

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	08-00026-03-05-CR-W-FJG
v.)	
)	
TROY SOLOMON,)	
CHRISTOPHER ELDER, and)	
DELMON L. JOHNSON,)	
Defendants.)	

MEMORANDUM OF MATTERS DISCUSSED AND
ACTION TAKEN AT PRETRIAL CONFERENCE

PENDING CHARGE: On February 6, 2008, the Grand Jury returned a twenty-four count indictment against defendants Mary Lynn Rostie, Cynthia S. Martin, Troy R. Solomon, Christopher L. Elder, and Delmon L. Johnson.¹ The defendants remaining for trial as of the date of the pretrial conference are charged with conspiracy to distribute controlled substances (Count I) , conspiracy to commit money laundering (Count II), and distribution of controlled substances (Counts III-XII).² The indictment also seeks criminal forfeiture.

The following matters were discussed and action taken during the pretrial conference:

TRIAL COUNSEL:

Government: Rudolph Rhodes and Curt Bohling
Case Agents: Diversion Investigator Judy Watterson of the DEA and Lori Nelson a financial analyst with the U.S. Attorney's Office
Defense: Chip Lewis for defendant Troy Solomon
John Osgood for Christopher Elder
Darren Fulcher for defendant Delmon Johnson

OUTSTANDING MOTIONS:

1. Defendant Elder's motion in limine to preclude testimony of a government handwriting expert and request for a pretrial hearing to resolve admissibility issues with suggestions in support (doc. #50). (Ready to be ruled based on the pleading.)

¹Defendants Rostie and Martin have entered pleas of guilty.

²Charges of unlawful use of a communications facility, concealment of money laundering and transactional money laundering (Counts XIII-XXIV) were brought only against defendants Rostie and/or Martin.

2. Motion in Limine for an order directing the United States not to allude to, discuss, or offer into evidence in the presence of the jury any written plea agreement entered into between a potential government witness and the United States Government or any state prior to obtaining a ruling from the Court as to whether the entire plea agreement, none of it or only relevant non-prejudicial portions contained therein is admissible (doc. #102).
3. Defendant Elder's Motion in Limine for an order prohibiting the government from mentioning in opening statement or during the trial that DEA Agent Watterson queried the internet and used a system called "Autotrack XP" to determine if names appearing on prescriptions were real existing persons with suggestions in support (doc. #105). (During the pre-trial conference, the government indicated it would not oppose this motion.)
4. Defendant Elder's Motion in Limine for an order prohibiting the government from mentioning during opening statement or during trial the alleged existence and content of three or four telephone conversations between defendant Rostie and defendant Elder with suggestions in support (doc. #107). (During the pre-trial conference, the government indicated it would not oppose this motion)
5. Defendant Elder's Motion in Limine to preclude testimony of a Houston Police Department Officer who is purportedly an expert on the question of how prescription medication is obtained illegally and dispensed as an illegal controlled substance in the Houston area on grounds of relevancy and unfair Rule 403, FRE, prejudice (doc. #169).
6. Defendant Elder's Request for a Daubert Hearing on the issue of the qualifications of Houston Police Officer John Kowal to testify and offer opinion testimony as an expert on issues dealing with "methods of pharmaceutical diversion, including inappropriate prescribing, prescription rings, doctor shopping and 'crew boss' conspiracies" with suggestions in support of the motion (doc. #235). (Request for a hearing granted, hearing held on June 4, 2010.)
7. Defendant Troy Solomon's motion to adopt defendant Elder's proposed voir dire questions (doc. #237).
8. Defendant Troy Solomon's motion to adopt defendant Elder's request for a Daubert hearing on the issue of the qualifications of Houston Police Officer John Kowal (doc. #238). (Motion withdrawn prior to the Daubert hearing.)
9. Defendant Delmon Johnson's objection to notice of prior conviction and notice of the government's intent to use for impeachment (doc. # 236).

TRIAL WITNESSES:

Government: 55 witnesses (Doc. # 294)
Defendants: Solomon–3 specifically named witnesses (Doc. # 160)
Elder–35 witnesses (Doc. # 233)
Johnson – 3 witnesses (Doc. # 304)
Each of the defendants may testify.

TRIAL EXHIBITS

Government: 1,150 exhibits (Doc. # 283)
Defendant: Solomon–3 specifically identified exhibits (Doc. # 161)
Elder–54 exhibits (Doc. # 302)
Johnson– 12 exhibits (Doc. # 305)

DEFENSES: General denial

POSSIBLE DISPOSITION:

(X) Definitely for trial; () Possibly for trial; () Likely a plea will be worked out

TRIAL TIME: Two weeks

Government's case including jury selection: 6 days
Defense case: Defendant Solomon: 1-2 days
Defendant Elder: 2 days
Defendant Johnson: 2 days

STIPULATIONS: The government proposed eighteen stipulations. Defense counsel anticipated being able to reach agreement on fifteen or sixteen of the stipulations.

UNUSUAL QUESTIONS OF LAW:

Defense counsel may propose limiting instructions on how the jury is to consider the sections of the Code of Federal Regulations mentioned in the Indictment which will be discussed by several expert witnesses.

FILING DEADLINES:

Witness and Exhibit List

Government: Friday before the pretrial conference
Defense: Friday before the pretrial conference

Counsel are requested to list witnesses in alphabetical order on their witness list.

Exhibit Index, Voir Dire, Jury Instructions: Noon, Monday, June 14, 2010.

Please Note: Jury instructions must comply with Local Rule 51.1

Motion in Limine: The only additional motion in limine beyond those already on file was a possible motion by the government to keep out any references to Dr. Elder being absolved

of any “charges” by the Texas Medical Board. Any additional motions in limine must be filed by June 10, 2010 with replies filed by June 14, 2010.

TRIAL SETTING: Criminal jury trial specially set on June 21, 2010.

IT IS SO ORDERED

/s/ SARAH W. HAYS
SARAH W. HAYS
United States Magistrate Judge