

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK P. HEATH,

Defendant.

REPORT AND
RECOMMENDATION

04-CR-44-C-01

REPORT

Before the court is defendant Mark Heath's motion to suppress physical evidence seized from his residence. For the reasons stated below, I am recommending that the court deny this motion.

On September 8, 2004, this court held an evidentiary hearing on Heath's motion. Having heard and seen the witnesses testify, having judged their credibility, and having considered the exhibits, I find the following facts:

Facts

In 1999, investigators in Trempeleau and Eau Claire Counties were conducting a joint fraud investigation of Mark Heath and Jerry Wendt. The suspects allegedly were using counterfeit checks to buy motor vehicles, including a Honda ATV and two full-sized pickup trucks. On September 27, 1999, investigators were able to track down and arrest Heath and Wendt at a Trempeleau County bank. Wendt promptly confessed, reporting that all three

vehicles currently were located at Heath's business, located on the same lot as his home in Eau Claire County. On September 27, 1999, at 5:45 p.m., Eau Claire County Sheriff's Department Detective Sergeant John Vogler sought and obtained from the state circuit court a warrant to search Heath's residence and adjoining business.

While Detective Vogler was obtaining the warrant, Sheriff's Detective John Strenski was surveilling the Heath residence in case anyone tried to move the trucks before Vogler arrived with the warrant. Vogler showed up at about 6:10 p.m. Both detectives, attired in sports coats and ties with no weapons visible, knocked on the door and were greeted by Heath's wife, Deborah Heath. The detectives introduced themselves, showed identification, explained that they had a warrant to search, and asked for cooperation. Mrs. Heath agreed to assist. The entire conversation was cordial and conversational. Neither detective threatened Mrs. Heath, made any threatening gestures, raised his voice, or did anything else that could be deemed coercive.

The detectives made a cursory search of the residence, then searched the adjoining business for records, with Mrs. Heath tagging along. Although the detectives intended to look for the missing pickup trucks in the garage of the Heaths' home, they forgot. The actually-executed portion of the search took about an hour.

So, it would have been past seven o'clock when the detectives drove away. As he departed, Detective Vogler called his counterpart in Trempeleau County to report that they had not found the trucks. Apparently the Trempeleau County detective asked a question

to the effect of “So the garage was empty?” This prompted a sheepish epiphany; Detective Vogler radioed Detective Strenski and both men forthwith returned to the Heath residence to seek permission for a garage search.

Detectives Vogler and Strenski again knocked on the door and spoke to Mrs. Heath a second time. Detective Vogler asked for permission to search the garage. Mrs. Heath expressed bewilderment, observing that the detectives had a search warrant. Detective Vogler explained that the executed warrant did not provide authority to enter and search the property a second time. Mrs. Heath agreed to let the detectives into the garage. They all walked to the driveway whence Mrs. Heath opened the garage door. The two trucks were jammed inside. The detectives seized both and ended the search.

The next day, September 28, 1999, Detective Vogler learned that the GMC truck had been sold to Heath with a front-end snowplow attached. Detective Vogler remembered seeing such a snowplow in the Heaths’ yard. On September 29, 1999 Detective Vogler applied for and obtained a new search warrant for the snowplow. Detective Vogler had a wrecker pick it up from the yard, apparently without contacting anyone in the residence.

Analysis

Heath has moved to suppress the trucks and snowplow seized from his residence on two grounds: first, he claims that the detectives performed a search before obtaining a warrant; second, he claims that the detectives coerced Mrs. Heath into consenting to a

warrantless search. As became clear during her testimony, Mrs. Heath is alleging that the warrantless search and coercion occurred simultaneously during her *first* encounter with the detectives. Now that I have heard and seen her testify, I conclude that Mrs. Heath's story is a preposterous and shameless fabrication.

Two examples will suffice: according to Mrs. Heath, when the detectives *first* came to her door, they never showed her a warrant, but angrily threatened to break windows and kick in the door if she did not *consent* to a search. Mrs. Heath described one detective as fairly calm and reasonable, but the older one furiously paced, shouted and gesticulated, which frightened Mrs. Heath into submitting to their demands. Mrs. Heath says no one ever showed her a warrant.

This alarming tale, spun from the stand by Mrs. Heath with robotic dispassion, offends logic and common sense (as well as Mrs. Heath's oath as a witness). Why would veteran detectives clutching a fresh, valid warrant hide it from the suspect's wife and needlessly behave so obstreperously? They wouldn't and they didn't. Everything played out routinely, just as Detective Vogler testified at the hearing. Mrs. Heath's contrary contentions are offensively unbelievable.

Second, although Mrs. Heath demonstrated a vivid memory for details that she thinks support suppression (for instance, the purported "good cop / bad cop" routine), she doesn't recall the rather pivotal fact that two full-sized pickup trucks were crammed into her garage like elephants in a refrigerator. We're talking 9000 pounds of Detroit steel here, but Mrs.

Heath has no recollection whether any such trucks graced her garage that evening, or that the detectives saw them, squeezed them out and seized them. An odd memory lapse by someone testifying in support of a motion to suppress the trucks that, by Mrs. Heath's account, might not have been there at all.

Deborah Heath's testimony was astoundingly untrue. The detectives never conducted a pre-warrant search, they never said or did anything that even arguably could be construed as coercive or overbearing, and they obtained valid consent before looking in Heath's garage.

The parties do not quibble over the law regarding the need for a valid warrant or for voluntary consent to search. Heath's suppression motion hangs completely on the facts and I have resolved all factual disputes against him. To grant suppression in this case would be to reward willfully false testimony.

RECOMMENDATION

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

Entered this 20th day of September, 2004.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge