

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

CORTLAND A. SHELLY,

Defendant.

ORDER

05-CR-024-C

On April 11, 2005, defendant Cortland A. Shelly filed a motion to suppress evidence derived from his February 17, 2005 arrest, contending that the police seized him without a warrant, probable cause, or any other exception to the warrant requirement. See Dkt. 10. I am denying this motion because defendant has waived it by failing to brief it.

On February 25, 2005, this court issued a scheduling order advising defendant that if he wanted an evidentiary hearing on any pretrial motion, he was required to provide a nonconjectural factual basis establishing a prima facie entitlement to the relief requested pursuant to United States v. Toro, 359 F.3d 879, 885 (7th Cir. 2004). See Dkt. 5. On April 11, 2005, defendant filed the instant motion to suppress and requested an evidentiary hearing. At an April 13, 2005 telephonic hearing, the magistrate judge denied defendant's

request for an evidentiary hearing on his suppression motion because defendant had not made the required prima facie showing. Nonetheless, the court required the government to amplify the record with additional reports about the challenged incident, and it allowed the parties to brief the motion. Defendant's first brief in support was due by April 26, 2005. See Dkt. 12. The government promptly filed its additional reports. See Dkt. 13.

Thereafter, defendant did not file a brief in support of suppression. The only submission by defendant was his motion to substitute counsel, which the court granted on the condition that all previously-scheduled dates and deadlines remained in effect. See Dkt. 14. On May 3, 2005, the government wrote to the court and defendant's new attorney to verify that no brief had been filed and that the government assumed defendant had abandoned his motion. See May 3, 2005 Letter from Assistant U. S. Attorney Vaudreuil in the correspondence file. This prompted the magistrate judge to leave a telephonic message with replacement counsel on May 4, 2005 seeking confirmation of this apparent waiver. As of May 13, 2005, the court received no response.

Failure to brief a claim constitutes waiver. Hildebrandt v. Illinois Department of Natural Resources, 347 F.3d 1014, 1025, n. 6 (7th Cir. 2003); Rodriguez v. United States, 286 F.3d 972, 977, n. 3 (7th Cir. 2002). Therefore, defendant has waived his motion to suppress by failing to brief it.

In any event, a review of the record establishes that the motion was meritless. The

magistrate judge found that defendant had not even made a prima facie showing of entitlement to relief. The police reports subsequently submitted by the government clearly establish that the agents had probable cause to arrest defendant. Defendant suffered no violation of his Fourth Amendment rights, and it was reasonable for his counsel not to pursue this matter further.

ORDER

IT IS ORDERED that defendant Cortland A. Shelly's motion to suppress evidence is DENIED.

Entered this 16th day of May, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge