

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

BERTRAND EDWARDS,

Defendant.  
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ORDER

12-cr-10-bbc

Defendant Bertrand Edwards has filed an objection to the report and recommendation entered by United States Magistrate Judge Stephen L. Crocker on July 13, 2012. The magistrate judge recommended denying defendant's motions to quash his October 3, 2011 arrest and to suppress evidence gathered after the arrest. Defendant argues that the magistrate judge erred in finding that this post arrest search was legal. I conclude that defendant is wrong and that the magistrate judge's finding is supported by the facts and the law.

The only issue is whether the arresting officer had enough information to support defendant's arrest for possession of marijuana; if he did, he had grounds for a search of the vehicle in which he found defendant. (Defendant does not object to the magistrate judge's determination that the officer's search was legal if he had probable cause to arrest defendant for some offense; his objection is to the finding that probable cause existed.) The magistrate

judge found that probable cause existed for the arrest, and with good reason. The officer was following up a report that a vehicle with a Minnesota license plate of 319GRV had driven off without paying for gas. He found the suspect vehicle at a rest stop at about 4:00 in the morning. The car was parked askew; the driver (defendant) was asleep; and the officer could smell marijuana. When he woke defendant, he observed that defendant had bloodshot eyes that appeared to be somewhat dilated, that his speech was slurred and his responses were slow in coming. The officer asked defendant to step out of the car; when he did so, the officer noticed an open beer bottle and marijuana “shake” on the floorboard. He also saw ash on the console, seat and floorboard. Defendant performed poorly on a range of field sobriety tests and the officer put him under arrest for Operating While Intoxicated-I (a civil offense) and told him he was being detained for an investigation into a theft of gasoline.

In the course of conducting a more detailed search of the car, the officer and a colleague found evidence of counterfeiting. This discovery led to the federal charges against defendant.

## DISCUSSION

Although defendant contends that the evidence before the arresting officer was insufficient to arrest him, he is wrong, as the magistrate judge has explained convincingly. (Defendant does not dispute any of the facts found by the magistrate judge, only his assessment of the significance of those facts.) The officer had the signs of impairment in front of him once he woke defendant: defendant’s bloodshot eyes, slurred speech and the

smell of stale marijuana. If this was not enough, he had the evidence of defendant's poor performance on the field sobriety tests and the marijuana shake he had observed. As defendant argues, the shake might have been grass clippings, but coupled with the other indications of marijuana use, it was reasonable for the arresting officer to suspect that it was actually marijuana. Accordingly, the officer had probable cause to arrest defendant for either a first-time OWI offense or for possession of marijuana.

Defendant argues that all the officer had was evidence of impairment, not evidence that the impairment was the result of marijuana use and certainly not evidence that defendant might still be in possession of marijuana. This argument does not help him. Once the officer had determined that defendant was impaired and had placed him under arrest, he could legitimately check for evidence that might support a charge against defendant. That evidence might be evidence of marijuana or alcohol or other drugs.

In short, I conclude that defendant has failed to show that probable cause was lacking for his arrest or why the evidence found in the car should be suppressed.

### ORDER

IT IS ORDERED that the report and recommendation issued by the United States Magistrate Judge on July 13, 2012, dkt. #48, is ADOPTED as the court's own. FURTHER, IT IS ORDERED that defendant Bertrand R. Edwards's motion to quash his arrest and to

suppress the evidence seized from his car on October 5, 2011, dkt. #34, is DENIED.

Entered this 24th day of July, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge