

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 05-00344-02-CR-W-ODS
)
STEVEN SANDSTROM,)
)
Defendant.)

**OBJECTIONS TO REPORT AND RECOMMENDATION TO DENY
DEFENDANTS' MOTION TO DISMISS COUNTS ONE THROUGH SIX
BASED ON MULTIPLICITY**

COMES NOW Steven Sandstrom (hereinafter "defendant"), by and through appointed counsel and pursuant to 28 U.S.C. §636(b)(1), to respectfully file the following objections to the Report and Recommendation to Deny Defendants' Motion to Dismiss Counts One Through Six Based on Multiplicity (Document 120), in support of which is offered the following:

I. The magistrate erred in not conducting a hearing regarding defendant's motion.

By order dated October 14, 2005, the magistrate is "designated to hear and process all pretrial motions" requesting dismissal of the indictment. Contrary to the order, the magistrate did not conduct a hearing regarding defendant's motion. In making his recommendations related to the instant motion, the magistrate was required to apply general principles of law to the facts of this case. Because he did not conduct a hearing related to defendant's motion, the magistrate did not have sufficient information available to him to make proper findings and recommendations.

II. The magistrate erred in finding that Counts One through Six of the indictment are not defective on the ground of multiplicity.

The indictment alleges the defendants, aiding and abetting each other, shot at and killed

William McCay. In making his recommendation regarding defendant's motion, the magistrate assumed the existence of multiple occurrences, whereas the indictment may be read to describe a single transaction. No hearing was had regarding the motion, and the government presented no evidence of multiple or different behaviors. Because the indictment may be read to charge separate counts related to the same alleged behavior, the counts are multiplicitous and offensive to defendant's right not to face multiple punishments for a single offense and to due process of law.

WHEREFORE, defendant Steven Sandstrom respectfully prays that this Honorable Court not accept the Report and Recommendation and enter an order granting defendant's motion to dismiss the defective counts of the indictment.

Respectfully Submitted,

/s/ John G. Gromowsky
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served upon counsel for all parties via the court's ECF System, this 20th day of July, 2006, upon the following:

/s/ John G. Gromowsky
Attorney