
AFFIDAVIT COMPLAINT OF MISCONDUCT AGAINST

**U.S. DISTRICT COURT MAGISTRATE JUDGE
JOSEPH G. SCOVILLE
U.S. DISTRICT COURT CLERK/SECRETARY
MARGARET HETHERINGTON
U.S. DISTRICT COURT JUDGE
GORDON J. QUIST
ASSISTANT UNITED STATES ATTORNEY
LLOYD K. MEYER
B.A.T.F. SPECIAL AGENT
MARK SEMEAR**

**IN THE CASE OF
UNITED STATES OF AMERICA
V.
NORMAN DAVID SOMERVILLE**

**CASE No. 1:03-CR-00239 and 1:03-M-371
IN THE U.S. DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
CASE No. 05-1475 and 06-1734
IN THE U.S. COURT OF APPEALS FOR THE
SIXTH CIRCUIT**

**FILED TO
THE U.S. ATTORNEY GENERAL'S OFFICE
CIVIL RIGHTS DIVISION AND/OR
INSPECTOR GENERAL
PURSUANT TO TITLE 28 U.S.C. §526
AND OTHER STATUTORY AUTHORITIES**

**BY:
Norman David Somerville
11612-040 Younty
Federal Medical Center
P.O. Box 14500
Lexington, Kentucky 40512**

AFFIDAVIT

This Complaint is about Search Warrants and related documents from Case No. 1:03-M-371 or 1:03-mj-00371-JGS-ALL in the U.S. District Court for the Western District of Michigan. The matters complained about involve documents which were **Certified as True Copies** by Court Staff and clearly show violations of Civil Rights and Due Process for their obvious lack of validity. These documents were used to conduct a Search and to Seize property; they were distributed by the Assistant United States Attorney prosecutor to the defense Counsel as True Copies; they were presented by the BATF Agents at the time of the Search as valid; they were left in the residence by the BATF as True Copies at the conclusion of the Search. These documents have subsequently been disacknowledged by the Courts and the Government and supplanted in Court Records by similar documents appearing more in conformance with law which were Entered into Case No. 1:03-mj-00371-JGS-ALL nearly 2 1/2 years after the Search, and claimed to be valid.

These matters are addressed at length in PRO SE APPELLANT'S BRIEF by Norman David Somerville in Case No. 06-1734 in the Court of Appeals for the U.S. Sixth Circuit. A copy of this Brief in its original volume printing is provided with this Complaint.

This Complaint seeks an honest investigation of the documents and compliance by the Magistrate Judge, Court Staff, Assistant U.S. Attorney, and the BATF Agent with Federal Rules and other

applicable law as these matters are believed to have substantially violated my Civil Rights and the Rights of other persons whose property was searched.

I believe it is clear from the documents and events presented, that violations of law have been concealed by actions of numerous individuals who have effectively acted to deny my Rights to honest performance of lawful duties by Government and its Agents and Court Staff and Judicial Officers. In pursuit of resolving this matter prior to filing a Complaint, I submitted the 15 page letter attached as ATTACHMENT #1 to Magistrate Judge Joseph G. Scoville, who has not responded; as such I am left to presume that my complaints are valid. In order to minimize redundancy, the Exhibits contained in the presumptive letter inquiry to Magistrate Scoville will be referenced within this Complaint; other documents contained in the PRO SE APPELLANT'S BRIEF will also be referenced (See "tabbed" listing of Exhibits from the BRIEF).

The following is a chronological summary of events in this matter:

October 9, 2003. Documents identified as Exhibits A1, A2, A3, and A4 were issued and CERTIFIED as True Copies by U.S. District Court Clerk/Secretary Margaret Hetherington. These documents are rubber stamped with the name JOSEPH G. SCOVILLE instead of bearing the Magistrate Scoville's signature. As these documents are Certified as True Copies, it is apparent that the ORIGINAL documents from which these were copied were not signed or lawfully issued by the Magistrate. Electronic signing of documents was not legal or permitted in this Court in this time period; see local

rules of U.S. District Court for the Western District of Michigan local rule 49.10; these documents do not attempt to conform to ECF rules.

October 10, 2003. BATF Special Agent Mark Semear presents Exhibit A1 to Mr. Norman David Somerville as a lawful warrant to search 40 acres of property. Somerville immediately protests the warrant for lack of a valid signature. Semear's Search Warrant is conspicuously violating ATF O 3220.1. Agent Semear commences two day search and seizure.

October 11, 2003. Agent Semear leaves document Exhibit A2 and four page listing of seized property 'in residence' on 40 acres of property. These documents are taken by government informant Ms. Lisa Kay Vega.

October 16, 2007. U.S. District Court appoints Mr. Joseph Doele as Defense Counsel for Somerville.

October 17, 2003. Mr. Doele meets with A.U.S.A. Mr. Lloyd K. Meyer, at which time Meyer gives Doele complete documents with cover/signature pages shown in Exhibits A1, A3, and A4. These are the only versions of these Certified and unsigned documents which Doele ever acknowledged to possess or even to exist in discussions with Somerville. These were the documents in Doele's Case File which were transferred to replacement Counsel Mr. Richard Zambon in December 2004 when Doele withdrew as Defense Counsel.

October 18/19, 2003. Doele meets with Defendant Somerville in Newaygo County Jail/Federal Detention and gives Somerville copies of entire documents A1, A3, and A4.

October 20, 2003. U.S. District Court Hearing. See transcript as Exhibit I in PRO SE APPELLANT'S BRIEF Case No. 06-1734. Page 6 of transcript shows testimony of Meyer stating a warrant existed and that he gave a copy of it to Doele and that Doele could inspect or copy anything he wants in the "open file" policy. No mention of any other sealed or differing documents in another Case.

November 15, 2003. Somerville writes Letter to The Editor of THE ADVOCATE newspaper published in eight Michigan counties charging Search Warrant is fraudulent for lack of a valid signature. Contact Lisa Kay Vega, P.O. Box 675, Mesick, MI 49668 or newspaper Editor/Publisher Mr. Bill Richards, 9461 W. Kelly Rd., Lake City, MI 49651 (231) 839-2225, for a copy of the article. Mr. Doele fails to represent Somerville's interests by not filing Motion to contest Search Warrant and other documents in Exhibits A1, A2, A3, and A4. Somerville makes numerous written and verbal requests of Doele and government agents over the following months for a copy of valid Search Warrant; no one will provide such a Warrant, nor does Doele even allege that one exists.

August 11, 2004. Plea Hearing, U.S. District Court. Somerville gives guilty plea under Plea Agreement, to violation of 18 U.S.C. §922(o)(1). No Search Warrant has been entered in the criminal

case 1:03-CR-00239, nor was firearms testing report entered, as ordered on October 20, 2003.

September 2004. First draft of PSI Report is created, denying existence of any cases related to the criminal case; no mention of Search Warrant case No. 1:03-M-371 in PSI. See Exhibit E1 attached to this complaint; this DRAFT first page was not sealed, final PSI version from Case 1:03-CR-00239 is sealed and also states no related cases.

October 17, 2004. Somerville & Vega fax 10 pages of objections to PSI Report directly to Doele's office and Meyer's office. These objections contain statements specifically objecting to Search Warrant presented by BATF Special Agent Semear.

October 25, 2004. Doele meets with Meyer and U.S. Probation Officer Linda Skrycki regarding Somerville's PSI objections. Government refuses to include these objections in PSI Report.

October 27, 2004. Doele refuses to press Meyer to include PSI objections; Doele fires himself as Defense Counsel and files Motion to Withdraw as Defense Counsel on October 28, 2004 (Doc #59, 1:03-CR-00239)

November 17, 2004. Hearing, U.S. District Court, on Motion to Withdraw; see transcript attached to this complaint as Exhibit F1. Page 9 of this transcript has testimony of Somerville relating

to refusal of Doele to address Search Warrant issues. Court grants withdrawl of Doele as Defense Counsel.

December 2004. Mr Richard Zambon is appointed as Defense Counsel for Somerville. Doele gives case file to Zambon.

March 11, 2005. Final version of PSI Report presented to Defense Counsel Richard Zambon. This PSI claims no cases related to 1:03-CR-00239 and makes no claims to location of Search Warrant or Warrant RETURN in court records.

March 24, 2005. Sentencing Hearing, U.S. District Court. Somerville is sentenced to 80 months imprisonment. First page of Judgement and Committment Order, "Certified as a True Copy" signed by Judge Gordon J. Quist (Doc #97, 1:03-CR-00239) attached to this complaint as Exhibit G1. Somerville's court appointed Counsel confidentially expresses to Somerville his desire not to represent Somerville in Appeals; Somerville files Notice of Appeal with Counsel's help and proceeds Pro Se in forma pauperis in Appeals.

May 16 & 18, 2005. Somerville files Motions with District Court requesting copies of case documents and transcript (Doc #106, #107, 1:03-CR-00239)

June 6, 2005. District Court Orders copies of documents be produced and given to Somerville (Doc #108, 1:03-CR-00239) Exhibit B1.

Order notes request for ALL sealed items and copies of **signed** search warrant. Court orders clerk to provide free copies of the arrest/search warrants to defendant Somerville. No Search Warrant was produced by the Clerk, nor any of the related documents described as Case No. 1:03-M-371.

June 17, 2005. District Court Orders Clerk to copy and provide to the Defendant (Somerville) all previously sealed documents in this matter. (Doc #109, 1:03-CR-00239) Exhibit B2. No Search Warrant documents are produced, nor any related documents described as Case No. 1:03-M-371.

June 25, 2005. Somerville files Motion with 6th Circuit requesting Assistance of Counsel; Motion was NEVER ruled on, effectively denying Counsel in Direct Appeal; Somerville was ruled in forma pauperis by District Court.

September 20, 2005. Somerville serves Primary Appeal Brief in Direct Appeal in Case No. 05-1475 in 6th Circuit Court of Appeals, containing documents in Appendix O "Search Warrant" (which are copies of Exhibits A1, A3, and A4 in this complaint), and charges these documents are not valid; from APPELLANT'S ~~MERIT~~ BRIEF Issue 6, pages 40-42, copied and attached as Exhibit H1.

November 16, 2005. Somerville files Motion to Supplement the Record for Appeal, in District Court, requesting Search Warrant and RETURN be placed in Record. See Exhibit G, PRO SE APPELLANT'S

BRIEF in Case No. 06-1734.

November 22, 2005. Government serves REPLY BRIEF in Case No. 05-1475; pages 28 & 29 copied and attached as Exhibit I1. Government does not deny search warrants are invalid and only claims that guilty plea waived challenges to these documents. Government makes no claims to existence of other valid documents in a Case No. 1:03-M-371 or 1:03-mj-00371-JGS-ALL.

December 5, 2005. Judge Quist denies Somerville's Motion to Supplement the Record for Appeal, to include search warrants, citing this would be adding new evidence to the case. (Doc #142, 1:03-CR-00239) See Exhibit H, PRO SE APPELLANT'S BRIEF in Case No. 06-1734. Note that this Order is signed electronically.

February/March 2006. Somerville is trying to find existence of Case No. 1:03-M-371; asks family and paralegal helpers to query PACER systems and write letters and emails to Court Clerks. All queries show negative results.

April 3, 2006. Somerville's sister-in-law, who is wife of actual property owner whose property was searched by warrant(s) from Case No. 1:03-M-371, receives reply letter from U.S. District Court Clerk stating no such case as 1:03-M-371 exists. See Exhibit C1.

April 5, 2006. Somerville writes letter to Magistrate Judge

Joseph G. Scoville regarding "Certified" Search Warrant with rubber stamped "Signature of Judicial Officer" and requests location of documents in court files and a copy of "RETURN" pursuant to Federal Rules of Criminal Procedure 41(f). See Exhibit J1.

April 27, 2006. District Court responds to Somerville's April 5 request with a copy of the Search RETURN and a copy of the Docket for Case No. 1:03-mj-00371-JGS-ALL. See Exhibit D1.

May 8, 2006. Somerville files extensive arguments for Rules violations in Motion to Strike Docket for Case No. 1:03-mj-00371-JGS-ALL in District Court. See Exhibit A in PRO SE APPELLANT'S BRIEF, Case No. 06-1734 U.S. 6th Circuit.

May 15, 2006. District Court Judge Gordon J. Quist denies Somerville's Motion to Strike with an Order filled with erroneous information. Quist refuses to honestly address the fraudulent representation of Case No. 1:03-M-371 as being a "sealed case"; language in the "Motion to Seal" a single document is ignored. No explanation for the 2 1/2 year delay in entering the existence of documents into the official electronic case file per local rules and Fed. Rules of Crim. P. 55. No hint of explanation for the "Certified" documents not being True Copies or the serious evidentiary Due Process issues involved. The fact that Quist himself had previously issued Orders that these documents should have been produced previously and provided to Somerville for

Appeal was not even considered or noted.

May 20, 2006. Somerville files Notice of Appeal under 28 U.S.C. §1292 to Appeal the Order denying the Motion to Strike.

June 28, 2006. PRO SE APPELLANT'S BRIEF in U.S. Sixth Circuit Case No. 06-1734 is served by Somerville.

September 18, 2006. Government serves Reply Brief in Case No. 06-1734. Brief offers no explanation for "Certified" documents in Exhibits A1, A2, A3, and A4. Brief falsely claims that Somerville requested Case No. 1:03-M-371 be unsealed. Brief claims documents from Case No. 1:03-M-371 were only entered into the Public Record on April 26, 2006 because the Case was unsealed then. Government Brief offers no explanation for clearly erroneous claim that the language in the "Motion to Seal" a single document is somehow a request to seal the entire case off the Public Record. See pages 13 & 14 of this government Brief, attached to this Complaint as Exhibit K1. Government does not even address failure to comply with District Court Order(s) to previously produce these supposedly previously existing documents newly ENTERED into the Public Record in Case No. 1:03-mj-00371-JGS-ALL.

February 6, 2007. U.S. Sixth Circuit Court of Appeals issues Order in Case 06-1734; refuses to Strike Docket; no explanation for "Certified" documents or other issues; focuses on waived

Right to contest Search Warrants, and claims that Case No. 1:03-M-371 is a "related" case and therefore cannot be contested, despite government's and Court's denial in PSI Report and the Record forwarded for Appeal in Direct Appeal 05-1475 that any related cases existed. See Exhibit L1 attached.

May 21, 2007. Somerville submits presumptive letter inquiry to Magistrate Judge Joseph G. Scoville; 15 page letter attached as ATTACHMENT #1; no reply from the Magistrate has been received.

At no time has any Court Clerk of Judge or the A.U.S.A. or the appointed Defense Counsel explained why the "Certified" documents A1, A2, A3, and A4, are not properly signed or why they are not identical to the documents "unsealed" in Case No. 1:03-mj-00371-JGS-ALL on April 26, 2006. It is very clear that Court appointed Defense Counsel egregiously subverted Somerville's defense by not pursuing the obviously defective Search Warrant documents for violations of Due Process or by investigating the matter; it is not believable that Counsel intended to do anything other than to conspire to deny review of these obviously invalid documents. If Counsel indeed had "anything he wants" access to the Search Warrants and evidence then he should have had copies of the 'valid' signed documents ENTERED in the Public Record in Case No. 1:03-mj-00371-JGS-ALL, way back on October 17, 2003, if in fact these 'valid' documents actually existed then.

The A.U.S.A. should have never distributed these documents to defense counsel if in fact he was in any way aware that these

documents were NOT GENUINE as claimed on their face. The A.U.S.A. had multiple circumstances and causes to acknowledge the existence of and PROVIDE the 'valid' documents claimed on April 26, 2006 prior to that time, and no competent reason has ever been given for not doing so.

Having the PSI Reports repeatedly DENY the existence of the 'related' Search Warrant case amid the raging fireworks over objections to the PSI specifically targeting the validity of the Search Warrants can not be reasonably viewed as a clerical oversight. Failure to enter the Search Warrant and RETURN as evidence in the criminal case also lends suspicion that there was an intent to conceal invalid warrants.

Failure to timely ENTER the existence of these documents in the legally declared Public Record per Local Court Rules and F.R.Cr.P. Rule 55, in the Electronic Case File (ECF) system, which was the Official Record as of November 3, 2003 lends suspicion that there was an intent to conceal invalid warrants, and can hardly be viewed as a clerical oversight error given the number of documents involved.

Gross misconstrual of the language in the "Motion to Seal" the Search Warrant Application and Affidavit as a seal on the entire case has never been responsibly explained by Magistrate Scoville, Judge Quist, or the government. This distortion, as a means to obfuscate accountability for failure to properly ENTER the Case No. 1:03-mj-00371-JGS-ALL documents into the Lawful Public Record, lends further credibility to a claim of continuing conspiracy to conceal invalid warrants from any timely scrutiny whatsoever.

In any event, by no means would this excuse failure to comply with the District Court Order(s) to produce these documents, sealed or not, prior to April 26, 2006.

Inspection of the "Certified" set of warrant documents (A1, A2, A3, A4) reveal more reasons to believe that the supposed valid set of documents unsealed on April 26, 2006 did not exist on October 9, 2003. Documents A1 and A2 have a rubber stamped "OCT 19, 2003" in/above the blank following "YOU ARE HEREBY COMMANDED to search on or before "; this information is NOT found on the "signed" search warrant. And while a time of 9:10am and a date are handwritten on the signed search warrant, the time is not noted on the rubber stamped search warrant. If the "Certified" search warrant documents were improperly created to be a reflection of the valid documents then this diversity of information is unlikely. If the valid "signed" warrant documents actually existed in the office of Magistrate Scoville on October 9, 2003 at 9:10am then it seems inexplicable why his Clerk/Secretary would go to so much trouble to fabricate facimile documents when the valid documents would be right in front of her to simply photocopy and rightfully certify as True Copies. Reviewing the "Motion to Seal", document A3, and comparing it to the signed version in Case No. 1:03-mj-00371-JGS-ALL, the base document including A.U.S.A. Meyer's dating and signature appear identical; if the original paper document with Meyer's signature had in fact been signed by the Magistrate then there would be no document available for the Clerk to photocopy and rubber stamp with the date and the Magistrate's name. The supposedly valid signed set of documents are further suspicious

because of the two-hole file folder holes punched in the top edge of them; these holes are visible in the scanned versions of what are supposedly ORIGINAL documents from 11:00am on October 9, 2003; It is unlikely that original documents would have these holes punched in them prior to scanning into the ECF system; no other original documents in the criminal case 1:03-CR-00239 or Case No. 1:03-mj-00371-JGS-ALL exhibit this phenomenon.

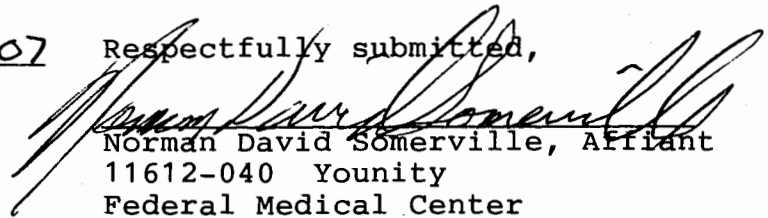
Taken together, the matters disclosed above reveal substantial misconduct and a continuing conspiratorial effort to subvert honest review consistent with appropriate levels of Public Confidence in the integrity of Judicial Proceedings, Court Staff, and government agents.

I request that these matters be investigated, and appropriate measures instituted to effect remedy.

Pursuant to the provisions of Title 28 U.S.C. §1746, the undersigned affiant, Norman David Somerville, does hereby certify that the above statements are true and correct to the best of his information, knowledge, and belief, under penalty of perjury under the laws of the United States of America.

Executed on: AUGUST 3, 2007

Respectfully submitted,



Norman David Somerville, Affiant
11612-040 Younty
Federal Medical Center
P.O. Box 14500
Lexington, Kentucky 40512-4500

ATTACHMENT #1

Norman David Somerville
11612-040 Younty
Federal Medical Center
P.O. Box 14500
Lexington, KY 40512

May 21, 2007

Magistrate Judge Joseph G. Scoville
666 Federal Building
110 Michigan Street, NW
Grand Rapids, MI 49503

Magistrate Scoville,

I am preparing a Formal Complaint against yourself and your Clerk Secretary Margaret Hetherington charging you with Fraud, including falsifying Court Documents, Conspiracy, Fraud on the Record, and Violations of Federal Rules.

I am presenting the questions and Document Exhibits on the attached pages to you in order to resolve this matter prior to Filing a Formal Complaint. Your responses will help me ascertain whether or not my complaints are justified.

Naturally, if you do not respond to this Inquiry, presumptively it is understood that you stipulate to the legitimacy and veracity of the Complaint. Noting U.S. v. Tweel, 550 F.2d 297 "Silence can only be equated with fraud where there is a legal or moral duty to speak or when an inquiry left unanswered would be intentionally misleading."

Thank you for your time and cooperation.

Best Personal Regards,


Norman David Somerville

ATTACHMENT #1

Inquiry of Magistrate Judge Joseph G. Scoville
May 21, 2007
RE: Complaint of Fraud and Conspiracy

Page 1 of 3

Question #1: Refer to Documents EXHIBIT A1 and EXHIBIT A2

Please explain why these two documents, "Certified as a True Copy" by your Clerk/Secretary Margaret Hetherington, are not identical to each other, and why they are not identical to the SEARCH WARRANT which you claim is validly Filed in Case No. 1:03-mj-00371-JGS-ALL.

Question #2: Refer to Documents EXHIBIT A1 and EXHIBIT A2

Please explain why your Clerk, Margaret Hetherington, provided these two "Certified as a True Copy" SEARCH WARRANT documents to BATF Agent Mark Semear to use to conduct the supposedly lawful Search of the Somerville property when these documents conspicuously violate Federal Rules of Criminal Procedure, Rule 41, for failure to be Signed by yourself, and when supposedly valid SEARCH WARRANT documents were supposedly on File at the time, which could have been photocopied and provided to Agent Semear with your Signature on them.

Question #3: Refer to Document EXHIBIT A3

Please explain why this "Certified as a True Copy" document is not identical to the document which you claim is validly Filed in Case No. 1:03-mj-00371-JGS-ALL.

Question #4: Refer to Document EXHIBIT A3

Please explain what language in this MOTION TO SEAL requests or specifies a Seal on the entire Case of Case No. 1:03-M-371 and

ATTACHMENT #1

Inquiry of Magistrate Judge Joseph G. Scoville
May 21, 2007
RE: Complaint of Fraud and Conspiracy

Page 2 of 3

Question #4, continued:

not a single document Seal on the Search Warrant Application and Affidavit as the language therein clearly states.

Question #5: Refer to Document EXHIBIT A3

Please explain why this Certified as a True Copy document, which, as a Court Order, does NOT bear your Signature.

Question #6: Refer to Document EXHIBIT A4

Please explain why this Certified as a True Copy document is not identical to the document which you claim is validly Filed in Case No. 1:03-mj-00371-JGS-ALL.

Question #7: Refer to Documents EXHIBIT A1 and EXHIBIT A3 and EXHIBIT A4

Please explain why these documents were provided to A.U.S.A. Lloyd K. Meyer and/or Defense Counsel Attorney Joseph Doele, on or about October 17, 2003, by yourself or your Clerk, as True Copies of the documents properly Filed in Case No. 1:03-M-371, instead of the documents which you now claim are properly Filed in Case No. 1:03-mj-00371-JGS-ALL.

Question #8: Refer to Documents EXHIBIT A1 and EXHIBIT A2 and EXHIBIT A3 and EXHIBIT A4

Please explain who changed the Case Number from 1:03-M-371 to 1:03-mj-00371-JGS-ALL, by what Rule or Authority this change

ATTACHMENT #1

Inquiry of Magistrate Judge Joseph G. Scoville
May 21, 2007
RE: Complaint of Fraud and Conspiracy

Page 3 of 3

Question #8, continued:

is permitted, and the Date on which this change was made.

Question #9: Refer to Documents EXHIBIT B1 and EXHIBIT B2

Please explain why the documents which you claim were properly Filed in Case No. 1:03-mj-00371-JGS-ALL, in October of 2003, were NOT produced upon Court Orders issued by Judge Gordon Quist when said Orders specifically directed production of SEARCH WARRANT documents and all SEALED documents "in this matter", and delivery thereof to Defendant Somerville.

Question #10: Refer to Document EXHIBIT C1

Please explain why the Court Claimed there was no such Case as Case No. 1:03-M-371.

Question #11: Refer to Document EXHIBIT D1

Please explain why documents which you claim were properly Filed in October of 2003 were not ENTERED into the Public Record/Docket until the day after you closed the Case approximately 30 months later on or about April 26, 2006, and explain how this comports honestly with the Duties of the Court Clerk(s) and yourself to properly File documents and make ENTRIES thereof in the Public Record.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

SEARCH WARRANT

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W - MESICK."

CASE NUMBER: 1:03-M-371

Certified as a True Copy
Ronald C. Weston, Sr., Clerk
By [Signature]
Deputy Clerk
U. S. District Court
Western Dist. of Michigan
Date OCT 9 2003

TO: The Bureau of Alcohol, Tobacco, Firearms and Explosives and any Authorized Officer of the United States

Affidavit(s) having been made before me by Mark Semear, S.A. who has reason to believe

that on the person of or X on the premises known as (name, description and/or location)

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W -MESICK."

in the Western District of Michigan, Southern Division, there is now concealed a certain person or property, namely (describe the person or property)

See Attachment A

I am satisfied that the affidavits(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before OCT 19 2003 (not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime - 5:00 A.M. to 10:00 P.M.) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to the Honorable Joseph G. Scoville, U.S. Magistrate Judge, as required by law.

OCT 9 2003

at Grand Rapids, Michigan

Date Issued

Honorable JOSEPH G. SCOVILLE
Magistrate Judge

JOSEPH G. SCOVILLE
Signature of Judicial Officer

EXHIBIT A1

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

copy
1257 st
earn

In the Matter of the Search of
(Name, address or brief description of person or property to be searched)

SEARCH WARRANT

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W - MESICK."

CASE NUMBER: 1:03-M-371

Certified as a True Copy
Ronald C. Weston, Sr., Clerk
By M. Hetherington
Deputy Clerk
U. S. District Court
Western Dist. of Michigan
Date _____

TO: The Bureau of Alcohol, Tobacco, Firearms and Explosives and any Authorized Officer of the United States

Affidavit(s) having been made before me by Mark Semear, S.A. who has reason to believe

that on the person of or X on the premises known as (name, description and/or location)

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W -MESICK."

in the Western District of Michigan, Southern Division, there is now concealed a certain person or property, namely (describe the person or property)

See Attachment A

I am satisfied that the affidavits(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before (not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to the Honorable Joseph G. Scoville, U.S. Magistrate Judge, as required by law.

OCT 9 2003 at Grand Rapids, Michigan
Date Issued

Honorable JOSEPH G. SCOVILLE
Magistrate Judge

JOSEPH G. SCOVILLE
Signature of Judicial Officer

UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

IN THE MATTER OF:

No. 1:03m371

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W -MESICK."

Hon. Joseph G. Scoville
U. S. Magistrate Judge

Certified as a True Copy
Ronald C. Weston, Sr., Clerk
By M. Hetherington
Deputy Clerk
U. S. District Court
Western Dist. of Michigan
Date OCT 9 2003

MOTION TO SEAL

Now comes the United States of America by Margaret M. Chiara, United States Attorney for the Western District of Michigan and Lloyd K. Meyer, Assistant United States Attorney, and moves this Court pursuant to Local Rule 49.8(a) to seal the Search Warrant Application and Affidavit in the above entitled case in order that the execution of the search warrant be unimpeded and the investigation continue, and that such sealing remain in force and operation until the United States Attorney releases the information or until further order of this Court.

Respectfully submitted,

MARGARET M. CHIARA
United States Attorney

Dated: 10/9/03

Lloyd K. Meyer
LLOYD K. MEYER
Assistant United States Attorney

IT IS SO ORDERED.

Dated: OCT 9 2003

JOSEPH G. SCOVILLE
JOSEPH G. SCOVILLE
United States Magistrate Judge

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

In the Matter of the Search of
(Name, address or brief description of person or property to be searched)

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W - MESICK."

CASE NUMBER: 1:03-M-371

Certified as a True Copy
Ronald C. Weston, Sr., Clerk
By M. Setherington
Deputy Clerk
U. S. District Court
Western Dist. of Michigan

Date OCT 9 2003

I Mark Semear, being duly sworn depose and say:

I am a Special Agent with the ATF and have reason to believe

that on the person of or X on the property or premises known as (name, description and or location)

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W -MESICK."

in the Western District of Michigan, Southern Division, there is now concealed a certain person or property, namely (describe the person or property to be seized)

See Attachment A

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

evidence of the commission of a federal crime

concerning a violation of Title 18 United States Code, Sections 922(o)(1), (g)(3) and 21 United States Code, Sections 846, 841(a)(1)

The facts to support a finding of Probable Cause are as follows:

See attached affidavit - continued on the attached sheet and made a part hereof.

Signature of Affiant (Mark Semear)

Sworn to before me, and subscribed in my presence

Date OCT 9 2003 at Grand Rapids, Michigan

Honorable JOSEPH G. SCOVILLE
Magistrate Judge

JOSEPH G. SCOVILLE
Signature of Judicial Officer

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:03:CR:239-01

NORMAN DAVID SOMERVILLE,

HON. GORDON J. QUIST

Defendant.

MEMORANDUM ORDER

The Court has before it Defendant's motion for copies of documents without fee (docket no. 106) and his motion for a copy of the transcript of the November 17, 2004, hearing on his counsel's motion to withdraw (docket no. 107). Defendant pled guilty on August 11, 2004, to one count of possession of a machine gun in violation of 18 U.S.C. § 922(o)(1). On March 24, 2005, the Court sentenced Defendant to 120 months, a special assessment of \$100, and a fine of \$2,880. Thereafter, Defendant appealed his sentence to the United States Court of Appeals for the Sixth Circuit and is representing himself in the appeal.

In his current motions, Defendant seeks free copies of all documents in the Court's file, in general, and the following documents in particular: (1) all sealed items; (2) all exhibits (including those submitted at the March 24, 2005, sentencing hearing); (3) color copies of all photographs; (4) copies of the signed search and/or arrest warrant; and (5) a copy of the transcript from the November 17, 2004, hearing regarding his counsel's motion to withdraw.

An indigent defendant has a constitutional and statutory right to a free transcript in certain circumstances. See Draper v. Washington, 372 U.S. 487, 495, 83 S. Ct. 774, 779 (1963); United States v. Johnson, 584 F.2d 148, 157 (6th Cir. 1978); 18 U.S.C. § 3006A(e)(1). An indigent defendant is entitled to a free “transcript of prior proceedings when that transcript is needed for an effective defense or appeal.” Britt v. North Carolina, 404 U.S. 226, 227, 92 S. Ct. 431, 433 (1971). However, the defendant must establish his indigency, a particular need for the transcript in connection with a subsequent proceeding, and that no alternative device would suffice. See id.

Defendant’s indigency has already been established for purposes of the Criminal Justice Act. Because Defendant is representing himself on appeal before the Sixth Circuit, he has a need for certain documents to assist him in taking an effective appeal. The Court finds that Defendant is entitled to free transcripts of the plea hearing and the sentencing hearing. In addition, to the extent that they are in the record, the Court finds that Defendant is entitled to copies of the non-sealed exhibits presented at the sentencing hearing. With regard to sealed documents submitted in connection with the sentencing hearing, the Court finds that Defendant may have a need for such exhibits and is probably entitled to them but that the Government should be permitted an opportunity to respond to this request before the sealed documents are provided to Defendant. Finally, although the need for them is less clear, the Court finds that Defendant is entitled to the transcript of the hearing on the motion to withdraw and a copy of the arrest and/or search warrant.

Therefore,

IT IS HEREBY ORDERED that Defendant’s Motions For Copies Of Documents Without Fee (docket nos. 106 and 107) are **GRANTED IN PART**. The Clerk shall provide free copies to Defendant of: (1) the transcript of the August 11, 2004, plea hearing; (2) the transcript of the March

24, 2005, sentencing hearing; (3) the transcript of the November 17, 2004, hearing on the motion to withdraw; (4) the arrest/search warrant; and (5) to the extent they are in the record, non-sealed exhibits presented at the sentencing hearing.

IT IS FURTHER ORDERED that the Government shall file a response addressing Defendant's request for free copies of the sealed documents submitted in connection with his sentencing hearing by **June 15, 2005**.

Dated: June 6, 2005

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:03cr239-01

v.

Hon. Gordon J. Quist

NORMAN DAVID SOMERVILLE,

Defendant.

ORDER

The Court having heard no response to its June 6, 2005, order directing the government to address Defendant's request for free copies of the sealed documents submitted in connection with his sentencing hearing by June 15, 2005,

IT IS ORDERED that counsel for the government provide copies of the sealed documents, as well as the color copies of all photographs, used during the sentencing hearing, to the defendant at the last known address of record:

Norman David Somerville
#11612-040
Federal Detention Center
Box 1000
Milan, MI 48160

IT IS FURTHER ORDERED that the Clerk of Court copy and provide to the defendant all previously sealed documents in this matter. Those documents shall remain under seal in the public file.

/s/ Gordon J. Quist
Gordon J. Quist
U.S. District Judge

Date: June 17, 2005

EXHIBIT B2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

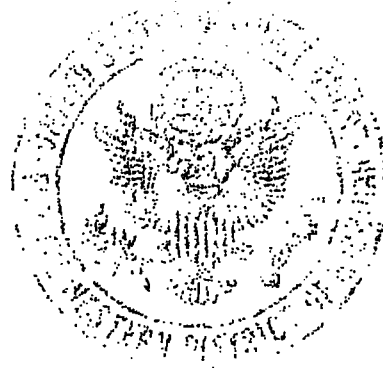
OFFICE OF THE CLERK
Ronald C. Weston, Sr., Clerk of Court

REPLY TO:

399 FEDERAL BUILDING
110 MICHIGAN STREET NW
GRAND RAPIDS, MI 49503

April 3, 2006

Mrs. Robyn Somerville
23136 Marlboro
Dearborn, MI 48128-1886



Re: USA vs Norman Somerville
No: 1:03CR239

Dear Mrs. Somerville:

As requested, enclosed you will find a copy of our payment history regarding the criminal case noted above. Our records concur with your records that the special assessment and fine have been paid in full.

Additionally, I was not able to locate any case number on the system with the case number 1:03M371.

If you have any questions, please feel free to contact me at (616) 732-2715.

Sincerely,

Ronald C. Weston, Sr., Clerk of Court

by: Michael J. Polkowski
Financial Administrator

Robyn Ann Somerville
ACKNOWLEDGEMENT

enc

of ATTACHMENT Letter to AFFIDAVIT of Robyn Somerville
SUBSCRIBED TO AND SWORN before me this 21st day of April, A.D. 2006,
a Notary, that Robyn Somerville, personally appeared and known to me to be the woman
whose name subscribed to the within instrument and acknowledged to be the same.

Alicia L. Salecki (Seal)
Notary Public in and for said State
My Commission expires; June 9, 2008

ALICIA L. SALECKI
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Jun 9, 2008
ACTING IN COUNTY OF Wayne

EXHIBIT C1

CLOSED

United States District Court
Western District of Michigan (Grand Rapids)
CRIMINAL DOCKET FOR CASE #: 1:03-mj-00371-JGS-ALL

Case title: USA v. 40 Acres of property

Date Filed: 10/09/2003

Assigned to: Magistrate Judge Joseph G. Scoville

defendant

40 Acres of property (1)
*located on the west side of 21st Road
between M-42 and 18 1/2 Road; Antioch
Township, Wexford County, Michigan
TERMINATED: 04/25/2006*

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

claimant

Norman David Somerville #11612-040

Plaintiff

USA

represented by **Brian K. Delaney**
 U.S. Attorney (Grand Rapids)
 The Law Bldg.
 330 Ionia Ave., NW
 P.O. Box 208
 Grand Rapids, MI 49501-0208
 (616) 456-2404
 Email: brian.delaney@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lloyd K. Meyer
 U.S. Attorney (Grand Rapids)
 The Law Bldg.
 330 Ionia Ave., NW
 P.O. Box 208
 Grand Rapids, MI 49501-0208
 (616) 456-2404
 Email: lloyd.meyer2@usdoj.gov
TERMINATED: 04/17/2006

Date Filed	#	Docket Text
10/09/2003	1	APPLICATION and affidavit for Search warrant as to 40 Acres of property ; signed by Magistrate Judge Joseph G. Scoville (Attachment #(1): Indictment in case 1:03CR239 as to Norman David Somerville) (dmh) (Entered: 04/26/2006)
10/09/2003	3	MOTION and ORDER to seal case as to 40 Acres of property until further order of this court; CASE UNSEALED pursuant to Order of the Court dated 4/25/06 ; signed by Magistrate Judge Joseph G. Scoville (dmh,) (Entered: 04/26/2006)
10/14/2003	4	SEARCH WARRANT RETURNED EXECUTED on 10/10/2003 in case as to 40 Acres of property (dmh,) (Entered: 04/26/2006)
04/12/2006	5	LETTER from Norman David Somerville <i>requesting a copy of the inventory</i> re 40 Acres of property (dmh,) (Entered: 04/26/2006)
04/17/2006	6	LETTER from the Court to AUSA Delaney <i>re: case will be unsealed on 4/21/06</i> re 40 Acres of property <i>unless there is any objection</i> (dmh,) (Entered: 04/26/2006)
04/25/2006	7	ORDER to unseal case as to 40 Acres of property ; signed by Magistrate Judge Joseph G. Scoville (dmh,) (Entered: 04/26/2006)
04/25/2006	8	Remark: Copy of inventory re: Search Warrant as to 40 Acres of property, mailed to Norman David Somerville by mmh (see letter in file) (dmh) (Entered: 04/26/2006)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA)
)
v.) PRESENTENCE INVESTIGATION REPORT
)
NORMAN DAVID SOMERVILLE) Docket No. 1:03:CR:239-01

Prepared For: The Honorable Gordon J. Quist
U.S. District Judge

Prepared By: Linda A. Skrycki
U.S. Probation Officer
Grand Rapids, MI 49503-2313
616-456-2641

3

Assistant U.S. Attorney
Lloyd K. Meyer
P.O. Box 208
Grand Rapids, MI 49501-0208
616-456-2404
Fax 456-2517

Defense Counsel
Joseph H. Doele
220 Lyon St., N.W.
Grand Rapids, MI 49503-2275
616-454-1847
Fax 774-8203

Sentence Date: November 17, 2004, at 3:00 p.m.

Offense: Count One: Possession of a Machine Gun; 18 U.S.C. § 922(o)(1)
Penalty: 10 years imprisonment and/or \$250,000.00 fine

**Date Offense
Concluded:** September 10, 2003

Release Status: Mr. Somerville was arrested on October 10, 2003, and made his initial appearance. He was remanded to the custody of the U.S. Marshals Service.

Detainers: None known.

Codefendants: Donald Joseph Koshmider, II 1:03:CR:239-02
Jeffrey Thomas Horvath 1:03:CR:239-03

Related Cases: None

Exhibit E1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

1				
2				
3	UNITED STATES OF AMERICA,	---)	
4)	
5)	
6	Plaintiff,)	
7	vs.)	No. 1:03cr0239
8	NORMAN DAVID SOMERVILLE,)	
9	Defendant.)	
10		---		

Before

THE HONORABLE GORDON J. QUIST,

U. S. District Judge

Grand Rapids, Michigan

November 17, 2004

Motion Hearing Proceedings

APPEARANCES:

MARGARET M. CHIARA, U.S. ATTORNEY

By: Lloyd Meyer

5th Floor Law Building

330 Ionia N.W.

Grand Rapids, MI 49501-0208

On behalf of the Plaintiff;

JOSEH H. DOELE

450 Grand Plaza Place

220 Lyon Street NW

Grand Rapids, MI 49503

On behalf of the Defendant.

Diane C. Calsbeek, Court Reporter
492 Federal Building
Grand Rapids, MI 49503

Exhibit F1

1 87 months.

2 That's part of the reason I was upset and why
3 Mr. Doele and I had our disagreement which prompted his
4 desire to file for withdrawal. And this is just typical of
5 the type of things that have gone on. He has not been
6 answering my questions. I have concerns about the search
7 warrant and why it wasn't signed. And I brought this up
8 with the ATF agent right in the beginning when I was first
9 arrested and felt this was wrong. Why is this? And it was
10 only the ATF agent who really told me about that. I have
11 asked Mr. Doele about this many times in writing.

12 And I was on the video conference with him once, and I
13 had just written him a letter. And it had a whole bunch of
14 questions on it that I was very concerned about. And
15 instead of referring to my letter, he was reading the
16 newspaper and just ignoring my letter and my questions.
17 And this is just been par for the course every time I've
18 had serious concerns and serious issues. I haven't been
19 getting the counsel from him that I needed. And instead of
20 giving me answers to things, he'd call my wife and give her
21 answers.

22 When the FBI Agent Birdsong kind of contacted
23 Mr. Doele and said I needed questions answered about what
24 the Secret Service was asking me, he contacted my wife.
25 He's supposed to be there to answer my questions and deal

DIANE C. CALSBEEK, COURT REPORTER

Exhibit F1

United States District Court Western District of Michigan

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

NORMAN DAVID SOMERVILLE

Case Number: 1:03:CR:239-01

USM Number: 11612-040

Richard E. Zambon
Defendant's Attorney

Certified as a True Copy
of an electronically filed document
Ronald C. Weston, Sr., Clerk

By _____
Deputy Clerk
U.S. District Court
Western Dist. of Michigan

Date 3/25/05

THE DEFENDANT:

- pleaded guilty to Count One.
- pleaded nolo contendere to Count(s) which was accepted by the court.
- was found guilty on Count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 922(o)(1)	September 10, 2003	One

Nature of Offense:

Possession of a Machine Gun

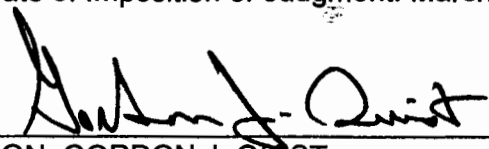
The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on Count(s)
- All remaining counts and charges are dismissed without prejudice on the motion of the United States.

IT IS ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Judgment: March 24, 2005

DATED: MAR 25 2005



HON. GORDON J. QUIST
U.S. DISTRICT JUDGE

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee

Case No. 05-1475

**District Court
No. 03-00239**

Vs.

NORMAN DAVID SOMERVILLE

Defendant-Appellant

APPELLANT'S MERIT BRIEF

For the Appellee:

United States Attorney
Western District of Michigan
Attorney for Plaintiff-Appellee
330 Ionia Avenue, NW
Suite 501, The law building
Grand Rapids, Michigan 49503

For the Appellant:

Norman David Somerville
#11612-040
Defendant/Appellant, Pro Se
Federal Medical Center
P.O. Box 14500
Lexington, Kentucky 40512

41(b). U.S. v. Scott, 260 F.3d 512, 515 (6th Cir. 2001) and executed prior to Search, Illinois v. Gates, 462 U.S. 213 at 238-39.

According to F.R.C.P. 41, warrants may only be issued by Magistrate Judges. Warrants must be "signed" by a Magistrate or Judge. Exhibit N shows the unsigned arrest warrant which Somerville protested at the time of his arrest. Exhibit Q is the "rubber stamped" search warrant which Somerville also protested at the time of its execution. A rubber stamp of a magistrate's name is not a legally valid signature. A rubber stamp may not accept testimony from the applicant/affiant for the search warrant nor issue a warrant. Both warrants are invalid and exhibit blatant denial of Due Process of Law which Somerville vigorously protested to the executing agents and to his court appointed counsel, Mr. Joseph Doelee, to no avail. Mr. Doelee refused to address the matter to the Court or to discuss it with Somerville. This is mentioned on Page 9 at the hearing transcript to release Mr. Doelee as counsel for Somerville.

The Search of the Somerville property and home was conducted with emphasis on seizing valuable items which are not listed on the Search Return correctly nor do they appear in the P.S.I. U.S. v. Foster, 100 F.3d 846, 849-52 (10th Cir. 1996). Valuable Personal property taken by government agents included legally obtained and owned : a \$2800.00 night vision scope; an laptop computer; many cases of ammunition; a "machine" gun, collectable gun mounts, body armor, and more. Improper Administrative Seizure without Administrative

Search Warrant, of gun parts/kit and Missile Tracking System unit and no receipt was issued for these valuable seized items. Seizure of items, or images thereof, used as evidence at sentencing which were not authorized under Search Warrant, constitute violations of Somerville's 1st and 4th Amendment rights, namely: pictures of President Bush and Mr. Rumsfeld which Somerville had innocently doodled on, and documentary videotapes of a political nature (example, Alex Jones "9/11 Road to Tyranny") and others pictured in exhibits at the sentencing hearing which Somerville was not permitted to see, examine, protest nor cross-examine, nor were they used as part of his conviction, nor did he enter any part of a guilty plea concerning these items. *Stanford v. Texas*, 379 U.S. 476, 485-86 (1965). *Frisby v. U.S.* 79 F.3d 29, 33 (6th Cir 1996) Said illegally seized items were used to portray a false picture of criminality to the judge, and used to justify an upward departure in sentencing, though they were not part of the plea agreement, search warrant, nor indictment. These videos, r items of personal free expression, were not used to facilitate any criminal activity.

Further, there was a government failure to seize the items in the Search Warrant which would have been exculpatory such as a minivan, ammunition reloading presses and ammunition components (cases and projectiles), gun mount for .50 caliber M2. The government agents actually STAGED a picture of "evidence" by erecting a gun mount onto a broken down jeep and then photographing it; no guns or ammunition were in this vehicle. Thus the acts and

inactions of government agents deliberately fabricated and falsified the true facts at the Somerville farm. The Government used statements of a so-called "confidential informant", that a fully automatic M2 Anti-Aircraft gun and 45,00 rounds of .50 caliber linked ammunition (that's 12,000 POUNDS of ammo) , which statements were repeated in the government Motion to Detain despite the fact these items were not found . Effectively, the Government committed perjury about the Search results, including this issue, and perjured statements about "landmines and booby traps." The Government deliberately violated Somerville's marital privilege communications despite knowing that a Marriage License was on file. They further used his wife Lisa Vega to invade Somerville's Attorney-client privilege, influencing her to continually rummage and pilfer Somerville's personal papers and effects over 18 months, in order to facilitate the interests of the FBI and BATF. See Exhibit P of the Appendix.

B. Massive ineffective assistance of counsel

On April 20, 2004, Somerville gave Grand Jury testimony in Grand Rapids Federal Court, with Lloyd K. Meyer as the prosecutor. Mr. Meyer made representations to Somerville and to the Grand Jury in that proceeding which indicated that Meyer would, not "may" , file for a downward departure in his Sentence. The matter of these remarks was brought to the attention of Attorney Joseph Doelee who told Somerville this was perfect evidence to use against Meyer with regard to the Plea Agreement, but Doelee never did obtain this testimony/transcript for Somerville's benefit during sentencing. In a further

testimony to Appellant's disadvantage at trial. Consequently, if this Court proceeds under a plain error analysis, Appellant's claim of improper disclosure of grand jury information has no affect on his substantial rights or the fairness, integrity, or public reputation of any judicial proceeding. See Stewart, 306 F.3d at 307 (discussing the requirements of plain error).

For the reasons stated above, each of Appellant's claims of error under the Sixth Amendment are without force. In addition, if Appellant's claims of ineffective assistance of counsel are not denied, such claims should be reserved for factual development in an appropriate proceeding.

D. Appellant waived any Fourth Amendment claims.

Appellant makes several challenges, for the first time on appeal, to the constitutionality of his conviction in light of the Fourth Amendment. (Appellant's Br. at 39-41.) Appellant argues that the government violated his Fourth Amendment rights by allegedly failing to corroborate information within the Search Warrant, failing to knock and announce, unreasonably relying on a confidential informant, using improper signatures on the Search Warrant and Arrest Warrant, proceeding without an affidavit for the Arrest Warrant, and seizing items not within the Search Warrant. (Appellant's Br. at 39-41.) Appellant did not object to the Fourth Amendment issues below, and he

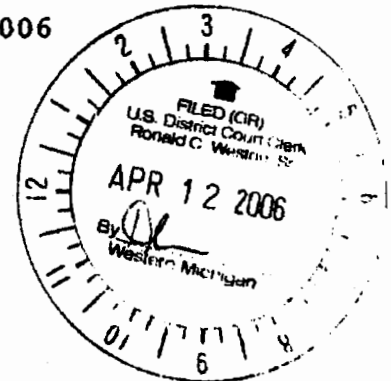
knowingly waived those issues. See United States v. Scarborough, 43 F.3d 1021, 1025 (6th Cir. 1994) (appellate court has no jurisdiction to hear constitutional objections raised for the first time on appeal because they are waived, not forfeited); United States v. Hall, 200 F.3d 962, 964 (6th Cir. 2000) (same). (See R. 90: Def. Sentencing Mem. at 1; R. 54: Plea Agreement § III(D); Plea TR at 16-18.) Even if this Court chooses to apply the plain error standard of Rule 52(b), reversal is still unwarranted because Appellant's substantial rights were not affected. Appellant admitted to the underlying fact that he possessed machine guns. (R. 54: Plea Agreement § I(A); Plea TR at 35.) Thus, Appellant's substantial rights are unaffected and any error would not threaten "the basic fairness, integrity, or public reputation of the district court proceedings." See Stewart, 306 F.3d at 307 (discussing the requirements of plain error).

E. Appellant's First Amendment freedom of expression was not infringed by the Government search or the District Court's sentence.

Appellant contends, for the first time on appeal, that his First Amendment rights were transgressed when the Government seized pictures and videotapes in Appellant's possession and when the District Court upwardly departed from the Sentencing Guideline range based in part upon a letter Appellant wrote to The Advocate Newspaper. (Appellant's Br. at 41, 43.)

Mr. Norman David Somerville
11612-040
Federal Medical Center
P.O. Box 14500
Lexington, KY 40512

April 5, 2006



Magistrate Judge Joseph G. Scoville
Federal Building
110 Michigan St. NW
Grand Rapids, Michigan 49503

Honorable Magistrate Judge Scoville,

Please find attached a photocopy of a CERTIFIED copy of a Search Warrant. This Search Warrant bears your rubber-stamped name in the space marked "Signature of Judicial Officer". This document does not bear any marking that it was "FILED" in the District Court record.

According to Federal Rules of Criminal Procedure, Rule 41(f)(4):
"...The judge must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken..."

This is my request, according to Rule 41(f)(4), for a copy of the inventory taken in this Search Warrant execution. Please provide such copy to me at my address above.

According to Fed. Rules of Crim. Proc. Rule 41(i): "FORWARDING PAPERS TO THE CLERK. The magistrate judge to whom the warrant is returned must attach to the warrant a copy of the return, of the inventory, and of all other related papers and must deliver them to the clerk in the district where the property was seized."

It is the statement of the Clerk of the District Court that no such case file numbered 1:03-M-371 exists in the Court records. I would like to know where you filed these Warrant documents as required by Rule 41(i).

Respectfully,

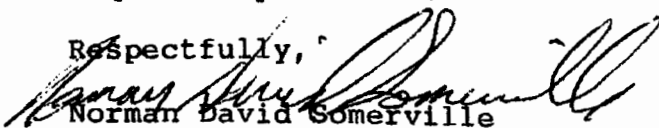

Norman David Somerville

Exhibit J1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

In the Matter of the Search of
(Name, address or brief description of person or property to be searched)

SEARCH WARRANT

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W - MESICK."

CASE NUMBER: 1:03-M-371

Certified as a True Copy
Ronald C. Weston, Sr., Clerk
By: [Signature]
Deputy Clerk
U. S. District Court
Western Dist. of Michigan
Date OCT 9 2003

TO: The Bureau of Alcohol, Tobacco, Firearms and Explosives and any Authorized Officer of the United States

Affidavit(s) having been made before me by Mark Semear, S.A. who has reason to believe that on the person of or X on the premises known as (name, description and/or location)

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W -MESICK."

in the Western District of Michigan, Southern Division, there is now concealed a certain person or property, namely (describe the person or property)

See Attachment A

I am satisfied that the affidavits(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before OCT 19 2003 *(not to exceed 10 days)* the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to the Honorable Joseph G. Scoville, U.S. Magistrate Judge, as required by law.

OCT 9 2003 at Grand Rapids, Michigan
Date Issued

Honorable JOSEPH G. SCOVILLE
Magistrate Judge

JOSEPH G. SCOVILLE
Signature of Judicial Officer

Exhibit J1

judgment and determine punishment.” Cox, 464 F.2d at 942; see also United States v. Lanier, 201 F.3d 482, 846 (6th Cir. 2000) (quoting In re Hanserd, 123 F.3d 922, 926 (6th Cir. 1997)) (“plea serves not only to admit the conduct charged in the indictment[,] but also to concede guilt of the substantive crime”). Thus, this Court correctly determined that a sufficient factual basis existed to support Somerville’s guilty plea. Somerville, Nos. 05-1475/2441, slip op. at 3.

Therefore, both the law of the case and case law generally make plain that Somerville waived any Fourth Amendment claims by pleading guilty.

Somerville contends that case “1:03-MJ-371” was recently created in order to improperly introduce the search warrant documents into the record. (Appellant’s Br. at 31.) Such an argument does not assist Somerville’s constitutional claim, and, since the claim is without merit, the District Court properly denied his motion to strike. Even if the warrant documents were never filed, the previous discussion indicates that Somerville waived his Fourth Amendment right to challenge the validity of any search or seizure that occurred prior to pleading guilty. Thus, even if Somerville could successfully show that the record in case 1:03-MJ-371 was improperly supplemented after his plea, he cannot attack the validity of a search that occurred before his plea.

However, case number “1:03-MJ-371” was not improperly created or supplemented. As noted by the District Court, the record shows that the search

warrant was filed in October of 2003. (MJR. 1: Application for Search Warrant Signed, JA*; R. 150: Order Den. Mot. to Strike at 2, JA*.) The search warrant documents were contemporaneously sealed, and those documents were not unsealed until April of 2006. (MJR. 3: Case Sealed/Unsealed, JA*; R. 150: Order Den. Mot. to Strike at 2, JA*.) The entry of the search warrant documents into the public record only after being unsealed in April 2006, at Somerville's request, is not a violation of any constitutional right of Somerville.

Somerville has failed to provide any reason why case number 1:03-MJ-371 should be stricken. Moreover, Somerville would not benefit from striking the case because it creates no constitutional violation affecting the knowing and voluntary nature of Somerville's guilty plea. Thus, the District Court did not abuse its discretion in denying Somerville's motion to strike.

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 06-1734

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

FEB - 6 2007

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 v.)
)
 NORMAN DAVID SOMERVILLE,)
)
 Defendant-Appellant.)

LEONARD GREEN, Clerk

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF
MICHIGAN

ORDER

Before: KENNEDY, BATCHELDER, and CLAY, Circuit Judges.

Defendant Norman David Somerville appeals a district court order that denied his post-conviction motion to “strike docket” following his conviction for possession of a machine gun in violation of 18 U.S.C. § 922(o)(1). This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On August 11, 2004, Somerville pled guilty to possession of a machine gun, and the district court sentenced him to eighty months of imprisonment. While his direct criminal appeal was pending before this court, Somerville filed a “motion to strike docket,” in which he sought to strike documents filed in a related case pertaining to a search warrant issued by a magistrate judge authorizing a search of Somerville’s property which led to his prosecution in this case. The district court denied Somerville’s motion. Somerville filed a timely notice of appeal. This Court affirmed Somerville’s conviction and sentence, as well as a district court order that denied three earlier post-

judgment motions Somerville filed. *United States v. Somerville*, Nos. 05-1475/2441 (6th Cir. Aug. 1, 2005) (unpublished case).

Somerville contends that documents pertinent to the search warrant issued for his property are bogus and improperly filed, and that his conviction must be reversed. The government argues that Somerville waived his right to challenge the search warrant in this case. Upon consideration, we affirm the district court's order.

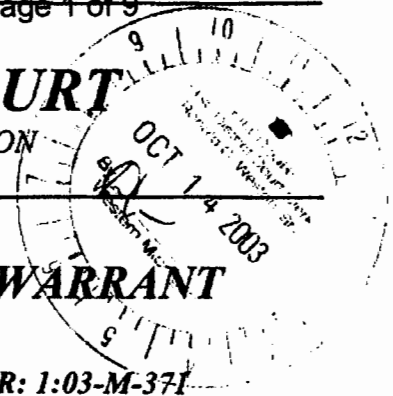
Generally, this Court has recognized appellate jurisdiction over appeals from post-judgment orders. See *United States v. One 1985 Chevrolet Corvette*, 914 F.2d 804, 807 (6th Cir. 1990). In the instant case, the district court correctly concluded that, despite the relief nominally requested, Somerville essentially sought to challenge the search that led to his prosecution, and thereby challenge his conviction. This Court determined on direct appeal that Somerville's guilty plea was valid. Somerville's voluntary and unconditional guilty plea waived any non-jurisdictional claims he may have had, *Tollett v. Henderson*, 411 U.S. 258, 267 (1973); *United States v. Webb*, 403 F.3d 373, 378 n.1 (6th Cir. 2005), and forecloses "independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *United States v. Lanier*, 201 F.3d 842, 847 (internal quotation marks and citation omitted). Under these circumstances, the relief Somerville sought is foreclosed, and the district court properly denied Somerville's motion.

For the foregoing reasons, the district court's order is affirmed. See Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT


Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION



In the Matter of the Search of
(Name, address or brief description of person or property to be searched)

SEARCH WARRANT

CASE NUMBER: 1:03-M-371

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W - MESICK."

TO: The Bureau of Alcohol, Tobacco, Firearms and Explosives and any Authorized Officer of the United States

Affidavit(s) having been made before me by Mark Semear, S.A. who has reason to believe

that on the person of or X on the premises known as (name, description and/or location)

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W -MESICK."

in the Western District of Michigan, Southern Division, there is now concealed a certain person or property, namely (describe the person or property)

See Attachment A

I am satisfied that the affidavits(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before (not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to the Honorable Joseph G. Scoville, U.S. Magistrate Judge, as required by law.

10/9/2003 at 9⁰⁰ AM at Grand Rapids, Michigan
Date Issued

Honorable JOSEPH G. SCOVILLE
Magistrate Judge

Joseph G. Scoville
Signature of Judicial Officer

FILED

UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

03 OCT -9 AM 11:12
CLERK
COURT
WESTERN DISTRICT OF MICH

IN THE MATTER OF:

No. 1:03mj00371

Hon. Joseph G. Scoville
U. S. Magistrate Judge

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W -MESICK."

MOTION TO SEAL

Now comes the United States of America by Margaret M. Chiara, United States Attorney for the Western District of Michigan and Lloyd K. Meyer, Assistant United States Attorney, and moves this Court pursuant to Local Rule 49.8(a) to seal the Search Warrant Application and Affidavit in the above entitled case in order that the execution of the search warrant be unimpeded and the investigation continue, and that such sealing remain in force and operation until the United States Attorney releases the information or until further order of this Court.

Respectfully submitted,

MARGARET M. CHIARA
United States Attorney

Dated: 10/9/03

Lloyd K. Meyer
LLOYD K. MEYER
Assistant United States Attorney

IT IS SO ORDERED.

Dated: 10/9/03

Joseph G. Scoville
JOSEPH G. SCOVILLE
United States Magistrate Judge

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

In the Matter of the Search of
(Name, address or brief description of person or property to be searched)

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W - MESICK."

CASE NUMBER: 1:03-M-371

I Mark Semear being duly sworn depose and say:

I am a Special Agent with the ATF and have reason to believe

that on the person of or X on the property or premises known as (name, description and or location)

Forty acres of property located on the west side of 21st Road between M-42 and 18 1/2 Road; it is the second parcel of land north of 18 1/2 Road and west of 21st Road, in Antioch Township, Wexford County, Michigan, Western Judicial District of Michigan. The legal description is "COM 100 RDS N OF SE COR OF SEC: N 100 RDS: W 64 RDS: E TO BEG. 40 A: ANT. SEC. 10 T23N R11W -MESICK."

in the Western District of Michigan, Southern Division, there is now concealed a certain person or property, namely (describe the person or property to be seized)

See Attachment A

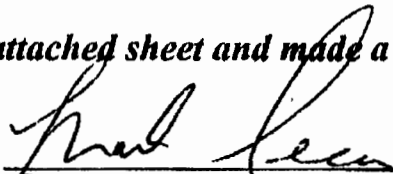
which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

evidence of the commission of a federal crime

concerning a violation of Title 18 United States Code, Sections 922(o)(1), (g)(3)
and 21 United States Code, Sections 846, 841(a)(1)

The facts to support a finding of Probable Cause are as follows:

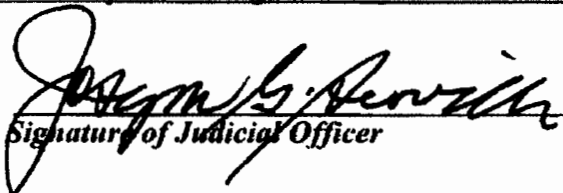
See attached affidavit - continued on the attached sheet and made a part hereof.


Signature of Affiant (Mark Semear)

Sworn to before me, and subscribed in my presence

10/9/2003 at Grand Rapids, Michigan
Date

Honorable JOSEPH G. SCOVILLE
Magistrate Judge


Signature of Judicial Officer