

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHNNY ESPINOZA,

Defendant.

MEMORANDUM

12-cr-104-bbc

A final pretrial conference was held in this case on September 4, 2013. The United States was represented by Robert Anderson and Julie Pfluger. Defendant Johnny Espinoza was present in person and by counsel, Dennis Ryan.

The only two issues remaining for resolution were the viability of defendant's entrapment defense and the government's Santiago proffer. After hearing the evidence that defendant wanted to introduce in support of the entrapment defense, I ruled that the defense could not succeed because defendant had no evidence that any government agent said anything at all to him, let alone tried to persuade him to commit a crime for which he had no predisposition. Defendant attended the drug deal at the behest of his brother. He did not show up because any government agent had invited him to do so. The entrapment defense is justified as a response to improper government conduct, not to protect persons who happen to be at the scene of a crime for reasons having nothing to do with any

inducement by the government. Defendant is free to argue that he came to the scene of the drug deal thinking he was helping his brother pay off a gambling debt and that he had no awareness that the money he was bringing along was for buying drugs, but he cannot argue that he was entrapped into coming.

The government's Santiago proffer was sufficient to establish that it was more likely than not that defendant and his brother were conspiring to buy drugs. Therefore, statements made by defendant's brother during the course of that conspiracy that were made in furtherance of the conspiracy may be introduced into evidence against defendant.

Counsel indicated that they might be able to finish the trial in one day and certainly in two. They had no other matters to bring to the court's attention.

Entered this 5th day of September, 2013.

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