

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

2006 NOV -8 A 10: 28

UNITED STATES OF AMERICA)
)
)
v.)
)
ELAINE A. BROWN, and)
EDWARD LEWIS BROWN,)
Defendants)
_____)

Criminal No. 1:06-cr-00071-SM

**NOTICE AND MOTION FOR COURT ORDER
TO SUPPRESS EVIDENCE OBTAINED UNLAWFULLY**

JUDICIAL AND ADMINISTRATIVE NOTICE

The Defendants in propria persona without representation by an attorney notice this court and all parties involved in the above captioned case, of this their motion, for Court Order to Suppress Evidence Obtained Unlawfully, and the memorandum included herein. Officers of the court are hereby noticed of their continuing duty under authority of the supremacy; equal protection and full faith and credit clauses of the United States Constitution and the common law authorities of Haines v Kerner, 404 U.S. 519-421, Platsky v. C.I.A. 953 F.2d. 25, and Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000). In Haines: pro se litigants are held to less stringent pleading standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. In Platsky: court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and instructions to repair pleadings. In Anastasoff: litigants' constitutional Rights are violated when courts depart from precedent where parties are similarly situated.

U.S. DISTRICT COURT
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MOTION FOR ORDER TO SUPPRESS EVIDENCE 2006 NOV 8 AM 10: 28

Elaine A. Brown and Edward L. Brown, husband and wife, Defendants herein, move this court under authority of the Constitution for the United States, Amendments IV; VI; IX, and X to ORDER SUPPRESSION OF EVIDENCE obtained by government agents at the Defendants' home in an unlawful search absent a warrant as required by organic law and additionally order the return of all items of private property wrongfully *taken* from the Defendants'. This motion embraces the individual Rights interpretation of the first ten amendments known as the "Bill of Rights" to the United States Constitution according to settled law and as set out the Fourth Amendment. This motion argues that this federal search without a warrant is unreasonable and is unconstitutional. The Defendants' cannot tolerate the United States violation of Rule of Law without surrendering their vision of human dignity under God which is our national soul. In support of this motion Elaine and Edward Brown instruct this court as follows:

MEMORANDUM OF LAW AND FACTS

1. The Fourth Amendment guarantees the Right of the Browns, as two of "the people", to be free from unreasonable government searches and seizures and provides that a warrant shall issue only upon presentation of an oath or affirmation demonstrating probable cause and particularly describing the place to be searched and the persons or things to be seized.
2. U.S. Marshals armed and operating unlawfully without jurisdiction outside of

United States Territory on May 24, 2006 did search, without warrant, the Defendants' home in violation of the Fourth Amendment to the Constitution of the United States.

3. No sworn affidavit requesting this search was made before Magistrate Muirhead on or before May 24, 2006.

4. The unlawful search of the Defendants' home on May 24, 2006 was not made contemporaneously with a lawful arrest.

5. No warrant was issued, in compliance with Defendants' Rights as protected under the Fourth Amendment to the Constitution of the United States, which authorized the seizure of Ed and Elaine Brown's personal effects or anything else from their private property.

6. Amendments IV, IX, and X of the Bill of Rights, added to the Constitution of the United States, exactly manifest the founders' concern about the federal government assuming powers not expressly delegated to it by the states.

7. The amendments were crafted to guard against any such usurpation or abuse of power: "Amendment IV: The Right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

"Amendment IX: The enumeration in the Constitution of certain Rights shall not be construed to deny or disparage others retained by the people."

"Amendment X: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

5. Both Defendants have been deprived of the primary purpose of the warrant requirement which is its assurance of neutrality. As Justice Jackson stated for the Court in *Johnson v. United States*, 333 U.S. 10, 13-14 (1948): "The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers. . . . When the Right of privacy must reasonably yield to the Right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent." In the instant case Magistrate Muirhead deliberately ignored the mandates set forth in the Fourth Amendment, to facilitate rouge government agents in violating the Brown's Right to have their home and personal property secure from a warrant less search and seizure.

6. See *Welsh v. Wisconsin*, 466 U.S. 740, 748-749, and n. 10(1984); *Coolidge v.*

New Hampshire, 403 U.S. 443, 449 (1971). A warrant also defines the scope of a search and limits the discretion of the inspecting officers. See *New York v. Burger*, 482 U.S. 691, 703(1987); *Marron v. United States*, 275 U.S. 192, 196(1927). These purposes would be served no less in the foreign state of New Hampshire than in the domestic context of District of Columbia.

7. The Warrant Clause cannot be ignored simply because Congress has not given any United States magistrate authority to issue search warrants for foreign searches. See Fed. Rule Crim. Proc. 41(a). Congress cannot define the contours of the Constitution. If the Warrant Clause applies, Congress cannot excise the Clause from the Constitution by failing to provide a means for United States agents to obtain a warrant. See *Best v. United States*, 184 F.2d 131, 138 (CA1 1950)("Obviously, Congress may not nullify the guarantees of the Fourth Amendment by the simple expedient of not empowering any judicial officer to act on an application for a warrant"), cert. denied, 340 U.S. 939(1951).

8. Nor is the Warrant Clause inapplicable merely because a warrant from a United States magistrate could not "authorize" a search in a foreign state or country. Although this may be true as a matter of international law, it is irrelevant to our interpretation of the Fourth Amendment. As a matter of United States constitutional law, a warrant serves the same primary function outside of the United States as it does domestically; it assures that a neutral magistrate has authorized the search and limited its scope. The need to protect those suspected of criminal activity from the unbridled discretion of investigation officers is no less important abroad than at home. The record of this case contains no evidence of

any such assurance by a neutral magistrate in violation of Constitutional Law that protects the Defendants' and their home in this case.

9. When the United States Government conducts a law enforcement search against a foreign national outside of the United States and its territories, as done here, it still must comply with the Fourth Amendment. Absent exigent circumstance, it must obtain a search warrant from a United States Article III court. This Article IV court sitting in New Hampshire cannot expect all people, wherever they may be, to abide by its laws, and in the same breath tell the world that its law enforcement officers need not do the same. It cannot expect others to respect its laws until it respects its own Constitution, anything less is hypocrisy and violates the law. No exigent circumstance existed nor was consent given on May 24, 2006 that could excuse or cure the law enforcement officers' violation of the Defendants' Rights as protected by the Fourth Amendment to the Constitution of the United States.

10. The Fourth Amendment contains no express or implied territorial limitations, and the Supreme Court does not hold that the Fourth Amendment is inapplicable to searches outside the United States and its territories. Indeed, the majority's analysis implies that a foreign national who had "developed sufficient connection with this country to be considered part of [our] community" would be protected by the Fourth Amendment regardless of the location of the search. Certainly nothing in the Court's opinion questions the validity of the rule, accepted by every Court of Appeals to have considered the question, that the Fourth Amendment applies to searches conducted by the United States

Government against United States citizens abroad. See, e.g., *United States v. Conroy*, 589 F.2d 1258, 1264 (CA5), cert. denied, 444 U.S. 831 (1979); *United States v. Rose*, 570 F.2d 1358, 1362 (CA9 1978). A warrant less, unreasonable search and seizure is no less a violation of the Fourth Amendment because it occurs in Plainfield, New Hampshire.

11. Given the history of our Nation's concern over warrant less and unreasonable searches, explicit recognition of "the Right of the people" to Fourth Amendment protection may be interpreted to underscore the importance of the Right, rather than to restrict the category of persons who may assert it. The restrictions that the United States must observe with reference to aliens beyond its territory or jurisdiction depend, as a consequence, on general principles of interpretation, not on an inquiry as to who formed the Constitution or a construction that some Rights are mentioned as being those of "the people." The Defendants take it to be correct, as the plurality opinion in *Reid v. Covert* sets forth, that the Government may act only as the Constitution authorizes, whether the actions in question are foreign or domestic. See 354 U.S., at 6.

12. The Fourth Amendment guarantees the Right of "the people" to be free from unreasonable searches and seizures and provides that a warrant shall issue only upon presentation of an oath or affirmation demonstrating probable cause and particularly describing the place to be searched and the persons or things to be seized. According to the U.S Supreme Court the term "the people" refers to "a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." The Court admits that "the people"

extends beyond the citizenry, but leaves the precise contours of its "sufficient connection" test unclear. At one point the majority hints that aliens are protected by the Fourth Amendment only when they come within the United States and develop "substantial connections" with our country. At other junctures, the Court suggests that an alien's presence in the United States must be voluntary and that the alien must have "accepted some societal obligations." At yet other points, the majority implies that respondent would be protected by the Fourth Amendment if the place searched were in the United States.

13. The court transcripts for both sham arraignments evidence numerous violations of the Rights of the Defendants by Magistrate Muirhead, to include but not be limited to, knowingly ordering the unlawful search of the Defendants' home and private property without describing anything or any place to be searched, absent a warrant, without probable cause, and not supported by any oath or affirmation.

14. Magistrate Muirhead deliberately held both defendants in custody at their court hearings on May 24, 2006 to obscure the fact that the Defendants' home was at that time being raided and plundered by federal agents operating unlawfully outside of federal territorial jurisdiction.

15. The federal agents systematic ransacking and pillaging of the Brown's home is evidenced by video and still pictures taken during the warrant less search which included all areas of the house, garage and yard, making copies of books, documents, papers, computer files, including their taking personal effects owned by Ed and Elaine Brown.

16. There was no warrant or authorized judicial order for this raid, therefore there was nothing particularly describing the place to be searched, and the persons or things to be seized, resulting in violation of Amendment IV to the United States Constitution.

17. Amendment IV to the United States Constitution specifically prohibits this unreasonable conduct by federal officers and agents as follows: The Right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

18. The New Hampshire Constitution at Article 2 guarantees to Ed and Elaine Brown: [Natural Rights.] All men have certain natural, essential, and inherent Rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of Rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.

19. The people do not derive this Right from the state or federal government, but directly from their sovereignty as one of the people that framed the government. It is one of the "high powers" directly belonging to the citizen and "is excepted out of the general powers of government." No law, or judicial grumbling, can be passed to infringe upon or

impair it, because the Right is above the law, and independent of the law-making power.

20. Federal courts are required to follow state law when applicable and thus the New Hampshire Constitution is fully binding on this court and its rogue agents. In *Erie R. Co. v. Tompkins*, 304 US 64 (1938), the U.S. Supreme Court ruled that a federal court must follow state law rather than some kind of federal common law.

21. The Fourth Amendment prohibits "unreasonable searches and seizures" whether or not the evidence is sought to be used in a criminal trial, and a violation of the Amendment is "fully accomplished" at the time of an unreasonable governmental intrusion. *United States v. Calandra*, 414 U.S. 338, 354 (1974); *United States v. Leon*, 468 U.S. 897, 906 (1984).

22. Edward and Elaine Brown are people that have been violated. Their Right to be free from unreasonable government searches and seizure at the hands of pillaging government agents was trespassed. Their Right to be secure in their property is absolute and is not to be disregarded by any government official.

CONCLUSION

Wherefore, having demonstrated failure of government actors to obey fundamental law, the Defendants Edward and Elaine Brown now demand that this court issue an **ORDER** to SUPPRESS EVIDENCE UNLAWFULLY COLLECTED BY FEDERAL AGENTS ON MAY 24 2006 and order the return of ALL property pillaged that day. This court has

a non-discretionary duty to grant this motion and (1) Order the suppression of evidence; (2) Order the return of all private effects and property taken; (3) Enjoin the United States from any further harassment of Elaine Brown and Edward Brown; (3) Stay all further proceedings until such time as the United States Attorney learns and complies with the organic law.

ORAL ARGUMENT DEMANDED

Date Nov. 6, 2006

Prepared and submitted by:

Elaine A. Brown
Elaine A. Brown
c/o 401 Center of Town Road
Plainfield, New Hampshire

Edward L. Brown
Edward L. Brown
c/o 401 Center of Town Road
Plainfield, New Hampshire

CERTIFICATE OF SERVICE

I, **Edward L. Brown**, certify that I delivered via postage paid First Class U.S. Mail Return Receipt, a true and correct copy of the above and foregoing **NOTICE AND MOTION** to the office of the Clerk of Court U.S. District Court, District of New Hampshire, at 55 Pleasant St., Concord, NH 03301-0001 for entry into the record and to William E. Morse in the office of THOMAS P. COLANTUONO, the United States Attorney for the District of (NH) located at 53 Pleasant St. Concord, NH 03301-0001.

Date November 6, 2006

Edward L. Brown
Edward L. Brown

James R. Starr, Clerk
Clerk's Office
Warren B. Rudman U.S. Courthouse
55 Pleasant Street, Room 110
Concord, NH 03301-3941.

November 6, 2006

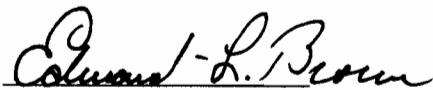
Via Certified Mail
7006 0810 0002 7165 6779

Re: 01:06-cr-00071-SM UNITED STATES OF AMERICA v. Elaine Brown; Ed Brown

Dear Mr. Starr:

Please timely file the enclosed Defendants' motion into the above captioned case file and make a suitable docket entry. I have already mailed a true copy of the enclosed motion to the United States Attorneys office.

With all due respect,



Edward Lewis Brown
c/o 401 Center of Town Road
Plainfield, New Hampshire