

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

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

**GOVERNMENT’S MOTION IN LIMINE TO
EXCLUDE PREVIOUS BAD ACTS OF THE VICTIM**

Comes now the United States of America, by and through its undersigned counsel, and files its Motion to preclude defendant Eye from presenting argument or evidence alleging a violent character and/or specific instances of prior violent conduct of the victim, William McCay, or eliciting such evidence during cross-examination. In support, the government offers the following:

Discussion

In February of 2005, Mr. McCay was allegedly involved in an altercation with Ronnie Knabe at the Kansas City Rescue Mission. Both men were residents of the Mission at the time. Janice Brown, Case Manager, at the Mission provided an internal incident report from Kansas City Rescue Mission describing the incident. The report states that both McCay and Knabe were kicking and punching each other. The report also discloses that Knabe called McCay a “nigger.” When interviewed regarding the incident,

Ms. Brown told the FBI that Knabe provoked McCay in to the altercation. She provided the name of an eyewitness to the incident, and reported in reference to William McCay that, “You couldn’t ask for a nicer person.” She described McCay as well-liked around the shelter and indicated that he was never associated with any problems at the shelter.¹

Nonetheless, defendant Eye has sponsored Ronnie Knabe as a defense witness. Apparently, Eye plans on presenting evidence that McCay was involved in the altercation described in the incident report, during which McCay’s assailant called him racial slurs. Aside from attempting to attack the victim generally, perhaps the defendants intend to demonstrate that McCay was the aggressor in the physical altercation between McCay and Eye that resulted in McCay’s death on March 9, 2005. However, the evidence will demonstrate that Eye fired at McCay prior to any physical contact or even an exchange of words.

Indeed, a victim’s violent *character*, if proven, is not an essential element of the charge of murder or the defense of self-defense. *United States v. Gregg*, 451 F.3d 930, 934 (8th Cir. 2006). “Evidence of *specific instances* of a victim’s prior conduct to prove action in conformity therewith is only admissible ‘in cases in which the character or a trait

¹To the extent that defendant Eye seeks to attack William McCay’s character, the only available evidence of McCay’s character as reported by Ms. Brown is directly contrary to the apparent defense theory. Neither defendant has provided any additional evidence or even an interview from Ronnie Knabe in reciprocal discovery. The Mission’s incident report and the FD-302 of Ms. Brown’s interview were provided to defense by the government in the discovery process.

of character of a person is an essential element of a charge, claim, or defense.” *Gregg*, 451 F.3d at 934 *quoting* Fed. R. Evid. 405(b). Therefore, specific instances of McCay’s prior conduct are not essential to any attempt by Eye to fashion a claim of self-defense, nor is the specific episode involving Knabe admissible.

Moreover, any specific instances of violent conduct by McCay are especially irrelevant here because neither Eye nor Sandstrom has demonstrated that they had any knowledge of McCay prior to shooting and killing him on March 9, 2005. There is no evidence of any kind that would support a conclusion to the contrary. McCay was a total stranger to both Eye and Sandstrom at the time of the killing. The defendants may not use evidence of this prior violent altercation involving Knabe to demonstrate that McCay was the aggressor in an altercation between McCay and Eye on March 9th. Specific instances of a victim’s prior violent conduct is only admissible if the defense can establish knowledge of such prior violent acts at the time of the charged conduct. *Gregg*, 45 F.3d at 935. Therefore, defendants Eye and Sandstrom may not introduce through Knabe, evidence of McCay’s prior conduct without first demonstrating that they had knowledge of these previous acts at the time of the conduct charged in the indictment. This is a showing they can never meet.

Conclusion

For the reasons stated, the government respectfully requests that this Court bar defense from presenting or commenting on any evidence of the incident between McCay and Knabe during opening statements, closing arguments, or during the government's case-in-chief in cross-examination, or in presenting their defense.

Respectfully submitted,

John F. Wood
United States Attorney

By */s/ Eric L. Gibson*

Eric L. Gibson
Trial Attorney
Civil Rights Division, Criminal Section

United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Telephone: (202) 353-7425

/s/ David M. Ketchmark by ELG

David M. Ketchmark
Assistant United States Attorney

/s/ D. Michael Green by ELG

D. Michael Green
Assistant United States Attorney

Charles Evans Whittaker Courthouse
400 East Ninth 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 April 21, 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/ Eric L. Gibson

Eric L. Gibson

Trial Attorney

Civil Rights Division