IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**No. 03-20036BV**
	)	
JAMES CLAY CHESTEEN,	)	
	)	
Defendant.	)	

ORDER DENYING DEFENDANT'S MOTION IN LIMINE

The defendant, James Clay Chesteen, has been indicted on three counts associated with the manufacture of methamphetamine in violation of 21 U.S.C. § 843(a)(6), 846, and 858. Now before the court is Chesteen's motion in limine to preclude the government from introducing at trial for impeachment purposes, pursuant to Rule 609(a) of the Federal Rules of Criminal Procedure, any evidence of Chesteen's two prior convictions for drug possession and manufacturing. The motion was referred to the United States Magistrate Judge for determination.

Chesteen has two prior felony convictions: one dated May 4, 2000, for possession of cocaine and methamphetamine in Marshall County, Mississippi, and the other on November 20, 2000, in Crittenden County, Arkansas, for possession of a controlled substance.

Evidence of prior felony convictions is admissible as impeachment evidence under certain circumstances under Rule 609 of the Federal Rules of Evidence. Rule 609 provides:

> **(a) General Rule. For the purpose of attacking the credibility of a witness, (1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused . . . .**

Fed. R. Ev. 609(a).

Chesteen claims that because his prior convictions are so similar to the present charge, the probative value of evidence of his prior convictions as impeachment evidence is outweighed by its prejudicial effect. The burden is on the government to establish that the probative value of admitting a prior conviction outweighs the prejudicial effect. ***United States v. Bagley*****, 772 F.2d 482, 488 (9th Cir. 1985).**

To determine if the probative value of a prior conviction outweighs its prejudicial effect, a five-factor balancing test is used. The five factors are: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness' 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. *United States v. Meyers*, 952 F.2d 914.916 (6th Cir. 1992)(allowing impeachment evidence); *United States v. Moore*, 917 F.2d 215. 234 (6th Cir. 1990)(allowing impeachment evidence)(citing *Gordon v. United States*, 383 F.2d 936 (D.C. Cir. 1968)).

In *Moore*, the Sixth Circuit allowed a nine-year-old armed robbery conviction to be used as impeachment evidence during an armed robbery trial of the defendant, even though the crimes were substantially the same. The Sixth Circuit noted that the trial court's limiting instruction to consider the prior conviction only as impeachment evidence "provided an adequate safeguard against any potential prejudice possibly engendered by the admission of the prior conviction." *Moore*, 917 F.2d at 235.

In *United States v. Lewis*, 626 F.2d 940, 950 (D.C. Cir. 1980), the D.C. Circuit permitted the admission of a prior felony drug conviction when the defendant was being tried for a similar offense. The court noted that the similarity of the two offenses actually increased the probative value of the prior conviction because the defendant was defending himself by denying knowledge of drug transactions. *Id.* at 950. See also *United States v. Ortiz*, 553 F.2d 782, 785 (2d Cir. 1977)(allowing the admission of a four-year-old narcotics conviction as impeachment evidence in a cocaine distribution trial).

Here, Chesteen testified at the suppression hearing that he had never seen the fans and gas masks that were in his attic. On redirect, he explained that he had never been in his attic. He also testified that he did not smell an unusual chemical smell in his house contrary to the testimony of all the officers who entered the house. He did not address the other items associated with the manufacture of drugs that were found in his house. From all indications, and the government anticipates, Chesteen will deny knowledge of the drug manufacturing activities in his house if he takes the stand. Evidence of Chesteen's prior drug convictions would be particularly relevant and probative as impeachment evidence in that regard if he denies drug manufacturing activity.

Chesteen's two drug convictions are both recent, dating back only to 2000. One relates particularly to methamphetamine. Evidence of the methamphetamine conviction would be probative of Chesteen's familiarity with the drug and the chemicals and smells associated with it. A limiting instruction to consider the evidence only as impeachment evidence should sufficiently guard against any prejudicial effect.

Accordingly, the court finds that the probative value of Chesteen's prior drug convictions outweigh any prejudicial effect.

IT IS SO ORDERED this 23rd day of June, 2003.

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DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE