

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMMY J. REICHLING,

Defendant.

OPINION AND ORDER

13-cr-126-bbc

On May 16, 2014, this court granted defendant Timmy J. Reichling's leave to file an untimely motion to suppress evidence. Dkts. ## 30 and 32. The government did not oppose granting leave, but it opposes defendant's motion. Dkt. #33. In his new motion, defendant asserts that, although the two search warrants issued by the state court authorized law enforcement officers to seize the items listed in the warrants, the warrants did not authorize the officers to open or otherwise access the information contained within these listed items. The government responds that the law clearly allows such searches. The government is correct.

Information about the warrants and their execution is contained in the United States Magistrate Judge's February 28, 2014 report and recommendation, dkt. #23, and this court's March 20, 2014 order, dkt. #27, and will not be repeated here. The issue raised by defendant's new motion is whether agents who have obtained a warrant authorizing seizure

of devices that could hold electronically stored information are implicitly authorized to gain access to the information contained within the listed devices and review it. As the government points out, although the challenged search warrants were issued by a state court, “[f]ederal law, not state law, governs the admissibility of evidence in federal criminal trials.” United States v. Bruce, 550 F.3d 668, 673 (7th Cir. 2008). Fed. R. Crim. P. 41(e)(2)(B) provides that

a warrant under Rule 41(e)(2)(A) may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant.

That could be the end of the analysis, but as the government further observes, Wisconsin state law also allows agents to seize items named specifically in a search warrant and then examine their contents off site. In State v. Petrone, 161 Wis.2d 530, 544-45 (1991), limited in other part in State v. Greve, 272 Wis.2d 444, 465 (2004), the court held not only that agents executing a search warrant in a child pornography investigation could seize undeveloped camera film, which was listed in the warrant, but that they could develop the film to determine whether it contained images of child pornography. “The deputies simply used technological aids to assist them in determining whether items within the scope of the warrant were in fact evidence of the crime alleged.” *Id.* at 545. Conceptually, accessing the visual images in an electronic information storage device is the same as developing the photographs on camera film. In short, the law enforcement agents did not exceed the scope of the two search warrants issued by the state court.

ORDER

IT IS ORDERED that defendant Timmy J. Reichling's May 16, 2014 motion to suppress evidence, dkt. #30, is DENIED.

Entered this 3d day of June, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge