

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

BERNARD VON NOTHAUS,)
)
 Claimant,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)

CAUSE NO. 3:09-cv-00050-RLY-WGH
[3:07-mj-17-WGH-1]

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

In support of its motion to dismiss the claimant Bernard Von Nothaus' ("Von Nothaus") Motion for Return of Property, filed in this Court pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure, the United States advises the Court as follows:

BACKGROUND

On November 8, 2007, the United States District Court for the Southern District of Indiana authorized a search warrant with respect to the property and premises located at 225 N. Stockwell Road, Evansville, Indiana. A copy of that search warrant is attached to Von Nothaus' Motion for Return of Property as Exhibit A.

A search of the property or premises located at 225 N. Stockwell Road, Evansville, Indiana, was conducted pursuant to the warrant on or about November 11, 2007, resulting in the seizure of the items listed on the receipt for seized property attached to Von Nothaus' Motion to Return Property as Exhibit B.

Some, but not all, of the items seized from the property or premises located at 225 N. Stockwell Road, Evansville, Indiana, in the search mentioned above are the subject of a forfeiture action pending in the United States District Court for the Western District of North Carolina in the case entitled *United States v. 3039.375 Pounds of Copper Coins, et al*, Cause

Number 1:08-cv-230. The items subject to the civil forfeiture action in the North Carolina district court are not (according to Von Nothaus' pleadings) the subject of or included in the instant Motion for Return of Property. Nonetheless, Von Nothaus has not described or identified (except in the most general of terms) the items or materials whose return he seeks via this action with any precision or specificity.

On June 3, 2009, an indictment was unsealed in the case entitled *United States v. Bernard Von Nothaus, William Kevin Innes, Sarah Jane Bledsoe and Rachelle L. Moseley*, Cause Number 5:09-CR-27, United States District Court for the Western District of North Carolina.¹ That indictment charged Von Nothaus and three additional defendants with violations of 18 U.S.C. § 371, 18 U.S.C. § 485, 18 U.S.C. § 486, 18 U.S.C. § 1341, and 18 U.S.C. § 2. Von Nothaus has been arrested (in Florida) on the charges alleged in the indictment.

The materials seized from the property or premises located at 225 N. Stockwell Road, Evansville, Indiana constitute evidence in the case against Von Nothaus and his co-defendants. That being the case, the United States is entitled to retain custody over the seized items which Von Nothaus seeks to recover in this action until such time as the criminal proceedings against him and his co-defendants are resolved or terminated.

The claimant Von Nothaus has (in addition to failing to specify what precise materials he wants returned) failed to demonstrate his need for the materials; the likelihood of irreparable harm if the materials are not returned at this time; and that he has no available remedy at law (such as seeking access to the materials at issue by seeking an appropriate order from the district court before which his criminal case is docketed). *See Interstate Cigar Co. v. United States*, 928

¹A copy of the indictment is attached hereto and submitted herewith as Ex. 1.

F.2d 221, 223 (7th Cir. 1991); *Mr. Lucky Messinger Serv. v. United States*, 587 F.2d 15, 17-18 (7th Cir. 1978). The United States has an interest in retaining the seized materials which are the subject of this litigation until the resolution or termination of the criminal proceedings against Von Nothaus and his co-defendants because such materials constitute evidence that may be used at the trial of Von Nothaus and his co-defendants.

ISSUE

Whether Von Nothaus' indictment negates, renders moot or otherwise obviates his Motion for Return of Property.

DISCUSSION

Von Nothaus has been indicted in the Western District of North Carolina on charges of conspiracy to utter or pass silver coinage resembling the coinage of the United States, mail fraud, and selling and possessing, with intent to defraud, so called "Liberty Dollar" coins, and uttering and attempting to pass these coins, which resemble the coinage of the United States. (See Ex. 1) During the investigation of the case against Von Nothaus, a search was conducted, pursuant to a warrant issued by the United States District Court for the Southern District of Indiana, of a property or premises located at 225 N. Stockwell Road, in Evansville, Indiana. Pursuant to that search, various items were seized. Von Nothaus has initiated the instant action to recover some of the items seized in the 225 N. Stockwell Road premise's search.

Von Nothaus initiated this action prior to his indictment. Von Nothaus has now been indicted, and that indictment negates the basis of Von Nothaus' claim for return of the seized property at this time. As that is the case, Von Nothaus' Motion for Return of Property fails to state a claim upon which relief may be granted and must therefore be dismissed.

Although this Court was the proper venue to entertain a Rule 41, Fed. R. Crim. P. motion to return property prior to the filing of an indictment, *see Mr. Lucky Messenger Serv., Inc. v. United States*, 587 F.2d at 16-17; Fed. R. Crim. P. 41(g), the filing of the indictment in the Western District of North Carolina moots the return of property motion and makes the Western District of North Carolina the proper venue for further proceedings on the matter. *See United States v. 1617 Fourth Ave., S. W. Rochester, Minnesota*, 406 F. Supp. 527, 528-29 (D. Minn. 1976) (“[W]e find persuasive authority for declining jurisdiction of motions [to return property] such as this in instances where there is a related criminal action pending in another district.”). “It is ‘unquestionably’ within the court’s discretion to defer such a motion for subsequent action by the court in the district where the trial is to be had.” *Id.*, 406 F. Supp. at 529.

Once an indictment is filed, a motion to suppress, and not a Rule 41 motion to return property, is the appropriate vehicle to secure the return of the property and to challenge the lawfulness of the search itself. *In re: Search of the Office of Ken Tylman*, 245 F.3d 978, 980-81 (7th Cir. 2001). The proper forum for the entertainment of Von Nothaus’ motion, now that an indictment has been returned, is the forum in which trial will be held. *See United States v. Levasseur*, 609 F. Supp. 849, 851 (D. Me. 1985). “[I]t is within the discretion of a judge to defer [ruling upon a Rule 41] motion [to return property] for subsequent action thereon by the court in the district where the trial is to be had” *Freedman v. United States*, 421 F.2d 1293, 1295 (9th Cir. 1970). The burden of proof in any motion to return property seized is upon the movant. *United States v. A Bldg. Housing a Bus. Known as Machine Prod. Co., Inc.*, 139 F.R.D. 111, 116 (W.D. Wis. 1990). “If an indictment or information is filed at any time during the pendency of

the [Rule 41 motion to return property], it [the Rule 41 motion] is automatically converted into a motion to suppress under Rule 12" *Id.*, 139 F.R.D. at 118.

The appropriate venue to consider the issues raised by Von Nothaus' Rule 41 motion is the Western District of North Carolina. As that is the case, Von Nothaus' motion for return of property should be dismissed.

Respectfully submitted,

TIMOTHY M. MORRISON
United States Attorney

By: s/Gerald A. Coraz
Gerald A. Coraz
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2009, a copy of the foregoing was mailed, by first class

U.S. Mail, postage prepaid and properly addressed to the following:

Bernard Von Nothaus
1614 Emerson Street, # 18
Honolulu, HI 96813

Bernard Von Nathaus
527 N. Green River Road, # 158
Evansville, IN 47715

s/Gerald A. Coraz
Gerald A. Coraz
Assistant United States Attorney

Office of the United States Attorney
Southern District of Indiana
10 West Market Street, Suite 2100
Indianapolis, IN 46204-3048
(317) 226-6333

UNDER SEAL
FILED
CHARLOTTE, N.C.

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

MAY 19 2009

UNITED STATES OF AMERICA)
)
v.)
)
1) BERNARD VON NOTHAUS)
2) WILLIAM KEVIN INNES)
3) SARAH JANE BLEDSOE)
4) RACHELLE L. MOSELEY)

DOCKET NO. 5:09CR 27

U.S. DISTRICT COURT
W. DIST. OF N.C.

BILL OF INDICTMENT

VIOLATIONS:

- 18 USC § 371
- 18 USC § 485
- 18 USC § 486
- 18 USC § 1341
- 18 USC § 2

THE GRAND JURY CHARGES:

INTRODUCTORY PARAGRAPHS

1. NORFED, the National Organization for the Repeal of the Federal Reserve and Internal Revenue Codes, together with its officers, members, associates, and customers (collectively NORFED), was founded by Bernard von NotHaus in 1998. In or around 2007 NORFED was renamed Liberty Dollar Services, Inc.
2. NORFED has continuously been in operation from 1998 to the present.
3. Bernard von NotHaus was the president of NORFED and the Executive Director of Liberty Dollar Services, Inc. until on or about September 30, 2008. He is also the Regional Currency Officer in Evansville, Indiana where NORFED corporate offices are maintained. Bernard von NotHaus designed the Liberty Dollar currency in 1998.
4. William Kevin Innes is the Asheville, North Carolina Regional Currency Officer for NORFED and one of three members of the NORFED Executive Committee.
5. The corporate office, which is also known as the NORFED Fulfillment Office, is located in Evansville, Indiana. The corporate office contracts for the printing and minting of American Liberty Dollar, receives orders and monetary payments in United States Currency for Liberty Dollars, distributes materials, distributes



**U.S. District Court
Western District of North Carolina (Statesville)
CRIMINAL DOCKET FOR CASE #: 5:09-cr-00027-RLV-DCK All Defendants**

Case title: USA v. von NotHaus et al

Date Filed: 05/19/2009

Assigned to: District Judge Richard Voorhees
Referred to: Magistrate Judge David Keesler

Defendant (1)

Bernard von NotHaus

Pending Counts

Disposition

18:371 CONSPIRACY TO DEFRAUD THE UNITED STATES BY A SCHEME TO PUBLISH, POSSESS, AND SELL FOR PROFIT COINS IN RESEMBLANCE AND SIMILITUDE OF COINS OF A DENOMINATION OF HIGHER THAN FIVE CENTS, COINED AT THE SUNSHINE MINT, A MINT OF THE UNITED STATES, IN VIOLATION OF 18:485, and CONSPIRACY TO PASS, AND ATTEMPT TO UTTER AND PASS, A COIN OF SILVER IN RESEMBLANCE OF GENUINE COINS OF THE UNITED STATES IN THE DENOMINATIONS OF FIVE DOLLARS AND GREATER, AND INTENDED FOR USE AS CURRENT MONEY, IN VIOLATION OF 18:486; with forfeiture allegations
(1)

18:1341 and 2 FRAUD BY DISTRIBUTING FOR UNLAWFUL USE COUNTERFEIT AND SPURIOUS COINS, OBLIGATIONS, SECURITIES, AND OTHER ARTICLES, AND FOR THE PURPOSE OF SAID SCHEME TO DEFRAUD, PLACED IN A POST

