

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

**UNITED STATES OF AMERICA,** )

**Plaintiff,** )

**vs.** )

**NICHOLAS DONKERSLOOT** )

**Defendants.** )

**No. 09-00296-06-CR-W-FJG**

**MOTION IN LIMINE TO PRECLUDE IMPROPER IMPEACHMENT  
BY PRIOR CONVICTION, WITH SUGGESTIONS IN SUPPORT**

COMES NOW Nicholas Donkersloot, Defendant herein, and hereby moves this Honorable Court for an order in limine precluding government from impeaching him with an alleged prior conviction, should he testify in his own defense, for the reasons set forth in the following Suggestions in Support.

**SUGGESTIONS IN SUPPORT**

On November 18, 2009, the government filed its Notice of Intent to Use Conviction(s) as Impeachment if Mr. Donkersloot testifies (Doc.# 111). With regard to Mr. Donkersloot, the only conviction alleged is: "On July 17, 1995, Nicholas E. Donkersloot was convicted of misdemeanor assault and sentenced to 30 days imprisonment in the county jail."

The government filed Doc. #111 "pursuant to Fed. R. Evid. 609(a)(1)." Rule 609 provides, 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 was 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 . . .

**(b) Time limit** - Evidence of a conviction under this rule is *not admissible if a period of more than ten years has elapsed* since the date of the conviction of or the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect . . .

Fed. R. Evid. 609 (emphasis added).

The conviction set forth in the government's notice is not for an offense punishable by death or imprisonment in excess of one year; according to the government's Notice, it is a misdemeanor. Moreover, well over ten years have elapsed since the date of the conviction and since Mr. Donkersloot's release from confinement imposed for that conviction. That conviction is not admissible under Rule 609.

WHEREFORE, Mr. Donkersloot respectfully moves this Honorable Court for an order in limine precluding government from impeaching him with an alleged prior conviction, should he testify in his own defense.

Respectfully submitted,

WYRSCH HOBBS MIRAKIAN, P.C.

By:

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ATTORNEY FOR DEFENDANT  
NICHOLAS DONKERSLOOT

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was delivered via electronic notification this 19<sup>th</sup> day of November, 2009, to all counsel of record.

/s/Charles M. Rogers

CHARLES M. ROGERS