

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

ASHLEY DIAMOND,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.
v.	:	5:20-cv-00453-MTT
	:	
TIMOTHY WARD, <i>et al.</i> ,	:	
	:	
Defendants.	:	

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**RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION  
IN LIMINE TO EXCLUDE REFERENCE TO DETAILS OF  
CONVICTIONS OF PLAINTIFF’S WITNESSES**

Defendants Sharon Lewis, Ahmed Holt, Robert Toole, Brooks Benton, Grace Atchison, and Lachesha Smith, through counsel, respectfully submit this response in opposition to Plaintiff’s “Motion *in Limine* to Exclude Reference to Details of Convictions of Plaintiff’s Witnesses” (Doc. 209). Plaintiff’s motion should be denied for the reasons set forth herein.

Rule 609 of the Federal Rules of Evidence provides, in relevant part:

- (a) **In General.** The following rules apply to attacking a witness’s character for truthfulness by evidence of a criminal conviction:
  - (1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
    - (A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant ....

Fed. R. Evid. 609(a)(1)(A). Thus, the first assertion in the motion – that only the “*fact* of a prior conviction” is admissible – is plainly wrong. The rule provides that *evidence of a* qualifying criminal conviction is admissible. And the cases make plain that it is not merely the conviction itself, but the fact of, nature of, and number of convictions that the

witness has all are admissible. *See, e.g., United States v. Burston*, 159 F.3d 1328, 1335 (11th Cir. 1998); *Knight through Kerr v. Miami-Dade County*, 856 F.3d 795, 817 (11th Cir. 2017); *United States v. Fernandez-Leyva*, 482 F. App'x 417, 421 (11th Cir. 2012); *and see Stewart v. Johnson*, 2012 U.S. Dist. LEXIS 136116 (SD Ga. 2021) (Cheesbro, M.J.).

As the cited precedents explain, the implicit assumption of Rule 609 is that prior felony convictions have probative value as to impeachment of a witness' credibility. And contrary to the suggestion in the motion, again as the cases explain, that probative value increases when credibility is central to the case as it is here.

Plaintiff's motion asserts that admission of evidence of the criminal convictions for sex offenses of the witnesses Lyde and Ojeda will be "unfairly prejudicial." But the motion does not explain how *Plaintiff* will be prejudiced by admission of evidence regarding the convictions of these non-party witnesses, and further it does not carry the burden to show that any prejudicial impact will outweigh the probative value of the evidence. The cited cases make clear that it is Plaintiff's burden to make that showing under Rule 403.

Defendants acknowledge the cases which reflect that sex offenses are potentially the most prejudicial in the Rule 609 and 403 analyses, as recognized in *Stewart*, but here at least four factors weigh against exclusion. *First*, these are non-party witnesses, and Plaintiff selected these particular witnesses to testify on her behalf out of all of the possible dormitory occupants in her period of incarceration. *Second*, what is admissible under Rule 609, as the above cited cases make clear, is the **fact, nature, and number of** the qualifying criminal convictions. This is the limited inquiry that will be made. So

while the jury will hear evidence of the convictions and their nature (*i.e.*, the crimes for which there was a conviction), they will not hear the details or specifics of the crimes. *Third*, the Court can give the jury an explanatory or limiting instruction on the reason why the evidence is presented.

The *fourth* consideration, which is an especially important one here, is that the nature of these particular convictions is actually relevant for another reason in this case. Plaintiff has suggested that she was at risk of assault merely because the dormitory where she was placed and housed also housed, at times, persons who had been convicted of sex crimes. But that Lyde and Ojeda were convicted of sex crimes, and yet presumably did not assault Plaintiff or present a risk of assault to Plaintiff, is relevant substantive evidence on whether she was at risk in her dorm placement.

Defendants respectfully ask that Plaintiff's motion be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Charles Coleman, Jr.  
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This 11th day of January, 2023.

s/ Roger A. Chalmers  
Roger A. Chalmers