

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CORTEZ L. WOOTEN,

Defendants.

No. 10-30088-DRH

MEMORANDUM and ORDER

HERNDON, Chief Judge:

Now before the Court is Defendant Wooten's motion in limine (Doc. 20). Wooten moves pursuant to Rules 403 and 609 of the Federal Rules of Evidence for an Order prohibiting the introduction of or impeachment of Defendant through evidence of his prior convictions from 1996 and 1998. Wooten merely argues that the crimes are of such nature that the prejudicial effect to the Defendant will far outweigh any probative value said evidence may have on the truthfulness and that he will be denied his constitutional right to present evidence and testify on his behalf. The Government has not filed a response to the motion in limine.¹ Based on the following, the Court grants in part and denies in part Wooten's motion.

Pursuant to **FEDERAL RULE OF EVIDENCE 609(b)**, prior crimes are only admissible for impeachment purposes if no more than ten years have elapsed

¹On August 4, 2010, the Government filed a notice of intent to seek to introduce Rule 404(b) evidence (Doc. 26) from which the Court can glean pertinent facts.

from the date of conviction or the date of release from confinement. Wooten's 1998 conviction falls within this ten-year period.² Accordingly, evidence of this crime should be allowed for impeachment purposes if this Court finds that the conviction meets the balancing test provided in **RULE 609(a)**.

FEDERAL RULE OF EVIDENCE 609(a) provides that, “[f]or the purpose of attacking the credibility of a witness, ... evidence that an accused has been convicted of such a crime [*i.e.* one punishable by more than a year's imprisonment] shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused.” In ***United States v. Mahone*, 537 F.2d 922 (7th Cir. 1976)**, the Seventh Circuit articulated a five-part test to guide a district court in the exercise of its discretion in determining whether the probative value of a conviction outweighs its prejudicial effect: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. ***See United States v. Montgomery*, 390 F.3d 1013, 1015 (7th Cir. 2004); *United States v. Hernandez*, 106 F.3d 737, 739-40 (7th Cir. 1997); *Rodriguez v. United States*, 286 F.3d 972, 983 (7th Cir. 2002)**. If

²On November 4, 2008, the Court sentenced Wooten to 210 months imprisonment for distribution of cocaine base. ***See United States v. Wooten*, No 3:98-CR-30034-DRH; Doc. 26**. Subsequently, the undersigned reduced his sentence he was released from prison in April 2008. ***Id.* at Doc. 40**. Thereafter, the undersigned revoked Wooten's supervised release and sentenced him to twelve months and a day on October 27, 2008. ***Id.* at Docs 53 & 54**. Again on February 24, 2010, the Court revoked Wooten's supervised release and sentenced Wooten to 11 months imprisonment. ***Id.* at Docs. 68 & 70**.

allowed, the Government can impeach the defendant with the crime charged, the date, and the disposition. ***United States v. Smith*, 454 F.3d 707, 716 (7th Cir. 2006)**. However, where a defendant attempts to explain away the prior conviction by giving his own versions of the events, he has “opened the door” to impeachment by the prosecution on the details of the prior crime. ***United States v. White*, 222 F.3d 363, 370 (7th Cir. 2000)**.

As to his 1998 conviction, Wooten simply asserts that this conviction is not admissible under 403 and 609 of the Federal Rules of Evidence. His motion does not elaborate further.

As to the impeachment value of the prior crime, the Court recognizes that, in general, prior felonies have some probative value on the issue of credibility. ***See United States v. Nururdin*, 8 F.3d 1187, 1192 (7th Cir. 1993)** (“**Thus a prior felony need not have involved ‘inherent dishonesty’ to be probative and admissible under Fed.R.Evid. 609(a)(1).**”). Thus, should Wooten testify the Court finds that a jury has the right to be apprised of the 1998 conviction.

Regarding the time of the 1998 conviction, Wooten was released from prison on his original sentence in April 2008 which is within the 10-year time limit under Rule 609(b). Further, the instant offense in this case occurred on February 17, 2010 which is less than two years from Wooten’s release from prison under his original sentence. Thus, the 1998 conviction is timely.

As to the third element, the similarity between the crimes, the Court

finds that this factor weighs against admissibility. Wooten's prior 1998 conviction was for distribution of cocaine base; he is now charged with possession with intent to distribute 50 grams or more of a mixture or substance containing cocaine base. The Court, however, recognizes that, while this is a factor that requires the Court to exercise caution, similarity alone is not controlling on the question of admissibility. **Hernandez, 106 F.3d at 740.** Rather it remains one factor that the Court must consider.

As to the fourth and fifth factors, which look both to the importance of Defendant's testimony and the centrality of the credibility issue, the Court finds that these factors weigh toward allowing the 1998 conviction into evidence. In the event that Wooten does testify, both Wooten's testimony and the credibility will be critical to the outcome of the case. The 1998 conviction need not come in unless Wooten testifies at trial that the testimony of the Government's witnesses was not true and correct. Thus, Wooten's credibility and testimony will be a key point of contention making his credibility a central issue.

The Court concludes that on balance the probative value for credibility purposes outweighs the potential for prejudice to Wooten. For purposes of this motion, the Court will allow admission of the evidence of his 1998 conviction for the limited purpose of impeachment of his character for truthfulness under Rule 609(a)(1) of the Federal Rules of Evidence. Thus, the Court denies Wooten's motion in limine as to his 1998 conviction for distribution of cocaine base.

As stated previously, Wooten also moves in limine to exclude evidence

of his 1996 conviction. While it is not clear from the record what this 1996 conviction stems from, it does not appear that the Government intends to use that conviction at trial as it has not addressed that conviction in its pleading. Thus, the Court grants the motion in limine as to these convictions.

Accordingly, the Court **GRANTS in part** and **DENIES in part** Defendant Wooten's motion in limine (Doc. 20). The Court **REMINDS** the parties that this case is set for trial on September 27, 2010 at 9:00 a.m.

IT IS SO ORDERED.

Signed this 9th day of September, 2010.

/s/ David R. Herndon

**Chief Judge
United States District Court**