

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

UNITED STATES OF AMERICA, )  
Plaintiff, )  
v. )  
NARICCO T. SCOTT, )  
Defendant. )

Case No.: 10-00162-06-CR-W-FJG

**NARICCO SCOTT'S OBJECTIONS TO REPORT AND RECOMMENDATION  
DENYING DEFENDANT'S MOTION TO SUPPRESS**

**COMES NOW** Naricco Scott, by and through counsel Robin D. Fowler, and hereby respectfully asks the Court to overrule the Report and Recommendation (hereinafter Report) filed on January 6, 2012 (Doc. 578), by the Hon. Robert E. Larsen. In support of said motion, Mr. Scott states:

**A. BACKGROUND**

On October 13, 2011, an evidentiary hearing was held and evidence was presented in response to a pro se motion to suppress (Doc. 451) which had been filed by Mr. Scott. Mr. Scott's motion sought the suppression of evidence seized on or about May 9, 2010. The Government's response is found at Doc. 480.

The witnesses, who testified, as well as the exhibits which were offered and received, are documented in pages 2 and 3 of the Report. In the Report, the court's findings of fact are set forth in 10 paragraphs, located at pages 3-12. The Report's

specific legal findings are summarized in its conclusion, found on pages 12 and 13 of the Report.

Specifically, in this pleading Mr. Scott objects to the Report's conclusions finding that there was probable cause for his arrest, and that the seizure of a firearm and other items was lawful. Further argument will be set forth below.

## **B. ARGUMENT AND AUTHORITIES**

Mr. Scott incorporates by reference and restates herein the arguments made and authorities cited in the motion to suppress (Doc. 451) he filed pro se in this case, wishing to preserve those for the record. In addition, while his original motion to suppress argued that his arrest was illegal, it did not seek suppression of any items obtained through the search of his person after his arrest. Instead, that motion sought suppression of "all evidence and testimony obtained through the searches of a vehicle allegedly associated with Mr. Scott, and or found on the residential premises of 4414 Askew." In this pleading Mr. Scott also seeks to suppress, in addition to the evidence he sought to suppress in his initial motion, the items (3 cell phones, approximately \$1,500 in case, and the key to the truck) seized from his person after his arrest. These items are specifically described in paragraph 6 of the Report.

At the time he filed the motion to suppress, Mr. Scott was acting pro se, and obviously therefore did not have the assistance of counsel. Pro se pleadings are generally to be construed liberally. *Stone v. Harry*, 364 F.3d 912, 914 (8<sup>th</sup> Cir. 2004). Mr. Scott's initial motion did allege that he was illegally detained, which is a fact allegation which supports a legal theory to support the suppression of items seized from

his person. For that reason we ask this Court to consider suppression of the items seized from his person on that basis, believing that it comports with the holding in *Stone v. Harry*, cited above.

We concede that an individual who is lawfully arrested may be searched incident to that arrest. See, e.g., *United States v. Pratt*, 355 F.3d 1119, 1121 (8<sup>th</sup> Cir. 2004). Mr. Scott asserts that the evidence presented at the hearing on the motion to suppress did not rise to the level of probable cause. *United States v. Roberson*, 439 F.3d 934, 939 (8<sup>th</sup> Cir. 2006).

For the reasons set forth above, Mr. Scott respectfully urges this court to overrule the Report and Recommendation filed in this case (Doc. 578), and suppress all evidence seized by the Government in this investigation on May 9, 2010.

Respectfully submitted,

*/s/ Robin D. Fowler*

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 20, 2012 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notice of electronic filing to all parties of record herein.

*/s/ Robin D. Fowler*

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Robin D. Fowler