

No. 24-_____

IN THE
SUPREME COURT OF THE UNITED STATES

CURTIS PAUL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

APPENDIX

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2024 WL 891611

Only the Westlaw citation
is currently available.

United States Court of Appeals, Sixth Circuit.

UNITED STATES of
America, Plaintiff-Appellee,
v.
Curtis Mitchell PAUL,
Defendant-Appellant.

Case No. 23-5241

FILED March 1, 2024

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF TENNESSEE

Attorneys and Law Firms

Luke A. McLaurin, Office of the U.S. Attorney,
Knoxville, TN, for Plaintiff-Appellee.

Jennifer Niles Coffin, Federal Defender
Services, Knoxville, TN, for Defendant-
Appellant.

Before: COLE, GIBBONS, and MATHIS,
Circuit Judges.

OPINION

MATHIS, Circuit Judge.

***1** A police officer stopped Curtis Paul after suspecting that he robbed a convenience store. At the time of his detainment, Paul was walking in the vicinity of the crime scene shortly after the robbery occurred, he had a bulge in his right

front pocket, and his clothing bore similarities to those worn by the photographed suspect. Paul was not the robber. But he was a convicted felon. And the search of his person uncovered a loaded handgun. For this, Paul was charged with, and pleaded guilty to, being a felon in possession of a firearm. Paul appeals the denial of his motion to suppress the firearm. For the reasons below, we affirm.

I.

On February 10, 2021, Detective Joe Jaynes—a 20-year veteran of the Johnson City police department and an FBI task force officer—was at his desk when he heard the emergency tone on his hand-held dispatch radio. The dispatch reported a robbery at a convenience store near East Tennessee State University, and it identified the suspect as a white male who fled on foot. Detective Jaynes grabbed his radio, got in his unmarked police vehicle, and drove to the crime scene.

While driving, Detective Jaynes heard the radio dispatch describe the suspect as wearing a “bluish hat” and “black gaiter type mask,” and that he robbed the store with a ten-inch knife. R. 24, PageID 99, 101. The dispatch also indicated the suspect’s height as five feet, two inches, and further indicated that the suspect fled westbound. By the time Detective Jaynes arrived, he received the following images on his department-issued cellphone:



D. 17 at pp.4–6. Another officer captured these photographs from the convenience store's security monitor. Because Detective Jaynes viewed the photos on his cellphone, "they weren't very big and the resolution wasn't very good." R. 24, PageID 78, 85. But he was able to discern that the robber wore a "black hat, a black neck gaiter," and a "bright blue jacket" with a "black jacket underneath." *Id.* at 78, 125. Approximately fifteen minutes after receiving the initial dispatch, Detective Jaynes saw Paul—a white male who stood six feet, three inches tall—walking eastward a block away from the store. "[M]ostly going off the pictures," Detective Jaynes noticed that Paul's appearance resembled the robber. *Id.* at 100, 117–19. Paul wore "a black hat, a black neck gaiter, a black jacket, and blue jeans," and Detective Jaynes observed a "bulge in his right front pocket." *Id.* at 81. Although Paul was not wearing a bright blue jacket, that did not dispel Detective Jayne's suspicions because, based on his "training and experience," it was "common for robbery suspects to shed outer garments of clothing in an attempt to avoid detection." *Id.* at 79–80, 119.

Detective Jaynes exited his unmarked vehicle, announced himself, and requested that Paul talk to him. Paul refused and Detective Jaynes grabbed his arm. Paul "jerked away" and reached for the bulge in his right front pocket. *Id.* at 88–89. Fearing for his safety,

Detective Jaynes pushed Paul against a nearby embankment and called for assistance. After a brief struggle, the officers corralled Paul and patted him down. They discovered a loaded firearm on Paul's person.

***2** An investigation determined that Paul was not the robber. But because he was a felon in possession of a firearm, a grand jury indicted him for violating 18 U.S.C. § 922(g)(1). Paul moved to suppress the firearm, arguing that Detective Jaynes lacked reasonable suspicion to detain him.

A magistrate judge conducted an evidentiary hearing on Paul's suppression motion. Detective Jaynes testified at the hearing. While testifying, Detective Jaynes reviewed a recording of the dispatch transmission along with copies of the above photographs and the security monitor footage to aid in his recollection of the events. After relistening to the transmission, Detective Jaynes conceded that the dispatch had reported the suspect's height and the direction he fled; however, he did not recall hearing those details at the time he responded to the robbery. Detective Jaynes also admitted that the suspect was photographed wearing sunglasses, khaki pants, and black shoes, which differed from the blue jeans and brown work boots worn by Paul.

The magistrate judge issued a report recommending the denial of Paul's motion to suppress, and the district court overruled Paul's objections to the report and recommendation, adopting it in full. In doing so, the district court found that Detective Jaynes had reasonable suspicion to stop Paul because he "was in the vicinity of the robbery, was of the same

race and sex of the suspect and was wearing clothing that in some respects matched that of the suspect.” R. 28, PageID 175. Although the district court acknowledged the differences in height and clothing between Paul and the robbery suspect, the district court concluded that those differences either (a) did not factor into Detective Jaynes’s decision to stop Paul, or (b) were insufficient to defeat a finding of reasonable suspicion. The district court also credited Detective Jaynes’s testimony, based on his experience, that Paul may have shed away the bright blue jacket and sunglasses to avoid detection.

Paul pleaded guilty to the felon-in-possession charge, reserving the right to appeal the denial of his motion to suppress. This appeal followed.

II.

On appeal from the denial of a motion to suppress, we review factual findings for clear error, viewing the evidence “in the light most favorable to the government,” and conclusions of law de novo. *United States v. Sykes*, 65 F.4th 867, 876 (6th Cir. 2023). A factual finding is “clearly erroneous when we are left with the definite and firm conviction that a mistake has been committed.” *United States v. Cooper*, 893 F.3d 840, 843 (6th Cir. 2018).

III.

Paul contends that the district court erred in denying his motion to suppress because the firearm recovered by Detective Jaynes resulted from an unlawful stop. We disagree.

The Fourth Amendment guarantees the “right of the people to be secure in their persons” against “unreasonable searches and seizures.” U.S. Const. amend. IV. In criminal cases, we give this amendment teeth through the exclusionary rule, which generally forbids the government from using at trial evidence procured in violation of the Fourth Amendment. *Herring v. United States*, 555 U.S. 135, 139 (2009).

We must decide whether Detective Jaynes stopped Paul consistent with *Terry v. Ohio*, 392 U.S. 1 (1968). Under *Terry*, officers may conduct an “investigatory stop” when there is reasonable suspicion “that criminal activity is afoot.” *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). “[R]easonable suspicion” is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence[.]” *Id.* That said, we require “more than a mere hunch.” *United States v. Lyons*, 687 F.3d 754, 763 (6th Cir. 2012) (quotation omitted). To evaluate the validity of a *Terry* stop, we consider the “totality of the circumstances—the whole picture.” *United States v. Sokolow*, 490 U.S. 1, 8 (1989) (quotation omitted). “That includes the officer’s own observations as well as information the officer receives from police reports, dispatch, and fellow officers.” *United States v. McCallister*, 39 F.4th 368, 374 (6th Cir. 2022). It also “involves commonsense judgments and inferences about human behavior, as well as inferences the officer may draw based on his experience and specialized training.” *Id.* (citations and quotation marks omitted). “Even entirely innocent behaviors may establish reasonable

suspicion in some circumstances.” *Id.* The “question is not whether there is a possible innocent explanation for each of the factors, but whether all of them taken together give rise to reasonable suspicion[.]” *United States v. Jacob*, 377 F.3d 573, 577 (6th Cir. 2004) (citing *United States v. Arvizu*, 534 U.S. 266, 274–75, 277 (2002)).

*3 Detective Jaynes conducted a valid *Terry* stop. The totality of the circumstances consisted of the following facts when Detective Jaynes stopped Paul: (1) Detective Jaynes observed Paul in the vicinity of the convenience store shortly after the robbery occurred; (2) Paul had a “bulge in his right front pant pocket” that could have been a “knife or possibly money that was collected from the robbery”; and (3) the photographs Detective Jaynes received showed that some of Paul's clothing bore similarities to those worn by the actual robber. Taken together, these circumstances gave rise to reasonable suspicion that Paul committed the robbery. *See Wardlow*, 528 U.S. at 123. Thus, Detective Jaynes was justified in briefly detaining Paul to investigate those suspicions. *See United States v. Moberly*, 861 F. App'x 27, 30 (6th Cir. 2021) (finding law enforcement had reasonable suspicion to conduct a *Terry* stop where the defendant “admitted” that he had been at, or near, the crime scene and his hair and clothing matched the description of the suspect identified in a 911 call); *United States v. Lindsey*, 114 F. App'x 718, 722–23 (6th Cir. 2004) (finding a *Terry* stop was valid based on: (1) the defendant's location, (2) officer testimony that the defendant matched the description of the suspect given by the dispatch, and (3) officer testimony that the

defendant was running in the vicinity of the alleged criminal activity).

Paul responds that the evidence Detective Jaynes relied on when stopping him was insufficient to establish reasonable suspicion. Paul emphasizes the differences in clothing between himself and the photographed suspect, including the “differing pants and shoes” and the fact that he was not wearing a bright blue jacket or sunglasses at the time Detective Jaynes stopped him. But, as the district court found, “not all the photos showed the suspect was wearing khaki pants and shoes.” R. 28, PageID 173. As for the bright blue jacket and sunglasses, Detective Jaynes inferred, as his experience and training allowed him to do, *McCallister*, 39 F.4th at 374, that Paul might have discarded those garments to avoid detection. *See United States v. Arthur*, 764 F.3d 92, 98 (1st Cir. 2014) (“We think it entirely plausible … that the robbers might proceed to a nearby street and shed identifying clothing.”).

Paul also points out that he was walking in the opposite direction than the robber from the convenience store and that he did not run away when Detective Jaynes confronted him. This argument fares no better. Viewing the totality of the circumstances, the district court could credit Detective Jaynes's testimony that he has encountered situations where a suspect fleeing the scene of a crime changes his direction of travel. Further, Paul did not need to exhibit evasive behavior for Detective Jaynes to reasonably suspect his involvement in the robbery. *See, e.g., Sokolow*, 490 U.S. at 9 (even “wholly lawful conduct” can justify a *Terry* stop). “Indeed, *Terry* itself involved ‘a series of acts, each of them perhaps innocent’

if viewed separately, ‘but which taken together warranted further investigation.’ ” *Id.* at 9–10 (quoting *Terry*, 392 U.S. at 22).

Because Detective Jaynes’s stop of Paul was proper, and because Paul makes no separate challenge to the search of his person that uncovered the firearm, the district court did not err in denying Paul’s motion to suppress.

IV.

For the foregoing reasons, we **AFFIRM** the district court’s judgment.

All Citations

Not Reported in Fed. Rptr., 2024 WL 891611

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE GREENEVILLE DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

CURTIS MITCHELL PAUL

USM#80193-509

Case Number: 2:21-CR-00112-DCLC-CRW(1)

Cameron C Kuhlman
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s): **1 of the Indictment**
- pleaded nolo contendere to count(s) which was accepted by the court.
- was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section and Nature of Offense	Date Violation Concluded	Count
18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(a)(2)- Convicted Felon in Possession of a Firearm	02/10/2021	1

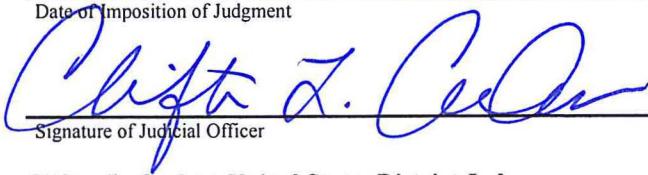
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. § 3553.

- The defendant has been found not guilty on count(s).
- All remaining count(s) as to this defendant are dismissed upon motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

March 2, 2023

Date of Imposition of Judgment



Clifton L. Corker, United States District Judge

Name & Title of Judicial Officer

March 8, 2023

Date

DEFENDANT: CURTIS MITCHELL PAUL
CASE NUMBER: 2:21-CR-00112-DCLC-CRW(I)

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IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

55 months as to count one. This sentence shall be served concurrently with any sentence that might be imposed in Washington County, Tennessee, Criminal Court Docket Number 47009. This sentence shall run consecutively to any sentence that might be imposed in Washington County, Tennessee, Criminal Court Docket Numbers 47560, 47559, and 47925; and Washington County, Tennessee, General Sessions Court Docket Number 2021-CR-152417. Additionally, this sentence shall run consecutively to any sentence that might be imposed for the pending probation violations in Carter County, Tennessee, Criminal Court Docket Numbers 24078, 24080, and 24288.

The court makes the following recommendations to the Bureau of Prisons:

1. Receive 500 hours of substance abuse treatment from the Bureau of Prisons' Institution Residential Drug Abuse Treatment Program.
2. Receive a physical health evaluation and a mental health evaluation, and any needed treatment while in the custody of the Bureau of Prisons.
3. Be afforded a full range of educational and vocational programs offered by the Bureau of Prisons.
4. Designation to the federal facility at Butner, NC.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on

to,
at,
with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CURTIS MITCHELL PAUL
CASE NUMBER: 2:21-CR-00112-DCLC-CRW(1)

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **three (3) years**.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentencing of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: CURTIS MITCHELL PAUL
CASE NUMBER: 2:21-CR-00112-DCLC-CRW(1)

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STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the mandatory, standard, and any special conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: CURTIS MITCHELL PAUL
CASE NUMBER: 2:21-CR-00112-DCLC-CRW(1)

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SPECIAL CONDITIONS OF SUPERVISION

1. You shall participate in a program of testing and/or treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as you are released from the program by the probation officer.
2. You shall not take any prescribed narcotic drug without notifying the physician that you have a substance abuse problem and without obtaining permission from the probation officer.
3. You shall participate in a program of mental health treatment, as directed by the probation officer, until such time as you are released from the program by the probation officer. You shall waive all rights to confidentiality regarding mental health treatment in order to allow release of information to the supervising United States Probation Officer and to authorize open communication between the probation officer and the mental health treatment provider.
4. You shall submit your person, property, house, residence, vehicle, papers, [computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media,] or office, to a search conducted by a United States probation officer or designee. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: CURTIS MITCHELL PAUL
CASE NUMBER: 2:21-CR-00112-DCLC-CRW(1)

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments sheet of this judgment.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment **
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options under the Schedule of Payments sheet of this judgment may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: CURTIS MITCHELL PAUL
CASE NUMBER: 2:21-CR-00112-DCLC-CRW(1)

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of **\$100.00** due immediately.
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal *(e.g., weekly, monthly, quarterly)* installments of \$ _____ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after the date of this judgment; or

D Payment in equal *(e.g., weekly, monthly, quarterly)* installments of \$ _____ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to **U.S. District Court, 220 West Depot Street, Suite 200, James H. Quillen United States Courthouse, Greeneville, TN 37743**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several
 See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
 Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA Assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) 2:21-CR-00112-DCLC-CRW
)
v.)
)
CURTIS MITCHELL PAUL,)
)
Defendant.)

MEMORANDUM OPINION AND ORDER

Before the Court is a Report and Recommendation of United States Magistrate Judge Cynthia R. Wyrick filed on September 26, 2022 [Doc. 25] (the “R&R”), recommending that this Court deny Defendant’s Motion to Suppress Evidence [Doc. 16]. Defendant filed objections to the R&R [Doc. 26]. For the following reasons, the Court **ADOPTS** the R&R [Doc. 25] and **DENIES** Defendant’s Motion to Suppress [Doc. 16].

I. BACKGROUND

On February 10, 2021, at about 1:59 p.m. FBI Task Force Officer Joe Jaynes was working in his office in Johnson City when he overheard dispatch announcing a robbery had just occurred at 815 W. Walnut Street, Johnson City, Tennessee, and that the suspect had proceeded out the store on foot [Doc. 24, pg. 30]. Dispatch reported that the suspect was about 5’2” wearing a white jacket, dark green gaiter-type mask, a bluish hat and had used a ten-inch silver knife in the robbery [Doc. 22, Exs. D1B, D1C]. Officer Jaynes immediately proceeded to the general area of the robbery. Another officer sent out several pictures he obtained from the store’s video surveillance camera [Doc 22, Exs. 2–4]. One showed the suspect waist up, wearing a black hat, black neck

gaiter, sunglasses, and a large bright blue jacket with what appeared to be a black jacket underneath. One of the pictures showed the entire body of the suspect with khaki pants on.

Officer Jaynes proceeded to the general area of the robbery [Doc. 24, pg. 16]. At about 2:16 p.m., he encountered Defendant about a block or so to the east of the scene of the robbery [Doc. 24, pg. 45], wearing a black jacket, black cap, black neck gaiter, and blue jeans and exhibiting a bulge in his right front pants pocket [Doc. 24, pg. 13, 16, 46]. Although Defendant was not wearing a bright blue jacket like the suspect in the photographs, Officer Jaynes testified he nevertheless stopped him because “in my training and experience it’s common for robbery suspects to shed outer garments of clothing in an attempt to avoid detection.” [Doc. 24, pg. 14]. Moreover, although the suspect had reportedly fled to the west of the robbery, not to the east where Officer Jaynes found him, Officer Jaynes testified that he had previously encountered suspects who changed directions when fleeing from the scene of a crime [Doc. 24, pgs. 71–72].

Officer Jaynes exited his car, identified himself as law enforcement, and said to Defendant “Hey, I’m Detective Jaynes with the Police Department. Come over here and talk to me.” [Doc. 24, pg. 17]. Defendant stated, “No, I didn’t do anything” and proceeded to walk away from the officer. At this point, Officer Jaynes grabbed Defendant’s arm because he “felt like [he] needed to conduct of brief detention to investigate whether or not he was the robbery suspect.” [Doc. 24, pg. 17]. Defendant “ jerked away” and “started reaching for his right front pocket,” saying “I’m going to grab something here....” [Doc. 24, pg. 24]. In response, Officer Jaynes immediately pushed Defendant against the rock wall preventing him from reaching in his front pocket. Another officer arrived and conducted a pat down in which a loaded taurus firearm was found in Defendant’s front pocket [Doc. 24, pg. 24]. Officer Jaynes arrested Defendant, who, as it turned out, was a convicted felon and could not legally possess a firearm.

On October 13, 2021, a federal grand jury indicted Defendant, charging him with a possession of a firearm by a convicted felon violation of 17 U.S.C. § 922(g)(1) [Doc. 1]. On July 27, 2022, Defendant filed the present motion to suppress, and on August 8, 2022, the United States of America responded in opposition [Doc. 20]. On August 29, 2022, the magistrate judge held an evidentiary hearing at which Officer Joe Jaynes testified [Doc. 24]. On September 26, 2022, a Report and Recommendation was filed, which recommended the motion be denied [Doc. 25]. Defendant timely filed objections to the R&R [Doc. 26].

Paul raises five objections to the magistrate judge's findings of fact. The first objection relates to the description of the clothing the suspect was wearing. Here he acknowledges that Officer Jaynes observed the suspect was wearing a black hat, black neck gaiter, sunglasses and bright blue jacket with a black jacket underneath but also "khaki pants" and "black shoes" [Doc. 26, pg. 1]. The second objection relates to what Officer Jaynes recalled hearing over dispatch about the suspect's height and the knife. Here he claims the officer was being crafty in his responses because he did not deny hearing those descriptions, just that he did not recall. He claims a "careful listener will recognize [that distinction] . . . represent[s] a distinction *with* a difference." [Doc. 26, pg. 2] (emphasis in original). The third objection relates to the magistrate judge's finding that the precise location where the officer encountered Defendant was not crucial because a fleeing suspect may change directions to avoid detection. He argues that "[t]his explanation does not appear in the transcript." [Doc. 26, pg. 2]. In the fourth objection, Defendant argues the magistrate judge should be faulted for crediting Officer Jaynes' testimony that he had seen someone carry a knife in their front pocket before. [Doc. 26, pg. 4] ("Jaynes offered no specific example of when he'd 'seen it' and admitted that he had personally never carried a Bowie knife in his front pocket . . ."). The fifth objection pertains to the magistrate judge finding that sufficient

similarity between the photographs depicting the suspect and what Defendant was wearing. Defendant contends that the officer lacked reasonable suspicion to stop Defendant because he was wearing blue jeans at the time of the stop and the photograph of the suspect shows a person wearing khaki pants. He contends Officer Jaynes lacked reasonable suspicion to conduct an investigatory stop because his “general appearance did not match the description received” by Officer Jaynes. [Doc. 23, pg. 4].

Defendant further objects to the magistrate judge’s conclusions of law. He first argues that the totality of the circumstances failed to provide Officer Jaynes with reasonable suspicion to initiate an investigatory stop and that his explanation that fleeing suspects commonly shed layers of clothing was mere “bootstrap[ping]” [Doc. 26, pg. 5]. Second, he argues that the officer, and by extension the magistrate judge, over-relied on “contextual factors” rather than facts raising particularized suspicion against Defendant [Doc. 26, pgs. 5–6]. Third, he asserts that the magistrate judge erred in finding that Defendant’s clothing “reasonably matched” Officer Jaynes’ description [Doc. 26, pgs. 6–7]. Fourth, Defendant contends that the officer’s testimony was insufficient to support a reasonable inference that Defendant shed outer garments of clothing [Doc. 26, pg. 7]. Fifth, he argues that the officer’s testimony is inconsistent with a reasonable inference of Defendant’s involvement in the robbery because the officer failed to testify that it was “common” for suspects to remain in the area of a crime scene [Doc. 26, pg. 8]. Sixth and finally, Defendant asserts that the magistrate judge erred in concluding that the officer reasonably believed the bulge in Defendant’s pocket could have been the knife used in the robbery [Doc. 26, pg. 9].

Defendant’s objections to the R&R can be categorized into two underlying arguments. Those are that the Magistrate Judge erred in: (1) determining that Defendant’s appearance reasonably matched the information Officer Jaynes knew about the suspect and (2) concluding that

Defendant acted and appeared consistent with Jaynes' experience with fleeing suspected felons. The Court addresses these arguments in turn.

II. ANALYSIS

The Fourth Amendment protects against unreasonable searches and seizures “and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest.” *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (citing *Terry v. Ohio*, 392 U.S. 1, 9 (1968)). Law enforcement’s actions must be “supported by reasonable suspicion to believe that criminal activity ‘may be afoot.’” *Id.* (citation omitted). “There is not a bright-line rule to determine whether an officer had reasonable suspicion.” *United States v. Luqman*, 522 F.3d 613, 616 (6th Cir. 2008). Instead, the focus is on the “totality of the circumstances surrounding the stop to determine whether the officer had a particularized and objective basis for suspecting criminal activity.” *Id.* (quoting *Arvizu*, 543 U.S. at 266). On this point, the Sixth Circuit counsels against looking “at each factor leading to the stop individually,” instead favoring examination of all “the factors as a whole” because each of the separate factors might each have “an innocent explanation” yet in the aggregate justify further investigation. *Id.* (citations and internal quotations omitted). Moreover, “due weight [must be given] to the officer’s factual inferences[] as their specialized training and experiences allow them to draw inferences . . . that might well elude an untrained person.” *Id.* (internal quotations omitted) (citing *United States v. Marxen*, 410 F.3d 326, 331–32 (6th Cir. 2005)). Reasonable suspicion is less than probable cause, “which itself ‘is not a high bar.’” *McCallister*, 39 F. 4th at 374 (quoting *D.C. v. Wesby*, 138 S. Ct. 577, 586 (2018)). All that is required is a “moderate chance of finding evidence of wrongdoing.” *Id.* at 373 (quoting *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 370–71 (2009)).

a. Objections based on differences in the suspect's appearance

The store clerk reported his store had been robbed at approximately 1:59 p.m. [Doc. 24, pg. 30]. An officer responded at the store and took several pictures from the video taken from the surveillance camera [Doc 22, Exs. 2–4]. The first picture shows the suspect wearing a dark cap, bright blue jacket, and a dark neck gaiter and sunglasses. Less than 20 minutes after the dispatch, Officer Jaynes saw Defendant walking near the scene of the crime with a dark hat, dark neck gaiter, and dark jacket [Doc. 24, pg. 13, 16, 46].

Defendant argues that his pants and shoes were different than those worn by the suspect and that he could not have easily changed them in the 20 minutes between the robbery and the stop. But not all the photos showed the suspect was wearing khaki pants and shoes [Doc 22, Exs. 2–4]. Further, Jaynes testified that he viewed these low-resolution images on his cell phone [Doc. 24, 10:14–16]. The fact that in this case there were some differences in the descriptions does not defeat reasonable suspicion. The real key is whether “the description is sufficiently unique to permit a reasonable degree of selectivity from the group of all potential suspects.” 4 W. LaFave, Search and Seizure, § 9.5(h) Location near scene of recent crime, pg. 780 (6th ed. 2020).

In any event, “the touchstone of the Fourth Amendment is reasonableness, not perfection.” *United States v. Moberly*, 861 Fed. App’x 27, 30–31 (6th Cir. 2021) (citing *Heien v. North Carolina*, 574 U.S. 54, 60–61) (holding that where a witness described a suspect standing among a congregated group as having dreadlocks, wearing a brown jacket, and driving an Oldsmobile, officers had reasonable suspicion although the suspect in fact drove a Buick and wore a gray sweatshirt). The descriptions were not so vague as to essentially permit a broad dragnet to stop everyone the officer encountered. The description was that the suspect was a white male who fled on foot and was identifiable by several items of clothing the suspect had been wearing.

Although the dispatch described the robbery suspect as five-foot-two, Officer Jaynes testified that he “did not recall” hearing this description [Doc. 25, pg. 4]. Defendant stresses that this testimony was not a denial, and because Officer Jaynes did not deny hearing the description, the height discrepancy between Defendant and the robbery suspect defeats reasonable suspicion. Defendant’s emphasis on the wording of Officer Jayne’s testimony is unpersuasive, however. Jaynes’ inability to recall hearing the suspect’s true height in no way shows that he in fact heard it but ignored it. Officer Jaynes’ testimony fairly establishes that the suspect’s height did not enter his decision to stop Defendant.

Defendant further argues that the general public commonly wears neck gaiters in the wake of Covid-19, but this reality also does not defeat reasonable suspicion. Officer Jaynes could discern from the surveillance footage that the suspect was wearing a dark neck gaiter. This observation “winnow[ed] the class of potential suspects” such that, alongside the other factors in this case, there was at least a moderate likelihood that Defendant was the suspect. *See United States v. Davis*, 341 Fed. App’x 139, 141 (6th Cir. 2009).

Because Jaynes’ decision to stop Defendant was based on sufficient specific and articulable facts, he did not over-rely on contextual factors. *See United States v. Caruthers*, 458 F.3d 467 (6th Cir. 2006). Courts indeed must weigh contextual factors carefully such that any person near the scene of a crime is not subject to seizure merely for being in the wrong place at the wrong time. *Id.* at 465. Here, however, Defendant’s proximity to the robbery was buttressed by his dress and the bulge in his pocket, factors that were specific to him and unrelated to his surroundings.¹

¹ Defendant further argues that he exhibited no nervous or evasive behavior, *see Illinois v. Wardlow*, 528 U.S. 119, 124 (2000), no furtive movements, *see Florida v. J.L.*, 529 U.S. 266, 268 (2000), and no hasty retreat, *see Wardlow*, 528 U.S. at 124. But, as explained above, Officer Jaynes relied on other facts in deciding to stop Defendant.

Officer Jaynes also explained that he disregarded Defendant's lack of sunglasses and a bright blue jacket because—in his experience—fleeing suspects commonly shed outer layers of clothing to avoid detection [Doc. 24, 11:3–5]. In fact, many courts reasonably conclude that exact matches of clothing descriptions will not defeat reasonable suspicion because of the obvious fact that a suspect may discard some items of clothing. *See United States v. Arthur*, 764 F.3d 92, 98 (1st Cir. 2014)(“[w]e think it entirely plausible (as did the district court) that the robbers might proceed to a nearby street and shed identifying clothing”).

As explained above, Jaynes observed additional facts giving rise to reasonable suspicion that Defendant was a suspect in the recently committed robbery. The conclusion that Defendant could have shed clothing was therefore a “rational inference from” specific and articulable facts on which officers are entitled to rely under *Terry*. 392 U.S. at 21. Here, because Defendant was in the vicinity of the robbery, was of the same race and sex of the suspect and was wearing clothing that in some respects matched that of the suspect, Officer Jaynes had reasonable suspicion to stop Defendant. He was entitled to infer Defendant may have discarded other articles of outer clothing, and the Court must give “due weight” to his inference. *Luqman*, 522 F.3d at 616.²

But more importantly, officers should be permitted to account for errors in the description provided. In this case, the first description was the suspect was wearing a white jacket. The pictures from the surveillance camera show that was plainly wrong [See Doc. 24, pg. 36].

One question which sometimes arises with regard to the requisite particularity of a description to justify stopping a person for investigation in connection with a recently committed crime is this: when there are several points of comparison possible as a result of the description, may a person ever be lawfully stopped even though he does not match up on all points? The answer is yes, for the investigating officers must be allowed to take account of the possibility that some of the

² Moreover, because reasonable suspicion is an objective standard, *see Terry*, 392 U.S. at 21, Officer Jaynes was not required to “conclud[e]” on the record, as Defendant suggests [See Doc. 26, pg. 7], that Defendant in fact shed a jacket and sunglasses.

descriptive factors supplied by victims or witnesses may be in error.

4 W. LaFave, Search and Seizure, § 9.5(h) Location near scene of recent crime, pg. 784 (6th ed. 2020).

Similarly, Officer Jaynes was entitled to rely on his past observation of a fleeing suspect who had changed directions to avoid being apprehended. Reasonable suspicion does not require that suspects *commonly* display any pattern of conduct [*see* Doc. 26, pg. 2], only that the evidence supports a reasonable suspicion that Defendant had been involved in the robbery under the totality of circumstances test. In fact, it defies logic to assume that when a robber flees the scene he must remain in a straight line. Jaynes testified that he had seen at least one suspect change directions while fleeing [Doc. 24, 68:24–69:1].

Lastly, Paul objects that ordinary people do not commonly carry ten-inch knives in their front pockets, and that the magistrate judge erred in crediting Jaynes' testimony that "he had seen it happen" [Doc. 25, pg. 4]. But like the other aspects of Jaynes' experience, this observation permitted a reasonable inference that Defendant was carrying a knife or money from the robbery. This further supports Officer Jaynes' reasonable suspicion that Defendant was a suspect in the recent robbery and justified his initial stop of Defendant.

IV. CONCLUSION

For the foregoing reasons, Defendant's objections [Doc. 26] are **OVERRULED** and the R&R [Doc. 25] is **ADOPTED**. Defendant's Motion to Suppress Evidence [Doc. 16] is **DENIED**.

SO ORDERED:

s/Clifton L. Corker
United States District Judge





GOVERNMENT
EXHIBIT

CASE
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EXHIBIT
NO. 3

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GOVERNMENT
EXHIBIT

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EXHIBIT
NO. 4