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SUPERIOR COURT
 YAVAPAI COUNTY ARIZONA
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 BY: _____
 L. JACKSON

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	P1300CR201600476
)	
Plaintiff,)	
)	MOTION IN LIMINE: Sanitize Prior
vs.)	Felony Convictions Used By The State for
)	Rule 609 Purposes
ANTHONY RICHARDS,)	
)	
Defendant.)	(Hon. Tina Ainley, Div. 3)
_____)	

Under Rule 609, Ariz. R. Evid.R., the this Court has wide discretion in deciding whether to exclude evidence of a prior conviction because its prejudicial effect is greater than its probative value. In this case, the state may wish to impeach the defendant, should he testify, with evidence that he has a felony conviction(s). The courts have previously endorsed an impeachment procedure when such conviction evidence is allowed, whereby the jury is informed that the witness was previously convicted of a felony without the specific felony or facts therein being identified. Under this procedure the prosecution is prohibited from eliciting or presenting any information except that the defendant was previously convicted of a felony, on a specific date, in a particular court.

The state’s Disclosure includes a quasi 404(b) statement:

A list of all prior acts of the defendant(s) which the prosecution will use to prove motive, intent, or knowledge or otherwise use at trial, including for Rule 609, Ariz.R.Evid., purposes ...

(15th Supplemental Disclosure by State, pg. 8).

The Disclosure goes on to list two felony convictions from 2008 in Deschutes County, Oregon: Theft, and Conspiracy to Commit Theft, in which both offenses occurred on March 16, 2005.

First, the state has the burden of proof in a Rule 609 hearing. State v. Becerill, 124 Ariz. 535 (App.1979), State v. Flores, 140 Ariz. 469 (Ct. App. 1984). In addition, the Court must do an analysis, per Rule 609 (Impeachment by Evidence of a Criminal Conviction), to determine the admissibility of those Oregon offenses, i.e. the age of the offenses¹ and release dates, and the probative value for *impeachment*. The Court must determine whether any particular conviction is sufficiently probative on the issue of the witness' credibility to outweigh its prejudicial effect.

As a general rule, evidence of a prior conviction is not admissible to show that the defendant is a bad person or has a propensity for committing crimes of a similar nature. State v. Rose, 121 Ariz. 131, 135-136, 589 P.2d 5 (1978). Evidence of prior crimes, however, is admissible under Rule 609(a), Rules of Evidence, 17A A.R.S., for purposes of impeaching a witness' credibility. Under this rule, the court should make an on-the-record finding based on specific facts and circumstances that the probative value of admitting the evidence outweighs its prejudicial effect. State v. Ellerson, 125 Ariz. 249, 252, 609 P.2d 64 (1980).

(State v. Sullivan, 130 Ariz. 213, 217, 635 P.2d 501, 505 (1981)).

Thus, any impeachment allowed should be only for the purpose of determining the credibility of the witness.

Following a Rule 609 Hearing, should this Court decide that one or both of the prior convictions is admissible for impeachment, then a limiting instruction² is required:

¹ Ariz. R. Evid. 609(b) states: Limit on Using the Evidence After 10 Years. This subsection (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if: (1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and (2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

² Rule 105 requires that the trial court give a limiting instruction upon request.

The jurisprudence of this state has clearly established the right of a criminal defendant to instructions regarding the limited use to be made of prior convictions. In State v. Finley, 85 Ariz. 327, 335, 338 P.2d 790, 796 (1959), we stated:

“Whenever evidence is admitted of other offenses there is an imperative duty on the trial court to clearly instruct the jury as to the restricted and limited purpose for which such evidence is to be considered.”

(State v. Canedo, 125 Ariz. 197, 200, 608 P.2d 774, 777 (1980)).

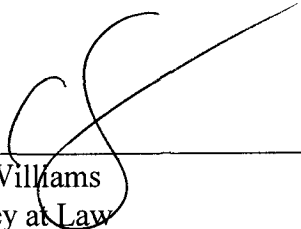
Should the state seek to admit the evidence of prior bad acts through Rule 404(b), then

Arizona Rule of Evidence 404(b) provides that evidence of other acts is admissible to show “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” To introduce such evidence, a proper purpose must be shown under Rule 404(b), it must be relevant under Rule 402, the probative value of the evidence must not be substantially outweighed by its potential prejudicial effect under Rule 403, and the court must give a proper limiting instruction if requested under Rule 105. (Citations omitted).

(State v. Acuna Valenzuela, 245 Ariz. 197, 207 (2018), cert. denied, 139 S. Ct. 1326 (2019)).

For the above-stated reasons, it is requested that the state be precluded from using the above listed felonies, or in the alternative, be precluded from delving into the specifics of the prior felony offense or confinement record.

RESPECTFULLY SUBMITTED on January 9, 2020.



Craig Williams
Attorney at Law

Copies of the foregoing delivered and/or faxed this date to:
Hon. Tina Ainley, Judge of the Superior Court
Josh Fisher, Yavapai County Attorney

By 