

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 09-00296-02-CR-W-FJG
)
ERIC BURKITT,)
)
Defendant.)

**MOTION IN LIMINE TO PRECLUDE ANY REFERENCE BY THE
GOVERNMENT TO THE CHARGES OF RAPE AND FORCIBLE SODOMY
PRESENTLY PENDING AGAINST MR. BURKITT IN JACKSON COUNTY
MISSOURI WITH SUGGESTIONS IN SUPPORT**

The defendant was charged by indictment for the conspiracy offense in the instant case which said conspiracy, the period of which is alleged to be from January 1, 2002 up to and including July 31, 2007. On November 12, 2008, defendant was accused by one Jennifer Harrison of the crimes and rape and forcible sodomy and she claims that the offenses occurred in Jackson County, Missouri. Subsequently, on March 25, 2009, defendant was arrested and charged with those offenses in Jackson County, Missouri. After his arrest, the Jackson County court set bond and imposed bond conditions in that case which required him to remain on home confinement during the pendency of those proceedings. The undersigned believes that that matter is scheduled to go to trial in September of 2010. It was after that arrest and while remaining at liberty in accordance with the bond provisions set by the state court, that Mr. Burkitt was arrested as a result of the filing of the indictment in the instant case on or about September 23, 2009.

During his review of the discovery materials in this case, the undersigned noted that there were numerous documents pertaining to these allegations and the investigation in that state case. Counsel became concerned regarding the government's intentions with regards to these very serious and highly prejudicial allegations, and whether it intended to somehow raise these issues in the instant case, a case only charging Mr. Burkitt with the offense of conspiring to distribute narcotic drugs. Those concerns were somewhat

allayed when, during the recent pretrial conference in this case, Mr. Valenti, on behalf of the government indicated that it was not their intention to inject this issue at all into the this case. The materials pertaining to this investigation had been provided to defense counsel since Ms. Harrison was going to be called as a government witness and since Mr. Burkitt's attorney would have a right to cross-examine with regard to any possible bias Ms. Harrison might have against defendant.

To date, the undersigned has not been able to determine from his review of the discovery material, the nature of Ms. Harrison's testimony and what it is that she might say about Mr. Burkitt and his alleged involvement in the conspiracy charged in the instant case. He is and will continue to be very concerned regarding the affect of any such reference to these yet unproven allegations and is simply insuring that the Court be made aware of those possible consequences. His only concern is that Mr. Burkitt is only required to deal with the accusation in this case, and that there be no mention whatsoever of these other allegations which would necessarily affect his right to the fair and impartial trial to which he is entitled.

It is submitted that the introduction in any form of the aforementioned evidence would violate the provisions of Rule 404 (b), of the Federal Rules of Evidence. The undersigned certainly appreciates the comments of government counsel regarding the fact that he is not intending to utilize any such evidence. However, an abundance of caution would call for all parties to be aware of this potential problem so that we can avoid the risk of injecting any of this irrelevant and highly prejudicial evidence into this complex and complicated trial involving not only this defendant but several others.

WHEREFORE, defendant Mr. Burkitt through counsel moves this Court in Limine to instruct government counsel to avoid the injection of any issue concerning these allegations into the trial in this case.

Respectfully submitted,

LAW OFFICES OF F.A. WHITE,

/s/ F.A. White, Jr.

F.A. (AL) WHITE, JR. – MO 22565

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon the following via the Court's electronic filing system and a copy electronically served on all parties this 20th day of November 2009. .

/s/ F.A. White, Jr.

F.A. (Al) White, Jr.