UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CRIMINAL NO. 09-20295

vs. **HON. MARIANNE BATTANI**

D-2 SAMUEL L. RIDDLE, JR.
and
D-3 MARY WATERS,

Defendants.
_____/

REDACTED[1]
CONSOLIDATED RESPONSE OF THE UNITED STATES TO THE DEFENDANTS' MOTIONS TO DISMISS INDICTMENT AND/OR SUPPRESS WIRETAP

The United States of America, through the undersigned Assistant United States Attorneys, hereby presents this Redacted Consolidated Response to the motions of defendant Mary Waters ("Waters"), joined in by defendant Samuel Riddle ("Riddle"), seeking dismissal of the First Superseding Indictment and/or suppression of the wiretap.[2]

[1]The United States has filed a more extensive response under seal which contains material that may not be publicly disclosed because it contains information that is covered by protective orders filed in this matter and because it further contains information governed by Fed. R. Crim. P. 6(e).

[2]This Consolidated Response addresses the following motions filed by Waters and joined by Riddle: (1) Motion to Dismiss Indictment for Violation of 18 U.S.C. § 2515, Docket No. 67; (2) Motion to Dismiss First Superseding Indictment and Addendum, Docket Nos. 65 & 72; and (3) Motion to Suppress Wiretap Evidence, Docket No. 74.

I. INTRODUCTION

In a scattershot approach, Waters seeks suppression of the wiretap and dismissal of the Indictment. First and most importantly, Waters seeks to suppress the wiretap by picking at, mischaracterizing, and/or ignoring the affidavits supporting the wiretap in this case. What Waters fails to do, however, is address the standard to be applied in examining the decisions by [the district court judges] to authorize the wiretaps. Under the great deference afforded to the issuing judges' determinations of probable cause, the wiretaps here easily withstand scrutiny given the vast array of criminal activity by Riddle detailed in the affidavits. Furthermore, upon closer examination, Waters' various complaints about portions of the affidavits are misleading and do not accurately reflect the information that was presented to [the district court judges] about the

[Redacted to comply with the protective order and Fed. R. Crim. P. 6(e).]

After careful review of the affidavits presented to these judges, the United States respectfully requests that this Court deny the motion to suppress. Similarly, Waters' motions to dismiss the Indictment are without merit. In some respects, Waters seeks either to litigate Rule 29 issues pretrial or to apply legally unsupported interpretations of 18 U.S.C. § 666. Waters also seeks to use technical or ministerial errors as the basis for dismissal despite contrary legal authority. These motions should be denied.

Even aside from the merits of defendant Waters' motions, counsel for Waters has violated at least two Orders of this Court by revealing a significant amount of sealed

information in his public filings.[3]

II. BACKGROUND

A. Start of the Obstruction of Justice Investigation

In approximately November 2004, the FBI began conducting a corruption investigation of various City of Detroit elected officials and private persons. In July 2005, the U.S. Attorney's Office for the Eastern District of Michigan began utilizing a federal grand jury to assist the FBI in this investigation.

[Redacted to comply with the protective order and Fed. R. Crim. P. 6(e).]

Sometime in December 2007, Riddle stopped acting as the Chief of Staff for Monica Conyers.

D. The Wiretap Ends and the Interceptions Are Examined In Detail

The wiretap ended on January 9, 2008. At that time, the FBI continued its investigations into both the obstruction of justice case, as well as the extortion/bribery/honest services fraud. One part of these investigations was the FBI's further review of telephone calls intercepted during

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[3]On September 3, 2009, this Court issued an Order limiting the disclosure of the wiretap materials produced in discovery in this case. In addition, this Court issued an Order sealing the contents of the government's motion regarding the attorney conflict of interest issue. Obviously, counsel for Waters should have filed his motions or portions of these motions under seal since they cite information from the wiretap materials and the government's sealed motion, including publicly disclosing the names of confidential informants and witnesses.

, combined with follow up investigation regarding the reviewed and intercepted calls. Given that there were a large number of intercepted calls, this process was lengthy.

One part of this post-wiretap investigation was the review of the calls involving City of Southfield City Councilman William Lattimore ("Lattimore") and the relocation of a jewelry store in Southfield. Based on reviews of the intercepted calls between Riddle and Lattimore, FBI agents interviewed Lattimore on March 3, 2009. At that time, Lattimore confessed to taking bribes from Riddle and Waters. Subsequently, Lattimore agreed to plead guilty to taking a bribe, in violation of 18 U.S.C. § 666.

III. ARGUMENT

A. Motion to Suppress Wiretap Evidence (Docket No. 74)

In her motion to suppress the wiretap, Waters seeks to raise a whole host of issues ranging from typographical errors to allegations of misconduct, hoping that something will stick. As set forth below, however, the wiretap applications and affidavits were thorough and candid documents. The detailed and extensive evidence presented to [the district court judges] by the FBI provided more than a substantial basis to support probable cause in support of the wiretap Orders issued by these two district judges. Under Sixth Circuit precedent, the probable cause determinations of these two judges are owed "great deference." Furthermore, Waters does not present any colorable claim that Agent sought to mislead these two judges, or that any technical issues she raises undermine the basis of the wiretap. As a result, Waters' motion to suppress the wiretap should be denied.

[Redacted to comply with the protective order and Fed. R. Crim. P. 6(e).]

All the courts that have addressed the issue have rejected suppression of the wiretap as a remedy. See, e.g., United States v. Wesley, 2009 WL 395279, at *2-3 (D. Kan. 2009); United States v. Lopez, 2008 WL 2156758 (C.D. Cal. 2008) (dismissing the impact of citing an expired designation order); United States v. Tinnin, 2008 WL 1786991, at *9 (D. Minn. 2008) ("The application's mere reference to a revoked designation order, when a new order containing the same authorizations was in place, did not compromise the statutory scheme so as to make the interception unlawful."). Instead, the courts have held that the reference to the revoked Order was a ministerial mistake that does not impair the objectives of Title III so as to warrant suppression. See United States v. Chavez, 416 U.S. 562, 570 (1974) (suppression not required even though application did not correctly identify the individual authorizing the application). Under these circumstances, the wiretap should not be suppressed on this basis.

In the same way, Waters' argument that Attorney General Gonzales' resignation from office somehow caused the relevant Attorney General Order to lapse is without merit, and this argument has also been repeatedly rejected by the Sixth Circuit and other courts. United States v. Lawson, 780 F.2d 535, 539 (6th Cir. 1985) (citing numerous cases).

3. There Was A Substantial Basis for the Decisions of [the district court judges] that the Wiretap Applications Were Supported By Probable Cause

a. Standard of Review for Suppression of Wiretap Based on A Lack of Probable Cause

To warrant suppression based on a lack of probable cause, Waters must show that the

district judges who approved the wiretaps, abused their discretion in approving the applications. United States v. Alfano, 838 F.2d 158, 163 (6th Cir. 1988). In determining whether probable cause was established, this Court must examine the application under the totality of the circumstances in a "reasonable fashion and common sense manner." Id. at 161. This Court must accord "great deference" to the issuing judge's determination of probable cause because "reasonable minds frequently may differ on the question of whether a particular affidavit established probable cause." United States v. Giacalone, 853 F.2d 470, 479 (6th Cir. 1988). "Even if a subsequent trial judge or reviewing court arrives at a different conclusion, suppression of the evidence is not required or warranted." United States v. Gray, 372 F. Supp.2d 1025, 1039-40 (N.D. Ohio 2005), aff'd, 521 F.3d 514 (6th Cir. 2008); see Alfano, 838 F.2d at 162. The trial court reviewing the issuing judge's decision must uphold the finding of probable cause if the record contains a "substantial basis" for "concluding that probable cause existed." United States v. Lambert, 771 F.2d 83, 92 (6th Cir. 1985). Deference does not apply when the issuing judge is given misleading information. United States v. Gray, 521 F.3d 514, 524 (6th Cir. 2008).

Thus, as set forth above, the standard for a trial court's review of the issuing judge's determination of probable cause is extremely deferential to the issuing judge's original decision. In this instance, the applications easily establish that there was a substantial basis for [the district court judges'] determinations of probable cause. [The district court judges] did not abuse their discretion in issuing the orders, and the wiretap should not be suppressed on the basis of a lack of probable cause.

b. [The District Court Judges] Did Not Abuse Their Discretion In Finding that The Wiretap Applications Were Supported By Probable Cause

As set forth below, there was more than a substantial basis to support [the district court judges'] probable cause determinations as to the wiretap applications in this case.

[Redacted to comply with the protective order and Fed. R. Crim. P. 6(e).]

In Waters' motion, she unfairly criticizes the affidavits for being redundant. To be sure, when seven months of affidavits are reviewed at one time, the repetition is noticeable. However, when either [of the district court judges] reviewed the affidavits every thirty days, it would obviously be important that they be reminded of earlier calls that give meaning to the most recent calls.

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Because they will be reviewed together, instead of at thirty day intervals, the calls to put them in context will not be repeated. These verbatim excerpts from the affidavits do not include all of the calls. The entire affidavits themselves also are attached for the Court's review. See Exhibits A-G. In the Addendum, explanations and summaries are in italics. Additionally, significant facts are emphasized.

[Redacted to comply with the protective order and Fed. R. Crim. P. 6(e).]

4. Waters' Various Allegations Asserting that the FBI Sought to Mislead [the District Court Judges] Are Wholly Without Merit

In the face of the substantial evidence of probable cause supporting [the district court judges'] decisions to authorize the wiretaps in this case, Waters seeks to create the illusion

that the FBI was misleading these judges. In fact, however, Waters can only rely on typographical errors, and Waters seeks herself to mislead this Court concerning the nature of the wiretap affidavits. Waters cannot establish that Agent sought to mislead [the district court judges] , and, in fact, Waters does not even request a Franks hearing. In all likelihood, this is because Waters recognizes that she cannot satisfy the standard necessary for such a hearing. Set forth below is the Franks standard, as well as a brief discussion of a number of the various allegations raised by Waters in her motion to suppress. None of these allegations, however, serve to undermine the district judges' decisions to authorize the wiretaps.

a. Threshold Standard for a Franks Hearing

Instead of requesting a Franks hearing, Waters argues that her unsupported allegations of misconduct somehow undercut the probable cause supporting issuance of orders authorizing the wiretaps. Waters cannot meet the standard under Franks. In order to be entitled to a hearing under Franks v. Delaware, 438 U.S. 154 (1978) for the purpose of testing the validity of the wiretap affidavits in this case, Waters must be able to "make a substantial preliminary showing that (1) a false statement, (2) knowingly and intentionally, or with reckless disregard for the truth, was included in the affidavit, and (3) the allegedly false statement is necessary to the finding of probable cause." United States v. Poulsen, 2008 WL 728440, at *4 (S.D. Ohio 2008); see United States v. Ranney, 298 F.3d 74, 78 (1st Cir. 2002). Thus, in this case, Waters would have to make a "substantial preliminary showing" that Agent Lubisco made the purportedly false statements intentionally or with reckless disregard for their truth. Without competent proof that Agent Lubisco acted with the

requisite state of mind, Waters could not seek a Franks hearing or seek suppression of the wiretaps. Poulsen, 2008 WL 728440, at *4; see Franks, 438 U.S. at 131-32 (stating that a defendant's "allegations must be accompanied by an offer of proof," such as "[a]ffidavits or sworn or otherwise reliable statements of witnesses"). Without such a showing, Waters has no basis to obtain a Franks hearing, and she has not even requested such a hearing because she cannot meet the standard.

b. Waters' Allegations Are Baseless

Throughout his motion, counsel for Waters makes various allegations that Agent withheld information or sought to mislead [the district court judges]. Upon further examination, however, these allegations are without merit. See United States v. Gray, 372 F. Supp.2d 1025, 1041 (N.D. Ohio 2005) (district court rejected defendant's various claims that the wiretap affidavit contained falsehoods after the court actually examined the affidavit and determined that the defendant's claimed falsehoods were inaccurate).

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Waters' argument that intercepting journalists is somehow improper also is without basis. Nowhere in his motion does counsel for Waters cite any statute or case prohibiting or limiting such interceptions. There is absolutely no requirement in Title III or elsewhere requiring that permission be sought from the court before intercepting calls with journalists. Instead, counsel for Waters cites the U.S. Attorney Manual and its policy against issuing subpoenas to reporters absent prior approval. Even if the manual counseled against

interception of journalists, which it does not, the "Sixth Circuit has held that the U.S. Attorney's Manual does not provide rights to third-parties which can be enforced in a civil or criminal proceeding." United States v. Garcia-Guia, 2009 WL 1324223, at *4 (S.D. Ohio 2009). Nowhere, however, does counsel for Waters cite any prohibition, legal, constitutional, or otherwise, blocking law enforcement from intercepting journalists over a Title III wiretap. In fact, the U.S. Attorney's Manual contains nothing stating that Title III wiretaps cannot be used to intercept journalists.

The circumstances of this investigation illustrate why there is no such prohibition.

[Redacted to comply with the protective order and Fed. R. Crim. P. 6(e).]

a. Issuing Court Given Deference In Deciding Issue of Necessity

A true necessity claim argues that the government failed to try investigative techniques other than electronic surveillance, or that the government failed to show why the conventional investigative techniques were likely to have failed if tried or been too dangerous. See 18 U.S.C. § 2518(1)(c) (wire application must contain "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous"); United States v. Stewart, 306 F.3d 295, 304 (6th Cir. 2002) (purpose of necessity requirement is to show "the issuing judge of the difficulties involved in the use of conventional techniques").

The requirement of "necessity" in the wiretap statute exists to ensure that investigators use the tool of electronic surveillance "with restraint" and not as the "initial step in criminal investigations." United States v. Giordano, 416 U.S. 505, 515 (1974). The Sixth Circuit has not required that investigators have actually tried alternative techniques and failed:

> All that is required is that the investigators give serious consideration to the non-wiretap techniques prior to applying for wiretap authority and that the court be informed of the reasons for the investigators' belief that such non-wiretap techniques have been or will likely be inadequate.

United States v. Alfano, 838 F.2d 158, 163-64 (6th Cir. 1988). In fact, the Sixth Circuit and other appellate courts have characterized the government's burden to establish compliance with Section 2518(c)(1) as "not great." United States v. Landmesser, 553 F.2d 17, 20 (6th Cir. 1977). Hence, in determining whether other investigative methods are inadequate in a given case, the issuing judge has broad discretion. Id. at 20. "[T]he only requirement is that there be a 'factual predicate' in the affidavit" for concluding that other investigative techniques are likely inadequate given the particular investigation." Id. at 20. Its purpose is "simply to inform the issuing judge of the difficulties involved in the use of conventional techniques." Id.

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B. Motion to Dismiss First Superseding Indictment (Docket Nos. 65 & 72)

In support of her motions to dismiss the First Superseding Indictment, Waters advances various grounds attacking the wiretap and the grand jury, and arguing that the

Indictment fails to state a claim. As set forth below, each of Waters' claims do not support dismissal of the Indictment, and her motions should be denied.

1. There Is No Basis For Dismissal Under Section 2517(5)

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In addition, the Sixth Circuit and a number of other courts of appeals hold that even if there had been an improper disclosure under Section 2517(5), such disclosure cannot serve as the basis for a dismissal or suppression of the wiretap interceptions.

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b. Even Without the Order, Improper Disclosure Is Not A Proper Basis for Dismissal in the Sixth Circuit

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In Resha v. United States, 767 F.2d 285,288 (6th Cir. 1985), the Sixth Circuit held that the suppression of a wiretap is not the proper remedy for violating the provisions of Section 2517. The court stated that Title III "does not authorize suppression for disclosures of such information even if they violate § 2517," but that "suppression was a remedy reserved for unlawful interceptions." Id. at 288 (emphasis in original). In so holding, the Sixth Circuit relied on and cited the decision in United States v. Vento, 533 F.2d 838, 855 (3d Cir. 1976), where the Third Circuit held that a "'motion to suppress does not appear to lie when the complaint is one of improper disclosure, rather than one of unlawful interception.'" Resha, 767 F.2d at 289.

Other courts have similarly held that a violation of Section 2517(5) is not grounds for suppression of a wiretap or dismissal of an indictment. See, e.g., United States v. Barnes, 47 F.3d 963, 965 (8th Cir. 1995); United States v. Williams, 124 F.3d 411, 426-27 (3d Cir. 1997); United States v. Cardall, 773 F.2d 1128, 1134 (10th Cir. 1985). Thus, although Waters seeks to rely upon the decisions in United States v. Marion, 535 F.2d 697 (2d Cir. 1976) and United States v. Brodson, 528 F.2d 214 (7th Cir. 1976), the law in the Sixth Circuit is to the contrary.[4] As a result, Waters' motion should be denied on this additional basis.

2. There Was No Misuse of the Grand Jury

Without citing any authority or legal basis for dismissal of the indictment, defendant Waters claims that she testified before the same grand jury that indicted her. However, this claim is just factually wrong.

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Similarly, defendant Waters' contradictory claim that she wanted and tried to testify before the grand jury that indicted her, but that the government refused to allow her to testify, is also incorrect. The fact is that Waters never asked or offered in any way to appear and testify before the grand jury investigating the Southfield bribery. Even if she had, however, the law is clear that targets of grand jury investigations have no right to testify before the

[4]Waters' reliance on the decision in United States v. Carlberg, 602 F. Supp. 583 (W.D. Mich. 1984) is misplaced because Carlberg was decided before the Sixth Circuit issued its decision in Resha and the government in Carlberg, unlike in this case, never sought approval from the court under Section 2517(5).

grand jury. In fact, the two cases cited by Waters in her motion to support her claim that she has a right to testify to the grand jury (see Waters Motion at 8, n.7–Docket No. 65), actually hold that no such right exists. See United States v. Leverage Funding System, Inc., 637 F.2d 645, 648 (9th Cir. 1980) ("an accused has no right to be called as a witness before the grand jury that is considering his or her indictment"); United States v. Gardner, 516 F.2d 334, 339 (7th Cir. 1975) (defendant has not right to appear before a grand jury). Additionally, the U.S. Attorney's Manual specifically states that there is "no legal obligation" to have a target testify. See 9-11.152. As a result, there are no grounds to dismiss the Indictment on this basis.

[Redacted to comply with the protective order and Fed. R. Crim. P. 6(e).]

4. The Indictment Properly States the Elements of 18 U.S.C. § 666

In her motion to dismiss, Waters raises various arguments concerning the Section 666 charges and whether the First Superseding Indictment states a valid claim.

a. The Indictment Alleges that the Transaction Involved $5,000

Waters argues that the Indictment does not allege that the "business" transactions at issue involved $5,000 or more, other than the bribe amounts paid by Riddle and Waters to co-defendant Lattimore. Waters also alleges that the government has not produced any documentary evidence thus far. On these grounds, Waters seeks dismissal of the Indictment.

Waters' motion is without merit for several reasons.

First, each of the three counts of the Indictment specifically alleges that the defendants paid the bribes "in connection with a business, transaction, or series of transactions of the City of Southfield involving $5,000 or more." This language tracks the language of Section 666(a). As a result, on its face, the Indictment states a valid charge under the statute. Given that the Indictment validly states a claim, Waters is really seeking to argue a Rule 29 motion before the trial even begins. This is improper and without legal basis because so long as the indictment adequately alleges a criminal offense, pretrial dismissals are limited to those rare situations where the undisputed facts can only lead to a determination that the accused is not guilty. United States v. Jones, 542 F.2d 661, 664 (6th Cir. 1976) (sufficiency of an indictment "may not be properly challenged by a pretrial motion on the ground that it is not supported by adequate evidence"); see United States v. Knox, 396 U.S. 77, 83, n. 7 (1969) (factual issues must be decided at trial, not in pretrial motion to dismiss).

Second, it is well established that the amount of a bribe can satisfy the $5,000 requirement under Section 666(a). See, e.g., United States v. Mills, 140 F.3d 630, 633 (6th Cir. 1998); United States v. Zimmerman, 509 F.3d 920, 926 (8th Cir. 2007); United States v. Fernandes, 272 F.3d 938, 944 (7th Cir. 2001). In Mills, the Sixth Circuit upheld a district court decision that used the bribe amounts paid in analyzing whether the $5,000 threshold had been met. Mills, 140 F.3d at 633. Where the bribe amounts were $3,930 and $3,500, both below the $5,000 threshold, the Sixth Circuit upheld the dismissal of the counts that had been based on bribe amounts of less than $5,000.

The weakness of Waters' argument that the bribe amount cannot serve to satisfy the $5,000 requirement is epitomized by Waters' reliance on a dissenting opinion from the Fifth Circuit in United States v. Marmolejo, 89 F.3d 1185, 1201-02 (5th Cir. 1996), as the only case supporting her position. Of course, the majority holding in Marmolejo is that the $5,000 element may be satisfied by the bribe amounts. Id. at 1193-94. The Fifth Circuit noted that the best way to determine what a transaction or object is worth is to look at what someone was willing to pay for it, which was the bribe amount in excess of $5,000 in that case. In this case, the defendants obviously valued the transaction at issue to be at least $7,500 and $5,000, thereby satisfying the threshold of $5,000 or more.

The decisions cited by defendant Waters in her Addendum to her motion to dismiss (Docket No. 72) do not hold that the bribe amount cannot satisfy the $5,000 element.[5] The fact remains that courts have repeatedly recognized that the bribe amount is sufficient to satisfy this element of the offense. Thus, at trial, the government will argue in response to the defendants' Rule 29 motions that it has satisfied this element of the Section 666(a) offense because of the bribe amounts at issue.

Third, the government anticipates that there will be testimony at trial from City of Southfield officials and others that the relocation of the Zeidman's Jewelry Store in

[5]Waters is simply incorrect in her claim that the U.S. Attorney's Manual supports her position on this issue. In any event, the statute and Sixth Circuit authority interpreting the statute are controlling, as opposed to the manual. United States v. Myers, 123 F.3d 350, 356 (6th Cir. 1997) (U.S. Attorney's Manual provides no rights to criminal defendants).

Southfield was in fact a transaction of the City of Southfield involving $5,000 or more. This is true in connection with various costs and revenue to the city from the transaction, as well as the fact that Zeidman's was making a million dollar investment in the project. For example, the City of Southfield's share in the property taxes each year from the Zeidman's Jewelry Store was over $12,000. Although Waters argues that Section 666(a) was only meant to apply to the most serious of bribery cases, it is unclear why even under the defendant's logic this would not apply to her conduct since she paid $12,500 in bribes on an important project to the City of Southfield involving a million dollar investment in the new jewelry store. In this way, the government anticipates that at trial it will produce evidence sufficient to meet all of the elements of the Section 666 offense, including the value of the transaction and the bribes at issue.

b. The Indictment Alleges that the City of Southfield Received Federal Assistance of $10,000 in a One Year Period

Waters argues that the Indictment should be dismissed because she says it fails to state the $10,000 jurisdictional threshold. Waters is incorrect in that she seeks to ignore the language of the statute, she avoids recognizing the nature of the criminal activity, and she is unaware of relevant precedent.

Among other things, Section 666(a) criminalizes bribes paid to local and state officials. Section 666(a) is limited, however, in that Section 666(b) requires that "the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee,

insurance, or other form of Federal assistance." The term "in any one year period" is defined as a "continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and afer the commission of the offense." The Indictment in this case makes the necessary allegations and is valid on its face.

The Indictment alleges that between April 2007 and May 2008, the defendants conspired with each other "to corruptly give, offer, and agree to give approximately $12,500 to William Lattimore with intent to influence and reward Lattimore." First Superseding Indictment ¶ 3. The two bribes paid by the defendants were alleged to have been paid on August 1, 2007 and October 12, 2007. Id. ¶¶ 10 & 18. The Indictment also alleges that the "City of Southfield was a local government that received federal assistance in excess of $10,000 during the one year period beginning July 1, 2007 and ending June 30, 2008." Id. ¶ 1. Thus, the bribes were alleged to have been paid during the one year period that Southfield received in excess of $10,000 in federal assistance, and the Indictment states valid claims.

Waters argues, however, that because part of the conspiracy took place between April 2007 and June 2007, before the one year jurisdictional period alleged in the Indictment, that this fact somehow should cause the Indictment to be dismissed. Waters does not and cannot cite any legal authority for such a proposition. Other courts addressing similar issues, however, hold otherwise. For example, in United States v. Baldridge, 559 F.3d 1126, 1138 (10th Cir. 2009), the court held that Section 666 "does not require all the illegal conduct

occur during the twelve month period in which the benefits were received." In the same way, it is not required by Section 666 that all of the defendants' illegal conduct or acts in furtherance of the conspiracy took place during the one year jurisdictional period alleged in the Indictment.

In her argument, Waters also seeks to ignore the nature of a conspiracy charge under Section 371. A conspiracy is simply an agreement to commit an illegal act. In this case, it was an agreement to pay bribes to co-defendant Lattimore in August and October 2007, during the jurisdictional period. The fact that part of the conspiracy took place before the alleged fiscal year starting July 1, 2007 does not provide any grounds to dismiss the Indictment or to exclude evidence. For example, it would be nonsensical for a district court to exclude evidence of a three-month plan to rob a bank, where the conspirators conducted surveillance and purchased guns and masks just because the bank did not become insured by the FDIC until the day before the actual bank robbery took place. Obviously, the evidence of the conspiracy during the three months leading up to the robbery of a newly FDIC insured bank would be highly relevant and admissible. Just as in a bank robbery case, the government need not prove that the defendants in this case had any knowledge concerning whether the City of Southfield received any money from the federal government. This example illustrates the meritless nature of Waters' strained, technical argument. The meritless nature of the argument is further established by her failure to cite any case under Section 666 or otherwise excluding evidence of a conspiracy that occurred before all of the jurisdictional elements had come into place.

Waters also complains that the government has not identified any documentary exhibits concerning the issue of whether the City of Southfield received federal funds in excess of $10,000. Again, however, Waters seeks to raise Rule 29 arguments before the trial even begins. This is not a valid pretrial motion. United States v. Jones, 542 F.2d 661, 664 (6th Cir. 1976). The government anticipates that it will present testimony at trial from city officials of Southfield regarding the federal funds that the city received during the period at issue, thereby satisfying the jurisdictional threshold. In fact, the testimony will establish that the City of Southfield receives over $500,000 in block grants every fiscal year from the federal government, including during the period at issue.

[Redacted to comply with the protective order and Fed. R. Crim. P. 6(e).]

In any event, the government agrees that any interceptions from September 13, 2007 and October 13, 2007 should be suppressed, and it will not seek to introduce any such calls, including the originally identified Exhibit 2(Q) from October 13. Similar mistakes in calculating thirty day interception periods have occurred in other wiretap cases, and the courts in those cases have imposed the same remedy. See, e.g., United States v. Gangi, 33 F. Supp.2d 303, 308-09 (S.D.N.Y. 1999) (court suppresses the thirty-first days on two of the wiretap extensions); United States v. Pichardo, 1999 WL 649020, at *3 (S.D.N.Y. 1999) (court suppresses calls intercepted one day after wiretap order had expired). In fact, in Gangi, the district court rejected the defense's request to suppress the entire wiretap based

on the one-day miscalculation. Gangi, 33 F. Supp.2d at 309. No further remedy is necessary in this case because

[Redacted to comply with the protective order and Fed. R. Crim. P. 6(e).]

[6] Beyond that, Waters has not and cannot identify any evidence that was derived from the calls that were erroneously intercepted on September 13 or October 13, 2007. As a result, there are no grounds for dismissal of the Indictment or suppression of the wiretap based on this argument by the defense.

IV. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny the defendants' motions.[7]

Respectfully submitted,

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DATED: May 17, 2010

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[6] It should be noted that Waters was represented by another attorney at the April 24, 2009 meeting, not Mr. Convertino.

[7]The government requests the right to file supplemental briefs if necessary given the limited time allotted to respond to Waters' motions.

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2010, I electronically filed Redacted Consolidated Response of the United States to the Defendants' Motions to Dismiss Indictment And/or Suppress Wiretap with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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