

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

RANDY J. BALLMER and
DELCINA HOCHSTETLER,

Defendants.

OPINION AND ORDER

11-cr-91-bbc

Defendants Randy J. Ballmer and Delcina Hochstetler have filed objections to those aspects of the United States Magistrate Judge's report and recommendation that were unfavorable to them. Defendant Hochstetler adds no arguments in support of her objections over and above those she raised before the magistrate judge, but simply notes them to preserve her rights for a possible appeal. Defendant Ballmer argues one issue, the adequacy of the search warrant, and preserves his objections to the other issues decided against him. The magistrate judge recommended granting defendants' motion to suppress evidence seized in a search of defendants' residence; the government has not objected to that ruling.

The warrant at issue was directed to a search of defendants' residence. Two two deputy sheriffs had entered the residence while defendants were present and observed two long guns in the kitchen area of the house: one in a gun cabinet and one leaning against the cabinet. In addition, This observation, a criminal history check of defendant Hochstetler

brought up at least one very old felony conviction. The affidavit supporting the warrant included these two relevant averments.

Defendant Ballmer contends that the affidavit fell short on two grounds: nothing in the warrant supported a finding that defendant Hochstetler had the necessary intent to exercise control over the guns, even the one outside the cabinet, and no one had vouched for the reliability of the criminal history check run by the police. He argues that the government has not shown that defendant Hochstetler had constructive possession of the gun, that is ownership, dominion or control over it. But in United States v. Morris, 576 F.3d 661, 666 (7th Cir. 2009), the Court of Appeals for the Seventh Circuit held that a substantial connection between the defendant and the physical location of a gun is sufficient to support a finding of constructive possession. Neither defendant denies that defendant Hochstetler lived at the residence where the guns were stored. This was sufficient for the search warrant to show that she could exercise dominion and control over the one gun that was not locked up. With the dispatch check on her criminal history, this was sufficient to establish probable cause for the search warrant, as the magistrate judge found.

I agree with the magistrate judge that defendants have failed to show that the first search warrant issued for the search of their residence was constitutionally insufficient. Therefore, I will deny defendant Ballmer's motion to quash this search warrant (referred to in the report and recommendation as the "first-issued search warrant"). In the absence of any new arguments from defendants and from my own review of the report and recommendation, I will accept the magistrate judge's report and recommendation in all

respects.

ORDER

IT IS ORDERED that the report and recommendation entered by the United States Magistrate Judge on May 25, 2012, is ADOPTED as the court's own. FURTHER, IT IS ORDERED that the motions of defendants Randy J. Ballmer and Delcina Hochstetler to dismiss counts 2 and 3 of the indictment against them and to quash the search warrant issued on January 26, 2010 are DENIED; defendants' motion to suppress evidence derived from the deputy sheriffs' entry in their residence on January 25, 2010 is GRANTED.

Entered this 5th day of June, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge