

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD GEASLAND,

Defendant.

OPINION & ORDER

15-cr-132-jdp

Defendant Richard Geasland is charged with one count of possessing child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). Geasland has moved to suppress: (1) all evidence and derivative evidence discovered as a result of the first search warrant issued in this case; and (2) the statements Geasland made to law enforcement officers while they executed the first search warrant and his later admissions following his arrest. Dkt. 16 and Dkt. 17. On February 16, 2016, the magistrate judge issued a Report and Recommendation that Geasland's motion to suppress the first search warrant be denied in full and that the motion to suppress admissions be denied with the exception of one inconsequential statement. Dkt. 38. Geasland objects generally to the magistrate judge's recommendations and contends that: (1) the good faith exception cannot save the first search warrant; and (2) his statements to law enforcement in his home were not voluntary. Dkt. 41.

Pursuant to 28 U.S.C. § 636(b)(1) and this court's standing order, I am required to review de novo the objected-to portions of the Report and Recommendation. Geasland does not point to specific errors in the Report and Recommendation; he stands on his earlier submissions. Accordingly, I have reviewed the parties' briefs and the materials submitted with them, particularly the body-cam video made during the execution of the first search warrant.

I will adopt the magistrate's recommendation concerning the first search warrant: the warrant lacks probable cause but it is salvageable under the good faith doctrine. But I will not adopt the recommendation concerning Geasland's statements during the execution of the first search warrant. I agree with the magistrate judge that Geasland was in custody during the execution of the warrant. But I conclude that Geasland made the incriminating statements in response to interrogation by Special Agent Van Schoyck. Accordingly, I will grant Geasland's motion to suppress most of his statements made during the execution of the first search warrant. I will not, however, grant the motion to suppress Geasland's statements made after he was informed of his *Miranda* rights.

ANALYSIS

I have reviewed the record. Neither party has raised any objection to the facts as set forth in the Report and Recommendation, and, accordingly, I adopt those factual findings.

A. Motion to suppress first search warrant

Neither party objects to the magistrate's recommendation that probable cause did not support the first search warrant. I agree with the magistrate's careful analysis, which concludes that a completely uncorroborated statement by a citizen informant without a track record is not sufficient to establish probable cause. This is an avoidable problem of law enforcement's own making: had Chief Terpstra corroborated Geasland's status as a convicted sex offender and included that information in the warrant application, the warrant would have been supported by probable cause.

Geasland objects to the magistrate's conclusion that the good faith exception saves the otherwise deficient warrant. "The good faith exception prevents operation of the exclusionary

rule if the police officer's reliance on a search warrant was objectively reasonable." *United States v. Glover*, 755 F.3d 811, 818 (7th Cir. 2014) (citing *United States v. Leon*, 468 U.S. 897, 922-23 (1984)). A law enforcement officer's decision to obtain a warrant is *prima facie* evidence that the officer was acting in good faith. *United States v. Reichling*, 781 F.3d 883, 889 (7th Cir.), *cert. denied*, 136 S. Ct. 174 (2015). But *Leon's* good faith exception will not save a deficient warrant when: (1) the affiant misleads the issuing judge with a reckless or knowing disregard for the truth; (2) the issuing judge wholly abandons his impartial role; or (3) the affidavit is "bare bones" or "so lacking in indicia of probable cause" that reliance is unreasonable. *Glover*, 755 F.3d at 818-19 (citing *Leon*, 468 U.S. at 923). Nothing in the record suggests that the issuing judge abandoned his detached and neutral judicial role or that Chief Terpstra was dishonest or reckless when preparing his affidavit, and Geasland does not offer any argument on either of these points. Thus, the question is whether the warrant was so lacking in probable cause that Chief Terpstra could not have reasonably relied on its issuance.

"[T]o determine whether an officer could have relied in objective good faith on the magistrate's decision to issue a search warrant, we limit our inquiry to whether the officer could have reasonably believed that the materials presented to the magistrate judge . . . were sufficient to establish probable cause." *United States v. Koerth*, 312 F.3d 862, 869 (7th Cir. 2002). The government has cited cases in which uncorroborated statements establish probable cause. Dkt. 36, at 5 (citing *Gramenos v. Jewel Companies, Inc.*, 797 F.2d 432 (7th Cir. 1986); *United States v. Decoteau*, 932 F.2d 1205 (7th Cir. 1991)). Although the circumstances of those cases do not pertain here, the existence of those authorities shows that an officer could reasonably believe that a warrant issued on an uncorroborated statement was valid.

Leppert's sworn statement, and Chief Terpstra's affidavit in support of her statement, were not plainly deficient. Leppert's sworn statement was filled with factual detail that made it facially plausible, despite the fact that law enforcement did not corroborate any of its material contents. As the magistrate pointed out, "Leppert provided [a] vivid and disturbing account, rich in details that if true, would suffice to establish probable cause that Geasland was looking at child pornography on his computer." Dkt. 38, at 9-10. The fact that Chief Terpstra met with Leppert and had the opportunity to judge her credibility and ask her questions also indicates that he relied on her statements in good faith.

Leppert stated that Geasland said he accessed the photos on a "private network where naked pictures of children are there to view." Dkt. 18-2, at 6. I do not agree that either Chief Terpstra or the issuing judge had to rule out the possibility that Geasland might have been looking at child erotica rather than child pornography. Probable cause does not require certainty. Besides, the information from Leppert strongly suggested that Geasland was looking at pornography. Leppert reported that Geasland confessed that he often spent time "looking at young girls/children on a porn site online." *Id.* The fact that Leppert recounted Geasland describing the photos as "pornography" and acknowledging that he accessed the material over a private network more than suggested that the images were not innocuous.

I will adopt the magistrate's recommendation and hold that the good faith exception saves the otherwise deficient first search warrant. Because Geasland's objections to the second warrant depend entirely on the fact that it refers back to the first, I will not suppress any evidence that law enforcement obtained as a result of either warrant.

B. Motion to suppress admissions

Neither party objects to the magistrate's recommendation that I conclude that Geasland was in custody while law enforcement executed the first search warrant. Geasland was tackled and handcuffed when the officers arrived. They took the cuffs off only after he promised "complete cooperation," and they would not let him leave the kitchen. I will adopt this recommendation. There is no dispute that Geasland was not informed of his *Miranda* rights during the execution of the warrant. The question is whether Geasland's statements were the result of interrogation or whether they were voluntary.

I do not agree with the magistrate's conclusion that Geasland's statements were voluntary. Based on my review of Chief Terpstra's body-cam video of officers executing the first search warrant, I conclude that SA Van Schoyck interrogated Geasland during the search.

Interrogation includes not only "express questioning" but also "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response." *United States v. Jones*, 600 F.3d 847, 854 (7th Cir. 2010) (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)). *Miranda* does not require courts to exclude voluntary statements that are not the product of police interrogation; "[i]f a defendant makes a statement in response to words or actions by the police that do not constitute interrogation or if the defendant himself initiates further communications, the police are not prohibited from merely listening to his voluntary statement." *Id.* at 854-55 (citation and internal quotation marks omitted). A statement is voluntary if, "in light of the totality of the circumstances, [it] is the product of a rational intellect and free will and not the result of physical abuse, psychological intimidation, or

deceptive interrogation tactics that have overcome the defendant's free will." *United States v. Richardson*, 657 F.3d 521, 525 (7th Cir. 2011) (quoting *United States v. Dillon*, 150 F.3d 754, 757 (7th Cir. 1998)).

The magistrate (like the government) took a granular approach to the issue and concluded that all but one of Geasland's incriminating admissions were uttered without police prompting,¹ because Geasland's incriminating statements did not follow immediately after particular pointed questions from SA Van Schoyck. But—looking at the totality of the circumstances—the context of the exchange with Geasland shows that SA Van Schoyck calculated to elicit incriminating statements, and that Geasland was thus “interrogated.”

Near the beginning of the recording, SA Van Schoyck tells Geasland that she is from the Department of Justice and that her purpose is to talk with him about “what is happening here.” She soon reiterates that she is there to talk to Geasland. Despite the fact that he is handcuffed, SA Van Schoyck tells him that he is not under arrest. But one of the officers (apparently Chief Terpstra) tells Geasland that they “need your full cooperation before we get these handcuffs off.” These are not pointed questions, but in context it is clear that SA Van Schoyck is trying to get Geasland to talk about why the officers are executing a search warrant.

SA Van Schoyck soon turns to more pointed questions. She reiterates that he is not under arrest, and he volunteers that he soon will be. She asks, “Why will you be?” Geasland says “Because I gave them the fucking hard drive.” After a few more exchanges, Geasland says

¹ The Report and Recommendation determined that law enforcement elicited one incriminating statement by Geasland: “Because I’m going to prison, that’s why.” Neither party objects to the recommendation that I suppress this statement. Thus, I will adopt the magistrate’s recommendation.

that the hard drive has embarrassing stuff on it. SA Van Schoyck asks, “Can you tell me what it is?” He says, “It’s some porn.” Over the next couple of minutes, she presses on, asking about Geasland’s computers and the hard drive, trying to get Geasland to consent to letting the officers look at the contents of the hard drive. After Van Schoyck tells Geasland that the search warrant covers all the electronics, Geasland tells Van Schoyck to put the cuffs back on, and that the hard drive has child porn on it. After that, Geasland makes other incriminating statements, such as that he will be spending the rest of his life in prison.

The government submitted an exhibit that purports to show that Geasland’s incriminating statements did not directly follow pointed, express questions from SA Van Schoyck. Dkt. 36-2. But this takes too narrow a view of “interrogation,” which includes not only express interrogation, but any statement that a reasonable officer should know is likely to elicit an incriminating response. Judging the interchange as a whole, as I must, SA Van Schoyck plainly intended to elicit incriminating statements from Geasland without *Mirandizing* him. Even Geasland recognized the technique and calls her out for it:

Why do you people try to con people? The only reason you didn’t want to arrest me in the first place is because you wanted to pump me for information and you’re not gonna convince me any different on that. Once you arrest me you have to read me my *Miranda* rights.

Dkt. 36-1, at 7. Van Schoyck’s interview with Geasland involved a mix of suggestion, implication, and pointed questions. But it leaves no doubt that her interview was calculated to, and was reasonably likely to, elicit incriminating statements. I will grant Geasland’s motion to suppress the statements made during the interview in his home, after SA Van Schoyck says, “I am a special agent with the Department of Justice. I want to talk with you about what’s happening here.” For clarity, I will not suppress statements Geasland made

before this point, including the incriminating statements he made when the officers entered the apartment and handcuffed him.

Geasland contends (somewhat summarily) that suppression of his admissions in his home requires suppression of his later admissions at the Cuba City Police Department, pursuant to *Missouri v. Seibert*, 542 U.S. 600 (2004).

Seibert condemns the police technique of withholding a *Miranda* warning until after an incriminating statement is elicited, after which the officer *Mirandizes* the suspect and obtains essentially the same statement. “[I]f the interrogators employ the technique of withholding warnings until after interrogation succeeds in eliciting a confession, the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content.” *Seibert*, 542 U.S. at 613. As the magistrate observed in the Report and Recommendation, *Seibert* offers two tests for evaluating “two part” interrogation techniques: the plurality focuses on whether mid-stream warnings could be effective enough to accomplish their objective, whereas Justice Kennedy focuses on the officer’s intent. The Seventh Circuit has yet to favor one approach over the other. *See United States v. Lee*, 618 F.3d 667, 678 (7th Cir. 2010) (“[T]wo tests have emerged from *Seibert*; this Court has yet to choose which test should govern.”).

Under the plurality’s test, courts consider several factors when weighing whether “mid-stream” warnings are effective: (1) “the completeness and detail of the questions and answers in the first round of interrogation”; (2) “the overlapping content of the two statements”; (3) “the timing and setting of the first and the second” interrogations; (4) “the continuity of police personnel”; and (5) “the degree to which the interrogator’s questions treated the second round as continuous with the first.” *Seibert*, 542 U.S. at 615.

Although Geasland was subjected to un-*Mirandized* custodial interrogation in his home, as discussed above, *Seibert* does not require exclusion of his later admissions. The two interrogations were separated by time and location. The interview at the police station took place 60 to 90 minutes after the interview in his home. The character of the interrogation changed substantially: as the Supreme Court noted in *Seibert*, the transition between questioning in one's home and the police station presents a "markedly different experience." *Id.* (discussing *Oregon v. Elstad*, 470 U.S. 298 (1985)). More significantly, SA Van Schoyck's first interrogation was far from complete and detailed. Her 18 minutes of questioning did not explore the underlying details of Geasland's allegedly criminal conduct. Law enforcement spent much of their time discussing his personal safety, the nature of the search, and whether Geasland would consent to the search. By way of comparison, Geasland's interrogation at the police station lasted two hours. I also note that Geasland made incriminating statements when the officers entered his apartment, and that the officers had these statements and the detailed statement from Leppert to guide their interrogation at the police station. And, applying Justice Kennedy's alternative intent-based test, nothing in the record suggests that law enforcement intended to use the prohibited two-step interrogation technique. The bottom line is that the officers did not need the incriminating statements that I have suppressed to conduct an effective post-*Miranda* interview with Geasland.

I will grant Geasland's motion to suppress the statements made during the interview in his apartment, but I will deny the motion as it relates to the statements made at the police station.

ORDER

IT IS ORDERED that Defendant Richard Geasland's objection to the Report and Recommendation, Dkt. 41, is OVERRULED IN PART and SUSTAINED IN PART, and the Report and Recommendation is ADOPTED IN PART. Defendant's motion to suppress the first search warrant, Dkt. 16, is DENIED. Defendant's motion to suppress admissions, Dkt. 17, is GRANTED IN PART and DENIED IN PART, as provided in this Opinion and Order.

Entered March 10, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge