

*Not To Be Published:*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

SCOTT L. TINIUS,

Plaintiff,

vs.

CARROLL COUNTY SHERIFF  
DEPARTMENT; CARROLL COUNTY  
SHERIFF; DOUG BASS, individually  
and in his official capacity; JOHN DOE  
DEPUTIES, individually and in their  
official capacities; ST. ANTHONY  
REGIONAL HOSPITAL AUXILIARY,  
INC.; ERIN KLEKOT; DAVID  
MCCOY; TAMMY ROETMAN;  
CHEROKEE MENTAL HEALTH  
INSTITUTE; and, G. SKOREY,

Defendants.

No. C03-3001-MWB

**ORDER REGARDING PARTIES'  
MOTIONS IN LIMINE**

---

***I. INTRODUCTION AND BACKGROUND***

Plaintiff Scott L. Tinius filed this lawsuit on January 2, 2003, against various state and county officials and employees. At the center of this lawsuit is Tinius's continued detention by various defendants following his being stopped by Carroll County Deputies. Defendants Anthony Regional Hospital Auxiliary, Inc., Erin Klekot, Tammy Roetman, and David McCoy ("The Hospital Defendants") are the only defendants remaining in this lawsuit. The remaining claims set for trial on January 5, 2005, are for false imprisonment, assault and/or battery, intentional infliction of emotional distress, invasion of privacy, and

negligence.

The Hospital Defendants have a Motion In Limine (#47) in which they seek the exclusion of the following categories of evidence: (1) existence of liability insurance; (2) any comparison between the wealth of plaintiff Tinius and the Hospital Defendants; and, (3) matters relating to prior lawsuits or claims against the Hospital Defendants. The Hospital Defendants have filed a Second Motion In Limine (#51) in which they request that the court preclude plaintiff Tinius from making any statements, references, inferences, or asking any questions of the Hospital Defendants concerning his claim of false imprisonment. Plaintiff Tinius has also filed a Motion In Limine (#52) in which he seeks the exclusion or limitation of the following categories of evidence: (1) plaintiff Tinius's criminal record; (2) that parties have been dismissed from this case; and (3) that plaintiff Tinius may have committed a criminal act on the date of the incident. In addition, plaintiff Tinius has filed a Second Motion In Limine (#54) in which he seeks to preclude the Hospital Defendants from introducing any evidence of the Hospital Defendants' attempt to involuntarily commit plaintiff Tinius or transfer him to a mental health institution. The parties have filed timely responses to each others motions in limine. The court will consider the admissibility of these categories of evidence *seriatim*.

## ***II. LEGAL ANALYSIS***

### ***A. Applicable Standards***

The parties base their motions in limine frequently on the alleged irrelevance or prejudicial nature of certain challenged categories of evidence. Rule 401 of the Federal Rules of Evidence defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." FED. R. EVID. 401.

Rule 402 of the Federal Rules of Evidence provides generally that “[a]ll relevant evidence is admissible,” while “[e]vidence which is not relevant is not admissible.” FED. R. EVID. 402.

Rule 403, however, provides that even some relevant evidence may be excluded:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

FED. R. EVID. 403. Thus, “Rule 403 allows the district court to exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice.” *United States v. Schumacher*, 238 F.3d 978, 980 (8th Cir. 2001) (quoting *United States v. Davis*, 154 F.3d 772, 780 (8th Cir. 1998), *cert. denied*, 525 U.S. 1169 (1999)). “Rule 403 is concerned only with ‘unfair prejudice, that is, an undue tendency to suggest decision on an improper basis.’” *United States v. Gabe*, 237 F.3d 954, 959-60 (8th Cir. 2001) (quoting *United States v. Yellow*, 18 F.3d 1438, 1442 (8th Cir. 1994)). The Eighth Circuit Court of Appeals has explained the balancing test of relevance against prejudice in more detail, as follows:

Relevant testimony is assumed admissible, Fed. R. Evid. 402, unless its probative value is “substantially outweighed” by the possibility of unfair prejudice. Fed. R. Evid. 403. Once a party has demonstrated the relevance and probative value of the evidence, the role of the district court is simply to determine whether admission of the [evidence] would create an “undue tendency to suggest decision on an improper basis.” Notes of Advisory Committee, Fed. R. Evid. 403. A district court may exclude relevant evidence if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. Fed. R. Evid. 403.

*United States v. Mulder*, 147 F.3d 703, 707 (8th Cir. 1998). A reviewing court will

“give deference to a district court’s decision under the Rule 403 balancing test and reverse only if there was a clear abuse of discretion.” *Schumacher*, 238 F.3d at 980 (quoting *Davis*, 154 F.3d at 780).

This court will consider the parties’ motions in limine in light of these standards.

### ***B. Unopposed Portions Of Motions In Limine***

Plaintiff Tinius does not resist the Hospital Defendants’ Motion In Limine, and because the court concludes that such evidence is irrelevant to resolution of the merits of the issues involved in this litigation the Hospital Defendants’ Motion In Limine is granted. Therefore, plaintiff Tinius is precluded from offering evidence of: (1) existence of liability insurance; (2) any comparison between the wealth of plaintiff Tinius and the Hospital Defendants; and, (3) matters relating to prior lawsuits or claims against the Hospital Defendants.

The Hospital Defendants do not resist that portion of plaintiff Tinius’s Motion In Limine concerning dismissed parties from this case. The court concludes that such evidence is irrelevant to the issues involved in this case. Therefore, that portion of plaintiff Tinius’s Motion In Limine is granted and the Hospital Defendants are precluded from discussing or making any reference to the fact that parties have been dismissed from this case.

### ***C. Evidence Of Tinius’s Criminal Record***

Plaintiff Tinius asserts that his criminal record is irrelevant to any issues in this case and therefore should be excluded. The Hospital Defendants assert that because plaintiff’s credibility as a witness is key in this case, his 1999 conviction for burglary in the State of

Missouri is admissible under Federal Rule of Evidence 609.<sup>1</sup> Rule 609(a) of the Federal Rules of Evidence provides:

For the purposes of attacking the credibility of a witness,

(1) evidence that a witness other than an accused had 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 if it involved dishonesty or false statement, regardless of the punishment.

FED. R. EVID. 609(a).

The court notes initially that burglaries are not crimes that inherently implicate an individual's dishonesty or truthfulness. *See United States v. Foster*, 227 F.3d 1096, 1100 (9th Cir. 2000) (citing *United States v. Glenn*, 667 F.2d 1269, 1273 (9th Cir. 1982)); *United States v. Rodriguez-Andrade*, 62 F.3d 948, 952 (7th Cir. 1995); *United States v. Mejia-Alacon*, 995 F.2d 982, 988 (10th Cir.), *cert. denied*, 510 U.S. 927 (1993); *United States v. Seamster*, 568 F.2d 188, 191 (10th Cir. 1978). A conviction for burglary may nevertheless be admissible under Rule 609(a)(2) if the crime was actually committed by fraudulent or deceitful means. *See Seamster*, 568 F.2d at 191; *United States v. Donoho*, 575 F.2d 718, 721 (9th Cir. 1978); *United States v. Papia*, 560 F.2d 827, 847-48 (7th Cir. 1977). In such a case, the party seeking to introduce the prior conviction would have the burden of producing facts demonstrating that the particular conviction involved fraud or

---

<sup>1</sup>Neither party has provided the court with plaintiff Tinius's complete criminal record.

deceit. *See Rodriguez-Andrade*, 62 F.3d at 952; *United States v. Motley*, 940 F.2d 1079, 1083 (7th Cir. 1991); *United States v. Smith*, 551 F.2d 348, 364 n.28 (D.C. Cir. 1976). Here, the record in this case does not show any of the circumstances surrounding Tinius's burglary conviction. Thus, the court cannot determine at this juncture whether Tinius's 1999 burglary conviction is admissible under Federal Rule of Evidence 609(a)(2).

Turning next to Federal Rule of Evidence 609(a)(1), the court must consider this rule's threshold requirement that the crime was punishable by death or imprisonment in excess of one year. Here, because neither party has provided the court with any specifics of Tinius's burglary conviction, the court cannot determine at this time whether the crime for which Tinius was convicted was punishable by imprisonment in excess of one year. Therefore, this portion of defendant Tinius's motion is denied without prejudice to its renewal at the time of trial.

#### ***D. Reference To A Possible Criminal Act On The Date Of The Incident***

Plaintiff Tinius also seeks to preclude the Hospital Defendants from mentioning that plaintiff Tinius may have committed a criminal act on the date of the incident. Plaintiff Tinius asserts that since he was not charged with any criminal conduct on the date of the incident, that it would be irrelevant and severely prejudicial to him for the Hospital Defendants to mention that he was involved in criminal activity on the day of the incident. The Hospital Defendants counter that evidence of plaintiff Tinius's actions on the day of the incident are relevant to his state of mind and therefore admissible.

To resolve this issue it is necessary to relate some factual background of this case. On the afternoon of January 3, 2001, Carroll County Sheriff Douglas Bass, Carroll County Deputy Sheriff William Croghan, and Carroll County Deputy Sheriff David Potthoff responded to a call of a reported burglary. George Johnston, the person who reported the

incident, indicated that he had returned home from a funeral and found someone in the house. Johnston also reported that the man was traveling on foot. Sheriff Bass and Deputies Croghan and Potthoff responded to the report by traveling in the direction of the residence of the reported burglary. Deputy Potthoff observed a man walking on the highway in that immediate area. Deputy Potthoff followed the man traveling on foot, while Sheriff Bass and Deputy Croghan went to the residence where the incident had taken place to investigate at the scene. Deputy Potthoff approached the man traveling on foot, who was later identified as plaintiff Tinius, exited his patrol car, and asked Tinius for his name and what he was doing. Tinius was subsequently handcuffed and placed in the front seat of Deputy Potthoff's patrol car and transported to St. Anthony Regional Hospital because the deputies allege that they felt that Tinius was a danger to himself and to others.

It is clear that because the investigation of a reported possible burglary directly preceded plaintiff Tinius being transported to St. Anthony Regional Hospital, where the events at issue in this litigation transpired, evidence of the report of a possible burglary and the police's follow-up to that report is relevant in this case to provide background as to how Tinius came to find his way to the hospital and is relevant to show Tinius's mental and physical state just prior to his being transported to St. Anthony Regional Hospital. However, the probative value of this evidence is substantially outweighed by the danger of unfair prejudice to plaintiff Tinius. *See* FED. R. EVID. 403. It is unclear at this juncture whether any of the parties intend to call George Johnston to testify at trial. While his report of a possible burglary at his home started the actions which ultimately led to the events at the center of this case, it is the use of the term burglary and its inherent criminal connotations which is likely to result in unfair prejudice to Tinius. Therefore, this portion of plaintiff Tinius's Motion In Limine is granted. The Hospital Defendants are precluded from mentioning that plaintiff Tinius may have committed a criminal act on the date of the

incident; that Johnston reported a possible burglary at his home, or that the deputies were responding to a report of a possible burglary on the date in question. Rather, the Hospital Defendants shall instruct their witnesses that they may testify that, on the date in question, Johnston contacted the authorities about a man that was at his residence and in responding to that call law enforcement personnel came upon Tinius on the roadway.

***E. Attempt To Involuntarily Commit Or Transfer To Mental Health Institution***

In his Second Motion In Limine, plaintiff Tinius seeks to exclude any and all reference to the Hospital Defendants' attempt to involuntarily commit him or to transfer him to a mental health institution. Plaintiff Tinius asserts that since the Hospital Defendants did not begin the process of involuntarily committing him until after they had performed the catheterization procedure at issue in this litigation, evidence of the Hospital Defendants' actions to involuntarily commit him would be irrelevant and severely prejudicial to him. Plaintiff Tinius argues that the involuntary commitment procedure had no bearing on whether or not the Hospital Defendants committed an unwanted and unnecessary medical procedure on him. The Hospital Defendants counter that evidence concerning Tinius's commitment and transfer to the Cherokee Mental Institution is relevant to explain what transpired after Tinius was admitted to the hospital and is relevant to the question of whether plaintiff Tinius was capable of consenting to the catheterization procedure.

Again, some factual background is necessary to resolve this issue. Defendant Dr. McCoy ordered a blood and urine test for Tinius when Tinius was first brought to the hospital. At the time Tinius presented to the emergency room, it was believed that he was under the influence of either alcohol or drugs. A blood test was ordered to determine if Tinius could be treated at St. Anthony or if he needed to be transferred to another hospital

which was better equipped to treat patients with psychiatric problems. Thus, the blood test was to be used to determine if Tinius was suffering from a physical illness or some type of mental problem. However, because St. Anthony's does not have the capability to process blood specimens quickly, a urine test was also ordered. Thus, evidence of Tinius's commitment to the Cherokee Mental Institution is part and parcel of the events in question in this litigation and is relevant. Evidence of Tinius's commitment is admissible to complete the story of the events in question by providing the context of those events. *See United States v. Royal*, 972 F.2d 643, 647 (5th Cir. 1992) (finding intrinsic evidence admissible in order to permit fact finder to evaluate all the circumstances under which the defendant acted). Therefore, plaintiff Tinius's Second Motion In Limine is denied.

***F. Attempt To Involuntarily Commit Or Transfer To Mental Health Institution***

In their Second Motion In Limine, the Hospital Defendants asks that plaintiff Tinius be precluded from making any statements, references, inferences, or asking any questions of the Hospital Defendants concerning Tinius's claim of false imprisonment. The Hospital Defendants assert that plaintiff Tinius is unable to prove the elements of his false imprisonment claim and therefore it would be clear error and prejudicial to the Hospital Defendants to admit such evidence. Plaintiff Tinius responds that the court previously denied the hospital Defendants' Motion For Summary Judgment and that his false imprisonment claim is properly before the fact finder. The court concurs. In this court's June 14, 2004, Memorandum Opinion and Order regarding the hospital Defendants' Motion For Summary Judgment, the court concluded that plaintiff Tinius had demonstrated that he could present sufficient evidence to establish a *prima facie* case of false imprisonment against the Hospital Defendants. The Hospital Defendants have not

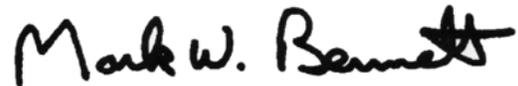
presented any new materials in their Second Motion In Limine which would cause the court to reverse the decision it previously reached when ruling on the Hospital Defendants' Motion For Summary Judgment. Therefore, the Hospital Defendants' Second Motion In Limine is denied.

### ***III. CONCLUSION***

For the reasons detailed above, the Hospital Defendants' Motion In Limine (#47) is granted; the Hospital Defendants' Second Motion In Limine (#51) is denied; plaintiff Tinius's Motion In Limine (#52) is granted in part and denied in part; and, plaintiff Tinius's Second Motion In Limine (#54) is denied.

**IT IS SO ORDERED.**

**DATED** this 22nd day of December, 2004.



---

MARK W. BENNETT  
CHIEF JUDGE, U. S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA