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

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS DREWNIAK,

Defendant.

OPINION AND ORDER

15-cr-93-wmc

The grand jury charged defendant Thomas Drewniak with one count of being a felon in possession of firearms and ammunition. (Dkt. #2) In response, Drewniak moved to quash the evidence underlying his indictment, which he claims was obtained during the execution of an illegal March 30, 2015, state search warrant for his residence, along with his statements to the police after that search. (*See* dkt. #16.)

Specifically, Drewniak contends that the warrant was not supported by probable cause. (*See* dkt. #16.) The government disputes this contention, but as a fallback, also invokes the good faith doctrine articulated in *United States v. Leon,* 468 U.S. 897 (1984). (*See* dkt. #18.) Drewniak subsequently replied (*see* dkt. #19), leaving both the warrant and the suppression of the fruits of its execution for the warrant in this court to decide.

For reasons discussed below, the court finds the warrant was supported by probable cause. To the extent this might be viewed as a close call, however, the court also finds that the *Leon* good faith doctrine would prevent suppression of evidence of his possession of the firearms and ammunition, as well as his resulting statements to the police.

BACKGROUND[1]

On March 30, 2015, Detective Arthur Jaquish of the Eau Claire Police Department ("ECPD") filed an application for a search warrant in the Circuit Court for Eau Claire County. The property to be searched was the first floor apartment of a residence at 711 East Grand Avenue in Eau Claire, along with a detached garage and three specific automobiles located on the premises. Detective Jaquish sought authority to search for weapons (including firearms and knives), ammunition, paper records reflecting the purchase or use of firearms, cell phones and other electronic devices used to send or receive communications or perform research, garbage containers and their contents, "any evidence and/or items capable of inflicting bodily injury" and "any evidence of violence or disputes."

Jaquish advised the court that he had been a law enforcement officer for eight years, during which time he had attended many training sessions and investigated many cases, including those involving felons with guns. Jaquish further represented that he was investigating Thomas Drewniak, a known felon, who was born Dec. 19, 1976, and living at 711 East Grand Avenue in Eau Claire, based on a tip received a week earlier, on March 23, 2015, by ECPD Sgt. Gary Axness who received a telephone call from a known citizen (referred to in this opinion as "KC-1").[2]

---

[1]Drewniak submitted the application and affidavit for the warrant. (Dkt. #16-1) While the affidavit speaks for itself as a legal matter, the following summarizes the basic, material representations made to the state court in support of the warrant's issuance.

[2] While Detective Jaquish uses KC-1's actual name in his affidavit, the parties have, albeit half-heartedly, redacted the actual identities of some of the citizen witnesses. However, these names were *not* consistently redacted in some of the parties' submissions. Accordingly, if either side wishes to keep these names from disclosure, they should move for the sealing of specific documents. Nonetheless, from the copies of documents filed with this court, the court will not use the citizens' actual names in its opinion.

Over the telephone, KC-1 advised Sgt. Axness that he wanted to provide information about a felon in possession of a firearm. As the owner of a fast food restaurant on Kennedy Road in Chippewa Falls, KC-1 claimed to be familiar with Thomas Drewniak, who frequented the restaurant. KC-1 also knew that Drewniak worked nearby at Spectrum in Chippewa Falls and dated several of the female employees at the restaurant. In conversations with KC-1, these women reported that Drewniak had told them that he had served time in an Illinois prison for murder. KC-1 researched this online and confirmed that Drewniak actually had a murder conviction in Illinois. One of his employees (named in the affidavit and referred to here as "KC-2 ") also told KC-1 that she had seen firearms in Drewniak's apartment in Eau Claire. KC-1 thought this information should be investigated by the police.

According to Detective Jaquish, Sergeant Axness telephoned KC-2 to follow up. KC-2 told Axness that she had been friends with Drewniak for about two months and confirmed being at his apartment in Eau Claire. KC-2 saw firearms in Drewniak's apartment on several occasions. Most recently on Saturday, March 21, 2015, KC-2 had seen a black handgun in the bathroom on the back of the toilet. She had also seen the same handgun in the same position on several earlier dates. KC-2 also reported seeing at least one rifle in Drewniak's bedroom closet, along with several knives. According to KC-2, Drewniak occasionally answered the door with a gun in his hand. At one point KC-2 called Drewniak "crazy," but was unable to elaborate on what she meant. In response to Sergeant Axness's questions, KC-2 expressed her belief that these were real firearms, not airsoft or bb guns.

On March 26, 2015, KC-2 met with an officer and provided a written statement, confirming her previous oral statement to Sergeant Axness that Drewniak had a handgun in the

bathroom and a rifle in his bedroom closet. Although KC-2 was not sure of Drewniak's street address, she described the residence as a first floor apartment in a large white house, and she also explained how one would drive there, starting eastbound on Main Street. KC-2 further described Drewniak's vehicles as "an old white squad car," another white car and a green car.

Sergeant Axness learned on his own that Drewniak had in the past listed 711 East Grand Avenue as his address. This location matched that described by KC-2. On March 28, 2015, ECPD officers also drove past 711 East Grand Avenue to check for vehicles and saw on the property a white Crown Vic,[3] a white Chevy Malibu and a maroon Chrysler Concord.

Finally, a criminal record check showed that Drewniak had been convicted of murder and armed robbery on June 13, 1996, in Cook County, Illinois, and that he had been sentenced to 25 years' imprisonment on each conviction. Detective Jaquish averred that in his training and experience, felons who possess firearms often keep their weapons and records around their residences, garages and vehicles.

OPINION

I. Probable Cause

A reviewing court must afford great deference to the decision of the judge issuing a search warrant and is to uphold the finding of probable cause in the face of a motion to quash "so long as the issuing judge had a substantial basis to conclude that the search was reasonably likely to

[3] "From 1997 into the early 2010s, The Crown Victoria Police Interceptor was the most widely used automobile in law enforcement operations in the United States and Canada." https://en.wikipedia.org/wiki/Ford_Crown_Victoria_Police_Interceptor.

uncover evidence of wrongdoing." *United States v. Reichling*, 781 F.3d 883, 886 (7th Cir. 2015) (quoting *United States v. Aljabari*, 626 F.3dd 940, 944 (7th Cir. 2010)). Needless to say, 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 cause is not even proof by a preponderance of the evidence). As the Seventh Circuit explained recently in *United States v. Aleshire*, 787 F.3d 1178, 1178 (7th Cir. 2015), "a warrant-authorized search must be sustained unless it is pellucid that the judge who issued the warrant exceeded constitutional bounds."

Probable cause itself is established based on the totality of the circumstances, provided that the supporting affidavit sets forth sufficient evidence to induce a reasonably prudent person to believe that a search will uncover evidence of a crime. *Reichling*, 781 F.3d at 886. While the judge must be neutral, "the law does not require judges to pretend they are babes in the woods." Judges are allowed to consider what is or should be common knowledge. *Id.* at 883 (quoting *United States v. Seiver*, 692 F.3d 774, 778 (7th Cir. 2012)). In reviewing a warrant application, the judge is simply to make a practical, common sense decision whether there is a fair probability that contraband or evidence of a crime will be found in a particular place, given all the circumstances set forth in the affidavit. Taking into account the nature of the evidence and the offense, the judge may also draw reasonable inferences concerning where the evidence referred to in the affidavit is likely to be kept. *Reichling*, 781 F.3d at 887 (quoting *Seiver*, 692 F.3d at

778; *Scott*, 731 F.3d at 665 (quoting *United States v. Singleton*, 125 F.3d 1097, 1102 (7th Cir. 1997)).

As the Supreme Court noted 66 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.

Id. at 175. More recently, the Supreme Court reemphasized 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.

Florida v. Harris, ___ U.S. ___, 133 S.Ct. 1050, 1055-56 (2013) (internal quotations and citations omitted).

Here, the most salient information supporting the warrant application came from the restaurant employee KC-2, who having dated Drewniak, credibly claimed to have seen a

handgun and a long gun in his apartment in the same locations on multiple occasions. In evaluating KC-2's reliability, the court is to consider: (1) the degree to which her report is based on firsthand observation; (2) the amount of detail she provided; (3) the extent to which the police corroborated her report; and (4) the interval between the date she saw the firearms and the date that the officers applied for the search warrant. *United States v. Thompson*, ___ F.3d ___, 2015 WL 5306311, at *2 (7th Cir. Sept. 11, 2015). No single factor controls; a weakness in one may be overcome by other factors. *Id.; see also United States v. Glover*, 755 F.3d 811, 816 (7th Cir. 2014)(reliability, veracity and basis-of-knowledge are all highly relevant, but a deficiency in one may be compensated for by some other indicia of reliability). In applying the factors, the court may also give more weight to information provided by a named witness, since she can be held responsible should the information provided prove to be misleading to the police. *See United States v. Searcy*, 664 F.3d 1119, 1123 (7th Cir. 2011); *see also United States v. Koerth*, 312 F.3d 862, 871 (7th Cir. 2002) (court considering a warrant affidavit may give greater weight to a tip from a known informant).

Focusing then on KC-2, she provided a detailed, first-hand account of repeated, recent gun sightings. Moreover, she had no discernable motive to lie or to curry favor with the police. Hoping to blunt the force of this account, Drewniak stoops to misogynic speculation to dirty up KC-2, observing without foundation that she "actually sounds like a scorned ex-girlfriend with an ax to grind." (Dkt. #16 at 7; *see also* dkt. #19 at 6 ("it is more reasonable to infer the informant holds a grudge than she has no bias at all"). But as the reviewing court, I am limited to averred facts and reasonable inferences.

Not only does the suggestion of bias on K-2's part amount to rank speculation, the evidence is all to the contrary. According to Detective Jaquish's affidavit, it was KC-2's boss who called the police, not KC-2; Sergeant Axness then reached out to KC-2 to see if she could confirm what KC-1 had reported second hand; KC-2 answered their questions, apparently guilelessly; and the officers were able to confirm KC-2's statements as to the location of Drewniak's residence and cars.[4]

The fact that KC-2 provided the same account to three different people on three different days further burnishes the reliability of that account by virtue of its consistency. By sticking with her story when questioned by Sergeant Axness, and then actually hand-writing a consistent version of her narrative on a police report form, KC-2 doubled-down. Rather than waffling, recanting or clamming up, KC-2 told essentially the same version of events. This is a further, strong indicium of KC-2's reliability. *See Searcy*, 664 F.3d at 1123 (quoting *Koerth*, 312 F.3d at 871 (court considering a warrant affidavit may give greater weight to a tip from a known informant who can be held responsible should she be found to have given misleading information to the police)). In short, there is *no* basis on this record to find the issuing judge lacked a substantial basis to conclude that the search was reasonably likely to uncover evidence of wrongdoing.

---

[4]Despite acknowledging that the probable cause determination is "limited to the four corners of the document itself" (dkt. #16, at 1), Drewniak makes one other blatant attempt to draw outside the lines, alerting this court that "in fact, [KC-2] has prior worthless check violations and two misdemeanor convictions for theft-false representation . . . which the officer could have easily discovered." (*Id*. at 7.) If Drewniak had wanted to go outside the four corners of Detective Jaquish's affidavit to accuse him of intentionally or recklessly omitting material information, however, he should have asked for a *Franks* hearing. *See Franks v. Delaware,* 438 u.s. 154 (1978). He did not. Perhaps if any of the Eau Claire police officers *had* known of KC-2's criminal record, then Detective Jaqquish would have been obliged to include this in his affidavit. Regardless, Drewniak's attorneys must have concluded that they could not make the required substantial preliminary showing of such police misconduct. *See Franks*, 438 U.S. at 155-56.

II. The Good Faith Doctrine

Even if there were some doubt to the facial validity of the search warrant for Drewniak's residence, the product of that search would be salvaged by the good faith doctrine. If a search warrant is subsequently deemed invalid for lack of probable cause, evidence seized during execution of the warrant will generally not be suppressed if the officers relied in good faith on the judge's decision to issue the warrant. *See Reichling*, 781 F.3d at 889 (citations omitted). Indeed, the decision to obtain a warrant itself is *prima facie* evidence that the officer was acting in good faith. To overcome this evidence of good faith, a defendant must show one of these things: (1) the issuing judge abandoned the 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. This the defendant has not and cannot do.

In *Reichling*, the Seventh Circuit observed that the search warrant application was poorly written but nevertheless concluded that "while we do not endorse this affidavit as a model for other officers to follow, this is not one of those unusual cases in which exclusion will further the purpose of the exclusionary rule." *Id*. (quoting *Leon*, 468 U.S. at 918); *see also Thompson,* 2015 WL 5306311 at *3 (despite a weak search warrant affidavit that relied on a confidential informant, police did enough to be entitled to rely on the good faith doctrine). Similarly, notwithstanding Drewniak's unsubstantiated potshots at KC-2, or vague criticism of the "thinness" of Detective Jaquish's affidavit[5], there were no other obvious investigative avenues

[5]While Detective Janquish did not check all the boxes on the informant reliability template, what he did was enough at least to get the benefit of the good faith doctrine given a totality of the circumstances. He was neither dishonest nor reckless in preparing

available to the police here. Having received a citizen's complaint from KC-1, having interviewed KC-2, having had KC-2 provide a written statement, and having verified the location of the apartment, the presence of the three cars, and the existence of Drewniak's criminal record, the police concluded that they had enough evidence to run their application past a judge to see if he agreed. As the Court noted in *Leon*,

> It is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant comporting in form with the requirements of the Fourth Amendment. In the ordinary case, an officer cannot be expected to question the [judge's] probable-cause determination or his judgment that the form of the warrant is technically sufficient. Once the warrant issues, there is literally nothing more the policeman can do in seeking to comply with the law.

468 U.S. at 921 (citation omitted*).*

In the end, this is simply not one of those unusual cases in which suppression of improper evidence will further the purpose of the exclusionary rule, *Leon*, 468 U.S. at 918, making "application of the extreme sanction of exclusion inappropriate." *Id.* at 926.

ORDER

IT IS ORDERED that defendant's motion to suppress (dkt. #16) is DENIED.

Entered this 9th day of November, 2015.

BY THE COURT:
/s/
William M. Conley
District Judge

---

his affidavit. Even if there were room to question whether the search warrant actually is supported by probable cause, Det. Jaquish's affidavit is not so bare-bones that he could not reasonably rely on the court's issuance of the warrant.