

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

UNITED STATES OF AMERICA,)	
)	Case Nos.: 2:04po00254
v.)	2:04po00255
)	
CLIFFORD E. HALL,)	
Defendant)	<u>MEMORANDUM OPINION</u>
)	
)	By: PAMELA MEADE SARGENT
)	United States Magistrate Judge

This case came to be heard before the court on February 16, 2005, at which time the defendant, Clifford E. Hall, (“Hall”), pleaded not guilty to four Violation Notices, each of which charged Hall with a petty offense. *See* 36 C.F.R. § 1.3(a) (2004) (covering offenses within the jurisdiction of the National Park Service). These Violation Notices charged Hall with operating a motor vehicle while under the influence, in violation of 36 C.F.R. § 4.23(a), interfering with agency functions, in violation of 36 C.F.R. § 2.32, unsafe operation of a motor vehicle, in violation of 36 C.F.R. § 4.22, and failure to obey a traffic control device, in violation of 36 C.F.R. § 4.12, all within the confines of the Cumberland Gap National Historic Park, (“the Park”),¹ on November 27, 2004. Hall also filed a Motion In Limine, (Docket Item No. 4), (“the Motion”), seeking to prohibit the government from introducing certain

¹The Cumberland Gap National Historic Park spans land in the Western District of Virginia, Eastern District of Kentucky and Eastern District of Tennessee. Pursuant to order entered December 28, 1993, in each of these districts, the undersigned, along with magistrate judges in the other districts, have been granted multi-district authority to proceed in matters arising within the confines of the Park.

statements and evidence obtained at the time of Hall's arrest.

At trial, the court dismissed the interfering with agency functions charge without prejudice on the government's motion. At the close of the evidence, the court found Hall not guilty of the operating a motor vehicle while under the influence charge. Thus, the only charges remaining against Hall are failure to obey a traffic control device and unsafe operation of a motor vehicle, ("the Remaining Offenses"). The court then took the Remaining Offenses and the Motion under advisement. The court has considered the parties' legal arguments and supporting documents, as well as the evidence presented at trial. Based on the reasons stated below, the court denies the Motion and finds Hall guilty of the Remaining Offenses.

I. Facts

On November 27, 2004, at approximately 8:00 a.m., Dirk Wiley, ("Wiley"), a United States Forest Ranger at the Park, received a call from the Cumberland Gap Tunnel Authority, ("CGTA"), reporting a northbound vehicle on Highway 25E that had run a stop light for a hazardous materials escort and was continuing north inside the tunnel at an extremely high rate of speed. Wiley and another ranger, Brian Chartier, ("Chartier"), responded, while CGTA dispatch provided a description of the vehicle and its location. Based on CGTA's initial statement that the vehicle was northbound inside the tunnel, and followed shortly thereafter by CGTA's description of the vehicle turning onto Cumberland Avenue, as well as the rangers' inability to see the vehicle anywhere on Highway 25E as they responded, it was apparent to them that the vehicle was traveling at an extremely high rate of speed.

Wiley testified that Chartier made visual contact with the vehicle in downtown Middlesboro, Kentucky, where it was slowed by traffic. Chartier attempted to close the distance when the vehicle turned onto Chester Avenue. Wiley followed and watched as the vehicle turned into the driveway of a house, followed a few moments later by Chartier. Wiley stated that when he arrived at the residence seconds later, the driver, whom neither he nor Chartier saw, already had entered the residence. He testified that he knocked on the door² and made contact with Hall, who immediately admitted to having just driven the vehicle.

Wiley testified that he asked Hall for his driver's license, to which Hall responded "No, sir." Hall then asked "What's going on?" After Wiley explained, Hall replied "Ya'll need to go away. I just got home from work. Ya'll need to quit." Wiley stated that Hall was angry and uncooperative, eventually returning inside the residence and shutting and locking the door behind him. At that point, Wiley contacted Middlesboro Police Department, ("MPD"), for assistance, and multiple officers arrived soon thereafter.

Wiley testified that one of the MPD officers who was familiar with Hall convinced Hall to come out of the house and speak with Wiley. Hall eventually produced his driver's license. Wiley testified that he again explained the violations that he was investigating and noticed that Hall's pupils were unusually small. That, in addition to his agitated and aggressive behavior, caused Wiley to question whether Hall

²Wiley testified that he could not recall whether he knocked on the door or rang the doorbell. In any event, after receiving no response on his first attempt, Wiley testified that he opened the storm door and knocked on the inside door.

was under the influence of some sort of stimulant. Wiley asked Hall if he was on any medication or had taken any drugs within the previous 24-hour period, to which Hall replied “No, I have not!” Hall then explained that he had just finished a 24-hour shift working for an ambulance service.

Wiley asked Hall to perform four field sobriety tests, two of which he failed and two of which he marginally passed, meaning that the results were suspicious, but inconclusive. On the basis of these tests, as well as Hall’s appearance and behavior, Wiley again asked Hall of the last time he took any drugs. Hall then stated that he took Prilosec OTC and Phentermine, a prescription weight loss drug. Hall produced the prescription bottle, which was in the name of Joyetta Hall, Hall’s wife. Hall stated that he had last taken the medication the previous morning. When Wiley pointed out to Hall that his name was not on the prescription bottle, Hall became angry and stated that “We’re on it together.”

At that point, Wiley stated that he believed that Hall was under the influence of the drug, and that it might explain his behavior and unsafe driving. Hall was placed under arrest at 8:24 a.m. He was searched and transported to Middlesboro Regional Hospital for a blood test. Once there, Wiley advised Hall of his Fifth Amendment rights. After Hall signed a consent form, a blood sample was taken, which Wiley observed. Wiley then escorted Hall to the hospital exit where Hall’s wife was waiting. Wiley issued Hall two Violation Notices, one for interfering with agency functions and one for operating a motor vehicle while under the influence. Hall was released into his wife’s custody.

Thereafter, Wiley returned to the Cumberland Gap Tunnel, where he viewed the tunnel video and observed Hall's driving behavior as he traveled through the tunnel. The northbound tunnel was being closed to traffic to accommodate a hazardous materials escort. The last traffic allowed through the tunnel in front of Hall's vehicle was approximately 30 seconds before Hall's vehicle passed the stop lights. Another vehicle obeyed the 35 mile per hour speed limit signs, the STOP warning and the red lights at the stop point, coming to a rest for seven seconds before Hall's vehicle sped by, traveling much faster than the posted speed limit. Using CGTA video to measure the vehicle's time through the tunnel, Wiley stated that he established Hall's vehicle's average speed inside the tunnel to be in excess of 80 miles per hour. Wiley stated that the tunnel video showed Hall's vehicle continuing toward Middlesboro, Kentucky, at a high rate of speed, cutting through a restaurant parking lot to avoid a red light and continuing west on Cumberland Avenue, followed shortly thereafter by Chartier and himself. Based on this evidence, Wiley wrote two more mandatory appearance Violation Notices, one for failing to obey a traffic control device and another for unsafe operation of a motor vehicle.

II. Analysis

In his Motion, Hall argues that the arresting officer, a ranger for the Park, lacked authority to arrest him for the traffic offenses because, although allegedly committed within the confines of the Park, they were not committed within the ranger's presence. Likewise, Hall contends that the ranger was not authorized to arrest him on the interfering with agency functions charge because, although the conduct upon which the charge was based was committed in the ranger's presence, it occurred outside of

the Park. Thus, Hall contends that any statements made and any evidence gathered during the course of his illegal arrest must be suppressed.

Conversely, the government argues that statements made by Hall *prior to* his arrest, regardless of the legality of the arrest, support convictions on the Remaining Offenses. Thus, the government contends that this court need not reach the issue of whether the arrest was, in fact, illegal.

The Fourth Amendment to the United States Constitution states:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. AMEND. IV. Hall argues that his Fourth Amendment rights were violated when he was arrested, without a warrant, for misdemeanor offenses which did not occur in the presence of the arresting officer.

It is well-established that the Fourth Amendment does not prohibit warrantless arrests for misdemeanors committed outside of the presence of the arresting officer. *See Diamond v. Marland*, 395 F. Supp. 432, 439 (S.D. Ga. 1975); *Street v. Surdyka*, 492 F.2d 368, 372 (4th Cir. 1974); *Soltész v. City of Sandusky*, 138 F. Supp. 2d 932, 936 (N.D. Ohio 2001). Specifically, the court in *Street* stated: “[w]e do not think the fourth amendment should now be interpreted to prohibit warrantless arrests for misdemeanors committed outside an officer’s presence.” 492 F.2d at 372.

Instead, the Fourth Amendment requires that probable cause exist for such a warrantless arrest. *See Diamond*, 395 F. Supp. at 439; *Street*, 492 F.2d at 372; *Soltész*, 138 F. Supp. 2d at 936. In determining whether there was probable cause for an arrest, a federal court must determine whether the arresting officer possessed knowledge of facts and circumstances gained from reasonably trustworthy sources of information sufficient to justify a man of reasonable caution and prudence in believing that the arrested person has committed or is committing an offense. *See Diamond*, 395 F. Supp. at 439. In other words, “probable cause ... may be established by the possession of knowledge and facts justifying the belief on the part of one of reasonable prudence that the person arrested was guilty of the crime charged.” *Diamond*, 395 F. Supp. at 440.

Hall argues, however, that 16 U.S.C.A. § 1a-6(b) does not give national park rangers the authority to make arrests for misdemeanors committed outside the presence of the officer. He contends that, regardless of the caselaw relating to misdemeanors committed outside of an officer’s presence, Congress has narrowly limited park rangers’ authority as follows:

(b) ... In addition to any other authority conferred by law, the Secretary of the Interior is authorized to designate, pursuant to standards prescribed in regulations by the Secretary, certain officers or employees of the Department of the Interior who shall maintain law and order and protect persons and property within areas of the National Park System. In the performance of such duties, the officers or employees, so designated, may —

(1) carry firearms and make arrests without warrant for any offense against the United States committed in his presence, or for any felony

cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony, provided such arrests occur within that system or the person to be arrested is fleeing therefrom to avoid arrest.

16 U.S.C.A. § 1a-6(b)(1) (West 2000). Thus, Hall argues that his arrest for the operating a motor vehicle while under the influence charge, which allegedly occurred within the confines of the Park, but outside of the rangers' presence, and his arrest for interfering with agency functions, based on conduct that allegedly occurred outside of the Park, but within the rangers' presence, was illegal and any resulting statements or evidence gathered as a result thereof must be suppressed.

Although Hall raises an interesting question regarding the statutory limitation on national park rangers' authority, I find that I do not need to address the legality of his arrest. Specifically, as the government contends, Hall's statement upon Wiley's initial contact with him that he had just driven the vehicle occurred prior to his arrest. Thus, even assuming that the arrest was illegal, Hall's statement is not subject to suppression as a result thereof. Moreover, the statements made by Hall subsequent to his arrest and the evidence gathered subsequent to Hall's arrest are inconsequential to the Remaining Offenses in that they would be relevant only to either the operating a motor vehicle while under the influence charge, of which the court already found Hall not guilty, or the interfering with agency functions charge, which was dismissed without prejudice upon the government's motion. That being the case, I will not address the legality of Hall's arrest by Wiley for misdemeanor offenses allegedly committed within the Park, but outside of Wiley's presence, or those committed within Wiley's presence, but outside the confines of the Park.

Even without considering any of the statements or evidence gathered as a result of Hall's arrest, the evidence proves that Hall is guilty of the Remaining Offenses beyond a reasonable doubt. In particular, I find that the evidence proves beyond a reasonable doubt that Hall is guilty of unsafe operation of a motor vehicle and failure to obey a traffic control device. The evidence at trial showed that Wiley received information from the CGTA that a vehicle, which later turned out to be driven by Hall, had run a stop light outside of the tunnel used to stop traffic so that vehicles carrying hazardous materials could be escorted through the tunnel and was continuing north inside the tunnel at an extremely high rate of speed.³ Wiley and Chartier responded, while CGTA dispatch provided a description of the vehicle and its location. Based on CGTA's initial statement that the vehicle was northbound inside the tunnel, followed shortly thereafter by CGTA's description of the vehicle turning onto Cumberland Avenue and the rangers' inability to see the vehicle anywhere on Highway 25E as they responded, it was apparent to them that the vehicle was traveling at an extremely high rate of speed. Chartier made visual contact with the described vehicle in downtown Middlesboro, Kentucky, where it was slowed by traffic. Chartier attempted to close the distance when the vehicle turned onto Chester Avenue. Wiley followed and watched as the vehicle turned into the driveway of a house, followed a few moments later by Chartier. When Wiley arrived at the residence seconds later, the driver, whom neither he nor Chartier saw, already had entered the residence. He knocked on the door and made contact with Hall, who immediately admitted to having just driven the vehicle.

³It should be noted that Hall's counsel did not object on hearsay grounds to Wiley's testimony regarding the statements of the CGTA employees, nor to Wiley's testimony regarding the contents of the videotape recording.

Thereafter, Wiley returned to the Cumberland Gap Tunnel, where he viewed the tunnel videotape recording. According to Wiley, the videotape recording showed that the northbound bore of the tunnel was being closed to traffic to accommodate a hazardous materials escort. The last traffic allowed through the tunnel in front of Hall's vehicle was approximately 30 seconds before Hall's vehicle passed the stop lights. Another vehicle obeyed the 35 mile per hour speed limit signs, the STOP warning and the red stop lights at the stop point, coming to a rest for seven seconds before Hall's vehicle sped by the STOP warning and the red stop lights, traveling much faster than the posted speed limit. Using the videotape recording to measure the vehicle's time through the tunnel, Wiley stated that he established Hall's vehicle's average speed inside the tunnel to be in excess of 80 miles per hour. Based on this, I find that the evidence proves beyond a reasonable doubt that Hall is guilty of failing to obey a traffic control device, in violation of 36 C.F.R. § 4.12, and unsafe operation of a motor vehicle, in violation of 36 C.F.R. § 4.22. As stated above, this decision is not based on any statements made by Hall subsequent to his arrest or on any evidence gathered subsequent to his arrest on November 27, 2004.

Based on the above-stated reasons, I will deny the Defendant's Motion, and I will find Hall guilty of failing to obey a traffic control device, in violation of 36 C.F.R. § 4.12, and unsafe operation of a motor vehicle, in violation of 36 C.F.R. § 4.22 .

An appropriate order will be entered.

DATED: April 5, 2005.

Sargent
MAGISTRATE JUDGE

/s/ Pamela Meade

UNITED STATES