

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TODD A. TEMPLETON,

Defendant.

ORDER

07-CR-0018-C-01

Defendant Todd A. Templeton has filed objections to the report and recommendation entered in this case by United States Magistrate Stephen L. Crocker. Defendant contends that the magistrate judge erred in finding that the police had probable cause to impound his automobile and search it for evidence relating to the robbery of the Wells Fargo Bank in West Baraboo, Wisconsin on December 12, 2006. Although the existence of probable cause is a close question, I conclude that the magistrate judge was correct in his recommendation to deny defendant's motion to suppress the evidence found in the search of his vehicle.

On December 16, 2006, officers from the Village of Oregon, Wisconsin located a car in the parking lot of an apartment complex. They, and officers from other localities had

been looking for the car in response to a teletype issued by the Sauk County Sheriff's Department. According to the teletype, the department was looking for a suspect in a bank robbery, the suspect had been driving a Honda Accord with a specific license plate and officers should use caution because a weapon threat had been made during the robbery. When the Oregon officers observed the vehicle from outside, they saw plastic packaging in the back seat that looked as if it had held a pellet gun. They did not observe a pellet gun. The officers reported the sighting to the Sauk County authorities, who asked them to impound the car and take it to their lot, where Sauk County deputies searched it without a warrant and recovered certain items that defendant wants suppressed.

The magistrate judge held that probable cause supported the search: defendant's ex-wife and mother had identified him as the subject of pictures taken by bank surveillance cameras during the robbery; his ex-wife had told officers what kind of car defendant drove and its license number and that she had seen him in it about three hours after the robbery; defendant had made a threat of a weapon during the robbery; and pellet gun packaging was visible in the car. Defendant makes a strong argument that this information falls short of establishing probable cause: defendant did not brandish a gun during the robbery; when defendant's car was located, it was parked, unoccupied and not being used for any illegal purpose; and the pellet gun packaging had no reasonable connection to the robbery. What use would a pellet gun be to a robber, defendant asks, if he does not show it to the victim

or at least carry it as a “threatening lump” in his clothing?” Certainly it would be useless if the victim demonstrated resistance. Defendant adds that at the time of the search the police had no information indicating that defendant had possessed an actual weapon or anything that looked like a weapon.

As ably as defendant argues, I am not convinced that probable cause did not exist to search defendant’s car. The link between the packaging and defendant’s threat is not strong, but it is sufficient to permit a search of a car. It is not a leap to think that a robber who refers to a weapon during a robbery might have one, even if he does not display it, or to think that evidence of a pellet gun might be linked to the threat. The magistrate judge was correct to conclude that the packaging was “indicative of other illegal activity,” United States v. Hines, 449 F.3d 808, 814 n.5 (7th Cir. 2006), so as to support a search. Having probable cause, the officers did not need a warrant. The automobile exception to the warrant requirement of the Fourth Amendment relieves law enforcement officers of the need to obtain a warrant when they have probable cause to believe that a search will uncover evidence of a crime. Id. at 814.

ORDER

IT IS ORDERED that the recommendation of the United States Magistrate Judge to deny defendant Todd A. Templeton’s motion to suppress evidence obtained during a search

of his car is ADOPTED; the motion to suppress is DENIED.

Entered this 1st day of June, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge