

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

UNITED STATES OF AMERICA	
V.	CAUSE NO. 4:08-cr-00026
TROY R. SOLOMON DELMON JOHNSON	

DEFENDANTS TROY SOLOMON AND DELMON JOHNSON'S

MOTION TO DISMISS

TO THE HONORABLE SARAH HAYS, UNITED STATES MAGISTRATE COURT JUDGE
FOR THE WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION:

COME NOW the Defendants, Troy Solomon and Delmon Johnson, and hereby move this Court for an Order Dismissing Troy Solomon and Delmon Johnson from the indictment at hand for Prosecutorial Misconduct stemming from abuse and misuse of discovery and the Fifth and Sixth Amendments to the United States Constitution. In further support of this Motion, the Defendants offer the following:

I.

The Defendants were originally indicted on February 5, 2008. Since that time, various discovery issues have been brought to this Court's attention regarding the timeliness of the disclosure of such material as is required. To illustrate this point, Counsel for Defendants received

as recently as Monday, December 8, 2008 seven (7) computer disks comprising several thousand documents and an additional 175 pages of material. The prior Thursday, December 4, 2008, Counsel received the statements of Ada and Pleshette Johnson for the first time, despite the fact that the Government relied heavily upon those statements (which arguably contain *Brady* material) in its Second Supplemental Response to Defendant Solomon's Second Supplemental Motion to Suppress Evidence.

II.

The Eighth Circuit has echoed the principles protected and addressed in *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). In *Nassar v. Sissel*, 792 F.2d 119, 121 (8th Cir.1986), the Court held that evidence discovered, after the trial, of information known to the prosecution but unknown to the defense is a violation of due process. The Government's repeated pattern of trickling important information to the defense is disturbing. Additionally, contrary to the rule of law, the Government has tried to expand its case post-indictment beyond what is reasonable to prepare the instant indictment for trial. For example, use of a search warrant to avoid the protections afforded to Defendant post indictment is akin to misusing grand jury or administration subpoena's to bolster a prosecution. The courts have held "it is improper to utilize a grand jury for the sole or dominating purpose of preparing an already pending indictment for trial." See *United States v. Dardi*, 330 F.2d 316, 336 (2d. Cir.) *cert denied*, 379 US 845 (1984) (misuse grand jury subpoena); *United States v. Lazar*, 2005 US Dist Lexis 44213 (US Dist. Tenn. 2005) citing *United States v. La Salle Nat. Bank*, 437 US 298 (1978).

It is not implausible that the pace of the Government's production is indicative of an

investigation that has yet to be fleshed-out. As such, Defendants are provided the information and evidence they are constitutionally entitled to only after the Government has decided what, if any significance the material has to them.

III.

WHEREFORE, PREMISES CONSIDERED, the Defendants respectfully pray that this Honorable Court grant this Motion and dismiss the charge against the Defendants.

Respectfully Submitted,

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Certificate of Service

I Certify That A True And Exact Copy Of The Defendants Troy Solomon and Delmon Johnson's Motion To Dismiss Was Delivered To Rudolph Rhodes, Assistant United States Attorney On The 12th Day of December Via The Electronic Filing System.

/S/ Anthony Bannwart
Anthony Bannwart

Certificate of Conference

None necessary for this filing.

Delmon Johnson