

**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

JEFFREY R. GREEN,
Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,
Defendant.

3:11-cv-00210 JWS

ORDER AND OPINION

[Re: Motion at docket 31]

I. MOTION PRESENTED

At docket 31, plaintiff Jeffrey R. Green (“Green” or “plaintiff”) moves *in limine* to exclude certain evidence. Defendant Allstate Insurance Company (“Allstate” or “defendant”) opposes the motion at docket 45. Plaintiff’s reply is at docket 56. Oral argument was not requested and would not assist the court.

II. DISCUSSION

A. Character Evidence

Green concedes that evidence of his financial condition is relevant to motive. He argues, however, that evidence of why he was in a particular financial state is inadmissible character evidence under Rule 404. Rule 404(a) only precludes introduction of character evidence “to prove that on a particular occasion [a] person

1 acted in accordance with the character or trait.”¹ There is no indication that Allstate
2 intends to introduce evidence of Green’s character in order to prove conduct in
3 conformity with that character.

4 **B. Green’s Criminal Record**

5 **1. Rule 404**

6 Green argues that evidence of Green’s misdemeanor and felony convictions is
7 inadmissible pursuant to Rule 404(b). Rule 404(b) precludes introduction of “[e]vidence
8 of a crime . . . to prove a person’s character in order to show that on a particular
9 occasion the person acted in accordance with the character.”² There is no indication
10 that Allstate intends to introduce evidence of Green’s criminal convictions to prove
11 character to show conduct in conformity with that character. To the extent Green seeks
12 notice if Allstate intends to use such evidence, that requirement only applies in criminal
13 cases.³

14 **2. Rule 609**

15 The court is unable to rule on the admissibility of any particular conviction to
16 impeach Green’s credibility because Green’s motion does not provide any context or
17 specific objections. Green requests that he be given notice if Allstate intends to
18 introduce evidence of his convictions to impeach him. However, there is no notice
19 provision in Rule 609.

20 **C. Evidence of Drug Dealing Allegations**

21 Green argues that testimony suggesting that Green is a drug dealer is irrelevant
22 and unfairly prejudicial. Allstate argues that it is premature to exclude evidence that
23 Green is a drug dealer and that such evidence could be relevant to motive, insofar as it
24 reflects on Green’s financial situation. Compared to other evidence of Green’s financial
25

26 ¹Fed. R. Evid. 404(a).

27 ²Fed. R. Evid. 404(b).

28 ³Fed. R. Evid. 404(b)(2)(A).

1 condition, the probative value of evidence that he is a drug dealer is slight. Moreover,
2 that probative value is substantially outweighed by the danger of unfair prejudice and its
3 tendency to confuse the issues.⁴

4 **D. Evidence of Domestic Violence**

5 Green argues that evidence of domestic violence between him and his girlfriend,
6 Christa Finley, is irrelevant and unfairly prejudicial. Allstate argues that such evidence
7 suggests that Green had a motive to set his house on fire while his girlfriend was still in
8 it. Allstate also maintains that it considered those allegations in denying Green's claim.
9 Green responds that Allstate has never raised that theory in the past. The court agrees
10 with Green that, under the circumstances, the danger of unfair prejudice, confusion of
11 the issues, and potential waste of time substantially outweigh the probative value of
12 allegations that Green and his girlfriend engaged in domestic violence.

13 **E. Evidence of Polygraph Tests**

14 Green argues that evidence of polygraph examinations is inadmissible pursuant
15 to *Brown v. Darcy*.⁵ Allstate correctly notes that *Brown* was overruled by *Daubert v.*
16 *Merrel Dow*.⁶ Allstate also notes that a *Daubert* analysis is not necessary here because
17 Allstate only intends to introduce evidence of Green and his girlfriend's polygraph
18 examinations to demonstrate that Allstate had a reasonable basis to deny coverage.
19 Because Green is no longer pursuing a bad faith claim—and has conceded that Allstate
20 had a reasonable basis to deny coverage, presenting polygraph examination evidence
21 would be needlessly cumulative.⁷

24
25 ⁴Fed. R. Evid. 403.

26 ⁵783 F.2d 1389 (9th Cir. 1986).

27 ⁶509 U.S. 579 (1993). See, e.g., *United States v. Cordoba*, 104 F.3d 225, 228 (9th Cir.
28 1997).

⁷Fed. R. Evid. 403.

1 **F. Expert Findings Not Expressed in Report**

2 Green argues that defendant’s experts should not be allowed to opine as to
3 matters not contained in their reports. Federal Rule of Civil Procedure 26(a)(2)(B)
4 states that expert witnesses must provide a written report containing “a complete
5 statement of all opinions the witness will express and the basis and reasons for them.”⁸
6 Although the court agrees with Allstate that the report need not spell out the expert’s
7 testimony word for word, the court disagrees with Allstate that “Mr. Shouman [Allstate’s
8 expert] can testify as to findings and opinions supporting his conclusion not expressly
9 stated in his report.”⁹ Allstate’s contention is contrary to the express language of
10 Rule 26.

11 **G. Evidence of Accelerant**

12 Green argues that the limited “evidence of an accelerant should be prohibited
13 because Mr. Shouman cannot reasonably conclude from the chemical testing alone that
14 an accelerant was used in the fire.”¹⁰ The presence of gasoline residue provided a
15 basis for Shouman’s opinion. Green believes that such evidence may only be used to
16 corroborate other evidence. Green’s criticism of the test results goes to the weight of
17 the evidence, not its admissibility. The evidence is relevant to Allstate’s defenses, and
18 Green will have an opportunity to discredit it at trial.

19 **H. Non-Testifying Experts**

20 Green argues that Allstate should be precluded from presenting opinions of other
21 experts through its testifying expert. Specifically, Green argues that because Shouman
22 was not involved in the test of the fire debris samples sent to MDE Forensics, Inc., he
23 should not be able to present the conclusions of Dale Mann, the chemist who conducted
24
25

26 ⁸Fed. R. Civ. P. 26(a)(2)(B)(i).

27 ⁹Doc. 46 at 19.

28 ¹⁰Doc. 32 at 6.

1 the testing. The parties discuss Alaska Rule of Evidence 703 which does not apply in
2 this lawsuit.

3 Federal Rule 703 provides that “[i]f experts in [a] particular field would reasonably
4 rely on those kinds of facts or data in forming an opinion on the subject, they would
5 need not be admissible for the opinion to be admitted.”¹¹ However, “if the facts or data
6 would otherwise be inadmissible, the proponent of the opinion may disclose them to the
7 jury only if their probative value in helping the jury evaluate the opinion substantially
8 outweighs their prejudicial effect.”¹² Here, the data from MDE Forensics would be
9 reasonably relied upon by experts in the field of fire investigation, but would otherwise
10 constitute inadmissible hearsay. Rule 703 instructs the court to consider the probative
11 value of the data as it pertains to the jury’s evaluation of the expert’s opinion. Because
12 Shouman’s opinion was based in large part on the test results, the court concludes that
13 its probative value in this respect substantially outweighs any prejudicial effect.

14 V. CONCLUSION

15 For the reasons above, Green’s motion *in limine* at docket 31 is **GRANTED** in
16 part and **DENIED** in part as follows:

17 1) It is denied with respect to evidence of why Green was in a particular financial
18 condition.

19 2) It is denied without prejudice to an objection at trial, or renewal in proper
20 context, with respect to Green’s criminal history. It is denied with respect to Green’s
21 request for notice from Allstate.

22 3) It is granted insofar as evidence that Green is a drug dealer is excluded.

23 4) It is granted insofar as evidence of domestic violence involving Green is
24 excluded.

27 ¹¹Fed. R. Evid. 703.

28 ¹²*Id.*

