IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn

Criminal Case No. 10-cr-00164-REB

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD SANTIAGO,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR COURT'S CONSIDERATION TO ALLOW JURY VIEW OF ADX

Blackburn, J.

The matter before me is **Defendant's Motion for Court's Consideration To Allow Jury View of ADX** [#1239],[1] filed April 18, 2016. The government filed a response [#1248]. I deny the motion.[2]

Defendant Richard Santiago is charged with two courts of murder in the April 21, 2005, death of Manuel Torrez, a fellow inmate at the United States Administrative Maximum prison ("ADX") in Florence, Colorado. Mr. Torrez was killed in a recreational yard of the prison. By this motion, defendant Richard Santiago requests the court sanction a jury visit to ADX to view the scene of the incident and, presumably, other

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[1] "[#1239]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

[2] Because plaintiff is proceeding *pro se*, I review his pleadings more liberally and hold them to a more lenient standard than those submitted by an attorney. ***See, e.g.***, ***Erickson v. Pardus***, 551 U.S. 89, 94, 127 S.Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); ***Haines v. Kerner***, 404 U.S. 519, 520-21, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972); ***Andrews v. Heaton***, 483 F.3d 1070, 1076 (10th Cir. 2007); ***Hall v. Bellmon***, 935 F.2d 1106, 1110 (10th Cir. 1991).

areas of ADX about which the jurors will hear testimony in this case. In support of this request, Mr. Santiago notes that, during the trial of his co-defendant, the government presented copious testimony during its case-in-chief regarding the layout of ADX and the relation of various areas of the prison to one another in describing the events surrounding the attack on Mr. Torrez. He avers a jury view of these areas of the prison will "assist the jury in contextualiz[ing]" and "better underst[anding]" this evidence, encourage jurors to "tune-in rather than tune-out," and "avoid confusion and waste of court time." As nothing could be further from the truth, I deny the motion.

Jury views are "highly unusual," ***Inaganti v. Columbia Properties Harrisburg, LLC***, 2010 WL 2471671 at * 3 (E.D. Pa. June 15, 2010), and thus rarely appropriate, ***Ruelas Aldaba v. Michelin North America, Inc.***, 2005 WL 3560587 at * 7 (N.D. Cal. Dec. 29, 2005). The determination whether to permit a jury view is committed to the sound discretion of the trial court. ***See United States v. Culpepper***, 834 F.2d 879, 883 (10th Cir. 1987); ***United States v. Gallagher***, 620 F.2d 797 (10th Cir.), ***cert. denied***, 101 S.Ct. 224 (1980). That discretion is guided by a number of considerations, including but not limited to: the availability of other sources of documentary evidence and/or witness testimony, ***United States v. Passos-Paternina***, 918 F.2d 979, 986 (1st Cir. 1990), ***cert. denied***, 111 S.Ct. 2808 (1991); ***Kelley v. Wegman's Food Markets, Inc***., 98 Fed. Appx. 102, 104 (3rd Cir. 2004); whether conditions at the site have changed since the time of the incident, ***Culpepper***, 834 F.2d at 883; ***In re M/V Mielke Wave***, 2011 WL 4063274 at *1 (E.D. Mich. Sept. 13, 2011); and any logistical difficulties that may be associated with coordinating and executing an out-of-court excursion,

United States v. Bernal, 533 Fed. Appx. 795, 795–96 (9th Cir. 2013); ***United States v. Chiquito***, 175 Fed. Appx. 215, 218 (10th Cir. April 6, 2006); including any potential dangers inherent thereto, ***United States v. Moonda***, 347 Fed. Appx. 192, 201 (6th Cir. Sept. 29, 2009); ***Passos-Paternina***, 918 F.2d at 986. ***See also Langenbau v. Med-trans Corp***., 2016 WL 943765 at *6 (N.D. Iowa Mar. 8, 2016) (distilling relevant considerations in context of Rule 401/403 analysis, balancing probative value of jury view against potential for undue prejudice, confusion, waste of time, and/or needless presentation of cumulative evidence).

In light of these relevant considerations, the court has little trouble in concluding that a jury view of the recreation yard and other implicated areas of ADX is neither necessary nor wise. As demonstrated in the earlier trial of Mr. Santiago's co-defendant, the government presented copious evidence regarding the structure and layout of all relevant areas of the prison.[3] Mr. Santiago's conclusory suggestion that the jury would better understand these matters or be more likely to "tune in" were they permitted to view the scene is wholly unsubstantiated and not supported by this court's own experience in the prior trial. Having presided over that trial, the court can say with assurance that the testimonial, photographic, and other evidence anticipated to be presented is more than sufficient to describe the scene with sufficient clarity to allow the jury to understand the relevant events, obviating any real necessity for a jury view. ***See Chiquito***, 175 Fed. Appx. at 217-18 ("A trial court acts within its discretion when it

[3] To the extent Mr. Santiago's motion may be construed to ask that the government be required to undertake a jury view during the presentation of its case-in-chief, the court has found no legal authority that would allow a defendant to dictate the presentation of the government's evidence and declines any request or invitation to do so.

denies a motion for a jury view of a crime scene so long as sufficient evidence is available to describe the scene, such as testimony, diagrams, or photographs.").

In addition, the physical condition of the recreational yard where Mr. Torrez was attacked has changed significantly since April 2005. Formerly comprised of a single, open area that permitted group recreation, the yard now consists of separate, barred, mental recreation enclosures which prevent inmates from coming in contact with one another. Equipment that was present in 2005 has been removed or is no longer operational. (***See* Gov't Resp. App.**, Fox Decl. ¶ 10 at 3-4.) Other areas of the prison implicated here also have been reconfigured or are now used for different operational purposes. (***Id.***, ¶¶ 11-12 at 4.) These changes further diminish the probativity of a jury view of the facility.

Finally, and most importantly, there are significant logistical difficulties and serious security concerns attendant on allowing a criminal jury to view ADX. Jurors would have to be transported (presumably at government expense) to Florence, some 110 miles from the federal courthouse. Admission to the prison requires multiple layers of physical security, which are time-consuming and give lie to any suggestion that a jury view would be more efficient than the in-court presentation of other, more traditional forms of competent, admissible evidence.

The sheer size of the group also presents problems. Regular internal security protocols for moving about the facility (***see id.***, ¶ 9 at 3), or staff response to any exigency that may arise during a visit (***see id.***, ¶ 14 at 4-5), are implicated and potentially could be compromised. While the group was present, no inmates could be

moved within the facility, and normal operations would have to be suspended, including medical, family, and contract visits. (***Id.***, ¶ 16 at 5.)

It is true, as Mr. Santiago points out, that BOP has conducted informative tours of ADX in the past for judicial, corrections, and law enforcement officials. Nevertheless, and aside from the fact that the BOP's normal discretion to deny admission to any prospective visitor could be compromised by the admission of all duly chosen members of the jury (***see id.***, ¶ 7 at 2), Mr. Santiago's request implicates areas of the prison vital to internal security that are not part of the informative tour in any event (***id.***, ¶ 6 at 2).

Moreover, visitors on official tours are offered stab-proof vests and advised that all staff are required to wear such protective equipment inside the prison. (***Id.***, ¶ 13 at 4.) This court most certainly would require jurors to be thus protected were it even remotely inclined to allow them inside the prison. Aside from the substantial prejudice such a requirement undoubtedly would engender for Mr. Santiago's defense, the court's paramount concern is that, even with such precautions, the jury's safety and security could not be vouchsafed.

A prison is an inherently unpredictable environment; ADX, home to the most violent and disruptive offenders, is especially so. Weighed against Mr. Santiago's suggestion that "contextualization" of the government's other evidence would be helpful, these concerns plainly win out. The motion accordingly will be denied.

THEREFORE, IT IS ORDERED that **Defendant's Motion for Court's Consideration To Allow Jury View of ADX** [#1239], filed April 18, 2016, is denied.

Dated August 1, 2016, at Denver, Colorado.

BY THE COURT:

Robert E. Blackburn
United States District Judge