

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARTHUR T. CONNER,

Defendant.

FINAL PRETRIAL
CONFERENCE ORDER

07-CR-031-S-03

On July 23, 2007, this court held the final pretrial conference. Defendant Arthur Conner was present with his attorney, Kelly Welsh. The government was represented by Assistant United States Attorney Daniel Graber.

Prior to the hearing, both sides submitted proposed additional voir dire questions. After discussing the proposals with the parties and for reasons stated on the record, I added the government's first two questions and defendant's first question, and declined to add the rest. A copy of the final voir dire is attached to this order.

The government proposed one additional pattern jury instruction be added to the court's packet. Conner objects to the instruction as unnecessary; that, however, is an issue to be raised at the close of the evidence during the final run-through of the jury instructions. At that time, Judge Shabaz will cull the packet and tailor the instructions to fit the evidence presented at trial. Conner had no additional instructions of his own to propose.

The parties had a number of hotly-contested *in limine* issues to bring to the court's attention. The government filed a multi-part notice of intent to offer evidence at trial (dkt. 66). First, the government intends to offer certain convictions of Conner's as impeachment under Rule 609 if he takes the stand. The government supported this Rule 609 proffer with a memorandum (dkt. 79) to which Conner likely will reply before the final hearing on August 25. In dkt. 66, the government also proffered its intent to offer other acts evidence as "intricately related" to the charged conduct or, alternatively, as Rule 404(b) evidence. Conner vigorously objects to introduction of this evidence in a brief docketed as 77. The government filed a reply docketed as 78. Conner noted his intent to surreply to the government's reply at the final hearing. The parties' briefs clearly state their positions so that there is nothing I can add that would illuminate the matter further for the district judge.

In dkt. 66, the government also notes its intent to offer under Rule 801(d)(2)(E). alleged "co-conspirator statements" of its cooperating witnesses, Conner's former co-defendants Hughes and Robison. Conner objects to this in dkt. 76, claiming that the government cannot meet its burden of persuasion under *Santiago*.

The government filed a separate motion *in limine* (dkt. 74) asking the court to exclude four types of evidence. Conner disputes the first and third points, but does not dispute the second and fourth. Conner wishes to be heard on whether the jury should learn of the penalties he personally faces, and whether the jury should learn of the potential penalties the co-defendants who now are cooperating with the government had faced but have avoided by cooperating. The dispute is framed for the court.

Finally, the parties notified the court at the hearing that they currently disagree on how much – if any – of the tape-recorded conversations should be played to the jury. Right now, the government does not intend to play the tapes at all, instead relying upon the live witnesses to recount the conversations. Conner objects that the tapes are more complete and more accurate; he has reserved the right to argue this point at the final hearing, but may decide upon further reflection that he does not wish to pursue this point.

Finally, the court addressed with Attorney Welsh Conner's letter that he wrote without her knowledge and sent directly to Judge Shabaz. Attorney Welsh reported that Conner's main concerns had been addressed and that she would advise the court if she needed any assistance. Conner did not disagree with this report. The parties had no other substantive matters to bring to the court's attention.

The parties are aware that their jury selection is scheduled for July 30, 2007 at 9:00 a.m., with the trial set for August 1, 2007 at 9:00 a.m. The parties agreed that one alternate juror would be sufficient. Attorney Welsh acknowledged her obligation to obtain street clothes for Conner to wear at trial. The parties had no other mechanical concerns to bring to the court's attention.

Entered this 24th day of July, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge