

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

UNITED STATES OF AMERICA,            )  
  )  
  Plaintiff,            )  
  )  
vs.    )  
  )  
  )  
GARY EYE and                            )  
STEVEN SANDSTROM,                    )  
  )  
  Defendants.            )

Case No. 05-00344-01/02-CR-W-ODS

**ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANTS' MOTIONS IN LIMINE**

Pending are three motions in limine filed by the Government. While technically untimely, the Court recognizes that denying them on this basis will simply result in the motions being renewed in the form of contemporaneous objections. Inasmuch as the parties will benefit from knowing the Court's decisions earlier rather than later.

1. The motion to exclude the victim's previous bad acts (Doc. # 406) is deferred. The motion specifically targets the testimony of Ronnie Knabe, who was involved in a physical altercation with the victim approximately one month before his murder. Mindful of the limits imposed by Rule 405(b), the Court finds it difficult to rule this motion without knowing the specifics of Knabe's testimony or the purpose for which it will be offered. Therefore, a ruling on this motion is deferred. Knabe will not be permitted to testify unless and until the matter is discussed in further detail outside of the jury's hearing.

2. The motion to exclude expert opinions as to whether either or both defendants are "racists" (Doc. # 407) is granted. The Court previously held that no lay witness could offer an opinion as to whether a defendant is a "racist," but "Defendants' motivations are an issue in this trial, so witnesses will be permitted to provide factual testimony, including testimony about Defendants' actions and statements, that reflect Defendants' views towards racial minorities." The Government argues this ruling should extend to expert testimony offering the same opinions. Defendant Eye justifies the

proposed testimony by explaining the expert – a linguistic expert – will testify about speech patterns and the effect cultural influences have on those patterns, and that certain words reflect exposure to that culture and do not reflect views regarding race. He has also reviewed oral or written expressions and concluded “there is nothing in the sampled materials to indicate anything other than life style patterns of speech common among both blacks and whites.”

The Court believes Rule 704 applies to this situation. That rule states “[n]o expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.” One of the elements for Counts I and III requires the Government to prove the defendants acted “because of the race or color” of the victim. The defendants’ motivations therefore constitute a “mental state or condition constituting an element of the crime charged.”

The Court also believes the proposed testimony will not “assist the trier of fact to understand the evidence” as required by Rule 702. Juries routinely assess a party’s motivations based on facts presented to them. Having an expert explain the source of the words and phrases defendants employed will not help the jury determine the defendants’ motivations.

Finally, to the extent the expert intends to offer an opinion about a defendant’s motivations, the Court harbors serious doubts that the proposed testimony “is the product of reliable principles and methods.” Such testimony does not appear to be within the body of knowledge ascribed to linguists; in fact, divining an individual’s motivations is probably beyond the ken of any field of expertise.

3. The Government’s request to bar cross-examination and extrinsic evidence about uncharged misconduct (Doc. # 408) is denied without prejudice. The Court is mindful of the limits imposed by Rule 608, and the Court fully intends to enforce Rule 608, but the Court lacks sufficient information to identify evidence that should be

excluded pursuant to that rule. The Government is free to assert an objection when it believes objectionable testimony is sought.

IT IS SO ORDERED.

DATE: April 23, 2008

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