

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

KENDRICK DEMOND GRAY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 09-0669-KD-N
	)	
JEFFREY HILBURN,	)	
	)	
Defendant.	)	

ORDER

This matter is before the court on defendant’s Motion for Summary Judgment (doc. 24), together with the Brief (doc. 25) and Exhibits (doc. 26) filed with the motion, plaintiff’s Response (32) and Defendant’s Reply (doc. 33). The motion has been referred to the undersigned for entry of a Report and Recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.2(c)(4). Upon careful review, the undersigned finds that supplementation of defendant’s submissions is necessary prior to the court’s consideration of the motion.

Plaintiff’s central claim is that defendant Hilburn arrested him in the absence of probable cause. Defendant offers evidence concerning the statements of various witnesses. However, no document reflecting the incriminatory statements is included in the record. Moreover, defendant has not provided an affidavit—either as part his Special Report<sup>1</sup> or in support of the motion for summary judgment—stating what he knew at the time of the arrest. The references to

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<sup>1</sup> The service order required defendant to file a Special Report which was to contain “where applicable the sworn statements of all persons having knowledge of the subject matter of the complaint.” The Special Report (doc. 20) submitted by defendant and its exhibits (doc. 21) contained excerpts of the deposition of the plaintiff, a copy of the Offense Report and its supplement, a letter from the Mobile County Impound Yard to Timothy Hall, the arrest reports for plaintiff’s co-defendants Timothy Hall and Jajuan Holmes, and a certified copy of the criminal case file from the Mobile County Circuit Court.

incriminatory statements by petitioner's co-defendants and his girlfriend do not demonstrate when they were given nor that defendant Hilburn knew of those statements prior to the arrest. Further, there is no indication in the record when the DNA test linking defendant to the crime was performed on the gloves found in the getaway car. Nor does any of the other evidence submitted by defendant answer this central question sufficiently to make the initial showing required of a movant seeking summary judgment.

For the foregoing reasons, it is hereby ORDERED that, no later than **August 12, 2011**, defendant shall supplement his evidentiary submissions in support of his Motion for Summary Judgment as set forth above. Thereafter, plaintiff may file a supplement to his Response to the defendant's Motion for Summary Judgment no later than **August 26, 2011**; *any such supplement should be limited to new evidence or argument relevant to the defendant's supplement, and should not repeat arguments previously made.*

DONE this the 4<sup>th</sup> day of August, 2011.

/s/ Katherine P. Nelson  
**KATHERINE P. NELSON**  
**UNITED STATES MAGISTRATE JUDGE**