

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEPHEN B. BINNING,

Defendant.

ORDER

05-CR-130-C

A final hearing was held in this case on Thursday, February 23, 2006 before United States District Judge Barbara B. Crabb. The government was represented by Paul Connell. Defendant appeared in person and by counsel, Joel Winnig.

Mr. Connell advised the court and defendant's counsel that he would agree to an instruction that unlawfully "means an act done voluntarily and intentionally and with the intent to do something the law forbids," so long as the government is allowed to put in the following evidence: (1) physical evidence of seven pens that it alleges were taken from the mail by defendant; (2) evidence that defendant was warned about delaying mail by a supervisor; (3) evidence that on another occasion defendant was warned by a witness who had seen defendant delaying mail in the same way he supposedly delayed it in this case; and

(4) a confession by defendant to postal inspectors following his apprehension. The government's request was GRANTED.

In other rulings, I determined that defendant cannot ask questions about defendant's non-commission of crimes on other occasions and may not argue that investigators violated any rights defendant has under the collective bargaining agreements as being probative of the government's desperation to have a successful result of its investigation. Although defendant cannot put in any evidence about his rights under the collective bargaining agreement, he can call a union steward to discuss common practices in the postal service. However, before doing so, he must make a proffer at sidebar, outside the presence of the jury.

Defendant cannot put in evidence of the length of time the inspectors investigated or referred to videotapes that the government did not turn over to defendant.

The government can tell the jury that defendant is shown sitting down in the videotapes because of a medical condition that the postal service accommodated.

Defendant may ask about any gaps in the tapes only as to the length of the time between defendant's setting aside a package and his co-defendant's taking the package. Defendant can also ask whether the gaps show any other misconduct by defendant.

The government wants to show a redacted video. It agreed to show the video to defendant's counsel so that defendant can raise any objections it has to the redacted version.

Also, prior to trial, counsel are to decide between themselves whether the audio portion of the videotape should be run. The government is planning not to run the audio portion because it believes it is prejudicial to defendant.

Entered this 27th day of February, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge