

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TYREESE TAYLOR,

Defendant.

ORDER

06-CR-0105-C-02

Defendant Tyreese Taylor has moved for a new trial on the ground that he was deprived of a fair trial by the government's introduction into evidence of inadmissible evidence. In addition, he has moved for judgment of acquittal on the ground that the jury did not have an adequate basis for finding that the substance involved in the offenses was crack cocaine.

The motion for judgment of acquittal will be denied. The jury had sufficient evidence from which it could make the reasonable finding that the substance involved was the "crack" form of cocaine. As defendant concedes, a number of witnesses said that the controlled buys of crack they made from defendant were crack. This alone would be sufficient to allow the jury to find that the substance was crack. Defendant denigrates this evidence, saying that

all of these witnesses testified in this manner only because they thought it was their job or their obligation to do so. But the jury is the ultimate decision maker when it comes to evaluating witness credibility and it found the testimony of these witnesses to be credible. In addition, the government's expert witness testified that the substance he examined tested positive for cocaine base and that its physical form was consistent with that of the substance commonly known as "crack."

The motion for a new trial rests on three allegedly inadmissible references: a reference by the government in its opening statement to defendant's 2001 conviction for possession of crack cocaine, references by police witnesses to prior contacts with defendant and references by witnesses to their association with defendant. The reference to defendant's earlier conviction was not improper when it was made because defendant had advised the government that he was putting the government to its proof on his intent to distribute the crack cocaine. At the final hearing before the court, defendant had submitted a proposed jury instruction for simple possession of crack cocaine. This submission put defendant's intent into issue, making it permissible for the government to introduce evidence of his 2001 conviction and to discuss it in its opening statement. Midway through the statement, defendant advised the court and the government that he was withdrawing his proposed instruction on simple possession. By this time, it was too late for the government to avoid mention of the prior conviction. The error was not the government's. Defendant cannot

lead the government into thinking it has a right to introduce certain evidence, then change his defense mid-stream and accuse the government of misconduct.

As for the references by the police that they had had previous contacts with defendant, the government handled these references just as it had been instructed to do at the final hearing. Defendant was not prejudiced by the references.

Finally, it was legitimate for the confidential informants to explain how they knew defendant and why they went to him to buy crack. Their testimony put the controlled buys into context.

ORDER

IT IS ORDERED that defendant Tyreese Taylor's motions for a new trial and for acquittal are DENIED. Defendant has failed to show any valid ground for ordering a new trial or for entering a judgment of acquittal.

Entered this 9th day of November, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge