

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	18-cr-20031-JTF-tmp
)	
JOSE ANGEL SANCHEZ,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Before the court by order of reference is defendant Jose A. Sanchez's Motion to Suppress, filed on April 12, 2018. (ECF Nos. 19, 24.) The government filed a response on May 1, 2018, and Sanchez replied on May 9, 2018. (ECF Nos. 25, 28.) For the reasons below, it is recommended that Sanchez's Motion to Suppress be denied.

I. PROPOSED FINDINGS OF FACT

At the suppression hearing, the court heard from one witness, Agent Preston Hill of the West Tennessee Drug Task Force, and received into evidence seven exhibits, including a dashboard camera recording and a recording of the interior of the police vehicle during the traffic stop. The following proposed findings of fact are based on Agent Hill's testimony and the evidence presented at the hearing.

On March 7, 2017, Agent Hill was driving eastbound on Interstate 40 in Fayette County, Tennessee, conducting interstate interdiction. He did not have another law enforcement officer with him but was instead accompanied by his certified narcotics detection canine. At approximately 5:11 p.m., Agent Hill observed a number of cars traveling in the right lane at a slower than typical rate of speed for interstate traffic. Using the left lane, he pulled his vehicle up to the front of the car line to determine the cause of the delay. He saw a blue Chevrolet Silverado pickup truck traveling at approximately fifty to fifty-five miles per hour in a zone where the speed limit was sixty-five miles per hour. Agent Hill transitioned to the right lane behind the truck and discovered he could not read the entire Texas registration plate on the back of the truck because a trailer ball hitch was blocking the middle number. As depicted in the dashboard recording and a photograph of the registration plate, a bumper-mounted towing ball was located directly in front of the registration plate and nearly touching it. In order to read the obscured number, Agent Hill had to move back into the left lane and pull up beside the truck. After ascertaining the number, Agent Hill returned to a position behind the truck in the right lane. At this point, the truck briefly veered across the painted fog line, bumped against the rumble strip, and then resumed a proper course on the road

between the road lines. Shortly after this occurrence, Agent Hill activated his recording equipment. For approximately two miles, Agent Hill followed the truck with no further incident. The recording shows that, while Agent Hill was following the truck, two vehicles used the left lane to pass Agent Hill's vehicle and the truck. As the truck was attempting to leave the interstate via Exit 25, Agent Hill initiated a traffic stop. While still sitting in his vehicle, Agent Hill observed that the truck's spare tire was not mounted properly and had hand prints on it.

Agent Hill approached the passenger's side of the truck and asked the driver, later identified as Jose A. Sanchez, for permission to open the door. After opening the passenger door, Agent Hill asked Sanchez for his license, and Sanchez handed him a Texas identification card. Agent Hill asked Sanchez, "No license?" to which Sanchez responded, "No, Sir." Agent Hill then explained that he pulled Sanchez over because he could not read his registration plate and because Sanchez had crossed the fog line. Agent Hill asked Sanchez where he was going, and Sanchez (whose speech patterns demonstrated that English was not his first language) explained that he was traveling to Nashville to see a doctor regarding his cancer. Agent Hill asked where Sanchez was coming from, and Sanchez responded, "One, two, three days I thinks." Upon hearing the question a second time,

Sanchez stated he was traveling from Houston, Texas. He explained that he did not have a doctor in Nashville but was traveling there to look for one. At this point, Agent Hill interrupted him to make sure Sanchez could communicate comfortably, having observed that each time Sanchez spoke he had to press his thumb to his throat and that his voice was raspy. Sanchez said he was "okay" talking. Sanchez further explained, "I looking for one. Just, I have an appointment every day, Houston, and somebody say me he got a good doctor Nashville. That's why I'm going." He could not give Agent Hill further information about the doctor's location. Agent Hill asked for the truck's paperwork.

Agent Hill testified that he then obtained consent from Sanchez to search the truck while Sanchez looked for the paperwork. The dashboard recording shows that Agent Hill told Sanchez, "Give me just one second, okay. I want to look at something, okay. Is that okay?" to which Sanchez responded, "Yes." Agent Hill proceeded to inspect the truck for approximately ninety seconds. He shined a flashlight on the rear of the truck, crouched down, and examined the spare tire. Then he walked around to the side of the truck and radioed to another police officer to "come on down." He testified that, when he said this, he intended for the officer to come to his location and deploy a narcotics canine around the truck. After

radioing the other officer, Agent Hill got down on his knees, crawled partway under the truck, and examined the undercarriage with his flashlight in several locations. Once he was finished with this inspection, Agent Hill went back to the passenger side of the truck and asked Sanchez to come with him while he looked at his paperwork. Sanchez stated that he had a Mexican license.

Agent Hill escorted Sanchez to his patrol vehicle and placed him in the front passenger seat. As depicted by the recording of the interior of the vehicle, the two of them sat in the vehicle while Agent Hill wrote a warning ticket. In the meantime, another officer arrived on the scene with a narcotics canine and ran the canine around the truck. The canine gave a positive alert, indicating that there was an odor of illegal narcotics coming from the vehicle. After the canine alerted, Agent Hill and other members of law enforcement searched the vehicle. Behind the weather stripping in the headliner, the officers found five packages of cocaine weighing a total of approximately eleven pounds. Sanchez was later indicted for possession of cocaine with intent to distribute in violation of 21 U.S.C. § 841.

II. PROPOSED CONCLUSIONS OF LAW

The Fourth Amendment provides, in part, that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not

be violated[.]” U.S. Const. amend. IV. This protection from unreasonable search and seizure “extend[s] to brief investigatory stops of persons or vehicles that fall short of traditional arrest.” United States v. Johnson, 702 F. App'x 349, 355 (6th Cir. 2017) (quoting United States v. Arvizu, 534 U.S. 266, 273 (2002)). The constitutionality of such a stop is evaluated by a two-step analysis: first, there must be a proper basis for the stop, United States v. Collazo, 818 F.3d 247, 253-54 (6th Cir. 2016); second, the investigation must “address[] the infraction [that] is the purpose of the stop, [and] may ‘last no longer than is necessary to effectuate th[at] purpose.’” Rodriguez v. United States, 135 S. Ct. 1609, 1614 (2015) (quoting Florida v. Royer, 460 U.S. 491, 500 (1983) (plurality opinion)).

The Sixth Circuit differentiates between ongoing and completed violations when assessing whether an officer lawfully stopped a vehicle. See United States v. Warfield, No. 17-3930, 2018 WL 1778555, at *2 (6th Cir. Apr. 13, 2018). Typically, the Sixth Circuit requires that law enforcement officers have reasonable suspicion to stop a vehicle for ongoing criminal activity but have probable cause to stop a vehicle for a civil infraction or a completed misdemeanor. Id.; see also Collazo, 818 F.3d at 253-54 (noting that the Sixth Circuit has only stated in dicta that it required probable cause for a stop based

upon a completed misdemeanor (citing United States v. Simpson, 520 F.3d 531, 541 (6th Cir. 2008)).

The government points to three lawful bases for the traffic stop: the speed at which Sanchez was driving, the fact that Sanchez veered across the fog line, and the obstructed view of Sanchez's registration plate.

A. Speed of Vehicle as Basis for Stop

While the government concedes that that speeding was not one of Agent Hill's reasons for stopping the truck, the government claims that, because courts are not to consider the subjective intent of the officer, the slow speed of the vehicle is still an objectively valid basis for justifying the stop. Sanchez argues that the court should not consider whether the alleged violation was a valid basis for the stop because the government may not engage in after-the-fact justifications and cites United States v. Hughes, 606 F.3d 311 (6th Cir. 2010), to support his argument. While the Hughes court barred "after-the-fact justifications," the court clarified that this meant the government could "not begin poring through state and local traffic ordinances looking for any that a suspect might have violated." Id. at 314-16. In Hughes, the Sixth Circuit explicitly stated that if an officer knows sufficient facts at the time of a stop "to believe that [the defendant] was violating one of the traffic ordinances or statutes raised by

the government before the district court, then it simply does not matter whether [the officer] intended to stop [the defendant] on the basis of that traffic violation." Id. at 316-17. Accordingly, because Agent Hill was aware of Sanchez's rate of speed, the court will examine whether Agent Hill had a lawful basis to stop Sanchez for driving too slowly.

Tennessee Code Annotated § 55-8-154(a) provides that "[n]o person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law." The Tennessee Supreme Court has identified several factors for courts to consider when determining whether a driver violated the statute by impeding the flow traffic, including "how slow the driver's automobile was traveling, the posted maximum speed limit, the posted minimum speed limit, if any, the effect on traffic, the duration of the effect on traffic, and the normal and reasonable flow of traffic in that area," as well as "whether other traffic could safely pass the slow-moving automobile in the right lane." State v. Hannah, 259 S.W.3d 716, 722-23 (Tenn. 2008). A violation of this statute is a Class C misdemeanor. T.C.A. § 55-8-154(d). Because a violation of this statute is a completed misdemeanor, the government must show Agent Hill had probable cause to believe that Sanchez violated this law. See United

States v. Hutton, No. 3:12-00215, 2013 WL 3976628, at *5 (M.D. Tenn. Aug. 2, 2013).

Regarding the first three of the Hannah factors, the difference of ten to fifteen miles per hour between Sanchez's speed and the posted speed limit is not, on its own, evidence of a violation. See Warfield, 2018 WL 1778555, at *4 (noting, when interpreting an Ohio statute that is similar to T.C.A. § 55-8-154(a), that "[t]he law does not require a driver to travel at exactly the posted speed limit"). Nor, when taken in consideration with the other Hannah factors, was the speed of Sanchez's truck slow enough to impede traffic. Although some traffic had built up behind Sanchez's truck, the evidence shows his rate of speed was not an obstacle to the flow of traffic because Agent Hill and at least two other vehicles were able to accelerate and pass the slower vehicles using the left lane. Thus, the court finds that Agent Hill lacked probable cause to stop Sanchez for violating T.C.A. § 55-8-154(a).

B. Veering of Vehicle as Basis for Stop

Tennessee Code Annotated § 55-8-123(1) requires that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety." The Tennessee Supreme Court has held that "'as nearly as practicable' means that a motorist must not leave her lane of

travel any more than is made necessary by the circumstance requiring the lane excursion.” State v. Smith, 484 S.W.3d 393, 409 (Tenn. 2016). Lane excursions resulting from outside forces, such as “high velocity wind gusts” or obstructions in the road, would not violate this statute, whereas other lane excursions resulting from impermissible causes, such as impairment, would. Id. at 404, 409-10. A violation of this statute is a Class C misdemeanor. See T.C.A. § 55-1-103. Because a violation of this statute is a completed misdemeanor, the government must show that Agent Hill had probable cause to believe Sanchez violated this law. See United States v. Braden, No. 2:11-CR-20192-JPM, 2012 WL 3552851, at *6 (W.D. Tenn. Aug. 16, 2012).

Because Sanchez’s lane excursion was isolated and brief, Agent Hill did not have probable cause to stop the truck on this ground. See United States v. Gross, 550 F.3d 578, 583 (6th Cir. 2008) (finding that there was not probable cause to stop a vehicle that straddled two lanes for a few seconds when traveling up a steep hill); United States v. Freeman, 209 F.3d 464, 466 (6th Cir. 2000) (“We cannot, however, agree that one isolated incident of a large motor home partially weaving into the emergency lane for a few feet and an instant in time constitutes a failure to keep the vehicle within a single lane ‘as nearly as practicable.’” (quoting T.C.A. § 55-8-123(1))).

Therefore, the court finds that Agent Hill lacked probable cause to stop Sanchez for violating T.C.A. § 55-8-123(1).

C. Obstruction of Registration Plate as Basis for Stop

Tennessee Code Annotated § 55-4-110(b)¹ requires the following:

Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so to prevent the plate from swinging and at a height of not less than twelve inches (12") from the ground, measuring from the bottom of the plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible No tinted materials may be placed over a license plate even if the information upon the license plate is not concealed.

These requirements apply to in-state and out-of-state registration plates. See Simpson, 520 F.3d at 535-38. Although the Tennessee Supreme Court has yet to interpret this statute, Tennessee appellate courts have upheld traffic stops where the registration information on the plate was obscured from view. See State v. Ochoa, No. M2011-02400-CCA-R3CD, 2012 WL 6082476, at *8 (Tenn. Crim. App. Dec. 7, 2012) (finding that there was reasonable suspicion to stop a vehicle when a clear plastic covering over the temporary registration tag "obscured the writing on the tag"); State v. Martin, No. M2011-02296-CCA-R3CD,

¹Effective July 1, 2018, Tennessee has amended the numbering of the statute cited in T.C.A. § 55-4-110(a). 2018 Tennessee Laws Pub. Ch. 1023 (S.B. 2693). The amendment has no impact on this case.

2012 WL 1895795, at *1, *4 (Tenn. Crim. App. May 24, 2012) (finding that there was an "equipment violation" when law enforcement could not read a registration plate "because it had oil and dirt on it"). But see State v. Anderson, No. M2004-00735-CCA-R3CD, 2005 WL 292430, at *1, *4 (Tenn. Crim. App. Feb. 8, 2005) (finding that there was not a violation of the statute where the name of "the issuing county was partially obscured" but "no part of the plate appear[ed] to have been illegible"). Because a violation of T.C.A. § 55-4-110(b) is considered an ongoing criminal offense, an officer need only possess reasonable suspicion that a vehicle's registration plate violates the statute before stopping the vehicle. See Simpson, 520 F.3d at 542.

Sanchez argues that the position of the trailer ball hitch did not violate the statute because Agent Hill was ultimately able to read the obscured number once he moved into the left lane. To support his argument, Sanchez points to United States v. Simpson, 520 F.3d at 544, observing that in Simpson the court rejected a district court's overbroad interpretation of T.C.A. § 55-4-110(b) that treated any obstruction of the visibility of the registration plate as a violation. Contrary to Sanchez's argument, Simpson does not address the issue at hand, which is whether the statute is violated when a registration plate is

visible from certain angles but not from a position behind the vehicle.

The court finds particularly instructive the Supreme Court of Michigan's decision in People v. Dunbar. 499 Mich. 60 (2016). At the time of the Dunbar decision, Michigan's statute governing the display of registration plates, Michigan Compiled Law § 257.225(2), was in all relevant parts identical to T.C.A. § 55-4-110(b). In Dunbar, sheriff deputies stopped the defendant for violating M.C.L. § 257.225(2)² after they decided to perform a random check of the defendant's pickup truck's registration and discovered that they could not read his full registration plate because a bumper-mounted towing ball obstructed the middle number of his truck's registration plate. Id. at 63-64. The officers approached the defendant's truck, and the smell of marijuana coming from the vehicle alerted them to the possibility that he was transporting illegal narcotics. Id. Upon searching the truck, they found marijuana, cocaine, and a handgun. Id. The Supreme Court of Michigan held that the stop was lawful because the location of the defendant's bumper-mounted towing ball violated M.C.L. § 257.225(2). Id. The

²In 2018, Michigan's legislature amended M.C.L. § 257.225(2) by adding the following language: "The attachment to the rear of a vehicle of a tow ball, bicycle rack, removable hitch, or any other device designed to carry an object on the rear of a vehicle, including the object being carried, does not violate this subsection." 2018 Mich. Legis. Serv. P.A. 147 (H.B. 5100).

Court highlighted the significance of the language in M.C.L. § 257.225(2) that states the plate “shall be attached . . . in a place and position which is clearly visible.” Id. at 68. It interpreted this language to mean “that the location where the plate is attached – and after attachment the plate itself – can be viewed without obstruction.” Id. (footnotes omitted). The Court acknowledged that the holding might impact the use of common “items such as trailer hitches and bicycle racks.” Id. at 71-73. However, it noted that its interpretation “advance[d] public safety by permitting witnesses to a hit-and-run motor-vehicle accident or police officers engaged in the investigation of criminal flight to observe the registration information of a fleeing vehicle.” Id. at 68 n.7.

Like the defendant in Dunbar, Sanchez was stopped for driving a truck with a bumper-mounted towing ball that obstructed the middle number on his registration plate. Even though Agent Hill was ultimately able to read the registration plate, the location of the trailer ball hitch rendered the plate’s “place and position” not clearly visible. See id. at 68-72; Lamb v. Bailey, No. 516CV00123TBRLK, 2017 WL 2798519, at *3 (W.D. Ky. June 28, 2017) (finding that a license plate was not clearly visible when a trailer hitch obstructed a police

officer's view of the plate).³ Accordingly, the court finds that, because the trailer ball hitch abutted the truck's registration plate and prevented Agent Hill from reading the middle number as he drove behind the truck, Agent Hill had a reasonable suspicion that Sanchez was violating T.C.A. § 55-4-110(b).⁴

III. RECOMMENDATION

For the foregoing reasons, it is recommended that Sanchez's Motion to Suppress be denied.

Respectfully submitted,

s/ Tu M. Pham

TU M. PHAM
United States Magistrate Judge

³In United States v. Ratcliff, No. 1:06-CR-55, 2006 WL 2771014, *5 (E.D. Tenn. Sept. 25, 2006), the court held that law enforcement had probable cause to stop a defendant for violating T.C.A. § 55-4-110(b) when the location of the defendant's trailer hitch obscured a number on the registration plate because "any invisibility or obstruction to visibility of any portion of the tag could constitute a violation of the statute, even if such invisibility or obstruction to visibility is temporary - or even momentary - and may be easily cured." However, it is unclear whether the analysis in Ratcliff still stands in light of the Sixth Circuit's holding in Simpson. See Simpson, 520 F.3d at 544.

⁴As for the second step of the analysis of a stop, the scope of the stop, in Sanchez's motion, he states that "since the second part of the analysis is conditioned upon satisfaction of the first part of the analysis, the second part of the inquiry is not reached." (ECF No. 19 at 5.) At the suppression hearing, Sanchez's argument focused entirely on the first step. Because Sanchez does not challenge the constitutionality of the scope of the stop, the court does not reach this issue.

July 11, 2018

Date

NOTICE

WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THIS REPORT AND RECOMMENDED DISPOSITION, ANY PARTY MAY SERVE AND FILE SPECIFIC WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS. FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.