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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFERY, L. LORANGER,

Defendant.

REPORT AND RECOMMENDATION

07-CR-82-S

REPORT

The grand jury has indicted defendant Jeffery L. Loranger for unlawful possession of a firearm by a felon. Before the court for report and recommendation is Loranger's motion to suppress the shotgun recovered from his apartment building during a warrantless search authorized by Loranger's state parole officer. *See* dkt. 20. For the reasons stated below, I am recommending that this court deny Loranger's motion to suppress.

On August 9, 2007 this court held an evidentiary hearing on Loranger's motion. Having heard and seen the witnesses testify and having considered all of the parties' documents and exhibits, I find the following facts:

FACTS

In January 2007, Jeffery Loranger, then 59 years old, was serving a Wisconsin state sentence of parole arising out of 1999 state convictions involving drugs and guns and a 2003 bail jumping conviction. Loranger's parole officer was John Weinheimer. In Wisconsin, a person serving a sentence of parole must submit to myriad statutory and regulatory conditions; among other things, he may not possess firearms, *see* Wis. Admin. Code § DOC 328.044(3)(j), and he

must make himself available for searches of his residence and property upon order of his parole officer, *id.* at § DOC 328.044(3)(k). A parole officer may search a parolee's residence only "if there are reasonable grounds to believe that the quarters or property contain contraband." *Id*. at § DOC 328.21(3).

Loranger was living at 215 South Bedford Street in Madison, less than three blocks from the Greyhound Bus Station at 2 South Bedford. Loranger had a 23 year old son, Eliah Dinur-Loranger, and a 21 year old daughter, Gabriel Dinur-Loranger. Loranger's criminal record included a 1975 federal conviction in Arizona for assaulting a federal officer with a deadly weapon.

Also in January 2007, a man named Travis T. Walsh was serving a Wisconsin state sentence of probation. His probation officer was Mary Jones. On January 30, 2007, P.O. Jones received a telephone call from the Montana Highway Patrol (MHP) reporting that on January 29, 2007, troopers had caught Walsh transporting ten pounds of marijuana. Walsh was snitching out the supplier in California and the recipients in Madison. P.O. Jones immediately passed this information to Detective Steve Wegner on county's drug task force.

Detective Wegner telephoned MHP Trooper Glenn Quinnell. Trooper Quinnell reported that Walsh had described a large marijuana growing operation on Coffee Creek Road in Ferndale, California, two participants in which were a brother & sister named Eliah and Gab. Walsh had told Trooper Quinnell that Eliah & Gab's dad was an older man named Jeff who lived in Madison near the bus station at West Washington and Bedford, and could not leave the state of Wisconsin. Walsh reported that Jeff had served time for shooting a police officer several years ago. According to Wash, Jeff had a shotgun that he kept at his residence behind a door.

Detective Wegner researched this information in police data bases and triangulated "Jeff" "Eliah" and "Gab," deducing that Jeffery Loranger was the man Walsh was talking about in Madison. Upon discovering that Loranger was on parole, Detective Wegner telephoned P.O. Weinheimer, who filled in some of the blanks, such as Loranger's address on Bedford near the bus station and his 1975 conviction for shooting a DEA agent in Tucson. Detective Wegner passed along Walsh's report that Loranger kept a shotgun in his residence.

P.O. Weinheimer forthwith requested and received from his supervisor permission to search Loranger's home for a shotgun. He co-ordinated the parole search with his colleagues and with drug task force agents. P.O. Weinheimer summoned Loranger downtown and advised him that probation officers were going to search Loranger's residence that afternoon. Task force agents then handcuffed Loranger. Loranger told P.O. Weinheimer that there would be "a little bit" of marijuana at his residence.

An entourage of parole officers and task force agents drove to 215 South Bedford with Loranger in tow. Task force agents conducted a protective sweep of Loranger's apartment, then P.O. Weinheimer and two of his colleagues conducted the search. In the apartment they found over two ounces of marijuana buds, loose marijuana, paraphernalia and other indicia of marijuana use and sales, but no firearms. In the basement they found a 12 gauge shotgun and shells in a hard case.

ANALYSIS

Loranger challenges the search of his residence on the ground that it was unreasonable, even under the low evidentiary threshold that applies to searches of parolees. In *Griffin v. Wisconsin*, 483 U.S. 868 (1987) the Court upheld Wisconsin's regulations governing parole searches (which require supervisory approval and "reasonable grounds" to believe the presence of contraband), because a state's operation of its probation system presented a special need for the exercise of supervision to assure that probation restrictions are in fact observed. *Id*. at 870, 875. This special need justified the regulation and the search conducted pursuant to it. *Id.* at 875-80; *see also United States v. Knights*, 534 U.S. 112, 117 (2001).

In *Knights*, the Court clarified that showing "special needs" was not a prerequisite to a warrantless search of a parolee; rather, the question is whether the search was reasonable under the totality of circumstances, with the parolee's obligation to submit to searches being one of the salient circumstances. 534 U.S. at 118-19. Such an obligation significantly diminishes a parolee's reasonable expectation of privacy, in contrast to the state's strong interest in preventing recidivism by persons already once-convicted of crimes. *Id*. at 120-21. Therefore, parole officers may conduct warrantless searches whenever they have reasonable suspicion that a parolee subject to a search condition is engaged in criminal conduct. *Id.* at 121-22. *See also United States v. Hagenow*, 423 F.3d 638, 642 (7th Cir. 2005)(probationer who signed unconditional waiver of rights regarding probation searches was subject to searches based on reasonable suspicion without the need for probable cause or a warrant).

It is of no legal consequence that Wisconsin's regulations allow probation searches only if there are "reasonable grounds" as opposed to the unconditional search waiver presented in *Knights*. The Court explicitly declined to decide whether the Fourth Amendment would permit suspicionless searches of probationers based on a waiver, finding no need to address this issue in a case where the state had a reasonable suspicion justifying the search. *Knights*, 534 U.S. at 120, n.6. In other words, since the Court limited its holding to endorsing probation searches based on reasonable suspicion, a parolee's consent to allow reasonable searches is enough to lower his reasonable expectation of privacy. Therefore, the operative question in this case is whether reasonable suspicion supported the search of Loranger's residence.[1]

Reasonable suspicion amounts to something less than probable cause but more than a hunch and it exists when there is some objective manifestation that a person is engaged in prohibited activity. *Hagenow*, 423 F3d at 642. In *Griffin*, the Court found reasonable grounds to search a probationer's residence for firearms based on

> the unauthenticated tip of a police officer–bearing ... no indication whether its basis was firsthand knowledge or, if not, whether the firsthand source was reliable, and merely stating that Griffin 'had or might have' guns in his residence, not that he certainly had them.

Griffin, 483 U.S. at 878.

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[1]The Court's analysis in *Griffin* does not help answer this question. In *Griffin*, the Court explicitly declined to determine whether the challenged search would have been constitutionally reasonable in the absence of the state's regulatory scheme. *Id*. at 872-73. This is the question the Court answered in *Knights*: it could be, depending on the circumstances. Therefore, in a federal prosecution, constitutional reasonableness does not depend on whether the search of a state probationer's residence complied with state regulations. *See United States v. Brack* 188 F.3d 748, 759 (7th Cir. 1999).

The court explained:

> We think it reasonable to permit information provided by a police officer, whether or not on the basis of firsthand knowledge, to support a probationer search. The same conclusion is suggested by the fact that the police may be unwilling to disclose their confidential sources to probation personnel. For the same reason, and also because it is the very assumption of the institution of probation that the probationer is in need of rehabilitation and is more likely than the ordinary citizen to violate the law, we think it enough if the information provided indicates, as it did here, only the likelihood ('had or might have guns') of facts justifying the search.

Id. at 880.

If this is really the threshold of reasonable suspicion, then P.O. Weinheimer could have searched 215 South Bedford on nothing more than Detective Wegner's unadorned statement that he believed Loranger might have a shotgun in his apartment. This can't be right: such a statement could be based on nothing more than an inchoate, unparticularized suspicion or hunch, which would not provide reasonable suspicion to justify official action.

Reasonable suspicion require a bit more, such as an informant's detailed statement corroborated at least in part by the police. *See, e.g., United States v. Ganser*, 315 F.3d 839, 843 (7th Cir. 2003); *United States v. LePage*, 477 F.3d 485, 488 (7th Cir. 2007)(reasonable suspicion for *Terry* stop provided by detailed report of suspicious behavior from an identified citizen witness). When determining reasonable suspicion, officers may surmise that if an informant is shown to be right about some things, then he probably is right about others, including claims that the suspect is engaged in criminal activity; this is all the more true if the tip accurately predicts future behavior or reports facts only an insider would know. *United States v. Price*, 184 F.3d 637, 640 (7th Cir. 1999)

Here, the font of information was Walsh, a rogue probationer who got caught in Montana ferrying marijuana from Loranger's children in California to their customers in Wisconsin. Loranger complains that there were too many intermediaries between Walsh's lips and Weinheimer's ear, but both Trooper Quinnell and Detective Wegner were trained law enforcement officers whose reports of Walsh's statements likely would be accurate on the salient points. Walsh provided a wealth of detail about Eliah and Gab's operation in Ferndale, along with "by-the-way" information about their dad in Madison. True, Walsh didn't predict Loranger's future behavior or demonstrate inside information (other than the presence of the shotgun), but the rich detail of his report coupled with the collateral, off-handed nature of these observations lent credibility to them. Obviously Walsh wasn't going to get much consideration for snitching out an old man with a gun; the children, Eliah and Gab were his path to expiation. Having no strong motive to get Loranger in trouble, Walsh's detailed recollection of Loranger's criminal history, apartment near the bus station, and possession of a shotgun were sufficiently believable to establish reasonable suspicion to search, particularly since the police were able to corroborate points (1) and (2) about the shooting and the apartment.

In closing, I note that perhaps the suppression analysis could have begun and ended with this fact: before the search began, Loranger admitted that the probation officers would find marijuana at his place. Statements against penal interest are presumed reliable. *See United States v. Olson*, 408 F.3d 366, 371 (7th Cir. 2005); *United States v. Garey*, 329 F.3d. 573, 578 n.5 (7th Cir. 2003). Loranger essentially volunteered probable cause to believe that evidence of a crime would be found on the premises.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Jeffery L. Loranger's motion to suppress evidence.

Entered this 30th day of August, 2007.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
120 N. Henry Street, Rm. 540
Post Office Box 591
Madison, Wisconsin 53701

Chambers of
STEPHEN L. CROCKER
U.S. Magistrate Judge

Telephone
(608) 264-5153

August 30, 2007

Grant Johnson
Assistant United States Attorney
P.O. Box 1585
Madison, WI 53703-1585

Ronald Benavides
Benavides Law Office
520 University Avenue, #225
Madison, WI 53703

Re: United States v. Jeffery L. Loranger
Case No. 07-CR-0082-S

Dear Counsel:

The attached Report and Recommendation has been filed with the court by the United States Magistrate Judge.

The court will delay consideration of the Report in order to give the parties an opportunity to comment on the magistrate judge's recommendations.

In accordance with the provisions set forth in the newly-updated memorandum of the Clerk of Court for this district which is also enclosed, objections to any portion of the report may be raised by either party on or before September 10, 2007, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by September 10, 2007, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

/s/ S. Vogel for

Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures
cc: Honorable John C. Shabaz, District Judge