

SEP 10 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: GRAND JURY SUBPOENA
DUCES TECUM,

WITNESS,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

No. 08-35427

D.C. No. GJ-01-300-MJP

MEMORANDUM *

In re: GRAND JURY SUBPOENA
DUCES TECUM,

WITNESS,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

No. 08-35537

D.C. No. GJ-01-300-MJP

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the Western District of Washington
Marsha J. Pechman, District Judge, Presiding

Argued and Submitted September 2, 2009
Seattle, Washington

Before: HAWKINS, McKEOWN and BYBEE, Circuit Judges.

In 08-35427, a federal grand jury witness appeals from the district court's denial of his motion for return of property under Federal Rule of Criminal Procedure 41(g) and for an evidentiary hearing. The district court did not abuse its discretion in declining to exercise its equitable jurisdiction under the four-factor analysis established in *Ramsden v. United States*, 2 F.3d 322 (9th Cir. 1993). The district court also did not abuse its discretion in denying the motion for an evidentiary hearing. The witness did not proffer expected testimony that would have been relevant to the *Ramsden* factors. The case cited by the witness, *United States v. Martinson*, 809 F.2d 1364 (9th Cir. 1987), is inapposite because it concerns the *merits* of a motion for return of property, which the district court would only reach after deciding under *Ramsden* to exercise equitable jurisdiction. The witness also points to *Mr. Lucky Messenger Service, Inc. v. United States*, 587 F.2d 15 (7th Cir. 1978), which bears on *Ramsden* factor one. That case, however, is factually distinguishable from this case as it now stands. Neither the property at

issue nor the lapse in time are sufficient to support a claim that the government has displayed callous disregard for the witness's constitutional rights. We affirm without prejudice to the witness renewing his motion on a proper showing of the *Ramsden* factors.

In 08-35537, the witness appeals from the district court's denial of his motion for a copy of his own grand jury testimony. Because the witness seeks a copy of his testimony transcript, we need not determine the standard that applies when a witness seeks mere access to his testimony transcript. *Compare In re Grand Jury*, 566 F.3d 12 (1st Cir. 2009), *with In re Grand Jury*, 490 F.3d 978 (D.C. Cir. 2007) (*per curiam*). The district court did not abuse its discretion in determining that the witness's "particularized need" was outweighed by the government's need for grand jury secrecy. We observe that the district court denied the motion without prejudice.

AFFIRMED.