

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.)
) No. 09-00296-05-CR-W-FJG
STEVE LARSON,)
)
Defendant.)

**GOVERNMENT’S SUGGESTIONS IN OPPOSITION TO DEFENDANT’S
MOTION IN LIMINE TO DISALLOW THE TESTIMONY OF STEVE COOK
INSOFAR AS IT INVOLVES HIS OPINION AS TO THE HISTORY AND
ALLEGED GENERAL CRIMINAL PROPENSITIES, ACTIVITIES, PRACTICES,
AND RITUALS OF PERSONS WHO BELONG TO SO-CALLED “OUTLAW”
MOTORCYCLE CLUBS**

The United States of America, in response to defendant Steve Larson’s motion in limine to disallow the testimony of Detective Steve Cook insofar as it involves his opinion as to the history and alleged general criminal propensities, activities, practices, and rituals of persons who belong to so-called “outlaw” motorcycle clubs, states as follows:

I. BACKGROUND

On September 23, 2009, a grand jury sitting in the Western District of Missouri returned a two-count indictment, in which the listed defendants were charged with conspiracy to distribute methamphetamine, cocaine, and marijuana, all Scheduled Controlled Substances, between January 1, 2002 and July 31, 2007, contrary to the provisions Title 21 U.S.C. § 841(a)(1) and (b)(1)(A), all in violation of Title 21 U.S.C.

§ 846. This matter is currently set for jury trial, on Count One only, commencing on Monday, December 14, 2009, before the Honorable Fernando J. Gaitan.

II. STANDARD OF REVIEW

The district court is given “substantial deference” on evidentiary rulings, and the Eighth Circuit will only find error with the trial court’s evidentiary ruling if there has been a clear abuse of discretion. *United States v. Blue Bird*, 372 F.3d 989 (8th Cir. 2004) (noting that the Eighth Circuit gives deference to the trial judge regarding the application of evidentiary rules that “require a balancing of how particular evidence might affect the jury”); *see also United States v. King*, 351 F.3d 859, 866 (8th Cir. 2003); *United States v. Bolden*, 92 F.3d 686, 687 (8th Cir. 1996).

III. PROPER SCOPE OF OUTLAW MOTORCYCLE GANG EVIDENCE

The trial will be limited to Count One of the government’s indictment, which charges a conspiracy to distribute narcotics within the El Forastero and Galloping Goose motorcycle gangs throughout multiple charters across the Midwestern United States. The history, violent conduct, territoriality, and general criminal propensities of outlaw motorcycle gangs (“OMGs”) in general are not at issue in the current trial and the government will not seek to introduce such evidence. The government is mindful of limitations on the proper scope of such evidence, particularly of general propensity evidence, as laid down by the Eighth Circuit in the decisions *United States v. John Street* and *United States v. Roark*.

In *United States v. Street*, the defendant was convicted of aiding and abetting the murder of a witness in furtherance of a drug trafficking offense, and he appealed. *United States v. Street*, 548 F.3d 618 (8th Cir. 2008). The Eighth Circuit reversed and remanded the case, in part, because the trial court allowed 20 transcript pages of expert testimony about the history and criminal propensities of American motorcycle gangs and the El Forasteros. *Id.* at 631-32. Detective Steve Cook provided specific examples of El Forasteros' violent and lawless behavior, including members' degrading attitudes toward women, their brutal hazing rituals, and their "uncompromising policy against police informants or 'snitches.'" *Id.* At 623. The Court found problematic the fact that Street was never a member of El Forasteros or any motorcycle gang, he had never been to the clubhouse, and he only had limited dealings with two members. *Id.* at 631. The Court held that "[n]one of this was tied to the actual crimes with which Street was charged or the particular facts of his case." *Id.* at 631. It found insufficiently probative the government's argument that Street's "casual associations with a few El Forasteros members was sufficient for the gang's anti-snitch code 'to rub off on [him].'" *Id.* The Court concluded that Detective Cook's testimony was "excessive, unduly prejudicial, and in great part completely irrelevant to the charged offenses." *Id.* at 633.

Similarly, in *United States v. Roark*, the Eighth Circuit held that allowing general, wide-ranging motorcycle gang evidence to establish criminal propensity was reversible error even though the defendant was a member of the gang. *United States v. Roark*, 924

F.2d 1426 (8th Cir. 1991). Roark was a member of the Hell's Angels and was charged with various offenses related to a methamphetamine lab in the Ozarks. The government introduced extensive expert testimony about the Hells Angels motorcycle club including its general reputation for drugs, far-flung gang actions in Richmond and San Francisco, and testimony regarding 100 other drug labs the Hells Angels had been involved with. *Id.* at 1430. The Court criticized the government's "relentless attempt to convict Appellant through his association with the motorcycle club." *Id.* at 1432. The Court held that "it was inappropriate to expose the jury to such evidence because it would be 'inherently and unfairly prejudicial'" by "deflect[ing] the jury's attention from the immediate charges and caus[ing] it to prejudice a person with a disreputable past, thereby denying that person a fair opportunity to defend against the offense that is charged." *Id.* at 1434. Indeed, the Court criticized the entire theme of the government's case, calling it "guilty by association." *Id.* at 1434.

In *Street*, the Court distilled several important factors regarding admission of motorcycle club evidence in this line of cases. *United States v. Street*, 548 F.3d at 632. First, was the defendant actually a member of the gang?¹ Second, was the evidence specific and relevant, or was it a "wide ranging inquiry into the generic criminality and

¹In *United States v. Frank*, 2009 WL 2016342 (8th Cir. July 14, 2009)(unpublished), the convicted defendant in the companion case to the *Street* case attempted to argue that the motorcycle gang evidence introduced in his trial was unfairly prejudicial. Noting that Frank was a former gang member, and the testimony was limited and more closely related to a relevant issue (snitches), the court distinguished the *Street* case and upheld admission of the evidence under Rule 403. *Id.* at *3.

violent dispositions of gangs and their members”? Third, was the mention of gang membership an unavoidable incident of presenting other permissible evidence? *Id.* The *Street* court identified three other cases where evidence of gang membership was allowed because it was relevant to establish conspiracy or to rebut codefendants’ innocent explanations of their relationships with one another. See *United States v. Bradford*, 246 F.3d 1107, 1117 (8th Cir. 2001); *United States v. Johnson*, 28 F.3d 1487, 1497-98 (8th Cir. 1994); *United States v. Sparks*, 949 F.2d 1023, 1026 (8th Cir. 1991). The Eighth Circuit noted approvingly that “[i]n none of these cases was gang membership used to show criminal propensity or otherwise paint a defendant guilty through mere association.” *Id.*

IV. GANG EVIDENCE OF THE DRUG CONSPIRACY

As the law in this area now appears settled, the government will take this opportunity to clarify what types of motorcycle gang evidence it seeks to introduce in this trial. The government plans to highlight only those activities, practices and rituals of the Galloping Goose and El Forastero motorcycle clubs that relate to the charged drug conspiracy. This evidence will help establish the conspiracy, prove elements of the offense, and rebut the defendants’ anticipated innocent explanations of their relationships with one another. The government will not introduce evidence of the history of motorcycle gangs or their general propensity to engage in lawless behavior. The evidence will likewise not be offered to argue guilt by association.

Witnesses will establish that members pooled their funds as a matter of regular practice to purchase illegal narcotics that were distributed and consumed at club functions, including “runs.”² The El Forasteros and Galloping Goose are “brother clubs,” and all the defendants were members. Locally, they hold joint meetings and functions. Until this investigation, they shared a clubhouse in the West Bottoms. Nick Donkersloot belonged to an El Forastero charter in Iowa, and Steve Larson belonged to an El Forastero charter in Minnesota. Former brothers will testify that the clubs’ criminal narcotics activities were universally known to its membership and members purposefully structured the club to reduce the risk of prosecution. This distinguishes these motorcycle gangs from recreational clubs of law-abiding motorcycle enthusiasts, which the government anticipates may be a defense.

Direct evidence and *res gestae* evidence will establish that illegal drug use and distribution was prevalent, tolerated, enabled, protected, and encouraged by these two clubs and by the club brothers charged in the indictment. Certain evidence of the culture and practices of these groups will explain how the participants in the conspiracy knew each other, the clubs’ requirements for each member, and how the club brothers worked together to execute the drug conspiracy. Through the testimony of numerous former club

²For each run, brothers of the motorcycle clubs’ charters across the Midwest met to attend multiple-day parties. In advance, each charter would send “run money” to purchase supplies, including illegal drugs. These communal drugs were then available to all club brothers and their guests. This practice led to the instant indictment.

brothers, guests and law enforcement officers, the government will also introduce other evidence of illegal drug use by the defendants during the charged time frame. Such evidence will be limited to use and distribution by the defendants of the same narcotics that are charged in the conspiracy.

Generally, evidence of other crimes committed by a defendant is inadmissible. *United States v. Oliver*, 525 F.2d 731, 739 (8th Cir.1975). However, one of the exceptions to the general rule permits the introduction of evidence of other criminal activity for the purpose of providing the context in which the crime occurred, i.e., the *res gestae*. *United States v. Moore*, 735 F.2d 289, 292 (8th Cir. 1984), *citing Carter v. United States*, 549 F.2d 77, 78 (8th Cir.1977). A jury is entitled to know the circumstances and background of a charge and cannot be expected to make its decision in a void without knowledge of the time, place, and circumstances of the acts which form the basis of the charge. *Id.*, *citing United States v. Masters*, 622 F.2d 83, 86 (4th Cir.1980).

Former club brothers will describe the process of obtaining membership in the Galloping Goose and El Forstero motorcycle gangs, and their transition from “hang around” (a friend of the club), to “prospect” (like a fraternity pledge), to “patched brother.” They will describe the rules and roles applicable to persons at each stage of membership. These rules will help prove elements of the charged conspiracy, such as knowledge and intent. For example, aspects of the clubs’ drug use were concealed from hang-arounds until they gained the clubs’ trust. Prospects were used as look-outs outside

the clubhouse while the brothers discussed narcotics activity at meetings (referred to as “church”). Each patched brother was required to attend a certain number of functions each year, including church, and mandatory trips made by motorcycle to visit other charters, or “runs.” If members did not attend church, pay their dues and attend a certain number of runs each year, they could lose their patch.

In furtherance of the conspiracy, the charters coordinated with each other. Prior to each run, all club brothers were required to submit “run money” to the treasurer of each charter, who then sent money orders to the treasurer of the host charter. Former brothers will testify that every patched brother knew that the run money would be used by the host charter to pay for the run site and to purchase supplies for the run, including food, drinks, and illegal drugs, including methamphetamine, cocaine and marijuana. The practice of sending run money to the host charter was deliberately designed by the club’s leadership to protect members who were concerned about the potential for contact with law enforcement on their way to out-of-town runs. A common saying was “ride clean, it will be there when you get there.” At the runs, brothers and their guests could obtain the illegal drugs from brothers of the host charter who carried the drugs in “run bags.”

Club rules governed drug use. For example, it was permissible to snort methamphetamine, but club rules prohibited smoking it in a pipe or “shooting” it with a needle. During parties, brothers were only allowed to consume “hard” drugs at certain locations in the clubhouse with guests who were vouched for. Other club practices

evidence the culture of drug use and distribution. Former club prospects will testify that at runs, they were given methamphetamine by patched brothers to enable them to stay up the entire time to serve food, clean up, and provide other services. Former brothers will testify that some brothers who were considered hard core drug users would be awarded patches they would sew onto their vests reading “DFFL,” which means “drugs forever, forever loaded” or “dope forever, forever loaded.” If drug use became out of control, then the club could “eighty-six” a brother from that drug, meaning they were not allowed to use it.

Detective Steve Cook and Officer Jeffrey Seever of the Independence Police Department have been the case agents since the inception of this investigation several years ago. Captain Chris Omodt of the Hennepin County Sheriff’s Department has conducted a similar investigation in Minnesota. They will testify, in summary fashion for the jury, about the findings of their investigations into these two motorcycle clubs and the clubs’ members. The government does not intend to elicit expert opinion testimony from these witnesses regarding the practices of outlaw motorcycle gangs in general unless the defense opens the door to such issues on cross examination.

V. CONCLUSION

In order for the government to meet its burden of proof, the jury will be instructed that there must be an agreement or understanding to distribute methamphetamine. The fact that the defendants were all Gooses and Forasteros together is obviously very

important. Certain activities, rituals, practices, and rules of the two gangs are relevant, probative evidence of the drug conspiracy. But the government does not plan to delve into allegations of violence, misogynist behavior, territoriality, or other aspects of club life. The government realizes that its is not an indictment of outlaw motorcycle gangs in general and it will not seek to smear the defendants through propensity arguments. The government will focus on the defendants at trial and the aspects of their motorcycle clubs that are relevant to the drug conspiracy charged in the indictment.

WHEREFORE, for the foregoing reasons and authorities, the government respectfully requests the Court deny defendant's motion in limine to disallow the testimony of Detective Steve Cook insofar as it involves his opinion as to the history and alleged general criminal propensities, activities, practices, and rituals of persons who belong to so-called "outlaw" motorcycle clubs.

Respectfully submitted,

Matt J. Whitworth
United States Attorney

By */s/Daniel M. Nelson*

Daniel M. Nelson # 53885
Assistant United States Attorney

Charles Evans Whittaker Courthouse
400 East 9th Street, Suite 5510
Kansas City, Missouri 64106
Telephone: (816) 426-3122

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on December 7, 2009, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

/s/Daniel M. Nelson
Daniel M. Nelson
Assistant United States Attorney