

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARTHUR CONNER,

Defendant.

ORDER

12-cv-8-bbc
07-cr-31-bbc

Defendant Arthur Conner is appealing from the September 20, 2012 order denying his motion for post conviction relief under 28 U.S.C. § 2255. His notice of appeal has been docketed in the Court of Appeals for the Seventh Circuit. Now, he moves for correction or modification of the record under Fed. R. App. P. 10(e)(2), which allows corrections to the record under certain circumstances.

Defendant has raised three matters relating to the statement of facts in the September 20 order, dkt. #43, that he thinks need correcting. As a technical matter, a motion to amend a written order should be brought under Fed. R. Civ. P. 60(a), which allows a court to correct clerical mistakes in orders. Because defendant is proceeding pro se, I will interpret his motion as one brought under Rule 60(a), and, because his appeal has been docketed, I will make any changes conditionally, awaiting leave from the court of appeals, as Rule 60(a) requires.

The first alleged mistake is that the court erred in saying that the confidential informant, Abdul Harriel, *wrote out* a statement for the police after the drug transaction with defendant. Dkt. #43 at 4. Defendant says that it was the officer, Aaron Dammen, who did the actual writing of Harriel's oral statement. Defendant is correct.

Defendant's second objection is to the court's statement at page 12 of the September 20 order: "Counsel then tried to raise a reasonable doubt in the minds of the jurors that what defendant had handed to either Michael Huges or Harriel was crack cocaine and not something else." The objection is not entirely clear. I read it as defendant's objection to what he thinks the court assumed as fact: that during the drug transaction, defendant handed *something* to either Michael Hughes or to Harriel. If defendant interprets this statement as the court's assumption, he is wrong. I was simply describing the situation in which his counsel found herself in responding to Harriel's trial testimony on this point, which contradicted his post arrest statement to Dammen. In the statement Harriel gave to Officer Dammen, he said, "I [Harriel] saw Toby hand Michael something and Michael [Hughes] immediately turned around and handed me [Harriel] the crack cocaine. At trial, Harriel testified that defendant had handed crack cocaine directly to him (Harriel). Counsel was trying to impeach Harriel's trial testimony, as explained in the order. Dkt. #43 at 12.

Working with what she had, Welsh impeached Harriel about his prior statement to the police in which he had said that defendant had handed something to Michael Hughes, not to him [Harriel], in contradiction of his [Harriel's] trial testimony that defendant had been the one to give him [Harriel] the crack cocaine after receiving the money from Michael Hughes. Counsel then tried to create a reasonable doubt in the minds of the jurors that what defendant had handed to Michael Hughes or to Harriel was crack cocaine and not something else . . .

According to Harriel, the key witness against defendant, defendant handed something to somebody. Counsel wanted to diminish the force of Harriel's testimony on direct examination that defendant had handed drugs directly to Harriel; she was trying to show that it was not clear whether defendant handed anything at all to Harriel or to Hughes and also that if defendant did hand something to Hughes, it was not the cocaine. She was suggesting the possibility that Hughes had the cocaine with him from the beginning. There is no reason to amend the sentence about what defendant handed to Hughes or Harriel. It is what I found at the evidentiary hearing.

As for defendant's third objection, defendant is correct. It was a mistake to say that Harriel's testimony under cross examination was contrary to his post arrest statement to Dammen. In fact, it was consistent with his post arrest statement in which he said that as soon as defendant had gotten into the car, defendant had handed Michael Hughes something and that Hughes had then handed the crack cocaine to Harriel. Harriel's testimony under direct examination contradicted his statement to Dammen, but his testimony under cross examination did not.

If the court of appeals grants leave to amend the September 20 order to reflect the two errors defendant has identified, I will amend the order by deleting the entire third sentence in the first paragraph on page 4 and I will amend the last sentence of that paragraph by deleting the words "Harriel wrote out for Dammen" and inserting the following: "Harriel gave to Dammen."

ORDER

IT IS ORDERED that if the Court of Appeals for the Seventh Circuit grants leave to do so, I will amend the order entered herein on September 20, 2012, to make the following changes:

Deleting the entire third sentence in the first paragraph on page 4 and amending the last sentence of the same paragraph by deleting the words “Harriel wrote out for Dammen” and inserting the following: “Harriel gave to Dammen.”

Entered this 7th day of January, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge