

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA                    )  
  )  
  Plaintiff,    )  
  )  
  v.            ) No. 08-00026-04-CR-W-FJG  
  )  
CHRISTOPHER L. ELDER,                    )  
  )  
  Defendant.    )

**DEFENDANT ELDER'S ANSWER TO THE GOVERNMENT'S  
MOTION SEEKING AN ORDER TO PROVIDE FINGER PRINT  
AND HAND WRITING EXEMPLARS WITH SUGGESTIONS IN SUPPORT**

Defendant Elder was arraigned before this Court on April 2, 2008. He was processed and provided major case prints to the United States Department of Justice at that time. Those prints are on file and available to the government for examination and comparison.

Defendant resides in Houston, Texas and is a full time practicing physician with a sizeable patient load. Defendant was previously interviewed by Drug Enforcement agents on October 25, 2006 in Houston and offered hand writing exemplars at that time. DEA agents obtained "1 lined paper with original writing" from Doctor Elder.

Defendant has recently been provided with partial discovery. That discovery contains a report from a forensic consultant, Dan McCarty, that indicates the original hand writing samples provided by Doctor Elder were compared to photocopies of faxed prescriptions and faxed prescriptions of unknown origin and that

the results of the examination indicated that the questioned documents "were most probably written" by Doctor Elder. The report further indicates that the original writing provided by the doctor was compared to six known original prescriptions written by the doctor in Houston and that he "wrote the text of the six Original prescriptions . . ." Finally, the report indicates that in looking at prescriptions "[t]hat the area writing in both questioned and known writing is rarely a discernable writing" and that "[t]he signature area writing is a 'signature sign'" that is not intended to represent the Doctor's name.

The focus of the investigation appears to revolve around faxed prescriptions that were sent from various phone numbers in Houston (none belonged to Doctor Elder) which were filled in Missouri and then shipped back via federal express to Texas where someone other than Doctor Elder signed for them, sometimes at a medical facility where Doctor Elder worked part time. There is an absolute abysmal lack of evidence connecting Doctor Elder to any such scheme. The government has not suggested in its motion that it now has originals of the faxed prescriptions in its possession that it wishes to submit to finger print and hand writing analysis. Consequently, requiring the Doctor to submit yet additional prints and handwriting appears to be an unnecessary financial burden on him and is something that would likely be additionally disruptive his medical practice.

It would appear that in the absence of a favorable report from their expert that the government now wishes to take a second bite of the apple and perhaps try and obtain samples of some type that will satisfy the examiner. While handwriting is generally non-testimonial and not subject to 5<sup>th</sup> Amendment privileges (See Gilbert v. California, 388 U.S. 263 (1967)), asking an accused to "provide a writing sample of his own composition", makes the content of the writing testimonial and subject to refusal on 5<sup>th</sup> Amendment grounds. Pennsylvania v. Muniz, 496 U.S. 582 (1990).

Absent further clarification as to why additional submissions are required and a clear statement as to the nature of the requested submissions and the circumstances under which they will be obtained, defendant objects.

**WHEREFORE**, defendant moves the Court to deny the government's request until such time as the government can provide additional reasons to satisfy the court that such request does not violate the 5<sup>th</sup> Amendment and that the request is not simply duplicative of what has already been done and therefore oppressive and unnecessary.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been caused to be served on the Assistant United States Attorney Rudy Rhodes for Western District of Missouri and other ECF listed counsel through use of the Electronic Court Document Filing System on Sunday, May 18, 2008

/s/  
JOHN R. OSGOOD