

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

GARY PRIDEAUX-WENTZ,

Defendant.

OPINION AND ORDER

07-CR-0063-C-01

Defendant Gary Prideaux-Wentz pleaded guilty on August 15, 2007, to one count of knowingly possessing child pornography in violation of 18 U.S.C. § 2252(a)(4)(B). When he did so, he reserved his right to appeal this court's decision on his motions (1) to suppress evidence seized from his residence in the execution of a search warrant on February 2, 2006; (2) to direct the government to submit a copy of its image evidence to the court; and (3) to hold a hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978), to determine whether the applicant for the warrant made reckless or intentional misstatements or omissions.

The magistrate judge recommended denial of all of these motions in a report and recommendation entered on August 3, 2007. To preserve his right to appeal, defendant filed timely objections to the magistrate judge's recommendation. United States v. Hall, 462 F.3d

684, 688 (7th Cir. 2006) (party's failure to file timely, specific objections to magistrate judge's proposed findings of fact and conclusions of law constitutes waiver of party's right to appeal).

I have reviewed defendant's objections, his briefs in support of the motions and the magistrate judge's report and have concluded that it is unnecessary to discuss defendant's objections in detail. The magistrate judge undertook a thorough and entirely persuasive analysis of all of the issues defendant raises.

However, I will take up one new argument that defendant has raised, based upon an unpublished opinion entered very recently by the Court of Appeals for the Seventh Circuit in United States v. Doan, No. 06-2252, 2007 WL 2247657 (7th Cir. 2007). The court found in that case that a search warrant based on information that was 18 months old lacked probable cause. The court took pains to point out that it was not holding that any warrant based on information of a similar age would lack probable cause. The Doan warrant failed because the affiant had included no information about whether the allegedly pornographic images were in print, on video or on a computer or how Doan had obtained them. The warrant application did not say how long Doan had had the subscriptions, whether they included the capability of downloading and if so, whether Doan had downloaded images from them, the last date he had accessed the sites or even whether he owned a computer and had internet access at his home, All that the affidavit set forth was the fact that Doan had

two subscriptions to child pornography websites.

Doan is readily distinguishable from this case. The application for the warrant in this case included an expert opinion to the effect that computer images of pornography are rarely discarded once they have been downloaded, the affiant's personal knowledge of a cache found by the FBI in Beaver Dam including pornography that was five years old, information that defendant had internet access from his new residence as well as an email account, uncontradicted evidence that defendant had posted at least 11 images of minors under 18 that were pornographic, together with many images of child erotica, and that in a fifteen-month period between approximately August 15, 2003 and January 28, 2004, he had uploaded to eight different groups images identified by internet service provider company Yahoo! as child pornography. In addition, defendant had belonged to several different internet groups several groups whose names suggested a sexual interest in young boys, including BBBboysbarebuns, boiboyz, boysonly9-16undies and LETSHAVEFUN2003. Doan does not require rejection of the magistrate judge's carefully considered recommendation.

The magistrate judge ruled correctly that defendant had not shown grounds for suppression of the evidence seized from the search of his residence, for requiring the government to submit actual images of its evidence to the court for review or to hold a Franks hearing. Therefore, his recommendation to deny defendant's motions will be

adopted.

ORDER

IT IS ORDERED that the recommendation of United States Magistrate Judge Stephen L. Crocker is ADOPTED by the court. FURTHER, IT IS ORDERED that defendant Gary Prideaux-Wentz's motions to suppress the evidence seized in the execution of the search warrant at his residence on February 2, 2006, for a Franks hearing and for an order requiring the government to produce the images of the alleged child pornography for examination by the court are DENIED.

Entered this 4th day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge