IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

06-CR-0105-C

v.

TYREESE R. TAYLOR,

Defendant.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

A final hearing was held in this case on August 9, 2006, before United States District Judge Barbara B. Crabb. Assistant United States Attorney Robert Anderson represented the government; defendant was present in person and by counsel, David Karpe.

The main issue for discussion was the use of defendant's 2001 conviction for distributing cocaine. The government contended that it is admissible under Fed. R. Evid. 404(b) for two reasons: the circumstances of defendant's arrest for that conviction would be probative of defendant's having had cocaine in his pants at his 2006 arrest and his conviction would be probative of his intent to distribute, as charged in this case.

At the time of defendant's 2001 arrest, he was concealing approximately 1.3 grams of cocaine in his rectum. When he was arrested in this case, the arresting officer patted him

down and felt what appeared to be plastic packaging surrounding small hard lumps in the rear of defendant's pants. Because the arrest took place in a public place, the officer did not ask defendant to remove his pants but placed him in a squad car and took him to the police station to undergo a search. Upon arrival, he searched defendant but found none of the objects he had felt earlier. He then searched the squad car and found 13 grams of wrapped crack cocaine behind the seat in the rear of the car, where defendant had been sitting.

From what defendant's counsel said at the final hearing, it appears that defendant will take the position at trial that the drugs found in the squad car were not his but were secreted by someone else and that, if they were his, they were not for distribution but for personal use. Allowing a previous conviction for distribution is highly relevant on the question of defendant's intent to distribute. United States v. Jones, No. 04-2447, slip op. at 16 (7th Cir. August 1, 2006 (earlier conviction for drug trafficking "evidenced [Jones's] knowledge of the drug trade and the practices of drug dealers"). A prior conviction is evidence that a defendant has the knowledge, opportunity and contacts to engage in the distribution of controlled substances. Defendant has asked for a lesser included offense instruction informing the jury that if it cannot find that defendant intended to distribute the cocaine in his possession, it may find him guilty of possession only. Under these circumstances, in which defendant is clearly denying his intent to distribute, the government may introduce the 2001 conviction. Not only would it tend to establish a matter in issue, it is clearly

similar enough to the charge in this case to be relevant, it would be sufficient to support a jury finding that defendant committed the similar act and the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

As to whether the government may introduce the circumstances of defendant's prior arrest with cocaine in his pants to prove that he had cocaine in his pants when he was arrested in this case, I have concluded, contrary to my statements at the final hearing, that the evidence is not probative of any permissible issue and too close to propensity evidence to be admissible at trial.

As discussed at the final hearing, the government is to delete from its tape recording of an alleged drug buy on March 2, 2006, the words "cuz the mo'fucker got shot." The government does not plan to introduce evidence of other acts taking place in 2004 under Fed. R. Evid. 404(b) and it will not make any reference to defendant's alleged gang affiliations with the G.D. or 6th Street Boys. He will instruct his witnesses not to refer to

these organizations.

Entered this 11th day of August, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge