

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

GARY MAYS,

Defendant.

FINAL PRETRIAL
CONFERENCE ORDER

12-cr-15-wmc

On April 25, 2013, the court held a final pretrial conference. Defendant Gary Mays was present with his attorney, David Mandell. The government was represented by Assistant U.S. Attorney Paul Connell.

The court discussed with the parties their proposed changes to the voir dire and the jury instructions. Updated copies of those documents are attached to this order. Most of the changes involved editing the instructions to reflect that this now is a one-count case, not a seven count case. I have asked the attorneys to double-check for implementation in this regard. Both sides wish to be heard at the close of the evidence on post-trial jury instructions. Finally, although no one brought this up in their filings or at the final pretrial conference, it occurred to me while editing the voir dire that the court does not ask the venire panel whether anyone would have trouble being impartial in a case where the defendant already has pled guilty to six charges of distributing heroin but is contesting a seventh charge that adds an enhancer based on allegedly causing serious bodily injury to the consumer. Perhaps this is tied into the court's decision at the final hearing on the motions in limine, but the record should be tightened up on the lack of a voir dire question about this.

Next we discussed the motions in limine, basically just culling the undisputed motions from the disputed motions. These motions, listed by docket number, are not disputed and do

not require discussion at the final hearing: 35, 37, 38, 39, 40, 59, 86 (a letter, not a motion) 105, 107, 108, 109. Still needing discussion and resolution at the final hearing are the motions docketed as 36, 42, 43, 44, 45,(57/110), (58/111) 91, 110, and ¶¶ 2(a) - (d) and (f) of the government's notice of intent to offer evidence, dkt. 112. As these motions reflect, the parties vigorously dispute what evidence each side may adduce at trial about the series of events that led to the charge that is being tried; the parties dispute with equal vigor how the witnesses and attorneys may describe, characterize, or present inferences drawn from this evidence. At the final hearing the parties will be seeking the clearest lines the trial judge can draw so that they know what is in-bounds and what is out-of bounds for opening statements and witness questioning. I allowed each side until noon on Monday, April 29, 2013 to present any additional written argument they wished the court to consider at the April 30, 2013 final hearing.

As for housekeeping, the parties predict a two or three day trial, for which they have requested two alternate jurors. Mays has access to street clothes for trial, but may voluntarily choose to appear in prison garb. If so, the court then should confirm with Mays personally that this is a knowing and voluntary choice. The parties are aware they must use the court's ELMO to present evidence.

Entered this 29th day of April, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge