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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEONTE L. WILLIAMS,

Defendant.

REPORT AND RECOMMENDATION

07-CR-059-C

REPORT

This is a gun case in which defendant Deonte Williams has moved to suppress the handgun and ammunition seized from his apartment during a warrantless search by Williams's state probation officer. *See* dkt. 12. For the reasons stated below, I am recommending that this court deny Williams's motion to suppress.

The parties have submitted the operative state reports to the court, from which I find the following facts:

FACTS

In May, 2006, Deonte Williams began serving a sentence of state probation following convictions involving firearms, battery and bail jumping. Williams's probation officer was Michelle Eggers. On May 8, 2006, Williams signed off on his probation rules, which included a firearms prohibition and making himself available for searches of his residence and property. Wisconsin's administrative code allows searches of a probationer's residence only "if there are reasonable grounds to believe that the quarters or property contain contraband." Wis. Admin. Code § DOC 328.21(3).

In early October, 2006, PO Eggers received a report from the group facilitator for Williams's CGIP Group[1] that Williams had informed the group that

> he is always 'packing' to protect himself, indicating that he always has a gun. He proceeded to go into details about shooting incidents he has been involved in.

See "Home Search Report," dkt. 12 at 4.

PO Eggers obtained permission from her supervisor to search Williams apartment, enlisted fellow POs to assist with the search, and enlisted Beloit police officers to provide security. This search occurred on October 9, 2006. PO Eggers found a box of .25 caliber ammunition in Williams's bedroom. She reported this to the police officers on the scene, who verified the find. The police officers then spoke with the lessee of the apartment, Patrice Freeman, who provided consent to search the entire apartment, including Williams's room, to which she had complete access. Police found a loaded .25 caliber Beretta handgun in a shoe box full of Williams's documents.

ANALYSIS

Williams claims that the warrantless probation search of his residence was unreasonable because it failed to comply with all applicable requirements of Wisconsin's regulatory scheme, as required by *Griffin v. Wisconsin*, 483 U.S. 868 (1987). In *Griffin*, the Supreme Court upheld Wisconsin's regulations governing probation searches because a state's operation of its probation system presented a special need for the exercise of supervision to assure that probation

[1] Which most likely stands for Cognitive Group Intervention Program, which would address "criminal thinking" by participants.

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 probationer; rather, the question is whether the search was reasonable under the totality of circumstances, with the probationer's obligation to submit to searches being one of the salient circumstances. 534 U.S. at 118-19. Such an obligation–which in *Knights* was unconditional–significantly diminishes a probationer'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. The Court explicitly declined to decide whether the Fourth Amendment would permit suspicionless searches of probationers based on a blanket waiver, finding no need to address this issue in a case where the government had a reasonable suspicion justifying the search. *Knights*, 534 U.S. at 120, n.6. In other words, a limited consent to search still would trigger the totality of circumstances/reasonable suspicion analysis.

Therefore, when an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal conduct, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable without the need to obtain a warrant. *Id.* at 121-22. *See 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).

As a result, the Court's decision in *Griffin* has little relevance here, notwithstanding Williams's persistent attempts to impose *Griffin* as the lens through which the legal perspective must be forced. In *Griffin*, a state defendant challenged the warrantless search conducted by his state probation officer. The Court concluded that Wisconsin's regulatory scheme governing probation searches comported with the Fourth Amendment and therefore provided adequate justification for the search. *Id*. at 872-73. The Court explicitly declined to answer the question whether such a search would have been constitutionally reasonable in the absence of a regulatory scheme. *Id.* This is the question it answered in *Knights*: the reasonableness of a warrantless probation search does not depend on the existence of, let alone compliance with, a state statutory scheme.

Therefore, there is no need in this federal prosecution for this court to determine whether the search of Williams's residence complied with state regulations because federal courts determine constitutional reasonableness under federal standards. *See United States v. Brack* 188 F.3d 748, 759 (7th Cir. 1999)(violation of state law on strip searches irrelevant to federal determination whether search was reasonable); *see also United States v. Kontny*, 238 F.3d 815, 818 (7th Cir. 2001)(federal exclusionary rule does not extend to violations of statutes and regulations). The operative question in this case is whether the totality of circumstances, including Williams's limited consent to search, establish reasonable suspicion that a firearm was present at Williams's residence.

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.

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.

With due respect, this explanation is suspect because by not requiring the police officer to provide the basis for his suspicion, it erases the line between a *reasonable* suspicion and an inchoate hunch. But no matter: in *this* case, the grounds justifying the probation search are more robust: Williams shot off his mouth at group session, claiming always to be packing and regaling fellow participants with tales of his firearm exploits. 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). Williams's braggadocio provided reasonable

suspicion to support a probation search of his residence for a firearm. There is no basis to grant Williams' motion to suppress.

RECOMMENDATION

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

Entered this 28th day of August, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

UNITED STATES DISTRICT COURT
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August 29, 2007

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Re: United States v. Deonte L. Williams
Case No. 07-CR-059-C

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 14, 2007, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by September 14, 2007, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures
cc: Honorable Barbara B. Crabb, District Judge