

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CR No. 08-1976 JCH

JADE HICKS,

Defendant.

**MOTION IN LIMINE TO EXCLUDE EVIDENCE  
OF PRIOR CONVICTION**

JADE HICKS, through her undersigned counsel, Assistant Federal Public Defender Donald Morrison, moves this Court to exclude all evidence of Ms. Hicks' alleged prior conduct as stated in the Government's Notice of Intent to Introduce Evidence Pursuant to Fed. R. Evid. 609 and 806. As grounds for this motion, Ms. Hicks would show the following:

1. Ms. Hicks is charged with assault with a dangerous weapon and assault resulting in serious bodily injury.
2. On June 8, 2009, the government filed a Notice of Intent to Introduce Evidence Pursuant to Fed. R. Evid. 609 and 806 (Doc. 40). This Notice states:

The United States of America hereby notifies the Court and the Defendant of its intent to introduce evidence, as permitted by Fed.R.Evid. 609 and 806, of the Defendant's March 24, 2008 convictions sustained in cause number D-1215-CR-2007-0042 in the District Court for the State of New Mexico.

## DISCUSSION

3. The government seeks to admit evidence of the prior convictions pursuant to Rules 609 and 806.<sup>1</sup>
4. Before admitting the prior convictions pursuant to Rule 806, the Court must determine that they are admissible under Rule 609. *See United States v. Lawson*, 608 F.2d 1129 (6<sup>th</sup> Cir. 1979).

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<sup>1</sup>Fed. R.Evid. 806 provides:

When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

5. Rule 609<sup>2</sup> allows impeachment of witnesses by evidence of conviction of a crime. Subsection (a) allows evidence that the accused has been convicted of a felony “if the court determines that the probative value of admitting the evidence outweighs the prejudicial effect to the accused[.]” The plain language of the rule requires that the conviction be introduced “[f]or the purpose of attacking the character for truthfulness of a witness.”
6. The convictions referenced by the government are for criminal damage to property. Such crimes have little relevance to a witness’s reputation for truthfulness. “Crimes of violence are weak in showing credibility.” 4 Weinstein’s Federal Evidence § 609.05[3][b], n. 17 (listing cases). These convictions have little or no impeachment value.

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<sup>2</sup>Rule 609 states in pertinent part:

(a) General rule.--For the purpose of attacking the character for truthfulness 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; and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.

7. The probative value of admitting the criminal damage to property convictions would be outweighed by the prejudicial effect. The prior conviction would prejudicially portray the defendant as a person who loses her temper without having probative value regarding her truthfulness. *See United States v. Beahm*, 664 F.2d 414, 419 (4<sup>th</sup> Cir. 1981) (trial court erred in admitting conviction for indecent liberties with children when it was similar charged offense, would inflame jury, and was minimally related to credibility). For these reasons, the convictions should be excluded.

WHEREFORE, for the foregoing reasons, Defendant respectfully requests that the Court grant the above-requested relief and order the government to not introduce any evidence or testimony concerning Ms. Hicks' prior conviction as described in the Notice provided by the government.

Respectfully submitted,

**FEDERAL PUBLIC DEFENDER**  
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**Electronically filed 9-16-09**  
/s/ Donald J. Morrison  
Assistant Federal Public Defender  
Las Cruces Office

**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to the following: Jennifer M. Rozzoni, Assistant United States Attorney, and Shana Pennington, Assistant United States Attorney, and all other counsel of record and I hereby certify that I have mailed the document to the following non-CM/ECF participants:

**Electronically filed 9-16-09**  
/s/ Donald J. Morrison  
Assistant Federal Public Defender