

NOT RECOMMENDED FOR PUBLICATION

File Name: 20a0449n.06

No. 19-5964

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED
Jul 31, 2020
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.)
)
PATRICK RYAN SMITH,)
)
Defendant-Appellant.)
)

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

OPINION

Before: MOORE, CLAY, and McKEAGUE, Circuit Judges.

KAREN NELSON MOORE. Patrick Smith was indicted for being a felon in possession of firearms and ammunition in violation of 18 U.S.C. § 922(g)(1) after police searched his car and discovered multiple guns and sets of ammunition. A nearby business owner noticed Smith’s car parked in the driveway of a vacant-looking house and asked the police to investigate. Initially suspecting Smith of trespass, the officers asked who he was and to whom the house belonged. About eleven minutes into the stop, the officers discovered that Smith had guns and ammunition in his car, and after the officers saw the guns, Smith told the officers that he was a felon.

Smith moved to suppress the evidence coming out of that encounter under the Fourth and Fifth Amendments, but the magistrate judge recommended that the district court deny Smith’s request. R. 28 (R. & R. at 36) (Page ID #138). The district court adopted the magistrate judge’s Report and Recommendation (“R&R”) and denied Smith’s motion to suppress. R. 29 (Mem. &

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Order) (Page ID #139). The case proceeded to trial, and a jury convicted Smith of multiple counts of being a felon in possession of a firearm and ammunition. R. 43 (Jury Verdict) (Page ID #204). Smith timely appealed and solely challenges the district court’s denial of his motion to suppress on Fourth Amendment grounds under *Terry v. Ohio*, 392 U.S. 1 (1968). We hold that Smith forfeited his right to appeal the denial of his motion to suppress because his counsel did not object to the R&R.

“In this circuit, the failure to object to a magistrate judge’s Report and Recommendation results in a [forfeiture] of appeal on that issue as long as the magistrate judge informs the parties of the potential [forfeiture].” *United States v. Wandahsega*, 924 F.3d 868, 878 (6th Cir. 2019); *see also Berkshire v. Beauvais*, 928 F.3d 520, 530–31 (6th Cir. 2019) (clarifying that the failure to file objections to an R&R results in forfeiture, not waiver). The magistrate judge informed Smith of the potential forfeiture here—noting that any objections must be filed within fourteen days and that the failure to file timely objections forfeits the right to an appeal—but Smith failed to submit objections. *See* R. 28 (R. & R. at 36 n.7) (Page ID #138). As Smith concedes, no exception to forfeiture previously enumerated in our cases applies. And Smith’s argument that we should excuse the forfeiture because his counsel was ineffective in failing to object to the R&R is better suited to a collateral proceeding. We accordingly deem Smith’s argument forfeited and **AFFIRM** the district court’s decision denying Smith’s motion to suppress.