

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

VINCENT LOWE,

Defendant.

ORDER

09-cr-18-bbc

Defendant Vincent Lowe has filed an unusual motion for an order unsealing in-camera proceedings that took place on October 29, 2009 to let his counsel review all of the documents presented at the hearing. Defendant does not have a pending case to which any of this information would be relevant, making it questionable whether he is in any position to ask for the unsealing. I conclude that defendant has failed to show that he is entitled to the order he seeks.

RECORD FACTS

Two events converged to give rise to defendant's motion. The first is defendant Vincent Lowe's 2009 conviction in this court of possession with intent to distribute more

than 50 grams of crack cocaine. The other is a departmental investigation of Madison police officer Denise Markham. The investigation is relevant only because Markham was involved in the events of September 16, 2008 that led to the discovery of crack cocaine and a digital scale in the armrest of a car that defendant owned, which in turn led to his federal indictment.

Defendant was under investigation as of September 16; in fact, on that day, his probation officer was conducting a home and vehicle search in response to information that defendant had sold crack cocaine to an confidential informant. Coincidentally, defendant was arrested on the same day for running a red light by officers unaware of the investigation of defendant. When defendant did not pull over as directed, the police treated the subsequent stop as high risk. They removed him from the van he was driving, handcuffed him, patted him down and recovered car keys and \$3000 in cash from his pocket. In checking defendant's status, the police learned of the probation hold that had been put on him and took him to the south precinct for booking. Officer Markham responded to the scene of the arrest and took possession of defendant's key ring, which included the keys to the van he had been driving as well as the keys to a Lincoln Continental he owned.

After his arrest, defendant was taken to the South Police District, where he was allowed to make a telephone call to his girlfriend. While Markham and others were monitoring the call, they heard defendant tell his girlfriend to go to "the Lincoln," "bust the

window” and “get the stuff.” Markham called the West Side precinct to alert them to the call; officers were sent to defendant’s residence to look for a Lincoln Continental. She joined them there with the keys she had confiscated earlier, which she used to open the car so that the car could be towed to the police department.

About that time, defendant called his girlfriend again and learned that the car was being towed. He said, “It’s over with, Baby.” Officer Markham saw defendant’s girlfriend using the telephone, took the phone from her and told defendant that the police would be getting a search warrant for the car and after that, she would come up to talk with him. She added, “I know, you know what’s up, I know what’s up, we’ll talk about it, ok?” Defendant responded, “Yep.” Officer Julie Rortvedt searched the Lincoln the next day and found 121.8 grams of crack cocaine and a digital scale in the armrest between the driver’s and the passenger’s seats.

Defendant was indicted in February 2009. He filed a motion to suppress the drugs and the scale; the motion was denied in an order entered June 3, 2009. He entered a plea of guilty to the charge against him and was sentenced to a term of 240 months, 22 months before the bottom of the applicable guideline range.

Because rumors were swirling about Markham in 2009 and it was widely known that she was under investigation, defendant moved on September 8, 2009, for an order requiring production of evidence related to Markham’s investigation. Specifically, defendant suggested

that perhaps Markham had handled the search of the Lincoln improperly and even planted the crack cocaine and digital scale in the armrest. In response to defendant's concerns, I held a recorded ex parte hearing with the Acting United States Attorney and Assistant United States Attorney and reported the results of the hearing to defendant's counsel in a letter dated October 30, 2009. I explained that from my review of the reports and from the United States Attorney's description of conversations he and the Assistant United States Attorney had held with persons working on the Markham investigation, I concluded that nothing in the reports or investigation had uncovered any evidence that would support defendant's allegations that Markham had planted drugs in defendant's case. I added that none of the information made available to me raised any questions about Markham's actions in defendant's case.

In support of his new request, defendant argues that the investigation report includes a reference to an instance in which Markham violated police policy by maintaining control of an individual's car keys. Dkt. #151, exh. #1, ¶ 101. Defendant says that this might be a reference to his situation and he should have an opportunity to review the underlying reports to see whether it is. If it is, he argues, this would show that law enforcement failed to provide the United States Attorney with all of its materials before the court's review.

This is not enough to warrant disclosure of the reports that I reviewed. As I told defendant in the October 30, 2009 letter, nothing in those reports says anything about

planting evidence. If defendant believes that the police has information to that effect and should have provided it to the United States Attorney, he must direct his attention to obtaining it from the department. If ¶ 101 of exhibit 1 refers to defendant's case, it says nothing more than Markham did not handle defendant's keys properly. That is a far cry from saying that she used the keys to plant evidence.

Defendant's theory has no support. The two telephone calls from defendant to his girlfriend are indisputable evidence that defendant was well aware that he had incriminating evidence in his car.

In short, I am unpersuaded that there is any reason to unseal the reports that I reviewed or to allow defendant's counsel to review the record of the discussion I had with the government on this topic.

ORDER

IT IS ORDERED that defendant Vincent Lowe's motion to unseal the in-camera proceedings that took place on October 29, 2009 is DENIED for defendant's failure to show

that he has any legal need to review the proceedings.

Entered this 23d day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge