

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

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDRE G. SIMMONS,

Defendant.

---

ORDER

09-cr-122-bbc

A final hearing was held in this case on December 2, 2010, before United States District Judge Barbara B. Crabb. The United States appeared by Peter Jarosz, Assistant United States Attorney. Defendant appeared in person, pro se, but with standby counsel Paul F.X. Schwartz.

The parties are predicting that if the case is tried to a jury, it will take 5 days to try. They understand that trial days will begin at 9:00 and will run until 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon. Defendant is to advise the court no later than noon on Friday, December 3, 2010, whether he wishes to have a trial to the court or to a jury.

The parties agreed that with the exception of the case agent, all witnesses would be sequestered. Defendant will meet with the clerk for instruction on the visual presentation system.

The parties have previously agreed to the voir dire questions in the form distributed to them at the final pretrial conference before the magistrate judge. The jury will consist of 14 jurors to be selected from a qualified panel of 32. Defendant will exercise 10 strikes against the panel, plus one strike against the prospective alternate jurors. The government will exercise six strikes, plus one against the alternates.

Before the parties give their opening statements, the court will give the jury the introductory instructions on the way in which the trial will proceed and their responsibilities during the trial. The jury will be allowed to take notes during evidentiary stages of the trial.

Mr Jarosz and Mr Simmons are to use the microphones at all times and address the bench with all objections. If they need to consult with one another, they should ask for permission to do so.

Final decisions on the instructions and form of verdict will be made at the instruction conference after the parties have presented all of their evidence.

The following rulings were made on the parties' motions in limine.

The Government's Motions

\_\_\_\_\_ 1. To preclude defendant from saying anything about the circumstances of his self-representation. GRANTED.

2. To preclude defendant from arguing or introducing evidence that his prosecution is the result of racial bias. GRANTED.

3. To preclude defendant from introducing evidence relating to the refusal of any government witness to agree to an interview by the defense. GRANTED.

Defendant's Motions in Limine

1. Motion to use 1997 charge of delivering crack cocaine in Eau Claire County as 404(b) evidence against Muhammad Simmons. DENIED because defendant has failed to show the relevance of this charge to any issue in dispute.

2. Motion to use 2006 charge of delivering crack cocaine in Chippewa County as 404(b) evidence against Muhammad Simmons. DENIED because defendant has failed to show relevance of this charge to any issue in dispute. The evidence is admissible under Fed. R. Evid. 609.

3. Motion to use 2003 charge of delivering cocaine in Chippewa County as 404(b) evidence against Muhammad Simmons. DENIED because defendant has failed to show relevance of this charge to any issue in dispute. The evidence is admissible under Fed. R. Evid. 609.

4. Motion to use 2009 charge of delivering cocaine in Chippewa County as 404(b) evidence against Muhammad Simmons and federal charge of delivery of cocaine. DENIED because defendant has failed to show relevance of this charge to any issue in dispute. Again, it appears that the evidence will be admissible under Fed. R. Evid. 609.

5. Motion to use 2009 charge of delivery of cocaine in Eau Claire County against Sara Johnson. The charge arises out of the same facts underlying this case. If it has resulted in a conviction, the conviction can be introduced against Johnson under Rule 609 and defendant may explore whether Johnson has received any benefits from the government in connection with her testimony. He has not identified any reason why evidence of the charge would be independently admissible under Rule 404(b). DENIED.

6. Motion to use 2009 charge of delivery cocaine in Eau Claire County against Angela Howard. If the charge has resulted in a conviction, the conviction can be introduced against Johnson under Rule 609 and defendant may explore whether Howard has received any benefits from any government in connection with her testimony. Defendant has not identified any reason why evidence of the charge would be independently admissible under Rule 404(b).

7. Motion to use 1998 delivery of cocaine charge in Trempealeau County against Jadari Dillard as 404(b) evidence. DENIED unless defendant can show anything about the charge that is relevant under Rule 404(b).

8. Motion to use 2006 delivery of cocaine charge in La Crosse County against Jadari Dillard as 404(b) evidence. DENIED unless defendant can show anything about the charge that is relevant under Rule 404(b). It is not enough to show that Dillard was dealing only a small amount of cocaine and was accompanied in his car by a female.

9. Motion to use 2009 delivery of cocaine charge in Eau Claire County against Jadari Dillard as 404(b) evidence. DENIED. If this case has resulted in a conviction, the conviction is admissible under Rule 608, Also, defendant may explore whether Dillard has received any benefits from the federal government in connection with his testimony.

10. Motion to use 2005 delivery of cocaine charge in Eau Claire County against Michael Cowart. DENIED. The facts that Cowart was dealing a small amount of crack cocaine, using a confidential informant, and the same investigators were involved do not make the evidence admissible under Rule 404(b).

11. Motion to use 2009 delivery of cocaine charge in Eau Claire County against Michael Cowart. DENIED unless defendant can explain why evidence of the charge would prove any of the factors identified in Rule 404(b). If this case has resulted in a conviction, the conviction is admissible under Rule 609, Also, defendant may explore whether Cowart has received any benefits from any government in connection with his testimony.

12. Motion to use evidence of 2009 delivery of cocaine case in Eau Claire County against Shannon Simmons. DENIED unless defendant can explain why the charge would

prove any of the factors identified in Rule 404(b). If this case has resulted in a conviction, the conviction is admissible under Rule 609. Also, defendant may explore whether Simmons has received any benefits from any government in connection with her testimony.

13. Motion to use as 404(b) evidence against Kurt Schulte his previous work as a confidential informant. DENIED but defendant may question Schulte about the work and whether he benefited from it in some way. Defendant may also ask Schulte whether he told the truth in the previous case but if Schulte says he did, defendant cannot introduce evidence to the contrary. Defendant may call the investigators who worked with Schulte and ask them their opinion of Schulte's truthfulness.

14. Motion to use three 1997 misdemeanor convictions as evidence against Sara Johnson is DENIED because the convictions are too old to be probative of truthfulness.

15. Motion to use two 1997 convictions against Muhammad Simmons, one of theft by fraud and one of theft by false representations is DENIED

16. Motion to use old convictions of Kurt Schulte is DENIED because the convictions not for crimes involving dishonesty or a false statement by Schulte.

17. Motion to use Schulte's prior service as a confidential informant as 608(b) evidence is DENIED under Rule 403, because the probative value is outweighed by the prejudicial effect.

18. Motion to introduce exhibits documenting Shannon Simmons's prior criminal

acts involving dishonesty and false statements. DENIED. The documents are not admissible but defendant may question Simmons about these prior convictions.

Entered this 3d day of December, 2010,

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

