

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERIC GARVEY,

Defendant.

FINAL PRETRIAL
CONFERENCE ORDER

10-cr-134-wmc

On February 24, 2011, this court held the final pretrial conference. Defendant Eric Garvey was present with his Richard Christensen. The government was represented by Assistant United States Attorney Peter Jarosz.

Prior to the hearing, the court circulated draft voir dire questions to the parties. The only proposed change was to increase the predicted trial length, since the attorneys now are predicting that this case *might* go into Thursday, and could *possibly* stretch into Friday. Because that was the only change, I have not attached a new copy of the voir dire to this order.

Next we discussed the universe of jury instructions. Prior to the hearing the government proposed a set of post-trial elements-of-the-crimes instructions that actually specified each vehicle by type and VIN. *See* dkt. 105. The government withdrew its proposal in favor of the court's elements instructions, which grouped the counts by the statute allegedly violated and directed the jury to hew to the vehicle specifics set forth in each count. At the hearing, Garvey asked for a hybrid of the two approaches, suggesting that we keep the court's by-statute format but within that also specify each vehicle by type and VIN. I declined to adopt that approach for two reasons: first, it would lead to a more cumbersome and confusing set of element instructions than either separate format. Second, the jury will have a stand-alone copy of the indictment with it during deliberations, which will permit it simultaneously to view each specific count and the elements for that count, thereby obviating the need to provide vehicle specifics in the elements instructions. Garvey did not buy off on the court's approach and might wish

to advocate his position at the final hearing on March 1. Because the court did not change anything substantive in the instructions, I have not attached a copy of the jury instructions to this order.

Third on the agenda were in limine issues. Garvey had no in limine issues to bring to the court's attention. Garvey did not oppose the government's motion to correct the incorrect vehicle description in the indictment *see* dkt. 106, so I granted that motion. The government acknowledged its obligation to present a jury-edited indictment to Garvey and the court by Monday, February 28. As for the government's omnibus notice of intent to offer evidence, dkt. 103, there were no genuine disputes, although Garvey reserves the right to object to any government summary charts or demonstrative charts once he sees final versions.

As noted above, although this trial might end as early as Wednesday, they thing a four-day trial is more likely and they suggested that the court predict up to a five-day trial to the venire panel in an abundance of caution. The court should seat two alternative jurors. Garvey will have street clothes to wear for trial. The parties are aware they must present evidence on the court's ELMO. The parties had no other matters to bring to the court's attention.

Entered this 25th day of February, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge