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

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 05-CR-00344-01-W-ODS**
GARY EYE,	)	
	)	
Defendant.	)	

DEFENDANT EYE'S MOTION FOR NEW TRIAL WITH SUGGESTIONS IN SUPPORT

COMES NOW Defendant Eye by undersigned counsel and hereby moves the Court pursuant to Rule 33, Federal Rules of Criminal Procedure, to grant him a new trial. As grounds therefore, defendant asserts as reversible error at trial: 1) the failure of the court to grant him a separate trial based on Bruton violations as well as general prejudice resulting from the spillover effect of the admission of evidence that was admitted separately as to defendant Sandstrom which could not be cured by limiting instructions. 2) the failure of the Court to grant a judgment of acquittal at the close of the government's evidence as to the Counts involving the alleged shooting at 9th and Spruce; and, 3) the denial of the various objections made by defendant Eye during trial, particularly those to which he requested a mistrial, which were overruled and denied. Because the above issues are so intertwined, defendant will not attempt to address them

separately but will instead simply point to the many problems at trial that can be attributed to these issues and the results that flow from them.

Defendant Eye repeatedly sought a severance, both pretrial and during trial, on grounds that he could not receive a fair trial because of potential Bruton violations, the general prejudice resulting from the presentation of antagonistic defenses, and the potential prejudice resulting from the spill over effect of evidence admissible against Sandstrom, including but not limited to, the evidence of threats made by Sandstrom to witnesses. See generally Zafiro v. United States, 506 U.S. 534 (1993); United State v. Abefalter, 340 F.3d 646 (8th Cir. 2003)(both for antagonistic defense issue); and Bruton v. United States, 391 U.S. 123 (1968) (6th Amendment confrontation).

During trial the government presented evidence from two detectives in the form of redacted admissions of Sandstrom in which Sandstrom admitted that he and another person committed the crime, the other person shot the victim, and he and the other person burned the car. Throughout the trial all witnesses in the case placed three parties at the scene of the crime: Reginnia Rios, Steven Sandstrom and Gary Eye. The redacted statements clearly focused on three persons, identified Rios by name, and referred to the third party by the male gender and use of the pronoun “he” instead of “someone” or “others” or something less direct. That the confession inculpated Eye cannot be disputed and it is safe to assume that anyone with minimal education and metal acumen would conclude beyond a shadow of a doubt that the “he” referred to was defendant

Gary Eye. Inasmuch as Sandstrom failed to testify, Eye was denied his right to cross examine Sandstrom and test this self serving statement.

Eye presented credible scientific evidence at trial that he was not the shooter based on the testimony of Rios, the only alleged witness, and that Rios or Sandstrom shot the victim without Eye's prior knowledge or acquiescence. The redacted confession of Sandstrom which was not subject to confrontational testing bolstered the government's theory of the case substantially and undermined substantially Eye's defense. Defendant submits this clearly violated the spirit of Bruton and rendered the concept of right of confrontation a joke or farce. Moreover, it undermined Eye's position at trial that the shooting at 8th and Spruce did not occur. The latter was of course supported by credible evidence that it was impossible for the victim to have been at 9th and Brighton less than two minutes later. The latter evidence of course comes from Rios herself who described the immediate and direct route the threesome took following the claimed incident at 9th and Spruce.

Further gumming up the works is the position taken by Sandstorm's attorney's at trial that the shooting at 9th and Spruce did occur but that Sandstrom tried to prevent it. It is an equally plausible hypothesis from all the evidence that it was entirely a different black person who was at 9th and Spruce. The latter of course would render the conviction based on the count involving McKay at this location a nullity. In either event, whether it was a different person or it did not occur at all, the fact remains it

could not have been McKay based on the testimony of Rios. Consequently, any count tied to 9th and Spruce involving McKay should not have been submitted to the jury at the close of the evidence.

During the trial the government presented numerous recordings and letters from Sandstrom in which he threatened to kill witnesses. This evidence went far beyond the evidence necessary to support a finding of the existence of the threat contained in the letter charged in Count nine of the indictment. The court ruled that there was an absence of any post murder conspiracy between Eye and Sandstrom and his cousin, Buchanan. Buchanan admitted he never sent or received letters from Eye while at Crossroads and that Eye was not a part of the discussion between Sandstrom and Eye to kill key witnesses. Albeit Buchanan did claim Eye tried to enlist his aid while at CCA but this was after the threat investigation was over and Buchanan was trying to extricate himself from his problems. This is also when he attempted to sell information about Eye's case. At any rate, the Crossroads letters and phone calls were not relevant to Eye and were highly prejudicial and the court's repeated limiting instructions were simply ineffectual at neutralizing the prejudice that resulted in a case of this magnitude involving such emotionally charged evidence.

Again, all the above served to undermine Eye's defense that he was not part of the conspiracy to hunt down and shoot an African American and that he did not know the crime was going to occur and that nothing took place at 9th and Spruce. All this along

with the Burton evidence was directly instrumental in causing the jury to find Eye guilty of the counts involving the shooting at 9th and Spruce and 9th and Brighton. For these reasons, Eye should be granted a new and separate trial.

WHEREFORE, Defendant Eye moves the Court to grant him a new trial in this matter.

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 Tuesday, May 20, 2008.

/s/
JOHN R. OSGOOD