IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

REPORT AND
RECOMMENDATION

v.

03-CR-097-C

JOHN W. SANDERS,

Defendant.

REPORT

Before the court is defendant John W. Sanders's motion to suppress all evidence derived from a pretextual traffic stop. (Dkt. 8). Sanders has decided not to brief the motion, predicting that the outcome is "fairly clear." *See* October 3, 2003 letter of Attorney Gregory Dutch. This is a perspicacious prediction. For the reasons stated below, I am recommending that the court deny Sanders's motion to suppress.

On September 16, 2003, this court held an evidentiary hearing on Sanders's motion. Having heard and seen the witnesses testify and having considered the exhibits and affidavits in the record, I find the following facts:

Facts

Pseudoephedrine is a key ingredient in many recipes to cook methamphetamine; it also is a key ingredient in many over-the-counter cold medicines. As a result, meth-cookers routinely cruise the aisles of Walmart, ShopKo and Walgreens trying to look inconspicuous

while filling their carts with hundreds of boxes of generic cold tablets. Not surprisingly, the Big Boxes have trained their employees to notice and report such behavior.

On October 25, 2002, Detective Anthony Curtis of the University Police Department, assigned to the Dane County Narcotics and Gang Task Force, met with ShopKo representatives to view a store videotape of a man named Alexander Jarvis purchasing noteworthy quantities of pseudoephedrine cold tablets in the company of John Sanders. Detective Curtis filed this information for future reference.

The future arrived on November 22, 2002 when Detective Curtis was called to the East Side Copps grocery store to intercept two men buying large quantities of cold medicine. While staked out in the parking lot, Detective Curtis observed Sanders and Jarvis leaving Copps with a plastic bag that appeared full of pseudoephedrine. Detective Curtis broadcast a description of Sanders's truck and asked all available law enforcement officers to converge and pursue until the truck committed a traffic violation that would justify a vehicle stop.

One agent who responded was Sheriff's Sergeant Gary Anderson, a drug task force agent who was driving an unmarked SUV. Sergeant Anderson saw a truck matching Detective Curtis's description sitting at the traffic lights at the corner of ShopKo and Aberg, headed the opposite direction. Sergeant Anderson circled round and began to tail the truck westbound on Aberg Avenue.

At the traffic light where Aberg intersects Packers Avenue, there is a left turn lane that allows traffic to enter Packers Avenue inbound. Wisconsin law forbids performing a U-turn

at an intersection controlled by a traffic light, but Sanders performed a U-turn from the left turn lane and headed back eastbound on Aberg Avenue. Sergeant Anderson followed and paced Sanders at approximately 55 miles per hour in a 45 mile per hour zone. Sanders exited onto East Washington; Anderson could not follow safely, so he abandoned pursuit. Detective Anderson then telephoned Detective Curtis to report that he had observed the blue truck perform an illegal U-turn and exceed the speed limit on Aberg Avenue. Detective Curtis broadcast this information over the police radio.

Among those hearing the broadcast was Madison Police Officer Bart O'Shea, who was patrolling northeast Madison in a marked squad car. By that time, Detective Curtis had fine-tuned his description of the vehicle to a bright blue Dodge Ram pickup truck with Kentucky license plates that last had been seen near Wright Street and East Washington Avenue. As Officer O'Shea drove outbound on East Washington Avenue he saw the targeted blue truck drive past him on the other side, heading inbound. Officer O'Shea reversed course and began pursuit.

Officer O'Shea radioed Detective Curtis to ask if the task force already had developed probable cause for the stop or if he needed to observe a traffic violation himself. Detective Curtis responded that Sergeant Anderson had seen the truck execute an illegal U-turn on Aberg Avenue followed by a speeding violation. Based on this report, Officer O'Shea activated his emergency lights and pulled over the truck.

As he approached the truck, Officer O'Shea saw a driver and two passengers, none of whom was wearing a seatbelt as required by state law. Within minutes, three or four other squad cars responded to the scene. Officer O'Shea arrested all three occupants of the truck on the traffic and seatbelt violations and because they were from out of state.

Analysis

Regardless whether it's good public policy, it does not violate the fourth amendment for police to arrest a driver for committing a minor traffic violation, even if this was not the reason for initiating pursuit and even if they never issued a traffic ticket. The Supreme Court held in *Whren v. United States*, 517 U.S. 806 (1996) that ulterior motives do not invalidate a police stop for a traffic violation, no matter how minor, if the police detect a motor vehicle law infraction. "That is the law, and the time for debating whether it is correct – historically or conceptually – has passed." *United States v. Murray*, 85 F.3d 459, 461 (7th Cir. 1996). A motorist legally may be stopped and arrested for any petty regulatory violation, such as failing to wear a seatbelt, *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001), driving with a cracked windshield, *United States v. Childs*, 277 F.3d 947, 949 (7th Cir. 2002)(*en banc*), and driving with a dangling air freshener, *United States v. Smith*, 80 F.3d 215, 219 (7th Cir. 1996).

Indeed, there doesn't even have to be an *actual* motor vehicle regulatory violation; probable cause to believe one has occurred is sufficient to justify a traffic stop and arrest.

Smith, 80 F.3d at 219 ("The issue here is not whether he would have been convicted of a violation in traffic court. The issue is whether there was probable cause that a traffic law had been violated"). *See, also United States v. Cashman*, 216 F.3d 582 (7th Cir. 2000):

> The propriety of the traffic stop does not depend, in other words, on whether [the defendant] was actually guilty of committing a traffic offense by driving a vehicle with an excessively cracked windshield. The pertinent question instead is whether it was reasonable for Trooper Spetz to *believe* that the windshield was cracked to an impermissible degree.

Id. at 587, emphasis in original.

Additionally, it is constitutionally irrelevant whether the offense on which the arrest is premised ordinarily is handled less seriously:

> Although traffic stops usually proceed like *Terry* stops, the Constitution does not require this equation. Probable cause makes all the difference – and as [*Whren*] shows, traffic stops supported by probable cause are arrests, with all the implications that follow from probable cause to believe that an offense has been committed.

United States v. Childs, 277 F.3d at 953. Only where no proffered circumstance could cause a prudent person to suspect a moving violation would the suppression of evidence be appropriate. *United States v. Williams*, 106 F.3d 1362, 1365 (7th Cir. 1997). In fact, it is constitutionally irrelevant if the traffic violation justifying the stop and arrest ultimately never is charged. "An arrest may be perfectly reasonable even if the police officer ultimately does not charge the suspect for the offense giving rise to the officer's probable cause determination." *United States v. Woody*, 55 F.3d 1257, 1268 (7th Cir. 1999).

In this case, Sergeant Anderson developed probable cause that Sanders committed two moving violations that would justify the vehicle stop sought by Detective Curtis. Under the collective knowledge doctrine, all officers in radio contact during an investigation are imputed to know what the others know. *See United States v. Sawyer*, 224 F.3d 675, 680 (7th Cir. 2000); *United States v. Edwards*, 885 F.2d 377, 382 (7th Cir. 1989). Here, Sergeant Anderson reported to Detective Curtis the traffic violations he had observed, and Detective Curtis passed this information to Officer O'Shea. That was enough render the traffic stop and the driver's arrest reasonable. Once Officer O'Shea saw that the two passengers were not wearing their seatbelts, he had probable cause to arrest them as well. Everything that the police did that day was within the limits of the Fourth Amendment as interpreted by the Supreme Court and the Seventh Circuit. Therefore, there is no basis to quash the traffic stop or to suppress evidence.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant John W. Sanders's motion to suppress evidence.

Entered this 8th day of October, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge