

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Case No. 08-00026-02/05-CR-W-FJG
)
 CYNTHIA S. MARTIN,)
 TROY R. SOLOMON,)
 CHRISTOPHER L. ELDER, and)
 DELMON L. JOHNSON,)
)
 Defendants.)

ORDER

On September 24, 2008, a hearing was held before the undersigned regarding various scheduling and discovery issues. Based on the parties' discussion at the hearing, it is

ORDERED that the Government's Motion for an Extension of Time in Which to File Government's Response to Defendant Elders' Motion to Suppress All Evidence Seized from the South Texas Wellness Center (doc #112) is granted. The Government shall file its response to defendant Elder's Motion to Suppress All Evidence Seized From the South Texas Wellness Center (doc #96) and to defendants Solomon's and Johnson's Combined Motion to Suppress All Evidence Obtained in Search of South Texas Wellness Center (doc #115) by October 3, 2008. It is further

ORDERED that the Government's Motion for Leave to File Out of Time and for an Extension of Time in Which to File Government's Response to Defendant's Motion in Limine to Preclude Testimony of a Government's Handwriting Expert (doc #81) is granted. The Government's Response in Opposition to Defendant Elder's Motion in Limine on Proposed Handwriting Expert Under Rule 702 of the Federal Rules of Evidence (doc #101) shall be deemed properly filed. It is further

ORDERED that Defendant Elder's Motion for Leave to File Out of Time a Motion to Suppress the Testimony of Witness Hearn as to Her Lay Identification of Defendant's Purported Handwriting on Photo Copies of Previously Faxed Prescriptions on Due Process Grounds that the

Procedure Used by the DEA was Unconstitutionally Suggestive (doc #108) is granted. Defendant Elder's Motion to Suppress the Testimony of Witness Hearn as to Her Lay Identification of Defendant's Purported Handwriting on Photo Copies of Previously Faxed Prescriptions on Due Process Grounds that the Procedure Used By the DEA was Unconstitutionally Suggestive (doc #117) shall be deemed properly filed. It is further

ORDERED that the Government shall file any suggestions in opposition to Defendant Elder's Motion to Suppress the Testimony of Witness Hearn as to Her Lay Identification of Defendant's Purported Handwriting on Photo Copies of Previously Faxed Prescriptions on Due Process Grounds that the Procedure Used By the DEA was Unconstitutionally Suggestive (doc #117) by October 6, 2008. It is further

ORDERED that an evidentiary hearing is scheduled for Defendant Elder's Motion to Suppress the Testimony of Witness Hearn as to Her Lay Identification of Defendant's Purported Handwriting on Photo Copies of Previously Faxed Prescriptions on Due Process Grounds that the Procedure Used By the DEA was Unconstitutionally Suggestive (doc #117) on October 21, 2008, at 1:30 p.m. At this hearing, counsel will also be allowed to inquire of Witness Hearn with respect to the allegations contained within the Motion to Dismiss the Indictment as to Defendant Elder Because of Government Misconduct (doc #93). It is further

ORDERED that the Government shall provide to defendants any additional discovery, including but not limited to the Houston prosecution and the computer seized from the South Texas Wellness Center by October 15, 2008. It is further

ORDERED that a conference to discuss the parties' standing to challenge the search warrant served on the South Texas Wellness Center as well as any issues relating to the additional discovery to be provided by the Government is scheduled for October 21, 2008, at 9:30 a.m. If a hearing on defendant Elder's Motion to Suppress All Evidence Seized From the South Texas Wellness Center (doc #96) and defendants Solomon's and Johnson's Combined Motion to Suppress All Evidence Obtained in Search of South Texas Wellness Center (doc #115) is deemed appropriate, it will be set

at a later time. It is further

ORDERED that Defendant Troy Solomon's Motion for Discovery (doc #59) and Defendant Delmon L. Johnson's Motion for Discovery (doc #68) have been resolved and are, therefore, deemed moot. It is further

ORDERED that Defendant Troy Solomon's Motion for Early Production of Witness Statements (doc #61) and Defendant Delmon Johnson's Motion for Early Production of Witness Statements (doc #69) have been resolved and are, therefore, deemed moot. It is further

ORDERED that the Trial Orders are modified to require the Government and defendants to file their witness and exhibits lists thirty days prior to trial (rather than the Friday prior to the pretrial conference as previously ordered). It is further

ORDERED that the Trial Orders are modified to reflect that the Government will produce to defendants all proffer statements by October 8, 2008, and upon receipt of the proffer statements, defendants will produce to the Government any statements from witnesses they have interviewed. It is further

ORDERED that Defendant Troy Solomon's Motion for Discovery and Inspection Concerning Government Use of Informants, Operatives, and Cooperating Individuals (doc #60) and Defendant Delmon Johnson's Motion for Discovery and Inspection Concerning Government Use of Informants, Operatives, and Cooperating Individuals (doc #67) have been resolved and are, therefore, deemed moot. It is further

ORDERED that to the extent that the Government has the ability to obtain information that anyone has claimed that they obtained drugs which are the subject of this prosecution from someone at the South Texas Wellness Center, the Government shall provide defendants with this information by October 15, 2008. It is further

ORDERED that Defendant Troy Solomon's Motion to Discover Evidence Favorable to Defendant (doc #62) and Defendant Delmon Johnson's Motion to Discover Evidence Favorable to Defendant (doc #70) have been resolved and are, therefore, deemed moot. It is further

ORDERED that Defendant Elder's Motion for a Bill of Particulars and Notice of Alibi Defense (doc #55) has been resolved and is, therefore, deemed moot. It is further

ORDERED that defendant Solomon's Motion for Bill of Particulars (doc #58) and defendant Johnson's Motion for Bill of Particulars (doc #63) are denied as seeking evidentiary detail. While the Court would have required the Government to advise defendants of the identity of the "unindicted co-conspirator," the Government has already provided this information to defendants. The Government has further agreed to advise defendants of the identities of "other persons known ... to the Grand Jury" who were involved in the conspiracy. The Government will not be required to produce anything further in response to the instant motions for bills of particulars. However, defendants may refile a request for a bill of particulars if something specific is sought and the parties are unable to work it out between themselves. It is further

ORDERED that the Motion Requesting That the Court Issue a Subpoena Pursuant to Rule 17(c) to the Texas Medical Board Directing Production of Certain Files That Are Relevant and Necessary to Defendant Elder's Defense (doc #88) is denied as being overbroad. Defendant Elder may refile a request for a Rule 17(c) subpoena that is more narrowly tailored. It is further

ORDERED that Defendant Troy Solomon's Motion to Dismiss Count Two for Failure to State an Offense (doc #98) shall be deemed timely filed. It is further

ORDERED that the Court will not entertain any additional discovery motions, until the following requirements have been satisfied:

1. Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this directive in any discovery motion; and
2. If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the Court for an immediate telephone

conference with the judge and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

/s/ Sarah W. Hays
SARAH W. HAYS
UNITED STATES MAGISTRATE JUDGE

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