

**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.	)	

**MOTION IN LIMINE TO PRECLUDE THE TESTIMONY  
OF DETECTIVE JEFF SEEVER AS AN EXPERT ON THE  
MANUFACTURE OF METHAMPHETAMINE WITH  
SUGGESTIONS IN SUPPORT**

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The government has indicated in its expert notification pleading, doc# 112, that it intends to call Detective Jeff Seever as an expert on the manufacture of methamphetamine. Detective Seever and other “drug experts” have previously testified in various cases in the Western District as to how methamphetamine is manufactured. His presentation will likely include a fairly elaborate slide presentation in which he describes the various steps involved and takes the process through completion. The testimony and slides show how ephedrine pills are “popped” from packets purchased by runners at various over-the-counter outlets; how the pills are crushed and placed in solution; how striker strips are removed

from matches to obtain phosphorus; the cooking and rendering process; the filtering through coffee filters; how “freezer dope residue” is generally found as a by product; and, how the finished product is often bleached and then dried and packaged for distribution. See *United States v. Francis, Jr.* 327 F.3d 729 (8<sup>th</sup> Cir. 2003) (description of evidence presented by Independence task force officers in a methamphetamine manufacturing case tried in this district).<sup>1</sup>

Defendants are charged in this case with the distribution of methamphetamine. There is no allegation that the defendant Larson or any of his co-defendants “cooked” meth or for that matter rendered powder cocaine into crack cocaine. This type of testimony is usually allowed to explain to the jury how meth or crack is manufactured where there is a genuine issue as to whether a defendant has taken sufficient steps to either prepare for a cook or has indeed completed a cook. See *U.S. Eide* 297 F.3d 701 (8<sup>th</sup> Cir. 2002); *U.S. v. Anderson*, 236 F.3d 427(8<sup>th</sup> Cir. 2001); *United States v. Harris* 192 F.3d 580 (6<sup>th</sup> Cir. 1999).

In *Daubert v. Merrell Dow Pharms., Inc.* 509 U.S. 579 (1993) the Supreme Court made it quite clear that in addition to establishing that the witness is indeed an expert in his field, the proponent must also clearly establish that the particular testimony has genuine relevance to the matter being tried. See Rule 702, Fed.R.Evid. Also See *U.S. v. Street*, 548 F.3d 618 (8<sup>th</sup> Cir. 2008) (admission of “other guns” other than the murder weapon in a murder trial is irrelevant evidence

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<sup>1</sup> Counsel has previously participated in trials where this presentation was made and recalls that it can take up to as much as an hour of court time or more to present. It is therefore also quite simply a waste of time in this case given these charges.

and highly prejudicial); *United States v. Flores*, 362 F.3d 1030 (8<sup>th</sup> Cir. 2004) (evidence that a defendant had a picture of an individual in his bag that officers identified as a person they believe to be “the patron saint of drug traffickers” was irrelevant in a methamphetamine distribution case).

Relevant evidence is evidence having "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *U.S. Banks* 553 F.3d 1101(8<sup>th</sup> Cir. 2009) quoting from Fed.R.Evid 401. Evidence about how methamphetamine is cooked is being offered in this case simply to bring to the jury’s attention the admitted rampant problem in our community and others attributable to the large number of independent “home grown” meth cooking that is occurring. It is evidence designed and intended to prejudice the jury about drugs, drug manufacturing, drug distribution and drug use. In *United States v. Wipf*, 397 F.3d 632 (8<sup>th</sup> Cir. 2005) the court summed this issue up as:

Relevant evidence is evidence that tends to show that any fact of consequence in the action is more or less probable. Fed.R.Evid. 401. Subject to certain exceptions, relevant evidence is admissible. Fed.R.Evid. 402. One of these exceptions is that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Fed.R.Evid. 403. "However, evidence is not unfairly prejudicial merely because it hurts a party's case." *United States v. Emeron Taken Alive*, 262 F.3d 711, 714 (8th Cir. 2001). "[R]ather, evidence is unfairly prejudicial when it would influence the jury to decide the case on an improper basis." *Cummings v. Malone*, 995 F.2d 817, 824 (8th Cir. 1993).

Expert testimony about cooking is intended and designed to do specifically that condemned in *Cummings*. It should not be allowed in this case.

**WHEREFORE**, defendant Larson moves the Court to enter an order granting the relief requested.

Respectfully submitted,

/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**

