

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID G. WENZEL,

Defendant.

ORDER

15-cr-63-bbc

Defendant David G. Wenzel has filed objections to the report entered by United States Magistrate Judge Stephen Crocker on September 23, 2015, recommending denial of defendant's motion to suppress evidence seized under a search warrant issued by a state court judge. From my review of the objections, the magistrate judge's report and the briefing of the initial motion to suppress, I conclude that defendant's objections are without foundation and that the seizure of the evidence was legal.

To summarize the relevant facts: A mother dropped off her child at defendant's home; when she returned later, she happened to notice in the powder room a red light pointed directly at a person sitting on the toilet. She removed the vent covering the light and found a camera lens with a red light; the camera itself was wrapped in electrical tape. The mother complained to Deputy Barr of the Rock County Sheriff's Department, who checked defendant's criminal record, saw that he was on the Sex Offender Registry and had been

convicted of attempted first degree sexual assault and possession of an electronic weapon in 1997. Another deputy, Detective Brian Meister, applied for a warrant to search defendant's residence in Rock County, attaching a detailed list of items, including video tapes, film, video recording devices, computers, pornographic materials, DVDs and cellular phones. He attested to his training and experience in investigating crimes involving computers and in operating as an undercover internet user investigating people trying to exploit children and he said he had read Deputy Barr's report. He added that he had confirmed that defendant was on the Sex Offender Registry, that he knew from his training and experience that persons who record others in the nude without their knowledge will store and retain the images for long periods of time, that there are websites devoted to the clandestine recording of others in the nude, that these websites allow the sharing of images and videos and that video cameras can be connected to multiple recording devices, such as VCRs, DVD recorders, DVR devices, and that they can broadcast live to the internet.

Det. Meister sought a warrant for a search directed to finding a wide array of devices, all related to the filming, storage and dissemination of images. The warrant was granted by a Rock County circuit judge and executed the same day.

Subsequently, the sheriff's office sought a second warrant to obtain evidence of sexual assault of children. That warrant is not a subject of defendant's motion to suppress; counsel assumes that if his challenge to the first warrant succeeds, the second warrant will fall as well.

Defendant challenges the informant's statement to the sheriff as insufficiently reliable and the corroboration of the informant's statement as insufficient. In addition, he contends

the warrant was overbroad in its description of things to be searched for and the places to be searched. As the magistrate judge explained thoroughly and persuasively, none of defendant's objections to the warrant justifies exclusion of the evidence seized under it.

Det. Meister had information from an identified source that she had found a camera directed at the toilet in defendant's powder room; he had no reason to think she was unreliable and he knew that defendant had a history of sex crimes. This was sufficient to provide probable cause for the issuance of a search warrant. It was certainly reasonable for the issuing judge to think that the search was likely to uncover evidence of criminal activity and that the broad-ranging nature of the items sought was appropriate in light of the known array of devices that can be used to film, record, store, transmit and share visual images. This is not a situation in which the judge issuing the warrant exceeded constitutional bounds.

In short, defendant has failed to show that this court should not adopt the magistrate judge's report and recommendation.

ORDER

IT IS ORDERED that the report and recommendation issued by the United States Magistrate Judge in this case on September 23, 2015 is ADOPTED by the court and defendant David G. Wenzel's motion to suppress evidence obtained as a result of the search

of his premises is DENIED.

Entered this 9th day of October, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge