

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
DOCKET NOS.

2077ESCR00289

~~2077ESCR00290~~

COMMONWEALTH

vs.

WILLIAMS RAMIREZ
JOSE GUERRERO-NUNEZ

MEMORANDUM OF DECISION AND ORDER
ON DEFENDANTS' MOTIONS TO SUPPRESS

Defendant Willians Ramirez ("Ramirez") stands indicted for trafficking in 200 grams or more of Heroin, Fentanyl trafficking, possession with intent to distribute a Class E substance, unlawful possession of a firearm, unlawful possession of a loaded firearm, and conspiracy to violate the Controlled Substances Act. Defendant Jose Guerrero-Nunez ("Guerrero-Nunez") stands indicted for those same crimes, as well as for three counts of furnishing a false name or security number to law enforcement on diverse dates, and two counts of possession or use of false or stolen Registry of Motor Vehicles documents. Both defendants now move to suppress drugs, drug paraphernalia, a firearm, and other objects found during a warrantless search of a motor vehicle, as well as a closed container therein, on March 13, 2020. An evidentiary hearing was held on January 28, 2021, after which each party submitted a written memorandum of law, and oral argument was heard on February 11, 2021. For the reasons that follow, the defendants' motions are ALLOWED.

FINDINGS OF FACT

The Commonwealth called two witnesses, Sergeant John Strazzullo and Trooper Stephen Durant, both members of the Massachusetts State Police ("MSP"). The exhibits include

photographs and a search warrant and supporting affidavit for 49 Klondike Avenue, Haverhill, MA. The MSP Towing Policy (TRF-09) and Vehicle Inventory Policy (TRF-10) were also introduced into evidence.¹ The court credits the factual testimony of the two officers except as to their respective opinions as to the legal bases for the searches. The issues regarding the existence of probable cause for the searches as well as the legality of purported inventory-policy-based searches are for the court to determine.

At all times relevant both testifying officers were involved in a narcotics investigation in the northeast Massachusetts area, including Lawrence, Methuen, and Haverhill. They were working with other law enforcement personnel on a narcotics investigation team. Both officers are very experienced in the investigation of drug trafficking. The investigation included both camera and in-person surveillance.

In October 2019, Trooper Durant, acting in an undercover capacity, made two buys of trafficking-weight Fentanyl or Heroin from a person known to investigators. Immediately before each sale officers observed a man, whom they later identified as Ramirez, enter and leave the premises police were observing. The seller and target of the initial investigation was arrested in possession of trafficking-weight drugs in the amount to be purchased by Trooper Durant. At the time of his arrest, the seller identified Ramirez, although not by name, as his supplier. Officers were then able to identify Ramirez by name through observations, Registry of Motor Vehicle (“RMV”) records, phone records and electronic surveillance. During the investigation, which lasted for several months, investigators obtained “ping” or location warrants for a phone used by

¹ Following the evidentiary hearing on January 28, 2021, at which the towing and inventory policies were admitted into evidence, the Commonwealth notified defense counsel that the towing policy admitted into evidence was not the version in effect on the date of the search. With the agreement of all parties, the correct version, effective June 14, 2018, was marked as Exhibit 26 at the February 11, 2021 hearing. The court considers that version in deciding the motions to suppress.

Ramirez. The officers also observed Ramirez to be engaged regularly in behavior which, based upon their experience and training, was related to narcotics sales.

The officers observed Ramirez on "hundreds" of occasions. They observed him enter and leave multiple locations, for example retail stores, frequently for short periods of time, without carrying anything visible in or out of these locations. Ramirez was never observed carrying out any merchandise. Ramirez also engaged in counter-surveillance behavior designed to thwart narcotics investigations. He switched motor vehicle registrations on the same vehicle. He was also observed to engage in what officers reasonably suspected to be drug transactions on several occasions.

A pattern was observed in which Ramirez stopped at what officers concluded was a "stash house" or drug storage area each day prior to stopping at numerous other locations. At some point the officers observed Ramirez carry large bags of items from the suspected stash house to 49 Klondike Avenue, Haverhill. Thereafter, officers observed that Ramirez went to 49 Klondike Avenue regularly and associated regularly with Guerrero-Nunez, who resided at that location. Officers developed information that both defendants were stopped together in a motor vehicle with an empty drug "hide," at which time Guerrero-Nunez gave a false identity. Guerrero-Nunez was arrested for providing false identification to police. The investigation extended into an investigation of false identification, the basis for which is set forth in Exh. 23, the search warrant and affidavit for 49 Klondike Avenue.

During the investigation, officers determined that both defendants had arrest warrants outstanding. Ramirez had a misdemeanor warrant from Newburyport District Court for failing to appear for jury duty. Guerrero-Nunez had an outstanding warrant from this court for a violation of probation on narcotics distribution charges. The officers knew of those warrants, but failed to

execute them for several months prior to March 13, 2020. Officers obtained a search warrant for 49 Klondike Avenue from another justice of this court on March 12, 2020. The warrant was for items related to identity and document fraud as well as transactions involving such fraud.

On March 13, 2020, the officers engaged in surveillance of 49 Klondike Avenue in preparation for the execution of the search warrant that afternoon. Investigating officers observed the defendants moving several bags filled with unknown items out of 49 Klondike Avenue. They also observed the defendants carry what appeared to be a very heavy plywood table from 49 Klondike Avenue. The defendants placed the items in a Ford Edge vehicle, which officers had seen operated regularly by Ramirez. The Ford Edge left 49 Klondike Avenue and the officers called for backup from other law enforcement personnel. The officers were concerned that the items which were the subject of the search warrant were being removed. The Ford Edge was observed to have both a cracked windshield and a malfunctioning brake light, either one of which would constitute a basis for a civil infraction motor vehicle stop. A uniformed trooper signaled, with flashing lights, for the vehicle to stop. The Ford Edge pulled into a Methuen Sunoco gas station and market and parked in a legal spot meant for customers. The four-door vehicle was operated by Ramirez and Guerrero-Nunez was in the front passenger seat.

Both defendants were directed to exit the vehicle through their respective front doors and both were arrested on the outstanding arrest warrants. Before the arrests the troopers confirmed the validity of the outstanding warrants.²

After the arrests the officers opened the rear doors of the vehicle and looked inside. They also called for a tow truck to tow the vehicle. In their testimony, the officers characterized this search as an inventory search in preparation for the tow. The vehicle was parked legally and

² The defendants do not contest the validity of the arrest warrants.

safely. The area of the stop was not a high-crime area. The vehicle was legally registered and insured by someone other than the defendants. There is no evidence that the parking area had any posted closing hours. There were not any no trespassing, towing or other restrictive parking signs or postings. The investigators never asked the management of the station whether or not the vehicle could permissibly remain parked there. Officers never asked either defendant if anyone was available to retrieve the legally parked vehicle.

When the officers opened the rear doors of the vehicle they observed, in plain view, clear and substantial narcotics trafficking paraphernalia. This included hydraulic jacks, finger presses, a heat sealer, bags, blenders, grease, gloves, and masks. Both officers testified credibly as to the substantial relationship between the items observed and narcotics trafficking. Officers also observed narcotics residue on the blenders. When the officers lifted one end of the plywood table they confirmed that it was heavy. They credibly concluded that the table was disproportionately heavy for a plywood table and they reasonably believed that it may be a drug "hide." The officers observed that the table was closed with metal bolts or screws. An electric drill with a fitting consistent with the table bolts or screws was also found in the vehicle.

Suspecting that the table contained narcotics, the officers used the drill to unscrew the bolts or screws and the table came apart. Inside the unbolted table was a hidden compartment or "hide." In that area the officers found a large quantity of what they concluded was Fentanyl or Heroin, as well a firearm and ammunition.

After making their observations, the officers re-bolted the table and closed the doors of the vehicle. A civilian tow truck arrived and the vehicle was towed, at the direction of the officers, to a secure state police garage. After observing the residue, drugs and firearm, the officers expressed a credible concern for public safety if the vehicle was not towed.

RULINGS OF LAW

Decision to Impound

The outcome of the defendants' motions to suppress turns on whether the police were justified in opening the rear doors of the Ford Edge and looking inside after arresting the defendants. The defendants concede that the stop of the vehicle was lawful, either based on the defendants' outstanding warrants or the vehicle's cracked windshield and a malfunctioning brake light. There is also no question that the arrest of the defendants was lawful based on their outstanding warrants. What the defendants challenge, however, is the lawfulness of the warrantless search of the Ford Edge after their arrests.

The Commonwealth relies solely on the inventory search exception to the warrant requirement to justify the search. The Commonwealth contends that investigators lawfully impounded the vehicle and conducted an inventory search, and that once the inventory search revealed evidence of drug trafficking, the search transformed into a lawful investigatory search pursuant to the automobile exception to the warrant requirement. The Commonwealth conceded at oral argument that it does not rely on the theory that, before officers opened the rear doors and observed evidence related to drug trafficking, there was probable cause to search the vehicle under the automobile exception, based on officers' observations of the defendants in the months and minutes prior to the stop.³

TRF-09, the MSP towing policy, states that:

Officers are authorized to remove (or cause to be removed) any vehicle found upon a road/state highway when:

- The vehicle was stolen or taken without the owner's consent;
- The vehicle is disabled as to constitute an obstruction to traffic and/or is an obvious hazard;

³ As the Commonwealth has conceded this point, the Court specifically refrains from making a determination on whether or not probable cause existed at the time of the stop.

- The operator of the vehicle is arrested and the vehicle would be left unattended on a public way;
- The vehicle is improperly parked or standing in violation of a state or municipal law or regulation
- The operator of the vehicle is not properly licensed and there are no properly licensed occupants;
- The vehicle is not validly registered or insured;
- The vehicle, in its current condition, is too hazardous or dangerous to be driven;
- The vehicle is impounded/towed pursuant to MGL or state or federal court order; and/or
- Adverse weather conditions or other emergency reasons necessitate the removal in the interest of public safety, or when requested by the Massachusetts Highway Department or other agency having jurisdiction over maintenance of the roadway.

Similarly, TRF-10,⁴ the MSP inventory policy, states that:

The Department shall inventory any vehicle ordered towed, removed, or impounded:

- As outlined within TRF-09 Towing;
- When involved in a crash, and the owner is unable to care for it;
- Pursuant to a lawful arrest when the vehicle would be left unattended; or
- As a seizure – the vehicle is subject to statutory forfeiture or lawful seizure pursuant to a governmental interest, such as:
 1. A seizure pending forfeiture;
 2. Company or corporation distress warrant; or
 3. The vehicle was used in the commission of a crime, as an instrument of a crime, or is stolen.

In evaluating whether a vehicle's seizure was reasonable, courts look first to the police's true purpose for seizing it. "After the arrest of the driver, a vehicle may be seized for one of at least four legitimate purposes: to protect the vehicle and its contents from theft or vandalism, to protect the public from dangerous items that might be in the vehicle; to protect public safety

⁴ There appears to be some overlap between TRF-09 and TRF-10 that leads to confusion about the circumstances under which MSP should impound and inventory a vehicle. Specifically, TRF-09 authorizes impoundment of "any vehicle found upon a road/state highway when . . . The operator of the vehicle is arrested and the vehicle would be left unattended on a public way," while TRF-10 states that police "shall inventory any vehicle ordered towed, removed, or impounded . . . Pursuant to a lawful arrest when the vehicle would be left unattended." As TRF-09 controls when police should impound or tow a vehicle, and TRF-10 details the procedure for the subsequent inventory search, the Court will only consider TRF-09 when discussing the police's decision to impound the vehicle, because the validity of an inventory search necessarily depends on the validity of the decision to impound. Therefore, the Commonwealth's argument that TRF-10 required police to impound the vehicle is inapposite.

where the vehicle, as parked, creates a dangerous condition, or where the vehicle is parked on private property without the permission of the property owner as a result of a police stop, to spare the owner the burden of having to cause the vehicle to be towed.” Commonwealth v. Oliveira, 474 Mass. 10, 13 (2016) (internal citations and quotations omitted). Where the police’s true purpose for searching the vehicle is investigative, the seizure of the vehicle may not be justified as a precursor to an inventory search, and must instead be justified as an investigative search. See Commonwealth v. White, 469 Mass. 96, 102 (2014). See also Commonwealth v. Rostad, 410 Mass. 618, 620 (1991) (inventory search “may not be allowed to become a cover or pretext for an investigative search”)

If the vehicle was seized for a legitimate purpose, the court looks next to whether the seizure was reasonably necessary based on the totality of the evidence. See Commonwealth v. Eddington, 459 Mass. 102, 108-110 (2011). Where the police arrest the driver of a vehicle, courts consider whether the vehicle reasonably could have been left in the place it was parked and therefore need not have been seized.

In this case, while conceding that it is a close question, the Court concludes that the decision of the police to impound the vehicle was unreasonable in these circumstances. Before the vehicle was impounded, the defendants had been arrested only for failure to appear for jury service and violation of probation, so it was likely that they would be released on bail after they were booked and could then notify the vehicle’s owner to retrieve the vehicle or retrieve it themselves.⁵ Even if they were not quickly released on bail, they were legally entitled to make a telephone call at the police station. See G. L. c. 276, § 33A. During this telephone call, either defendant could notify the vehicle’s owner of the need to pick up the vehicle or ask another

⁵ Other than the police’s suspicions, there was no other evidence presented to suggest that the vehicle’s registered owner was not a real person.

person to notify the owner. Even if they were unable to reach the owner and were not released on bail, there was no evidence that the vehicle was at significant risk of being stolen or vandalized if it remained overnight in the gas station lot. Compare Commonwealth v. Eddington, 76 Mass. App. Ct. at 177 (judge's finding that vehicle would be left on side of road in "high crime area" justified impoundment); Commonwealth v. Ellerbe, 430 Mass. 769, 775 (2000) (specific testimony from officer that area vehicle was parked had significant history of vehicle theft and vandalism). Nor, where it was parked properly in the lot, did it pose any public safety risk or any obstruction to other vehicles. See Commonwealth v. Dunn, 34 Mass. App. Ct. 702, 704 (1993).

Therefore, because the validity of an inventory search turns on the propriety of the underlying impoundment, the search was unlawful. See Commonwealth v. Oliveira, 474 Mass. at 13.

Inventory Search as Pretext

The defendants also argue that the fruits of the inventory search of the vehicle must be suppressed because the inventory search was merely a pretext to allow the police to search for evidence of drug trafficking. The Court agrees, and concludes that even if impoundment were proper, the resulting search was an impermissible investigatory search.

Even if otherwise valid, an inventory search must be "conducted for some legitimate police purpose other than a search for evidence." Commonwealth v. Ortiz, 88 Mass. App. Ct. 573, 576 (2015), quoting Commonwealth v. Benoit, 382 Mass. 210, 219 (1981). See Commonwealth v. White, 469 Mass. 96, 102 (2014) ("The investigative use of these pills transformed a lawful inventory seizure of the pills into an unlawful investigatory search of the pills").

“The distinction between an inventory search and an investigatory search is found in the objective of each. The objective of an investigatory search is to gather evidence, whereas an inventory search is conducted for the purposes of ‘safeguarding the car or its contents, protecting the police against unfounded charges of misappropriation, protecting the public against the possibility that the car might contain weapons or other dangerous instrumentalities that might fall into the hands of vandals, or a combination of such reasons.’” Commonwealth v. Ortiz, 88 Mass. App. Ct. at 576, quoting Commonwealth v. Baptiste, 65 Mass. App. Ct. 511, 516 (2006). “[T]he fact that the searching officer may have harbored a suspicion that evidence of criminal activity might be uncovered as a result of the search should not vitiate his obligation to conduct the inventory.” Commonwealth v. Tisserand, 5 Mass. App. Ct. 383, 386-387 (1977). However, “an inventory search [will] not be upheld if ... there [is] a ‘suggestion ... that this standard procedure’ [is] a pretext concealing an investigatory police motive.” Id., quoting South Dakota v. Opperman, 428 U.S. 364, 376 (1976).

Here, prior to stopping the defendants, police observed them removing objects, including trash bags and a wooden table, from 49 Klondike Ave., where police were preparing to execute a search warrant later that day. The police were concerned that items with evidentiary value were being removed and could be lost.⁶ Because of this concern, police stopped the defendants and arrested them on outstanding warrants—warrants the police had known about for months but had yet to act upon. The Court finds that police only stopped the vehicle and arrested the defendants because, as the troopers credibly testified, they believed that drugs were in the vehicle.⁷

⁶ Although the search warrant authorized police to search for evidence of identity fraud, it is apparent that by this point the police’s investigation of the two defendants was primarily a drug trafficking investigation and that police feared evidence of that suspected drug trafficking was being removed from the premises.

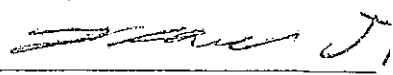
⁷ This is not to suggest that the police’s decision to stop the vehicle was in any way motivated by bad faith. The police clearly believed, and the Court credits their testimony, that they were authorized to stop the vehicle, arrest the defendants, impound the vehicle, and perform an inventory search.

“The conduct of the police is assessed by an objective standard.” Commonwealth v. Ortiz, 88 Mass. App. Ct. at 577. The Court concludes that when viewed objectively, the search here was an investigative search and not an inventory search. Accordingly, the Court concludes that the inventory search here was a pretext for using the inventory policy to conduct an investigatory search of the vehicle for evidence of drug activity without a warrant. Viewed in this context, the warrantless search of the vehicle was unconstitutional. See Commonwealth v. Benoit, 382 Mass. 210, 219 (1981) (“The record clearly reveals that the only purpose for the [search of the suitcase] ... was to seize evidence”).

ORDER

For the foregoing reasons, the defendants’ motions to suppress are **ALLOWED**.

Dated: March ^{31st} 2021



Thomas Drechsler
Justice of the Superior Court