

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

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 09-00296-03-CR-W-FJG
	)	
<b>STEVE LARSON,</b>	)	
	)	
Defendant.	)	

**DEFENDANT LARSON’S REQUESTED INSTRUCTIONS**

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Defendant has reviewed the government’s proposed instructions filed late today and believes those instructions are proper at this stage of the trial with the caveat that verdict directors, impeachment instructions, and other trial specific instructions might require minor modification depending on how evidence is offered and received.

Defendant does submit herewith his requested theory of defense instruction which has been tailored from the standard “mere presence” instruction drawing on the discussion and guidance in *United States v. Johnson*, 278 F.3d 749 (8<sup>th</sup> Cir. 2002). In *Johnson* the court held it was not error to give a tailored instruction similar to that requested below as it would have been cumulative because a “mere presence” instruction had already been approved and given. It is significant that the Court did not state such an instruction was inappropriate and noted that the Court has broad discretion to tailor instructions and that indeed, the defendant is

entitled to a “theory of defense” instruction. Defendant Larson submits that his proposed instruction will more adequately apprise the jury of the controlling law and give them a better idea of various options available to them in deciding this case.

### **PROPOSED DEFENSE INSTRUCTION**

**Mere membership in a motorcycle club and association with other club members named in this indictment is not sufficient to establish guilt beyond a reasonable doubt that each of the defendants knowingly and intentionally distributed methamphetamine as part of an overall agreement. Nor is mere presence at a motorcycle club event by a defendant where the alleged distribution of a controlled substance might have taken place by someone other than the defendant whose case you are deciding, an act sufficient to establish that the particular individual defendant knowingly and intentionally participated in that distribution or was a party to an agreement to do so.**

WHEREFORE, defendant requests that his theory of defense instruction be given in lieu of the standard 8<sup>th</sup> Circuit “mere presence” instruction.”

Respectfully submitted,

/S/

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/S/

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2009, I electronically filed the foregoing through use of the CM/ECF system causing a copy of same to be served electronically on all counsel presently of record in the case.

/s/

**JOHN R. OSGOOD**