

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA

Plaintiff,
vs.

TRACE RAE THOMS, and
JENNIFER ANNE THOMS,
Defendants.

3:10-cr-069-JWS-JDR

FINAL
RECOMMENDATION
REGARDING
MOTION TO SUPPRESS

(Docket No. 57)

In a recommendation filed at Docket 174, I advised that defendants' Motion to Suppress be granted/denied. The defendant Trace Thoms filed objections at Docket No. 176. Defendant Jennifer joined in the objections at Docket 177. The government filed a response. Docket No. 181. After careful review of the objections, I decline to modify the original recommendation. However, defendant Trace Thoms's objection that the court relied on United States v. Johns, 851 F.2d 1131 (9th Cir.

1988) for the standard of preponderance of evidence is inaccurate. “The defendant bears the burden of proving a violation under Franks by a preponderance of the evidence.” Recommendation, p.3, “The instant case is unlike United States v. Johns.” Recommendation, p.44.

The motion to Suppress lacks merit and should be denied. IT IS SO RECOMMENDED. Accordingly, this matter will be forwarded to the assigned district judge for his determination.

DATED this 31st day of March, 2011, at Anchorage, Alaska.

/s/ John D. Roberts
JOHN D. ROBERTS
United States Magistrate Judge