

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID HAMPTON TEDDER,

Defendant.

ORDER

02-CR-105-C

A hearing was held in this case on May 22, 2003, before United States District Judge Barbara B. Crabb. Plaintiff appeared by Dan Graber and Tim O'Shea, Assistant United States Attorneys. Defendant appeared in person and by counsel, Mark Eisenberg and H. Manuel Hernandez.

At the outset, defendant's counsel advised the court that they were willing to agree to live video testimony from defendant's secretary thus making it unnecessary to take her testimony in advance of trial.

Counsel discussed the voir dire questions as proposed by the United States Magistrate Judge. With some minor modifications, the voir dire questions were approved as proposed.

We then took up the matter of the parties' motions in limine. Starting with the government's motions in the order in which they were filed, motion no. 1 to exclude evidence of penalties to which defendant might be subject if convicted is GRANTED. Motion no. 2 to exclude any discussion of reasonable doubt is GRANTED. Motion no. 3(a) addresses the government's request to exclude any evidence by the defendant that the Internal Revenue Service was unfair in its investigation of defendant. The motion is GRANTED. However, defendant can attempt to show that a specific agent or agents had a bias against him. He cannot ask any questions on this subject unless before doing so he advises the court and opposing counsel of the evidence he has that there was bias toward his client.

Motion 3(b) to preclude evidence that it was unfair of the United States to indict defendant is GRANTED. Defendant may not put in any evidence of his belief that he should not have been indicted. Motion 3(c) to preclude evidence of the proliferation of the offshore betting and internet casinos is DENIED. However, defendant may not put in unlimited evidence on this issue. He may call one witness on this subject other than himself, or, if he does not testify, two witnesses on the subject. Motion 3(d) to preclude evidence that offshore sports books are legal in Curaçao is DENIED. Defendant can put in evidence that Gold Medal's conduct was legal in Curaçao, but he cannot put in any evidence or even imply that it was legal to run an offshore betting operation in Curaçao, at least so far as the

betting operation extended to the United States. The government's motion 3(e) to preclude any evidence that defendant's deferred compensation program was legal is GRANTED. Defendant cannot put in any evidence about the nature or details of the deferred compensation plan so long as the government makes no effort to show that the various techniques that defendant used are evidence of his motive or of his knowledge of the illegal nature of the funds. The government's motion 3(f) is GRANTED. Defendant may not call any non-attorney witnesses who would testify that they told defendant that offshore sports betting was legal. The government's motion no. 4 to preclude any evidence of penalties applicable to cooperating witnesses is DENIED, but defendant is limited to asking what the witnesses understood about the penalties to which they were exposed. Government's motion no. 5 to exclude evidence of the legality of estate planning, foreign banks and correspondent bank accounts is GRANTED. Defendant may not put in any evidence of the legality of these matters unless the government opens the door to such evidence. However, defendant is entitled to an instruction about these matters in the form suggested by the government in its brief.

Government's motion no. 6 to exclude any evidence of D'Ambrosia's being a drunken philanderer is DENIED in part and GRANTED in part. The defendant may ask D'Ambrosia about his alcoholism insofar as it might relate to his memory of the events about which he is testifying. Defendant does not intend to ask anything about D'Ambrosia's mistress.

The government has filed a Rule 404(b) notice of its intention to introduce evidence about defendant's continued participation in a company known as "Clear Pay" to show that he continued to handle money for sports books after he knew that the source of the funds was illegal. Although defendant objects to this evidence as unduly prejudicial, I am persuaded that it is more probative than prejudicial and that it would not be a waste of time. As defendant argues, his intent and knowledge are critical issues in this case. The evidence about his participation in Clear Pay goes directly to those issues.

The government brought up the matter of a defense of "advice of counsel." Defendant stated that he does not intend to advance such a defense but that he does intend to testify that he received legal advice that made him think that offshore gambling was legal. The government pointed out that in the event defendant testifies to this effect, the court has to instruct the jury that anything he was advised goes only to the question of his intent and does not provide him a defense to the charges.

Defendant has moved to preclude the government from going into areas of defendant's past as bearing on his credibility. The motion is GRANTED, provisionally. The government is not to go into any of those areas unless defendant testifies and opens the door during his direct testimony. At that time, the government can seek a ruling from the court about what areas it can go into in cross-examination.

The parties are working out the use of charts and other exhibits during opening statements. They had no other matters to bring to the court's attention.

Entered this 27th day of May, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge