

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 v.)
)
 DEJAY MONSON,)
)
 Defendant.)

CASE NO. 8:08CR388

**BRIEF IN SUPPORT OF MOTION
FOR RETURN OF SEIZED
PROPERTY**

The defendant has filed a motion seeking the return of intimate photos of his wife which were seized from his home by Burt County Deputy Sheriff J. Keatts on or about September 16, 2008. The defendant further seeks the return of \$5,000 in cash which was submitted to the Washington County Sheriff to secure his recognizance on bond. The money was seized after a drug detector dog allegedly alerted on the cash for the presence of narcotics.

The search warrant in question did not direct Deputy Keatts to seize intimate photos of the defendant's wife. The photos are neither illegal nor do they represent evidence of any crime. They should clearly have been left in the defendant's residence. Their seizure represents a gross invasion of the marital relationship and their continued possession by law enforcement causes the defendant and his wife emotional distress.

On September 18, 2008, both Floyd Munson, and a friend of his, withdrew money from their banking accounts for the purpose of lending the money to Dejay Monson for the posting of his \$5,000 state court bond. Floyd Munson took the money he received from the bank and delivered it to the Washington County Sheriff's Office. Investigative reports briefly describe that Washington County Sheriff's Office personnel ordered a drug detector dog to

sniff the \$5,000. The dog allegedly indicated that it detected the odor of narcotics on the money. The Washington County Sheriff seized the \$5,000 and the Honorable Thomas Thalken, United States Magistrate Judge later ordered the money seized from state authorities. Therefore, the money is now under this court's jurisdiction.

The court has not received any evidence that the detector dog in question was well trained, that it was trained to detect the odor of marijuana residue, or that it had demonstrated any reliability in detecting the odor of marijuana residue. Even if the dog turns out to have proven its reliability, drug detector dogs are often trained to indicate on more than one illegal drug. It is likely that the dog used was trained to indicate when it detects the odor of cocaine, methamphetamine and heroin as well. Therefore, a positive indication would only suggest that some of the currency contained the odor of one of those illegal drugs. Therefore, even a reliable indication isn't sufficient to make a probable cause finding that the \$5,000 in cash posted by Lloyd Monson came from drug proceeds, much less carry the government's burden in a forfeiture proceeding.

The government has the burden of proof to "justify its continued possession of the property by demonstrating that it is contraband or subject to forfeiture." United States v. Martinson, 809 F.2d 1364, 1369 (9th Cir. 1987). See also United States v. Smith, 659 F.2d 97, 99 (8th Cir. 1981). The government cannot meet this burden and therefore the property should be returned.

DATED this 17th day of February, 2009.

Respectfully submitted,

DEJAY MONSON, Defendant,

By s/ Michael F. Maloney

Michael F. Maloney: 19085

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 17, 2009, I electronically filed the foregoing with the Clerk of Court, using the ECM/ECF system, which sent notification of such filing to the following: Kimberly C. Bunjer, Assistant U.S. Attorney.

s/ Michael F. Maloney