

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

JO EL ANGEL TREVINO,)	
)	
Plaintiff))	
)	
v.)	CAUSE NO. 1:09-CV-248RM
)	
DREW TITTLE, JOSH ZIGLER,)	
RICHARD EASTES, JOHN KAUFFAN,)	
MICHAEL ANDRY, GRAY BRADLEY,)	
MARION POLICE DEPARTMENT,)	
GRANT COUNTY, and STATE OF)	
INDIANA,)	
)	
Defendants)	

OPINION AND ORDER

In its order dated September 22, 2009 (doc. # 3), this court requested Mr. Trevino to file a status report (i) attaching a recent copy of the docket sheet from the state criminal proceeding; (ii) informing the court of the status of the state criminal proceeding; (iii) stating whether he has filed a motion in that proceeding regarding the alleged Fourteenth Amendment violations, and if so, (iv) providing a status of the ruling on that motion along with a copy of the filed motion. On October 1, Mr. Trevino filed various state court documents with this court (doc. # 5) complying, in part, with the court's September 22 order.

After reviewing the documents submitted by Mr. Trevino, it appears that his counsel in the state court proceeding filed a motion to suppress on June 16, 2009, arguing that the failure to file the affidavit for probable cause with the court, even though the procedure set out in Indiana Code § 35-33-5-8(a)(3) was followed, constitutes grounds for suppression. The motion to suppress was denied on July 10. Mr. Trevino's counsel in state court then filed a motion for certification of

interlocutory appeal of the denial of the motion to suppress, which was denied on August 7. A jury trial is set in the state court action for November 18, 2009. At present, it doesn't appear that Mr. Trevino has waived his right to appeal and so, he still retains the right to appeal the denial of the motion to suppress if found guilty in the state court proceeding.

Mr. Trevino, acting *pro se*, filed this civil complaint pursuant to 42 U.S.C. § 1983 asserting that the defendants violated his rights protected by the constitution's Fourteenth Amendment by conducting an unreasonable search and seizure of his residence. Mr. Trevino's § 1983 claim is based on the events giving rise to his criminal prosecution and contains similar issues as those raised in his motion to suppress. Because Mr. Trevino may still appeal the denial of his motion to suppress, there is potential for friction between the ongoing state court proceeding and the issues raised in this action. Accordingly, for the reasons stated in the court's September 22, 2009 order, the court maintains the STAY of this action, but INSTRUCTS Mr. Trevino to inform the court when the state court proceeding has concluded.

SO ORDERED.

ENTERED: October 6, 2009

_____/s/ Robert L. Miller, Jr.
Chief Judge
United States District Court

cc: J. Trevino