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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. CR 99-0319 BZ
)	
v.)	
)	ORDER DENYING MOTION FOR
KATHRYN LOUISE FOX,)	JUDGMENT OF ACQUITTAL
)	
Defendant.)	
_____)	

Defendant was tried on charges of violating 36 C.F.R. § 1004.23(a)(1), driving under the influence of alcohol, 36 C.F.R. § 1004.23(c)(2), refusal to submit to a test, and 36 C.F.R. § 1004.21(c), speeding. At trial, United States Park Police Officer Smith testified that she was stationed in her patrol car at the intersection of Lincoln Avenue and Bowley Street in the Presidio¹, which is policed by the Park Police, when she observed defendant's car proceeding south down Lincoln at a high rate of speed. As the

¹ All references herein to the Presidio are more specifically to area under the jurisdiction of the Presidio Trust as that term is used in 36 C.F.R. § 1001.1.

1 defendant's car approached her, Officer Smith, using a
2 radar gun, clocked defendant as traveling well in excess of
3 the posted speed limit. Officer Smith then signaled to
4 defendant to pull over by activating her flashing lights,
5 and began to follow defendant. Instead of pulling over,
6 defendant drove on for about two hundred yards, left the
7 Presidio and came to a stop on 25th Avenue just past its
8 intersection with El Camino Del Mar and about one block
9 outside the Presidio.

10 Officer Smith further testified that after she
11 approached the car and asked for defendant's driver's
12 license, she observed signs of intoxication and had
13 defendant perform certain field sobriety tests. Officer
14 Smith then concluded that she had probable cause to believe
15 that defendant had been driving under the influence of
16 alcohol, arrested her and took her to the Presidio Police
17 Station.

18 At the conclusion of the government's case, defendant
19 moved under FRCrP 29 for a judgment of acquittal. In part,
20 defendant argued that in view of Officer Smith's testimony
21 that the factual bases for probable cause to believe
22 defendant was driving under the influence of alcohol were
23 all developed outside the Presidio, Officer Smith lacked
24 jurisdiction to arrest her for that crime.² Defendant

25
26 ² In opposition to the motion, the government first
27 argued that defendant was precluded from raising this issue
28 in that another Magistrate Judge had earlier denied a motion
to suppress in which the defendant made a similar
argument. Since that judge did not issue a written
ruling and I had before me the actual testimony as to the

1 argued that all Officer Smith could do once outside the
2 Presidio was to call the San Francisco Police Department.

3 The authority of United States Park Police is set
4 forth in 16 U.S.C. § 1a-6(b) which provides in pertinent
5 part as follows:

6 In addition to any other authority conferred
7 by law, the Secretary of the Interior is
8 authorized to designate, pursuant to standards
9 prescribed in regulations by the Secretary,
10 certain officers or employees of the Department
11 of the Interior who shall maintain law and order
12 and protect persons and property withing areas of
13 the National Park System. In the performance of
14 such duties, the officers or employees, so
15 designated, may -

16 (1) carry firearms and make arrests without
17 warrant for any offense against the United States
18 committed in his presence, or for any felony
19 cognizable under the laws of the United States if
20 he has reasonable grounds to believe that the
21 person to be arrested has committed or is
22 committing such felony, provided such arrests
23 occur within that system or the person to be
24 arrested is fleeing therefrom to avoid arrest;

25 ***

26 (3) conduct investigations of offenses against
27 the United States committed in that system in the
28 absence of investigation thereof by any other Federal
law enforcement agency having investigative
jurisdiction over the offense committed or with the
concurrence of such other agency.

29 I conclude that Officer Smith was authorized to arrest
30 the defendant for drunk driving under § 1a-6(b)(1) in that
31 she made an arrest without a warrant for an offense against

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jurisdictional facts, I address the merits of defendant's
motion without determining whether defendant should be
precluded from raising this issue again.

1 the United States³ committed in her presence by a person
2 fleeing from the Presidio to avoid arrest. I find that
3 given her observations and the results of the field
4 sobriety tests administered to defendant, Officer Smith
5 reasonably concluded that there was probable cause to
6 believe defendant had been driving while under the
7 influence of alcohol and that this offense had been
8 committed in the Presidio and witnessed by Officer Smith.
9 I also conclude that when defendant failed to stop in
10 response to Officer Smith's flashing lights, though she had
11 the opportunity to do so, but instead traveled about 200
12 yards through the Presidio before coming to a stop about
13 one block outside the gate, she was fleeing to avoid arrest
14 within the meaning of § 1a-6(b)(1). I do not read that
15 section as requiring that the defendant lead the police on
16 a high speed chase to race them to the park's border. I
17 think the statute is satisfied in a case such as this, if
18 the Park Police attempt to stop a defendant in the Presidio
19 and the defendant continues to travel through the Presidio
20 so she cannot be arrested within its borders, especially
21 where the defendant later contends that the Park Police
22 lacked jurisdiction to arrest her solely because she
23 managed to leave the Presidio before she stopped.

24 The other bases of authority urged by the government
25 are problematic. California Penal Code § 830.8(a)(2)

27 ³ Driving in the Presidio while under the influence of
28 alcohol is prohibited by federal law. 36 C.F.R.
§1004.23(a)(1).

1 purports to grant Officer Smith arrest power outside
2 federal property so long as she is enforcing federal
3 criminal law and has been certified under § 830.8(a)(4).
4 Apart from serious questions about the ability of a state
5 to legislate federal authority, there is no evidence in the
6 record that Officer Smith was properly certified. 16
7 U.S.C. § 1a-6(b)(3), which authorizes Officer Smith to
8 conduct investigations of offenses against the United
9 States, has been interpreted by the Ninth Circuit to permit
10 investigations which start on federal property to move off
11 federal property. United States v. Smith, 713 F.2d 491,
12 494 (9th Cir. 1983).⁴ Whether Officer Smith was conducting
13 an investigation within the meaning of that statute when
14 she stopped defendant is a question I need not decide in
15 view of my earlier ruling.

16 Defendant has cited no authority for the proposition
17 that Officer Smith did not have jurisdiction to arrest her
18 for drunk driving and the court has been unable to find
19 any. Nor does defendant's proposal have much to commend
20 it. It would provide incentive for persons stopped by Park
21 Police in the Presidio to try to leave the Presidio in an
22 effort to avoid arrest. This in turn could endanger
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25 ⁴ In Smith, the Park Police observed a defendant acting
26 suspiciously on park property and followed him off park
27 property where they conducted a "Terry" stop. While there
28 is dicta in Smith that the Park Police did not have the
authority to arrest the defendant once he left the park (713
F.2d at 493), I believe that that is because the Park Police
did not observe the defendant within the Park commit a crime
in their presence, as is the case here.

1 persons and property.⁵ It could unduly complicate law
2 enforcement by requiring two sets of officers to be
3 involved in the investigation and prosecution of many
4 Presidio crimes. And it could lead to considerable
5 mischief to law enforcement if a Park Police Officer could
6 not secure immediate cooperation from the San Francisco
7 Police Department. Finally, apart from her geographical
8 argument, defendant offers no explanation of how she has
9 been prejudiced by having been arrested by the Park Police
10 as opposed to the San Francisco Police. For all these
11 reasons, defendant's motion for a judgment of acquittal on
12 the grounds that Officer Smith lacked authority to arrest
13 her for drunk driving is **DENIED**.

14 Dated: May 23, 2001

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Bernard Zimmerman
18 United States Magistrate Judge
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25 ⁵ See U.S. v. Gibson, 896 F.2d 206 (6th Cir. 1990),
26 assuming without discussion that Park Ranger had
27 jurisdiction to arrest defendant just outside a national
28 park on drunk driving and related offenses where the
defendant had been observed speeding in the park, failed to
pull over in response to the flashing lights and siren of
the Ranger's patrol car and instead continued to drive at
excessive speed until he was apprehended outside the park.