

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-60232-CR-ZLOCH

UNITED STATES OF AMERICA,

vs.

AUDIE WATSON,

Defendant.

REPORT AND RECOMMENDATION ON MOTION TO QUASH SEARCH WARRANT
(DE 121) AND ON MOTION TO DISMISS SUPERSEDING INDICTMENT (DE 122)

THIS CAUSE is before the Court on the Motion to Quash Search Warrant and Suppress [Defendant's Residence] with Authority (DE 121) and the Motion to Dismiss Superseding Indictment, or Alternatively Counts 5-9 [Money Laundering] and Related Forfeiture (DE 122), both filed by Audie Watson ("Defendant"), and were referred to United States Magistrate Judge Barry S. Seltzer pursuant to 28 U.S.C. § 636 and the Magistrate Rules of the Local Rules of the Southern District of Florida (DE 125). For the reasons set forth below, the undersigned recommends that both Motions be DENIED.

I. PROCEDURAL HISTORY

On August 27, 2008, the undersigned Magistrate Judge signed a Search Warrant (DE 121-2) for the premises located at 7500 N.W. 73rd Avenue, Tamarac, Florida ("search premises"). The accompanying Application for Search Warrant (DE 121-2) cited criminal violations of 8 U.S.C. § 1324 and 18 U.S.C. §§ 371 and 1341. The Application was supported by a 9-page affidavit and an attachment containing a list of 13 items to be seized. See id.

On August 28, 2008, a grand jury returned an Indictment (DE 1) charging Defendant and three other individuals with conspiracy to commit mail fraud and encourage illegal aliens to unlawfully remain in the United States, in violation of 18 U.S.C. § 371 (Count 1) and with encouraging illegal aliens to unlawfully remain in the United States, in violation of 8 U.S.C. § 1324 (Count 5). In addition, the Indictment charged Defendant alone with mail fraud, in violation of 18 U.S.C. § 1341 (Counts 2-4).

On August 29, 2008, law enforcement agents arrested Defendant and executed the search warrant at his residence, the search premises. See Response to Motion to Dismiss at 2 (DE 127). During the execution of the warrant, the Government seized from the search premises approximately 23 boxes of documents, including numerous financial records. Id. Thereafter, the Government obtained additional documentary evidence pertaining to Defendant's assets and money laundering. Id.

On March 12, 2009, a grand jury returned a Superseding Indictment (DE 96) that added, as to Defendant only, five counts of money laundering, in violation of 18 U.S.C. § 1957 (Counts 5-9) and forfeiture allegations.

On May 4, 2009, Defendant filed a Motion to Quash Search Warrant and Suppress [Defendant's Residence] with Authority (DE 121) and a Motion to Dismiss Superseding Indictment, or Alternatively Counts 5-9 [Money Laundering] and Related Forfeiture (DE 122). On May 8, 2009, the Government responded to the Motion to Dismiss (DE 127), and on May 11, 2009, it responded to the Motion to Quash Search Warrant and Suppress (DE 128). Defendant did not thereafter reply to the Government's responses, and his time for doing so has now passed. The Motions, therefore, are ripe for review.

II. MOTION TO QUASH SEARCH WARRANT AND SUPPRESS

A. THE SEARCH WARRANT

On August 27, 2008, the undersigned Magistrate Judge reviewed an Application and Affidavit for Search Warrant and, based on that review, signed a Search Warrant (DE 121-2) for the premises located at 7500 N.W. 73rd Avenue, Tamarac, Florida. The Application and Affidavit for Search Warrant (DE 121-2) describes in considerable detail Defendant's alleged criminal activity, as well as the affiant's grounds for believing that an enumerated list of 13 items evidencing that activity could be found at the search premises.

The Affidavit asserts that Universal Service Dedicated to God, Inc. ("USDG") was incorporated in Florida in 1996 and that since USDG's incorporation, Defendant has been listed as its President. Id. at ¶ 4 (DE 121-2). Law enforcement investigation revealed that from August 2005, Defendant and employees of USDG sold memberships in the Pembina Nation Little Shell Indian Tribe ("the Tribe") by falsely representing to their clients, who were illegal aliens, that they would become United States citizens through their membership in the tribe and thereby resolve their immigration problems. Id. at ¶ 5 (DE 121-2). Charging clients \$1,500 per individual and \$2,000 per couple, Defendant and the USDG employees completed applications for membership into the Tribe; they then issued identification documents, fraudulently stating that the applicants were members of the Tribe. Id. at ¶¶ 6, 7 (DE 121-2).

