

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Case No. 05-00344-01/02-CR-W-ODS
)
 GARY EYE and)
 STEVEN SANDSTROM,)
)
 Defendants.)

ORDER OVERRULING DEFENDANTS' OBJECTIONS, ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, AND DENYING
DEFENDANTS' MOTIONS TO DISMISS COUNTS I, III and V

On May 15, 2005, the Honorable Robert E. Larsen, United States Magistrate Judge for the Western District of Missouri, issued his Report and Recommendation ("the Report") recommending the Court deny Defendants' Motion to Dismiss Counts I, III and V. Defendants have filed timely objections, and the Court has reviewed the Report and parties' submissions on the matter; having done so, the Court adopts the Report as the Order of the Court and denies Defendants' Motion to Dismiss.

The Report is comprehensive and well-written, and nothing needs to be added to its discussion of the issues. The weight of authority is against Defendants, including particularly the Eighth Circuit's decision in United States v. Bledsoe, 728 F.2d 1094 (8th Cir.), cert. denied, 469 U.S. 838 (1984), the Second Circuit's decision in United States v. Nelson, 277 F.3d 164 (2d Cir.), cert. denied, 537 U.S. 835 (2002).

The only issue raised in Defendants' Objections that is not addressed by the Report is Defendants' contention Judge Larsen erred in failing to conduct a hearing on his motion. The undersigned's October 14, 2005 Order of Reference delegated authority to Judge Larsen to "hear and process all pretrial motions to (1) dismiss or quash the indictment, and (2) suppress evidence" Defendants argue this phrase mandated that a hearing be held on his motion. The Court disagrees. A hearing is necessary when factual findings are necessary. Absent a need for factual findings,

there is no need to develop a factual record. Defendant's Motion to Dismiss does not depend on the resolution of factual matters; it requires resolution of purely legal matters. The Court's Order of Reference is not intended to require a hearing where it is unnecessary for the resolution of the matter at hand. Judge Larsen certainly had the discretion to entertain oral argument on the motion, but the Court's Order of Reference did not require him to take this course.

Defendants' objections are overruled, the Report is adopted as the Order of the Court, and the Motion to Dismiss Counts I, III and V is denied.

IT IS SO ORDERED.

DATE: August 21, 2006

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT