

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 10-00320-12-CR-W-DGK
)	
DESHAUN L. CERUTI,)	
)	
Defendant.)	

**GOVERNMENT’S RESPONSE TO
DEFENDANT DESHAUN L. CERUTI’S MOTION TO SUPPRESS**

The United States of America, by Beth Phillips, United States Attorney, and the undersigned Assistant United States Attorney, both for the Western District of Missouri, respectfully submits this response to the defendant’s Motion to Suppress, filed June 24, 2011.

I. FACTUAL BACKGROUND

Juan Marron’s (“Marron”) drug distribution ring was investigated through confidential informants, arranged buys, and Title III wire interceptions on Marron’s phone. Through this investigation, it was discovered that Marron was the main supplier for many individuals, including DeShaun Ceruti (“Ceruti”), the defendant.

From May 30, 2010 to June 1, 2010, telephone calls were intercepted revealing that Marron was going to provide drugs to Ceruti. (ROI 1, ¶ 1)¹ A call on May 30, 2010 took place between Ceruti and Marron, where Marron asked if Ceruti wanted “three” of the “ones” he had been shown or “three” of the “ones” he had bought the last time. (ROI 1, ¶ 2) Ceruti replied that

¹ “ROI 1” refers to the Report of Investigation on June, 1 2010 by Special Agent Joe Geraci.

he wanted “three” of the “ones” Marron had shown him and some of the “other.” (ROI 1, ¶ 2). Based on Special Agent Joe Geraci’s training, experience, and knowledge of the investigation, he believed that “three” and “ones” were referencing marijuana and “other” was a reference to cocaine. (ROI 1, ¶ 2).

During a telephone call on May 31, 2010, Marron told Ceruti that his source of supply had not called him, but he still had some of what he had given him the other day. (ROI 1, ¶ 3) Ceruti said he was in Booneville but wanted some of “that” when they planned on meeting the next day. (ROI 1, ¶ 4). On June 1, 2010, Ceruti asked Marron what was going on with “it” and Marron told Ceruti to come by. (ROI 1, ¶ 5). SA Geraci believed that when Ceruti said “it,” he meant the drug transaction. (ROI 1, ¶ 5).

At approximately 2:05 p.m. on June 1, 2010, Kansas City, Missouri police detectives and Drug Enforcement Administration agents observed Ceruti arrive at Marron’s residence located at 111 South Lawn, Kansas City, Missouri, park his vehicle, and then walk inside. (ROI 1, ¶ 6). At approximately 2:19 p.m., agents observed Ceruti walk out of Marron’s residence with a white plastic bag and get in his blue 1999 Dodge Durango. (ROI 1, ¶ 6). Agents followed Ceruti to his mother’s residence located at 308 Spruce, Kansas City, Missouri. (ROI 1, ¶ 6). Ceruti had moving violation warrants, and the officers approached him at the residence to place him under arrest. (IR, Pg. 4). As officers arrived, Ceruti was backing the vehicle into the driveway, and as officers approached the vehicle, Ceruti backed the vehicle into the closed garage door of the residence. (IR, Pg. 4).² Police Officer Evans ordered Ceruti to get out of the vehicle and lie on the ground. (IR, Pg. 4).

² “IR” refers to Incident Report 10-40731.

Ceruti was placed under arrest due to his moving violation warrants. (IR, Pg. 5). Before inventorying the vehicle prior to its being towed, Officer Kell asked Ceruti if there was anything in the vehicle they needed to know about, and Ceruti replied there was “two pounds of weed.” (IR, Pg. 5). Officer Evans inventoried the vehicle and located a clear plastic bag containing a beige, rock-like substance later determined to be crack cocaine weighing approximately 20 grams and two white plastic bags containing a clear plastic bag that contained two bricks of a green leafy substance later determined to be marijuana weighing approximately 900 grams. These bags were located on the rear driver’s side floorboard. (IR, Pg. 5). Officer Evans field tested both items and discovered they were cocaine and marijuana respectively. (IR, Pg. 5). Ceruti was also placed under arrest for possession of a controlled substance. (IR, Pg. 5).

II. ARGUMENTS AND AUTHORITIES

The defendant argues his arrest and the resulting evidence discovered should be suppressed as a result of an alleged illegal search and seizure. The defendant also argues the audio recordings used in the investigation should be suppressed due to a lack of reliability or evidence of wrongdoing.

A. Arrest and Search

The defendant argues the Officers did not have probable cause to arrest. He also asserts the Officers did not obtain a search warrant to look in Ceruti’s vehicle and no exceptions existed to justify their search.

The Officers had valid warrants to arrest the defendant based on several moving violations. (IR, Pg. 3). It is settled law that an inventory search of an impounded vehicle

constitutes an exception to the Fourth Amendment's warrant requirement, provided that both the impoundment and the ensuing inventory search are based on standardized criteria that guides the exercise of police discretion. See, e.g., *Florida v. Wells*, 495 U.S. 1, 3-5 (1990); *Colorado v. Bertine*, 479 U.S. 367, 371-76 (1987); *South Dakota v. Opperman*, 428 U.S. 364, 368-69 (1976).

"Accord[ing] deference to police care taking procedures designed to secure and protect vehicles and their contents within police custody," the Court has recognized that an inventory search is constitutionally reasonable as long as officers exercise their discretion whether or not to impound a vehicle "according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity." *Bertine*, 479 U.S. at 374-75.

"The police are not precluded from conducting inventory searches when they lawfully impound the vehicle of an individual that they also happen to suspect is involved in criminal activity." See, e.g., *United States v. Pappas*, 452 F.3d 767, 771 (8th Cir. 2006) (quoting *Marshall*, 986 F.2d 1171, 1175-76 (8th Cir.1993)). Additionally, an otherwise valid inventory search does not become impermissible simply because officers hope or expect to uncover incriminating evidence during the course of the search. To the contrary, the courts of appeals - including the Eighth Circuit - have routinely held that if an inventory search or impoundment would have been conducted anyway pursuant to established police inventory practice, and if the search is conducted in accordance with that standardized policy, the fact that an officer harbors an investigative motive as well does not invalidate the search. See *United States v. Hall*, 497 F.3d 846, 851 (8th Cir. 2007) ("Even if the officer 'suspects he might uncover evidence in a

vehicle,' the police can still 'tow a vehicle and inventory the contents, as long as the impoundment is otherwise valid."); *United States v. Kanatzar*, 370 F.3d 818, 812-13 (8th Cir. 2004); *United States v. Petty*, 367 F.3d 1009, 1013 (8th Cir. 2004); *United States v. Garner*, 181 F.3d 988, 991-92 (8th Cir. 1999); *United States v. Wallace*, 102 F.3d 346, 348 (8th Cir. 1996).

Here, the Officers had arrest warrants based on moving violations. They executed the warrants and arrested the defendant. According to standard Kansas City, Missouri, Police Department (KCMOPD) procedure, the vehicle was ordered towed. Prior to towing the vehicle, the Officers conducted a standard inventory search, again pursuant to KCMOPD policy, providing a valid exception to the warrant requirement.

B. Audio Recordings

The defendant argues that the recorded telephone calls between Ceruti and Marron should not be submitted as evidence. The defendant asserts that the calls do not establish who is involved or allude to any pending drug transaction. The defendant provides no legal basis for suppression, other than stating his unsubstantiated belief that the evidence is unreliable. His motion to suppress the audio recording evidence should be denied as lacking any basis in law or support of facts.

III. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny the defendant's Motion to Suppress.

Respectfully submitted,

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By */s/ Bruce Rhoades*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on July 11, 2011, to the Electronic Filing System (CM/ECF) of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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