

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

COREY THOMAS and PRINCE
BECK,

Defendants.

ORDER

08-cr-87-bbc

Defendant Corey Thomas has asked the court to be permitted to take the video deposition of one of his prospective witnesses and use the deposition at trial. The motion will be denied because defendant has not shown either that the witness is “unavailable” for trial under Fed. R. Evid. 804(b)(1) or that her testimony would be relevant to the jury’s determination of defendant’s guilt.

Defendant is seeking to take the deposition because the witness has a planned vacation. This does not make her unavailable in the legal sense because defendant could subpoena her and require her to abandon her vacation. But even if she were available, it is not likely that her testimony would be allowed. She is expected to testify that she has no

independent memory of when defendant Thomas arrived at the Dane County courthouse for a sentencing hearing in an OWI case scheduled for 9:45 a.m., May 9, 2008, but that in her dealings with him, he tended to arrive early for such hearings or at least on time and she thinks she would have remembered had he been late. Also, she has no memory of his demeanor on that occasion but she does not recall his appearing to be “out of breath, nervous, agitated or otherwise out of the ordinary.” This testimony would not tend to show that defendant was not one of the men who robbed Bank Mutual on May 9, 2008 at approximately 9:15. He could have traveled to the courthouse from the bank in well under the half-hour between the time the bank was robbed and his hearing was to begin. Aside from the fact that the witness has no memory of his demeanor that day, whether he did not appear nervous or agitated to the witness says little about his actual state. He may be a good actor. In other words, the witness’s testimony would not help the jury make its decision.

ORDER

IT IS ORDERED that defendant Corey Thomas’s motion for an order permitting him

to depose a witness by video for use at trial is DENIED.

Entered this 19th day of February, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge