

FARNAN, District Judge.

Presently before the Court is Defendant's Motion To Suppress Physical Evidence (D.I. 16). For the reasons discussed, the Motion will be granted.

I. NATURE AND STAGE OF THE PROCEEDINGS

Defendant has been charged by indictment with possession with the intent to distribute cocaine and methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (B)(1)(C), and (b)(1)(B). (D.I. 14). Defendant moves pursuant to Federal Rule of Criminal Procedure 12 and the Fourth Amendment of the United States Constitution to suppress any physical evidence seized at the time of his arrest on July 23, 2001. (D.I. 16).

The Court held a hearing on the Motion on June 6, 2002 and ordered the parties to submit letter briefs outlining their proposed findings of fact and conclusions of law. (D.I. 27, 28, 30). This Memorandum Opinion sets forth the Court's Findings of Fact and Conclusions of Law as required by Rule 12 of Federal Rules of Criminal Procedure.

II. LEGAL STANDARD ON A MOTION TO SUPPRESS

Rule 41(f) of the Federal Rules of Criminal Procedure provides "[a] motion to suppress evidence may be made in the court of the district of trial as provided in Rule 12." Fed. R. Crim. P. 41(f). Rule 12 provides that suppression motions should be made prior to trial. See Fed. R. Crim. P. 12(b)(3), (f).

Ordinarily, the burden of proof in a suppression motion is on the defendant. See United States v. Lewis, 40 F.3d 1325, 1333 (1st Cir. 1994). Where the search being challenged was made without a warrant, as is the case here, the burden shifts to the Government to demonstrate that the warrantless search was conducted pursuant to one of the exceptions to the warrant requirement. See United States v. Herrold, 962 F.2d 1131, 1137 (3d Cir. 1992).

III. FINDINGS OF FACT

As required by Federal Rule of Criminal Procedure 12(e), the Court makes the following essential findings of fact based on the evidence adduced at the June 6, 2002 Hearing.

1. On July 23, 2001, at approximately 12:45 a.m., Delaware State Police Officer Daniel Meadows was traveling northbound on Interstate 495 in the area of Edgemoor Road, Wilmington Delaware en route to an assignment. (June 6, 2002 Transcript (hereinafter "Tr.") 4-5).

2. While on Interstate 495, Officer Meadows observed a black Honda traveling at a high rate of speed, changing lanes without signaling, and traveling in close proximity to other vehicles. (Tr. at 5-6).

3. To determine how fast the black Honda was traveling, Officer Meadows accelerated to a speed that was consistent with the Honda and maintained a consistent distance for approximately half a mile. (Tr. at 5-6).

4. Officer Meadows determined that the Honda was traveling at approximately 110 mph. (Tr. at 6).

5. Based on the foregoing observations, Officer Meadows initiated a traffic stop of the Honda. (Tr. at 6).

6. Defendant Joseph Nicolella was the driver and sole occupant of the Honda. (Tr. at 6)

7. Officer Meadows asked Defendant for his driver's license, registration, and insurance card. (Tr. at 7).

8. Defendant produced a Maryland driver's license, but was unable to locate his registration and insurance card. (Tr. at 7).

9. Officer Meadows ran a check of Defendant's Maryland driver's license through the National Crime Information Center ("NCIC"). (Tr. at 8)

10. From the NCIC report, Officer Meadows determined that Defendant's Maryland driver's license was suspended or revoked. (Tr. at 8).

11. Pursuant to the report from the NCIC, Officer Meadows removed Defendant from his vehicle and arrested him for driving without a valid license, as well as excessive speed, aggressive driving, and following another vehicle too closely. (Tr. at 9).

12. Because no licensed driver was present to take custody of Defendant's vehicle and remove it from Interstates 495, Officer Meadows made arrangements for Defendant's vehicle to be towed and impounded. (Tr. at 11, 41-42).

13. While waiting for the tow truck, Officer Meadows commenced an inventory search of Defendant's vehicle. (Tr. at 10).

14. The precise scope of an inventory search to be conducted on vehicles subject to towing is not set out in any written policy of the Delaware State Police. (Government Exhibit 1, Tr. 15, 52-53). The written policy of the Delaware State Police does not address closed containers found in vehicles during an inventory search. (Government Exhibit 1, Tr. 15, 52-53).

15. Further, the Delaware State Police written policy provides under the heading "Vehicle Storage Record and Release Form (61.4.3)," at paragraph 2A(15):

15. Inventory - Circle the appropriate pre-printed equipment, if additional items are to be listed in the inventory, specify the item following Other. "Don't forget to include things that are missing, such as hubcaps, mirrors, lights, etc. This protects you and the tower. If more room is needed, use the comments line opposite damage (below) (1.2.4f).

16. Because the written policy of the Delaware State Police does not, as I have found, address the precise scope of an inventory search of closed, sealed, or locked bags and/or containers, the Government offered the testimony of Lieutenant Joseph Aviola, Jr. of the Delaware State Police to establish the "standard practice" of the Delaware State Police. (Tr. at 53). As to the "standard practice" Lt. Aviola testified:

With an inventory search, any time a vehicle is stopped and it's going to be towed, like I stated, the passenger compartment and the trunk area or luggage area would be

inventoried, as well as any containers and/or luggage that may be there.

(Tr. at 53).

When asked about how the "standard practice" applies to a purse, Lt. Aviola testified:

To look into the purse to see what is in there, especially for the purpose of valuables. Again, not to be redundant, but I would expect - - I will, I have and would expect a trooper to do that to protect themselves against any false claims of theft by the person who owns it, and that has happened in the past with our department.

(Tr. 53-54).

17. I find that the testimony of Lt. Aviola does not establish that the unwritten "standard practice" of the Delaware State Police instructs and requires a trooper during a warrantless inventory search to open all closed containers and bags for the purpose of recording the contents. I have two reasons for making this Finding:

(1) After hearing Lt. Aviola testify and weighing his testimony against the written record, I find that Lt. Aviola's testimony sets forth his understanding and practice with regard to warrantless inventory searches, not that of the Delaware State Police. In his candid response to the Government's questions at page 51 of the Hearing Transcript Lt. Aviola testified:

Q. And what is your understanding of what you teach at the academy with regard to the Delaware State Police written policy on inventory searches?

A. My interpretation of this policy is that any time a vehicle is going to be impounded, which means it is going to be towed, then the police officer who conducted the stop will conduct a full inventory search of the passenger compartment and the trunk area.

Q. Now, is that what you teach to the individuals at the academy?

A. When I teach my class, yes.

The Court does not doubt that Lt. Aviola's practice entails opening all closed containers and bags during an inventory search; however, the Court finds that his testimony fails to establish that the Delaware State Police "standard practice" requires all troopers to conduct inventory searches in this manner. If the policy did require Lt. Aviola's procedure it could easily be included in the written policy in one sentence.

(2) The Vehicle Storage Form, as set forth in Government Exhibit 2, provides little space to account for the contents of all closed containers that may be encountered during an inventory search. I don't think it unreasonable to expect the form used by all officers to reflect the policy governing inventory searches. I am persuaded that the policy only requires an officer to record the bag or container, not their contents.

In sum, the Court finds that the Delaware State Police have no written policy or an unwritten "standard practice" concerning the

opening of closed containers found during the course of an inventory search of an impounded vehicle.

18. During the inventory search, Officer Meadows located several bundles of United States currency totaling \$2,800 in the glove box. (Tr. 18).

29. In the trunk, Officer Meadows located a small metal tin, which was closed. (Tr. 20).

20. Officer Meadows opened the metal tin and observed several plastic bags containing, what Officer Meadows believed to be cocaine and methamphetamine based on his training and experience. (Tr. 21).

21. Upon discovering the suspected contraband, Officer Meadows discontinued his inventory search of Defendant's vehicle. (Tr. 22-23).

22. Officer Meadows followed Defendant's vehicle to the nearest State Police barracks. (Tr. 22-23).

23. At the barracks, Corporal Victoria Jones, a K-9 officer, inspected the vehicle with her dog. (Tr. at 22-23).

24. During the inspection by Corporal Jones and her K-9 partner, the dog "alerted" to the trunk area of Defendant's vehicle. (Tr. at 24).

25. Based upon his observations during his inventory search of Defendant's vehicle, Corporal Jones' inspection of the vehicle and her dog's alerting to the trunk area of Defendant's vehicle,

Officer Meadows obtained a search warrant for the vehicle. (Tr. at 24, Government Exhibit 2).

26. Upon execution of the issued search warrant, Officer Meadows seized approximately 211 grams of methamphetamine and 122 grams of cocaine from the tin. This is the same contraband Officer Meadows originally discovered in the trunk of the vehicle during his inventory search. (Tr. at 25-26).

IV. CONCLUSIONS OF LAW

A. LEGALITY OF SEARCH

1. The Fourth Amendment provides: “[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.

2. An inventory search “may be ‘reasonable’ under the Fourth Amendment even though it is not conducted pursuant to a warrant based on probable cause.” Colorado v. Bertine, 479 U.S. 367, 371 (1987). Inventory procedures “serve to protect an owner’s property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger.” Id. at 372. Therefore, the government has a strong interest in conducting an inventory search; citizens, however, have a diminished expectation of privacy in property in police custody. Id. at 372. Thus, inventory searches, conducted in good faith,

pursuant to reasonable police regulations, satisfy the Fourth Amendment. Id. at 374.

3. Based on the findings of fact made in this Memorandum Opinion, the Court concludes that Officer Meadows arrest of Defendant for multiple traffic offenses, including driving without a valid license and driving at an unreasonable speed was lawful. The Court also concludes that Officer Meadows properly removed Defendant from his vehicle and arranged to remove and impound his vehicle, by tow truck, from Interstate 495 because no licensed driver was present on the scene to drive the vehicle from the location of the stop and arrest. Furthermore, the Court concludes that the initial inventory search conducted by Officer Meadows, to catalog the contents of the vehicle, thereby insuring against claims of lost, stolen, or vandalized property, was lawful. The Court will next consider the legality of Officer Meadow's search of the metal tin found in the trunk of Defendant's vehicle.

B. THE LEGALITY OF THE SEARCH OF THE METAL CONTAINER

1. The United States Supreme Court has held that standardized criteria or established routine must regulate the opening of containers encountered during an inventory search. Florida v. Wells, 495 U.S. 1, 4 (1990). Such policies may permit opening all containers or opening no containers. Id. Moreover, a police officer "may be allowed sufficient latitude to determine whether a particular container should or should not be opened in

light of the nature of the search and characteristics of the container itself.” Id. In sum, it is permissible for officers to open closed containers encountered during an inventory search so long as the officer is acting pursuant to standard police procedure. Id.; see also United States v. Frank, 864 F.2d 992 (1988).

2. In Florida v. Wells, the United States Supreme Court held that the opening of a suitcase found during an inventory search was unconstitutional in the absence of a policy with respect to the opening of closed containers found during an inventory search. 495 U.S. 1 (1990). The Supreme Court did not reconsider the Florida Supreme Court’s finding that the Florida Highway Patrol had no policy with respect to the opening of closed containers found during an inventory search. Id. at 5. The Supreme Court also held that standardized criteria or established routine are sufficient to regulate the opening of closed containers found during an inventory search in the absence of a written policy. Id. at 4.

3. Likewise, the Court of Appeals for the Third Circuit has held that a formalized standard setting forth the scope of an inventory search is not required. Frank, 864 F.2d 992 (1988). An unwritten, pre-existing routine or procedure, is sufficient to define the procedure for handling closed containers encountered during an inventory search. Id.

4. Based on the holdings of the Supreme Court and the Third Circuit, the Court must determine if the instant search was conducted pursuant to standardized criteria or established routine.

5. In this case, as evidence of an established unwritten routine, the Government offers the testimony of Officer Meadows who testified that "if there is a container that is closed anywhere in the vehicle . . . if the item is reasonably accessible, we are to look inside that item and document any contents within." (Tr. 14). The Court cannot credit the testimony of Officer Meadows regarding the existence of an established routine for handling containers found during an inventory search because Officer Meadows' conduct surrounding the search undermines the existence of an established routine. If the Delaware State Police had an established routine regarding closed containers, Officer Meadows would have seized the drug contraband upon first observing it and completed his inventory search of the vehicle. The fact that, upon observing the drug contraband, Officer Meadows ceased his inventory search, arranged for a K-9 officer to inspect the vehicle, and later obtained a search warrant demonstrates that Officer Meadows was unsure of the legality of his decision to open and inspect the closed container. On this record, the Court concludes that Officer Meadows' testimony does not establish the existence of an established procedure or routine to guide officers of the Delaware State Police.

6. As further evidence of an established routine, the Government relies upon the testimony of Lieutenant Joseph Aviola, Jr., an instructor at the Delaware State Police Academy. Lt. Aviola teaches his students to open all closed containers and inventory the contents. The Court finds the testimony of Lt. Aviola, alone, insufficient to prove an established routine of the Delaware State Police regarding containers.

7. Because the Court finds that Officer Meadows was not acting in accordance with an established routine of the Delaware State Police when he found and opened the metal tin during a warrantless inventory search of Defendant's vehicle, the Court concludes that the search was not sufficiently regulated to satisfy the requirements of the Fourth Amendment as set forth in the Wells decision. Therefore, the contents of the tin found in Defendant's vehicle will be suppressed.

V. CONCLUSION

For the reasons discussed, Defendant's Motion to Suppress Physical Evidence (D.I. 16) will be granted.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH NICOLELLA,

Defendant.

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Criminal Action No. 01-83-JJF

O R D E R

At Wilmington, this 22nd day of August 2002, for the reasons set forth in the Memorandum Opinion issued this day, IT IS HEREBY ORDERED that Defendant's Motion To Suppress Physical Evidence (D.I. 16) is **GRANTED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE