

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

**UNITED STATES OF AMERICA,**

Plaintiff,

v.

**CRIMINAL ACTION NO. 3:13-CR-33-2  
(JUDGE GROH)**

**DARNELL LEON PLAINES,  
a/k/a "Smalls,"**

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation. Magistrate Judge Seibert filed his report and recommendation on March 5, 2014. In that filing, the magistrate judge recommended that this Court deny Defendant's motion to suppress.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the Defendant's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v.

Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Magistrate Judge Seibert ordered that objections were due by Wednesday, March 19, 2014—fourteen (14) days after entry of the report and recommendation. Neither party filed objections to the report and recommendation. Accordingly, this Court will review the report and recommendation for clear error.

On September 4, 2013, a grand jury sitting in Clarksburg returned a seven-count Indictment. Defendant Plaines was charged in Count One of the Indictment, along with co-defendants Timothy Williams and Derrick Wells, with conspiring to possess with intent to distribute and to distribute twenty-eight grams or more of cocaine base between April 2013 and May 10, 2013. On February 14, 2014, Defendant moved to suppress the following: (1) all evidence obtained from the Defendant's person, automobile, house or any premises in which Defendant had a reasonable expectation of privacy and (2) any out-of-court statements made by Defendant whether written, oral, or videotaped. On February 19, 2014, the United States filed its response. On March 4, 2014, Magistrate Judge Seibert held an evidentiary hearing and argument on Defendant's motion.

After reviewing Defendant's motion and the United States' response and listening to arguments of counsel, Magistrate Judge Seibert found that the motion to suppress should be denied because the "warrantless protective sweep of the apartment was justified by the emergency exception and law enforcement officers properly obtained a search warrant for the items subsequently seized." Additionally, Magistrate Judge Seibert found that "Defendant did not make any statements to law enforcement at the time the officers entered the apartment on May 10, 2013 or during the search the same day. Therefore, there are no out-of-court statements made by Defendant on May 10, 2013 to suppress."

As previously stated, neither party filed objections to Magistrate Judge Seibert's report and recommendation.

In reviewing Magistrate Judge Seibert's report and recommendation, the Court does not find clear error. Therefore, it is the opinion of this Court that the magistrate judge's **Report and Recommendation [Doc. 68]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **DENIES** Defendant's Motion to Suppress [Doc. 121].

It is so **ORDERED**.

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

**DATED:** March 26, 2014

  
GINA M. GROH  
UNITED STATES DISTRICT JUDGE