

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

SCOTT BODLEY,

Defendant.

OPINION AND ORDER

13-cr-52-bbc

Defendant Scott Bodley was convicted of 26 counts related to obstructing the Internal Revenue Service, filing fictitious documents, filing a false tax return and evading taxes and was sentenced to a term of 78 months. He represented himself at trial with some assistance from standby counsel and, although new appellate counsel was appointed for him, has chosen to proceed on his own on appeal.

On his own behalf, defendant has filed a number of motions for the production of documents and additional motions challenging the denial of earlier motions for production of documents. After reviewing the motions, I conclude that defendant has shown no reason why he is entitled to the materials he is seeking, with the exception of a complete copy of the trial transcript, which he should have in his possession by now. In all other respects, the motions will be denied.

In ruling on the pending motions, I am guided by the order entered by the court of

appeals on February 4, 2016, dkt. #235, in which the court instructed defendant to make his request for documents to this court and to

1. Request only documents that he needs in order to present his arguments;
2. Identify those documents with as much specificity as possible; and
3. Explain why he needs the documents to litigate his appeal.

Id. at 3.

OPINION

A. Motion for Reconsideration of Denial of January 25, 2016 Motions

In motions filed on January 25, 2016, defendant asked for copies of (1) grand jury transcripts and Jencks Act materials, dkt. #228, (2) a full copy of the trial transcript, dkt. #227; and (3) transcripts of any Daubert hearings and Rule 16 disclosures, dkt. #228. These motions were denied, dkt. #245, and he now seeks reconsideration. Dkt. #249. (He also asked for certification of the complete record on appeal, for the record to be forwarded to the court of appeals and to him forthwith and for the court reporter and the clerk of the district court to explain why they did not follow the Civil Rules of Appellate Procedure and why they delayed in providing the records. Dkt. #227, 229. These requests were denied, dkt. #233, and defendant has not asked for reconsideration.)

1. Grand jury transcripts and Jencks Act materials

a. Grand jury transcripts

Defendant asks for copies of the grand jury transcripts, but he has given no good reason for needing them. The record does not show that he made any requests for grand jury transcripts before or during trial. In his present motion, he says only that he has a right to the grand jury transcripts because some of the witnesses who testified before the grand jury are now deceased and he never had a chance to cross examine them at trial.

Defendant had a chance to cross examine all of the witnesses who testified against him at his trial, which is all that matters. It does not matter whether there were some witnesses who testified against him at the grand jury who were unavailable to testify at trial, so long as the government produced enough witnesses at trial to prove him guilty beyond a reasonable doubt.

In connection with his request for grand jury transcripts, defendant says that he had no chance to see the credentials of certain witnesses called at trial. He does not explain what the credentials have to do with the grand jury transcripts, why he thinks he is entitled to see the credentials or how access to them would have been relevant to his defense. Nevertheless, he raised an issue of the credentials at trial with respect to one witness, Eric Kopp, and he can argue the denial of his request to see Kopp's credentials on appeal if he believes it has merit.

b. Jencks Act materials

Under the Jencks Act, 18 U.S.C. § 3500, after any witness testifies in a criminal case against the defendant, that defendant has a right to obtain from the government any statement made by that witness relating to the subject of the witness's testimony. Fed. R. Crim. P. 26.2(a) (incorporating requirements of 18 U.S.C. § 3500). If the government refuses to turn over any statements, the defendant may ask the court for assistance, at which point, the court may order the government to turn over the statements to the court to determine in camera whether they relate to the witness's testimony. E.g., United States v. Allen, 798 F.2d 985, 994 (7th Cir. 1986) (explaining procedure to obtain judicial review of allegedly impeaching materials). In this case, defendant has not shown that he ever asked for any statements or identified the statements of any particular witness he wanted to review but could not. Therefore, it is too late for him to ask for those statements.

2. Trial transcripts

In an order entered on February 24, 2016, dkt. #245, I denied defendant's request for a copy of the transcript for use in preparing his defense. At that time, I believed that he had received it from his former appellate counsel, Timothy Baldwin, who had written the court to advise the court that he had mailed a copy of the transcript to defendant on or before February 10, 2016. Dkt. #245. After the February 24 order was entered, Baldwin advised the court that the transcript had not reached defendant before his transfer to FMC Butner, and that Baldwin then sent the trial materials to defendant at Butner, but had to

send them again after the first mailing was returned because it was not marked “Legal Mail.” Baldwin ltr. dated Feb. 29, 2016, dkt. #247. In the month since Baldwin’s letter was sent, defendant has not written to say that he did not receive the transcript, so I assume that he has his copy.

As defendant can see from his copy of the transcript, it includes the court’s discussion with defendant and the government about the voir dire questions that were to be asked of the prospective jurors. Dkt. #208. It also includes the conference on jury instructions. Dkt. #206, at 21-41.

3. Daubert hearings

Defendant’s request for a transcript of any Daubert hearings must be denied because there were no such hearings. Defendant appears to understand this because he argues that the court abdicated its judicial duties by failing to hold a Daubert hearing.

Defendant raises a new issue, contending that he is entitled to an investigation to determine the identities of the expert witnesses who authenticated defendant’s signature on the original documents. From this contention I gather that he is asserting that experts were necessary to validate his signature, that he could not have been convicted without such validation and because he was convicted, the government must have called an expert and questioned him before the court ex parte and there must be transcripts of that questioning.

If this is his argument, he has adduced no evidence to support it, so there is no need to reconsider the motion.

B. Additional Motions

In addition to his request for reconsideration of the rulings set out in dkt. #245, defendant has moved for rulings by the court on a number of other matters he thinks require court action. Ordinarily, the filing of a notice of appeal divests the district court of jurisdiction to entertain new motions, United States v. Ramer, 787 F.3d 837, 838 (7th Cir. 2015). Since defendant has filed his notice of appeal, I will simply identify the recently-filed motions and set out my understanding of their status for the assistance of the court of appeals.

1. Defendant alleges that neither this court nor the prosecutor provided him a sworn affidavit proving that the court had jurisdiction over him, dkt. #249, at 3. The record includes no such affidavit.

2. Defendant believes that this court failed to rule on his motion to dismiss the case against him for lack of jurisdiction, dkt. #156. Id. In fact, this motion was denied at the final pretrial hearing. Dkt. #165.

3. Defendant argues that he is entitled to see the credentials of all of the government agents who testified against him at trial. Dkt. #249, at 5. Because the court refused to allow him to review the credentials of a witness, Eric Kopp, who testified against him as an IRS agent but who stated on the stand that his paycheck was issued by the United States Department of Agriculture, tr. trans., dkt. #211, 2-A-124, it is probable that defendant can raise the issue of the relevancy of Kopp's credentials on appeal.

4. Defendant believes that he was entitled to full documentation of the qualifications

of each grand and petit juror who served in this case. Dkt. #249 at 7. Defendant never raised this issue until after he had filed his notice of appeal.

5. Defendant contends that he is entitled to Brady material. However, he never raised that issue in this court before he filed his notice of appeal.

6. Defendant has asked for copies of all notes sent by the jury to the court. These notes are part of the record, dkt. #172, and will be sent to the court of appeals at the appropriate time. If defendant wants copies of the notes now, they are available from the clerk of court for \$.10 a page.

7. Rule 16 materials. In the early stages of this trial, defendant's appointed counsel asked for these materials in a motion for discovery. Dkt. #21. The record does not show that defendant followed up on this request, although the magistrate judge discussed Rule 16 with defendant at the pretrial conference held on January 15, 2015. Dkt. #123. On the Friday before the start of trial, defendant filed a "Motion for Government Informants" dkt. #160. This motion could be construed as a motion for Rule 16 materials, but it should be noted that defendant never said anything about it at the February 3, 2015 final hearing.

ORDER

IT IS ORDERED that defendant Scott Bodley's motion for reconsideration of the order entered in this case on February 24, 2016, dkt. #245, is DENIED. The following motions, nos. 1-5 and 7, filed by defendant, dkt #249, after he had submitted filed his notice of appeal and seeking

1. A sworn affidavit proving that the court had jurisdiction over him;
2. A ruling on his motion to dismiss the case against him for lack of jurisdiction;
3. An opportunity to review the credentials of all of the government agents who testified against him at trial;
4. Full documentation of the qualifications of each grand and petit juror who served in this case; and
5. Brady material;
7. Rule 16 materials.

are DENIED.

Defendant's motion no. 6 is GRANTED. Defendant may obtain copies of the two jury notes by sending \$.20 to the clerk of court along with his request for copies of the jury notes.

Entered this 30th day of March, 2016.

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