State of Florida corporation records show that in March 2008 USDG changed its address from a Tamarac office to the search premises; law enforcement later confirmed the move through surveillance and undercover meetings. Id. at ¶¶ 8, 9 (DE 121-2).

The Affidavit recites that on June 13, 2007, an undercover agent ("UC1") and an

accompanying individual went to 7126 W. McNab Road, Tamarac (the "Tamarac office") to pay Defendant \$1,000 for documents showing membership in the Tribe on behalf of the accompanying individual and his/her spouse, who were aliens present illegally in the United States. Id. at ¶ 10 (DE 121-2). UC1, who was posing as the accompanying individual's employer and as the owner of a landscaping business, told a USDG employee that he/she wanted to obtain documents for six undocumented aliens; the employee told UC1 that the document cost for each of the aliens would be \$1,500. UC1 then scheduled a meeting with Defendant for June 18, 2007. Id. at ¶ 11 (DE 121-2).

On June 18, 2007, UC1 met with Defendant, informing him that the group of landscapers working for UC1 were undocumented aliens illegally working and residing in the United States. Id. at ¶ 12 (DE 121-2). On July 13, 2007, UC1, accompanied by three individuals posing as landscaping employees, met with Defendant and USDG employees. UC1 paid \$4,500 for three tribal membership applications, and he informed Defendant that he had another three individuals in Naples and Ft. Myers who needed papers. Id. at ¶ 13 (DE 121-2). Defendant responded that USDG could provide temporary passports for opening bank accounts and traveling in the United States and, for another \$150, could provide license plates. Id.

On July 20, 2007, UC1, accompanied by two cooperating witnesses ("CW1" and "CW2") met with Defendant and USDG employees. Id. at ¶ 14 (DE 121-2). UC1 paid \$1,500 for one tribal membership application and \$40 for four notary stamps, which were used to notarize four sets of tribal documents purchased by UC1. Id. An employee of USDG advised CW1 that the tribal papers would make him legal because he would become a Native American; he explained that the Tribe is recognized by the United States.

Id.

On August 2, 2007, UC1 and CW1 went to USDG and paid \$500 to an employee for a Social Security card for "J.P." and paid \$10 to that same employee to notarize a USDG application for tribal documents. Id. at ¶ 15 (DE 121-2).

On August 10, 2007, UC1 met with USDG employees and received tribal documents for the individual who had accompanied UC1 on June 13. Id. at ¶ 16 (DE 121-2). UC1 also paid one of the employees \$3,000 for three sets of fraudulent Social Security cards and employment authorization cards. Id.

On August 15, 2007, UC1 received tribal documents for UC2 and UC3, which had been mailed from USDG in Tamarac. Id. at ¶ 17 (DE 121-2).

On August 20, 2007, UC1 met with employees at USDG and received a Social Security card and an employment authorization card for CW1 and UC3; UC1 also received tribal documents for CW1 and CW2. Id. at ¶ 18 (DE 121-2).

On September 20, 2007, UC1 met with employees at USDG and received a Pembina Nation driver's license for CW1 and a blank Pembina Nation membership application. Id. at ¶ 19 (DE 121-2).

On March 20, 2008, UC1 and UC2 met with Defendant at a Tamarac restaurant, at which meeting they requested Pembina Nation application forms from Defendant. Id. at ¶ 20 (DE 121-2). Defendant advised that he would provide them with the new "Little Shell Nation" application; he further advised that the USDG office was closed and that some of the business records were at his residence and that others were at a storage facility. Id. Furthermore, Defendant advised UC1 and UC2 that he was now operating the business from his residence. Id. Defendant then called a USDG employee, asked him to print an

application for the UCs, and left the meeting; he returned shortly thereafter with the application forms for the UCs. Id. Defendant was surveilled by agents that day as he left the search premises and traveled to meet the UCs at the restaurant; they also surveilled him as he returned to the search premises to retrieve an item and then went back to the restaurant, where he presented the new Little Shell application forms to the UCs. Id. at ¶ 21 (DE 121-2).

On August 25, 2008, UC1 and UC2 went to the search premises to speak to Defendant about purchasing Little Shell Nation documents and to check on the status of documents previously requested; the UCs met Defendant at the front door of the search premises. Id. at ¶ 22 (DE 121-2). Defendant stated that all of the applicant's files were in his residence. Id. The UCs asked Defendant to verify the status of three applications that they claimed had been mailed to USDG with a payment of \$1,500. Id. Defendant went into his residence to check on these applications and then emerged and stated that he had "searched his files and could not find any documents concerning the names" that were given to him. Id. Defendant also confirmed that although he had a file for CW2, he could not locate CW2's Pembina driver's license. Id. The UCs then asked Defendant to make copies of the new tribal application forms, as they only had copies of the old ones. Id. Defendant went into the search premises to retrieve copies of the applications, and he advised the UCs that a USDG employee was currently working there. Id. That employee then emerged from the search premises and gave the UCs copies of the tribal applications. Id. at ¶ 23 (DE 121-2). That employee further advised the UCs that he was working at the search premises one day per week and was personally conducting name checks and record checks on the computers and files located within the search premises. Id. The

employee informed the UCs that in January 2008 all the files and computers from the former business location had been transferred to and were now located at Defendant's residence – the search premises. Id.

The affiant then went into considerable detail to define various computer terms, to explain a computer's operation, and to set forth the protocol that would be employed "to determine which particular files are evidence or instrumentalities of the crime." Id. ¶ 24.

Based on the facts set forth, the affiant submitted that there existed probable cause to believe that at the search premises there was presently located evidence of a conspiracy to commit mail fraud and document fraud, as well as evidence of encouraging illegal aliens to reside in the United States, in violation of 8 U.S.C. § 1324(a) and 18 U.S.C. §§ 371 and 1341. Id. at 9 (DE 121-2). Further, in Attachment B to the Application, the affiant listed the specific items of evidence that he believed could be found at the subject premises: business records; client files; contents of file cabinets; computers; immigration application forms; Pembina Nation application forms; identification documents; checks; ledgers; correspondence; storage facility documents; calendars, telephone books, address books, and ledgers; and currency. Id. at Attachment B (DE 121-2).

B. ANALYSIS

In the Motion, Defendant primarily argues that "[t]he affidavit for search warrant fails to state requisite probable cause for a warrant to be issued" for the search premises. Motion to Quash at ¶ 1 (DE 121). Defendant also argues that the affidavit "fails to set forth with particularity the items to be seized and the basis for the seizure." Id. at ¶ 5 (DE 121).

The Fourth Amendment to the United States Constitution states:

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV (emphasis added). Probable cause will be found to support a warrant application when “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Illinois v. Gates, 462 U.S. 213, 238 (1983). The Supreme Court has stated that “probable cause deals ‘with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.’” Id. at 241 (citation omitted). Accordingly, courts considering the sufficiency of warrant applications do not read supporting affidavits in a hypertechnical manner. “[R]ather, a realistic and commonsense approach should be employed so as to encourage recourse to the warrant process and to promote the high level of deference traditionally given to magistrates in their probable cause determinations.” United States v. Miller, 24 F.3d 1357, 1361 (11th Cir. 1994). Consistent with the general preference for warrant-based searches, an issuing judge’s probable cause determination “is to be given great deference and is conclusive, if reasonable, absent arbitrariness.” United States v. Sweeting, 933 F.2d 962, 964 (11th Cir. 1991). Therefore, “after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review.” Gates, 462 U.S. at 236.

Further, although the Fourth Amendment’s particularity requirement prohibits general exploratory searches, the particularity requirement is nonetheless applied with a

practical margin of flexibility, depending on the type of property to be seized. “[A] description of property will be acceptable if it is as specific as the circumstances and nature of activity under investigation permit.” United States v. Wuagneux, 683 F.2d 1343, 1349 (11th Cir. 1982). And in cases involving fraud and complex financial transactions, “reading the warrant with practical flexibility entails an awareness of the difficulty of piecing together the ‘paper puzzle.’” Id.; see also United States v. Sawyer, 799 F.2d 1494, 1508 (11th Cir. 1986) (particularity requirement applied with practical margin of flexibility, taking into account nature of items to be seized and complexity of case under investigation; permitting all business records of enterprise to be seized in cases involving pervasive scheme to defraud). In a case involving a corporation’s scheme to defraud, the Eleventh Circuit has held that a warrant may direct the agents to search for and seize “books, ledgers, receipts, invoices, business records, the identification of financial accounts and any other evidence which is evidence in violation of Title 18 United States Code Sections 1341 and 1343.” United States v. Majors, 196 F.3d 1206, 1209, 1216 (11th Cir. 1999). Particularity, therefore, is a standard of practical accuracy, not a hypertechnical one. United States v. Summage, 481 F.3d 1075, 1079 (8th Cir. 2007); accord United States v. Brock, 667 F.2d 1311, 1322 (9th Cir. 1982) (stating that warrant must be “reasonably specific, rather than elaborately detailed, in its description of the objects of the search”).

Here, the Application and Affidavit for Search Warrant clearly established “a fair probability that contraband or evidence of a crime will be found in a particular place,” that is, the search premises. Gates, 462 U.S. at 238. The Affidavit recounted a law enforcement investigation showing that from August 2005, Defendant and employees of USDG had sold memberships in the Pembina Nation Little Shell Indian Tribe by falsely

representing to their clients, illegal aliens, that they would become United States citizens through their membership in the tribe and thereby resolve their immigration problems. Defendant and USDG employees completed applications for membership into the Tribe, and they then issued identification documents, fraudulently stating that the applicants were now members of the Tribe. In the course of their investigation, law enforcement officers conducted record checks, surveillance, and numerous undercover meetings and purchases from Defendant and his employees. Moreover, the investigation revealed that in or about January 2008, Defendant transferred operation of his business to, and began conducting fraudulent activities from, his personal residence – the search premises. Indeed, only two days before the warrant issued, two undercover officers met with Defendant at the front door of the search premises and listened to Defendant acknowledge that all of the applicant files were at those premises. See Affidavit at ¶ 22 (DE 121-2). And on that same date and location, an employee of USDG informed the undercover officers that he was conducting name and record checks on computers and files located at the search premises; that USDG employee also informed the officers that all of Defendant's files and computers had been transferred to the search premises as of January 2008. Id. Accordingly, the undersigned's probable cause determination – “the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant” – was reasonable and, therefore, conclusive. Search Warrant (DE 121-2); see Sweeting, 933 F.2d at 964.

Furthermore, contrary to Defendant's suggestion that the warrant request lacked particularity, a review of the document shows that the affiant did not request an open-

ended or general warrant; rather, he set forth with the requisite particularity the items to be seized. See U.S. Const. amend IV. More specifically, the affiant presented for the undersigned's consideration an itemized list of evidence that he believed could be found at the subject premises, each item finding support in the Affidavit describing Defendant's criminal activity: business records; client files; contents of file cabinets; computers; immigration application forms; Pembina Nation application forms; identification documents; checks; ledgers; correspondence; storage facility documents; calendars, telephone books, address books, and ledgers; and currency. Attachment B to Application and Affidavit for Search Warrant; Attachment B to Search Warrant (DE 121-2). Given that the Affidavit outlines a pervasive scheme to defraud by USDG and Defendant, the list of items to be seized must be read with "practical flexibility" and an "awareness of the difficulty of piecing together the 'paper puzzle.'" Wuagneux, 683 F.2d at 1349; see also Majors, 196 F.3d at 1216 (holding, in case involving scheme to defraud, that warrant may direct agents to search for and seize "books, ledgers, receipts, invoices, business records, the identification of financial accounts and any other evidence which is evidence in violation of Title 18 United States Code Sections 1341 and 1343."). Because the affiant's description of the property to be seized was as specific as the circumstances and the nature of the fraudulent activity under investigation would permit, it satisfied the Fourth Amendment's particularity requirement. See id.

In sum, the Application and Affidavit for Search Warrant satisfies the Fourth Amendment's probable cause and particularity requirements. The Motion to Quash (DE 121), therefore, should be denied.

III. MOTION TO DISMISS

In this Motion, Defendant asks this Court to dismiss the superseding indictment or, alternatively, the money laundering counts (Counts 5-9) and related forfeiture allegations. Defendant argues that the Government acted vindictively and, thereby, violated his due process rights when it sought and obtained a superseding indictment that added five money laundering counts, as well as forfeiture allegations. See Motion to Dismiss (DE 122). Defendant has advanced eight factual paragraphs in support of his argument:

1. The Defendant was Indicted on August 28, 2008 and the Grand Jury charged the Defendant, a 75 year old man, with one count of conspiracy, three counts of mail fraud and one count of encouraging illegal aliens to remain in the United States.
2. The Defendant was ordered held without bail and discovery proceeded.
3. The Defendant's counsel was provided what is, in essence, a "Brady" letter by the Government on January 20, 2009.
4. Thereafter, the undersigned and the Government had conversations initially relating to potential release on bail.
5. The Government and the undersigned then began discussing a release with the Defendant agreeing to plead to a 18 U.S.C. § 371 conspiracy, with certain agreements between the parties as to forfeitures, repatriation of monies and other attempts at resolution that might preclude incarceration of the Defendant with a resultant avoidance of trial for the Government [see first page of the proposed Plea Agreement attached hereto, the remainder of this agreement is available in the undersigned's office].
6. Thereafter the undersigned and Chief Assistant Economic Crime Prosecutor Jeffrey Kay spoke and he advised that, of course, he could not assure the Defendant would not receive prison time in the matter and any conversations of that with other prosecutors would be a "hope" rather than a "promise," which of course the undersigned recognizes is the situation in any case.

7. The Defendant, being advised of potential prison time upon a plea, declined to accept the Government's offer to the "371" Conspiracy.
8. Thereafter, and more particularly on 12 March 2009, the Government obtained a Superseding Indictment adding, to quote from the Government's response to the Defendant's Motion to Reconsider Detention Order, "five money laundering counts and forfeiture allegations."

Id. at ¶¶ 1-8 (DE 122). In addition to these eight paragraphs, Defendant has provided two paragraphs of argument:

9. The Defendant submits that the Superseding Indictment was occasioned by Government vindictiveness, particularly when one considers that all of the Co-Defendants to the undersigned's knowledge have elected to take pleas.
10. The Defendant thus submits his due process rights have been violated and the Superseding Indictment should be dismissed.

Id. at ¶¶ 9-10 (DE 122).

Although courts do not normally interfere with the prosecutorial decision-making function, the United States Supreme Court has cautioned that the exercise of prosecutorial discretion is not without constitutional limit. See, e.g., Wayte v. United States, 470 U.S. 598, 607-08 (1985). By way of example, where a prosecutor, following a defendant's appeal, brought a charge carrying a potentially greater sentence than the original charge, the Court stated that vindictiveness was presumed, provided the circumstances demonstrated either actual vindictiveness or a realistic fear of vindictiveness. See Blackledge v. Perry, 417 U.S. 21, 27-29 (1974); accord Thigpen v. Roberts, 468 U.S. 27, 30-33 (1984) (holding that presumption of prosecutorial vindictiveness arises where defendant indicted on more serious charges while pursuing appellate or collateral relief on original charges).

Significantly, however, the Supreme Court found no vindictiveness and, hence, no constitutional due process violation where the prosecution simply confronted an indicted defendant with a choice of either pleading guilty to a charged offense or facing a superseding indictment that exposed him to a harsher sentence. See Bordenkircher v. Hayes, 434 U.S. 357, 363-65 (1978); accord United States v. Goodwin, 457 U.S. 368, 381-83 (1982) (distinguishing between pre-trial and post-trial situations and holding that no presumption of vindictiveness arose where defendant indicted for felony after refusing to plead guilty to misdemeanor). The facts of Bordenkircher are illuminating.

In Bordenkircher, the prosecutor had threatened to supersede and bring more serious charges under the Habitual Criminal Act if the defendant did not plead guilty to a forged instrument charge. When the defendant rejected the plea offer, the prosecutor obtained a superseding indictment. The Supreme Court drew a distinction between the impermissible attempt to punish the exercise of rights, such as the appellate rights that had been exercised in Blackledge, and the permissible attempt to persuade a defendant not to exercise his rights in the future. The Court found no element of punishment or retaliation in the latter instance, provided the defendant was free to accept or reject a plea offer; it reasoned that such tactics are part of the “give and take” of plea bargaining. See Bordenkircher, 434 U.S. at 358 -59, 363-65; see also United States v. Cole, 755 F.2d 748, 757-588 (11th Cir. 1985); United States v. Astling, 733 F.2d 1446, 1452 (11th Cir. 1984). Similarly, in United States v. Barner, 441 F.3d 1310, 1315-17, 1320-21 (11th Cir. 2006), the Eleventh Circuit held that no presumption of vindictiveness arose when a prosecutor obtained a superseding indictment – in that case, five superseding indictments – prior to trial; such an exercise of discretion is more akin to the Bordenkircher “effort to persuade”

than to the Blackledge “punishment for exercising a right.”

On the facts Defendant alleges here, the Government’s actions were akin to those of the prosecution in Bordenkircher and Barner. In a pre-trial setting, the Government discussed with Defendant a prospective plea disposition. When those discussions did not prove fruitful, it sought and obtained a superseding indictment that added several money laundering charges, as well as forfeiture allegations. Such actions by the Government are part of the constitutional and permissible “give and take” of plea bargaining or part of the “effort to persuade”; they are not an unconstitutional and impermissible “punishment for exercising a right.”¹

In sum, Defendant has not alleged the type of prosecutorial (mis)conduct that the Supreme Court has deemed vindictive and, hence, violative of due process. The Motion to Dismiss (DE 122), therefore, should be denied.

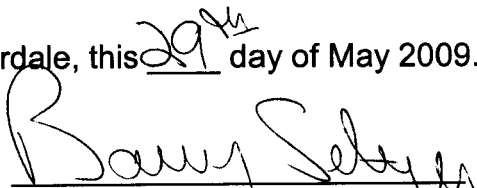
¹ Although not necessary to this Court’s decision, the undersigned notes that the Government explained in its response why it had not included the money laundering charges in the original (August 28, 2008) indictment. The Government explained that on the day after it obtained the original indictment – that is, on August 29, 2008 – it arrested Defendant and executed the (August 27, 2008) search warrant at his residence. See Response to Motion to Dismiss at 2 (DE 127). It was during the execution of this search warrant that the Government seized approximately 23 boxes of documents, including numerous financial records. Id. And it thereafter obtained additional documentary evidence pertaining to Defendant’s assets and money laundering. Id. According to the Government, “the indictment was [then] superseded to include allegations of money laundering for the which the [G]overnment, at the time of the original indictment, did not have all the evidence.” Id. at 3 (DE 127). The Government also explained the addition of the forfeiture allegations in the superseding indictment: “[T]he relinquishing of the defendant’s assets were one of the issues discussed with defense counsel during the plea negotiations so the defendant was aware that the government would seek to forfeit his assets.” Id.

IV. CONCLUSION

Based on the foregoing, the undersigned RECOMMENDS that Defendant's Motion to Quash Search Warrant and Suppress [Defendant's Residence] with Authority (DE 121) and the Motion to Dismiss Superseding Indictment, or Alternatively Counts 5-9 [Money Laundering] and Related Forfeiture (DE 122) both be DENIED.

The parties will have ten (10) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with the Honorable William J. Zloch, United States District Judge. Failure to file objections timely shall bar the parties from a de novo determination by the district judge of an issue covered in the report and shall bar the parties from attacking on appeal factual findings accepted or adopted by the district court except upon grounds of plain error or manifest injustice. See 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790, 794 (11th Cir. 1989).

DONE AND SUBMITTED at Fort Lauderdale, this 29th day of May 2009.


BARRY S. SELTZER
United States Magistrate Judge

Copies to:

Hon. William J. Zloch
United States District Judge

Fred Haddad, Esq.
Attorney for Defendant Audie Watson

Jennifer Keene, Esq.
Assistant United States Attorney