

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No.: 3:11-CR-142
)	(VARLAN/SHIRLEY)
UNDRA DAVIS,)	
)	
Defendant.)	

ORDER

This criminal case is before the Court for consideration of the Report and Recommendation, entered by United States Magistrate Judge C. Clifford Shirley, Jr., on March 29, 2012 (the “R&R”) [Doc. 45]. The R&R addressed the defendant’s motion to suppress [Doc. 34]. In the R&R, Magistrate Judge Shirley recommended that the motion be denied [Doc. 45]. The defendant requested an extension of time to file objections to the R&R, but failed to file any objections before the deadline for doing so; the Court, therefore, accepted the R&R and denied the motion to suppress [Doc. 49]. Subsequently, the defendant requested additional time to file objections to the R&R [Docs. 50, 51], and the Court granted that motion [Doc. 56]. The government then filed a response to the defendant’s objections [Doc. 59]. Pursuant to this order, the Court reconsiders the R&R.

I. Relevant Background

The defendant is charged in a four-count indictment [Doc. 7] with possessing with intent to distribute twenty-eight or more grams of crack cocaine, possessing with intent to

distribute a quantity of cocaine, being a felon in possession of a firearm, and possessing firearms in furtherance of drug trafficking, all on or about November 12, 2011. Magistrate Judge Shirley, after a hearing and considering the parties' submissions, made the following findings of fact:

The Court finds the following facts to be relevant in addressing the issues presented: Officer Huddleston observed a black SUV driving above the posted speed limit and saw two black individuals inside of the car. The officer recognized the driver, who made eye contact with him and was wearing a flat-billed baseball cap. Officer Huddleston turned onto North Illinois Avenue behind the SUV, and after confirming the car's speed with mobile radar, he turned on his blue lights and siren to initiate a traffic stop of the vehicle for speeding. When the officer attempted to initiate the traffic stop, the driver of the black SUV increased his rate of speed and evaded the officer. Following police department policies and procedures for actively evading vehicles, Officer Huddleston then terminated his pursuit and radioed in the last known location and a general description of the SUV and its occupants.

After a few minutes of several officers searching the area for the SUV and Sergeant Nance suggesting that the officers check Salem Road for the SUV, Officer Huddleston, tailed by Officer Thomas, proceeded to Salem Road. At 132 South Seneca, a house at the corner of Salem Road and South Seneca Road, Officer Huddleston observed what he believed to be the same black SUV with the same occupants preparing to exit the SUV. The SUV was backed into the driveway, with the front end facing the street. Officer Huddleston recognized the same shape, size, and color of the SUV, and the same face and hat of the driver.

Officer Huddleston exited his cruiser and ordered the Defendant, who was already proceeding toward the door to the house, to stop, identifying himself as a police officer, and informing the Defendant that he was under arrest. The Defendant continued toward the door and did not stop, reaching the porch. Officer Huddleston told the Defendant that he would tase him if he did not stop and when he did not, the officer tased the Defendant. When the taser barbs attached to the Defendant, the door, which may have already been partially open at the time,

opened fully, and the Defendant fell down a flight of stairs directly inside the door to the basement with at least one of the barbs still attached to his back. Officer Huddleston followed the Defendant into the basement and placed him under arrest. More than one search of the Defendant's person, a search of the area immediately within the Defendant's control, and searches pursuant to two issued search warrants followed, producing narcotics and firearms.

[Doc. 45].

Pursuant to his motion to suppress, the defendant argued that all the evidence discovered and seized should be suppressed because he was illegally stopped and seized without reasonable suspicion or probable cause, particularly because Officer Huddleston could not see who was driving the black SUV at the intersection of Ivanhoe and North Illinois, where Officer Huddleston first observed the SUV.

The first issue the magistrate judge addressed was at what point during the incident the Fourth Amendment was implicated. He found the defendant was seized when the barbs of Officer Huddleston's taser connected with the defendant's person because "[a] person fleeing from a police officer's show of force is not then under arrest" [Doc. 45 (quoting *United States v. Britton*, 335 F. A'ppx 571 (6th Cir. 2009))].

The magistrate judge then determined whether the police had a reasonable suspicion or probable cause to seize the defendant at the time the Fourth Amendment was implicated, noting the parties' disagreement on the matter was based "almost entirely" on the credibility of Officer Huddleston's testimony [*Id.*]. Magistrate Judge Shirley found that Officer Huddleston had probable cause to arrest the defendant for a violation of Tenn. Code Ann. § 39-16-603(b)(1), felony evading arrest, which provides that "[i]t is unlawful for any person,

while operating a motor vehicle on any . . . highway in [Tennessee], to intentionally flee or attempt to elude any law enforcement officer, after having received any signal from the officer to being [sic] the vehicle to a stop,” at the time he saw and positively identified the defendant outside of the house at 132 South Seneca.

In support of this conclusion, the magistrate judge noted that Officer Huddleston observed a black SUV driving by him at what he knew to be a high rate of speed in excess of the speed limit, and confirmed such via radar after turning onto North Illinois Avenue behind the SUV. The officer then turned on his blue lights and attempted to initiate a traffic stop of the vehicle; however, the driver of the SUV started increasing his speed and then made a fast turn down Iroquois.

The magistrate judge further noted that Officer Huddleston testified he was able to see the driver of the vehicle when it passed him because the passenger was leaning back and he made eye contact with the driver, who was a black male wearing a flat-billed cap. Officer Huddleston testified he recognized the driver’s face but could not remember the driver’s name at that point. While the defendant urged the magistrate judge to find the officer’s description too general to show the officer saw the defendant inside the SUV, Magistrate Judge Shirley determined otherwise. He found that, while a still from the moment the SUV passed Officer Huddleston did not reveal the identities of the occupants of the SUV, Officer Huddleston was nonetheless credible. When the officer arrived at the house on Salem Road, he saw what he described as a black SUV that was the exact same size, shape, and color as the one that evaded him, and he got a good look at the driver of that SUV. In addition, the

officer testified that he had put together through earlier preparations for patrols, information from roll calls, and the statements of other officers on the radio that the individual that evaded him was the defendant.

II. Standard of Review

As required by 28 U.S.C. § 636(b)(1) and Rule 59(b) of the Federal Rules of Criminal Procedure, the Court has undertaken a *de novo* review of those portions of the R&R to which defendant has objected. In doing so, the Court has carefully considered the R&R [Doc. 45], the parties' underlying and supporting briefs, the defendant's objections, and the government's response to those objections, all in light of the relevant law. For the reasons set forth herein, the Court will overrule the defendant's objections [Doc. 51], accept in whole the R&R [Doc. 45], and deny the defendant's motion [Doc. 34].

III. Analysis

The defendant objects on the basis that the R&R "errs in the amount of weight, or lack of weight, given to the testimonial evidence in this case" [Doc. 51]. In support of this objection, the defendant asserts that Officer Huddleston stated he did not know that the SUV that sped by him was the defendant's vehicle or whether the SUV was one that was ever known to be the defendant's vehicle. He also points out that Officer Thomas testified that he could not see who was in the SUV from Officer Huddleston's in-cruiser video and that the intersection of Ivanhoe and Illinois was sparsely lit, whereas Officer Huddleston testified it was well lit. The defendant further objects that the R&R "errs in the amount of weight, or lack of weight" given to the physical evidence in this case," namely Officer Huddleston's in-

cruiser video. The government responds that the objections “add not[h]ing new to the previous briefs filed on this matter” and that the defendant’s assertions are unsupported by the evidence and testimony presented at the suppression hearing as well as the law [Doc. 59]. Further, the government asserts that the R&R addresses and answers every point raised by the defendant.

The Court recognizes that the defendant’s objections are, indeed, a reiteration of the arguments the defendant set forth with respect to his motion to suppress [See Doc. 40]. Nevertheless, upon the Court’s *de novo* review of the arguments, the R&R, and the relevant law, the Court determines that Magistrate Judge Shirley gave appropriate weight to both the testimony of Officer Huddleston and the physical evidence presented during the hearing on this matter.

In support of this finding, the Court notes that Officer Huddleston’s testimony was corroborated by his radio reports; he reported that he saw two black males when he first observed the SUV and upon arriving at South Seneca, he reported that he saw the same two individuals. While the defendant claims the officer’s radio reports would have been more detailed had he actually seen the occupants of the SUV, the lack of detail in the description of the occupants of the SUV does not undermine the finding that he did observe the occupants, as Officer Huddleston testified that it was all that he “got out on the radio” because “[t]here is a lot we have to do” [Doc. 39]. Regarding Officer Thomas’s observation that one could not see the occupants of the SUV, the Court notes Officer Thomas was not present when Officer Huddleston first saw the SUV and only made observations pursuant to

a somewhat low-quality, in-cruiser video. Finally, the Court finds the defendant's point that Officer Huddleston described the relevant area as "well lit" whereas Officer Thomas described it as "sparsely lit" of little value given that the two individuals could have different perceptions about lighting and it was only Officer Huddleston who saw the SUV that night at that area.

IV. Conclusion

In sum, after reviewing the record in this case, including the R&R and the underlying briefs, as well as the relevant law, the defendant's objections to the R&R, and the government's response to the defendant's objections, the Court determines that the magistrate judge fully and appropriately considered the arguments in support of the motion to suppress. Further, the Court agrees with the magistrate judge's analysis and findings in their entirety.

Accordingly, and for the reasons given above, the Court **OVERRULES** the defendant objections to the R&R [Doc. 51] and **ACCEPTS IN WHOLE** the R&R [Doc. 45]. The defendant's Motion to Suppress [Doc. 34] is hereby **DENIED**.

IT IS SO ORDERED *NUNC PRO TUNC JUNE 5, 2012*.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE