



ROBINSON v. BANNING et al

2021 | Cited 0 times | E.D. Pennsylvania | November 30, 2021

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

RUSSELL ROBINSON Plaintiff, v. PATRICK BANNING, et al. Defendants.

CIVIL ACTION NO. 20-5442

PAPPERT, J. November 30, 2021

MEMORANDUM Russell Robinson alleges he was illegally arrested, imprisoned and prosecuted because Philadelphia police officer Patrick Banning falsely claimed he saw Robinson engage in three drug transactions on the afternoon of October 31, 2018. Banning moves to exclude evidence and questions regarding his prior misconduct and disciplinary history, while Robinson moves to exclude evidence of his prior convictions. After considering the papers, (ECF Nos. 23, 24, 26 and 31), and holding oral argument, (ECF No. 40), the Court grants in part and denies in part both motions.

I Robinson argues that a 2010 incident in which Banning falsely claimed to have reviewed the contents of a warrant application is admissible under Federal Rule of Evidence 404(b). According to Robinson, Banning attested to the contents of a warrant application that he had not actually read. (Pl. Resp. at 2.) While later admitted to making false statements in the application, Robinson does not

contend Banning knew those statements were false when he signed the document. (Id.) Instead, Robinson argues that attestation his claim to have read a

document he had not is relevant to show preparation, and opportunity . It is not. But

Robinson may cross-examination.

A in

admissible for another purpose, such as proving motive, opportunity, intent, Evi

admit evidence under 404(b)(2) bears the burden of demonstrating its applicability United States v. Caldwell, 760 F.3d 267, 276 (3d Cir. 2014).



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applied with careful precision, and . . . be admitted unless both the proponent and the District Court plainly identify a proper, non- Id. at 274 (citing *United States v. Davis*, 726 F.3d 434, 442 (3d Cir. 2013)).

Prior bad act evidence must satisfy a four-part test to be admissible under Rule 404(b). Specifically, the evidence must be:

(1) offered for a proper non-propensity purpose that is at issue in the case; (2) relevant to that identified purpose; (3) sufficiently probative under Rule 403 such that its probative value is not outweighed by any inherent danger of unfair prejudice; and (4) accompanied by a limiting instruction, if requested. Id. at 277 78 (citing *Davis*, 726 F.3d at 441).

rel *United States v. Repak*, 852 F.3d 230, 243 (3d Cir. 2017) (internal

probative value is substantially outweighed by a danger of one or more of the following:

unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time,

B The fact that Banning falsely claimed to have reviewed a warrant application in 2010 is not probative of his knowledge or intent in this case. Robinson alleges that Banning personally concocted the lies that led to 2018 1 2; Second Am. Compl. ¶ 16, ECF No. 18.) But in 2010, Banning purportedly did nothing more than attest to statements he had not in fact read. Whether Banning lied about reviewing an unrelated warrant application in 2010 has no bearing on whether he actually saw the drug transactions he claimed to see in 2018, and is therefore irrelevant to whether he

Robinson contends that Banning was motivated to lie in this case to sidestep the requirements of probable cause. (Pl. Resp. at 3.) But falsely claiming to have read a warrant application, without more, does not indicate that Banning wanted to create the illusion of probable cause. Again, Robinson does not allege that Banning knew the contents of the application were false when he signed it. offers no explanation for how , or plan to lie Resp. at 3.) In other words, he invites the jury to conclude that because Banning lied

about reading a warrant application in 2010 2018 arrest. Rule 404(b) forbids this type of reasoning.

C false attestation is inadmissible to prove that he lied about him about it on cross-examination. Under Federal Rule of Evidence 608(b), the Court

may allow cross-examination about specific instances of conduct if they are probative of *United States v. Williams*, 464 F.3d 443, 448 (3d Cir. 2006). In deciding whether to admit such evidence, the Court should of the evidence, the character of the previous conduct, and the remoteness in time of the

Ashford v. Bartz, No. 04-00642, 2009 WL 2356666, at *2 (M.D. Pa. July



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30, 2009) (quoting *United States v. Lundy*, 416 F. Supp. 2d 325, 330 (E.D. Pa. 2005)). Admissions under Rule 608 must also satisfy the requirements of Rule 403. *Id.*; *United States v. Bocra*, 623 F.2d 281, 288 (3d Cir. 1980).

On balance, these factors weigh in favor of allowing cross-examination regarding to the 2010 warrant application. The fact that Banning falsely claimed to have read statements in a sworn warrant application is highly

Jackson v. City of Pittsburgh, No. 07-111, 2011 WL 3443951, at *20 (W.D. Pa. Aug. 8,

2011) (quoting *Bocra*, 623 F.2d at 288) (alteration in original). The case may turn on whether in the drug transactions that purportedly supplied probable cause for his arrest. The

importance of testimony thus weighs in favor of allowing cross-examination regarding his earlier dishonesty. And while a decade has passed since the incident, it remains highly relevant to assessing his credibility. See *Lundy*, 416 F. Supp. 2d at 334

For the same reasons, the probative value of this questioning is not substantially outweighed by the risk of unfair prejudice. See *Bailey v. Diguglielmo*, No. 07-719, 2010 WL 2902532, at *3 (E.D. Pa. July 23, 2010) (permitting questioning about dishonest conduct that occurred ten years before trial). If requested, the Court will instruct the the credibility of his testimony.

Robinson may not, however, ask Banning about any investigation into or discipline imposed because of his dishonesty. His cross-examination must be directed See *United States v. Davis*, 183 F.3d 231, 257 n.12 (3d Cir.), amended, 197 F.3d 662 (3d Cir. 1999).

II Robinson, in turn, moves to exclude evidence of his prior convictions. Banning opposes the m 2009 convictions for robbery, criminal conspiracy, carrying a firearm without a license, and possession of an instrument of crime, are admissible for impeachment purposes under Rule 609(a)(1)(A). See at 2 3, ECF No. 26); Criminal Docket at 3 4, *Commonwealth v. Robinson*, CP-51-CR-0407761-2006 (Ct. C.P. Phila. Cnty.). 1

The robbery conviction is admissible. The others are not.

A In a civil case, a conviction for a crime that was punishable by more than one year of imprisonment must be admitted for impeachment purposes, subject to Federal Rule of Evidence 403. Fed. R. Evid. 609(a)(1)(A). In assessing its admissibility, the Court weighs four factors against the potential prejudice in admitting the conviction: (1) the nature of the conviction, (2) the time elapsed since the conviction, (3) the

credibility to the claim at hand. *Sharif v. Picone*, 740 F.3d 263, 272 (3d Cir. 2014) (citing *United States*



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v. Greenidge, 495 F.3d 85, 97 (3d Cir. 2007)).

1 Robinson initially asked the Court to exclude the convictions associated with Philadelphia County Municipal Court docket numbers MC-51-CR-26626-2007 and MC-51-MD-557-2008. Banning indicated at the final pre-trial conference that he does not intend to introduce evidence of these convictions, (ECF No. 40), so the Court will not address their admissibility.

If neither the conviction nor the occurred within ten years of the trial, the conviction is only admissible if its probative value substantially outweighs its prejudicial effect. Fed. R. Evid. 609(b)(1); United States v. Hans, 738 F.2d 88, 93 (3d Cir. 1984).

B is admissible impeachment evidence. First, the nature of the conviction weighs in favor of admission. Robinson was convicted of robbery under 18 Pa. Cons. Stat. § 3701(a)(1)(i). course of committing a theft, he His

Sharif, 740 F.3d at 273 n.10 (quoting

Gordon v. United States, 383 F.2d 936, 940 (D.C. Cir. 1967)); see also United States v. Carey, No. 18-037, 2019 WL 6492566, at *3 (M.D. Pa. Dec. 3, 2019) (collecting cases holding that robbery convictions are and

Second, t favor of admission. . See trial

Memorandum at 1, ECF No. 34). His credibility will be a critical issue for the jury, who conflicting testimony. See Sharif,

was the only witness testifying on his behalf).

Third, while not greatly reduced its relevance. Because Robinson was released from prison in 2015,

his conviction must be admitted as long as its probative value is not substantially outweighed by the danger of unfair prejudice. Fed. R. Evid,

609(a)(1)(A). Even courts applying Rule 609(b), which is weighted heavily toward exclusion, have admitted similar convictions. See United States v. Pritchard, 973 F.2d 905, 909 (11th Cir. 1992) (affirming admission of 13-year-old burglary conviction under Rule 609(b)); United States v. Slade, No. 12-0367, 2013 WL 5873576, at *5 (E.D. Pa. s just over

I balancing test imposed by Rule 403.

Analysis of the Greenridge factors shows that the probative value of robbery conviction as



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impeachment evidence is not substantially outweighed by the risk

of unfair prejudice. See Fed. R. Evid. 403. the alleged drug activity that formed the basis for his arrest. There is little risk that the jury will conclude that arrest must have been supported by probable cause simply because he had previously been convicted for robbery. See *Brown v. McCafferty*, No. 18-1126, 2020 WL 887915, at *2 (E.D. Pa. Feb. 24, 2020). And if requested, the Court can provide an appropriate limiting instruction to mitigate concerns that the conviction would be used for propensity purposes.

C In contrast, convictions for conspiracy, carrying a firearm without a license and possession of an instrument of crime are not admissible. firearms convictions say little about his character for truthfulness. See *Sharif*, 740 F.3d

at 273 (violence are less probative of honesty than are crimes involving ; *United States v. Whitfield*, No. 12-418, 2013 WL 12212553, at *2 (E.D.

did not reflect on his truthfulness). And at the final pre-trial conference, neither party could say what Robinson was convicted of conspiring to do. (ECF No. 40.) It is hard to character for truthfulness without knowing anything about the nature of the offense

Robinson conspired to commit.

The probative value of these convictions is further diminished by the fact that challenged by his robbery conviction. *Picone*, 740 F.3d at 274. Evidence of these convictions would be needlessly cumulative. See *United States v. Patterson*, No. 09-513, 2009 WL 3423839, at *4 (E.D. Pa. Oct. 21, 2009) (admitting robbery conviction under 609(a)(1) but excluding convictions for conspiracy and carrying a firearm without a license). The Court will exclude them under Rule 403.

An appropriate order follows.

BY THE COURT:

/s/ Gerald J. Pappert GERALD J. PAPPERT, J.

