

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JARRETT JAMES,

Defendant.

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REPORT AND  
RECOMMENDATION

07-cr-163-bbc

REPORT

The grand jury originally charged defendant Jarrett James with two armed bank robberies, possession of crack cocaine with intent to distribute it, and three § 924(c) counts. The drugs and a gun were found in a small, portable safe that police removed from James's mother's house without a warrant, although they obtained a warrant before opening the safe. James has moved to suppress evidence found in the safe, contending that the police needed a warrant to take it from his mother's house.<sup>1</sup> The government disagrees. The government is correct and I am recommending that this court deny the motion to suppress.

FACTS

On May 14, 2008, this court held an evidentiary hearing. Having read the relevant documents and having heard and seen the witnesses testify, I find the following facts:

On March 16, 2006, a lone gunman robbed Bank Mutual in Middleton. About a month later, on April 14, 2006, a lone gunman robbed the same bank. For reasons outlined in

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<sup>1</sup> Post indictment the government learned that the substance charged as crack cocaine was powder cocaine, so it withdrew the drug count and the associated § 924(c) count, intending to re-indict later with a more accurate drug charge. This does not moot the instant motion because the firearm found in the safe is evidence of the alleged armed bank robberies and associated gun counts.

these search warrant affidavit (attached), Middleton police developed defendant Jason James as a suspect in both bank robberies.

On May 14, 2006, authorities in Nebraska arrested and detained James on unrelated charges. James still was jailed in Nebraska on October 24, 2006, when Detective Darrin Zimmerman of the Middleton Police Department interviewed James's mother, Linda Martin. Martin reported that prior to his arrest James had been living with her and had told her that he was keeping a gun in her house. Martin directed James to get rid of it; apparently she believed that he had done so.

But on October 30, 2006, Martin called Detective Zimmerman and left word that she had received a letter from James in which he reported that he had left a gun in a small safe in Martin's house. Martin wanted the police to come and take the gun. The next day Martin hired attorney Terry Frederick to represent her during further interaction with the police. Attorney Frederick telephoned Detective Zimmerman, who confirmed that he would like to retrieve James's safe. Attorney Frederick agreed and they arranged for a November 2 meeting.

On November 2, 2006, Detective Zimmerman and a colleague met with Martin and Attorney Frederick at Martin's home. Martin led the police to James's safe and provided its combination. The police announced that they intended to take custody of the safe to preserve its contents until they could obtain a search warrant authorizing them to open it. Martin and Frederick agreed. The police took the safe, obtained a state court search warrant, opened the safe, and discovered cocaine and a firearm. (If Martin had not agreed to let the police take the safe, Detective Zimmerman would have seized the safe anyway and held it until he could apply for a warrant).

## ANALYSIS

James challenges the police removing his safe from his mother's residence without first obtaining a warrant. James argues that because of this unlawful removal, this court must suppress evidence recovered from the safe during execution of the subsequently-issued search warrant. As the government observes, however, this argument conflates James's possessory in the safe itself with his privacy interest in its contents. *See United States v. Ward*, 144 F.3d 1024, 1031 (7<sup>th</sup> Cir. 1998). A seizure, which affects a suspect's possessory interests, is less closely scrutinized by courts than a search, which affects a suspect's privacy interests. *See Segura v. United States*, 468 U.S. 796, 806 (1984). Indeed, because James was not present to assert an immediate possessory interest over the safe, it is not clear that removal of his safe from Martin's home even constitutes interference with that interest. *See Ward*, 144 F.3d at 1031.

In any event, James's mother indisputably had the right to allow the police to enter her home to search for evidence, *see United States v. Bell*, 500 F.3d 609, 612 (7<sup>th</sup> Cir. 2007). Police are allowed to secure a container on the basis of probable cause in order to prevent the destruction or removal of evidence while a search warrant is being sought for the container. *Segura.*, 468 U.S. at 810.<sup>2</sup> Martin already had reported James's confession that the safe contained a handgun. This, coupled with other facts reported by Detective Zimmerman in his subsequent search warrant affidavit, demonstrate that Zimmerman had probable cause to believe that he would find contraband in the safe. The state court issued the warrant, the police opened the safe and they recovered the contraband that James now seeks to suppress.

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<sup>2</sup> Probable cause exists when, given all the circumstances known to the police, there is a fair probability that evidence of a crime will be found in a particular place. *United States v. Newsom*, 402 F.3d 780, 782 (7<sup>th</sup> Cir. 2005).

The police did nothing unreasonable with James's safe that would justify suppression of the evidence found in it during their execution of the subsequently-issued search warrant. There is no need to resort to the inevitable discovery doctrine offered by the government as a safety net, *see United States v. Blackwell*, 416 F.3d 631, 633 (7<sup>th</sup> Cir. 2005), but I note for completeness's sake that the government is correct: if Martin had not consented to removal of the safe, the police had probable cause justifying its seizure pending issuance of a warrant to open and search it.

#### RECOMMENDATION

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

Entered this 30<sup>th</sup> day of May, 2008.

BY THE COURT:

\_\_\_\_\_  
STEPHEN L. CROCKER  
Magistrate Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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May 30, 2008

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Re: \_\_\_ United States v. James  
Case No. 07-cr-163-bbc

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 June 9, 2008, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by June 9, 2008, 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

## MEMORANDUM REGARDING REPORTS AND RECOMMENDATIONS

Pursuant to 28 U.S.C. § 636(b), the district judges of this court have designated the full-time magistrate judge to submit to them proposed findings of fact and recommendations for disposition by the district judges of motions seeking:

- (1) injunctive relief;
- (2) judgment on the pleadings;
- (3) summary judgment;
- (4) to dismiss or quash an indictment or information;
- (5) to suppress evidence in a criminal case;
- (6) to dismiss or to permit maintenance of a class action;
- (7) to dismiss for failure to state a claim upon which relief can be granted;
- (8) to dismiss actions involuntarily; and
- (9) applications for post-trial relief made by individuals convicted of criminal offenses.

Pursuant to § 636(b)(1)(B) and (C), the magistrate judge will conduct any necessary hearings and will file and serve a report and recommendation setting forth his proposed findings of fact and recommended disposition of each motion.

Any party may object to the magistrate judge's findings of fact and recommended disposition by filing and serving written objections not later than the date specified by the court in the report and recommendation. Any written objection must identify specifically all proposed findings of fact and all proposed conclusions of law to which the party objects and must set forth

with particularity the bases for these objections. An objecting party shall serve and file a copy of the transcript of those portions of any evidentiary hearing relevant to the proposed findings or conclusions to which that party is objection. Upon a party's showing of good cause, the district judge or magistrate judge may extend the deadline for filing and serving objections.

After the time to object has passed, the clerk of court shall transmit to the district judge the magistrate judge's report and recommendation along with any objections to it.

The district judge shall review de novo those portions of the report and recommendation to which a party objects. The district judge, in his or her discretion, may review portions of the report and recommendation to which there is no objection. The district judge may accept, reject or modify, in whole or in part, the magistrate judge's proposed findings and conclusions. The district judge, in his or her discretion, may conduct a hearing, receive additional evidence, recall witnesses, recommit the matter to the magistrate judge, or make a determination based on the record developed before the magistrate judge.

**NOTE WELL: A party's failure to file timely, specific objections to the magistrate's proposed findings of fact and conclusions of law constitutes waiver of that party's right to appeal to the United States Court of Appeals. *See United States v. Hall*, 462 F.3d 684, 688 (7<sup>th</sup> Cir. 2006).**