

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL R. GRIESBACH,

Defendant.

OPINION AND ORDER

07-CR-0044-C

Defendant Paul R. Griesbach has been charged with possession of child pornography on his computer hard drive in violation of 18 U.S.C. § 2252(a)(4)(B). He has entered a plea of guilty to the charge, conditioned on the outcome of his motion to suppress evidence seized pursuant to a state court-issued search warrant. Defendant contends that the investigating officer did not present sufficient evidence to the state court to establish probable cause for the issuance of the warrant.

The magistrate judge considered defendant's motion to suppress and entered a report in which he recommended denial of the motion. Having reviewed the report and defendant's objection, I concur with the magistrate judge's recommendation.

Like the magistrate judge, I have concerns about the manner in which the agent

proceeded in applying for a search warrant. It would be far better practice for the agent to supply the issuing judge copies of the actual images or at least describe the images in more explicit detail so that the issuing judge would have had a firmer foundation for determining whether they were pornographic images.

Despite the deficiencies in the agent's application, it passed muster, if only minimally, as the magistrate judge concluded. One of the three images was described as depicting a nude female under the age of 18, lying on her back, with the focal point of the photograph being her vaginal area. The agent advised the judge that the subject of the photograph was a known victim and that the image was one of a series that had been identified as child pornography. From this information, the judge could have found reasonably that it was probable that defendant's hard drive contained images of child pornography.

Moreover, as the magistrate judge explained, suppression of the seized evidence would not be justified in this case because defendant has not shown that the agent acted in bad faith in applying for the warrant. The good faith exception set out in United States v. Leon, 468 U.S. 897, 920-22 (1984), would save the seizure of the computer evidence. The record does not show that the issuing judge abandoned his judicial role or that the application was "so lacking in indicia of probable cause as to render belief in its existence entirely unreasonable." Id. at 924 (quoting Brown v. Illinois, 422 U.S. 590, 610-11 (1975)).

ORDER

IT IS ORDERED that defendant Paul R. Griesbach's motion to suppress evidence seized from his computer hard drive is DENIED in accordance with the recommendation of the United States Magistrate Judge.

Entered this 11th day of July, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge