



American
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Calendar of Events

NDAAs National Gang Conference

Alexandria, VA

January 22-23, 2008

To Register Online: http://www.ndaa.org/education/ndaa/gangs_training_schedule.html

Project Safe Neighborhoods

Anti-Gang Training
TBA

Noteworthy Caselaw:

Brendlin v. California, No. 06-8120 (U.S. Sup. Ct. June 18, 2007). Passengers right to challenge traffic stops.

United States v. Goddard, No. 05-3080 (D.C. June 22, 2007). Terry Stop/reasonable suspicion.

United States v. Ponder, No. 06-3843 (6th Cir. June 20, 2007). Exigent circumstances.

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SWIFT & CERTAIN

GUN VIOLENCE PROSECUTION PROGRAM

Volume 4, Number 2

Fighting Gangs with RICO and VICAR

by Philip H. Sheppard
NDAA legal intern

As the problem of gang violence increases and spreads across the country, some jurisdictions are combating this threat by use of federal Racketeer Influenced and Corrupt Organizations (RICO) statutes, originally contemplated to attack traditional organized crime. These prosecutions are extremely labor intensive and permission to proceed on a RICO case must be given by DOJ. But the RICO approach can have a devastating effect on gangs if the elements of the statute can be met.

In the prosecution of street gangs, RICO requires a showing of: two criminal acts by the defendant within the last ten years (at least one of which must have occurred within the last five years), the existence of an enterprise, the defendant's association with that enterprise, and a pattern of similar racketeering acts carried out by the enterprise.

Prosecutors can also charge defendants with conspiracy to violate the RICO act. This requires a showing that there was an enterprise, that the enterprise was engaged in activities that affected interstate or foreign commerce (these activities must be of a similar type, i.e. drug distribution, which qualifies under the definition of racketeering activity used for RICO), that the defendant was employed by or associated with the enterprise, and that the defendant was a part of the conspiracy.

Another tool that can be used against street gangs is the Violent Crime in Aide of Racketeering Activity (VICAR) statute. An advantage of VICAR over RICO is that VICAR requires only one criminal act to be proven, provided that it is violent and is carried out for personal monetary gain or for status within a gang. In a VICAR prosecution the enterprise, a pattern of racketeering activity, and the commission of an act by the defendant in furtherance of that racketeering activity all must be proven.

In order to satisfy the different elements of RICO and VICAR, federal prosecutors may use local and state convictions. Therefore, state and local prosecutors can be involved in federal RICO cases when federal prosecutors need details of the state and local convictions of defendants. In addition to the federal

RICO statutes, 31 states have their own RICO statutes, allowing for state or local RICO cases.

Some recent examples of the use of the federal RICO and VICAR statutes against street gangs can be seen in prosecutions in Salt Lake City and Petersburg, Virginia. King Mafia Disciples (KMD) is a street gang operating in Salt Lake City. KMD sought to gain respect from other gangs through criminal acts including drug distribution and violent crimes such as homicide, aggravated assault, and aggravated robbery. The gang operated through the use of a hierarchical system and sought out new members who were desperate for a "family." Before they could join, these potential members were required to carry out crimes directed by existing members of the gang. Aspiring members are then beat into the gang before finally swearing an oath of allegiance to KMD. Those who violate the gang's code can be disciplined through either physical assault or death.

RICO conspiracy was used to prosecute ten members of this gang for their criminal activity. In this case, proof of the enterprise at trial included: the KMD manual used by the gang, the hierarchy system, photographs of the "jump-in" ceremony for new members, the gang's colors (white and purple), tattoos showing membership in the gang (which included six-pointed stars, crowns, and pitchforks), photographs and videos of the gang's meetings, and a showing that the members of the gang associated with each other to commit the crimes. A pattern of racketeering activity was shown through the use of evidence of the crimes committed (murder, aggravated assault, robberies, drug distribution) and the requirement that such crimes be committed to gain admission to the gang and to maintain position in the hierarchy. Evidence was presented that showed that each member committed such crimes for personal gain and also for the gang as a whole because these crimes caused other gangs to fear and respect KMD. The VICAR charges against several members of the gang were met by proving a single act of homicide in furtherance of the racketeering activities of the gang. All defendants were convicted in this case.

and are serving sentences which range from six and one-half years to life in prison.

Another example from Utah is the Soldiers of the Aryan Culture (SAC), a violent street gang that originated in prison, but spread beyond the prison walls through members who were released and then sought out additional recruits. New recruits had to serve a six-month probationary period in which they proved themselves through various criminal acts. Once admitted, each member's torso was tattooed with swastikas, lightning bolts, and the gang's initials. The gang members held meetings and were organized in a hierarchy of officers: general, lieutenant, sergeant, etc. In prison, SAC members would assault homosexuals, racial minorities, and those who refused to follow the tenants of SAC. Those SAC members outside of prison engaged in aggravated assaults, drug distribution, and attempted homicide.

RICO was used to prosecute six of the gang's top leaders while VICAR was used to prosecute the remaining members. Under RICO, the existence of the enterprise was shown through the use of the gang's code of conduct, its associations, its meetings, the tattoos of members, and the execution of criminal orders. The pattern of racketeering activity was shown through the use of the gang's manual, the completion of assault orders given by higher ranking members of the hierarchy, and the fact that SAC members committed these crimes to benefit themselves personally and the gang as a whole (by helping it move closer to its goal of being a dominant force both in prison and on the street). Once the existence of the gang, its criminal acts, and the completion of criminal orders to benefit the gang was shown, the requirements of VICAR were met. In all, 14 members of the SAC were charged; 12 of these were convicted, with sentences from three to 20 years in prison.

In Virginia, prosecutors used charges of conspiracy to violate the RICO to bring down many members of the Third Ward gang. The Third Ward area of Petersburg had been plagued by drug and gang-related

crime and violence for years. The Third Ward gang was made up of three factions called "Top," "Spurs," and "Bottom." These factions were involved in drug distribution, and also violent crimes including homicides. However, the chief purpose of the gang was to prevent outsiders from competing in drug sales in the Third Ward; in this case outsiders primarily meant a rival gang known as the "Carter Boys." The gang also employed lookouts for police, kept locations to stash guns and drugs, and followed a set of rules including non-interference in the drug sales and customer base of other gang members and a code of silence regarding the gang's activities. After a particularly brazen murder and attempted murder, 36 members of the Third Ward gang were charged with conspiracy to violate the RICO act and with conspiracy to distribute 50 grams or more of cocaine base.

In order to meet the RICO requirements, the prosecution proved that the gang was involved in activities that affected interstate commerce by showing murder, attempted murder, and more than two acts of drug dealing against each defendant. The interstate nature of the acts in the case was stipulated to because the cocaine base used to produce drugs such as those distributed by the Third Ward gang is not grown in the United States, and thus must be shipped across not only state lines but national borders as well. The defendants' memberships in a gang were proven through use of pictures of the gang's graffiti, testimony about the gang's territory, the white t-shirt and blue jeans that each member wore as their "uniform" or colors, pictures of the defendant's tattoos which illustrated their gang affiliation, and testimony from a gang expert. Since gangs qualify as enterprises, once the group's status as a gang was proven the enterprise requirement of the RICO statute was met. Thirty-one members of the gang entered guilty pleas and cooperated with the government. Five gang members went to trial. The five who chose to go to trial received prison sentences ranging from 20 years to life imprisonment.

For more detailed information, please see *Silent Witness*—Volume 10, Number 3 online at: <http://www.ndaa-apri.org/apri/programs/dna/newsletter.html>

U.S. Supreme Court Grants Writ of Certiorari in DC Gun Law Case

Parker v. District of Columbia (District of Columbia v. Dick Anthony Heller) No. 07-290

Nov. 20, 2007

Petition GRANTED limited to the following question: Whether the following provisions - D.C. Code §§ 7-2502.02(a) (4), 22-4504 (a), and 7-2507.02 - violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?

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National District Attorneys Association
American Prosecutors Research Institute
Gun Violence Prosecution Program
99 Canal Center Plaza, Suite 510
Alexandria, Virginia 22314
www.ndaa.org

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