

**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.)	

**DEFENDANT LARSON’S REPLY TO THE GOVERNMENT’S
ANSWER TO LARSON’S MOTION IN LIMINE TO LIMIT THE
TESTIMONY OF AGENT COOK ABOUT MOTORCYCLE GANG
INVOLVEMENT WITH SUGGESTIONS IN SUPPORT**

On November 16, 2009 defendant filed a motion in limine (doc #103) seeking to limit the testimony of Agent Cook on grounds that much of the testimony would be directed at club practices and rituals of persons who belong to motorcycle gangs for the simple purpose of showing that the gang members have a reputation of engaging in certain criminal practices and it follows that if Larson was a member and was in attendance at any of the club meetings or so-called runs, then it follows he must have endorsed such practices and joined in a conspiracy to engage in such criminal activity. In short the testimony is intended to prove guilt through simple association.

This is precisely what is prohibited by *U.S. v. Street*, 548 F.3d 618 (8th Cir. 2008). The government in its answer continues to attempt to discount the applicability of the holding in *Street* simply by relying on the fact that *Street* was not an actual member whereas Mr. Larson was, a fact we do not dispute. The holding however is much broader than this simple reading. The crux of the opinion deals with unfair tactics where mountains of evidence are offered without any real and concrete connection to the charge and the charged defendant. As will be demonstrated *infra*, that is the case here.

Only a single count remains for trial in this case. That count charges:

That between on or about January 1, 2002, to and including July 31, 2007, said dates being approximate, in the Western District of Missouri and elsewhere, JOHN B. ANGELL, ERIC G. BURKITT, a/k/a "Little Eric," ROBERT E. STEWART, JAMES M. COX, a/k/a "Liberty Jim," STEVE W. LARSON, and NICHOLAS E. DONKERSLOOT, defendants herein, did knowingly and intentionally combine, conspire, confederate and agree with each other and others, both known and unknown to the grand jury, to distribute: (1) a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, in an amount of five hundred (500) grams or more; (2) cocaine, a Schedule II controlled substance; and (3) marijuana, a Schedule I controlled substance contrary to the provisions of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A), all in violation of Title 21, United States Code, Section 846.

The indictment charges conspiracy to distribute methamphetamine and other controlled substances. No defendant is charged with conspiracy to possess or use controlled substances. Nor is any defendant charged with substantive

counts of simple possession of controlled substances for personal consumption. The government's theory of prosecution, based on the discovery and the "canned" admissions memorialized in each of the plea agreements seems to be that when one group of club members would travel to another city for a "run" the host club would have "run bags" from which visiting club members could then obtain meth for personal consumption. The "distribution" aspect of the conspiracy appears to be that the host club members were the distributors when doing the hosting and that all the clubs engaged in such reciprocal practices thereby making all club members guilty of distribution, again, by the simple act of membership in the club without further proof of active involvement, agreement, or direct participation in the alleged practices.

The plea agreement factual-basis-paragraphs in all the agreements generally mirrors that contained in the *Donkersloot* agreement, the most recent defendant to enter a plea of guilty which states:

Defendant was a member of the El Forastero Motorcycle Club chartered in Okoboji, Iowa. The El Forastero maintained many different charters throughout the Midwest in such cities as Okoboji, IA, Des Moines, IA, Minneapolis, MN, Wichita, KS, Springfield, MO, and Kansas City, MO. Additionally, the El Forastero maintained a close relationship with the Galloping Goose Motorcycle Club, which similarly had many Midwestern charters, with the Kansas City charters sharing a common clubhouse in Kansas City, Missouri.

As a member of the El Forastero, he was required to annually pay dues and attend a certain number of motorcycle trips, known as "runs" per year. These runs were sponsored by a specific El Forastero or Galloping Goose charter. For each run, whether or not the member attended, the members were

required to pay run money that was pooled, or collected by each club charter, forwarded to the specific El Forastero or Galloping Goose charter that hosted the particular motorcycle run, and was used to purchase, among other things, methamphetamine, cocaine, and marijuana. Those drugs were maintained in run bags and were distributed, or made available, to all the club members that attended the run. The defendant knew what the money was going to be used for and knowingly contributed run money and in so doing, the defendant admits that he distributed methamphetamine, cocaine, and marijuana and assisted others in the distribution of those drugs.

As an active member of the El Forastero Motorcycle Club, defendant participated in the distribution of between 50 - 200 grams of methamphetamine, figuring at least 7 runs attended (out of a total of 35 runs possible) over 5 years, each involving the distribution of 1 ounce (28 grams) of methamphetamine or more per run.

See *Donkersloot* plea agreement, Doc #145, filed on 12/02/09, *U.S. v. Angell, et al*, 09-00296-03-CR-W-FJG.

Defendant Larson will not dispute at trial that he was indeed a member at one time of one of the clubs in Kansas City, Missouri and that he subsequently transferred his membership to a club in Minneapolis, Minnesota. Conversely, he will strongly dispute and take issue with the position that he was present at any club meeting where there was conspiratorial discussion such as that alleged above. Moreover, he will vehemently deny that he ever carried or had available a “run bag” for others to use or that he ever distributed methamphetamine to any other club members or agreed to participate in a conspiracy to do so.

The defense has been provided with over 1000 pages of discovery. The government's last witness list placed on file lists 101 separate witnesses. A number of these are former "gang members" who have entered guilty pleas (See Doc #107). Defendant has carefully studied these various statements and can state with some degree of certainty that not a single witness has heretofore specifically stated that Larson was present at any club meeting where there was discussion about "run bags", dues being used to buy methamphetamine, and the other things recounted in the various factual-basis-paragraphs contained in the various plea agreements. Not a single one of the witness can do anything other than testify to general facts such as: "well, it was common knowledge"; or, "he must have known"; or, "he must have been present," and so on. This is of course rank speculation and demonstrates why the government wants so desperately to use the Cook evidence as what amounts to criminal propensity evidence as opposed to offering direct credible evidence of criminal involvement by Mr. Larson in the charged conspiracy.

Perhaps the most helpful approach for the Court is to simply summarize the information from the many pages of voluminous discovery where Mr. Steve Larson is mentioned.¹ It is anticipated that the summary that follows will be that which the government will attempt to offer as evidence of direct involvement of

¹ It is probably worthwhile to note that a Mr. Jack Larson, aka "Shaky", is mentioned far more times in the discovery than defendant Steve Larson, aka "Fat Steve", is. Jack Larson is an older retired member of one of the clubs who is mentioned as having engaged in various criminal acts. It is clear from the reports that these are in fact two different individuals with markedly different appearance and physical attributes.

Mr. Larson is the charged conspiracy (much of which is Rule 404(b) evidence of other criminal acts not directly connected to this particular charge):

Mr. Dennis Anthony: Says Larson and a number other “gang members” had in the past offered to give him “bumps” at “runs” off a “run bag” during his time in the Galloping Goose club. Mr. Anthony is not clear as to dates or times or locations.

Mr. Steven Street: He places defendant Larson at the 2003 Memorial Day “run.” Street offers no other direct evidence of any particular act allegedly committed by Mr. Larson. Street also says that Larson was “a full patch member” of El Forastero’s in Kansas City at one time. Street also states that Mike Fitzwater at one point gave Larson 2 grams of meth to take back to Street’s house for him and that Larson used it and they got in an altercation over the incident. Mr. Street does not attribute any distributions to Mr. Larson nor does he place Mr. Larson at any club meeting where there were conspiratorial conversations about drug distribution. He of course does state Mr. Larson was a user of meth.

Mr. Michael Hensley: was asked specific questions about John Angell, Robert Stewart, Eric Burkitt, Jim Cox AKA "Liberty Jim", Nick Donkersloot and Steve Larson AKA "Fat Steve". Hensley advised that he has personally observed every one of these persons using methamphetamine while Hensley was a member of the Galloping Goose and additionally has seen Eric Burkitt, Jim Cox AKA "Liberty Jim" and John Angell in possession of "run bags" containing methamphetamine. Hensley apparently can only testify that Mr. Larson was a consumer as opposed to being a distributor.

Mr. Dennis Stone: Stone was asked about his knowledge of Steve Larson AKA "Fat Steve and Nick Donkersloot and their involvement with drugs. Stone advised that he has smoked a lot of "weed" with both subjects. Stone offered no direct evidence supporting the conspiracy charge in the indictment and can only brand Mr. Larson as a user of marijuana.

Mr. Bobby Paulson: States that Larson is a board member of the Minneapolis El Forastero club. Mr. Paulson also states that Larson told him 6 to 8 months prior to May 2009 that an individual named

Daren Frank is a "hitter." Paulson says he and Mr. Larson went to Fitzwater's house and smoked some "outdoor grown" marijuana. He also states that Mr. Larson "set up a deal for a "Doctor Pepper" who was "busted" in Saint Louis with methamphetamine" without further elaboration or connection to the conspiracy charged in this case.

Candidly, the witness with the most damaging to say about Mr. Larson will be a Mr. Richard Rohda, a former Hell's Angel club member turned government informant and witness. It is anticipated that he will testify to the following, if permitted. It is of course not clear at all that these alleged acts had anything to do with the conspiracy charged in this indictment:

Richard Rohda: Rohda told investigators that he knew Mr. Larson fairly well because Larson had been prospecting with the EI Forastero at the same time Rohda had been doing his second prospecting period with the Hells Angels.

Mr. Rohda told agents that he remembered one occasion where he had talked with Larson about doing methamphetamine business with him. Rohda advised that Larson had told him that he was sitting on a large quantity of methamphetamine if Rohda was interested in any of it. Rohda advised that at the time he did not need any. Rohda advised that shortly after this conversation Larson's residence was raided by Police and approximately 5-6 pounds of methamphetamine was recovered. Rohda advised that Larson put the drugs on his girlfriend "Cher" (Cherly Gigley) and that she ended up taking the fall for it. Rohda did advise that Larson had told him that the methamphetamine seized by the Police had been picked up by Larson in Kansas City.

Rohda advised that while he was in the Hells Angels it was common knowledge that Larson was a methamphetamine dealer and that if you needed methamphetamine he was one of the members that you could go to for it.

Rohda was asked if he was familiar with a patch worn by some members of the EI Forastero and Galloping Goose, "DFFL". Larson advised that he was familiar with the patch and that it

meant "Dope Forever Forever Loaded". Rohda was asked how he knew that and he advised that members of the EI Forastero had told him that. was what it meant.

Once again though, as with other witnesses, Mr. Rohda speaks in terms of "common knowledge" and suggests that Mr. Larson and not his girlfriend was the guilty party even though Mr. Larson was never charged with anything arising out of the incident. At the expense of perhaps "beating a dead horse," the paucity of true conspiratorial evidence against Mr. Larson is precisely why it is important for the government to "slop" in as much evidence as possible pointing to the alternative life style of the so-called "outlaw motorcycle gang" members.

Indeed, the government concedes as much in its reply brief at page 6. The reply brief states: "members pooled their funds as a matter of regular practice"; "[the clubs] were brother clubs"; "all the defendant were members"; "they hold joint meetings and functions"; "criminal narcotics activities were universally know"; and these clubs are "distinguish[hable]" from "law-abiding motorcycle enthusiasts" implying of course that they are "outlaw" clubs." The nine-page reply does not even attempt to connect Mr. Larson directly to any of the aforesaid activities other than by continually pointing out he was a member, ergo, he had to be involved and he had to know.

No doubt, there will be an attempt at trial to offer what amounts to co-conspirator hearsay statements where a testifying co-defendant club member from this case or the prior case will offer statements made by another club member at a

meeting or gathering in an attempt to attribute such statements to Mr. Larson. The government will then “bootstrap” Cook’s evidence into play by arguing that it has proven the underlying conspiracy and Cook is merely amplifying it.

A number of years ago our Circuit established the ground rules for the admissibility of co-conspirator hearsay in *United States v. Bell*, 573 F.2d 1040 (8th Cir. 1978). In *United States v. Nelson*, 603 F.2d 42 (8th Cir. 1979) the court again restated the *Bell* rule as requiring:

When objection is made by the defendant to the admission of an alleged coconspirator's out-of-court declaration, the court may conditionally admit the declaration without requiring the government to first present independent evidence of the conspiracy. But at the same time the court should caution the parties (1) that the statement is being conditionally admitted subject to the defendant's objection; (2) that the government will be required to prove by the preponderance of the independent evidence that the statement was made during the course and in furtherance of a conspiracy to which the declarant and defendant were parties; (3) that the court will make a determination on the record at the close of the evidence on whether the government has met its burden and will at that time rule on the ultimate admissibility of the statement; and (4) that if the court finds that the government has not met its burden, the court will upon appropriate motion declare mistrial or give a cautionary instruction if it finds that any prejudice caused can be cured by such an instruction.

There appears to be a real danger in this prosecution that the *Bell* hearsay will be used to “bootstrap” even more damaging evidence from Cook where he will once again attempt to provide generalized testimony about motorcycle gangs as the “icing on the cake” after a lot of hearsay has been conditionally admitted. Obviously, apart from the issue of Cook’s testimony, defendant is also very much

concerned about the admission of rank hearsay under the guise of the co-conspirator hearsay rule without reasonable assurances from the government that there will be a true relevant and admissible connection at some point between Mr. Larson and the statements and acts of others.

WHEREFORE, defendant again urges the Court to grant his motion in limine and severely limit Cook's testimony to areas where there has been a showing of substantial relevancy.

/S/

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CERTIFICATE OF SERVICE

I hereby certify that on Wednesday, December 09, 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