

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

ASHLEY DIAMOND,

Plaintiff,

v.

TIMOTHY WARD, *et al.*,

Defendants.

No. 5:20-CV-00453-MTT

**PLAINTIFF ASHLEY DIAMOND'S MOTION IN LIMINE TO EXCLUDE
REFERENCE TO DETAILS OF CONVICTIONS OF PLAINTIFF'S WITNESSES**

In advance of the trial in this matter currently set to begin on January 17, 2023, Plaintiff Ashley Diamond moves to exclude from evidence and argument reference to the crimes of convictions and any underlying facts or allegations related to those crimes for Plaintiff's witnesses Harry Lyde and Christopher Ojeda, pursuant to Federal Rules of Evidence 403 and 609. For the reasons set forth in the attached Memorandum of Law, the Court should grant Ms. Diamond's Motion and so limit the evidence and argument at trial.

Respectfully submitted,

This 11th day of January 2023.

/s/ Caitlin J. Sandley

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE
REFERENCE TO DETAILS OF CONVICTIONS OF PLAINTIFF’S WITNESSES**

Two of Plaintiff Ashley Diamond’s trial witnesses have been convicted of sex offenses involving minors, mention of which at trial would be unfairly prejudicial. For the reasons set forth herein, in Plaintiff’s December 16, 2022 Motion in Limine (ECF No. 190), and during the pretrial conference held on January 6, 2023, the Court should exclude from evidence reference to the crimes of convictions and any underlying facts or allegations related to those crimes for Plaintiff’s witnesses Harry Lyde and Christopher Ojeda pursuant to Federal Rules of Evidence 403 and 609.

FACTUAL BACKGROUND

For the majority of the time period relevant to the allegations in the Amended Complaint (ECF No. 36), the Georgia Department of Corrections (“GDC”) and the Defendants named in this lawsuit housed Ms. Diamond in Dorm N-B at Coastal State Prison. The evidence at trial will show that Dorm N-B houses people convicted of sex offenses.¹ Consequently, and by no fault of Ms.

¹ *E.g.*, 30(b)(6) Designee Brooks Benton Dep. Tr. 82:2-6 (“Q Okay. Were there convicted sex offenders who were housed in N-B? A I think there were some in there. I think there was a small number, small amount, but I think there were.”); Daniel Fass Dep. Tr. 67:16-22 (“So, I wouldn’t feel right if I didn’t put it in there that, you know, a larger population of sex offenders live in safe

Diamond's, the witnesses to Defendants' deliberate indifference include people convicted of sex offenses.

Specifically, Ms. Diamond intends to call two incarcerated witnesses who were housed in Dorm N-B with her: Harry Lyde and Christopher Ojeda. According to GDC, Mr. Lyde's convictions include multiple counts of aggravated child molestation and child molestation, from 2006.² Mr. Ojeda was convicted of cruelty to children in 2015 and statutory rape in 2021.³

ARGUMENT

Ms. Diamond concedes that the *fact* that Mr. Lyde and Mr. Ojeda have been convicted of offenses punishable by more than one year is proper impeachment evidence under Federal Rule of Evidence 609(a)(1).⁴ However, the Court should prohibit Defendants from making any reference to Mr. Lyde's and Mr. Ojeda's crimes of convictions (here, child molestation, aggravated child molestation, statutory rape, and cruelty to children) and any facts or allegations related to those convictions.

"[A] witness's character for truthfulness" may be impeached on cross-examination by introduction of the *fact* of a prior conviction punishable by more than a year's imprisonment, but only "subject to Rule 403['s]" general prohibition on evidence that is more prejudicial than probative. Fed. R. Evid. 609(a)(1)(A). "Crimes involving dishonesty or false statement are often more probative of the witness's lack of credibility than even more serious crimes involving

housing, whether it be N-building or some other form of safe housing, at all prisons because they are much more vulnerable. Other prisoners are more violent towards them.").

² *Find an Offender: Lyde, Harry T Jr GDC ID: 00012111352*, Ga. Dep't of Corrs., <https://gdc.ga.gov/GDC/Offender/Query> (last visited Jan. 11, 2023).

³ *Find an Offender: Ojeda, Christopher David GDC ID: 100126335*, Ga. Dep't of Corrs., <https://gdc.ga.gov/GDC/Offender/Query> (last visited Jan. 11, 2023).

⁴ Indeed, it will be plain to the jury that Mr. Lyde and Mr. Ojeda are currently incarcerated, and Ms. Diamond expects them both to testify to the amount of time they have been incarcerated.

violence.” *United States v. Cathey*, 591 F.2d 268, 276 (5th Cir. 1979) (citing Fed. R. Evid. 609(a)).⁵ “Rape is not a crime involving dishonesty or false statement . . .” and rape and sexual assault are “among the most prejudicial types of information the jury could learn” about a witness in a civil suit. *McCorvey v. Ala. River Cellulose, LLC*, No. 13-0118-WS-N, 2014 WL 5528219, at *2 (S.D. Ala. Nov. 3, 2014) (quoting *Czajka v. Hickman*, 703 F.2d 317, 319 n.1 (8th Cir. 1983); *Scott v. Lawrence*, 36 F.3d 871, 874 (9th Cir. 1994)).

This Court has recently taken a very cautious approach to admissibility of the underlying facts of past convictions. *See Robbins v. Robertson*, No. 7:15-CV-00124 (WLS), 2022 WL 2987890, at *4 (M.D. Ga. July 28, 2022) (“Whether Plaintiff was convicted of a crime of violence, and the facts surrounding that conviction, have little bearing on whether Defendants violated Plaintiff’s First and Eighth Amendment rights while incarcerated.”). In *Robbins*, which was also a lawsuit about prison conditions, this Court excluded evidence of the violent nature and underlying facts of the plaintiff’s gang participation, attempted murder, and voluntary manslaughter convictions due to their highly prejudicial nature. *Id.* at *3-4.

Other courts in the Eleventh Circuit have recognized that sex offenses, specifically, are highly inflammatory and have less probative value for Rule 609 purposes than crimes of dishonesty. *See, e.g., McCorvey*, 2014 WL 5528219, at *3 (concluding that any information including the nature of the crime – second-degree rape and statutory rape, the age of the victim, and the number of alleged incidents should be excluded “because any marginal probative value of this information is substantially outweighed by the risk of unfair prejudice to the plaintiff”).

⁵ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

Here, Mr. Lyde's and Mr. Ojeda's convictions for sex offenses involving children are likely to inflame jurors' prejudices and confuse the issues. Ms. Diamond had no choice about the fact that she was housed in a unit with people convicted of sex offenses and that those people are now the witnesses to the constitutional violations she suffered. The details of Mr. Lyde's and Mr. Ojeda's convictions have no bearing on their credibility in this case and are not otherwise probative of any facts at issue in this case.⁶ To allow Defendants to stoke juror mistrust of Ms. Diamond's witnesses by referencing their crimes of conviction and the allegations against them would be unfairly prejudicial.

CONCLUSION

For the reasons set forth herein, in Plaintiff's December 16, 2022 Motion in Limine (ECF No. 190), and during the pretrial conference held on January 6, 2023, the Court should exclude from evidence reference to the crimes of convictions and any facts or allegations related to those crimes for Plaintiff's witnesses Harry Lyde and Christopher Ojeda.

Respectfully submitted,

Dated: January 11, 2023

/s/ Caitlin J. Sandley

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⁶ See *supra* n.1.

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