

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) Case No. 05-00344-01/02-CR-W-ODS
)
 GARY EYE and)
 STEVEN SANDSTROM,)
)
 Defendants.)

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR
RECONSIDERATION

On March 17, 2008, the Court issued an Order that, *inter alia*, granted Defendants' request to limit evidence of their involvement in drugs, gangs and other crimes. With respect to Defendants' drug use, the Court ruled the evidence was not "intrinsic evidence . . . inextricably intertwined with the crime charged" and, in any event, the probative value was outweighed by the risk of prejudicial effect. The Court was "not certain what other crimes or acts the Government may wish to introduce at trial," so the Court barred such evidence until the matter was discussed outside of the jury's hearing. The Government has asked the Court to reconsider these rulings as they relate to Defendants' drug use and car thefts; Defendants have not responded and the time for doing so has passed. The motion (Doc. # 362) is granted in part and denied in part.

The Government indicates Defendants may wish certain aspects of their drug use to be introduced at trial, either as a means of impeaching prosecution witnesses or in an attempt to negate certain elements of the crimes charged. Certainly, if Defendants want to use such evidence they are free to do so. However, the Court cannot make this decision for them, and Defendants have not indicated their desire to introduce evidence of their drug use.

The Government also argues it cannot present a coherent picture of the crime without telling the jury the Defendants were using methamphetamine. The Court disagrees; as explained in the Court's previous Order, Defendants' drug use can be

extricated from evidence of the murder, particularly given the fact that Defendants' drug use occurred before and after the murder, but not during. Moreover, evidence of the murder itself is not intertwined with evidence of the drug use. Finally, even if the evidence were intertwined, the Court adheres to its conclusion that the prejudicial effect of the drug use outweighs its probative value (whatever that may be).

The Government also contends other witnesses' testimony will have "gaps" if they cannot discuss the drug activity. Again, the Court disagrees. Witnesses who were with Defendants can easily testify they were with the Defendants without testifying about what they were doing while they were with the Defendants.

The Government's final justification for introducing the evidence is that the drugs "made the defendants more edgy and aggressive" which "is relevant to proving that both defendants would be capable of committing a homicide." The Court believes this is a veiled invitation to the jury to conclude Defendants were more likely to have committed the homicide because they used drugs. The Government can introduce evidence from witnesses who can describe Defendants' demeanor and behavior in the time before the murder, but they cannot attribute that demeanor and behavior to Defendants' drug use.

The evidence regarding Defendants' car thefts appears to be integral to certain details of the crimes charged. Unlike the evidence of drug use, this evidence presents less potential for unfair prejudice. Therefore, the Court will permit use of this evidence during trial.

IT IS SO ORDERED.

DATE: April 16, 2008

/s/ Ortrie D. Smith _____
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT