

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA, Jacksonville, Florida

 Plaintiff, Case No. 3:06-cr-211(S2)-J-32TEM

vs. May 16, 2011

TONY HENDERSON, 2:07 p.m.
a/k/a "Hollywood", Courtroom No. 5B

 Defendant.

DIGITALLY RECORDED EVIDENTIARY HEARING
BEFORE THE HONORABLE THOMAS E. MORRIS
UNITED STATES MAGISTRATE JUDGE

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(Proceedings reported by microprocessor stenography;
transcript produced by computer.)

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TONY HENDERSON

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P R O C E E D I N G S

1
2 May 16, 2011

2:07 p.m.

3 - - -

4 COURT SECURITY OFFICER: Please be seated.

5 THE COURT: All right. Good afternoon. We're here
6 on case 3:06-cr-211-J-32TEM. Actually, it's -- I think it was
7 (S2) at one point -- 211(S2)-J-32TEM, *United States versus*
8 *Tony Henderson*.

9 Mr. Henderson has filed a petition -- or a motion
10 for return of disposition of property, which was document 155.
11 And then, more recently, a renewed motion, which is document
12 165, which contains a little more factual information.

13 And the United States did file a memorandum in
14 opposition to the return of the property.

15 For the United States, we have Mr. Russell Stoddard,
16 Assistant U.S. Attorney, and Janet Pellicciotti, of the FBI,
17 present.

18 And this was set for an evidentiary hearing and
19 argument as to the property.

20 Mr. Stoddard, is it still the United States'
21 position that the property cannot or should not be returned or
22 disposed of in any way that Mr. Henderson seeks?

23 MR. STODDARD: That is correct, Your Honor. And
24 that is the position that we outlined in our response. I
25 believe it's document No. 159 on the docket.

1 THE COURT: Yes.

2 Mr. Henderson, you're representing yourself in this
3 matter?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Okay. It's sort of -- it's an
6 interesting issue. I've, of course, done legal research. The
7 parties have each cited cases.

8 And there are some district courts or circuits in
9 the country which have allowed disposition of firearms to
10 the -- at the direction, I guess, or to the benefit of the
11 person who is -- they've been seized from or surrendered.

12 I would need to develop a little evidence in this
13 case. I've, of course, got the pleadings, but I've never seen
14 the notice of seizure that the FBI apparently sent you at some
15 point.

16 Do you have a copy of that?

17 THE DEFENDANT: Yes, I do, Your Honor.

18 THE COURT: All right. Do you want to -- how do you
19 want to proceed, Mr. Henderson? Do you want to -- I need to
20 get this under oath, I guess. You're going to need to testify
21 probably.

22 Are you willing to do that?

23 THE DEFENDANT: Whatever you say, Your Honor.

24 THE COURT: All right. Let's place Mr. Henderson
25 under oath.

1 COURTROOM DEPUTY: Do you solemnly swear the
2 statements you're about to give before this court will be the
3 truth, the whole truth, and nothing but the truth, so help you
4 God?

5 THE DEFENDANT: Yes, I do.

6 COURTROOM DEPUTY: Thank you.

7 **TONY HENDERSON,**
8 having been produced and first duly sworn as a witness,
9 testified as follows:

10 **DIRECT EXAMINATION**

11 THE COURT: And, for the record, the United States
12 is relying on the *Howell* case, I believe, from the Eleventh
13 Circuit? At least that's one of the primary authorities?

14 MR. STODDARD: That is -- that is correct.

15 THE COURT: And, of course, that refers under Rule
16 41(g) for seized property, pursuant to a search warrant, I
17 guess.

18 This was never seized pursuant to a search warrant,
19 so we'll see what the notice of seizure says. Because I'm not
20 clear what -- we're really under 41(g) or not, but...

21 Mr. Henderson, do you want to take the stand, I
22 guess, and take your documents up there?

23 Do you have copies of them for the court?

24 THE DEFENDANT: Yes. Yes, I do, Your Honor.

25 THE COURT: Okay.

1 (Judge confers with the courtroom deputy.)

2 THE COURT: Yes. If you have them -- anything you
3 intend to introduce today, if you could give that to my
4 courtroom deputy, or the CSO.

5 THE DEFENDANT: Oh, okay. I have the -- I have the
6 exhibits. I can give you all the exhibits or I can just wait
7 to see what y'all don't have -- what you don't have. Or
8 however you want to do it.

9 THE COURT: All right. Why don't you just take them
10 up there with you to the stand, and we'll -- we'll go by one
11 by one and have them identified what we're referring to.

12 And, for the record, Mr. Rosier is not present
13 today?

14 THE DEFENDANT: No, he is not, Your Honor.

15 THE COURT: Okay. All right. Let's see what we can
16 stipulate to, to begin with. I think it's uncontradicted that
17 when you were released on bond by Judge Richardson he ordered
18 you to surrender the firearms -- I believe to some federal
19 agency, either DEA or some other federal agency.

20 You chose to surrender them to the FBI; is that
21 correct?

22 THE DEFENDANT: That's correct, Your Honor.

23 THE COURT: And that was done on June 6th -- pardon
24 me, June 9th of 2006?

25 THE DEFENDANT: That's correct, Your Honor.

1 THE COURT: And then your case proceeded -- it's my
2 understanding you pled guilty to a count in the second
3 superseding indictment on -- it may have been early December
4 of 2007?

5 THE DEFENDANT: September 20th, 2007, I believe,
6 Your Honor.

7 THE COURT: September 20th, 2007? And there was an
8 order, document 120 -- well, the plea agreement was 128 in the
9 case, I believe. And that was filed on November 30th of 2007.

10 THE DEFENDANT: The plea agreement?

11 THE COURT: Yes, according to the docket sheet.

12 THE DEFENDANT: Yes.

13 THE COURT: And it appears the change of plea
14 proceeding was on November 30th of 2007.

15 THE DEFENDANT: That's correct, Your Honor.

16 THE COURT: Okay. And then you were adjudicated
17 guilty by Judge Corrigan on December 6th of 2007. Is that
18 correct?

19 THE DEFENDANT: I was sentenced on April 21st.

20 THE COURT: Right. But there was a separate order,
21 document No. 129, that's called acceptance of plea and
22 adjudication of guilt as to Count Five of the second
23 superseding indictment.

24 THE DEFENDANT: That's correct, Your Honor.

25 THE COURT: And then you were sentenced on April

1 24th of 2008. And I believe you received a six-month sentence
2 followed by a supervised release?

3 THE DEFENDANT: 24 months supervised release,
4 including four months on home detention.

5 THE COURT: Okay. Do you recall when you were
6 released from prison or incarceration?

7 THE DEFENDANT: It was December.

8 THE COURT: Of 2008?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And, Mr. Stoddard, if you disagree with
11 any of this, just speak up. I'm just trying to cut to the
12 important parts at some point.

13 Now, you indicated in your renewed motion for
14 disposition of property that you contacted the FBI -- this is
15 in document 165 -- in November of 2008. So that would have
16 been while you were still in prison, or on home detention?

17 THE DEFENDANT: That was an error, Your Honor. That
18 was supposed to be December.

19 THE COURT: It should be December?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: So December of 2008, after you were
22 released from --

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: -- incarceration, you contacted the FBI?

25 THE DEFENDANT: That is correct.

1 THE COURT: And was that local? Or do you know who
2 you talked to?

3 THE DEFENDANT: It was the agent on duty.

4 THE COURT: Here in Jacksonville?

5 THE DEFENDANT: That's correct, Your Honor.

6 THE COURT: And he told you to file the copy of the
7 bill of sale, along with a letter?

8 THE DEFENDANT: Yes. Can I say something?

9 THE COURT: Yes.

10 THE DEFENDANT: Prior to that, on June 13th of 2008,
11 while I was still incarcerated, Mr. Rosenblum wrote a letter
12 to the U.S. Attorney's Office -- U.S. Attorney Stoddard
13 inquiring about the firearms.

14 Mr. Rosenblum asked for which steps that would be
15 needed to be taken to transfer the firearms. And I have a
16 copy of that letter. And we never received any correspondence
17 back.

18 THE COURT: All right. Do you want to have that
19 letter marked as Exhibit No. -- Defense Exhibit No. 1?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. And then afterward you say you
22 never received any further correspondence back. I'll let you
23 find that first.

24 (Judge confers with the courtroom deputy.)

25 THE COURT: We need to give one to Mr. Stoddard too,

1 yes.

2 Defense Exhibit No. 1. Yeah. All right.

3 This doesn't have the attached list, but that's -- I
4 think you've had that attached to something else earlier.

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And I don't think the list is in
7 dispute, so -- all right. What happened after that, then?
8 What's the next thing that occurred with relation to the
9 firearms?

10 THE DEFENDANT: Okay. Do you want me to start at
11 the beginning? Or do you --

12 THE COURT: Well, yeah, whatever you're most
13 comfortable with. I was just trying to --

14 THE DEFENDANT: Okay.

15 THE COURT: Go ahead.

16 THE DEFENDANT: I filed the motion for the
17 disposition of property on February the 2nd, 2011. That
18 motion seeks the restoration of the non-possessionary interest in
19 the property pursuant to the *U.S. versus Edward L. Brown and*
20 *Elaine A. Brown* case, April 9, 2010.

21 I'd like to -- Your Honor, I'd like to lay out --
22 first I'd like to lay out, like, a timeline --

23 THE COURT: Yes.

24 THE DEFENDANT: -- if that would be possible. And
25 then --

1 THE COURT: Certainly.

2 THE DEFENDANT: -- go into the points.

3 THE COURT: Okay.

4 THE DEFENDANT: On June 7th I was arrested as a
5 result of a warrant and criminal complaint issued in the
6 Middle District of Florida, charging me with knowingly and
7 willfully and intentionally for the distribution of marijuana,
8 Scheduled I, controlled substance, the amount of marijuana
9 being less than 50 kilograms, in violation of Title 21,
10 U.S.C. -- Code, 841(a)(1) and 841(b)(1)(D).

11 THE COURT: Now, the indictments and things of that
12 nature are already in the court files, so I don't need copies
13 of those.

14 THE DEFENDANT: Okay, Your Honor. On June 7th, I
15 appeared before Judge Monte Richardson, where bond conditions
16 were set.

17 One of the conditions was the bond -- as indicated
18 on page two, paragraph four, was defendant was required to
19 immediately surrender all firearms, all law enforcement
20 firearms, and credentials to the DEA or any other authorized
21 federal agency.

22 In addition to all firearms, I voluntarily
23 surrendered 19 personal firearms to the FBI for safekeeping as
24 a condition of the bond while the charges were pending against
25 me, and, also, the fact that the judge had a concern over my

1 mental health and safety, for my concern over my family and
2 myself. At that time the judge felt that I was a suicide
3 risk.

4 On June 9th, FBI agents Janet Pellicciotti and
5 Douglas Mathews met with me and my attorney, Alex Christine,
6 at my residence located at 6195 Oakdale Lane, Macclenny,
7 Florida 32063. I voluntarily turned over all the firearms
8 noted on form FD-597 and FD-302.

9 Do you have a copy of that, Your Honor, or...

10 THE COURT: The form where you surrendered the
11 firearms?

12 THE DEFENDANT: Yes. Or do you want me --

13 THE COURT: I don't believe I do.

14 THE DEFENDANT: I'd like to note on -- after the
15 cover sheet on page one, on the right-hand corner, the items
16 listed below were received from me and turned over to the FBI.

17 On September 20th, I was indicted on a superseding
18 indictment. November 30th, pursuant to written plea
19 agreement, I entered a plea of guilty to Count Five of the
20 second superseding indictment. Count Five charged me with
21 distribution of marijuana, violation 21, U.S.C. -- Code,
22 Section 841(a)(1) and 841(b)(1)(D).

23 I'd like to make a -- several points about the plea
24 agreement.

25 THE COURT: Yes.

1 THE DEFENDANT: On the -- on the terms I entered a
2 plea of guilty to Count Five of the superseding indictment
3 charging me with distribution of marijuana, a Schedule I
4 substance, the amount of marijuana being less than 50
5 kilograms, in violation of 21, U.S.C., 841(a)(1) and
6 841(b)(1)(D).

7 The maximum penalty possible, up to five years
8 imprisonment, \$250,000, or both -- imprisonment. A supervised
9 release of two years. A special assessment of \$100.

10 As far as the elements of the offense, I understood
11 the nature and the elements of the offense which I had been
12 charged with pleading guilty to.

13 Counts dismissed at the time of sentencing, the --
14 Counts One, Two, Three, Four, Six, Seven, Eight, Nine, Ten,
15 and Eleven were dismissed.

16 Item five, no further charges. The United States
17 Attorney's Office agrees no other charges of defendant
18 committing any other federal criminal offense known in the
19 United States Attorney's Office at this time in the execution
20 of this agreement related to conducting [sic] giving rise to
21 this plea agreement.

22 No. 7, forfeiture, the United States agrees not to
23 pursue and will dismiss any motions related to the forfeiture
24 identified in the superseding indictment, to include the lot
25 and partial land, together with buildings, located at my

1 residence which are titled in my wife's name and I -- mine.

2 On April 9th, 2008, the U.S. Attorney's Office filed
3 a motion to dismiss the real property forfeiture allegation of
4 the second superseding indictment.

5 THE COURT: And the only specific property listed in
6 that forfeiture provision was the house, to begin with, and
7 the property?

8 THE DEFENDANT: That's correct, Your Honor.

9 THE COURT: Okay.

10 THE DEFENDANT: April 21st, I was given a sentence
11 of six months' imprisonment, which I followed -- served,
12 followed by a period of supervised release, 24 months,
13 including four months of home detention.

14 On June 11th, the time of supervised release was
15 shortened and terminated.

16 And this is, I guess, where we get into the -- where
17 I started inquiring. On June 13, 2008, my attorney,
18 Rosenblum, wrote a letter to AUSA -- U.S. Attorney Stoddard
19 and -- where he addressed that.

20 On December of 2008, shortly after release from the
21 Bureau of Prisons, I contacted the FBI via telephone, inquired
22 about the procedures that I would have to take in order to
23 transfer possession and ownership of the property that was
24 received from me on June 9th, 2006.

25 I was told to submit a written letter explaining the

1 details, along with -- of the case, along with a bill of sale
2 and the contact information of the person to whom I wished the
3 property to go to.

4 On December 17th, I sent a letter to the agent in
5 charge of the FBI office in Jacksonville explaining the facts
6 of the case, and indicated on 12/1 that I had transferred
7 possession/ownership of the firearms to William Boggs, and
8 gave the contact information of both parties.

9 William Boggs was a -- or is my next-door neighbor.
10 I spoke with him about transferring ownership and purchasing
11 the weapons. And he agreed on -- initially he agreed to do
12 so.

13 THE COURT: How do you spell his last name?

14 THE DEFENDANT: B-o-g-g-s. I have a copy of that
15 letter. And, also, I have a copy of the bill of sale.

16 THE COURT: All right. Now, that's a different
17 letter or bill of sale than listed in your renewed motion as
18 to Mr. Robert Rosier, right?

19 THE DEFENDANT: That is correct, Your Honor.

20 THE COURT: Okay. Well, let's go ahead and get that
21 in the record too, then.

22 THE DEFENDANT: Shortly after I submitted the letter
23 to the agent in charge of the FBI field office, they contacted
24 Mr. Boggs on or about January 24th, 2009, concerning taking
25 possession of the firearms.

1 Two days later, Mr. Boggs informed me that after
2 speaking with the FBI he didn't feel like he wanted to take
3 possession of the firearms, that he didn't want to purchase
4 them or become involved, so, therefore, the -- the bill of
5 sale was voided.

6 March 2nd, I sent a letter to the agent in charge of
7 the FBI field office in Jacksonville, Florida. I explained
8 due to the fact that Mr. Boggs no longer wanted to take
9 possession of the firearms that I spoke with an acquaintance
10 and a friend, Mr. Robert Rosier, about taking possession of
11 the firearms. And I have that letter that I sent, and also a
12 bill of sale.

13 THE COURT: All right.

14 THE DEFENDANT: April 6, I contact -- I sent a
15 letter to the agent in charge of the FBI field office and
16 asked the OIC, or the case agent, to please contact my wife or
17 Mr. Rosier and indicate when the property may be transferred.

18 On December 14th, 2009, I sent a letter -- another
19 letter to the OIC, field office, in Jacksonville, Florida,
20 indicated that I'd made several good-faith attempts to contact
21 the FBI and tried to transfer possession/ownership of the
22 firearms that were voluntarily turned over by myself on
23 June 9, 2006.

24 I also called several times -- April 22nd, 2009, at
25 1 p.m., I called the FBI and spoke with them -- and I didn't

1 get the agent's name. The agent would not give his name -- or
2 their name -- trying to get information about if they could
3 contact reference to firearms.

4 April 30th, again, at 11 o'clock a.m., the agent
5 would not give the name. May 13th, 2009, at 11 a.m., the
6 agent wouldn't give the name. June 22nd, 2009, at 2:30 p.m.,
7 I spoke with an Agent Rusty, who said he -- they would get
8 someone to call me back.

9 December 14th, 2009, 11 a.m., I spoke with Agent
10 Eubanks, who informed me that they were aware of my request
11 and they would be contacting me.

12 I asked Agent Eubanks, How come -- how come it only
13 took three weeks for them to approve Mr. Boggs to take
14 possession of the firearms, but they were not allowing me to
15 turn them over to Mr. Rosier? He said he didn't know. But
16 they were trying to work out -- work with the U.S. Attorney's
17 Office regarding the situation.

18 I requested to speak with a supervisor and was
19 denied to speak with anyone else. I have a copy of that
20 letter that was submitted on December 14th.

21 THE COURT: Let me ask you one question right there.
22 You said you were under the impression that you had been
23 approved to turn the firearm -- or that Mr. Boggs had been
24 approved to receive the firearms from the FBI?

25 THE DEFENDANT: That's what he told me. But then he

1 called them back and said that he didn't want to.

2 THE COURT: Did the FBI tell you that, or just
3 Mr. -- did Mr. Boggs?

4 THE DEFENDANT: Mr. Boggs. Mr. Boggs. The FBI
5 wouldn't give me no information, Your Honor.

6 THE COURT: All right. And you'd never received
7 anything in writing indicating they had approved it for
8 Mr. Boggs?

9 THE DEFENDANT: No. No, Your Honor.

10 THE COURT: Okay.

11 THE DEFENDANT: June 5th of -- excuse me, Your
12 Honor.

13 January 5th, I received a letter from the FBI
14 indicating that an investigation was being conducted to the
15 merits of the claim. That was the first correspondence --
16 written correspondence that I had ever received from them.

17 THE COURT: That's 2010?

18 THE DEFENDANT: Yes. Let's see. Yes, Your Honor.

19 THE COURT: Okay.

20 THE DEFENDANT: Yes.

21 THE COURT: Do you have a copy of that letter?

22 THE DEFENDANT: Did...

23 THE COURT: Or was it attached to one of your
24 pleadings earlier?

25 THE DEFENDANT: I think -- I think we did it -- was

1 it actually only on that, that last one?

2 THE COURT: No.

3 THE DEFENDANT: On December 16th, 2009, I received a
4 letter from the FBI indicating that on June 9th, 2006, the FBI
5 had seized the firearms and I had 30 days in order to submit a
6 claim for the property. Instructions were given on how to
7 submit the claim for the property.

8 On December 28th, myself and Mr. -- Mr. Rosier and
9 myself submitted written claims indicating -- and including a
10 statement of facts and circumstances justifying the claim for
11 the property.

12 The claim was supported by documentary evidence
13 establishing valid good-faith interest in the property,
14 attached a bill of sale, along with a settlement agreement
15 that I offered the FBI.

16 This is a copy of my submission. And I also have a
17 copy of Mr. Rosier's submission.

18 January the 5th, 2010, I received a letter from the
19 FBI indicating that an investigation was being conducted into
20 the merits of my claim. And May 21st, 2010, Mr. Rosier and
21 myself received a letter indicating that the claim had been
22 denied; again, a copy of the denial received by myself and by
23 Mr. Rosier.

24 June 3rd, 2010, I requested a reconsideration on the
25 decision.

1 THE COURT: Mr. Henderson, these -- this Exhibit
2 No. 11, the letter dated -- the certified letter to you from
3 the FBI, dated May 21st -- one looks like a mailed copy and
4 one a faxed copy of the same thing.

5 Go ahead and hand that back and let him look at
6 those. We would just need to...

7 COURTROOM DEPUTY: Am I marking this as one exhibit,
8 or two?

9 THE COURT: Well, we probably don't need both of
10 them if they are the same, indeed. We'll take the letter
11 instead.

12 MR. STODDARD: Actually, Your Honor, I believe --

13 THE DEFENDANT: One is to Mr. Rosier and one is to
14 myself.

15 MR. STODDARD: -- one of -- one of them is addressed
16 to Mr. Rosier.

17 THE COURT: Oh, okay. All right.

18 MR. STODDARD: And the other one is addressed to
19 Mr. Henderson.

20 THE COURT: We can mark them as 11A and B, if you
21 want to, if that's easier.

22 (Judge confers with courtroom deputy.)

23 THE COURT: All right. We'll make it 11 and 12,
24 then. Okay.

25 THE DEFENDANT: June 3rd, I requested a

1 reconsideration -- requested a reconsideration on the
2 decision. And, on January 26th, I received a letter from the
3 FBI indicating that the reconsideration was denied.

4 I feel that the FBI's response to my administrative
5 request for return of my property to a person entitled to
6 legally possess firearms under state and federal law -- the
7 response of the denial was based on my abandonment of the
8 property, citing 41, C.F.R., 128-48.502.

9 The agency has failed to follow its own procedures
10 relating to notifying me that the property was seized under
11 41 C.F.R. 128-48.102-1(b).

12 According to the FBI's seizure letter -- seizure
13 letter, dated December 16th, 2009, I was advised that the
14 property was seized on June 9th, 2006.

15 The notice of the seizure was received three years,
16 six months and seven days after the property was received from
17 me.

18 My question is: What would be the legal basis for
19 the seizure? And how could the property be seized prior to my
20 plea agreement on November 30th and my sentencing on April
21 21st, 2008? And there would be no probable cause for seizure.

22 On January 21st, 2011, Agent Stoddard received --
23 or, excuse me, U.S. Attorney Stoddard -- Mr. Stoddard received
24 a letter from the FBI indicating that on December 2009 the FBI
25 initiated an abandonment process to resolve the disposition of

1 the number of weapons that were seized pursuant to my arrest
2 on -- 2006.

3 Again, there was -- there would be no probable cause
4 for -- for a seizure at that time. I was merely under
5 indictment. I have a copy of that letter.

6 THE COURT: Yes, please.

7 THE DEFENDANT: I'd like to make the following
8 points in the case, Your Honor.

9 THE COURT: All right.

10 THE DEFENDANT: The firearms have been owned by my
11 family and me for many years. Many were given to me by
12 inheritance, trading and buying from family members, friends,
13 co-workers and other law enforcement officers.

14 I was a border patrol agent for 22 years, involved
15 in law enforcement. The firearms were not illegally possessed
16 at the time that I had them in my possession. None of the
17 weapons were prohibited or illegally altered and none of them
18 reported lost and stolen.

19 My conviction was totally unrelated to the surrender
20 of the firearms. The firearms were voluntarily turned over to
21 the FBI for safekeeping, like I said, and as a condition of
22 the bond. The firearms are no longer held as a condition of
23 the bond.

24 The firearms were not acquired by any administrative
25 process or any court order. I was never advised that by

1 voluntarily turning them over it would render them abandoned
2 or seized.

3 The firearms were never found to be involved in any
4 criminal activity, nor were they ever determined to have been
5 purchased from proceeds from any criminal activity, nor were
6 they ever used to facilitate the commission of any crime.

7 The firearms at issue do not constitute contraband,
8 fruits of a crime, and are not subject to forfeiture or
9 seizure. There is no basis for the seizure of the firearms.

10 I still hold legal title to the property at issue
11 because a transfer of title cannot be completed by Mr. Rosier.
12 And I acquired title before the government alleged any
13 criminal activity.

14 The firearms were never seized, forfeited,
15 abandoned, or considered unclaimed personal property, nor were
16 they ever used as evidence in any other criminal case.

17 There was no probable cause for any seizure, nor
18 there's any belief that the property was ever used unlawfully.

19 Mr. Rosenblum contacted the U.S. Attorney's Office
20 in -- June 22nd of 2008. I contacted the FBI six times by
21 telephone and wrote three letters prior to receiving the first
22 correspondence from the FBI of a notice of seizure, December
23 2009.

24 For this reason, I feel how can they be considered
25 abandoned? I was not given notice within the time frame

1 required by law that the firearms were considered seized. No
2 notice or seizure was ever provided -- they never provided
3 any -- citing any statute under which the firearms were
4 seized. There was no forfeiture provision or plea agreement
5 where I agreed to forfeit any assets. The firearms were not
6 involved as part of any search or seizure.

7 And I'd like to make this perfectly clear, Your
8 Honor. I do understand that by being a convicted felon that I
9 cannot own or possess a firearm. I do understand that.

10 Since my wife can legally own and is lawfully
11 entitled to the firearms, I respectfully request that my
12 spouse, who is present, Linda Henderson, be given possession
13 of, title, and control of the firearms collection for the
14 benefit of my adult children and heirs.

15 In the alternative, I respectfully request that the
16 court take jurisdiction over this issue and render a final
17 decision and a request to transfer my non-possessory interests
18 and issue Mr. Robert Rosier ownership, title, and possession,
19 or any other person of my choosing who is lawfully entitled to
20 own subject firearm collection.

21 And that concludes my...

22 THE COURT: Mr. Henderson, are you still on
23 supervised release?

24 THE DEFENDANT: No, I'm not, Your Honor.

25 THE COURT: And can you identify who Mr. Rosier is?

1 Is he a neighbor? Where does he live? What's --

2 THE DEFENDANT: Mr. Rosier lives in St. Augustine,
3 Florida. I met him in -- can I look at my notes, Your Honor?

4 THE COURT: Yes.

5 THE DEFENDANT: I met him on -- about March 4th,
6 through some -- a highway patrol friend of mine in a camping
7 group that I was involved in, a little camping -- my wife and
8 I joined a camping club. And it was acquaintance to them. He
9 lives in St. Augustine, Florida.

10 THE COURT: And, to your knowledge, he has no felony
11 convictions?

12 THE DEFENDANT: That is correct, Your Honor. And...

13 THE COURT: Is he a firearms dealer?

14 THE DEFENDANT: No, he's not, Your Honor. He's a
15 private citizen, early 70s, grandchildren, family man.

16 THE COURT: The bill of sale you presented does not
17 indicate he paid you anything for the firearms.

18 THE DEFENDANT: That is correct, Your Honor. He was
19 going to get the firearms, look the firearms over, if he felt
20 like he needed to have an appraisal or -- go from there, and
21 then we would decide on what would be transferred, as far as
22 funds.

23 THE COURT: Mr. Stoddard, do you have any questions?

24 MR. STODDARD: I do.

25 **CROSS-EXAMINATION**

1 BY MR. STODDARD:

2 Q. Mr. Henderson, according to the letter that you sent
3 the FBI on December -- dated December 14th, 2009, the first
4 attempt that you made to transfer possession of these weapons
5 was on December 1st of 2008; is that correct?

6 A. No. The first attempt was made by Mr. Rosenblum.

7 Q. I'm asking your first attempt. That was on --
8 according to your letter, that was on December 1st, 2008?

9 A. According to my letter, that's correct.

10 Q. And that would have been to Mr. Boggs?

11 A. Yes.

12 Q. And, for whatever reason, Mr. Boggs decided he didn't
13 want the firearms; is that right?

14 A. That's correct.

15 Q. And so your next attempt would have been on --
16 approximately a little over -- a month later, on December --
17 excuse me, on December 26th -- or, I'm sorry, on February 4th,
18 2009, was when you contacted Mr. Rosier about your firearms;
19 is that correct?

20 A. Yes.

21 Q. So you've made two attempts to transfer ownership of
22 these firearms, once in 2008 and once in 2009; is that
23 correct?

24 A. Yes.

25 Q. Now, did you make any attempt to transfer possession of

1 these firearms prior to December 6th of 2007?

2 A. Wasn't that when I was -- turned them over?

3 Q. I don't believe so.

4 THE COURT: No. December 6th, 2007, is when you
5 were adjudicated guilty.

6 BY MR. STODDARD:

7 Q. That was when you were adjudicated guilty. Did you
8 make any attempt to transfer ownership prior to December 6th,
9 2007?

10 A. No.

11 Q. Did you make any attempt to transfer ownership prior to
12 April 24th, 2008?

13 A. What was the date?

14 Q. April 24th, 2008, the day you were sentenced.

15 A. No, I did not.

16 Q. So any attempt that you've made to transfer ownership
17 of these firearms has occurred since you have been convicted
18 of a felony; is that correct?

19 A. That's correct.

20 Q. I have no more questions.

21 A. Okay.

22 THE COURT: All right.

23 All right. Anything else you wish to testify to,
24 Mr. Henderson?

25 I'll have argument. And I may hear if the United

1 States has some evidence they wish to present, but...

2 THE DEFENDANT: Not at this time, Your Honor.

3 THE COURT: All right. You may step back down to
4 the table. Thank you.

5 And any objection to -- I think I've got Exhibits 1
6 through 15 -- Defendant's Exhibits 1 through 15.

7 Any objection to those?

8 MR. STODDARD: No objections, Your Honor.

9 THE COURT: All right. They will be admitted into
10 evidence.

11 (Defendant's Exhibit Nos. 1 through 15 were received
12 into evidence.)

13 THE COURT: Mr. Stoddard -- again, you have no other
14 witnesses you wish to call, Mr. Henderson?

15 THE DEFENDANT: No, I do not, Your Honor.

16 THE COURT: Okay. Mr. Stoddard, do you have any
17 evidence you wish to present?

18 MR. STODDARD: No, Your Honor. We would rely on the
19 previous memorandum that's been submitted by the government.

20 THE COURT: I would like you to address, first, the
21 point Mr. Henderson raised about the FBI perhaps not following
22 its own procedures under 41 C.F.R., because they did not seize
23 the weapons until -- or they did not send him a letter of
24 notice of seizure, if that's, indeed, what it was to be
25 called -- and under 128, slash -- C.F.R. -- 41 C.F.R., Section

1 128-48.1, and that -- which concerns abandoned property rather
2 than seized property.

3 It does seem like it's to be -- notify within 20
4 days of finding such property. This property was never lost
5 exactly, but...

6 MR. STODDARD: Well, the government's position would
7 be that Mr. Henderson received actual notice of the seizure on
8 June the 9th, 2006, when the FBI came to his house and took
9 possession of the firearms and maintained possession of those
10 firearms up through and during the time of the pendency of the
11 charges, the adjudication of guilt, and the conviction.

12 THE COURT: All right. The -- but the form that --
13 I think Ms. Pellicciotti signed as receiving them, lists --
14 there's four boxes on it, received from, returned to, released
15 to, or seized. And that says received from. It does not
16 check seized.

17 MR. STODDARD: It does say received from, Your
18 Honor. That is correct.

19 THE COURT: I mean, is there any magic about how
20 December of -- or January of 2009 was chosen for that letter?

21 MR. STODDARD: I do not know what generated the
22 letter. I think perhaps just the fact that the weapons were
23 still there, that there needed to be some final adjudication
24 before the weapons could be disposed of by the FBI, would be
25 my -- and that's just a guess on my part.

1 THE COURT: The other question I have is under the
2 C.F.R., Title 41, procedures -- it does have, of course, the
3 procedure which Mr. Henderson exercised to appeal the initial
4 denial.

5 But is there anything in the C.F.R., to your
6 knowledge, that then follows up with a procedure to seek court
7 relief?

8 MR. STODDARD: None that I'm aware of, Your Honor,
9 other than what would typically be available to someone
10 appealing an administrative action by an executive agency.

11 THE COURT: Do you know what that is?

12 MR. STODDARD: I do not.

13 THE COURT: Okay. And these firearms are still
14 maintained in Jacksonville?

15 MR. STODDARD: The firearms are still in
16 Jacksonville. Nothing has been done to dispose of them.

17 THE COURT: Okay. All right. I'll hear the other
18 argument, or whatever else you wish to present.

19 MR. STODDARD: Very simply, Your Honor, that after
20 Mr. Henderson was adjudicated guilty in 2008 that he lost all
21 rights to do anything with respect to the transfer of these
22 weapons. By doing so, he would have been exercising
23 constructive possession of the weapons.

24 And as a convicted felon, constructive possession
25 would be an additional felony. And he's prohibited by law

1 from doing so.

2 And he can't seek the court's help or assistance in
3 committing what otherwise would be a felony. And that at that
4 point any attempts he had made prior to the adjudication of
5 guilt and the sentencing, I think would have -- could have --
6 certainly would have merit.

7 But anything done post conviction doesn't, because
8 he's -- he's not -- he doesn't sit in a position to be able to
9 do anything with respect to ownership of the firearms.

10 THE COURT: All right. Mr. Henderson, do you have
11 any reply to that?

12 THE DEFENDANT: Your Honor, it's recognized that
13 there have been -- a split decision in the circuit courts over
14 whether it's possible for the government to retain possession
15 of firearms following a criminal conviction without initiating
16 formal forfeiture proceedings.

17 However, several circuits have held it that
18 forfeiture is barred by failure to commence action within
19 appropriate time frame and the owner stands as a convicted
20 felon.

21 The owner continues to have a property interest in
22 the firearms, which must be accommodated by the sale,
23 transfer, or storage of the firearms, despite its own
24 possessory right of having it curtailed, *U.S. versus Miller*,
25 588, and *Watts versus United States*, 2002.

1 Directly on point is the more recent case, Your
2 Honor, of *U.S. versus Brown*, and reference a claim for
3 Bernhard Bastian, Jr., April 9th, 2010, where the facts are
4 virtually identical to the facts of my case.

5 In *Brown*, the judge issued an order stating that the
6 weapons surrendered by the defendant as a bail condition are
7 no longer being held as a bail condition and the defendant
8 violated his bail and is convicted and sentenced. That may be
9 transferred by the defendant to anyone who may legally possess
10 them.

11 Moreover, the disposition of property held as a
12 convicted -- condition of the bail is a matter falling well
13 within the court's jurisdiction.

14 The court rejected the proposition that the firearms
15 lawfully owned must fall in the owner's unrelated felony
16 condition -- conviction, except where they may be unable and
17 wasting, not subject to forfeiture and not subject to
18 confiscation as contraband, and not subject to disposition by
19 the owner or anyone else, or by the court for the owner's
20 benefit.

21 The court further rejected that such property is
22 subject to government confiscation and destruction in the
23 absence of due process of payment or just compensation.

24 The remedy fashioned by the *Brown* court and the
25 judge that exercised equitable powers and ordered that the

1 transfer and title of the firearms lawfully owned but later
2 convicted of a felony were not -- not subject to forfeiture or
3 confiscation as contraband for a felony owner's benefit.

4 The courts have fashioned solutions that preclude
5 convicted felons from unilaterally dictating or directing, get
6 possession of their unlawfully owned firearms while avoiding
7 serious constitutional issues under the Takings Clause while
8 protecting the felon owner's legitimate property interest.

9 And, Your Honor, I'm here pro se. I'm not an
10 attorney. So that's -- I presented the facts of the case and
11 everything I have in this. And that's the best I can do.

12 THE COURT: All right. Thank you, Mr. Henderson.

13 Mr. Stoddard, anything else?

14 MR. STODDARD: Nothing further from the United
15 States.

16 THE COURT: I'm going to take some time, because I
17 want to be able to look at these exhibits more carefully.
18 The -- there clearly is a split in authority, Mr. Henderson.
19 I'll go ahead and point this out.

20 And as Mr. Stoddard cited, the *Howell* case in the
21 Eleventh Circuit, which is, as you probably know, the circuit
22 that we're under here in Jacksonville -- and the *Howell* case
23 clearly says that a convicted felon cannot either take a
24 return of the weapons, and also was not entitled to
25 constructive possession of the weapons in the form of a trust,

1 or to be able to get the sale or distribution of the proceeds
2 for the weapons should they be sold.

3 So that's -- that case is binding on this court. I
4 will note that in that action the Eleventh Circuit, as some
5 other circuits, have indicated that a proper procedure perhaps
6 to get damages, if you believe they were unjustly taken from
7 you, would be under 42, U.S. Code, Section 1983.

8 That's in a footnote in the *Howell* case that we --
9 the Eleventh Circuit expressed no opinion on whether you may
10 file an action under that -- that statute. Other circuits
11 have indicated that would be appropriate.

12 However, in -- the *Brown* case, as you said, is
13 probably the only other case I've seen where the firearms
14 initially were surrendered as a condition of bail, which is
15 different than most of the cases involving firearms.

16 But they still clash at some point once you become
17 adjudicated guilty and were sentenced. That's where the
18 problem comes in.

19 Under *Brown*, the -- you're correct. The way I read
20 that case, you might be able to get the benefit of it. But
21 that's not the Eleventh Circuit case, unfortunately.

22 On the other hand, the Eleventh Circuit perhaps has
23 never faced this exact issue. So if I do rule against you,
24 you could either appeal to the Eleventh Circuit or you could
25 consider filing a separate action under 42, U.S. Code, Section

1 1983.

2 But I do want to digest the documents, the various
3 letters, and the attachments to those, as well. Frankly, I
4 don't find the C.F.R. procedures adequate in a case like this.
5 And they don't really address the situation directly.

6 I, frankly, cannot consider these ever abandoned,
7 given the circumstances which they were given and the fact
8 that he contacted the court -- or, I mean, the FBI, rather, as
9 early as 2008, while still serving as -- his sentence.

10 It would have been better had you tried to transfer
11 ownership prior to being adjudicated in the case. But I
12 understand you had other things on your mind at that point,
13 probably, as well.

14 THE DEFENDANT: That's correct.

15 THE COURT: And it's a little bit unusual -- it's
16 not unheard of, clearly, but to have these firearms
17 surrendered to the -- into the agency as a condition of
18 bond -- I've had cases where they've been released to some
19 other person or placed in a gun safe, someplace like that,
20 but -- so this is a different fact situation than most of
21 these cases.

22 So I will read these and get an order out as soon as
23 possible on it. I do appreciate the research you've done,
24 Mr. Henderson. You -- as a pro se person, you've --

25 THE DEFENDANT: Thank you, Your Honor.

1 THE COURT: -- thoroughly spent some time on it and
2 devoted to it. And I understand that.

3 On the other hand, again, as I mentioned, I am faced
4 with the Eleventh Circuit law and have to follow that. So
5 we'll -- we'll compare the two and see how they come out and
6 get an order out as soon as we can.

7 Anything else we can take up on this today?

8 MR. STODDARD: Nothing further from the United
9 States.

10 THE DEFENDANT: Nothing personal, Your Honor.

11 THE COURT: All right. Thank you. We'll be in
12 recess.

13 COURT SECURITY OFFICER: All rise. This Honorable
14 Court is now in recess.

15 (The digitally recorded proceedings concluded at
16 3:00 p.m.)

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CERTIFICATE

UNITED STATES DISTRICT COURT)
)
MIDDLE DISTRICT OF FLORIDA)

I hereby certify that the foregoing transcript is a true and correct computer-aided transcription of my stenotype notes taken at the time and place indicated herein.

DATED this 12th day of August 2013.

s/Shannon M. Bishop
Shannon M. Bishop, RMR, CRR