

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DUSTIN SACHSENMAIER,

Defendant.

ORDER

03-CR-0091-C-01

Defendant Dustin Sachsenmaier has filed objections to the report and recommendation entered by United States Magistrate Judge Stephen L. Crocker on October 17, 2003. The magistrate judge recommended denial of defendant's motions to suppress the statements he made to law enforcement officers and his motion to quash the search warrant for his residence. In those motions, defendant contended that he was in custody from the time that a law enforcement officer asked him to step out of his car and, because the officer did not give him any Miranda warnings, anything defendant said to the officer should be suppressed. He contended that the search warrant was invalid because it contained a recklessly inaccurate statement to the effect that he had said to a clerk at the store where he purchased \$125 worth of Sudafed that he made his own methamphetamine. The magistrate

judge found that defendant was not in custody until the officer put him in handcuffs; therefore, the officer had no obligation to give defendant any Miranda warnings in the early stages of the encounter. The statements defendant made to the officer before he was handcuffed were not subject to suppression. The magistrate judge found with respect to the search warrant that defendant was correct in challenging the statement he made to the clerk because the complaining officer had no reliable evidence that defendant had made the statement but that even if the disputed statement was redacted, the warrant was sufficient to establish probable cause to search defendant's residence.

Defendant raises two objections to the recommendation. (1) The magistrate judge erred in finding that defendant was not in custody as soon as Officer Rasmussen directed him to step out of his car and answer questions; and (2) the magistrate judge came to the wrong conclusions when he found that the search warrant provided probable cause to search defendant's residence even after inaccurate information had been deleted from it. In addition, defendant notes that the magistrate judge recommended that all the statements defendant made to Rasmussen before he was handcuffed should be admissible and that all statements he made after being handcuffed should be suppressed. Relying on this recommendation, defendant argues that the court should suppress his incriminating statement to Rasmussen about using an empty pen tube to ingest methamphetamine, which he made after he had been hand-cuffed. The difficulty with this argument is that defendant

never raised it before the magistrate judge. Consequently, the parties never adduced evidence bearing on the circumstances in which defendant made the statement and the magistrate judge had no reason to discuss the statement in his report and recommendation. Even now, despite the fact that it is defendant's burden to set forth in his objections his reasons for arguing that the magistrate judge erred, he does not explain why he thinks the statement should be suppressed, other than to say that he made it after he had been placed in handcuffs. Without an argument to consider, there is no need to address the admissibility of the empty pen tube statement. Other than objecting to the admissibility of this statement, defendant does not contest the magistrate judge's treatment of defendant's post-arrest statements. I assume, therefore, that defendant accepts the magistrate judge's conclusion that these statements defendant were voluntary and intelligent, despite defendant's fatigue and prior use of methamphetamine.

I agree with the magistrate judge's conclusions on the admissibility of defendant's pre-arrest statements. Defendant was not in custody until Officer Rasmussen handcuffed him. A reasonable person in defendant's position would have thought himself free to leave the site. The fact that Officer Rasmussen was uniformed at the time he was asking defendant questions does not necessitate any other conclusion. Rasmussen did not use force, commanding words or a threatening tone of voice. "[T]he questioning of a suspect in a 'coercive environment,' in the absence of a formal arrest or restraint on freedom, does not

convert automatically a noncustodial situation into a custodial interrogation.” United States v. Jones, 21 F.3d 165, 170 (7th Cir. 1994).

As to the sufficiency of the search warrant, the magistrate judge was correct in concluding that the warrant was sufficient even without the improper inclusion of defendant’s alleged statement to the effect that he “makes his own” methamphetamine. Defendant was in possession of an LP tank that tested positive for the presence of anhydrous ammonia, which is used to produce methamphetamine; three weeks earlier he had bought \$125 worth of Sudafed, another common ingredient in methamphetamine. It was reasonable for law enforcement officers to conclude from these facts that defendant was not simply a person with a very bad cold who had a good reason for transporting anhydrous ammonia inside a passenger car.

ORDER

IT IS ORDERED that the recommendations of the United States Magistrate Judge are ACCEPTED and that defendant Dustin Sachsenmaier’s motions to suppress the statements he made before and after he was arrested and to suppress the evidence seized in

a search of his residence are DENIED.

Entered this 4th day of November, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge