

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

GEORGE L. GOINS,

Defendant.

OPINION AND ORDER

05-CR-04-C-01

Defendant George L. Goins has filed objections to the United States Magistrate Judge's report and recommendation, which was entered on April 15, 2005. The magistrate judge recommended denial of both defendant's motion to suppress evidence seized in a search of his residence and his motion to suppress statements he made to the police on the day after the search.

Defendant objects to the recommended denial of his motion to suppress evidence on the ground that the La Crosse police officers did not have reason to believe that defendant's girl friend had authority to consent to a search of defendant's residence. He characterizes the evidence in their possession as wholly insufficient: her story that, although she had her own apartment elsewhere in the city where her children lived, she stayed regularly at

defendant's residence, did his laundry and cooked meals for him and that she had her own key to the apartment. Defendant notes that none of the officers ever testified that she claimed to have the key with defendant's permission and adds that when the officers carried out the search, they found very few items of clothing or toiletries in the residence that appeared to belong to a female.

Despite defendant's objections, I am persuaded that the magistrate judge's recommendation is the correct one. The facts available to the officers justified their decision to search the residence. A person of reasonable caution in the same position would have believed that defendant's girl friend had authority over the premises so that her consent made their entry into his residence lawful. The girl friend's possession of a key to the residence and her statements that she spent time at the residence, did defendant's laundry and helped maintain the household would have given the officers reason to believe that she had access to the entire residence, with the exception of the attic, which she told the police she was not allowed to enter. United States v. Rodriguez, 888 F.2d 519 (7th Cir. 1989) (wife's possession of key to estranged husband's janitor's office gave her apparent authority to consent to search of office).

Not only did the officers double-check her statement but they called the district attorney to see whether they needed a search warrant and were told by an assistant district attorney that they could enter without a warrant. Their decision to enter was a reasonable

one. When determining whether a person appears to be in a position to give consent to a search, police officers' obligation is to make the determination *reasonably*. The law does not require perfect accuracy. Illinois v. Rodriguez, 497 U.S. 177, 185-86 (1990).

The validity of the search was not undercut by the officers' failure to find more of the girl friend's personal items than they might have expected. They did see personal belongings on the premises, including clothing and cooking utensils; this supported her story.

As the magistrate judge noted, the officers did not have reason to believe that the girl friend had apparent authority to consent to a search of the gun case under the sofa. However, the doctrines of plain view and inevitable discovery save the search of the case and the seizure of the gun within the case.

Defendant has little support for his contention that his statements should be suppressed, once the search has been held reasonable. He testified at the evidentiary hearing that he did not understand the Miranda form he signed and that he told Investigator Byerson three times that he had nothing to say to him, but Byerson continued to question him nevertheless. From my own reading of defendant's testimony, I find it not credible. It is not reasonable to believe that defendant could have been arrested as often as he has been and not know what a Miranda warning is or understand what it means to remain silent.

I conclude that defendant's objections do not require rejection of the magistrate judge's recommendations. Therefore, I will adopt them and deny defendant's motions to

suppress evidence.

ORDER

IT IS ORDERED that the report and recommendation entered by the United States Magistrate Judge is ADOPTED and defendant George Goins's motions to suppress the evidence seized in a consent search of his residence and his statements to law enforcement on December 9, 2004 are DENIED.

Entered this 26th day of April, 2005.

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