

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:05CR43
(Judge Keeley)

TONY BRAHAM a/k/a "Tick"
a/k/a "Philly",

Defendant.

ORDER AFFIRMING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION AND
DENYING DEFENDANT'S MOTION TO SUPPRESS

On April 3, 2007, the defendant, Tony Braham, by counsel John Pizzuti, filed a motion to suppress all evidence of illegal drug activity obtained by authorities from electronic surveillance within the defendant's home without first obtaining judicial authorization under West Virginia state law. (Doc. No. 339.) The defendant cites the West Virginia Supreme Court's recent decision in State v. Mullens, 2006 WL 4099850 (W.Va. 2007), in support of his argument that any such evidence was obtained in violation of Article III, Section VI of the West Virginia Constitution and should be suppressed at trial.

On May 22, 2007, United States Magistrate Judge John S. Kaul issued a Report and Recommendation recommending that the defendant's motion to suppress be denied because the Fourth Amendment to the United States Constitution governs the admissibility of evidence obtained by state authorities, that is used in federal prosecutions. (Doc. No. 378 at 3) (citing U.S. v.

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Clyburn, 24 F.3d 613 (4th Cir. 1994) ("[T]he Fourth Amendment provides the only proper standard for determining whether evidence seized by state officials pursuant to a state warrant is admissible in federal court.") Further, given that the defendant concedes that the challenged evidence is admissible under the Fourth Amendment of the U.S. Constitution, U.S. v. White, 401 U.S. 745 (1971), the magistrate judge concluded that the defendant's motion to suppress should be denied.

On June 1, 2007, the defendant filed his objections to the magistrate judge's recommendation. (Doc. No. 394.) In those objections, the defendant does not challenge or refute the thorough and reasoned analysis of the magistrate judge. Rather, he cites to dicta in persuasive authority from the First¹ and Ninth² Circuits for the general proposition that federal courts should be careful not to sanction intentional illegal conduct by law enforcement authorities. As White and Clyburn illustrate, however, admission of the challenged electronic surveillance evidence in this case falls squarely within the rubric of federal law.

Accordingly, after de novo review, the Court **AFFIRMS** Magistrate Judge Kaull's Report and Recommendation (doc. no. 378)

¹ U.S. v. Jarabek, 726 F.2d 889 (1st Cir. 1984).

² U.S. v. Daniel, 667 F.2d 783 (9th Cir. 1982).

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on the grounds set forth therein, and **DENIES** the defendant's motion to suppress (doc. no. 339).

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: July 5, 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE