

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

APPEAL NO. 22-14126

UNITED STATES OF AMERICA

Appellee,

v.

SYLVANIS BRICE

Appellant.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

REPLY BRIEF OF APPELLANT SYLVANIS BRICE

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**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

No publicly traded company or corporation has an interest in the outcome of this appeal. The persons and entities listed below have an interest in the outcome of this case:

1. Badalamenti, John. L., United States District Court Judge.
2. Barber, Thomas P., United States District Court Judge.
3. Brice, Sylvanis, Appellant.
4. Chappell, Sheri Polster, United States District Court Judge.
5. Corrigan, Timothy J., United States District Court Judge.
6. Eth, Simon R., Assistant United States Attorney.
7. Holder, Johan, Co-defendant.
8. Hoppmann, Karin, Acting United States Attorney.
9. James, Kaleb, Co-defendant.
10. McCoy, Mac R., United States Magistrate Judge.
11. Mirando, Carol, United States Magistrate Judge.
12. Mizell, Nicholas P., United States Magistrate Judge.
13. Sansone, Amanda Arnold, United States Magistrate Judge.
14. Sinacore, Michael Carl, Assistant United States Attorney.

15. Rhodes, David, Assistant United States Attorney, Chief, Appellate Division.
16. Rosenthal, Russell K., former trial counsel for Appellant Sylvania Brice.
17. Shatz, Susan, former trial counsel for Appellant Sylvania Brice.
18. Summers, Jr., George Ellis, former trial counsel for Appellant Sylvania Brice.
19. Upson, Keith W., appellate counsel for Appellant Sylvania Brice.
20. Waggerby, Uriah, Co-defendant.

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ARGUMENT

I. Mr. Brice’s July 2022 trial occurred beyond the 70 days mandated by 18 U.S. Code § 3161.

In § II A of the Answer Brief, pages 38-39, Appellee relies on *United States v. Isaacson*, 752 F.3d 1291 (11th Cir. 2014), *United States v. McDaniel*, 631 F.3d 1204 (11th Cir. 2011), and *United States v. Register*, 182 F.3d 820 (11th Cir. 1999).

Counsel for Mr. Brice acknowledges these cases apply to the facts at bar for the reasons given in the Answer.

Counsel for Mr. Brice does not concede, as the Answer argues, that even if Mr. Brice had moved for dismissal under the Act the speedy claim would still fail, Answer Brief § II B (1)-(2), pages 39-44, and Mr. Brice stands on the argument and authority cited in the Initial Brief.

II. The court abused its discretion by admitting Mr. Brice’s prior convictions pursuant to Rule 609 where the court conducted no analysis as to whether the probative value outweighed the prejudicial effect and failed to explicitly identify the factors the court considered and weighed.

Appellee acknowledges that the court here did not make the on-the-record finding required under *United States v. Preston*, 608 F.2d 626 (5th Cir. 1979), and argues that any error in the admission of Mr. Brice’s priors was harmless because “the United States’ evidence would have been more than enough to support Brice’s conviction.” Answer at 45 and 48.

In support, Appellee relies on, *inter alia*, *United States v. Burston*, 159 F.3d 1328 (11th Cir. 1998). Answer at 45 and 48.

“Erroneous evidentiary rulings will not result in reversal if they are ‘harmless,’ meaning that the party asserting error has not shown prejudice to a substantial right.” *United States v. Burston*, 159 F.3d 1328, 1336 (11th Cir. 1998). “In the context of Rule 609, error is harmless ... if the Government’s case was strong enough to support a conviction even apart from the witness[’s] testimony.” *Id.*

Answer at 45.

In *Burston*, it was defendant Terry Burston who sought to impeach government witness Garland Wilson with the nature and number of Wilson’s convictions and was precluded from doing so. *Id.* at 1331, 1334.

Here, the Rule 609 error is not merely the admission of Mr. Brice’s prior convictions, but rather the court’s admission of additional prejudicial information that even the Government acknowledged was prejudicial:

“These are all certified convictions. And, again, if we can reach some sort of agreement, I don’t need to move these in, in front of the jury, **because they contain a lot of information that [counsel for Mr. Brice] probably doesn’t want in there about sentences and other matters**, but I’m happy to do it if we can’t reach an agreement.” (Doc. 426 at 254), *emphasis added*.

Counsel for Mr. Brice (correctly noted) that “[a]ll the Government has to get in is he has a prior conviction for X. That’s what’s appropriate, not the details.” (Doc. 426 at 256).

The court announced that absent a stipulation, “. . . I’m prepared to make a ruling tomorrow in a way that will be very quick and easy to facilitate with the jury if you can’t get something figured out. Okay? So that’s my ruling on that.” (Doc. 426 at 257).

When the court learned no stipulation had been reached, the court ruled, “First page of everything [is being admitted].” (Doc. 426 at 274).

“First page of everything” included, by the Government’s admission, materials that were prejudicial, and Government’s exhibits A-D, Mr. Brice’s prior convictions, were admitted over objection. (Doc. 426 at 254). (Doc. 427 at 39).

Without the benefit of the district court’s identification of the pertinent Rule 609 factors the court explicitly identified and weighed, *United States v. Preston*, 608 F.2d at 639-40, it is impossible to determine, as Appellee urges, whether there is any reasonable possibility that the admission of the prejudicial material affected the outcome of the case.

Accordingly, and at a minimum, this Court should remand the case for the Rule 609(a)(1) determination Mr. Brice was entitled to at trial, and for further proceedings consistent with *Preston*. *Id.*

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), per Fed. R. App. P. 32(a)(7)(A), because this brief contains only 1,272 words total in Times New Roman 14 point proportional font inclusive of the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

S/ Keith W. Upson, Esq.
Counsel for Appellant Sylvanis Brice

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing was served on Assistant United States Attorney Emily C. L. Chang via this Court's Electronic Case File System on this 11th day of June, 2024.

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