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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROGER ALESHIRE,

Defendant.

REPORT AND RECOMMENDATION

14-cr-79-jdp

REPORT

On July 16, 2014, the grand jury charged defendant Roger Aleshire with one counts of producing child pornography, along with a forfeiture count. *See* dkt. 5. Aleshire has moved to suppress the evidence discovered during execution of two state court search warrants issued on March 17 and 20, 2014 by the Circuit Court for Douglas County. Aleshire contends that both warrants lacked probable cause, the affiant omitted material facts, the second warrant cast too wide a net, and neither warrant can be rescued by the good faith doctrine *See* dkt. 12. The government disputes each of these contentions, responding that probable cause supports both warrants, there were no material omissions, the second warrant was not too broad, and, if the court even reaches the good faith doctrine, that doctrine rescues the warrants.

For the reasons stated below, I am recommending that the court deny the motion to quash the warrants. Aleshire is correct that the evidence in support of probable cause is wobbly, but the March 17 warrant is not so bare bones as to be unsalvageable. There were no material omissions from the first warrant, so under the good faith doctrine, the first warrant is valid even if there is no probable cause. The breadth of the second warrant simply reflects cautious–and unremarkable– thoroughness.

The Warrant Applications

Aleshire has attached the warrant applications to his motion, *see* dkts. 12-1 and 12-2. The applications speak for themselves, but I synopsize them here:

(1) March 17, 2014 warrant application

The affiant is Detective Michael Jaszczak, a 19-year member of the Superior Police Department (SPD). Det. Jaszczak seeks a search warrant for 1111 N. 16th Street in Superior, a single family home occupied by Roger Aleshire. Det. Jaszczak wishes to search for and seize evidence of child pornography on cell phones owned or possessed by Aleshire as well as any computer equipment and electronic storage devices. *See* ¶¶ C.-I., dkt. 12-1 at 2.

In support of this request, Det. Jaszczak starts provides seven paragraphs explaining the capabilities and routine uses of cell phones and the internet to access, store, retain and retrieve data such as photographs, text messages, call and contact logs and lists, among other things.

Det. Jaszczak then provides his probable cause to search Aleshire's residence: on March 11, 2014, SPD Sgt. John Kiel spoke to a woman who reported that a couple of days earlier, her nine-year daughter [*hereafter "AV1" for alleged victim number 1*[1]] had spent the night on a sleep-over with one of the Aleshire children, at the Aleshire residence. Afterwards, AV1 told her mother that she had had a strange dream about her friend's father, Roger Aleshire: in the middle of the night during the sleep-over, Aleshire came into the bedroom where she was sleeping, pulled down AV1's underpants and took pictures of her "privates" with his camera phone. AV1's mother told Aleshire about AV1's dream; he responded that he had been in the room with

[1] Det. Jaszczak's affidavit names names, the court will not.

a flashlight looking for his own daughter's headphones. Sgt. Kiel passed this to Det. Jaszczak, who telephoned AV1's mother on March 13, 2014. AV1's mother explained that AV1 sleeps very hard and sometimes sleepwalks. AV1's mother told Det. Jaszczak that AV1 has previously reported that she "dreamt" something that AV1's mother knew actually had occurred. AV1's mother gave an example from a month earlier, when AV1 reported dreaming that she had crawled into bed with her parents when in fact AV1 actually had crawled into bed with her parents. AV1's mother told Det. Jaszczak that she asked Aleshire's daughter if Aleshire had looked for her headphones; she responded, "yeah, I guess."

Det. Jaszczak ran Aleshire's criminal history and learned that in 1994 he had been convicted in Carlton County, Minnesota, of two counts of criminal sexual conduct 1st degree-penetration, with two count more counts dismissed, one of criminal sexual conduct 1st dgree, the other criminal sexual conduct 2nd degree–sexual conduct with a person under age 16. Aleshire had been a registered sex offender for ten years.

The court issued the search warrant, which SPD officers executed on March 18, 2014, while Aleshire was home. They seized seven cell phones but did not arrest Aleshire, who declined to speak to them until he had consulted with an attorney. *See* Supplemental Narrative Report, dkt. 12-2.

Prior to seeking and obtaining this warrant, Det. Jaszczak had been told that when AV1 told Aleshire of her dream, Aleshire responded that the dream was "weird" and that he would never do something like that. Detective Aleshire did not put this exchange in his warrant affidavit.

(2) March 20, 2014 Search Warrant

On March 20, 2014, Det. Jaszczak applied for another warrant to search Aleshire's residence at 1111 N. 16th Street in Superior. This warrant listed 14 categories of items to be seized, including cell phones belonging to or possessed by Roger Aleshire, computer equipment and electronic storage devices of any sort, instruction manuals for computers and other equipment, passwords, website information, photos and cameras (film and digital), developed and undeveloped film, communications with others regarding child pornography, magazines or books that might contain child pornography, pornographic recordings on VHS, DVD or other media.

Det. Jaszczak reported that, based on his training and experience, it was common for people who possessed child pornography to hide this material with adult pornography in material and electronic formats; that child pornography could be bought and traded on the internet; and that child pornography possessors typically retain their material for years. People who possessed child pornography commonly saved it onto their electronic devices, including cell phones, computers, tablets and digital storage devices. Det. Jaszczak explained why it was necessary to seize and search any computer hardware, software, peripherals and manuals at the residence, and explained how the SPD would conduct such searches and why these procedures were necessary.

As probable cause for the warrant, Det. Jaszczak repeated the facts that had led him to seek and obtain the first search warrant for Aleshire's residence. He reported that one of the telephones seized from the residence held photographs of a young girl sitting on the toilet with her pants down to her knees. Det. Jaszczak recognized who this girl was [*Her name is redacted from the application; this court will refer to her as AV2*]. AV2 was nine years old in March 2014 and

she was not a biological child of Aleshire. Det. Jaszczak interviewed AV2, who told him that on several occasions while AV2 was visiting Aleshire's residence, Aleshire had rubbed her back, touched her breasts, her buttocks and "where she goes to the bathroom." In the same interview, AV2 reported that Aleshire had touched her almost every time she had visited his house, which would have been four or five times each week for about two years. Sometime Aleshire touched AV2 over her clothing and under her clothing. The touching occurred in Aleshire's bedroom, where he had a laptop and a televison. Aleshire told AV2 that this was their secret and that she should not tell anyone else that he was touching her.

Analysis

Aleshire's primary argument is that Det. Jaszczak's March 17, 2014 search affidavit did not provide probable cause to issue the first search warrant. As a corollary to this, Aleshire offers a pseudo-*Franks*[2] proffer that Det. Jaszczak omitted a fact from his affidavit–Aleshire's denial to AV1–that would have further weakened the probable cause analysis. Next, Aleshire contends that the good faith doctrine[3] cannot save this warrant because it the affidavit is so bare-bones that Det. Jaszczak could not have reasonably believed that he had probable cause. Aleshire points out that the March 20, 2014 warrant is based on the same deficient facts as the March 17 warrant, plus evidence seized during the execution of that deficient first warrant; therefore, if the first warrant falls, so does the second. Apart from this, Aleshire contends that the March 20 warrant swept too broadly, improperly authorizing the seizure of cell phones and VHS tapes

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[2] *See Franks v. Delaware*, 438 U.S. 154 (1978)

[3] *See United States v. Leon*, 468 U.S. 897 (1984)

without any reason to believe that they would be present. The government concedes nothing, responding that both warrants are valid and that Aleshire's arguments are unpersuasive.

(1) Probable Cause To Issue the March 17, 2014 Warrant

Both sides acknowledge that "a determination of probable cause should be paid great deference by reviewing courts," which are to ensure simply that the issuing court "had a substantial basis for concluding that probable cause existed." *United States v. Scott*, 731 F.3d 659, 665 (7th Cir. 2013), citations omitted. Probable cause is a fluid concept that turns on assessment of probabilities in particular factual contexts; it is established when, based on the totality of circumstances, the application sets forth sufficient evidence to induce a reasonably prudent person to believe that a search will uncover evidence of a crime. *Id.* In issuing a search warrant, the court is given license to draw reasonable inferences concerning where evidence referred to in the affidavit is likely to be kept, taking into account the nature of the evidence and the offense. *Id., quoting United States v. Singleton*, 125 F.3d 1097, 1102 (7th Cir. 1997). As the Court noted 65 years ago in *Brinegar v. United States*, 338 U.S. 160 (1949),

> In dealing with probable cause, . . . as the very name implies, we are dealing with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act.
>
> 338 U.S. at 175.

More recently, the Court observed that:

> The test for probable cause is not reducible to precise definition or quantification. Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence have no place in the probable cause decision. All we have required is the

> kind of fair probability on which reasonable and prudent people, not legal technicians, act.
>
> In evaluating whether the State has met this practical and commonsensical standard, we have consistently looked to the totality of the circumstances. We have rejected rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach. In *Gates,* for example, we abandoned our old test for assessing the reliability of informants' tips because it had devolved into a complex superstructure of evidentiary and analytical rules, any one of which, if not complied with, would derail a finding of probable cause. We lamented the development of a list of inflexible, independent requirements applicable in every case. Probable cause, we emphasized, is a fluid concept– turning on the assessment of probabilities in particular factual contexts– not readily, or even usefully, reduced to a neat set of legal rules.
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> *Florida v. Harris*, ___ U.S. ___, 133 S.Ct. 1050, 1055-56 (2013) (internal quotations and citations omitted).

This is a low evidentiary threshold, requiring only a probability or a substantial chance of criminal activity, not an actual showing of such activity. *United States v. Roth*, 201 F.3d 888, 893 (7th Cir. 2000), *quoting Illinois v. Gates*, 462 U.S. 213, 244 (1983); *see also Gutierrez v. Kermon*, 722 F.3d 1003, 1008 (7th Cir. 2013)(probable cause is a practical, common sense standard that requires only the type of fair probability on which reasonable people act)*; United States v. Jones*, 763 F.3d 777, 795 (7th Cir. 2014) (Probable case is not even proof by a preponderance of the evidence).

Against this jurisprudential template, the parties argue whether Det. Jaszczak's affidavit met this low threshold. Aleshire acknowledges that the particular dream at issue is an odd dream for a child, perhaps beyond the experience of a nine-year old girl, but that this at most raises a

suspicion that provides grounds for further investigation short of a search warrant.[4] contends that dreams are not reality, and that AV1's history of sleepwalking adds nothing to the mix. Aleshire further contends that his prior conviction of sexually assaulting a child is irrelevant to a warrant looking for evidence that he possesses images of child pornography, and he argues that it was a material omission for Det. Jaszczak not to include Aleshire's denial to AV1. Aleshire also points to the equivocal nature of the evidence that he admitted entering the bedroom that night: he had an innocuous explanation for doing so, and his own daughter kind of, sort of, backed him up on that.

The government contests each of these assertions, and the government is right on at least some of them. First, it was immaterial to the probable cause determination for Det. Jaszczak to omit Aleshire's denial to AV1. This is the threshold step for including this omitted fact in the challenged search warrant affidavit. *See United States v. Glover*, 755 F.3d 811, 819-820 (7th Cir. 2014) (defendant must make a substantial preliminary showing of (1) a material omission that would alter the probable cause determination and (2) a deliberate or reckless disregard for the truth); *United States v. Williams*, 718 F.3d 644, 648 (7th Cir. 2013) (evidence seized pursuant to a warrant must be suppressed when the affiant recklessly or deliberately omits facts that would have negated probable cause). Aleshire argues that it was unfair for Det. Jaszczak to include in his affidavit Aleshire's admission that he had been in the room that night without also including the fact that he offered an innocent explanation for his presence. Perhaps this would

[4] Without explicitly saying so, Aleshire is analogizing the "reasonable suspicion" threshold that will justify a police officer performing an investigative detention of a person, but which falls short of probable cause to arrest. *See, e.g., United States v. Beltran*, 752 F.3d 671, 677 (7th Cir. 2014). This dichotomy is irrelevant to the probable cause determination, but it, to use a litotes, it's not irrelevant to the good faith analysis..

have been a more even-handed approach, but that does not make Aleshire's statements to AV1 material to the probable cause determination.

It is not unfairly cynical to suggest that no objective, rational judicial officer would deny an application to search for images of child pornography upon learning that the suspect had assured a confused nine-year old that he really had not pulled down her underwear while she slept in order to photograph her genitalia. *See, e.g., Beauchamp v. City of Noblesville*, 320 F.3d 733, 744 (7th Cir. 2003) (ignoring defendant's alibi was immaterial to the probable cause determination because criminal suspects frequently protest their innocence and a suspect's denial of guilt generally does not trigger a duty to investigate further). To the same effect, it could not have been a reckless or deliberate decision for Det. Jaszczak to exclude Aleshire's denial because no objective, rational police detective would have expected anything except such a denial, which means that Det. Jaszczak could not have been consciously depriving the court of materially exculpatory evidence in the court's consideration of the warrant application. (Picking up on another point in *Beauchamp*, Det. Jaszczak did not have the option of confronting Aleshire personally without first obtaining a warrant because this would have led to a predictable denial and would have given Aleshire the opportunity to dispose of any contraband he might have possessed.

Next, it was proper and relevant for Det. Jaszczak to include Aleshire's criminal record in his warrant application. In *United States v. Wagers*, 452 F.3d 534 (6th Cir. 2006), the defendant appealed his convictions for receiving and possessing child pornography, arguing that the three search warrants leading to the evidence against him were not supported by probable cause. One of Wager's contentions was that it was improper for the court to consider and rely

on his 1997 conviction for possession child pornography in determining probable cause. The court disagreed:

> The test for probable cause . . . is whether there is a fair probability that contraband or evidence of a crime will be found in particular place. The application of this test is not fettered by the presumption of innocence embodied in the test for conviction. Instead, a "person of reasonable caution" would take into account predilections revealed by past crimes or convictions as part of the inquiry into probable cause. . . . When, in our case, the Homeland Security agents uncovered evidence of Wager's connection to the websites carrying child pornography, his prior conviction was relevant, though not dispositive.
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> 452 F.3d at 541.

Law in this circuit is similar. *See, e.g., United States v. Olson*, 408 F.3d 366, 372 (7th Cir. 2005)(defendant's criminal record for similar conduct is relevant and has corroborative value, but alone it cannot serve to corroborate an informant's account; in any event, the good faith exception saves the warrant); *cf. United States v. Peck*, 317 F.3d 754, 757 (7th Cir. 2003) (defendant's criminal record for similar conduct is relevant to probable cause, but does not suffice by itself to corroborate the informant's statements; nevertheless, the good faith doctrine saves the warrant). *See also United States v. Cardoza*, 713 F.3d 656, 660 (D.C. Cir. 2013) (defendant's prior arrest fo selling drugs increased the likelihood he was involving in drug trafficking). *United States v. Vanness*, 85 F.3d 661,663 (D.C. Cir. 1996)(defendant' criminal record could support finding that he was dealing drugs).

Aleshire's attempt to distinguish his prior conviction because it involved actual sexual assault of a minor as opposed to creating or possessing images of child pornography is futile. As the government observes, Aleshire has a documented sexual interest in children. Second, Aleshire is skating on very thin ice when he describes his alleged conduct in terms of electronic

imagery when AV1 reported a dream that involved Aleshire's hands-on contact with a little girl to pull down her underwear while she slept.

These things being so, Aleshire raises a legitimate question: does a child's report of a dream suffice to support probable cause? Does it add much to the probable cause determination that her mother reports that AV1 sometimes reports as a dream events that actually occurred? Perhaps, as the government argues, this is enough, and perhaps the court could uphold the March 17, 2014 warrant on its face. But consider the court's holding in *United States v. Peck*, 317 F.3d 754: where a known adult informant of unknown reliability provides a vague report of her claimed boyfriend's drug trafficking and the only corroboration is the boyfriend's prior record for trafficking drugs, there was no probable cause to support the search warrant. *Id.* at 757. How different is that from this fact scenario? Probably not different enough to distinguish it. But if the court were to conclude that the March17, 2014 warrant was not supported by probable cause, then it is almost certainly valid pursuant to the good faith doctrine. That was the outcome in *Peck*, *see* 317 F.3d at 757, and that should be the outcome here.

(2) Good Faith

Pursuant to *United States v. Leon*, 468 U.S. 897, even if a search warrant is invalid because the supporting affidavit failed to establish probable cause, evidence seized in executing the warrant should not be suppressed if the officers relied in good faith on the judge's decision to issue the warrant; in fact, the officers' decision to obtain a warrant is treated as prima facie evidence that the officer was acting in good faith. *See United States v. Miller*, 673 F.3d 688, 693 (7th Cir. 2012). A defendant can defeat the good faith exception by showing: (1) the issuing

judge abandoned his/her detached and neutral judicial role; (2) the officer was dishonest or reckless in preparing the affidavit; or (3) the warrant was so lacking in probable cause that the officer could not reasonably rely on the judge's issuance of it. *Id.*

Apart from his claim that Det. Jaszczak deliberately withheld material information from the court (which I discuss in the previous section), Aleshire focuses his attack on the government's resort to good faith by arguing that "for the simple fact that a dream is not reality, no reasonable person could ever believe in a warrant based on a dream." Def. Brief in Support, dkt. 19 at 10. This is not entirely true. Wisconsin state courts have had occasion to deal with assertions in child sexual assault cases that the child was dreaming, and the courts have had no difficulty incorporating dreams and claims of dreams into legal proceedings. *See, e.g., State v. Brown,* 311 Wis.2d 489 at ¶ 7 (table) (App. 2008)(child victim claims to have slept through sexual assault but knew he wasn't dreaming because he had a different dream that night); *Kelly s. V. Myron H.*, 305 Wis.2d 377 at ¶ 28 & n.15 (table)(App. 2007)(child reports sexual assault by her mother both "in a dream" and "for real"; court issues temporary restraining order, holds a trial, finds that mother did not abuse the child); *State v. Jagielski*, 171 Wis.2d 771 at *4 (table)(Wis. App. 1992)(four year old child volunteers to adult that she had a bad dream about what defendant had done to her; court finds statements sufficiently reliable to be admissible at defendant's trial for sexually assaulting this child) *State v. Pulizzano*, 155 Wis.2d 633, 639, 634, 656 (1990) (seven year old child's report of dreams of sexual assault led to conclusion he had been sexually assaulted prior to the defendant allegedly assaulting him in the same way, and should have been admitted at trial to show another basis for the child's sexual knowledge; the dreams themselves, however, would not be admitted); *State v. Pete*, 152 Wis.2d 772 at *1

(table)(app. 1989) (court allows neuropsychologist to testify that it is uncommon for children to fabricate stories of sexual behavior; court also rejects defendant's suggestion that the child was reporting a dream). It is presumed that the state court considering Det. Jaszczak's warrant application was familiar with cases like these. *Cf., Wright v. Walls*, 288 F.3d 937, 952 (7th Cir. 2002) (it would be inappropriate to presume a state court did not know and follow state law).

Most of these cases are unreported, and they don't have much in common with each other. Even so, they are relevant to this court's good faith analysis because they would provide a basis for a state court to determine that a nine-year child's report of a dream of sexual contact while she was sleeping should not be dismissed out-of-hand. At the very least, these cases show that the state court was not venturing into legal *terra incognita* by choosing to give some credence in the corporeal world to what AV1 reported as having happened in a dream. This is all the more true when the child's mother reports that the child has previously reported actual events as dreams, and when the adult identified in the dream has a prior criminal record for sexual assault of a minor.

In short, the March 17, 2014 warrant application was not so lacking in probable cause that the issuing judge could viewed simply as a rubber stamp, or Det. Jaszczak should be foreclosed from relying on it. The court should uphold the warrant pursuant to the good faith doctrine. Because this warrant was not "poisoned fruit,"reporting the results of its execution did not taint the March 20, 2014 warrant application. Both warrants are valid.

(3) The Breadth of the March 20, 2014 warrant

Finally, Aleshire argues that there was no basis for Det. Jaszczak to request authorization in the March 20, 2014 warrant application to seize any cell phones or VHS tapes. It is not clear to the court why this matters, but the government opposes the motion, so I assume that there must be some evidence on one of these items that helps the government and does not help Aleshire.

Aleshire argues that the police had no basis to search for cell phones because they had just seized all the cell phones in the house three days prior, and he states that there was no basis at all to search for VHS tapes. Dealing with the second point first, in paragraph "C" on page "1-2" of the application, Det. Jaszczak refers to video format as a common place to hide child pornography. VHS is a video format and it is not so out of date that the court would have reason to question this assertion. *See, e.g., United States v. Nania*, 724 F.3d 824, 828 (7th Cir. 2013)(search recovered a VHS tape of child pornography); *United States v. Ferguson*, 669 F.3d 756, 759 (6th Cir. 2012)(2009 search recovers computer, web cam, 3 cameras with film, a cassette tape and 7 8mm movie reels).

As for the cell phones, Aleshire's contention would resonate more strongly if cell phones were time consuming or expensive to obtain, but they're not. Why should any law enforcement agency self-limit its ability to gather all evidence that might be present on the premises? Further, having already found child pornography on a telephone seized from Aleshire on March 17, *see* March 20 application at ¶ (12), any phone that they would have found on March 20, 2014 would have been subject to seizure even if cell phones weren't specifically listed as a type of electronic storage medium. *See, e.g., United States v. Buckley*, 4 F.3d 552, 557 (7th Cir. 1993)("where a warrant permits the search for firearms, the officers need not stop just because they

found one. Likewise, officers in search of marijuana and 'other controlled substances' certainly would not be expected to put the cocaine back where they found it.")

In sum, Aleshire has provided no basis to suppress any items seized during execution of the March 20, 2014 warrant.

RECOMMENDATION

Pursuant to 42 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Roger J. Aleshire's motion to suppress evidence seized during execution of the two challenged search warrants.

Entered this 20th day of October, 2014.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
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October 20, 2014

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Re: United States v. Roger Aleshire
Case No. 14-cr-79-jdp

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 October 31, 2014, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by October 31, 2014, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

/s/
Connie A. Korth
Secretary to Magistrate Judge Crocker

Attachment

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 (7th Cir. 2006).