IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

REPORT AND RECOMMENDATION

MICKEY A. RANDLE,

04-CR-188-S

Defendant.

REPORT

Before the court for report and recommendation is defendant Mickey Randle's three-part motion to suppress evidence obtained by the police on December 20, 1999. On that date, drug task force agents stopped Randle's car, arrested him, questioned him, and executed a search warrant at his home. Randle contends that the initial vehicle stop was unreasonable and that all evidence directly or derivatively obtained must be suppressed. For the reasons stated below, I am recommending that this court deny Randle's motion.

On September 13, 2005, this court held an evidentiary hearing. Having heard and seen the witnesses testify, having considered all the exhibits, and having made credibility determinations, I find the following facts:

Facts

Around October 1999, the Dane County Narcotics and Gang Task Force began investigating Mickey Randle. The seeds of this investigation had been planted a month earlier when in late September an undercover agent began buying crack cocaine from Juan Randle. During a late October meeting, Juan Randle told the undercover agent that his drug source was a man who lived in Sun Prairie. Thereafter, a confidential informant, CI 546, told Detective Dennis Gergen that he personally had bought cocaine from Juan Randle and had seen Juan Randle sell cocaine base on at least five occasions during the past year. CI 546 told Detective Gergen that Juan Randle obtained his cocaine base from a black man living in Sun Prairie nicknamed "Little Mick." CI 546 had visited Little Mick's duplex with Juan Randle on at least five occasions to pick up cocaine base. CI 546 drove with Detective Gergen to Sun Prairie and pointed out the duplex at 1002 North Pine Street as the location at which he and Juan Randle had met with Little Mick.

Task force agents undertook surveillance of the duplex. They often noted a vehicle parked there that was registered to Mickey A. Randle, for whom the Department of Motor Vehicles listed a Madison address. Court records revealed that Mickey Randle had been convicted in 1993 of delivering a controlled substance and in 1999 as a felon-with-a-gun.

On September 30, 1999, task force officers began a series of trash picks at 1002 North Pine Street. The first review revealed nothing of evidentiary value. On October 14, 1999, agents recovered a garbage bag that contained many plastic baggies with the corners cut off and white crumbs with an aggregate weight 0.7 grams that tested positive for the

presence of cocaine. The officers were aware that drug dealers often use baggy corners to package drugs for resale. They also found a phone bill to Mickey Randle at 1002 North Pine Street and a receipt from a local electronics store for Juan Randle.

On October 27, 1999, police recovered from the trash at this duplex two plastic baggies with their corners removed, two knotted pieces of plastic, two plastic baggie corners and a receipt from the Dane County Clerk of Courts made out to Mickey A. Randle and dated September 14, 1999.

On November 18, 1999 officers discovered more cornerless plastic bags in a trash bag. They also recovered plastic bags tied at the top but sliced open. From two of these bags, agents recovered approximately 1.2 grams of a substance that tested positive for the presence of cocaine base. The trash bags from which police recovered this evidence also contained mail addressed to Mickey Randle and to Grace Branch.

A December 9 trash pick revealed nothing of evidentiary value. A December 16 trash pick led to discovery of a shopping bag containing 0.2 grams of marijuana residue and two clear plastic one-gallon Ziplock bags containing marijuana residue. Task force agents knew that gallon Ziplock bags are used to package one-pound quantities of marijuana, an amount greater than that normally possessed for personal use.

On December 17, 1999, Detective Gergen gathered this information into an affidavit supporting a request to the Dane County Circuit Court for a search warrant for 1002 North

Pine Street in Sun Prairie. The court issued the requested warrant that same day but the officers held off on executing it until December 20.

In a collateral task force investigation, Detective Jeff Twing was investigating a suspected drug dealer, who, upon being caught by police, promptly agreed to become an informant in order to curry favor. (This informant is a different person from CI 546). Detective Twing's informant reported that in the past he had bought drugs from Mickey Randle. Based on this, the task force decided to have Detective Twing's informant arrange to buy crack from Randle.

On the morning of December 20, 1999, task force surveillance agents took positions around Randle's Pine Street duplex in Sun Prairie. At about 8:00 a.m. Detective Twing met with his informant in Madison. At Twing's request, the informant called Mickey Randle on his cell phone. Detective Twing did not record the telephone call and he only heard the informant's half of the conversation, which clearly was an attempt to set up a drug purchase. After he hung up, the informant advised Detective Twing that he had just talked to Randle and that Randle agreed to pick up some crack that he would bring to Madison and sell to the informant. No time or place for the transaction had been set; the informant expected Randle would call him back to firm things up.

Thereafter, surveillance agents tailed Randle as he left his Sun Prairie residence and drove to an appointment in Madison with his state probation officer, Stephanie Luk. On his way home, Randle stopped at a bank and the post office, returning home at about 10:15

a.m. About ten minutes later, Randle left the duplex, entered a different car and began driving down Main Street toward the highway into Madison.

Detective Gergen, who was in charge of the operation, directed his officers, including Sheriff's Deputy Todd Endl, to stop Randle's car. After they did so, but before they had undertaken their search, Detective Gergen telephoned Randle's probation agent to advise her that task force agents had stopped Randle and believed that he was in the middle of a drug transaction. In response, Luk stated that she was placing a probation hold on Randle and wanted him taken into custody. The agents then arrested Randle and took him to the Madison Police Department for booking and interrogation. A search of his car recovered about $1,000 cash but no drugs.

At about 1:00 p.m. Detectives Gergen and Twing met with Randle, advised him of his *Miranda* rights, told him the nature of their investigation and asked if he would speak with them. Randle agreed and provided self-inculpatory statements. In fact, he agreed to cooperate with the detectives and provide additional assistance. In light of this, the interrogation continued for over three hours.

At about 4:00 p.m. the detectives read to Randle their search warrant for 1002 Pine Street which they intended to execute that afternoon. Randle admitted that he stayed at this residence with his girlfriend Grace and her family. Randle asked the officers as a courtesy not to kick down the front door. The officers invited Randle to accompany them, usher them into the residence and show them around. Randle accepted the invitation.

Later that afternoon Randle voluntarily accompanied the police to his Sun Prairie residence and used his house key to open the front door. Randle led the detectives to the contraband and turned it over to them.[1]

Analysis

Randle contends that the December 20, 1999 traffic stop was unlawful. Therefore, he posits, this court must suppress all of the physical evidence and all of his post-arrest statements that derived from it. Randle contends that task force agents did not have either probable cause or reasonable suspicion to stop his car, and that there was no factual basis for his probation officer to authorize a hold. The government disagrees, arguing that there was probable cause for the stop. The government is correct.

Given my view of probable cause to support a drug arrest, there is no genuine need to dwell on several points raised by Randle. First, there is no need to determine whether Deputy Endl had probable cause to arrest Randle for some traffic status offense or moving violation pursuant to cases such as *Whren v. United States*, 517 U.S. 806 (1996), *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001), *United States v. Childs*, 277 F.3d 947, 949, 953 (7th Cir. 2002)(*en banc*), *United States v. Smith*, 80 F.3d 215, 219 (7th Cir. 1996) *United States v. Woody*, 55 F.3d 1257, 1268 (7th Cir. 1999).

[1] What happened next is irrelevant to suppression, but to complete the story, Randle pretended to cooperate that evening by actually calling his source and setting up a drug buy for that night. The police let Randle out of their custody–and out of their sight– to meet his source; Randle fled. He eluded recapture for over five years until his arrest in Indiana this past summer.

Second, there is no need to determine what effect the instantaneous probation hold had on the stop. Regardless whether Deputy Endl actually believed that this was the basis (or *a* basis) for the stop, the determination of reasonableness is objective, not subjective. As the Court of Appeals for the Seventh Circuit has noted,

> The officer's language does not change the facts, however: there was probable cause to believe that Jackson had committed a crime and he was (reasonably) taken into custody. It does not matter for current purposes what label the officer applied at the scene; analysis under the forth amendment is objective.

United States v. Jackson, 377 F.3d 715, 717 (7th Cir. 2004); *see also United States v. Garcia*, 376 F.3d 648, 651 (7th Cir. 2004).("It does not matter what [the officer] was thinking or planning. Reasonableness depends on facts, not labels"). Instead, pursuant to the collective knowledge doctrine, *see United States v. Sawyer*, 224 F.3d 675, 680 (7th Cir. 2000), this is the salient question: did the information known to Detective Gergen amount to probable cause to arrest Randle?

Randle, for understandable but unpersuasive reasons, takes issue with these points. He would have this court limit its analysis to what Deputy Endl knew (or thought he knew) and would hold the government to Deputy Endl's belief that the reason for the stop was the probation hold. Randle would have the court infer from this that the police knew they didn't have probable cause for a drug arrest and therefore improperly engaged Randle's probation officer in a subterfuge to justify the stop. But howsoever much it might profit a defendant to employ a "divide and conquer" approach to the evidence, the court must base

its probable cause determination on the totality of the circumstances where the sum often is greater than the total of the individual parts. *United States v. Caldwell*, ___ F.3d ___, ___ WL ___, Case No. 04-1929, slip op. At 10 (7th Cir. September 12, 2005); *see also United States v. $30,670*, 403 F.3d 448, 469 (7th Cir. 2005).

That's what occurred here: Deputy Endl was just a bit player in a larger, longer-running production. Detective Gergen was the lead and Detective Twing had second-billing, with the trash-picking officers in supporting roles. An objective review of their efforts as an ensemble establishes probable cause to arrest Randle for a drug crime. The government's citation to *United States v. Parra*, 402 F.3d 752 (7th Cir. 2005), provides a concise overview of how this court should evaluate probable cause:

> In order to have probable cause for an arrest, law enforcement agents must reasonably believe, in light of the facts and circumstances within their knowledge at the time of the arrest, that the suspect had committed or was committing an offense. The fact-intensive, on-the-spot determination of probable cause often involves an exercise of judgment which turns on the assessment of probabilities in particular factual contexts– not readily, or even usefully reduced to a neat set of legal rules. Therefore, courts evaluate probable cause "not on the facts as an omniscient observe would perceive them but on the facts as they would have appeared to a reasonable person *in the position of the arresting officer*– seeing what he saw, hearing what he heard. So long as the totality of the circumstances, viewed in a common sense manner, reveals a probability or substantial chance of criminal activity on the suspect's part, probable cause exists.

Id. At 763-64, emphasis in original.

Probable cause requires only a probability or a substantial chance of criminal activity, not an actual showing of such activity. *United States v Roth*, 201 F.3d 888, 893 (7th Cir. 2000), *quoting Illinois v. Gates*, 462 U.S. 213, 244 (1983); *see also United States v. Ramirez*, 112 F.3d 849, 851-52 (7th Cir. 1997)("all that is required for a lawful search is *probable* cause to believe that the search will turn up evidence or fruits of crime, not certainty that it will," emphasis in original). Although people often use "probable" to mean "more likely than not," probable cause does not require a showing that an event is more than 50% likely. *See United States v. Garcia,* 179 F.3d 265, 269 (5th Cir. 1999); *see also Edmond v. Goldsmith*, 183 F.3d 659, 669 (7th Cir. 1999)(Easterbrook, J., dissenting) (probable cause exists somewhere below the 50% threshold).

Where, as here, informants start pointing fingers as a result of their own problems with the police, courts must weigh their accusations carefully. On one hand, an informant's admission of personal involvement in criminal activity is presumed reliable. *See, e.g.,* F.R.Ev. 804(b)(3); *United States v. Harris*, 403 U.S. 573, 583-84 (1971); *United States v. Johnson*, 289 F.3d 1034, 1039-40 (7th Cir. 2002) (collecting recent cases). On the other hand,

> A person arrested in incriminating circumstances has a strong incentive to shift blame or downplay his own role in comparison with that of others, in hopes of receiving a shorter sentence and leniency in exchange for cooperation.

Williamson v. United States, 512 U.S. 594, 607-08 (1994)(Ginsberg, Blackmun Stevens and Souter, JJ. concurring in part and concurring in the judgment). Such statements are

inherently suspect. *Id.*; *see also id.* at 601 (opinion of the court); *United States v. Bernal-Obeso*, 989 F.2d 331, 333-34 (9th Cir. 1993).

Which is not to say that informants don't play a valuable role in helping the police root out crime, *id.* at 334-35, but their value depends on the police and the courts ensuring the integrity of the system by closely scrutinizing them and their claims. *Id; see also United States v. Leidner*, 99 F.3d 1423, 1430 (7th Cir. 1996)("Even if we entertain some doubt as to an informant's motives, his explicit and detailed description of the alleged wrongdoing, along with a statement that the event was observed first hand, entitles his tip to greater weight than might otherwise be the case,"quoting *Illinois v. Gates*, 462 U.S. at 234).

Here, the government had fresh, detailed first hand information from both CI 546 and Detective Twing's informant, whose stories deserved careful scrutiny, but who corroborated each other on important points. The unwitting informant, Juan Randle, added still more corroboration. The numerous trash picks provided direct physical evidence that supported the informants' reports that Mickey Randle regularly sold drugs. Therefore, it was reasonable for the task force agents to conclude on December 20, 1999 that when Randle left his home in Sun Prairie to drive to Madison, it was to sell cocaine to Detective Twing's informant. The fact that they may have jumped the gun does not negate their probable cause to arrest Randle. The stop was reasonable and all evidence derived from it was lawfully obtained by the police. Therefore, there is no need to consider whether there was a traffic violation or whether there was a basis for a state probation hold.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that defendant Mickey Randle's motion to suppress evidence be denied in all respects.

Entered this 30th day of September, 2005.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge

September 30, 2005

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Re: United States v. Mickey Randle
Case No. 04-CR-0188-S

Dear Counsel:

The attached Report and Recommendation has been filed with the court by the United States Magistrate Judge.

The court will delay consideration of the Report in order to give the parties an opportunity to comment on the magistrate judge's recommendations.

In accordance with the provisions set forth in the memorandum of the Clerk of Court for this district which is also enclosed, objections to any portion of the report may be raised by either party on or before October 11, 2005, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by October 11, 2005, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

/s/ S. Vogel for
Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures
cc: Honorable John C. Shabaz, District Judge