

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Case No. 08-00026-04-CR-W-FJG
)
 CHRISTOPHER L. ELDER,)
)
 Defendant.)

**GOVERNMENT’S RESPONSE TO DEFENDANT ELDER’S MOTION
IN LIMINE REGARDING THE ADMISSION OF ANY PLEA AGREEMENT**

The United States of America provides the following response to Defendant Christopher Elder’s motion *in limine* (Doc. 102) regarding the admissibility in evidence of any plea agreement involving witnesses cooperating with the government and testifying in the prosecution’s case-in-chief.

I. Background

Defendant Elder has filed a motion *in limine* requesting this Court to prevent the government from “. . . discussing, mentioning, or alluding to in any fashion the existence of plea agreements (or the contents contained therein) . . . without first obtaining a specific ruling from the Court out of the presence of the jury as to whether the agreement is admissible in whole or in part or not at all.” Defendant’s Motion at 3. The motion should be denied.

II. Discussion

The district court has broad discretion in determining what evidence can be admitted, and in this context, “its decision will be overturned on appeal only if there is an abuse of discretion.” *United States v. Kroh*, 915 F.2d 326, 331 (8th Cir. 1990) (en banc). In the Eighth Circuit, the

guilty plea of a cooperating witness is admissible, even on the government's direct examination of a witness, as evidence of the credibility of the witness, or of his acknowledgment of participation in the offense. *United States v. Brown*, 941 F.2d 656, 659 (8th Cir. 1991); *United States v. Kroh*, *supra*. Whether a witness has a plea agreement with the government, and whether a witness will receive a sentence reduction in exchange for his testimony, is clearly relevant in assessing that witness's credibility. *United States v. Espino*, 317 F.3d 788, 794 (8th Cir. 2003). Moreover, it is not an abuse of discretion to admit a witness-coconspirator's written plea agreement into evidence where jurors are instructed that such evidence is not to be considered as substantive evidence of guilt, but rather is to be used only to evaluate the credibility of the testifying cooperator. *Id.* See also *United States v. Alama*, 486 F.3d 1062, 1067 (written plea agreements may be received into evidence for the purpose of evaluating witness credibility); *United States v. Drews*, 877 F.2d 10, 12 (8th Cir. 1989) (same).

Defendant attempts to rely upon *United States v. Alama*, *supra*, and *United States v. Morris*, 327 F.3d 760 (8th Cir. 2003) in an apparent attempt to exclude any mention whatsoever of even the existence of such agreements. However, in *Morris*, the trial court permitted thorough cross-examination of both witnesses in that case who had executed such agreements. "Both readily admitted they had entered into plea agreements and hoped to receive favorable sentencing recommendations for their cooperation." *United States v. Morris*, 327 F.3d at 762. The trial court had merely barred introduction into evidence of the written plea agreements at the urging of a co-defendant, and it was this decision that was affirmed on appeal. Moreover, the Eighth Circuit in *Alama* declined an explicit invitation to reconsider the decision in *Brown* permitting

the introduction of even the existence of such plea agreements. *United States v. Alama*, 486 F.3d at 1067.

III. Conclusion

WHEREFORE, defendant's motion *in limine* to preclude the government from introducing into evidence the existence of any guilty plea agreements executed by cooperating government witnesses should be denied since such evidence is clearly admissible in the Eighth Circuit for the purposes of evaluating witness credibility.

Respectfully submitted,

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By */s/ Rudolph R. Rhodes, IV*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on October 3, 2008, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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