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

UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY HENDRIX,

Defendant.

REPORT AND RECOMMENDATION

06-CR-54-C

REPORT

Before the court for report and recommendation is defendant Larry Hendrix's motion to suppress his post-arrest statements (dkt. 14), motion to quash the search warrant (dkt. 15), and motion to disclose the confidential informant's identity (dkt. 16). For the reasons stated below, I am recommending that the court deny all three motions.

I. The Search Warrant

Hendrix claims that the state court's search warrant for his residence was not supported by probable cause. The government disagrees and alternatively argues that the warrant is saved by the good faith doctrine.

A. The Warrant Affidavit

On February 9, 2006, Sheriff's Detective Steven Wegner, assigned to the Dane County Narcotics and Gang Task Force, obtained from the state court a search warrant for defendant Larry Hendrix's residence at 220 Deer Valley Road. The warrant affidavit, which

speaks for itself, is attached to dkt. 15 as Exh. A. As a synopsis, Detective Wegner outlined his experience (18 years with the Sheriff's Department, 2½ years on the drug task force, 500 drug investigations and 50 search warrants) and presented the expected boilerplate averments about how drug traffickers operate.

As his probable cause showing, Detective Wegner reported that earlier that same day (February 9, 2006), he was advised by another agent that a particular confidential informant (CI)had information about a possible imminent heroin sale. This CI previously had made at least three controlled purchases on behalf of the state DOJ, the DEA and the Janesville Police Department, including a one-ounce purchase of an unspecified controlled substance.

The CI reported that earlier that morning he[1] had been in the apartment of a man he knew as "Chase." Detective Wegner knew from recent drug intelligence information provided by informants and officers that Chase was Larry Hendrix. Detective Wegner knew that Hendrix had felony convictions for bail jumping and possession of cocaine with intent to deliver. Detective Wegner showed a photograph of Hendrix to the CI, who identified him as Chase. A bit later that day agents asked the CI to direct them to Chase's apartment. The CI directed them to 220 Deer Valley Road, Apt. 1, in the Town of Madison. Parked next to the building was a 1980 Chevy Caprice registered to Hendrix at that address.

At Hendrix's apartment that morning the CI had seen two handguns on the kitchen table. The CI described one firearm as a black Glock automatic, the other was a gray and

[1] I do not know the CI's gender, I am merely picking one for ease of reference.

black shotgun with a pistol grip. Also on the kitchen table were cleaning solutions. No one else was home but Hendrix. The CI saw Hendrix move the firearms to the back of the apartment where the bedrooms were located. The CI also saw Hendrix open a lockbox from which he removed some cash from the large amount contained therein. The CI reported that Hendrix had driven him to 4322 Nakoosa Trail in the City of Madison; Hendrix told the CI that Hendrix was supposed to meet "Meat" to sell some heroin that Meat was bringing up from Chicago. Detective Wegner believed "Meat" to be Demetrius Coffee.

The agents began prepping the CI for a controlled purchase of heroin from Hendrix. When the agents were about to search the CI's vehicle for contraband, the CI revealed for the first time that there still was some heroin in his car that he had bought that morning from Hendrix. The agents directed the CI to retrieve this heroin and surrender it to them. Instead, the CI retrieved the heroin and snorted it.

The agents immediately pulled the plug on their attempt at a controlled buy from Hendrix. Instead, they commemorated all this in an affidavit that Detective Wegner presented to the state circuit court in order to obtain a warrant for Hendrix's apartment. In his affidavit, Detective Wegner averred that he, the DOJ agent and the DEA agent still were of the opinion that the CI's information about Hendrix was accurate because of his previous track record and because the agents were able to corroborate at least some of the information that the CI had provided. The court issued the requested warrant. Task Force agents executed it later that evening and seized evidence that Hendrix wishes to suppress.

B. Analysis

Hendrix claims that Detective Wegner's affidavit did not establish probable cause because the CI's behavior, including his having withheld information from the agents followed by snorting the cached heroin, rendered him unreliable and compromises the warrant. Hendrix doesn't actually invoke *Franks v. Delaware*, 438 U.S. 154 (1978), but he implies that the state court's decision to issue the warrant was tainted by the affidavit's failure adequately to impeach the CI. The government disagrees.

To uphold a challenged search warrant, a reviewing court must find that the affidavit provided the issuing court with a substantial basis for determining the existence of probable cause. In the Seventh Circuit, this standard is interpreted to require review for clear error by the issuing court. Reviewing courts are not to invalidate warrants by interpreting affidavits in a hypertechnical rather than a common sense manner. *United States v. Walker*, 237 F.3d 845, 850 (7th Cir. 2001), quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1982).

Put another way, the issuing court's determination of probable cause should be given considerable weight and should be overruled only when the supporting affidavit, read as a whole in a realistic and common sense manner, does not allege specific facts and circumstances from which the court reasonably could conclude that the items sought to be seized are associated with the crime and located in the place indicated. Doubtful cases should be resolved in favor of upholding the warrant. *United States v. Quintanilla*, 218 F.3d 674, 677 (7th Cir. 2000), quoting *United States v. Spry*, 190 F.3d 829, 835 (7th Cir. 1999), *cert. denied*, 528 U.S. 1130 (2000).

Probable cause is a fluid concept that relies on the common-sense judgment of the officers based on the totality of circumstances known to them. In determining whether suspicious circumstances rise to the level of probable cause, officers are entitled to draw reasonable inferences based on their training and experience. *United States v. Reed*, 443 F.3d 600, 603 (7th Cir. 2006). "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." *United States v. Parra*, 402 F.3d 752, 763-64 (7th Cir. 2005). It is not appropriate to consider each piece of evidence individually in a "divide and conquer" approach; rather the focus must be on what the evidence shows as a whole. *United States v. Caldwell*, 423 F.3d 754, 760 (7th Cir. 2005). Put another way, probable cause exists when, given all the circumstances known to the agents, including the veracity and basis of knowledge of an informant providing hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *United States v. Newsome*, 402 F.3d 780, 782 (7th Cir. 2005).

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 United States v. Funches*, 327 F.3d 582, 586 (7th Cir. 2003) (probable cause determination does not require resolution of conflicting evidence that preponderance of evidence standard requires); *Edmond v. Goldsmith*, 183 F.3d 659, 669 (7th Cir. 1999)(Easterbrook, J., dissenting) (probable cause exists somewhere below the 50% threshold).

When police use an informant to establish probable cause, the credibility assessment should consider whether the CI personally observed the events reported, the degree of detail he provides, whether the agents have independently corroborated the information, the age of the information, and whether the CI personally appeared before the issuing judge for a credibility determination. *United States v. Mykytiuk*, 402 F.3d 773, 776 (7th Cir. 2005). *See also United States v. Olson*, 408 F.3d 366, 370 (7th Cir. 2005).

In this case, Detective Wegner's probable cause recitation was routine and unchallengeable until the end when the CI confessed that he already had bought some heroin from Hendrix during their earlier meeting. This was an unexpected but manageable wrinkle for the agents. Things promptly headed much further south when the CI, upon being directed to retrieve this heroin from his car and surrender it to t he agents, stuck it up his nose instead.[2] The agents then huddled to see if they could salvage their investigation. They decided, prudently, to cancel the attempted controlled purchase from Hendrix: now the CI not only was unpredictable, he was unpredictable and high. Apparently the agents reached a consensus, based on their prior, less refractory interactions with the CI, to seek a search warrant anyway.

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[2] Everyone is assuming that this substance was heroin, but none was left for testing. The assumption is logical: it is unlikely the CI would jeopardize his relationship with his handlers by pretending to snort heroin allegedly obtained from an investigative target just for the purpose of framing Hendrix. It is more likely that the CI, who I infer is a junkie, was unable to resist the siren call of his secret stash.

Contrary to Hendrix's implication, it does not appear that Detective Wegner's affidavit omitted or sugar-coated any facts about the CI: every unfavorable inference Hendrix suggests should be drawn regarding the CI's veracity logically can be inferred from the information presented. If anything, the CI's pathetic behavior imbued Detective Wegner's narrative with a gritty realism lacking from the Dragnet-style recitations often presented in search warrant affidavits. In a nutshell, the state court learned that a junkie, implicitly working off a beef, in the past had provided agents with substantial information that established his reliability as an informant. On February 9, this junkie CI went to buy heroin from "Chase" without first telling his handlers. Later that day he offered up some after-the-fact information about his drug source, providing rich detail that the agents were able to corroborate in several non-trivial ways, but the CI omitted several critical facts about his own misconduct that the agents undoubtedly would have wanted to know. Only upon imminent discovery did the CI 'fess up, only to plunge to the nadir of self-abasement by snorting this heroin rather than see it consigned to an evidence locker.

Had the CI double-crossed his unknowing handlers in this fashion in previous deals? It would be fair to infer that he had.[3] Even so, as the agents concluded when agreeing to seek a warrant for Hendrix's house, whatever his flaws, this CI knew where to find drugs. That the agents candidly revealed the day's unplanned events establishes that they were not

[3] Although I also infer that the agents had no knowledge of any double-crosses, since the government would have disclosed such information long ago pursuant to its obligations under *Brady v. Maryland* , 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). *See United States v. Childs*, 447 F.3d 541, 545 (7th Cir. 2006).

complicit in the CI's misdeeds. Therefore, the only salient question is whether the information set forth in Detective Wegner's affidavit, when considered in its totality, established probable cause to search Hendrix's house. The answer is yes. The agents had probable cause to believe that Hendrix unlawfully possessed guns in his apartment, and to believe that drugs and drug records would be present.

C. The Good Faith Doctrine

Even if probable cause did not support this warrant, suppression would be inappropriate unless the police lacked good faith in relying on the warrant. *United States v. Sidwell*, 440 F.3d 865, 869 (7th Cir. 2006), citing *United States v. Leon*, 468 U.S. 897, 920-22 (1984). An officer's decision to seek a warrant is prima facie evidence that he was acting in good faith; a defendant may rebut this prima facie evidence only by establishing that the issuing judge wholly abandoned his judicial role, or that the warrant affidavit was so lacking in indicia of probable cause as to render belief in its existence entirely unreasonable. *Id.* Such determinations must be made on a case-by-case basis with suppression ordered "only in those unusual cases in which exclusion will further the purpose of the exclusionary rule." 468 U.S. at 918. When the officer's reliance on the warrant is objectively reasonable, excluding the evidence will not further the ends of the exclusionary rule because

> [it is] painfully apparent that the officer is acting as a reasonable officer would and should act in similar circumstances. . . . This is particularly true . . . when an officer acting with objective good faith has obtained a search warrant from a judge . . . and acted within its scope. . . . Once the

> warrant issues, there is literally nothing more the policeman can do in seeking to comply with the law. Penalizing the officer for the [court's] error rather than his own cannot logically contribute to the deterrence of Fourth Amendment violations.

Id. at 920-21, internal quotations omitted. The Court observed that "when officers have acted pursuant to a warrant, the prosecution should ordinarily be able to establish objective good faith without a substantial expenditure of judicial time." *Id*. at 924. *See also Arizona v. Evans*, 514 U.S. 1, 11-12 (1995)(reaffirming the Supreme Court's reluctance to suppress evidence obtained in good faith but in violation of a defendant's Fourth Amendment rights).

In the instant case, Hendrix argues that

> An affidavit that informs the issuing judge that an informant had lied to the officers, destroyed evidence, and ingested heroin on the day the informant provided his relevant information to law enforcement . . . should not provide a substantial basis for a probable cause determination.

Defendant's Memorandum in Support, dkt. 29, at 15. From this proposition, Hendrix posits that the issuing judge could not have had a substantial basis for determining that probable cause existed without at least viewing the CI in person to judge his credibility. Hendrix further posits that Detective Wegner, who "knew of all of the antics of the informant" could not have believed that the informant was credible and reliable and could not have concluded that the court's probable cause determination was legitimate. *Id*.

I disagree. Although an in-person determination of an informant's credibility is a factor in the probable cause determination, it is but one circumstance in the totality. Here, Detective Wegner candidly disclosed all of the informant's antics, so that the court knew of

them before issuing the warrant. Hendrix contends otherwise, employing circular logic: Detective Wegner failed clearly to spell out in his affidavit the CI's antics with the heroin, and this failure to spell out all the facts prevent the judge from asking Detective Wegner to spell them out. Defendant's Reply, dkt. 33, at 3-4. In essence, Hendrix infers that because the judge didn't seek more detail, he didn't sufficiently understand what really happened. But it is equally reasonable to infer that the judge didn't seek more detail because he *did* sufficiently understand what really happened. Having concluded that there was probable cause to search Hendrix's residence notwithstanding the informant's frantic subversion of his obligations to the police, the court saw no need for more interstitial information.

Perhaps the informant's misbehavior might have caused some hypothetical judge to conclude that there was no probable cause. However, as noted contrariwise above, the informant's behavior actually could have lent a perverse credibility to his accusations against Hendrix. In any event, the state court concluded that there *was* probable cause. Detective Wegner's affidavit was not so lacking in indicia of probable cause as to render the court's conclusion, or the agents' reliance on it, unreasonable. This court should deny Hendrix' motion to quash the search warrant.

II. The Informant's Identity

The government rebuffed Hendrix's request to identify the CI, claiming that he is no more than a tipster, *see Roviaro v. United States*, 353 U.S. 53, 60 (1957), and that Hendrix

has not made a sufficient preliminary showing of additional malfeasance by the CI so as to require further inquiry. Gov't. Opp., dkt. 30, at 17, *citing United States v. Mayomi*, 873 F.2d 1049, 1056 n.8 (7th Cir. 1989). Hendrix recognizes his dilemma, asking this court to remind the government of its *Brady* and *Giglio* obligations "due to the unique circumstances surrounding the confidential informant in this case." Dkt. 29 at 15-16. Hendrix's point is well taken: the government's informant privilege must give way if identification of the informant is helpful to the defense or essential to a fair determination of the cause. *See United States v. Banks*, 405 F.3d 559, 564 (7th Cir. 2005), citing *Roviaro*, 353 U.S. at 59-61.

As noted above at 8, n.3, this court presumes that the government already has fulfilled its *Brady* and *Giglio* obligations in the instant case, so that if the agents possessed any other evidence of double-crossing or malfeasance by the CI, the government would have disclosed it already. Thus, identifying the informant to Hendrix at this time would accomplish nothing: all Hendrix could do now would be to attempt to unearth post-hoc impeaching evidence in an attempt to bolster his motion to quash the warrant. But information unknown to the agents at the time they obtained their warrant cannot be a basis to challenge the warrant or the agents' good faith in seeking it. As the Court stated in *Franks*,

> Our reluctance . . . to extend the rule of exclusion beyond instances of deliberate misstatements, and those of reckless disregard, leaves a broad field where the magistrate is the sole protection of a citizen's Fourth Amendment rights, namely, in instances where police have been merely negligent in checking or recording the facts relevant to a probable-cause determination.

438 U.S. at 170.

Put another way, *Franks* hearings are necessary to ensure that a defendant is protected "where a Fourth Amendment violation has been substantial and deliberate." *Id.* at 171. "A little negligence–actually even a lot of negligence–does not the need for a *Franks* hearing make." *United States v. Swanson*, 210 F.3d 788 (7th Cir. 2000) at 790-91. In order to prove deliberate falsehood or reckless disregard a defendant must offer direct evidence of the affiant's state of mind or inferential evidence that the affiant had obvious reasons for omitting facts. *United States v. Souffront*, 338 F.3d 809 (7th Cir. 2003). Even if Hendrix could prove that task force agents "should have known" additional impeaching evidence about the CI, this would establish negligence, not recklessness. *See United States v. Ladish Malting Co.,* 135 F.3d 484, 487-88 (7th Cir. 1998). Accordingly, the agents' failure to provide the court with information that they did not have (and which never has been shown to exist) cannot be deemed reckless or intentional. Therefore, Hendrix is not entitled to learn the CI's identity.

III. Hendrix's Post Arrest Statements.

Following his arrest on February 9, 2006, Hendrix made self-incriminating statements regarding his possession of the firearm charged against him in this case. Hendrix contends that the police elicited these statements through the functional equivalent of questioning

without first providing *Miranda* warnings to Hendrix.[4] Hendrix also contends that his statements were involuntary.

A. Facts

On July 7, 2006 this court held an evidentiary hearing on Hendrix's motion. Having heard and seen the witnesses testify and having considered all the evidence in the record, I find the following facts:

On February 9, 2006, Detective Steven Wegner of the Dane County Narcotics and Gang Task Force obtained a search warrant for defendant Larry Hendrix's residence at 220 Deer Valley Road. The lead officers that evening were Lester Moore of the Madison Police Department and Officer Puccio of the Town of Madison Police Department, who arrived in the vicinity of Hendrix's residence at about 8:50 p.m. The officers knew that there was an outstanding arrest warrant for Hendrix based on an operating-after-revocation charge. Upon reaching the vicinity of Hendrix's home, the agents saw Hendrix walking outside. Both officers approached Hendrix, identified themselves and advised him that he was under arrest on the warrant. Officer Moore put handcuffs on Hendrix and placed him in the back of Officer Moore's squad car. Officer Moore did not provide *Miranda* warnings to Hendrix because he had no intention of questioning him. Detective Wegner approached Hendrix as he sat in Officer Moore's squad car and read him the search warrant.

[4] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

Other officers arrived on the scene to execute the warrant. Officer Moore led the entry into Hendrix's apartment then returned to his squad car to transport Hendrix to the Dane County Jail for booking on the traffic warrant. The other officers stayed to search.

During the five minute ride to the jail, Hendrix baited Officer Moore by repeatedly asking him how he could sleep at night as a black man arresting other blacks. Officer Moore rose to the bait at least to the extent of responding that he was just doing his job without regard to the skin color of the suspects. Throughout this conversation Hendrix was agitated and confrontational.

Officer Moore escorted Hendrix into the county jail's booking area. This area had an L-shaped array of six seats in which officers placed arrestees while the officers completed booking forms for the Dane County Sheriff's deputies ensconced behind a glass partition. Jail staff made it clear to arresting officers that they were to keep their arrestees quiet and under control. Hendrix was anything but. In a loud and agitated voice, he repeatedly demanded of Officer Moore what the charges against him were. Since Officer Moore already had advised Hendrix of the traffic warrant, Officer Moore presumed Hendrix was asking about the results of the search warrant.

By this time, Officer Moore had received telephonic word from the scene that his fellow officers had recovered a long gun and ammunition. Hoping to quiet Hendrix, and assuming that Hendrix generally was seeking information, Officer Moore advised Hendrix

that he would face additional charges. In saying this to Hendrix, Officer Moore did not intend to elicit an incriminating response from him.

Hendrix responded that all the officers would find was a pistol. Officer Moore replied that what they had found was larger than a pistol. He said this not in an attempt to elicit information but simply to provide more information to Hendrix in an attempt to calm him down. Officer Moore surmised from Hendrix's insistent questioning that Hendrix genuinely was seeking additional information about what was going to happen to him.

In response to Officer Moore's rejoinder, Hendrix stated that he called everything a pistol. Hendrix explained that he only got it for protection because his apartment had been broken into earlier.

Hendrix made no other statements of evidentiary value and the booking concluded without further incident. Having interacted with Hendrix throughout the evening, Officer Moore opined that although Hendrix was angry and agitated, he was not under the influence of alcohol or drugs and was not incompetent.

B. Hendrix's *Miranda* Claim

Hendrix contends that Officer Moore subjected him to custodial interrogation without first providing him with the required *Miranda* advisal and obtaining a waiver. The government responds that all of Hendrix's post-arrest statements were volunteered. The government is correct.

By its own terms, *Miranda* does not apply to volunteered statements, *see* 384 U.S. at 478, but it does apply to the functional equivalent of express questioning, which the Court defines as "any words or actions on the part of the police (other than those normally attendant to arrest and custody) likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301-02 (1980). The latter portion of this definition focuses primarily on the perception of the suspect, rather than the intent of the police, *id*., and it is determined objectively: courts must ask whether an objective observer would believe that the encounter was reasonably likely to elicit an incriminating response from the suspect. *Enoch v. Gramley*, 70 F.3d 1490, 150 (7th Cir. 1995).

Starting with Hendrix's first statement, it was not improper for Officer Moore to answer Hendrix's repeated inquiries as to what were the charges against him. "A police officer's response to a direct inquiry by the defendant does not constitute interrogation." *United states v. Briggs*, 273 F.3d 737, 740 (7th Cir. 2001). Here, Officer Moore simply told Hendrix that there would be more charges, an accurate, if slightly vague response. From Officer Moore's perspective–and the perspective of any third party observer–that was the end of it.

But Hendrix persisted, volunteering that all the searching officers would find was a pistol (as opposed to the heroin for which Hendrix knew they were searching by virtue of having had the warrant read to him by Detective Wegner). It was not improper for Officer Moore to respond to this observation by advising Hendrix that what the police had found

was "larger than a pistol." "Briefly reciting to a suspect in custody the basis for holding him, without more, cannot be the functional equivalent of interrogation." *Enoch v. Gramley*, 70 F.3d 1490, 1500 (7th Cir. 1995). As the court held in *Easley v. Frey,* 433 F.3d 969 (7th Cir. 2006), a state habeas case,

> [W]e do not believe that [the officer's] statement regarding the evidence and the possible consequences of the charges Easley faced rose to the level of interrogation under existing United States Supreme Court precedent. . . . Information about the evidence against a suspect may also contribute to the intelligent exercise of his judgment regarding what course of conduct to follow. . . . Like the Fourth Circuit, we do not believe that the provision of information, even if its weight might move a suspect to speak, amounts to an impermissible "psychological ploy."

433 F.3d at 974, *citing United States v. Payne*, 954 F.3d 199, 202 (4th Cir. 1992).[5] *See also United States v. Jackson*, 189 F.3d 502, 510 (7th Cir. 1999)(*also citing Payne*)(agent's declaratory statement to defendant that police had found a gun in defendant's house did not constitute interrogation so as to require *Miranda* warnings). Therefore, Hendrix's subsequent explanation that he called everything a pistol cannot be deemed a response to a question from Officer Moore.

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[5] The Fourth Circuit held in *Payne* that

> The *Innis* definition of interrogation is not so broad as to capture within *Miranda's* reach all declaratory statements by police officers concerning the nature of the charges against the suspect and the evidence relating to those charges.

954 F.2nd at 202.

Even if this court were to stretch the meaning of Officer Moore's comment to its breaking point and interpret it as a "question" seeking clarification from Hendrix (to the effect of "why do you refer to a pistol when they actually found a long gun?") Hendrix still would lose because *Miranda* does not apply to responsive police questioning intended to clarify a voluntary declaration since such exchanges are not the sort of coercive interrogations that *Miranda* seeks to prevent. *See Andersen v. Thieret*, 903 F.2d 526, 532 (7th Cir. 1990).

Finally, Hendrix's explanation why he kept the firearm in his house was completely voluntary. Nothing that Officer Moore said or did could have prompted this statement.

In sum, Officer Moore never subjected Hendrix to the functional equivalent of questioning. All of Hendrix's statements were volunteered and therefore not protected by the aegis of *Miranda*. This court should deny this portion of Hendrix's motion to suppress.

C. Voluntariness

Finally, Hendrix has challenged the voluntariness of his post-arrest statements although he has not pursued this claim in his briefs. *See* Defendant's Reply, dkt. 33, at 5. Statements are voluntary if the totality of circumstances shows that they were the product of rational intellect and free will rather than physical abuse, psychological intimidation or deceptive interrogation tactics that overcame the suspect's free will. *United States v. Huerta*, 239 F.3d 865, 871 (7th Cir. 2001). Coercive police activity is a necessary predicate to finding a confession involuntary. *Id; see also Colorado v. Connelly*, 479 U.S. 157, 167 (1986).

Factors important to the determination include the suspect's age, education, intelligence and mental state; the length of his detention; the nature of the interrogation; whether was in custody, whether he was advised of his constitutional rights; the use of physical punishment or deprivation of physical needs; and the suspect's fatigue or use of drugs. *Huerta*, 239 F.3d at 871. *See also United States v. Gillaum*, 355 F.3d 982, 990 (7th Cir. 2004).

In the instant case, there is no evidence of coercive police conduct, nor do any of the factors suggest that Hendrix was incapable of exercising his free will and rational intellect in deciding whether to talk. Hendrix was agitated and confrontational but he was not incompetent or otherwise unfairly vulnerable to police interrogation. The circumstances establish that Hendrix chose to speak of his own volition. None of his statements was involuntary.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend this court deny defendant Larry Hendrix's motions to quash the warrant, to disclose the informant's identity, and to suppress his post arrest statements.

Entered this 17th day of August, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

August 17, 2006

Paul W. Connell
Assistant U.S. Attorney
P.O. Box 1585
Madison, WI 53701-1585

Richard Coad
Federal Defender Services
222 W. Washington Avenue, Ste. 300
Madison, WI 53703

Re: United States v. Larry Hendrix
Case No. 06-CR-054-C

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 August 28, 2006, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by August 28, 2006, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

/s/

Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures
cc: Honorable Barbara B. Crabb, District Judge