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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES SANCHEZ,

Defendant.

ORDER

06-10001-X

Before the court for decision is defendant James Sanchez's motion to suppress evidence obtained following his traffic stop at Ft. McCoy. For the reasons stated below, I am denying this motion.

FACTS

On July 8, 2006, at about 10:00 a.m., Officer David Hansen of the Ft. McCoy Police Department was traveling westbound in his squad car on Highway 21 within the federal territorial jurisdiction of the United States. Defendant James Sanchez drove past him eastbound at what appeared to be an excessive rate of speed. Officer Hansen's radar showed acceleration of Sanchez's vehicle from 54 MPH to 66 MPH in this 55 MPH speed zone. Officer Hansen U-turned and activated his overhead lights. Sanchez stopped and parked and presented his driver's license without incident.

Officer Hansen immediately noticed the "strong odor" of alcoholic beverages emanating from Sanchez. In Officer Hansen's experience, which includes ten years of patrol

work at Ft. McCoy, in the vast majority of traffic stops during which the driver is strongly redolent of alcoholic beverages, testing establishes that the driver is legally intoxicated. Sanchez admitted he had been drinking but Officer Hansen cannot remember how many drinks Sanchez claimed to have consumed.

At the evidentiary hearing, Officer Hansen claimed that Sanchez's speech was slurred and that he was speaking slowly and had trouble pronouncing certain words. Officer Hansen did not note slurred speech in his written report at the time of the arrest. Officer Hansen explained that this was an oversight.

Officer Hansen wrote up a warning for speeding while waiting for backup to arrive, then performed field sobriety tests on Sanchez. Sanchez failed the tests. The officers took Sanchez into custody. Testing at the station by the "Intox EC/IR" revealed that Sanchez's BAC was 0.16, twice the legal limit.

ANALYSIS

Sanchez claims that Officer Hansen violated his fourth amendment rights by asking him to step out of his vehicle to perform field sobriety tests. According to Sanchez, the circumstances known to Officer Hansen did not rise to the level of a reasonable suspicion that Sanchez was driving while intoxicated. Therefore, removing Sanchez from his car to perform these tests was unreasonable. Sanchez is incorrect.

As a starting point, Sanchez does not contest the initial basis for the stop. Because Officer Hansen had probable cause that Sanchez was speeding Sanchez's appeal to the reasonable suspicion standard may be misdirected. In *United States v. Garcia*, 376 F.3d 648 (7th Cir. 2004), the defendant sought to suppress all evidence derived from a traffic stop initially based on a license plate violation. The court would have none of it, since a traffic stop based on probable cause justifies quite a bit:

> Garcia had been arrested. His traffic stop was itself an arrest on probable cause. That is why, we have held, it is inappropriate to treat investigations following traffic stops as governed by *Terry* when the stop rests on probable cause to believe that an offense has been committed. This stop was supported by probable cause [*of a license plate violation*], and soon probable cause to believe that Garcia had committed two more offenses [*driving without a license and OWI*] turned up. Custody had ample support.

Id. at 650, citations omitted. *See also United States v. Childs*, 277 F.3d 947, 953-54 (7th Cir. 2002)(*en banc*).

But apparently Officer Hansen issued the speeding warning to Sanchez prior to beginning the sobriety field testing, in which case the original rationale for the stop, by itself, did not justify the length and scope of the subsequent testing.

This is Sanchez's argument, at least in part. Sanchez also contends that it was constitutionally unreasonable for the officers to skip straight from the "strong odor of alcohol" to an intrusive series of roadside tests. According to Sanchez, the fourth amendment required the officers further to develop their suspicions of intoxication prior to removing Sanchez from his car. *See* Reply Brief, dkt. 8, at 2-3.

Information obtained during the period covered by the initial traffic stop may provide an officer with reasonable suspicion of criminal conduct that will justify prolonging the stop to permit a reasonable investigation. *United States v. Martin*, 422 F.3d 597, 602 (7th Cir. 2005). A reasonable suspicion is something more than an inchoate or unparticularized suspicion or hunch, *United States v. Ganser*, 315 F.3d 839, 843 (7th Cir. 2003), and it need not rise to the level of probable cause, let alone a preponderance of the evidence. *United States v. Wimbush*, 337 F.3d 947, 949-50 (7th Cir. 2003).

Here, Officer Hansen smelled the strong odor of alcoholic beverages on Sanchez, who admitted that he had been drinking. In Officer Hansen's extensive experience, someone who smelled like this likely would prove to be legally intoxicated. Perhaps state courts insist on additional sifting and winnowing by the police before allowing sobriety field tests, but this would be a policy preference, not a constitutional requirement. *See, e.g., United States v. Brack*, 188 F.3d 748, 758 (7th Cir. 1999) (state law irrelevant to fourth amendment reasonableness determination). Even disregarding Officer Hansen's testimonial embellishments at the suppression hearing, he had reasonable suspicion that Sanchez was OWI. This allowed him to remove Sanchez from his car for testing without additional questioning. As the court observed in *Smith v. Ball State Univ.*, 295 F.3d 763, 770 (7th Cir. 2002), "given the potential threat to public safety of an intoxicated driver in command of a running vehicle,"

> police officers are permitted to order a driver to exit his or her vehicle during the course of an investigatory stop. . . . This rule comports with the fourth amendment's reasonableness requirement for obvious reasons. An officer who confronts a

> potentially intoxicated driver must have the discretion–without probable cause–to order the individual our of the vehicle. Anything less would allow an unfit driver to retain control of his or her car.

Id. at 769.

Therefore, it is ORDERED that defendant James Sanchez's motion to suppress evidence is DENIED.

Entered this 29th day of January, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge