

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

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

**MOTION IN LIMINE REQUESTING THAT THE COURT INSTRUCT
THE PROSECUTION NOT TO MENTION DURING OPENING
STATEMENT TO THE JURY OR DURING THE CASE IN CHIEF
EVIDENCE INDICATING THAT DEFENDANT LARSON WAS AWARE
OF “HITS” PERFORMED BY ANOTHER CLUB MEMBER WITH
SUGGESTIONS IN SUPPORT**

The government has endorsed a witness from Minnesota by the name of Paulson. Defendant Larson is alleged to have been a member of one of the Minnesota clubs and, according to the government, knows Paulson. During an interview with Paulson on May 9, 2009, by the authorities, he reportedly said the following:

“Paulson was then asked if he had any information on former E1 Forastero member Darren Frank AKA "Derwood". Paulson advised that E1 Forastero member Steve Larson AKA "Fat Steve" told him that Frank is a "hitter" and does hits for the club. Paulson advised that this conversation with Larson occurred approximately 6-8 months ago. Paulson advised that Larson told him that Frank has been used for this type of activity on five different occasions.”

This appears to suggest that Mr. Frank engaged in acts of violence of some kind on five different occasions and that Mr. Larson was aware of this and related the information to Paulson. There is nothing elsewhere in the discovery to substantiate this occurred. More importantly, there is nothing in the evidence to suggest that if this individual Mr. Fank did engage in some violent act that it in any way involved Mr. Larson or that Mr. Larson was aware of it or participated in it or had any active role. This testimony is of course evidence of uncharged misconduct and if presented to the jury will be highly prejudicial to both Mr. Larson and other club members. See Rule 404(b), Federal Rules of Evidence.

In *Driscoll, v. Schmitt*, 649 F.2d 631 (8th Cir. 1981), the court stated that evidence of past violent acts or brawls, or of an individual's general propensity for aggressive behavior or bad character should not be admitted, citing Rule 404(b) and that the Rule is meant to prevent exactly this type of testimony.

WHEREFORE, defendant Larson moves the Court to so instruct the prosecution.

Respectfully submitted,

/S/

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 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