

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

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UNITED STATES OF AMERICA,

Plaintiff

v.

THOMAS VALLEY,

Defendant.

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REPORT AND  
RECOMMENDATION

11-cr-133-bbc

**REPORT**

On December 7, 2011, a grand jury charged defendant Thomas R. Valley with six counts of persuading six different teenage girls to send him sexually explicit cell phone photographs of themselves. *See* dkt. 2. Valley then moved to quash the state court search warrant for his residence, arguing that the warrant was not supported by probable cause. *See* dkt. 52. Valley also moved to suppress the statements he made to law enforcement agents during this search, arguing that the agents had subjected him to custodial interrogation without advising him of his *Miranda* rights. *See* dkt. 51. After briefing these motions, the parties reached a plea agreement that resulted in Valley pleading guilty to a two-count criminal information charging him with receiving visual depictions of minors engaged in sexually explicit conduct. *See* dkts. 69-72. The plea agreement reserves to Valley the right to obtain rulings on his two suppression motions and to appeal any adverse ruling. *See* dkt. 72 at ¶ 3.

For the reasons stated below, I am recommending that this court deny both of Valley's suppression motions.

## **Dkt. 52: Motion To Quash the Search Warrant**

On May 31, 2011, Special Agent Christopher DeRemer of the Wisconsin Department of Justice's Division of Criminal Investigation (DCI) applied to the Circuit Court for Dane County, Wisconsin for a warrant to search Unit 2 of 6167 Dell Drive in Madison. DCI was looking for images child pornography and the computer and electronic devices and media on which such images might be found.

### **Synopsis of the Affidavit in Support of the Search Warrant Request**

Agent DeRemer's affidavit in support of his warrant request speaks for itself can be found in the case file at dkt. 52-2.

By way of synopsis, Agent DeRemer reported that he was assigned to the Wisconsin Internet Crimes Against Children Task Force and in that capacity had received over 60 hours of specialized training relating to crimes against children, including electronic computer evidence, use of a computer to facilitate a child sex crimes, and the manufacture and distribution of child pornography. Agent DeRemer reported that fellow DCI Special Agent and Task Force member Vern Vandeberg was an agent with even deeper knowledge of the methods by which computer storage media operate. Agent Vandeberg knew that investigators can retrieve data from a storage medium months or even years after the data had been overwritten or "wiped." Agent Vandeberg was familiar with P2P networking, Gnutella P2P software and its use of the SHA1<sup>1</sup> digital signature. Agent Vandeberg had the ability to troll Gnutella for SHA1 signatures known

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<sup>1</sup> According to en.wikipedia.org (accessed April 16, 2013), "SHA-1" is one of four "secure hash algorithms" and is the most widely used outside of federal agencies (which use the more secure SHA-2).

to be associated with previously-identified images of child pornography. Agent Vandenberg then could match up these hash values to specific IP addresses; next he would ask the associated internet service providers (ISP) to disclose account information for these IP addresses, including the name and street address of the account holder.

Using this methodology, on September 30, 2010—eight months before the contested search warrant application—Agent Vandenberg determined that a particular IP address had available for sharing files with SHAI values known by the task force to represent child pornography. Agent Vandenberg browsed the list of offered files and found at least seven with titles indicating that they contained images of child pornography. To determine actual content, he opened three of the files, each of which contained a different image of a prepubescent girl engaged in oral-genital or genital-genital sexual intercourse with an adult male. On November 23, 2010, Agent Vandenberg subpoenaed the ISP and learned that the subject account was assigned to Kay Jensen at 6167 Dell Drive, Unit 2, Madison, Wisconsin.

In the resulting May 31, 2011 search warrant application Agent DeRemer attempted to allay any staleness concerns the court might entertain:

In many instances, due to unavoidable investigative delays during the previous four years, your affiant knows that Agent Vandenberg has obtained warrants for computer equipment based on evidence gathered during investigations several months earlier. In almost every instance Agent Vandenberg has found that evidence related to the crime of possession of child pornography observed on computer equipment at a given location through the Peer to Peer networks remained within the computer equipment regardless of the computer's later location, or the subsequent availability of internet access. This experience is consistent with the information explained in paragraph b), above concerning the persistence of digital evidence.

Dkt. 52-2 at 15, ¶ 1(z).

Agent DeRemer reported that on May 27, 2011 the Mercury Sable registered to Kay Jensen was driven out of the garage at 6167 Dell Drive, Unit 2.

On May 31, 2011 at 1:48 p.m., the state court issued the requested search warrant. Execution of this warrant resulted in the seizure of evidence that the government has used against defendant Thomas Valley (Kay Jensen's son) in this federal prosecution.

### Analysis

In his brief in support of his motion to quash the search warrant, Valley raises some challenges in headline fashion and also presents seven questions, the answers to which Valley presumably views as affecting the validity of the warrant. *See* dkt. 60. Valley's first five questions read more like civil interrogatories than challenges to the warrant, but a charitable reading would bundle them into a challenge to the sufficiency of Agent DeRemer's affidavit. Question 6 and Question 7 (which is more of an assertion) both argue that the evidence in Agent DeRemer's affidavit is too stale to provide probable cause to search. Valley also makes a cursory claim that the warrant is overbroad and lacks particularity, then closes by asserting that the warrant cannot be salvaged by the good faith doctrine of *United States v. Leon*, 468 U.S. 897 (1984). The government disputes each of Valley's contentions, asserting that the search warrant is valid.

The government is correct. As a starting point, the job of a court reviewing a request to issue a search warrant is

. . . simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit . . . including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence

of a crime will be found in a particular place. [Courts] are entitled to draw reasonable inferences concerning where the evidence referred to in the affidavit is likely to be kept, taking into account the nature of the evidence and the offense. The [court] considers all the factors supporting the reliability of the information including its age and the nature of the officer's experience.

*United States v. Hicks*, 650 F.3d 1058, 1065 (7<sup>th</sup> Cir. 2011).

Against this template, the government notes that the affiant, Agent DeRemer, detailed Agent Vandeberg's direct involvement in the investigation, including the investigative steps he took to discover the IP address that had accessed known images of child pornography. In further response to Valley's challenge, the government also correctly points out that the software Agent Vandeberg used to arrive at this juncture became irrelevant once Agent Vandeberg actually accessed images of child pornography offered for sharing by this IP address.

For probable cause purposes, it wouldn't matter if Agent Vandeberg had stumbled onto this account completely by accident, or—as actually happens more frequently—by virtue of this account being flagged for him by the ISP. This is because the lynchpin to the probable cause analysis of this warrant application is that Agent Vandeberg, from a “public” location in cyberspace, observed images of child pornography at the subject IP address. Once Agent Vandeberg had done this, it was a simple—and constitutionally uncontroversial—matter for him to learn from the ISP the street address of the household associated with the electronic address.

Valley also complains that Agent Vandeberg's evidence became stale before he applied for a search warrant. This challenge would have had more traction before the court's decision in *United States v. Seiver*, 692 F.3d 774 (7<sup>th</sup> Cir. 2012), cited by the government. The court in *Seiver* held that, given how home computers work, given how most owners use them and given the forensic investigative tools available to law enforcement agencies, a claim of staleness

resonates “only in the exceptional case.” *Id.* at 778. In *Seiver*, the gap between agents viewing child pornography and obtaining their search warrant was seven months. 692 F.3d at 774-75. The gap in this case was eight months. This is not the “*very* long time” envisioned by the court in *Seiver* as a basis to deny a warrant application or to quash an executed warrant. *Seiver*, 692 F.3d at 777, emphasis in the original. *See also United States v. Carroll*, \_\_\_ F.Supp.2d \_\_\_, 2013 WL 937832 (S.D. Ind. March 11, 2013)(report of creation and sharing of child pornography five years earlier provided probable cause for search warrant).

This leaves Valley’s unadorned pronouncement that “The warrant, and the affidavit must fail; it is overbroad [and] lacks particularity.” Dkt. 60 at 2. This headline-style assertion doesn’t give the court much guidance as to what Valley perceives to be the actual problem. This lack of particulars is a stand-alone ground to reject the argument. *See United States v. Irons*, 712 F.3d 1185, (7<sup>th</sup> Cir. 2013) (perfunctory, undeveloped and unsupported arguments are waived). True, the Task Forces’s list of things to be seized pursuant to the warrant is broad and inclusive, *See* dkt. 52-2 at 1-2, but the relevance to the criminal investigation of the items to be seized is facially apparent for every listed item. As the court noted in another case challenging the breadth of the search warrant, “This is not a case where the officers rummaged throughout the residence not knowing what they were looking for. They knew exactly what they wanted.” *United States v. Buckley*, 4 F.3d 552, 557 (7<sup>th</sup> Cir. 1993). Even assuming, *arguendo*, that Valley could persuade this court that the agents had seized items outside the scope of the warrant, then his remedy would be suppression of those items alone; the seizure of uncontested evidence would remain valid and would be severed from any invalid search. *Id.* at 557-58.

In short, the search warrant for Valley's residence was valid and the agents executed it properly. There is no factual or legal support for any portion of Valley's motion to quash the warrant. Even if this were a closer call, the good faith doctrine of *United States v. Leon*, 468 U.S. 897, 923 (1984) would militate against suppressing the evidence the officers seized in their good faith reliance on the state court's decision to issue the warrant. There is no evidence that the state court abandoned its neutral and detached judicial role in issue the warrant; that Agent DeRemer or his colleagues were reckless or dishonest in preparing the affidavit in support of the warrant application; or that the warrant was so lacking in probable cause that it was unreasonable for the Task Force agents to rely on it. *Id.*; see also *United States v. Miller* 673 F.3d 688, 693 (7<sup>th</sup> Cir. 2012). There is no basis to quash the warrant or to suppress any evidence seized during its execution.

#### **Dkt. 51: Motion To Suppress Statements**

Valley has moved to suppress statements that he made to Task Force agents when they questioned him during their execution of the search warrant for his residence on June 1, 2011. Valley's sole contention is that he was in custody for Fifth Amendment purposes and therefore was entitled to receive *Miranda* warnings<sup>2</sup> before being questioned. Valley is not contending that his statements were involuntary, which would require a related but separate analysis. See Transcript of March 14, 2013 hearing, dkt. 56, at 42. As a result, I have not found facts that would relate only to voluntariness as opposed to custody. Having heard and seen the witnesses testify at the March 14, 2013 evidentiary hearing, and having made credibility determinations,

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966).

I find the following facts for the purpose of deciding Valley's contention that he was subjected to custodial interrogation without being provided *Miranda* warnings:

### Facts

On June 1, 2011, at 12:57 p.m., seven DCI agents in plain clothes (including Task Force Agent Jesse Crowe) executed the state court's search warrant for 6167 Dell Drive, Unit 2. The agents knocked and announced at the front door, but no one answered. They waited about 20 seconds, determined that the door was unlocked, so they let themselves in without breaking the door. The agents swept through the first floor, then down to the basement, shouting "Police! Search Warrant!" as they advanced.

Agents descending into the basement saw a mattress on the floor with two people lying on it under a blanket. One was the defendant Thomas Valley, the other was his girlfriend, "Amanda."<sup>3</sup> Both were awake and only partially dressed. A female agent helped Amanda get dressed. The agents did not handcuff Amanda because she was pregnant. The other agents directed Valley off of the mattress, then handcuffed him while they finished sweeping the residence to confirm that no one else was present. Agent Crowe advised Valley that he was not under arrest but merely was being temporarily detained for agent safety. This was Agent Crowe's standard operating procedure because he was aware that at the beginning of any search based on the presence of a computer that previously had accessed child pornography, the agents did not have any evidence establishing which person in the household actually had used the computer in this manner, which meant that they did not have probable cause to arrest a resident simply because he lived there.

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<sup>3</sup> Only her first name was used during the hearing, so that's how I will refer to her.

Upon confirming that the house was empty, the agents uncuffed Valley and escorted him and Amanda upstairs. An agent led Amanda to the front stoop while Agent Crowe and another agent took Valley into the living room and sat him on the couch. Agent Crowe told Valley that the agents wanted to talk to him about what was going on. Agent Crowe told Valley that Valley did not have to talk to the agents if he didn't want to, and that he was free to leave at any time. Valley confirmed that he understood this. Valley decided to stick around. It was 1:12 p.m.

Although Agent Crowe didn't tell Valley this—perhaps because Valley did not choose to leave—if Valley *had* chosen to leave the residence, then the agents would not have let him back into the residence while they were searching. As the agents subsequently made clear to Valley by their actions during their 5½ hours at the residence (they were there until 6:40 p.m.), once Valley chose to stay, the agents would not allow him to roam about unescorted, even to use the bathroom. This was the agents' standard procedure because they needed to concentrate on the search without worrying about hovering residents or cached weapons.

Agent Crowe questioned Valley in the living room with assistance from Agent Jennifer Price. They did not advise Valley of his *Miranda* rights. One or two agents were out on the front stoop talking to Amanda. While questioning Valley, the agents provided him with a copy of the search warrant, which he read, and they left this copy of the warrant on the coffee table. In response to the agents' questions, Valley reported that his adult nephew "Allan" was the person who had downloaded the child pornography on Valley's computer. Valley also reported that at some point in the past he had been diagnosed with a mental illness,

As just mentioned, agents were at the house until 6:40 p.m. that evening. Searches in child pornography cases take a long time because the storage devices for electronically stored

information can be smaller than a fingernail, which means the agents must comb through everything in residence. Also, all computing devices and drives must be photographed, inventoried and examined by the task force's on-scene forensic expert. The search of Valley's residence took even longer than normal because of the huge amount of stuff jammed into his living space in the basement (*see* photographs of the basement, Exhs. 1-4).<sup>4</sup>

For the next 5½ hours, Valley chose to stick around, basically glued to the living room couch. The agents did not interview him the entire time, although they would ask him questions sporadically throughout the afternoon as the search progressed. Amanda stuck around as well, spending the afternoon on the front stoop and answering questions when asked, including her understanding of "Alan's" role in what had happened.

While Valley was in the residence, the agents limited his movement to the living room except to use the bathroom, to smoke, or if they wanted him to look at something in another room. When Valley wanted to smoke, agents let him go out on the deck to smoke. If Valley had decided just to stay out on the deck all afternoon to smoke, the agents would have let him. When Valley asked to go to the bathroom, they let him, although they made him leave the door open to insure against Valley arming himself with an improvised weapon (they already had searched for conventional weapons) or barricading himself inside so that he could hurt or kill himself. At one point late in the afternoon, Valley announced that he was having an anxiety attack that was making him sick; the agents let him use the bathroom per their standard operating procedure.

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<sup>4</sup> Also, there was a 45-60 minute timeout from actual searching after agents found apparent explosive devices in the basement that precipitated a visit from the Dane County Sheriff's Bomb Squad.

Whenever Valley asked for another can of Mountain Dew, the agents brought him one from his basement 'fridge (Valley estimates that he drank 10 cans that afternoon). If Valley had asked to eat, then Agent Crowe would have made him a sandwich (Valley claims to have offered to toss a pizza into the oven for everyone; Agent Crowe does not recall this). Agent Crowe was not personally present with Valley all afternoon, but at least one agent always was near Valley in the residence while the search took place. If at any time before the search ended Valley had decided to leave the residence, then the agents would have let him go.

Based on Valley's richly detailed explanation of "Allan's" use of Valley's computer, Agent Crowe at first believed that "Allan" was the Task Force's investigative target, not Valley. But on cross-checking the "Allan" explanation with Amanda, the agents decided that Valley's explanation didn't make sense. By the time the search ended at 6:40 p.m. Agent Crowe believed, based on what the forensic expert had found on the computers, what Valley had said, and what Amanda had told them, that Valley was the person who had used to computers to download child pornography. Based on this belief, Agent Crowe formally arrested Valley at that time.

#### ANALYSIS

The facts found above reflect my wholesale acceptance of Agent Crowe's testimony at the March 14, 2013 evidentiary hearing.

Valley also testified at this hearing, contradicting Agent Crowe on almost every salient point. Valley hit the stand loaded for bear: in the first three minutes of his direct examination, Valley asserted that the agents had ripped the blankets off the bed in which he and Amanda had been asleep, put the pregnant Amanda down on the ground, told Valley that he was going to be

detained *until* they searched the house, refused to show him their search warrant (“Jennifer Price said . . . ‘we’re not like the TV shows. We don’t have to show it to you.’”) and point-blank refused to honor his immediate requests for a lawyer and to make a telephone call. *See* Tr., dkt. 56 at 49-50. Valley *did* say that someone told him at about 3:00 that he was free to go if he wanted to; but at that point, this statement served only to trigger the realization “that I should not have been talking, since I was denied a lawyer.” Tr. At 55.

I have completely rejected Valley’s testimony as incredible and intentionally self-serving. Valley is an incorrigible fabulist. As Dr. Christine Scronce, Ph.D., noted in her June 26, 2012 Forensic Report on Valley, throughout his evaluation, Valley engaged in a “repetitive pattern of fantastical lying.” Dkt. 19 (*sealed*) at 16.<sup>5</sup> *Id.* at 12-13. Dr. Scronce deemed Valley’s use of his “alter identities”—“Allan” and “Sam”—to be “part of his clever and very organized ruse to manipulate his victims and create a convenient cover story for himself. These behaviors are not consistent with those of a confused or mentally ill individual; rather they are suggestive of practiced prevarication.” *Id.* at 12-13. To the same effect, Valley’s answers to the government’s cross-examination about “Allan” during the evidentiary hearing provide an example of how Valley likes to spin a yarn. *See* dkt. 56 at 58-65.

But Valley’s unbelievable testimony is not, *ipsa*, a reason to deny his suppression motion. Valley is entitled to have this court apply the relevant legal standard to the facts I have found. A suspect interrogated by the police is entitled to be advised of his *Miranda* rights only where

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<sup>5</sup> Although the forensic report is sealed to protect genuinely sensitive information about Valley, the opinions and findings of Dr. Scronce quoted herein are not confidential and constituted a part of her testimony at the August 28, 2012 competency hearing, held in open court. To forestall any possible confusion on this point, I have reached my credibility determination on Valley separately from and independently of Dr. Scronce’s report and opinion. We happen to reach the same conclusion.

there has been such a restriction on his freedom as to render him in custody. *United States v. Pelletier*, 700 F.3d 1109, 1114 (7<sup>th</sup> Cir. 2012). To determine “custody” in this situation, the first step is to determine whether, in light of the objective circumstances of the interrogation, a reasonable person would have felt that he was not at liberty to terminate the interrogation and leave.

In most situations, this is only the first step because not all restraints on freedom of movement amount to custody for the purposes of *Miranda*. Even if the subject would *not* have felt free to leave, courts must ask an additional question: did the relevant environment present the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*? *Id.* Determining whether an environment is coercive enough to be custodial requires an objective inquiry into all of the circumstances surrounding the interrogation, such as the location of the questioning, the presence or absence of physical restraints during the questioning, the presence or absence of physical force or a display of weapons, how many officers were present, the length of the questioning, statements made during the interview including whether the officers tell the subject that he is not under arrest and is free to leave, whether the subject consented to speak to the officers, and the release of the subject when the questioning is done. *Id.*, citing *Howes v. Fields*, \_\_\_ U.S. \_\_\_ 132 S.Ct. 1181, 1189 (2012) and *United States v. Snodgrass*, 635 F.3d 324, 327 (7<sup>th</sup> Cir. 2011).

This may be a case in which the court’s answer to the first question of the test disposes of the suppression motion: a reasonable person, upon being told by the agents that he did not have to talk to them if he didn’t want to and that he was free to leave, would have believed that he did not have to talk to the agents and that he was free to leave. Theoretically, other

circumstances could have constructively negated this clear advisal. For instance, if Agent Crowe had made this announcement to Valley while Valley still was in handcuffs on the basement floor surrounded by a phalanx of Task Force agents with firearms drawn, then a reasonable person logically could have concluded that in fact he had no choice but to stick around and answer questions until the agents deigned actually to release him from their custody. And of course, Valley *had* been in the agents' custody for the first five minutes after their entry into and sweep through the residence. But this temporary custody had ended quickly, as had all other indicia of actual custody. By the time Agent Crowe told Valley that he was free to go, a reasonable person in Valley's situation would have believed this to be true.

Perhaps most reasonable people would have taken advantage of this offer posthaste and hightailed it out of there. A few other hypothetical reasonable people might have chosen to stick around for a bit to get a better handle on what was happening and why; however, this choice to stay would not diminish the puissance of Agent Crowe's statement that Valley did not have to talk to the agents if he did not want to, a colloquial way of advising him that "you have the right to remain silent."

How the agents treated Valley after this fades to irrelevance in the custody analysis. For logical reasons relating to the efficacy of the search and to the safety of the agents (and Valley), the agents limited Valley's movement and actions within his residence while they searched. Even so, they let him smoke, guzzle Mountain Dew, use the bathroom and they would have let him eat if he had asked (he claims he offered to bake a pizza). More to the point, if at any time Valley had chosen to walk out the door, the agents would have let him go.

Perhaps Valley chose to stick around so that he could spin tales about “Allan,” a gambit that actually succeeded in deflecting suspicion from Valley at least for a while. Regardless of any exculpatory value this tactic might have generated, perhaps Valley appreciated having a rapt audience of Task Force agents to regale; as Dr. Scronce noted, Valley “seem[s] to relish telling outlandish-sounding stories,” dkt. 19 at 10,<sup>6</sup> which “seem[s] to be a way for him to boost his self-esteem, gain attention, promote admiration from others and escape into fantasy and daydreams.” *Id.* at 16.

In short, Valley was not in custody. The agents were not required to provide him with a *Miranda* advisal before asking him questions. There is no basis to suppress Valley’s statements.

#### RECOMMENDATION

Pursuant to 42 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Thomas R. Valley’s motion to quash the search warrant and deny his motion to suppress his statements made during execution of the warrant.

Entered this 21<sup>st</sup> day of May, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge

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<sup>6</sup> “. . . including that he traveled to Europe as a professional wrestler, he delivered five babies during his lifetime, he used to own a million dollar baseball card collection, and he was a self-taught computer whiz who re-wrote the Windows operating system.” *Id.*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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Re: United States v. Thomas Valley  
Case No. 11-cr-133-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 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 4, 2013, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by June 4, 2013, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

/s/

Connie A. Korth  
Secretary to Magistrate Judge Crocker

Enclosures



## 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).**