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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TODD A. TEMPLETON,

Defendant.

REPORT AND RECOMMENDATION

07-CR-18-C

REPORT

This is a bank robbery prosecution in which defendant Todd Templeton has moved to suppress evidence seized from his automobile. *See* Dkt. 10. The government opposes suppression, arguing that the police searches were justified by probable cause and the automobile exception to the warrant requirement. *See* Dkt. 18. The government is correct and I am recommending that the court deny Templeton's motion to suppress.

On April 19, 2007, this court held an evidentiary hearing on Templeton's motion. Having heard and seen the witness testify and having considered the other submissions by the parties, I find the following facts:

FACTS

On December 12, 2006, a man robbed the Wells Fargo Bank in West Baraboo, Wisconsin. The robber made a weapon threat but did not display a weapon. The bank's surveillance cameras photographed the robber. At least one of these photographs was published in area media.

Thereafter, Todd Templeton's ex-wife, Laurie Hustad, contacted the Sauk County Sheriff's Department to report her belief that Templeton was the robber in the photo. As a result, sheriff's deputies interviewed Hustad and Templeton's mother; both identified Templeton as the man in the surveillance photos. Hustad also described for deputies the Honda Accord (including a license plate number) she had seen Templeton driving about three hours after the bank robbery. The sheriff's department circulated a teletype of this information to area law enforcement agencies.

On December 16, 2006, the Dane County dispatch center responded to the teletype, reporting that the Honda had been located by the Village of Oregon's police department in a parking lot of an apartment complex. When examining the vehicle from outside, Oregon police officers noticed in the back seat plastic packaging that appeared as though it had held a pellet gun, although no pellet gun was visible. The police impounded the car and took it to their lot at the request of the Sauk County Sheriff's Department.

Sauk County sheriff's deputies searched the automobile without first obtaining a warrant. They recovered items of evidentiary value that Templeton now seeks to suppress. Other law enforcement officers conducted an unrelated search two days later.

ANALYSIS

Under the automobile exception to the Fourth Amendment's warrant requirement, police need not obtain a warrant to search a vehicle when they have probable cause to believe that their search will uncover contraband or evidence of a crime. *United States v. Hines*, 449 F.3d 808, 814 (7th Cir. 2006). Evidence of a crime includes items "indicative of other illegal activity." *Id.* at 814, n. 5; *cf. United States v. Pace*, 898 F.2d 1218, 1229 (7th Cir. 1990)(because police had probable cause to believe defendants were hit men, it was reasonable to believe defendants were carrying "tools of their trade"). The automobile exception derives not just from the ready mobility of a motor vehicle but also from a person's lesser expectation of privacy in his vehicle, even it if is not immediately mobile. *United States v. Washburn*, 383 F.3d 638, 641 (7th Cir. 2004). Therefore, a defendant's lack of access to his vehicle is irrelevant: so long as the vehicle is inherently, if not immediately, mobile, then police may invoke the exception. *Id; see also United States v. Galman* 907 F.2d 639, 641 (7th Cir. 1990)(waiting three days to search car does not vitiate the exception or require police to obtain a warrant: "the lapse of time does not change the nature of [defendant's] car. It is still an automobile.")

Determining probable cause involves a practical, common-sense decision whether, given the totality of circumstances know to the officers, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Hines*, 449 F.3d at 814. 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). 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).

By way of example in a car search case, in *Hines* the court found that the agents had probable cause that the defendant's van would contain evidence of defendant's alias and fake ID used to travel to and from Canada because three days earlier defendant had been in the van crossing the border with the assistance of the fake ID; the defendant had been using the van "a short time" before agents actually arrested him; defendant did not have the fake ID on him when agents searched him incident to arrest; and defendant and his wife had obstructed the agents during the agents' attempts to locate the defendant. 449 F.3d at 815.

Here, the evidence is about on par with that found sufficient in *Hines*. People close to Templeton had identified him as the bank robber.[1] The deputies knew that Templeton had been driving the Honda not later than three hours after the bank robbery. The deputies knew that the robber had made a weapon threat at the bank, and that pellet gun packaging was visible in the Honda. But for the combination of these last two facts, there would have been no probable cause to search: in the absence of evidence suggesting the robber had used a car as part of the

[1] In their briefs the parties quibble over how precisely the witnesses chose their words when identifying Templeton, but the record before the court establishes certitude, not equivocation. *See* Transcript, dkt. 15, at 9. Attorney Karpe nonetheless is entitled to a tip of the hat for quoting Chico Marx. Reply, dkt. 20, at 2, n.1.

The government, however, earns a raspberry for asserting facts known to it but not actually established at the suppression hearing. For instance, Captain Fultz did not provide the actual license plate number of the Honda, nor did he specify the nature of the threat made to the teller, but the government cites his hearing testimony in support of both facts. Response, dkt. 18, at 2 and 6.

robbery, the unadorned fact that Templeton had been seen in the Accord within hours after the robbery is almost completely irrelevant.

But if we adorn these facts with the robber's weapon threat and the presence of a pellet gun wrapper in the Honda, then the probable cause threshold is cleared. Although the police apparently did not seize the pellet gun wrapper, under F.R. Ev. 401-02, this wrapper itself likely would have been admissible against Templeton at trial as evidence having a tendency to link him to the weapon threat made by the bank robber. Templeton's condom syllogism (reply, dkt. 20, at 3) is not analogous to the totality of circumstances known to the police. It is a non sequitur to argue that the robber's failure to display the weapon he claimed to possess establishes that he didn't actually have one. On the other hand, evidence that Templeton recently purchased an *ersatz* handgun[2] tends to make more probable that he was the threat-making bank robber. *Cf. United States v. Rhodes*, 229 F.3d 659, 661 (7th Cir. 2000)(although most gun owners are *not* drug dealers, ownership of a gun–or even a pellet gun–could be relevant to proving that a defendant *is* a drug dealer).

The bottom line is that the deputy sheriffs had probable cause to believe there was contraband in Templeton's Honda. Pursuant to the automobile exception, this allowed them to search Templeton's car without first obtaining a warrant. The deputies did not violate Templeton's Fourth Amendment rights.

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[2] As should be obvious, an item need not be contraband to be evidence of a crime. Wooden guns are not unlawful *per se* but might support a conviction for armed bank robbery, *see McLaughlin v. United States*, 476 U.S. 16, 18, n.3 (1986).

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Todd Templeton's motion to suppress evidence.

Entered this 18th day of May, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
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May 18, 2007

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Re: United States v. Todd A. Templeton
Case No. 06-CR-018-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 newly-updated 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 May 29, 2007, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by May 29, 2007, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures
cc: Honorable Barbara B. Crabb, Chief Judge