

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL WINFIELD,

Defendant.

ORDER

15-cr-81-bbc

Defendant Paul Winfield has been charged with four counts of drug distribution in violation of 21 U.S.C. § 841(a). He contends that he was the subject of a search that was not supported by a valid search warrant. The United States Magistrate Judge entertained defendant's motion for the suppression of the evidence obtained in the search, considering both defendant's and his counsel's arguments asserting the invalidity of the warrant. (In a special arrangement, he allowed defendant to submit additional arguments through counsel.) He then issued a report and a recommendation that this court deny defendant's motion for suppression of evidence that he believed was obtained illegally. Having reviewed the report and recommendation, as well as the briefs filed with the magistrate judge and defendant's objections to the report and recommendation, I find that defendant has failed to show that any of the allegedly illegally obtained evidence is subject to suppression.

The magistrate judge's report is thorough and well reasoned. Although defendant

argues that the warrantless, undercover video recording of the interior of the house in which defendant was allegedly dealing heroin constituted an unreasonable search or seizure, the magistrate judge explained the applicability of an almost 50-year-old case, Lewis v. United States, 385 U.S. 206 (1966). Lewis did not involve videotaping or even sound recording, but rather a visit into a drug dealer's house by an undercover narcotics agent, who later testified about what he saw going on in the house. The Supreme Court held that a person who invites another into his home for a sale of drugs cannot claim a violation of the Fourth Amendment if the guest reports on what he observed. Once the homeowner converts his home into a commercial center to which outsiders are invited for the purpose of transacting illegal business, he cannot claim the usual sanctity of a home. Id. at 211. Adding video or audio recording activity does not affect the analysis. Just as in Lewis, the wrongdoer assumes the risk that his activities will be observed; in today's world, the possibility that the activities will be recorded is a fact of life. United States v. Wahchumwah, 710 F.3d 862, 867-68 (9th Cir. 2013 (defendant "cannot reasonably argue that the recording violates his legitimate privacy interests when it reveals no more than what was already visible to the agent").

Defendant argues that the unexplained discrepancies in the times that the video shows and the times recorded by the agents undermine the government's assertion that the target residence is the location at which the drug sales occurred. The existence of such discrepancies does not mean that the magistrate judge lacked probable cause to issue the warrant. The officer's averments in the application were sufficient to establish probable cause even if the court were to strike the representation in the warrant application that the

confidential informant was under surveillance at all times. Defendant wants a hearing on the issue but the allegedly false statement was not necessary to the finding of probable cause, so no hearing is required. Franks v. Delaware, 438 U.S. 154, 155-56 (1978).

Defendant speculates that the warrant was served without two attachments. Even if this is true, the court is not required to quash the evidence the agents obtained from the search. The search was supported by probable cause and with advance judicial approval. If the attachments were missing, that oversight would not justify exclusion of the evidence.

Finally, defendant complains about the search of his car within the detached garage because the Attachment A to the application did not describe with particularity which side of the garage was his and which was assigned to the upstairs tenant. The magistrate judge dealt with this issue by citing a few of the many cases that have held that a lawful search of a residence extends to all garages and other outbuildings. E.g., United States v. Ross, 456 U.S. 798 (1982) (lawful search of residence would extend to every part of premises as specifically related in language of search warrant in which object of search may be found); United States v. Griffin, 827 F.2d 1108, 1114 (7th Cir. 1987).

The magistrate judge was correct when he omitted any discussion of the arguments defendant's counsel submitted on defendant's behalf, with the permission of the court. None of these additional arguments undermine the legitimacy of the search of defendant's residence, including the garage.

ORDER

IT IS ORDERED that the report and recommendation of the United States Magistrate Judge filed on October 9, 2015, is ADOPTED as the court's own and that defendant Paul Winfield's motion to suppress the evidence derived from execution of the search warrant issued on June 13, 2015, is DENIED.

Entered this 28th day of October, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge