609(a)(1).

The Third Circuit has stated that relevant factors in judging the probative value of prior convictions under Rule 609(a)(1) include: (1) the nature of the convictions; (2) the recentness of the convictions; (3) the importance of the defendant’s testimony; and (4) the degree to which the defendant’s credibility is central to the case. *Gov’t of Virgin Islands v. Bedford*, 671 F.2d 758, 761 n.4 (3d Cir. 1982). In this case, the first factor weighs against admissibility because Defendant’s prior convictions are for drug crimes, receipt of stolen property, and a firearms violation—crimes

² Although the Government cites to Rule 609(a)(2) once in its brief, this citation is clearly a mistake, for it is appended to a quote from Rule 609(a)(1). (See Govt’s Resp. at Part III (unpaginated).) Furthermore, even if the Government had made an argument under Rule 609(a)(2), the Court would have found that the crimes are not *crimen falsi* for the reasons set out below regarding Rule 609(a)(1).

that involve dangerous acts but do not bear significantly on Defendant's veracity under oath.³ The second, third, and fourth factors weigh somewhat in favor of admissibility, for the convictions are as little as three years old, and Defendant's testimony and credibility will be important to the case should he choose to take the stand. Regarding the prejudicial impact, however, the receipt of stolen property and firearms charges are similar enough to the current charges of armed robbery and illegal use of a firearm that the prejudice resulting from their admission may be particularly severe, leading the jury to the impermissible inference that Defendant has a propensity to commit such crimes. *United States v. Hans*, 738 F.2d 88, 94 (3d Cir. 1984) (upholding trial court's exclusion of assault conviction due to its similarity to pending bank robbery charge); *United States v. Paige*, 464 F. Supp. 99, 100 (E.D. Pa. 1978) ("Because [admission of] the prior conviction would be highly prejudicial and improper, prior similar crimes generally are not admitted unless strong reasons exist for disclosure."). Admission of this evidence would therefore expose Defendant to one of the dangers that Rule 609(a)(1) was specifically designed to protect against. *See* FED. R. EVID. 609, Advisory Committee's Note to 1990 Amendments ("[T]he danger that prior convictions will be misused as character evidence is particularly acute when the defendant is impeached . . ."). Thus, the Court finds that Defendant's prior convictions are inadmissible under Rule 609 because their prejudicial impact outweighs their probative value.

³ The Government cites two Ninth Circuit cases and a First Circuit case for the contrary proposition that a conviction for receiving stolen property may be probative of a witness's credibility. However, even if the Court were to adopt this view, the conviction would remain inadmissible because, for the reasons stated below, its prejudicial impact would far outweigh its limited probative value.

II. EVIDENCE OF PRIOR CONVICTION UNDER RULE 404(b)

The Government seeks to introduce into evidence Defendant's conviction for illegal gun possession under Federal Rule of Evidence 404(b). Rule 404(b) prohibits the introduction of prior acts or convictions "to prove the character of a person in order to show action in conformity therewith" but permits their use to prove that the defendant possessed, inter alia, the knowledge or intent required to convict him.

The Government clearly seeks to introduce Defendant's prior conviction solely to show that he carried a gun during the bank robbery. As the Government's brief states: "The fact that Corley possessed a gun on a prior occasion shows he was familiar with firearms and not averse to handling them." (Govt's Resp. at Part IV (unpaginated).) Although the Government makes cursory attempts to cast this evidence as relevant to Defendant's intent or knowledge, these arguments are no more than conclusory statements irreconcilable with the Government's actual proposed use of the conviction, *i.e.* to prove that Defendant has a history of carrying illegal weapons in order to demonstrate actions in conformity with that history. Accordingly, this conviction is inadmissible under the plain text of Rule 404(b). *United States v. Morley*, 199 F.3d 129, 134 (3d Cir. 1999) (holding that admission of prior acts introduced to imply that defendant was guilty "merely because he had previously engaged in 'similar' impropriety . . . is the very evil that Rule 404(b) seeks to prevent"); *United States v. Scarfo*, 850 F.2d 1015, 1019 (3d Cir. 1988) ("[W]e will 'refuse to admit evidence of prior criminal acts which has no purpose except to infer a propensity or disposition to commit crime.'") (*quoting Gov't of Virgin Islands v. Toto*, 529 F.2d 278, 283 (3d Cir. 1976)); *see also* FED. R. EVID. 404, Advisory Committee's Note (describing types of character evidence prohibited by Rule).

III. CONCLUSION

For the reasons stated above, the Court grants Defendant's motion to exclude his prior convictions under Federal Rule of Evidence 609 and denies the Government's motion to admit his firearm conviction under Rule 404(b). An appropriate Order follows.

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UNITED STATES OF AMERICA

v.

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Criminal No. 03-775

ORDER

AND NOW, this 1st day of **March, 2004**, upon consideration of Defendant's Motion in Limine to Exclude Evidence of Prior Convictions Pursuant to Federal Rule of Evidence 609, Defendant's Motion in Limine for Order on the Government to Give Timely Written Notice of Intention to Present Rule 404(b) Evidence, and the responses thereto, it is hereby **ORDERED** that:

1. Defendant's Motion in Limine to Exclude Evidence of Prior Convictions Pursuant to Federal Rule of Evidence 609 (Document No. 14) is **GRANTED**.
2. Defendant's Motion in Limine for Order on the Government to Give Timely Written Notice of Intention to Present Rule 404(b) Evidence (Document No. 17) is **GRANTED**.
3. The Government's motion to admit Defendant's prior conviction for firearms possession under FED. R. EVID. 404(b) is **DENIED**.

BY THE COURT:

Berle M. Schiller, J.