

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

GERALDO VALTIERRA,
TIMOTHY CLARK and
DARIOUS T. KELLY

Defendants.

ORDER

06-CR-0126-C

A final pretrial conference was held in this case on November 2, 2006 before United States District Judge Barbara B. Crabb. The government appeared by Assistant United States Attorney Timothy O'Shea. Defendant Geraldo Valtierra appeared in person and by Ralph Maczyk, Darryl Goldberg and Damon Charonis. Defendant Timothy Clark appeared in person and by Joseph Sommers. Defendant Darious Kelly appeared in person and by David Mandell.

Shortly before the hearing, the government filed informations against the defendants pursuant to 21 U.S.C. § 851 and moved to dismiss the conspiracy count of the indictment against defendant Kelly and filed a superseding indictment reflecting the change. This filing

led to defendant Kelly's moving for severance. The government did not oppose the motion. The motion was granted.

Defendant Clark asked that defendant Kelly go to trial before he and defendant Valtierra had their trial. That request was denied. Defendant Gregory Bennett has not been apprehended but may be arrested soon. If so, he and defendant Kelly can be tried together.

Counsel predicted that the case would take four days to try. They understand that trial days will begin at 9:00 a.m. and will run until 5:30 p.m., with at least an hour for lunch, a short break in the morning and another in the afternoon. It is possible that trial will begin later on Tuesday, November 7, 2006, to allow the jurors to vote.

The witnesses will be sequestered, with the exception of the two case agents. Defendant Valtierra objects to having the two case agents present, but his objection was overruled.

Counsel are either familiar with the court's visual presentation system or will make arrangements with the clerk for some instruction on the system.

Counsel will question the witnesses in the order they are listed in the indictment unless they agree otherwise. Counsel should use the microphone at all times and address the bench with all objections. If counsel need to consult with one another, they should ask permission to do so. Only the lawyer questioning a particular witness may raise objections to questions put to the witness by the opposing party and argue the objection at any bench

conference.

The government made a Santiago proffer from which I found that the government had shown by a preponderance of the evidence that defendants Valtierra and Clark were members of a conspiracy and that the statements at issue were made in furtherance of the conspiracy.

The government may use 404(b) evidence against defendant Valtierra only for rebuttal, depending on defense proffered by Defendant.

The government may use the 1993 conviction against defendant Clark if he testifies *and* if it obtains verified evidence that defendant was not released from imprisonment on this conviction until 1997.

The court ruled on the motions in limine as follows:

The use of penalties to impeach the government's witnesses is permissible, provided counsel do not imply that the same penalties would apply to their clients.

There shall be no reference made to Amy Hill's sexual history, but counsel may ask whether Hill was having an affair at the same time she was writing to defendant Clark.

Counsel are to make no reference to DEA Agent Gade's 2002 conviction.

Counsel are to make no reference to pending drugs charges against defendant Valtierra in Illinois.

Defendants do not object to the government's motion to exclude evidence of Amy

Hill's refusal to release her medical records.

Defendant Clark may question Green about offering to bribe Clark not to tell about the murder for which Green was investigated.

The government does not oppose defendant Clark's motion to introduce evidence of Quincy Clark's drug dealing in Madison during 2003. Defendant may ask Quincy Clark whether he had an ongoing drug distribution operation.

If trial is not completed by Thursday, November 9, 2006, it will reconvene on Tuesday, November 14, 2006.

Entered this 3d day of November, 2006.

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