

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 09-00296-02-CR-W-FJG
	)	
ERIC BURKITT,	)	
	)	
Defendant.	)	

**DEFENDANT BURKITT’S REQUESTED INSTRUCTIONS**

Defendant has also reviewed the government’s proposed instructions and will agree that those instructions are appropriate. He has also reviewed the proposal filed by codefendant Steve Larson in this case, and would join in that motion in suggesting that at a more appropriate stage of the trial there might be the necessity for some small modification in certain of the instructions proposed by the government after the parties and the Court have had an opportunity to review the specific evidence coming into the case. In addition, Mr. Burkitt also joins in the submission by Mr. Larson with regard to his “theory of defense” instruction and the request that the Court look to the opinion espoused in *United States v. Johnson*, 278 F3rd 749 (8<sup>th</sup> Cir. 2002). It is also defendant Burkitt’s belief that the facts and circumstances surrounding this case require a more specific instruction than the standard “mere presence” language as proposed in the government’s proposed instruction # 27. As restated, that request was for language as follows:

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 defendant 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, Mr. Burkitt joins in the request that the above theory of defense language be given separately or, at least as a part of government's proposed instruction No. 27.

Respectfully submitted,

LAW OFFICES OF F.A. WHITE, JR., P.C.

/s/ F.A. White, Jr.

F.A. (AL) WHITE, JR. – MO #22565

Three Oaks Building

5440 North Oak Trafficway

Kansas City, Missouri 64118

1-816-454-5300

1-816-455-6011 – Fax

ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served upon the following via the Court's electronic filing system and a copy electronically served on all parties this 5th day of November, 2009. .

/s/ F.A. White, Jr. \_\_\_\_\_

F.A. (Al) White, Jr.