

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:05CR189
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
DIMITAR N. TRANCHEFF,)	
)	
Defendant.)	

This matter is before the Court on the Defendant's objections (Filing No. 31) to the Magistrate Judge's order and findings and recommendation (Filing No. 30) denying the Defendant's motion for leave to file a pretrial motion out of time and denying the motion to suppress as untimely filed.

Under 28 U.S.C. § 636(b)(1)(A) and NECrimR 59.2, the Court has reviewed the order from which this appeal has been taken. A district court may set aside any part of the magistrate judge's order, on a non-dispositive matter, shown to be clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A). The district court must review de novo any part of the magistrate judge's findings and recommendation to which a party objects, and the court may accept, reject, or modify the findings or recommendation. 28 U.S.C. § 636(b)(1).

On May 2, 2005, the Defendant was released on conditions. On June 6, 2005, the pretrial services officer reported that the Defendant had absconded, and an arrest warrant was issued. The arrest warrant was issued 4 days before pretrial motions were due, that deadline having been extended once by the parties' agreement. No motions were filed. The Defendant was arrested on November 21, 2009. At the November 25, 2009, initial

appearance on the petition for action on conditions of release, new counsel, Julie Hansen, Assistant Federal Public Defender, was appointed. The case was immediately set for trial on January 5, 2010. On December 22, 2009, defense counsel moved to extend the pretrial motion deadline. At the same time, defense counsel filed a motion to suppress and supporting brief. The motion to extend the pretrial motion deadline was denied, the motion to suppress was denied as untimely, and the Defendant's objections followed.

The Magistrate Judge concluded that because the Defendant was represented by retained counsel in 2005, and because the Defendant made himself unavailable, he is not now entitled to another extension of his pretrial motion deadline.

Ms. Hansen was appointed less than a month before requesting the extension. She represents that she received the discovery in question on December 2, 2009. Ms. Hansen has not caused any unreasonable delay in this case; her zealous representation of the Defendant is commendable; and the Court finds no fault with her actions.

The Defendant, however, caused the very substantial delay in this case by his act of absconding. He was represented by retained counsel in 2005 and his counsel could have filed pretrial motions, including any motions to suppress, within the appropriate deadlines. As the Supreme Court has noted, it is a "reality that defendants may have incentives to employ delay as a 'defense tactic': delay may 'work to the accused's advantage' because 'witnesses may become unavailable or their memories may fade' over time." *Vermont v. Brillion*, 129 S. Ct. 1283, 1290 (2009) (quoting *Barker v. Wingo*, 407 U.S.

514, 531 (1972)). Also, the Defendant's retained counsel in 2005 was the Defendant's "agent when acting or failing to act, in furtherance of the litigation." *Id.*

The Magistrate Judge's order denying the Defendant's motions for leave to file a pretrial motion out of time is not clearly erroneous or contrary to law. The Court has reviewed the matter of the suppression motion de novo, and the Magistrate Judge's findings and recommendation denying the motion to suppress as untimely filed are accepted.

Accordingly,

IT IS ORDERED:

1. The Defendant's objections to the Magistrate Judge's order and findings and recommendation (Filing No. 31) are denied;
2. The Magistrate Judge's order (Filing No. 30) denying the Defendant's motion for leave to file pretrial motions out of time is affirmed; and
3. The Magistrate Judge's findings and recommendation (Filing No. 30) denying the Defendant's motion to suppress (Filing No. 28) are accepted.

DATED this 29th day of December, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge