

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

JAMES MILLER : CIVIL ACTION
 :
 v. :
 :
 STANLEY HOFFMAN, M.D. and :
 DONNA HALE : NO. 97-7987

MEMORANDUM AND ORDER

HUTTON, J.

June 21, 1999

Presently before this Court are the Plaintiff James Miller's Motion in Limine (Docket No. 72) and the Answer of Defendant Stanley Hoffman, M.D. (Docket No. 77). For the reasons stated below, the Plaintiff's Motion is **GRANTED**.

I. BACKGROUND

This is a civil rights case in which Plaintiff, James Miller ("Miller" or "Plaintiff"), has brought claims pursuant to 42 U.S.C. § 1983 alleging deliberate indifference to his serious medical needs. Miller, an inmate at Graterford State Correctional Institution ("Graterford"), alleges that defendants Stanley Hoffman, M.D. ("Hoffman" or "Defendant") and Donna Hale ("Hale") were deliberately indifferent to his serious medical needs in violation of his constitutional right under the Eighth Amendment to be free from cruel and unusual punishment. Miller also alleges that Hoffman's treatment deviated from the accepted standard of medical care and constituted medical malpractice. The Court has

entered summary judgment in favor of Defendant Hale. Thus, Miller's claims against Hoffman are all that remain.

Hoffman has indicated that he wishes to introduce into evidence at trial several convictions of Miller. Specifically, Hoffman intends to introduce evidence of Miller's convictions of criminal conspiracy, aggravated assault, possession of a controlled substance, and resisting arrest. These convictions occurred between 1987 and 1990. On January 26, 1999, the Plaintiff filed the instant Motion in Limine moving the Court to preclude all evidence regarding his prior criminal record. Defendant Hoffman filed an Answer to Plaintiff's Motion in Limine on February 18, 1999.

II. DISCUSSION

The Plaintiff has filed a motion in limine to preclude the Defendant from introducing his prior convictions for impeachment purposes. The Plaintiff has objected to the admission of his prior convictions and has argued, inter alia, that the convictions are either overly prejudicial or are not crimen falsi. Accordingly, the Plaintiff argues that his prior convictions are not admissible under either Rule 609(a)(1) or 609(a)(2) of the Federal Rules of Evidence. In response, Defendant Hoffman argues that the Plaintiff's convictions are all admissible under Federal Rule of Evidence 609(a)(1). The Defendant does not argue that the convictions are admissible under Federal Rule of Evidence

609(a)(2), apparently conceding that none of the convictions can be classified as crimen falsi.¹

A. Prior Convictions

1. Standard

Federal Rule of Evidence 609 states in pertinent part:

(a) General Rule. For the purpose of attacking the credibility of a witness, (1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted,....

(b) Time limit. Evidence of a conviction under this rule 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 court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

Fed. R. Evid. 609. The burden of demonstrating the conviction survives the relevant test imposed by Rule 609 is on the party seeking to introduce the conviction. See, e.g., United States v. Cunningham, 638 F.2d 696, 698 (4th Cir. 1981); United States v. Hendershot, 614 F.2d 648, 652-53 (9th Cir.1980); United States v. Mahone, 537 F.2d 922, 929 (7th Cir.), cert. denied, 429 U.S. 1025, 97 S.Ct. 646, 50 L.Ed.2d 627 (1976).

¹If the prior conviction was for a crime involving "dishonesty or false statement," then this Court is required to admit such evidence. Fed. R. Evid. 609(a)(2); see also United States v. Wong, 703 F.2d 65, 67 (3d Cir. 1983) (recognizing that trial courts have no discretion to exclude evidence of crimen falsi convictions).

Courts used to be divided on how Rule 609 applied to civil witnesses. In 1989, the Supreme Court addressed this ambiguity and held courts lacked discretion regarding whether to admit prior convictions against civil witnesses. Green v. Bock Laundry Machine Co., 490 U.S. 504, 524, 109 S.Ct. 1981, 104 L.Ed.2d 557 (1989). However, the Green Court called for an amendment to the Rule, id., and Congress responded. In 1990, Congress amended 609(a) to clarify that prior convictions of all witnesses other than criminal defendants, if punishable by death or imprisonment in excess of one year and not involving dishonesty or false statement, shall be admitted subject to Rule 403. See Fed. R. Evid. 609 advisory committee's notes; Weinstein & Berger, 4 WEINSTEIN'S FEDERAL EVIDENCE at § 09.04[3] [a], § 09App.03[2].

Under Federal Rule of Evidence 403, relevant "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury."² Rule 403 does not act to exclude any evidence that may be prejudicial, but only evidence the prejudice from which substantively outweighs its probative value. Prejudice within the meaning of Rule 403 involves identifying a special

²Federal Rule of Civil Procedure 403 states in full that:
Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Fed. R. Evid. 403.

damage which the law finds impermissible." Charles E. Wagner, Federal Rules of Evidence Case Law Commentary, 145 (1996-97) (footnotes omitted).

