

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

UNITED STATES

v.

JASON TOMCZYK

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CRIMINAL NO. 05-CR-102

MEMORANDUM AND ORDER

Kauffman, J.

June 9, 2005

Defendant Jason Tomczyk (“Defendant”) has submitted a Motion to Bar Impeachment Use of Defendant’s Prior Convictions. For the reasons that follow, Defendant’s Motion will be denied in part and granted in part.

Defendant has two prior criminal convictions, which the government seeks to introduce at trial for impeachment purposes should he testify: (1) On November 17, 1995, Defendant pled guilty to robbery by force, a second degree felony under New Jersey state law; (2) On August 26, 1996, Defendant pled guilty to reckless manslaughter, also a second degree felony.

Under Federal Rule of Evidence 609(a)(1), evidence that a defendant who chooses to testify has been convicted of a crime punishable by death or imprisonment for more than one year may be admitted for the purposes of impeachment if the probative value of the evidence outweighs its prejudicial effect. Fed. R. Evid. 609(a)(1); see also United States v. Fromal, 733 F. Supp. 960, 972-73 (E.D. Pa. 1990). The Rule is premised on the principle that one who has “transgressed society’s norms” by committing a felony is more likely to lie under oath. See Walden v. Georgia-Pacific Corp., 126 F.3d 506, 523 (3d Cir. 1997). In weighing the prejudicial versus probative value of the evidence, a court may consider the type of crime involved, when

the conviction occurred, and the importance of the defendant's credibility and testimony. See Gov't of Virgin Islands v. Bedford, 671 F.2d 758, 761 n.4 (3d Cir. 1982). The government bears the burden of establishing admissibility. Id. at 761.

Weighing the prejudicial versus probative value of each conviction, the Court will permit the government to impeach Defendant, should he testify, with the robbery conviction, but will exclude evidence of the reckless manslaughter charge. Both convictions occurred nearly ten years ago, which militates against admission. At the same time, however, Defendant's credibility is likely to be a key issue in this case, increasing the probative significance of the convictions. See United States v. Johnson, 302 F.3d 139, 152 (3d Cir. 2002). In terms of the type of crimes involved, courts have repeatedly deemed crimes involving theft or robbery to be probative of truthfulness. See, e.g., United States v. Bianco, 419 F. Supp. 507, 509 (E.D. Pa. 1976); Fromal, 733 F. Supp. at 973. In addition, any prejudice stemming from evidence of this conviction is diluted by the fact that Defendant is charged as a felon in possession of a firearm and body armor, meaning that evidence of some prior felony conviction will already be before the jury. Cf. Johnson, 302 F.3d at 152. Therefore, the probative value of this conviction substantially outweighs the limited prejudicial effect. However, this Court will exclude evidence of the reckless manslaughter conviction, as such a crime is by no means probative of truthfulness and is potentially highly prejudicial. See, e.g., Miller v. Hoffman, 1999 WL 415402, at *3 (E.D. Pa. June 22, 1999). An appropriate Order follows.

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ORDER

AND NOW, this 9th day of June, 2005, upon consideration of Defendant's Motion to Bar Impeachment Use of Defendant's Prior Convictions (docket no. 18), and the government's response thereto, it is **ORDERED** that the Motion is **GRANTED** in part and **DENIED** in part. Accordingly, Defendant's conviction for robbery shall be admissible for impeachment purposes under Federal Rule of Evidence 609, but his conviction for reckless manslaughter shall not be.

BY THE COURT:

**S/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.**