



(8th Cir. 1995) (quoting *United States v. Jones*, 990 F.2d 1047, 1050 (8th Cir. 1993), cert. denied, 510 U.S. 1048 (1994)).

In *United States v. Sills*, 120 F.3d 917 (8th Cir. 1997) gang affiliation was admissible but only because it was demonstrated clearly that defendant possessed a sawed off shotgun because he had been involved in a shooting because of gang activities. In this case the defendants are charged with formulating a plan to kill a black person because of his race. Absent a proper and credible showing through prior expert testimony that defendants were members of a known “white power” organization the court should not allow testimony as to routine gang membership or affiliation. Similarly, routine criminal behavior such as car thefts and drug sales or possession are irrelevant and prejudicial unless there is credible proof that this some how is directly related to the crime charged in the indictment.

WHEREFORE, defendant moves the Court to instruct the government not to offer such evidence during opening statement or the case in chief without prior ruling from the court.

Respectfully submitted,

/s/  
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CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been caused to be served on the Assistant United States Attorney for Western District of Missouri through use of the Electronic Court Document Filing System on Friday, November 23, 2007.

/s/

JOHN R. OSGOOD