70 F.3d 1507, 43 Fed. R. Evid. Serv. 321
(Cite as: 70 F.3d 1507)

United States Court of Appeals,
Eighth Circuit.
UNITED STATES of America, Appellee,
v.
Carlton DARDEN, Appellant.
UNITED STATES of America, Appellee,
v.
Carla Simone SEALS, Appellant.
UNITED STATES of America, Appellee,
v.
Michael WILLIAMS, Appellant.
UNITED STATES of America, Appellee,
v.
Raymond AMERSON, Appellant.
UNITED STATES of America, Appellee,
v.
Gerald Douglas HOPKINS, Appellant.
UNITED STATES of America, Appellee,
v.
Jerry Lee LEWIS, Appellant.
UNITED STATES of America, Appellee,
v.
Noble Laverne BENNETT, Appellant.

Nos. 93–3386, 93–3448, 93–3449, 93–3451 to 93–3453 and 93–3456.
Submitted June 14, 1995.
Decided Nov. 22, 1995.

BOWMAN, Circuit Judge.

The United States presented evidence at the appellants' trial tending to show that Jerry Lee Lewis participated in and became the leader of a powerful criminal racketeering enterprise that for over ten years controlled a large percentage of the market for T's and Blues (a heroin substitute), heroin, and cocaine in north St. Louis. Lewis obtained and maintained his position by murdering competitors and others who threatened his organization (the Jerry Lewis Organization or JLO). The profitable but bloody activities of the appellants in this case, all members of the JLO, were described by other JLO members who eventually cooperated with the government and whose testimony will be set out in detail as necessary throughout this opinion. In essence, the investigation and prosecution of Jerry Lee Lewis and his associates produced evidence of a long-term, violent drug-trafficking enterprise operating behind a facade known as Subordinate Temple No. 1 of the Moorish Science Temple of America (MSTA).[FN1] Jerry ***1517** Lee Lewis held the position of Grand Sheik in the MSTA, and the membership of the JLO and the MSTA overlapped. A large number of MSTA/JLO members were arrested when a grand jury handed down the initial indictment in this case in January 1991. A superseding indictment was handed down in September 1992, and the trial of the seven appellants in this case and two other defendants began on October 28, 1992.

FN1. The Moorish Science Temple was founded in 1913 in Newark, New Jersey, by Timothy Drew, also known as Noble Drew Ali, a black delivery man from North Carolina. Drew taught that Christianity is a religion for whites and that the true religion of blacks is Islam. According to Drew, all blacks in the United States are descended from three Moroccan tribes, the Alis, Beys, and Els, and blacks are not "Negroes" but "Moorish–Americans." *See* 1 The Encyclopedia of Religion 101 (1987). Members add the hyphenated names "Ali," "Bey," or "El" to their surnames to reflect this belief. The St. Louis branch of the MSTA has been active in the Missouri prison system for two decades and recruits almost all of its members from the inmate population.

The appellants in this case who are MSTA members were indicted under their legal names. This opinion therefore does not use the Islamic surnames adopted by some of the appellants.

After a trial lasting almost nine months, one of the longest criminal trials in the history of the Eastern District of Missouri, a jury returned guilty verdicts against all seven appellants on one count of conducting a criminal racketeering enterprise in violation of 18 U.S.C. § 1962(c) (1988), against six appellants (all but Noble Laverne Bennett) on one count of conspiring to conduct and participate in the same criminal racketeering enterprise in violation of 18 U.S.C. §

1962(d), against Jerry Lee Lewis on six counts of committing violent crimes (murder, conspiracy to commit murder, and attempted murder) in aid of a racketeering enterprise in violation of 18 U.S.C. § 1959, and against Raymond Amerson on two counts of committing violent crimes (murder and conspiracy to commit murder) in aid of a racketeering enterprise in violation of 18 U.S.C. § 1959. Two co-defendants were acquitted. The District Court [FN2] sentenced each appellant to life in prison.

> FN2. The Honorable George F. Gunn Jr., United States District Judge for the Eastern District of Missouri.

On appeal, Jerry Lee Lewis and Noble Laverne Bennett challenge only their convictions while Carlton Darden, Carla Simone Seals, Michael Williams, Raymond Amerson, and Gerald Hopkins challenge both their convictions and their sentences. Appellants, in seven separate briefs running over 620 pages, properly raise forty-two issues.[FN3] The government's brief runs 336 pages. Because of the lengthy trial, the complexity of the case, and the sheer size of the record, we have accepted these overlength filings. For the reasons stated below, we affirm the convictions of all seven appellants and the sentences of Darden, Seals, Williams, Amerson, and Hopkins.

> FN3. Throughout their briefs, appellants liberally adopt the arguments of their colleagues. Unless a specific appellant's adoption of an argument affects our analysis of the issue, we will not refer by name to the appellants who adopt, without independent argument, the contentions of other appellants.
>
> Additionally, a substantial number of other issues were mentioned in passing in the appellants' briefs. Without any arguments or citations to the record that would assist us in judging the merits of those claims of error, we decline to address them. *See Jasperson v. Purolator Courier Corp.*, 765 F.2d 736, 740 (8th Cir.1985) (holding that failure to discuss issue in appellate brief constitutes abandonment of that issue).

I.

All of the appellants argue that the District Court should have granted their motions for a judgment of acquittal on Counts I and II because the evidence does not support the jury's verdicts. When evaluating a claim of insufficient evidence, this Court considers "the evidence in the light most favorable to the guilty verdict, giving the government the benefit of all reasonable inferences that might be drawn from the evidence." *United States v. Fregoso*, 60 F.3d 1314, 1322 (8th Cir.1995) (quoting *United States v. Smith*, 32 F.3d 1291, 1292 (8th Cir.1994)). We will reverse a conviction for insufficient evidence and order the entry of a judgment of acquittal only if no construction of the evidence exists to support the jury's verdict. *United States v. Parker*, 32 F.3d 395, 399 (8th Cir.1994).

In this case, the government charged all seven appellants with one count of conducting a criminal racketeering enterprise in violation of 18 U.S.C. § 1962(c) (1988) (Count I) and one count of conspiring to conduct and participate in the same criminal racketeering enterprise in violation of 18 U.S.C. § 1962(d) alleged in Count I (Count II). These activities were alleged to have taken place between April 1978 and September 1992. All ***1518** seven appellants were convicted on Count I. The jury acquitted Noble Bennett on Count II but convicted the other six appellants.

To establish the elements of a substantive RICO offense (Count I), the government must prove (1) that an enterprise existed; (2) that the enterprise affected interstate or foreign commerce; (3) that the defendant associated with the enterprise; (4) that the defendant participated, directly or indirectly, in the conduct of the affairs of the enterprise; and (5) that the defendant participated in the enterprise through a pattern of racketeering activity by committing at least two racketeering (predicate) acts. *United States v. Bennett*, 44 F.3d 1364, 1374 (8th Cir.), *cert. denied*, ___ U.S. ___, ___, 115 S.Ct. 2279, 2585, 132 L.Ed.2d 282, 833 (1995), *and cert. denied*, 516 U.S. 828, 116 S.Ct. 98, 133 L.Ed.2d 52 (1995). To establish the charge of conspiracy to violate the RICO statute (Count II), the government must prove, in addition to elements one, two, and three described immediately above, that the defendant "objectively manifested an agreement to participate ... in the affairs of [the] enterprise." *Id.* (quoting *United States v. Phillips*, 664 F.2d 971,

1012 (5th Cir.1981), *cert. denied,* 457 U.S. 1136, 102 S.Ct. 2965, 73 L.Ed.2d 1354 *and* 459 U.S. 906, 103 S.Ct. 208, 74 L.Ed.2d 166 (1982)). Proof of an express agreement is not required; "the government need only establish a tacit understanding between the parties, and this may be shown wholly through the circumstantial evidence of [each defendant's] actions." *Fregoso,* 60 F.3d at 1325.

Appellants argue that the evidence was insufficient to prove (1) the single enterprise charged by the government and (2) an enterprise with a structure distinct from the structure necessary to commit the predicate acts charged. Appellants Darden, Seals, Amerson, and Hopkins argue that the evidence is insufficient to prove that each of them was associated with the enterprise charged in the indictment. Appellant Lewis argues that the evidence is insufficient to prove that he managed, supervised, or directed the criminal racketeering enterprise charged in the indictment. We also address in this section a number of additional arguments concerning the sufficiency of the evidence as well as several related issues.

* * * *

4. Raymond Amerson

Amerson's criminal association with Jerry Lewis dates at least to the early 1980s. Michael Lewis, Jerry Lewis's brother and Carlton Darden's brother-in-law, testified that Amerson was a part of the JLO when he joined in 1980 or 1981 and that Amerson was selling large amounts of T's and blues. Rudy Weaver testified that Amerson asked Weaver to recruit drug dealers from the prison in which Weaver was then incarcerated. Weaver also testified that, after Weaver had been released from prison, Amerson taught him how to create a "spot" in his car to hide drugs and guns and that Amerson actually installed such a spot in Weaver's car. This was done behind the MSTA building. According to Weaver, Amerson laundered drug ***1524** money, received large amounts of cocaine, and broke down kilos of cocaine for redistribution at the JLO-managed Star and Crescent Market in 1988 and 1989. During that same time frame, Amerson travelled to Atlanta to pick up cocaine from a JLO source.

Amerson was also involved in the violent activities of the JLO. Ronnie Thomas testified that Amerson was involved in the elimination and intimidation of witnesses planning to testify against members of the JLO. Amerson, along with Michael Williams and Jerry Lewis, participated in the pre-killing surveillance of intended victims. Michael Lewis and Earl Parnell testified that Amerson shot and killed Bruce "Hat" Henry and either killed or participated in the killing of Harold "Count" Johnson, both loyal associates of rival drug dealer Lidell "Bud" Green. Lewis and Parnell also testified that Amerson murdered Billy Patton, a drug dealer who competed with the JLO, in late January 1989. After the killing, Amerson and other JLO members gathered at Jerry Lewis's house, toasted Patton's death, and laughed about the murder.

In sum, the evidence is clearly sufficient to show that Darden, Hopkins, Seals, and Amerson associated with the JLO, agreed to participate in the affairs of the JLO, and participated in the conduct of the JLO's affairs through patterns of racketeering activity.

D. Other Sufficiency Arguments

Several appellants argue that the government did not sufficiently plead and did not prove a pattern of racketeering activity because it failed to prove at least two predicate acts within the five-year statute of limitations. We reject all of these contentions, addressing below only those issues properly briefed.

Carlton Darden and Noble Bennett both argue, without any citation to authority, that the narcotics conspiracy [FN4] charged by the government as a predicate act in Counts I and II of the Superseding Indictment is identical to the RICO conspiracy and, as such, is not a proper predicate act under the statute. The Superseding Indictment charges that the appellants conspired to possess, distribute, and possess with the intent to distribute cocaine, heroin, marijuana, and pentazocine in violation of federal and state law. The elements of this offense differ from the elements of the RICO offenses charged by the indictment, *see supra* pp. 1517–18, and this offense clearly constitutes a predicate act under the RICO statute, *see* 18 U.S.C. § 1961(1)(A), (D) (1988). *Cf. United States v. Scarpa,* 913 F.2d 993, 1008 (2d Cir.1990) (holding that narcotics conspiracy had sufficient nexus with RICO charges to serve as predicate act). The jury found that the government proved beyond a reasonable doubt that Lewis, Seals, Amerson, Bennett, Darden, and Williams had engaged in a narcotics conspiracy that continued from 1978 to 1992. The jury's verdict is supported by the great weight of the evidence, and thus this assignment of error does

not provide a basis for relief for any of the appellants.

> FN4. Darden also argues the government failed to prove that the single narcotics conspiracy charged existed or that he ever agreed to join it. We reject these contentions for the same reasons we reject the contentions that the single RICO enterprise charged consisted of multiple conspiracies and that Darden was not a member of the RICO conspiracy. *See supra* pp. 1518–21, 1522.

Darden and Bennett also argue that the government failed to prove that they engaged in a pattern of racketeering activity, one of the essential elements of a RICO offense. In Bennett's case, the jury found that the government had proved beyond a reasonable doubt that Bennett was involved in the JLO's narcotics conspiracy, that he possessed cocaine on three separate occasions, and that he possessed cocaine with the intent to distribute cocaine on one occasion. The evidence is sufficient to support the jury's findings on these charges. Bennett's primary argument is that simple possession of cocaine cannot serve as a predicate act under the RICO statute. We agree. The statute specifically lists a number of drug-related offenses that constitute predicate acts for purposes of the RICO statute. *See* 18 U.S.C. § 1961(1)(A), (D) (1988). Applying the time-honored rule of *inclusio unius est* ***1525** *exclusio alterius* (the inclusion of one is the exclusion of another), it is apparent to us that mere possession is not a predicate act under the RICO statute. Bennett, however, is not aided by this argument. A pattern of racketeering activity consists of at least two predicate acts, although two may not be sufficient. *See Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n. 14, 105 S.Ct. 3275, 3285 n. 14, 87 L.Ed.2d 346 (1985). In this case, however, Bennett's two predicate acts (participating in the narcotics conspiracy and possession with intent to distribute), along with the other evidence of Bennett's intimate participation in the JLO, *see supra* pp. 1519–20, conclusively establish that Bennett engaged in the pattern of racketeering activity charged by the government.

In Darden's case, he argues that the evidence was insufficient to prove a pattern of racketeering activity. While RICO may not be broad enough to encompass the actions of every defendant who commits two proscribed racketeering acts, we think that Darden's involvement in the attempted murders of Rochelle Bartlett and Lidell "Bud" Green, his possession with the intent to distribute cocaine on numerous occasions from 1987 to 1989, and his leadership in the T's and blues trade, each of these activities having been established by sufficient evidence at trial, constitute a pattern of racketeering activity within the meaning of the RICO statute. The acts are all related to his participation in the JLO, and they represent a consistent desire to further the JLO's activities.

In addition to these arguments, Darden adds the contention that his prosecution was barred by the general federal five-year statute of limitations, 18 U.S.C. § 3282 (1988), which is applicable to prosecutions brought under the RICO statute, *United States v. Vogt,* 910 F.2d 1184, 1195 (4th Cir.1990), *cert. denied,* 498 U.S. 1083, 111 S.Ct. 955, 112 L.Ed.2d 1043 (1991). A prosecution under § 1962(c) (Count I) is barred by the statute of limitations unless the defendant committed a predicate act within five years of the indictment. *United States v. Salerno,* 868 F.2d 524, 534 (2d Cir.), *cert. denied,* 491 U.S. 907, 109 S.Ct. 3192, 105 L.Ed.2d 700 *and* 493 U.S. 811, 110 S.Ct. 56, 107 L.Ed.2d 24, 25 (1989). In a prosecution under § 1962(d) (Count II), an indictment is timely if the conspiracy had not accomplished or abandoned its objectives more than five years before the date of the indictment. *United States v. Rastelli,* 870 F.2d 822, 838 (2d Cir.), *cert. denied,* 493 U.S. 982, 110 S.Ct. 515, 107 L.Ed.2d 516 (1989). Because we conclude above that sufficient evidence supports the jury's finding that Darden committed a predicate act, possession with intent to distribute cocaine, as late as 1989, his statute-of-limitations arguments are foreclosed. The original indictment in this case was returned by the Grand Jury on January 9, 1991, only two years after Darden had committed a predicate act in furtherance of the JLO's continuing RICO conspiracy.

* * * *

VII.

For the reasons stated, the convictions and sentences of the appellants are affirmed.