

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

UNITED STATES OF AMERICA

v.

MARY LYNN ROSTIE,
CYNTHIA S. MARTIN,
TROY R. SOLOMON,
CHRISTOPHER J. ELDER, and
DELMON L. JOHNSON

Defendants

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NO. 08-00026-01/05-CR-W-FJG

**DEFENDANT DELMON JOHNSON'S OBJECTION TO NOTICE OF PRIOR
CONVICTION AND NOTICE OF THE GOVERNMENT'S
INTENT TO USE FOR IMPEACHMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DELMON L. JOHNSON, Defendant, and pursuant to Rule 609 of the Federal Rules of Evidence, files this Objection to Notice of Prior Conviction and Notice of the Government's Intent to Use for Impeachment, and in support hereof would show the Court as follows:

1. The UNITED STATES filed its Notice of Prior Conviction and Notice of the Government's Intent to Use for Impeachment on June 17, 2009.

2. The conviction which the Government seeks to use was entered on August 14, 1998, Defendant Johnson was not incarcerated for said offense, and more than ten (10) years have elapsed since said conviction.

3. Pursuant to Rule 609(b) of the Federal Rules of Evidence, evidence of conviction of a crime is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date.

4. Rule 609(b) “establishes what is in effect a rebuttable presumption against the admissibility of prior convictions more than ten years old.” *United States v. Felix*, 867 F.2d 1068, 1073 (8th Cir. 1989); *United States v. Reeves*, 730 F.2d 1189, 1196 (8th Cir. 1984); *United States v. Singer*, 660 F.2d 1295, 1300 (8th Cir. 1981). The Eighth Circuit has echoed the sentiment of the Senate Judiciary Committee that “convictions over ten years old generally do not have much probative value and should be admitted very rarely and only in exceptional circumstances.” *Reeves*, 730 F.2d at 1196 n. 7, (quoting S. Rep. No. 1277, 93rd Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 7051, 7061-62).

5. The Government has presented this Court with no evidence of exceptional circumstances to justify the admission of Defendant JOHNSON’s prior conviction. Accordingly, such evidence should be excluded.

WHEREFORE, for the reasons set forth above, Defendant DELMON L. JOHNSON objects to the admission of any evidence regarding his prior conviction of August 14, 1998, and requests that this Court exclude any such evidence from the trial of this cause.

Respectfully submitted,

BANNWART & ASSOCIATES, P.C.

By: /s/ Anthony L. Bannwart
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ATTORNEYS FOR DEFENDANT
DELMON L. JOHNSON

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Objection to Notice of Prior Conviction and Notice of the Government's Intent to Use for Impeachment has this day been sent via electronic filing to counsel for all parties of record.

SIGNED this 29th day of June, 2009

BANNWART & ASSOCIATES, P.C.

By: /s/ Anthony L. Bannwart
ANTHONY L. BANNWART

ATTORNEYS FOR DEFENDANT
DELMON L. JOHNSON