

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

UNITED STATES OF AMERICA,

Plaintiff

v.

JACOB STADFELD,

Defendant.

FINAL PRETRIAL
CONFERENCE ORDER

08-cr-138-bbc

On August 20, 2010, this court held the final pretrial conference. Defendant Jacob Stadfeld was present with his attorney, Michael Krejci. The government was represented by Assistant United States Attorney Daniel Graber.

Prior to the hearing, the court circulated two sets of proposed voir dire and jury instructions to the parties, the second to account for the co-defendant's resolution of his case. The government submitted several proposed voir dire questions, *see* *dk.* 190, and is satisfied that the court's voir dire adequately covers the topics raised. Stadfeld's only pre-hearing voir dire request was to allow sidebar questioning of venire people who knew his name (*see* *dk.* 198), a procedure to which the court agreed. To the same effect, we added one general question about Amos Mortier, responses to which will be heard at sidebar. A copy of the final version of the voir dire questions is attached to this order.

In response to the court's packet of jury instructions, the government offered a buyer-seller instruction that lists certain circumstances the jury may consider in determining the question. *See* *dk.* 191, citing *United States v. Johnson*, 592 F.3d 749 (7th Cir. 2010). The government acknowledged that this court has rejected similar proposals in other recent cases, but the government wishes to make its record at the final hearing. Stadfeld's only request was leave

to file a theory of defense instruction at the close of the government's case-in-chief. *See* dkt. 197. That request is granted. As always, the court will fine-tune the post-trial instructions after the close of evidence at trial.

The parties' myriad *in limine* submissions, dkts. 183-185, 192 and 196, most with subparts, can be parsed into three overlapping categories.¹ First, the government wishes to offer against Stadfeld a great deal of evidence regarding his *pre*-conspiracy drug trafficking, including a 1996 felony marijuana conviction, pursuant to Rules 404(b) and 609. Stadfeld strenuously objects to all this evidence as unfairly prejudicial and irrelevant. Second, pursuant to *Santiago*, and Fed. Rs. Ev. 404(b), 804(b)(3) and 608(b), the government intends to offer statements by Mortier and former co-defendant Delzer, along with evidence of the alleged burglary at Fred Schubert's condominium, as well as Delzer's statements to Dominic Dasho during a post-disappearance search regarding "Big Jake's" possible role. Stadfeld objects to most of this evidence as well. Third, although the government will not offer any evidence regarding Amos Mortier's disappearance, it looms in the background and every witness is keenly aware of it, so it would benefit the court and the parties to discuss appropriate preventative and remedial measures.

Less critically, Stadfeld may wish to be heard on the government's summary evidence offered pursuant to Rule 1006, and might wish to be heard on whether he may put in evidence of his voided immunity agreement with the state. As for the government's demonstrative charts, Stadfeld needs to see them before deciding whether to object. Stadfeld does not dispute the

¹ The best overviews are in dkts. 183 at (A)-(I), 185, and 196, all parts.

government's request to exclude evidence or argument about the definition of reasonable doubt or the penalties he personally faces if convicted.

As for housekeeping, the parties now are predicting a three or four-day trial. The government is resigned to one alternate juror, Stadfeld is lobbying mildly for two. The government has asked that the court call in at least 50 to 55 venire people because it expects many of them to be disqualified because of their views on marijuana laws and prosecutions; the government also predicts that some venire people will be familiar with the Amos Mortier investigation. Stadfeld is aware of his obligation to obtain street clothes for trial. Attorney Krejci is aware that he must present his evidence on the court's ELMO. The parties had no other matters to bring to the court's attention.

Entered this 20th day of August, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

Voir Dire: United States v. Stadfeld, 08-cr-138-bbc

Statement of the case: This is a criminal case, in which the defendant, Jacob Stadfeld, is charged with being a member of a marijuana trafficking conspiracy between 2000 and 2004. The defendant has entered a plea of not guilty to the charge against him.

Have any of you heard of this case before today? [*sidebar if necessary*] Would this affect your ability to serve impartially as a juror in this case?

1. Scheduling: this case will begin today and is scheduled to conclude by this Thursday. Are any of you actually unable to sit as jurors because of this schedule?

2. Is there anything about the nature of the charge in this case that might affect your ability to be impartial in this case?

3. The court reads Pattern Jury Instructions of the Seventh Circuit:

The defendant is presumed to be innocent of the charge. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty.

The government has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the government throughout the case. The defendant is not required to prove his innocence or to produce any evidence.

The defendant has an absolute right not to testify. The fact that the defendant does not testify cannot be considered by you in any way in arriving at your verdict.

Would any of you be unable or unwilling to follow these instructions?

4. Ask counsel to introduce themselves, the defendant and the case agent. Ask whether any jurors know any of them. [*Sidebar if they know Jacob Stadfeld*]

5. Are any of you familiar with a person named Amos Mortier? [*Sidebar if necessary*]

6. Invite each juror, in turn, to rise, and provide the following information:

Name, age, and city or town of residence.

Marital/partner status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse/partner and any adult children.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

Whether you regularly listen to talk radio, and if so, to which programs.

Whether you regularly use the internet to visit sites other than e-mail or personal business, and if so, what types of sites you visit most often.

Whether you have bumper stickers on your vehicles and what they say.

7. Do any of you in the jury box know each other from before today?

8. Have any of you, your relatives or any close friends ever belonged to any group that is concerned in any way with marijuana, alcohol, or other drugs, either for or against them? What is the name of that group, and what is your involvement in it? Would this affect your ability to be impartial in this case?

9. Do any of you think that the marijuana laws in this country or the enforcement of marijuana laws are either too harsh or too lenient?

10. Do any of you believe that a person charged with a drug crime is probably a dangerous person simply because he is charged with a drug crime?

11. Do any of you, your family or close friends work in a health related field which treats or counsels people who have problems related to alcohol or other drugs? Would this affect your ability to be impartial in this case?

12. Have any of you, your relatives or close friends ever needed, sought, or obtained any sort of counseling or treatment for a problem related to alcohol or any other drug? [*Sidebar if necessary*]. Would this affect your ability to be impartial in this case?

13. Have any of you, your relatives, or close friends ever been accused of, or convicted of any criminal offense, or any civil offense involving cocaine or marijuana? [*Sidebar if necessary*]. Would this affect your ability to be impartial in this case?

14. You will hear evidence about plea agreements and immunity agreements that the government reached with some witnesses in order to obtain their testimony in this case. Do any of you have strong feelings about the government's use of plea agreements or immunity agreements in criminal investigations? [*Sidebar if necessary*]. Would this affect your ability to be impartial in this case?

15. Do any of you, by virtue of past dealings with the United States government, or for any reason, have any bias for or against the government in a criminal case?

16. Have any of you, your relatives, or close friends ever worked for the local, county, state, or federal government? Would this affect your ability to be impartial in this case?

17. Have any of you, your relatives, or close friends ever worked for, or had other professional contact with any law enforcement, investigative or security company or agency, or any prison? Would this affect your ability to be impartial in this case?

18. Have any of you ever belonged to any organization or group that excluded people because of their race, gender, or religion?

19. Would any of you judge the credibility of a witness who was a law enforcement officer or government employee differently from other witnesses solely because of his or her official position?

20. Would any of you judge the credibility of a witness who had been convicted of a crime in the past differently from other witnesses solely because of this prior conviction?

21. If the defendant were to choose to testify, would any of you judge his credibility differently from other witnesses solely because it was the defendant who was testifying?

22. Have any of you, your relatives, or close friends ever been the victim of any crime? Would this affect your ability to be impartial in this case?

23. Have any of you, your relatives, or close friends ever been a witness in a trial? Is there anything about this experience that might affect your ability to be impartial in this case?

24. Have any of you, your relatives, or close friends ever had any negative experience with any lawyer, any court, or any legal proceeding that would affect your ability to be impartial in this case?

25. How many of you have served previously as a juror in another case? Please tell us in which court you served, approximately when, the type of cases you heard, whether you were foreperson, and the verdicts.

26. If at the conclusion of the trial you were to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of guilty?

27. If at the conclusion of the trial you were not to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of not guilty?

28. The court will instruct you on the law to be applied in this case. You are required to accept and follow the court's instructions in that regard, even though you may disagree with the law. Is there any one of you who cannot accept this requirement?

29. Do you know of any reason whatever, either suggested by these questions or otherwise, why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

JUROR BACKGROUND INFORMATION

When asked to do so by the court, please stand and provide the following information about yourself:

Name, age, and city or town of residence.

Marital/partner status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse/partner and any adult children.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

Whether you regularly listen to talk radio, and if so, to which programs.

Whether you regularly use the internet to visit sites other than e-mail or personal business, and if so, what types of sites you visit most often.

Whether you have bumper stickers on your vehicles and what they say.