

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

REPORT AND
RECOMMENDATION

SIDNEY MATHEWS,

03-CR-138-S

Defendant.

REPORT

Before the court is defendant Sidney Mathews's motion to suppress physical evidence (dkt. 15). Mathews withdrew his motion to suppress statements (dkt. 14) and motion to dismiss Count 1 (dkt. 17) at the preliminary pretrial conference. I declined to take evidence on this motion for reasons stated during the December 9, 2003 telephonic status conference. In light of this decision, Mathews declined to brief his motion but has asked for a ruling on it. For the reasons stated below, I am recommending that the court deny Mathews's motion.

Facts

Because I denied Mathews's request for an evidentiary hearing, for the purposes of this report and recommendation I will accept as true the facts proffered in his motion to suppress, dkt. 15 at 1-2. To synopsise, on July 17, 2003, James Leeson, Mathews' father-in-law, reported to a local sheriff's deputy that Mathews had stopped by the Leeson's house in Duluth to accuse Leeson's daughter (Mathews's wife) of having stolen Mathews's Pontiac

Grand Am and \$3000. Lesson reported that his daughter actually *had* stopped by driving Mathews's car, which contained a bag of marijuana. Leeson reported that his wife and daughter were going to drive Mathews's car and marijuana to Mathews's father's house at 909 North 12th Street in Superior, where Mathews was staying. The women did just this, taking the marijuana out of the Grand Am and transporting it in the mother's car, then returning it to the Grand Am's trunk upon arriving at 909 North 12th Street.

Minnesota sheriffs drove to the residence in Superior and were met there by Superior police. Mathews was there with his father, James Mathews. According to Mathews, the police detained him pending further investigation. The police then explained to James Mathews why they were there. James told the police that he owned the Pontiac Grand Am, but that he let Sidney drive it; he also reported that the van parked on the premises was registered to him (James) but that Sidney "owned" it. James agreed to let the officers search his house, the Grand Am and the van, then signed a "Permission To Search" form, a copy of which is attached to this report.¹ The police searched the house and the vehicles, recovering the evidence that Sidney Mathews has moved to suppress.

¹ According to police reports Sidney Mathews also consented to searches of the vehicles, but it is not clear if Sidney is stipulating to this, so I am not finding it as a fact.

Analysis

In his motion to suppress, Mathews contends that the police did not have reasonable suspicion or probable cause to believe he was engage in criminal activity, and they had no reason to conclude that he or his father knew about the marijuana in the trunk of the Grand Am; therefore, the police had no grounds to detain him and no grounds to seek permission to search the cars or the residence. Mathews's theory is that his wife planted the marijuana in the Grand Am to frame him.

Which may or may not be true, but it is irrelevant to the suppression analysis, as is Mathews' invocation of reasonable suspicion and probable cause:

The probable cause and warrant requirements of the Fourth Amendment are not applicable where a party consents to a search, where a third party with common control over the searched premises consents, or where an individual with apparent authority to consent does so.

United States v. Melgar, 227 F.3d 1038, 1041 (7th Cir. 2000).

Thus, the owner of a car has the authority to consent to that car's search, even if he shares the car with someone else. See *United States v. Jensen*, 169 F.3d 1044, 1048-49 (7th Cir. 1999)(police obtained valid consent to search car driven by defendant from defendant's stepfather, who owned car and shared it with defendant). A person's consent to search his automobile includes consent to search closed containers within the car unless those containers belong to a third party and someone tells the police this. See *United States v. West*, 321 F.3d 649, 651 (7th Cir. 2003); *United States v. Saadeh*, 61 F.3d 510, 518 (7th Cir. 1995); *United States v. Navarro*, 169 F.3d 228, 232 (7th Cir. 1999).

Here, the government has established that James Mathews consented in writing to the challenged searches. James Mathews had actual authority to consent because he owned the Grand Am, the van and the residence. Therefore, no unreasonable searches occurred and Sidney Mathews is not entitled to the suppression of evidence.

RECOMMENDATION

Pursuant to 28 U.S.C. §636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Sidney Mathews's motion to suppress evidence.

Entered this 31st day of December, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge