

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

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 05-00344-01/02-CR-W-ODS
	)	
<b>GARY EYE, et al.,</b>	)	
	)	
Defendants.	)	

**GOVERNMENT’S MOTION FOR RECONSIDERATION OF  
THE PORTION OF COURT’S ORDER (DOC. 345) PRECLUDING THE  
PRESENTATION OF EVIDENCE REGARDING DEFENDANTS’ INVOLVEMENT IN  
DRUGS AND OTHER CRIMES SURROUNDING THE HOMICIDE**

Comes now the United States of America, by and through its undersigned counsel, and files its Motion for Reconsideration of this Court’s Order precluding the government from presenting evidence of both defendants’ drug usage in the hours leading up to the homicide of William McCay and in the days following the homicide. (Doc. 345, ¶ 4.) In the government’s initial response (Doc. 305), the government failed to provide the Court with sufficient information or details regarding the factual presentation that is anticipated at trial, and why it believes that certain evidence regarding drug usage and auto theft during this time-frame is necessary to explain the circumstances surrounding the crimes charged. This mistake was based upon specific representations from both sets of defense counsel that neither defense motion (Docs. 263, 270) was seeking exclusion of drug usage and auto theft during this particular time frame.<sup>1</sup>

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<sup>1</sup> It is the government’s expectation that the introduction of some of the drug activity and the other behavior described in this pleading is useful to the defense in attacking either the elements of the offenses charged or in attempting to impeach or otherwise attack the veracity of the prosecution witnesses.

However, in light of the Court's recent ruling, the government is respectfully filing this motion for reconsideration in which it will provide a short factual summary of this evidence in order to place it into context of the government's case, and to demonstrate that proof of this evidence is necessary to establish the circumstances surrounding the homicide of William McCay and also to establish that the probative value of this evidence would substantially outweigh the danger of unfair prejudice under Fed. R. Evid. 403.

### **I. Factual Background**<sup>2</sup>

The government, if allowed, will present evidence that both defendants used methamphetamine in the hours before and after the murder of William McCay on March 9, 2005. The government also seeks to present evidence that the defendants stole vehicles in the hours before the murder. Specifically, the evidence would be that on March 8, 2005, Regennia Rios met up with defendants Gary Eye and Steven Sandstrom when they picked her up at a friend's house in a stolen Dodge Intrepid.<sup>3</sup> Sandstrom was driving the Intrepid. After the defendants picked up Rios, they immediately went into an alley and smoked a "bowl" of methamphetamine.

Following this, the defendants and Rios went to a location in the Northland so they could steal a Jeep Cherokee from someone's driveway. Rios and Eye rode together in one stolen vehicle and Sandstrom drove the stolen jeep. On the return trip to the northeast side, the parties became separated and eventually ended up at 3412 Gardner, where they came into contact with a

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<sup>2</sup>This factual recitation is very abbreviated and is intended solely to illustrate or highlight the drug usage and auto theft that was ongoing in the hours leading up the homicide of William McCay and shortly thereafter.

<sup>3</sup>As will be explained in more detail later in this motion, the Dodge Intrepid was later used in the homicide of William McCay and was subsequently burned by the defendants shortly thereafter under a bridge at 23rd Street and Manchester.

friend, Vincent Deleon. Mr. Deleon asked the defendants for a ride to go steal a vehicle of another individual who had recently “shorted” Deleon in a methamphetamine deal. These four individuals left in the stolen Intrepid to steal the truck. Following that, the defendants, Rios, and Deleon went to an area by the Truman Sports Complex where they stole another Jeep Cherokee. While en route to steal this Jeep, there were discussions in the stolen Intrepid about shooting “niggers.” After the Jeep was taken, Vincent Deleon separated from the defendants and Rios because of the conversation about shooting a “nigger,” and because of how high on methamphetamine the defendants appeared to be.

At some point, the defendants and Rios returned to defendant Sandstrom’s house where all three smoked several “bowls” of methamphetamine. Rios will testify that the methamphetamine use made both defendants “more irritable and aggressive.” The defendants and Rios eventually left the Sandstrom residence in the stolen Intrepid - with Sandstrom again driving - and the discussion of shooting a “nigger” resumed, ultimately culminating in the execution of William McCay.

The evidence will be that defendant Eye initially shot at McCay with Sandstrom’s gun and missed. Immediately following this first shooting, the occupants of the Intrepid - Eye, Sandstrom, and Rios - discussed “catching a case,” and the decision was made to locate William McCay and kill him to prevent the defendants and Rios from being charged with the shooting.

With Sandstrom still driving the Intrepid, they located William McCay several blocks away and defendant Eye fatally shot McCay. Following the homicide, the defendants and Rios went to the Sandstrom residence to get one of the stolen Jeeps. They proceeded to the area of 23rd Street and Manchester to burn the stolen Intrepid. Eventually, the defendants and Rios

came into contact with a number of individuals who will be called as witnesses during trial, and various incriminating conversations occurred while the parties were using drugs or drugs were discussed. In one particular conversation, defendant Eye - believing that Rios is selling drugs in unwelcome competition to an individual who was Eye's customer - made the comment that "to step on his toes is like being a nigger in the northeast." Rios interpreted this as a threat by Eye for selling drugs to one of his customers and that Eye was referring to the McCay homicide which she had witnessed.

## **II. Discussion**

The government contends that evidence of drug use and car theft involving the defendants and other individuals in the hours before and after the charged crimes is evidence which forms an "integral and natural part of the witness's accounts of the circumstances surrounding the offenses for which the defendant was indicted . . . ." *United States v. Foster*, 889 F.2d 1049, 1053 (11th Cir. 1989). The Eighth Circuit has held that "[e]vidence of the earlier bad act is admissible where it is 'so blended or connected, with the one on trial as that proof of one incidentally involves the other; or explains the circumstances; or tends logically to prove any element of the crime charged . . . In such a case the evidence of the other act is not considered extrinsic evidence and Rule 404(b) is not implicated.'" *United States v. LeCompte*, 108 F.3d 948, 952 (8th Cir. 1997). Stated another way, "evidence of acts that form an integral part of the crime charged is not rendered inadmissible merely because the acts are criminal in their own right but have not been charged . . . Otherwise, the government would be handicapped in presenting a coherent picture of the crime in issue." *United States v. Williams*, 95 F.3d 723, 731 (8th Cir. 1996).

**A. Evidence of Drug Use**

As recited above, the evidence will be that Regennia Rios used methamphetamine with both defendants at various points in the hours before and after the murder. The government seeks to present this evidence *not* to prove that the defendants have bad character or are drug users, but rather to provide a coherent picture of the relationship between Rios and the defendants. Rios' testimony will establish that drug use was an integral part of her association with both defendants. Leaving out the evidence would cause gaps in Rios' account of the events leading up to and following the McCay homicide

In fact, as recited above, Rios testified that the methamphetamine use by both defendants in the early morning hours of March 9, 2005, made the defendants more edgy and aggressive. This evidence is relevant to proving that both defendants would be capable of committing a homicide. Moreover, the complete picture of why these individuals associated with each other involves evidence of drug use. Leaving this evidence out would present an incomplete even misleading version of events to the jury.

**B. Car Theft Evidence**

There also is evidence that both defendants along with Vincent Deleon committed various car thefts in the hours before the McCay homicide. Specifically, there will be evidence that a few hours before the homicide, Deleon was riding with both defendants on a trip to steal a vehicle when defendant Sandstrom displayed a handgun. The government will present evidence that this firearm was used to murder McCay. Defendant Sandstrom made the statement that he would use the firearm to "kill a nigger quick." Sandstrom's statement in turn prompted Eye to also state that he would "kill a nigger quick." Deleon will testify that when they arrived at the

location where they were going to steal the vehicle, all three got out. Sandstrom then handed the firearm to Eye, so that he (Sandstrom) could steal the target vehicle.

Moreover, and most importantly, the government will present evidence that the red Intrepid which both defendants and Rios were riding in when Eye and Sandstrom hunted down and murdered McCay, was itself a stolen vehicle. Obviously, the government needs to present this car theft evidence to “complete the story” and provide a “total picture” of the events surrounding the McCay homicide.

In *United States v. McGuire*, 45 F.3d 1177, 1188 (8th Cir. 1995), the defendants were charged with various crimes related to the murder of a federal witness. As part of its proof, the government presented evidence that the defendants committed bank robberies together a few years before the murder of the informant. The defendants, of course, claimed that the evidence should have been excluded pursuant to Fed. R. Evid. 403. *Id.* at 1188. The Eighth Circuit held that the evidence of previous robberies –

was an integral part of the crimes charged. Evidence of these other crimes is admissible to explain the circumstances of Strada’s murder. *Id.* at 11312 (citations omitted). The robberies clarified the relationship between Mandacina, McGuire and Earlywine. The robberies brought both McGuire and Earlywine to Kansas City on numerous occasions to obtain firearms through the Mandacinas and to launder money. Most importantly, the robberies explained why McGuire would entrust Earlywine with knowledge of the Strada murder and why Mandacina would discuss a contract murder with McGuire, in Earlywine’s presence, without fearing that he would be reported to the authorities immediately.

*Id.* at 1188. This rationale from *McGuire* cannot be emphasized enough. The evidence of drug use and car thefts involving the defendants and other individuals, such as Rios and Deleon, explains and clarifies the various relationships and explains why both defendants would discuss committing a murder in front of those individuals. The fact that all of these persons were

involved in committing crimes makes it more credible that the defendants would feel comfortable publicly discussing their roles in committing a murder, or, in the case of Rios, committing a murder in her presence.

#### **IV. Conclusion**

Wherefore, for the foregoing reasons and authorities, the government respectfully requests that the court reconsider its Order precluding the government from presenting evidence of both defendants' drug usage in the hours leading up to the homicide of William McCay and in the days following the homicide (Doc. 345).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on April 3, 2008, 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/ D. Michael Green  
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