

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 13-cr-20312-SHM-tmp
	)	
DARRELL ADAMS,	)	
	)	
Defendant.	)	

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REPORT AND RECOMMENDATION

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On October 1, 2013, a federal grand jury returned a one-count indictment charging defendant Darrell Adams with being a convicted felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). The charge stems from an incident that occurred on November 7, 2012, when officers with the Memphis Police Department ("MPD") arrested Adams at the Peppertree Apartment Complex ("Peppertree Apartments") and found a loaded Lorcin .380 caliber semi-automatic pistol in his waistband. Presently before the court by order of reference is Adams's Motion to Suppress, filed on December 16, 2013. (ECF No. 16.) The government filed a response in opposition on January 6, 2014. On January 17, 2014, the court held a suppression hearing. The government called MPD Officer Jonathan Bond as a witness. The defendant testified at the hearing, and also called as a witness MPD Officer Demetric Renix.

The court also received into evidence a replica of a "No Trespassing" sign posted at the Peppertree Apartments, the MPD report detailing the events surrounding Adams's arrest, an advice of rights form and rights waiver form signed by Adams, and a post-arrest statement signed by Adams.

For the reasons below, it is recommended that the Motion to Suppress be denied.

#### **I. PROPOSED FINDINGS OF FACT**

At the suppression hearing, the government and Adams provided conflicting accounts of the circumstances surrounding Adams's arrest. The government's version, as supported by the testimony of Officer Bond and Officer Renix, and exhibits, is as follows: the Peppertree Apartments is considered by the MPD to be a "hot spot" or high-crime area, based on the high volume of complaints for crimes involving drugs, guns, burglaries, gang activity, and robberies. Due to the high crime volume, the Peppertree Apartments has joined the Shelby County District Attorney's Office Anti-Trespass Program, through which the apartment complex enlists the assistance of the MPD to enforce the criminal trespassing laws. MPD officers patrol the Peppertree Apartments on a daily basis. If they see someone who they suspect may be trespassing, the officers will approach that individual to determine if he or she is either a resident of the Peppertree Apartments or a guest of a resident. If the individual indicates that he or she is a resident or a

guest, the officers will ask for the apartment's address so that they can go to the apartment to verify the individual's status as a resident or guest. According to Officer Bond, anyone caught trespassing is arrested. "No Trespassing" signs are posted on the apartment buildings and at the entrances and exits of the apartment complex. The "No Trespassing" signs are printed in red ink and read:

NO TRESPASSING  
THIS PROPERTY IS FOR  
RESIDENTS  
AND THEIR GUESTS ONLY  
SHELBY COUNTY  
DISTRICT ATTORNEY'S OFFICE  
ANTI-TRESPASS PROGRAM  
FOR FURTHER INFORMATION  
PLEASE CONTACT THE SHELBY COUNTY  
DISTRICT ATTORNEY'S OFFICE  
AT 901-222-1300

(Ex. 1.)

On November 7, 2012, at around 8:45 p.m., Officer Bond, Officer Renix, and at least two other MPD officers were on foot patrol at the Peppertree Apartments. While on patrol, the officers noticed a man, later identified as Adams, pacing back and forth between two apartment buildings. The officers found this behavior to be "odd" and "very suspicious," because it was cold outside, it was dark, they were in a high-crime area, no one else was outside, and Adams did not appear to be heading toward any apartment. Officer Bond approached Adams and asked Adams if he was a resident of the apartment complex. Adams replied that he was not. Officer

Bond then asked Adams if he was visiting someone at the apartment complex. Adams replied that he was not. At that point, the officers placed Adams under arrest for criminal trespassing. Officer Renix patted down Adams and found a loaded Lorcin .380 caliber semi-automatic pistol in his waistband and two rounds of ammunition in his jacket pocket. He was subsequently taken to the MPD Felony Response Unit, at which time he was advised of his Miranda rights, waived his rights, and provided a signed statement.

Adams offered the following testimony, which contradicted the officers' version of the events: on the night of November 7, 2012, he was at the Peppertree Apartments with his fiancé and his five step-children. He was visiting Dawanna Smith, the cousin of his fiancé, who lived in the apartment complex.<sup>1</sup> Adams left Smith's apartment to go to the store to get a beverage and some chips and candy. As he was walking through the apartment complex, several officers emerged from behind a dumpster. One of the officers asked Adams, "Where are you going?" Adams replied, "I'm going to the store." The officer asked again, "Where are you going?" Adams again told the officer he was going to the store. Officer Renix told Adams, "Don't run. I feel like running." Although Adams did not attempt to run, the officers wrestled Adams to the ground,

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<sup>1</sup>During Adams's testimony, Adams referred to his fiancé as "my wife" and to Smith as "my cousin." On cross-examination, however, Adams stated that he was not legally married, that the woman is his fiancé, and that Smith is his fiancé's cousin.

handcuffed him, and located the pistol. It was only at that point, according to Adams, that the officers asked Adams if he was a resident or a visitor of the apartment complex. Adams told the officers that he was visiting his cousin who resided at the Peppertree Apartments. Later, when questioned by different officers at the Felony Response Unit, Adams told the officers that he was visiting his cousin (Smith) at the Peppertree Apartments, he provided the officers with her phone number, and the officers called and spoke with Smith.

To corroborate his version of the events, Adams points to the arrest report and his post-arrest statement. The arrest report, which was prepared by Officer Renix, states as follows:

On 11/07/2012 at 20:45 hours, Officer D Renix (12066), Officer J Bond (12096), Officer J Graham (11597), and Officer S Scott (10822) were signal 12, due to the complaints of burglaries, drug sales, gang activity, and robberies, in the Peppertree Apartments. This complex also has an affidavit that allows Memphis Police Department to enforce their criminal trespass laws. Officers observed defendant standing in front of 4260 Eastwind. Officers detained defendant and while performing a patdown for weapons, for officer safety, located on defendant left side waistband a silver 380 serial number 248123. The weapon had one live round in the chamber and no magazine. Defendant also had one live 44 caliber round and 40 caliber round in right inside jacket pocket. Defendant does not have a carry permit and is not a resident of the complex. Defendant advised that he is a convicted felon and was released from Northwest Penitentiary November 5, 2012. Lt. Mullins 6203 advised and made the scene and contacted Felony Response who advised that Defendant was booked in as Darrell Franklin and was convicted of aggravated robbery in 2006. Weapon was run on station B but no results were returned.

(Ex. 2.) Adams relies on the arrest report to show that (1) the officers observed him merely "standing," not pacing, and (2) the officers patted him down and found the firearm before they attempted to determine whether he was trespassing. Regarding his post-arrest statement, in response to the question, "Why are you in possession of the above-described firearm?", Adams stated that "They have been having some robberies and break-ins at the apartment where my cousin stays." Adams argues that this statement supports his testimony that he told the arresting officers as well as the Felony Response Unit officers that he was visiting Smith at the Peppertree Apartments.

The court, having carefully considered all of the evidence presented at the hearing, finds the testimony of the officers to be credible and the testimony of Adams to be not credible. The officers' testimony was consistent in all material respects, and in particular, both officers credibly testified that they saw Adams pacing back and forth, they questioned Adams about his residency and arrested him for criminal trespassing before they patted him down, and Adams did not tell them that he was visiting anyone at the apartment complex. The court does not find credible Adams's testimony that the officers - without any provocation from Adams - emerged from behind a dumpster, wrestled him to the ground, handcuffed him, and searched him. The court also does not find that the arrest report and post-arrest statement call into question

the credibility of the officers' testimony. The arrest report is unclear as to when and how the officers learned that Adams was not a resident of the apartment complex. With regard to the post-arrest statement, Adams told the officers that he possessed the firearm because of robberies and break-ins "at the apartment where my cousin stays." This statement, however, does not identify Dawanna Smith as the "cousin," refer to the Peppertree Apartments as the "apartment" where his cousin lives, nor indicate that Adams was visiting this "cousin" on the night in question. Other than Adams's own testimony, no evidence was presented at the suppression hearing to show that Smith resided at the Peppertree Apartments and that Adams was visiting Smith on the night of his arrest.<sup>2</sup>

## II. PROPOSED CONCLUSIONS OF LAW

"Encounters between police officers and citizens can be grouped into three categories: consensual encounters in which contact is initiated by a police officer without any articulable reason whatsoever and the citizen is briefly asked some questions; a temporary involuntary detention or Terry stop which must be predicated upon reasonable suspicion; and arrests which must be based on probable cause." United States v. Campbell, 486 F.3d 949, 953-54 (6th Cir. 2007) (quoting United States v. Bueno, 21 F.3d

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<sup>2</sup>Moreover, even assuming, *arguendo*, that Smith was a resident of the Peppertree Apartments and that Adams was visiting Smith, those facts would not necessarily prove that Adams conveyed that information to Officers Bond and Renix when they initially questioned him.

120, 123 (6th Cir. 1994)) (internal quotation marks omitted). In the present case, the government argues that the officers had reasonable suspicion to conduct an investigatory Terry stop of Adams.<sup>3</sup>

"The Fourth Amendment prohibits 'unreasonable searches and seizures' by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest." United States v. Smith, 594 F.3d 530, 535 (6th Cir. 2010) (citing United States v. Arvizu, 534 U.S. 266, 273 (2002)). An investigatory stop of an individual by a law enforcement officer is proper so long as there is a reasonable basis for the stop. Terry v. Ohio, 392 U.S. 1, 22-24 (1968). An officer can stop and briefly detain a person when the "officer has reasonable, articulable suspicion that a person has been, is, or is about to be engaged in criminal activity." United States v. Atchley, 474 F.3d 840, 847 (6th Cir. 2007) (quoting United States v. Hensley, 469 U.S. 221, 227 (1985)). "In reviewing a challenged investigative stop, the totality of the circumstances - the whole picture - must be taken into account." United States v. Horne, 313 F. App'x 788, 791 (6th Cir. 2008) (quoting United States v. Foster, 376 F.3d 577, 584-85 (6th Cir. 2004)). "The officer must be able to articulate something more than an inchoate and unparticularized

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<sup>3</sup>The government does not argue in its response brief that the officers engaged in a consensual encounter with Adams.



suspicion or hunch.” United States v. Gross, 662 F.3d 393, 399 (6th Cir. 2011). The Sixth Circuit Court of Appeals has enumerated several factors that courts may take into consideration when analyzing the constitutionality of an investigatory stop:

It is well-settled that, standing alone, mere presence in a high crime area is insufficient “to support a reasonable, particularized suspicion that the person is committing a crime.” Illinois v. Wardlow, 528 U.S. 119, 124, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). However, “the fact that the stop occurred in a ‘high crime area’ [is] among the relevant contextual considerations in a Terry analysis.” Id. (quoting Adams v. Williams, 407 U.S. 143, 144, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972)). The same is true with regard to the time of day: It is relevant without being independently dispositive. United States v. See, 574 F.3d 309, 314 (6th Cir. 2009). Similarly, “nervous, evasive behavior is a pertinent factor in determining reasonable suspicion.” Wardlow, 528 U.S. at 124, 120 S.Ct. 673.

Hoover v. Walsh, 682 F.3d 481, 495 (6th Cir. 2012). “Additionally, the experience of the law enforcement officer must be taken into account in the reasonable suspicion analysis.” United States v. McCauley, 548 F.3d 440, 445 (6th Cir. 2008).

“The fact that an individual not recognized by an officer is standing in a no-trespassing area may also be an additional factor in determining reasonable suspicion, especially when it is late at night, in a high crime area, and the individual acts in an evasive manner.” United States v. Lashley, No. 3:08-cr-00124-R, 2009 WL 197472, at \*3 (W.D. Ky. Jan. 26, 2009) (citing Horne, 313 F. App’x at 791; United States v. Simmons, 174 F. App’x 913, 914 (6th Cir. 2006); United States v. Thomas, 77 F. App’x 862, 865 (6th Cir.

2003)). In United States v. Horne, officers approached an apartment building at 1:00 a.m. in an area officers characterized as a "high-crime area, where drug trafficking and violent crime are common." 313 F. App'x at 789. "The building had 'No Trespassing' signs posted on it, and the owner . . . had requested in writing that the Cincinnati Police help enforce criminal trespass laws on his property." Id. The officers approached a group of people standing in a breezeway and advised them to move on if they did not live in the building. Id. When an officer saw a man (defendant Horne) "duck behind one of the girls" who remained standing, the officer became suspicious and asked Horne if he lived in the building. Id. Horne responded that he did not. Id. The officer then asked Horne if he had anything on his person. Id. Horne responded, "No, you can check." Id. The officer conducted a pat-down of Horne and located a weapon. Id. The court concluded that the officers had reasonable suspicion to justify a Terry stop:

First, "the area is a hot spot for drug and gun activity" – so much so that the owner of 3501 Burnet Avenue requested in writing that the police assist in enforcing criminal trespassing laws on his property. Second, it was late at night. Third, Horne "acted strangely by ducking behind one of the females in the breezeway." Under the totality of the circumstances standard, "[e]ven if each specific fact relied upon by the authorities to make a Terry stop would not be a basis for suspicion when considered in isolation, the reasonable suspicion necessary to support an investigatory stop can still be found when it is based upon an assessment of *all* circumstances surrounding the actions of a suspected wrongdoer . . . ." United States v. Garza, 10 F.3d 1241, 1245 (6th Cir. 1993) (internal quotation marks omitted). We have found reasonable suspicion in factually similar

cases. See, e.g., United States v. Finley, 239 F. App'x 248, 252 (6th Cir. 2007) (finding reasonable suspicion on the basis of the crime-ridden character of the area, another officer's report of males loitering in inclement weather, and suspicious behavior of two men in a parked car, who slumped down in their seats to avoid being seen); United States v. McGuire, 258 F. App'x 749 (6th Cir. 2007) (per curiam) (finding reasonable suspicion on the basis of the lateness of the hour, a recent series of crimes in the area, and the suspects' sitting in a vehicle with the headlights and engine turned off at the end of a long driveway to a private residence). Accordingly, even if Horne did not consent, officers had reasonable suspicion to investigate and, in view of the place, time, and behavior of the suspect, [the officer] was not unreasonable in conducting a pat-down.

Id. at 791.

Here, the officers were aware that the Peppertree Apartments is a high-crime area, with a high volume of complaints for crimes involving drugs, guns, burglaries, gang activity, and robberies. "No Trespassing" signs are posted on the apartment buildings and at the entrances and exits of the apartment complex. The officers observed Adams pacing back and forth between two apartment buildings, which they thought was "odd" and "very suspicious," because it was cold outside, it was dark, no one else was outside, and Adams did not appear to be heading toward any apartment. The court finds that these facts gave the officers reasonable suspicion to conduct an investigatory stop of Adams. See United States v. Young, 707 F.3d 598, 604 (6th Cir. 2012) (concluding that "considering [factors including high-crime history of location and defendant's reclined position in the passenger seat of a parked car] in the totality of the circumstances, they were sufficient and

reasonably support a brief Terry stop to investigate initial suspicions of trespassing"); Horne, 313 F. App'x at 791; Simmons, 174 F. App'x at 914 (concluding it was reasonable to stop an individual on suspicion of trespassing when officers did not recognize the individual who had been standing on property marked no trespassing, then immediately walked away, accompanied by two individuals who had previously been cited for trespassing); Thomas, 77 F. App'x at 865 (finding officer had reasonable suspicion that individuals at 3:15 a.m. in heavy drug activity area, sitting on porch of woman who had called the previous week about trespassers on her porch, were trespassing).

The court also finds that the scope of the investigatory stop was reasonable, as the officers only asked questions limited to determining whether or not Adams was trespassing. Berkemer v. McCarty, 468 U.S. 420, 439 (1984). Once the officers determined that Adams was not a resident or a guest of the Peppertree Apartment, they had probable cause to arrest him for criminal trespassing. See Tenn. Code Ann. § 39-14-405 (making the act of criminal trespass a Class C misdemeanor "if the person enters or remains on property, or any portion of property, without the consent of the owner"); Tenn. Code Ann. § 40-7-103(a)(1) (stating that an arrest without a warrant may occur for an offense committed or threatened to be committed in the officer's presence); see also Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001) ("If an

officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."); Thompson v. Ashe, 250 F.3d 399, 408 (6th Cir. 2001) (stating that the Tennessee criminal trespass statute "subjects a person to arrest if the person, with knowledge that he does not have the owner's consent to do so, enters or remains on the property"); United States v. Odoms, No. 3:06CR84, 2006 WL 3484025, at \*11 n.3 (E.D. Tenn. Nov. 30, 2006) (noting that "under Tennessee law, Tenn. Code Ann. § 40-7-103(a)(1), a misdemeanor must have been committed in the officer's presence in order for the officer to arrest the misdemeanor without a warrant"); State v. Padgett, No. E2011-01279-CCA-R3CD, 2012 WL 1648390, at \*11 (Tenn. Crim. App. May 9, 2012) (citing Tenn. Code Ann. § 40-7-103(a)(1) and noting that arrest for disorderly conduct, a Class C misdemeanor in Tennessee, committed in the officer's presence was lawful).

Lastly, the subsequent search of Adams's person was a lawful search incident to arrest. See United States v. Maine, No. 3:07-000096, 2008 WL 686215, at \*14 (M.D. Tenn. Mar. 5, 2008) (citing Chimel v. California, 395 U.S. 752, 763 (1969)) (finding that police officer had probable cause to place defendant under arrest for criminal trespass and search him incident to that arrest when

defendant had not given any legitimate reason for being on the property).<sup>4</sup>

### III. CONCLUSION

For the above reasons, it is recommended that the Motion to Suppress be denied.

Respectfully submitted,

s/ Tu M. Pham  
TU M. PHAM  
United States Magistrate Judge

January 24, 2014  
Date

### NOTICE

**ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1). FAILURE TO FILE THEM WITHIN FOURTEEN (14)**

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<sup>4</sup>Adams cites Ybarra v. Illinois, 444 U.S. 85 (1979) in support of his motion. In Ybarra, officers executed a search warrant at a tavern, and in the process, conducted investigatory stops and searches of patrons of the bar. 444 U.S. at 88. The Supreme Court found that the frisk of one of the patrons was unconstitutional because the police had lacked "a reasonable belief that [the individual] was armed and presently dangerous, a belief which [the Supreme Court] has invariably held must form the predicate to a pat-down of a person for weapons." Id. at 92-93. Ybarra is inapplicable here because the pat-down of Adams's person occurred subsequent to the officers' decision to arrest him for criminal trespassing. When conducting a search incident to arrest, police need no individualized suspicion that the arrestee is armed and dangerous. See United States v. Robinson, 414 U.S. 218, 228 (1973) (quoting Terry, 392 U.S. at 25-26) ("An arrest is a wholly different kind of intrusion upon individual freedom from a limited search for weapons, and the interests each is designed to serve are likewise quite different.' . . . Terry, therefore, affords no basis to carry over to a probable-cause arrest the limitations this Court has placed on a stop-and-frisk search permissible without probable cause." ).

**DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL**