

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA :  
 :  
 v. : CR No. 06-107S  
 :  
 ISAAC CHANDLER :

**MEMORANDUM AND ORDER**

Pending before the Court for determination (28 U.S.C. § 636(b)(1)(A); LR Cv 72) is Defendant’s Motion for Return of Personal Property. (Document No. 52). In 2007, Defendant pled guilty to federal drug trafficking and firearm charges and was sentenced to a 188-month prison term as a “career offender.” Defendant also forfeited \$2,705.00 in U.S. currency, a home theater system and a 1992 Lexus as a result of his conviction. After an unsuccessful appeal, Defendant filed a Petition under 28 U.S.C. § 2255 to vacate, set aside or correct his sentence. That Petition is still pending before the Court.

In the present Motion, Defendant seeks return of several items of personal property which he claims were seized by the Providence Police Department at the time of his arrest on May 4, 2006 pursuant to state court authorized search warrants. According to the docket in State v. Chandler, No. 62-2006-68421, these state search warrants were returned to the state court on May 17, 2006. Ultimately, the state criminal case was closed on December 6, 2006 with a “no information signed” entry meaning that state prosecutors chose not to further pursue the case presumably due to the fact that a plea agreement was filed in this case on November 9, 2006.

On July 27, 2010, a hearing was held in this Court on Defendant’s Motion for Return of

Personal Property in which Defendant participated by telephone from federal prison. During the hearing, the Court questioned whether it had authority to rule on the disposition of property which was seized pursuant to state court authorized search warrants (Document Nos. 66-1 and 66-2) and maintained in the custody of state authorities (Document Nos. 66-3, 66-4 and 66-5). Also, since Defendant pled guilty and did not go to trial in his federal case, it does not appear that custody of any of the property was ever maintained by federal authorities or by this Court as trial exhibits.

Pursuant to Federal Rule of Criminal Procedure 41(g), a person aggrieved by a deprivation of property seized pursuant to a search or seizure warrant may move for its return. However, Rule 41 only applies to searches that are federal in character. See United States v. Antrim, 389 F.3d 276, 282 (1<sup>st</sup> Cir. 2004) and United States v. Mitro, 880 F.2d 1480, 1485 (1<sup>st</sup> Cir. 1989). Here, there is no indication that the searches were federal in nature and thus Rule 41(g) does not apply. The warrants were issued by a state court judge to the Providence Police Department and Defendant was arrested by the Providence Police Department on May 4, 2006 and charged with several state drug and firearm offenses. Five months later, on October 4, 2006, a federal grand jury indicted Defendant on the federal charges he ultimately pled guilty to in this case. Despite making several submissions to the Court on this Motion, Defendant has not shown that the initial search was federal in character and thus subject to Rule 41(g). Defendant has also failed to identify any other legal authority for this Court to entertain his request under these circumstances. Further, in any event, the Court would have no authority to enforce any order in Defendant's favor since the claimed custodian of the seized property, the Providence Police

Department, is not a party to this action.<sup>1</sup> In making this ruling, the Court offers no opinion as to whether Defendant may have any legal rights to bring a direct action against the custodian in either this Court or state court seeking return of the property in question or compensation if the property cannot be located. Accordingly, Defendant's Motion for Return of Personal Property (Document No. 52) is DENIED.

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
December 6, 2010

---

<sup>1</sup> In its responses (Document Nos. 55 and 66), the Government represents that it has twice asked the Providence Police Department to locate the property sought by Defendant and that most of it cannot be located with the exception of some home theater equipment "available for pick up by the defendant or his duly authorized representative." In addition, the Government represents that there is no record of the seizure of two Apple Computers as claimed by Defendant. (Document No. 55 at p. 2). Thus, according to the Government's representations, there is no property to order returned. See United States v. Hervis, No. 06 cr 208 JD, 2010 WL 731028 (D.N.H. Feb. 23, 2010) (holding that "the Government cannot be ordered [under Rule 41(g)] to return property that it does not have"); and United States v. Schomaker, No. 97 CR 131 JD, 2006 WL 1236841 (D.N.H. May 9, 2006) (holding that the Court "lacks jurisdiction to grant money damages" for loss or destruction of seized property "in the context of a Rule 41(g) motion").