

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTIAN HARRIS,

Defendant.

**CRIMINAL ACTION NO.
1:23-CR-403-JPB-CCB-3**

FINAL REPORT AND RECOMMENDATION

Defendant Christian Harris is charged with conspiring to distribute, and possessing with intent to distribute, at least 500 grams of a mixture and substance containing a detectable amount of methamphetamine, as well as assaulting a federal officer. (Doc. 42). He raised an oral motion to suppress an out-of-court identification made by Homeland Security Task Force Officer David Schweizer in November 2023. *See* (Docs. 90, 105 at 6). The Court held an evidentiary hearing on July 2, 2025. (Doc. 105). Defendant filed a post-hearing brief in support of his motion, (Doc. 109), and the Government filed a response, (Doc. 112). The motion is now ripe for resolution, and for the reasons set forth below, I recommend that it be **GRANTED**.

I. Factual Background

On November 16, 2023, law enforcement conducted a controlled delivery of a tractor-trailer loaded with hema prime fertilizer that concealed a large quantity of methamphetamine. (Doc. 105 at 39).¹ The tractor-trailer was scheduled to be delivered to a warehouse located at 2450 Eastgate Plaza in Snellville, Georgia. *Id.* Officer Schweizer, a task force officer with Homeland Security assigned primarily to surveillance operations, was directed to begin surveillance at that location. *Id.* at 38-39.

Officer Schweizer arrived in the area at approximately 2:50 p.m. and positioned himself in a Pep Boys parking lot near the entrance to Eastgate, off of Main Street. *Id.* at 40-41. From there, he could not see the warehouse itself, but he had a clear view of the entrance to Eastgate and an AutoZone store located across the street. *Id.* at 42. He was seated in an unmarked car approximately 50 yards from the entrance point on Eastgate that led down to the warehouse, and he had

¹ Record citations are to the CM/ECF page number in the top right corner of the page.

an unobstructed view, with only momentary obstructions lasting less than a second when larger vehicles passed. *Id.* at 42–43, 46.

Around 7:30 p.m., while it was still “pretty light” outside, Officer Schweizer observed a white Porsche pull into the AutoZone parking lot. *Id.* at 43–44. The Porsche backed into a space along the side of the building, away from other cars and away from the main entrance. *Id.* Based on the type of car, where it was parked, and the fact that no one immediately got out, Officer Schweizer focused his attention on the Porsche. *Id.* at 44–45.

Approximately five minutes after the Porsche parked, a Black male got out of the front passenger seat and walked toward the AutoZone entrance. *Id.* at 44. Officer Schweizer maintained direct focus on the man as he walked, watching him from a clear, unobstructed vantage point. *Id.* at 47–48. He observed the man in profile as he walked from the car to the store, which took less than a minute. *Id.* at 47. Through the store’s glass doors, Officer Schweizer caught a partial frontal view of the man’s face, though his line-of-sight was somewhat obstructed by signage on the doors. *Id.* at 48. He was able to see portions of the man’s face but not a full-frontal view. *Id.*

Shortly thereafter, a Hispanic male arrived in another car, spoke briefly with the driver of the Porsche, and then gestured toward the store. *Id.* at 46. The Hispanic male went over to the front doors of the store and motioned to the Black male inside. *Id.* at 48. After that, both men left the store and walked back toward the Porsche. *Id.* at 48-49. Officer Schweizer again observed the Black male in profile during the return walk, using binoculars for approximately a second as the men walked back to the vehicle. *Id.* at 49. His view was clear and unobstructed. *Id.* at 49-50. The Black male entered the front passenger seat, and the Hispanic male entered the rear passenger seat. *Id.* at 49.

The Porsche then drove toward the warehouse and returned approximately a minute later. *Id.* at 50-51. On its return, Officer Schweizer observed only two occupants in the front seats and noted that he no longer saw the silhouette of the Hispanic male in the vehicle. *Id.* The Porsche later returned to the area a third time and then again around the time of the takedown and controlled delivery. *Id.* at 52-54. During the takedown, the Porsche fled the area at a high rate of speed and struck the undercover vehicle of another task force officer before leaving the scene.

Id. at 54-55. Law enforcement located the Porsche abandoned in a nearby shopping center parking lot, following a trail of oil from the collision. *Id.* at 56.

Officers obtained registration information for the Porsche by running its tag number. *Id.* at 59-60. The registered owner was identified as Christian Harris. *Id.* at 133. Another agent circulated a photograph of the registered owner in a WhatsApp group chat used by the investigative team. *Id.* at 60-62. He sent the photograph, along with identifying information, including the name Christian Harris and other biographical details, at approximately 10:09 p.m. *Id.* at 94-96.

Officer Schweizer viewed the photograph on his phone through the WhatsApp group chat. *Id.* at 62. Upon seeing the photograph, he recognized the person depicted as the same Black male he had seen leaving the white Porsche, walking into the AutoZone, and returning to the Porsche. *Id.* at 64. At the time he viewed the photograph, approximately three hours had elapsed since he had observed the man at the AutoZone. *Id.* at 65. That was the first identification.

On March 25, 2025, Officer Schweizer was contacted by an agent and was again shown a photograph of Christian Harris. *Id.* at 100-101. During a phone conversation regarding the photograph, he stated that he believed the person

depicted was the same man he had observed on November 16, 2023. *Id.* at 104. At that time, he expressed his level of certainty as approximately 75 to 80 percent. *Id.* That was the second identification.

Defendant now moves to suppress the first and second identifications and to prevent Officer Schweizer from making an in-court identification in the future. (Doc. 109 at 1).

II. Discussion

Courts in the Eleventh Circuit employ a two-part test to determine whether an identification procedure complies with the Constitution. *United States v. Diaz*, 248 F.3d 1065, 1102 (11th Cir. 2001). First, the court must decide whether the procedures used to obtain the identification were unduly suggestive. *Id.* If they were, the court proceeds to the second step: determining whether, under the totality of the circumstances, the identification was nonetheless reliable. *Id.* Several factors must be considered in a reliability determination: (1) the opportunity of the witness to view the suspect at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of his prior description of the suspect; (4) the level of

certainty of the identification; and (5) the time between the crime and the identification. *Id.* (citing *Neil v. Biggers*, 409 U.S. 188, 199) (1972).

Here, the Government concedes that the identification procedure used to identify Defendant in November 2023 was unduly suggestive. (Doc. 112 at 1, 5). It argues, however, that Officer Schweizer's identification was nonetheless reliable and should not be suppressed. *Id.* at 5-7. Defendant, relying on the reliability factors listed above, disagrees. (Doc. 109 at 8-22). I thus analyze each of the factors to determine the reliability of Officer Schweizer's November 2023 identification.²

A. Opportunity to View the Suspect and Degree of Attention

The first factor considers the witness's opportunity to view the suspect at the time of the crime.

As mentioned above, Officer Schweizer was positioned approximately 50 yards from the Porsche. (Doc. 105 at 45.) At the time the Black male left the car, it was "pretty light" outside. *Id.* at 44. His view was largely unobstructed, with only

² The Government states that it does not intend to use the March 2025 identification at trial. (Doc. 112 at 6). I thus do not analyze the reliability of that identification.

momentary interruptions of less than a second. *Id.* at 46. He maintained direct focus on the individual as he walked from the car to the store, a walk lasting less than a minute. *Id.* at 47. He again observed the man in profile on the return walk to the Porsche. *Id.* at 49. While the man was inside the store, Schweizer obtained a partial frontal view through the glass doors, though signage partially obstructed his view. *Id.* at 48.

However, the limitations were significant. Officer Schweizer acknowledged that he never obtained a full-frontal view of the man's face. *Id.* at 48-49. His observations consisted primarily of profile views from a distance of roughly 50 yards, supplemented by a partial and obstructed view through glass doors. *Id.* In other words, the duration of any clear facial observation was brief. Officer Schweizer did not have a close-up, face-to-face interaction with the person he observed. Nor did he see the individual at especially close range. As such, because Officer Schweizer had no direct interaction with the suspect and observed him only from a distance and without a frontal view of his face, I find that this factor weighs against reliability. *See, e.g., United States v. Foster*, No. 3:23-CR-00416-CLM-HNJ, 2025 WL 1109439, at *6 (N.D. Ala. Mar. 19, 2025) (finding an observation

unreliable when the witness had “casually viewed [the suspect] on only two occasions” and “did not personally interact with” him), *report and recommendation adopted sub nom.*, 2025 WL 1104762 (N.D. Ala. Apr. 14, 2025); *contra United States v. Perez*, No. 1:13-CR-0293-WBH, 2014 WL 1309088, at *7 (N.D. Ga. Mar. 31, 2014) (finding an observation reliable where a witness and a suspect “engaged in general conversation for about five minutes” and “were face to face within touching distance”).

B. The Degree of Attention

The second factor considers the witness’s degree of attention at the time of the observation.

The Government argues, correctly, that Officer Schweizer was not a casual bystander. He was engaged in a surveillance operation and testified that once the Porsche drew his attention, he was “totally focused” on the vehicle and its occupants. (Doc. 105 at 45). The Porsche appeared out of place in that commercial area, and its unusual parking position caused him to concentrate on it. *Id.* at 44-45. He maintained direct visual attention as the passenger walked to the store and returned to the Porsche. *Id.* at 47-50. This was a deliberate, observational effort

rather than a fleeting or distracted encounter. However, despite his training and experience—and his acknowledgment that detailed descriptions are important—Schweizer’s contemporaneous report documented only that he observed a “Black male.” *Id.* at 75-76. He did not record height, weight, clothing, hair, or facial features. *Id.* at 76. The absence of such detail somewhat tempers the weight to be given to his assertion that he was “totally focused.”

That said, the inquiry under this factor is not whether the officer later produced a comprehensive written description, but whether he was paying attention at the time. The evidence shows that once the Porsche drew his suspicion, Officer Schweizer intentionally observed the individual’s movements. He was not under acute stress, not distracted by violence, and not engaged in a chaotic scene. He was conducting surveillance with the purpose of noticing unusual activity. That context supports a finding that his degree of attention was meaningful. As such, this factor weighs slightly in favor of reliability.

C. The Accuracy of the Prior Description

The third factor examines the accuracy of the witness’s prior description of the suspect. Here, as mentioned, the description was undeniably sparse, noting

only a “Black male.” (Doc. 105 at 75-76). Officer Schweizer did not record facial hair, hairstyle, or other distinguishing characteristics, and he later testified that he could not recall such details. *Id.* at 88.³ On balance, given the lack of specificity, I find that this factor weighs against reliability. *See Foster*, 2025 WL 1109439 at *6 (finding a description of a “Hispanic male” insufficient to support reliability and contrasting it with cases in which the descriptions were more detailed).

D. Level of Certainty

The fourth factor considers the witness’s level of certainty at the time of the identification.

When Officer Schweizer first viewed the photograph circulated in the WhatsApp group on the night of the incident, he testified that he recognized the man depicted as the same person he observed leaving and reentering the Porsche. (Doc. 105 at 64). When asked to describe his level of certainty at that time, he stated

³ The Government argues that Officer Schweizer accurately described the Defendant as a “Black male, medium height, I guess, kind of heavyset.” (Doc. 105 at 50). As Defendant points out, however, that description was only given at the suppression hearing, not in Officer Schweizer’s initial report. *Id.* at 74. I thus do not give it any weight in determining the reliability of Officer Schweizer’s initial identification.

that it was “pretty high.” *Id.* at 65. Defendant places significant weight on Officer Schweizer’s use of the word “believe” during his testimony: “And I believe -- I’m not sure if I immediately text on there or if I got on the radio, but I said I believe that was the driver of the Porsche or the person that was occupying the Porsche at the AutoZone.” *Id.* at 62. But viewed in context, that phrasing appears conversational rather than an expression of uncertainty. His contemporaneous description of his confidence as “pretty high” was not qualified, and there is no evidence that he failed to identify the suspect when first presented with the photograph. On balance, then, this factor weighs in favor of reliability, but the factor itself does not play a major role in the final analysis. *See United States v. Moore*, No. 1:19-CR-452-AT-JSA, 2021 WL 8084556, at *11 (N.D. Ga. May 11, 2021), (noting that “the conclusory nature of” witness statements that they were “very sure” or “99.9% sure” of their accuracy “substantially limit their value”), *report and recommendation adopted*, 2022 WL 633565 (N.D. Ga. Mar. 4, 2022).

E. Length of Time Between Observation and Identification

The final factor considers the length of time between the observation and identification. Here, approximately three hours elapsed between Officer

Schweizer's observation of the man at the AutoZone and when he saw the photograph in the WhatsApp group. (Doc. 105 at 65). That is a very short interval. Indeed, the Eleventh Circuit has upheld identifications with much longer intervals. *See, e.g., United States v. Jean*, 315 F. App'x 907, 913 (11th Cir. 2009) (finding an identification reliable despite a six-year interval).

A matter of hours, by contrast, supports reliability because the event would still have been fresh in the witness's memory. Defendant argues that the short time frame cannot cure weaknesses in the other factors. (Doc. 109 at 22). True. But when assessed independently, this factor weighs in favor of reliability.

* * *

This is a close case. Officer Schweizer was attentive and fairly certain in his identification, which occurred only hours after he saw the suspect. What tips the balance is the limited nature of his observation itself. He viewed the suspect from approximately fifty yards away, primarily in profile, without ever obtaining a fully frontal view of his face. The observation was brief, partially obstructed, and unaccompanied by any direct interaction, and his contemporaneous description was sparse and lacking in distinguishing detail. Reliable identification begins with

a meaningful opportunity to observe facial features at sufficient proximity and with sufficient clarity. Here, that foundational predicate is weak. As such, I find that, under the totality of the circumstances, the identification is insufficiently reliable, and I recommend that it be suppressed.

III. CONCLUSION

For the reasons stated above, I **RECOMMEND** that Defendant's oral motion to suppress the out-of-court identification procedures be **GRANTED**.⁴ Defendant's case is **CERTIFIED READY FOR TRIAL**.

IT IS SO RECOMMENDED, this 11th day of May, 2026.



CHRISTOPHER C. BLY
UNITED STATES MAGISTRATE JUDGE

⁴ At this time, I decline to address whether Officer Schweizer should be precluded from making an in-court identification. (Doc. 109 at 1, 24-25). It is not clear whether the Government even intends to elicit such an identification. And if it does, the analysis will be influenced by the facts and circumstances present at the time of trial.