

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JAMES ALLEN MELS

No. 1:21-cr-184-BAH

**GOVERNMENT’S RESPONSE REGARDING
EVIDENCE OF DEFENDANT’S PRIOR CONVICTION**

The government hereby notifies the defendant and the Court that it no longer intends to use the defendant’s 1994 conviction as impeachment evidence if the defendant testifies. However, the defendant’s conviction may be admissible to rebut character evidence offered by witnesses other than the defendant.

Impeachment Evidence

Pursuant to Rule 609(a)(2) of the Federal Rules of Evidence, evidence of a testifying defendant’s prior conviction “must be admitted” for purposes of attacking his character for truthfulness, “if the court can readily determine that establishing the elements of the crime required proving—or the witness’s admitting—a dishonest act or false statement.” However, if more than 10 years have passed since the defendant’s prior conviction, evidence of that conviction is admissible only if, among other things, “its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.” FRE 609(b)(1); *see also United States v. Appiah*, No. CR 19-361 (BAH), 2020 WL 3469688, at *7 (D.D.C. June 25, 2020).

Upon conducting further research into the defendant’s 1994 conviction, the government has been unable to ascertain sufficient “facts and circumstances” to proffer to the Court as required by Rule 609(b)(1) to justify impeaching the defendant with this conviction. Accordingly, the government will not do so.

Rebuttal Character Evidence

The defendant has not objected to the government's stated intent to use the defendant's prior conviction to rebut any character evidence offered through other witnesses. *See* Dkt. 58, Joint Pretrial Statement at 4.

Pursuant to FRE 404(a)(2)(A) and 405(a), a defendant in a criminal case may offer evidence of a pertinent character by reputation or opinion. For example, a defendant may call a witness to testify about a defendant's reputation in the community for being law abiding or as to the witness's opinion about the defendant's character for lawfulness. *See United States v. Diaz*, 961 F.2d 1417, 1419 (9th Cir. 1992) (admissible character evidence "may include general traits such as 'lawfulness' and 'law-abidingness'"). If such evidence is admitted here, the government may rebut it with specific acts of the defendant, including his prior guilty plea and conviction. *See* FRE 404(a)(2)(A) ("[A] defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.").

CONCLUSION

For the foregoing reasons, the government will not seek to impeach the defendant with his 1994 conviction if he testifies, but may use the conviction to rebut any proffered character evidence about his lawfulness or law-abiding nature.

Respectfully submitted,

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