

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL HANCOCK,

Defendant.

OPINION AND ORDER

13-cr-128-bbc

Defendant Michael Hancock was indicted in October 2013 for being a felon in possession of a firearm and for possession of a sawed-off shotgun. He has now moved to suppress the evidence obtained during the execution of a state search warrant issued on August 14, 2013 and for a hearing to be held under Franks v. Delaware, 438 U.S. 154 (1978). In support of these motions, defendant alleged that the St. Croix County sheriff's investigator, Chris Drost, furnished an affidavit to the state court that did not establish probable cause to support the issuance of a search warrant and that included material false statements and material omissions. Defendant contended that Drost failed to include the material information that the informant on whom he relied in preparing his affidavit had a long criminal record and was incarcerated at the time awaiting the disposition of charges of assaulting a sheriff's deputy. He argued also that Drost had included false information about the alleged victim of a sexual assault by defendant.

In a 31-page report and recommendation, United States Magistrate Judge Stephen Crocker addressed the issues raised in the motion to suppress and in the request for a Franks hearing and recommended that they be denied. He agreed with defendant that Drost should have included the informant's criminal record in his affidavit, but then analyzed the affidavit to determine whether the warrant application would have stood up had Drost included the informant's prior record and the fact that he was in jail at the time on charges of assaulting a police officer. He concluded that even if the application had included this additional information, the state court would have issued the warrant. He then discussed the averments in the application concerning the victim of the sexual assault and the nurse who had examined her, concluding that defendant had not shown that Drost had any good reason to disbelieve the victim or to find that the nurse's report did not support the victim's complaints.

Defendant filed an objection to the report and recommendation, but only as to the magistrate judge's determination that the warrant would have issued even if Drost had included the informant's extensive criminal history. By failing to object to the finding that the application was not invalidated by Drost's failure to include the information about the assault victim, defendant has waived any objection he had to that aspect of the application. Egert v. Connecticut General Ins. Co., 900 F.2d 1032, 1039 (7th Cir. 1990) ("We have previously held that a party's 'failure to file objections [to the magistrate's report] with the district judge waives the right to appeal all issues, both factual and legal....'") (quoting Video Views, Inc. v. Studio 21, Ltd., 797 F.2d 538, 539 (7th Cir.1986)).

From my own review of the warrant application, I agree with the magistrate judge that the information contained in it was sufficient to supply probable cause to believe that defendant was in possession of firearms at his residence. It included Drost's interview with defendant, a review of defendant's prior criminal record, defendant's girl friend's recent text messages and the informant's history of helping out the sheriff's department. As the magistrate judge noted, the affidavit included a detailed first-hand report by the informant of illegal activities at the property where defendant and his girl friend resided and the informant's confession to participation in many of those activities, which added to his believability.

Since defendant is no longer challenging the inclusion of reports from the nurse who examined the alleged victim of defendant's sexual assault, it is not necessary to address that point, except to say that it is clear that Drost had good reason to believe the victim's report. Although defendant challenged the extent of the victim's injuries and argued that they did not support a finding that he had assaulted her when he filed his motion to suppress the seized evidence, the only support he had for his challenge to the extent of the victim's injuries was his own interpretation of the nurse's report. That was hardly an adequate ground for striking the evidence from the affidavit.

ORDER

IT IS ORDERED that the report and recommendation entered by United States Magistrate Judge Stephen L. Crocker on August 29, 2014, dkt. #49, is ADOPTED as the

court's own and defendant Michael Hancock's motion to suppress the evidence obtained during the execution of a state search warrant issued on August 14, 2013 and his request for a hearing to be held under Franks v. Delaware, 438 U.S. 154 (1978), dkt. #38, are DENIED.

Entered this 22d day of September, 2014.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge