

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REDACTED CRIMINAL MINUTES – GENERAL

‘O’

III. DISCUSSION

A. Government’s MIL #1

The government moves *in limine* to exclude a range of arrests and convictions relating to seven witnesses it intends to call. Dkt. 48 (“Gov’t MIL 1”) at 1; see dkt. 66, Appendix A to Gov’t MIL 1 (“Appendix A”). The objections are based on Federal Rules of Evidence 608 and 609.² Defendant opposes. Dkt. 82 (“Opp. to Gov’t MIL 1”).

Impeachment of a witness is governed by Rules 608 and 609. United States v. Colbert, 116 F.3d 395, 396 (9th Cir. 1997) (“Federal Rules of Evidence 608 and 609 limit a defendant’s ability to impeach an adverse witness with his prior criminal record during cross-examination.”). Rule 608 provides that, “[e]xcept for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness’s conduct in order to attack or support the witness’s character for truthfulness.” Fed. R. Evid. 608(b). Rule 609, then, provides, in relevant part, (1) that evidence of a felony “must be admitted, subject to Rule 403, ... in a criminal case in which the witness is not a defendant,” and (2) that evidence of a misdemeanor or a felony “must be admitted 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.” Fed. R. Evid. 609(a)(1), (2). However, “if more than 10 years have passed since the witness’s conviction or release from confinement, whichever is later,” evidence of the conviction “is admissible only if[] its probative value ... substantially outweighs its prejudicial effect,” and notice is given. Fed. R. Evid. 609(b). Admissibility of impeachment evidence depends on context. United States v. Bonanno, 852 F.2d 434, 439 (9th Cir. 1988) (citing United States v. Feldman, 788 F.2d 544, 554 (9th Cir. 1986)) (“A defendant’s constitutional right to confront witnesses through cross-examination is limited to issues relevant to the trial.”).

1. [REDACTED]

Witness [REDACTED] was convicted of:

(1) misdemeanor [REDACTED], 2005, and

(2) misdemeanor [REDACTED], 2016.

² Unless otherwise specified, all rules mentioned herein refer to the Federal Rules of Evidence.