

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

FREDERICK G. KRIEMELMEYER,

Defendant.

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ORDER

07-CR-0052-C-01

A hearing was held in this case on September 12, 2007, to take testimony from two persons who had served as jurors in defendant Frederick G. Kriemelmeyer's criminal trial on August 13-15, 2007. The chief deputy clerk of court had overheard the two in conversation as they returned to the clerk's office to obtain their certificates of jury service. He believed that he had heard the term "CCAP," which might refer to the state of Wisconsin's Circuit Court Automation Program, which contains the state court records of persons convicted or charged in state court, and "it was all there." Because the words suggested that one of the jurors had consulted CCAP and looked at defendant's criminal record, the government and defendant were notified and asked for their positions on what steps, if any, should be taken.

The government responded with a letter setting out its position that a hearing should

be held at which the two jurors should be questioned about the comments made in the clerk's office. Defendant responded with a motion for mistrial, based on the conversation. In addition, he asked that the witnesses be sequestered. This motion was granted.

A hearing was scheduled and the two former jurors subpoenaed to attend and give testimony. The first juror called testified that one or more of the jurors had asked after the return of the verdict what defendant's sentence might be and she had responded that it would show up in CCAP. She testified that when she said this she forgot that the sentence would be a federal one and would not be incorporated into the state's program. She testified further that she had not looked at CCAP at any time during the trial, that no juror had discussed CCAP during deliberations and that she had not discussed her testimony at the hearing with anyone, including her husband, before she came to court.

The second juror testified that he had not been part of the conversation with the first juror but that he may have overheard part of it. He said that he had not heard any juror mention CCAP or defendant's prior criminal record during jury deliberations or discuss any other information that had not been admitted into evidence.

The chief deputy clerk testified that he had been about half a foot from two jurors as they entered the clerk's office and that he had heard the snippets of conversation set out above. He was unable to say whether he heard the first juror say, "it was all there"; "it is all there"; or "it's all there."

From the evidence adduced at the hearing, I am satisfied that no extraneous information about defendant's prior criminal history reached the jury during its deliberations. Accordingly, there is no need to consider whether the information on CCAP concerning defendant's criminal history was so prejudicial to him as to require a mistrial. Defendant's motion for a mistrial will be denied.

At the hearing, defendant asked for subpoenas of the jurors' telephone records and computer hard drives so that he could determine whether they had looked at CCAP during the trial or spoken with one another before their hearing testimony. This request was denied. The witnesses' testimony was consistent and persuasive and did not give rise to any doubts about the credibility of their responses so as to require verification through telephone records or hard drives.

#### ORDER

IT IS ORDERED that defendant Frederick G. Kriemelmeyer's motion for a mistrial is DENIED.

Entered this 12th day of September, 2007.

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