In civil cases, courts have generally considered four factors when balancing probative weight and prejudicial effect under 609(a)(1): 1) the nature (i.e., impeachment value) of the prior conviction; 2) the age of the conviction; 3) the importance of credibility to the underlying claim; and 4) the potential for prejudice from admitting the convictions. See, e.g., Tabron v. Lt. Grace, 898 F. Supp. 293, 295 (M.D. Pa. 1995); Pettijohn v. Wusinich, 705 F.Supp. 259, 260 (E.D.Pa. 1989); see also Government of Virgin Islands v. Bedford, 671 F.2d 758, 761 n. 4 (3rd Cir. 1982) (applying standard in criminal context). The first three factors illuminate the inquiry into the probative value of the convictions. Tabron, 898 F. Supp. at 295. Once the probative value has been determined, it must be weighed against the fourth factor, the potential that the convictions will prejudice the jury against the Plaintiff. Id.

2. Analysis

a. Nature of the Prior Convictions

Evidence of Plaintiff's criminal convictions is of little probative value, if any. First, as noted above, none of the prior convictions involved crimes of dishonesty or falsity. Second, the nature of Miller's convictions provides no insight into Miller's

propensity to testify truthfully. This Court has held that "[e]vidence of a prior drug conviction is only minimally probative of a witness' character for truthfulness, if at all." Dover-Hymon v. Southland Corp., Civ.A. No.91-1246, 1993 WL 419705, *6 (E.D. Pa. Sep.27, 1993) (Hutton, J.). See id. (finding that any relevance for impeachment purposes of evidence of prior drug conviction to the plaintiff's Survival Act claim would be substantially outweighed by the risk of unfair prejudice and confusion of the issues).

Courts have found that crimes involving physical violence, such as assault, inciting a riot and/or resisting arrest are not significantly associated with veracity. See, e.g., Robinson v. Clemons, Civ.A. No.96-405, 1998 WL 151285, *3 (D.Del. Mar.24, 1998) (prior convictions of assault and disorderly conduct have little, if any, probative value of truthfulness); United States v. Castor, 937 F.2d 293, 294 (7th Cir.1991) (holding that although a conviction for battery was admissible under Rule 609(a)(1), the impeachment value of this felony, which was unrelated to truthfulness, was limited); United States v. Jackson, 627 F.2d 1198, 12010 (D.C.Cir. 1980) (holding that manslaughter ranked comparatively low on the scale of veracity-related crimes). Cf. United States v. Colletti, 984 F.2d 1339, 1343 (3d Cir.1992) (holding impeachment value of offense "akin to disorderly conduct"

is "virtually non-existent").³ The first factor--the nature of the conviction-- therefore, favors precluding evidence of Plaintiff's prior convictions.

b. Age of the Convictions

Three of Miller's convictions occurred in January of 1988--more than ten (10) years ago. Miller concedes, however, that his convictions do not come within the confines of Rule 609(b). Although these convictions are not barred by Rule 609(b), the fact that 10 years has passed weighs heavily against admittance. Even the most recent of Miller's convictions occurred in May of 1990--almost nine years ago. Accordingly, the significant age of these convictions argues against admissibility. See Robinson, 1998 WL 151285, at *3 (holding that although age of convictions diminishes its probative value as to veracity, it does not limit its prejudicial effect). This factor, therefore, strongly supports not admitting the prior convictions to impeach Miller's credibility.

c. Importance of Credibility

The third factor, dealing with the importance of the Plaintiff's testimony, weighs against admissibility. Miller will testify to explain the treatment he received for his injured elbow. Miller's testimony will dispute Hoffman's arguments regarding the

³The only other crime for which Miller has been convicted is criminal conspiracy. This crime is not associated with veracity and provides no insight into Miller's propensity for truthfulness.

alleged maltreatment to Miller's injured elbow. Miller will testify as to the pain he suffered as a result of Hoffman's conduct. There is no other means capable to introduce the evidence to be offered through his testimony. See generally Jack Weinstein & Margaret Berger, 4 Weinstein's Federal Evidence S 609.04[2][a][v] (Joseph McLaughlin ed., 2d ed.1997) (explaining that a lack of other potential sources for the defendant's testimony increases the importance of the testimony). Consequently, this factor weighs against admissibility.

III. CONCLUSION

All three factors regarding the probative value of the convictions strongly weigh against admissibility. Evidence of Miller's criminal convictions is highly prejudicial to his case, which hinges on his testimony. As such, all evidence of those convictions must be excluded for impeachment purposes based on the risk of unfair prejudice and confusion of the issues under Rule 403.

An appropriate Order follows.

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O R D E R

AND NOW, this 21st day of June, 1999, upon consideration of the Plaintiff James Miller's Motion in Limine (Docket No. 72) and the Answer of Defendant Stanley Hoffman, M.D. (Docket No. 77), IT IS HEREBY ORDERED that the Plaintiff's Motion is **GRANTED**.

IT IS FURTHER ORDERED that the Defendant Stanley Hoffman, M.D. **SHALL BE PRECLUDED** from offering evidence of the criminal record of Plaintiff James Miller for impeachment purposes.

BY THE COURT:

HERBERT J. HUTTON, J.