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

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

GOVERNMENT'S OBJECTIONS TO REPORT AND RECOMMENDATION GRANTING IN PART DEFENDANT'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 these objections to the Chief Magistrate Judge's Report and Recommendation, filed October 5, 2011 as Document 347.

I. FACTUAL BACKGROUND

Juan Marron's ("Marron") drug distribution ring was investigated through confidential informants, arranged buys, and court authorized Title III wire and electronic interceptions on Marron's phone. (R&R 4, #1).[1] Through this investigation, it was discovered that Marron was the main supplier for many individuals, including DeShaun Ceruti ("Ceruti"), the defendant. (R&R 4, #1).

From May 30, 2010 to June 1, 2010, telephone calls were intercepted revealing that Marron was going to provide drugs to Ceruti. (R&R 4, #1). During a conversation that took

[1] "R&R refers to the Report and Recommendation issued on October 5, 2011 by the Honorable Robert E. Larsen, Chief United States Magistrate Judge for the Western District of Missouri.

place between Ceruti and Marron on May 30, 2011, the two brokered an apparent drug transaction that would occur at Marron's residence at 111 South Lawn. (R&R 4, #1). At that time, Drug Enforcement Administration (DEA) Special Agent (SA) Joseph Geraci heard Ceruti say that "he wanted three of one and some of the other," which he interpreted to be three pounds of marijuana and then some cocaine. (T. 11-12).[2] SA Geraci also intercepted two telephone conversations on the 31st between Marron and Ceruti, where Marron said "touchdown" to Ceruti, which SA Geraci inferred to mean that the drugs were "available." (T. 11-12). Then on June 1st, Ceruti again communicated with Marron informing him that would be stopping by his residence. (T. 12).

Later that same day, Kansas City, Missouri, Police Department (KCMOPD) detectives and DEA agents observed Ceruti arrive at Marron's residence located at 111 South Lawn, Kansas City, Missouri, park his vehicle, and then walk inside. (R&R 4, #2). Agents subsequently observed Ceruti walk out of Marron's residence carrying a white plastic bag and get in his blue 1999 Dodge Durango. (R&R 5, #4). Agents followed Ceruti to a private residence located at 308 Spruce, Kansas City, Missouri. (R&R 6, #5, R&R). Ceruti had moving violation warrants, and the Agents had KCMOPD officers approached him at the residence to place him under arrest. (R&R 6-7, # 5-7). As officers arrived, Ceruti was backing the Dodge Durango vehicle into the driveway, and as officers approached the vehicle, Ceruti backed the vehicle into the closed garage door of the residence. (R&R 6-7, #7). Officer Evans ordered Ceruti to get out of the vehicle and lie on the ground. (R&R 6-7, #6, 7).

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[2] "T" Refers to the Transcript on Hearing of Motion to Suppress that took place on Aug. 10, 2011 before Judge Larsen.

Ceruti was placed under arrest due to his moving violation warrants. (R&R 7, #7). Before inventorying the vehicle prior to its being towed, Officer Keil asked Ceruti if there was anything in the vehicle they needed to know about, and Ceruti replied there was "two pounds of weed." (R&R 7, #9). 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. (R&R 8, #10). These bags were located behind the driver's side seat. (R&R 8, #10). Ceruti was thereafter charged with possession of a controlled substance in addition to his initial arrest for outstanding warrants relating to moving violations. (R&R 8, #11).

II. ARGUMENTS AND AUTHORITIES

A. Evidence from Ceruti's vehicle was lawfully recovered pursuant to the automobile exception.

The automobile exception authorizes officers to search a vehicle without a warrant if they have probable cause to believe the vehicle contains evidence of criminal activity. *United States v. Hill*, 386 F.3d 855, 858 (8th Cir. 2004). Probable cause exists where there is a fair probability that contraband or evidence of a crime will be found in a particular place. *United States v. Donnelly*, 475 F.3d 946, 954 (8th Cir. 2007). Here, multiple telephone calls were lawfully intercepted revealing a high probability that Marron was brokering a drug transaction with Ceruti. KCMOPD detectives and DEA agents subsequently observed Ceruti arrive at Marron's residence, walk into the residence and then observed Ceruti walk out of Marron's residence carrying a white plastic bag and get in his blue 1999 Dodge Durango. Agents then followed

Ceruti to his mother's residence and KCMOPD officers arrested him in the driveway.

Although police immediately placed Ceruti under arrest for driving under a suspended license, they still had underlying probable cause to search the vehicle without a warrant based on the high probability of contraband contained therein. The basis for this probability lied in the extensive surveillance leading up to the search and exceeds the fair probability standard iterated in *Donelly* for probable cause for searches without a warrant. Therefore, the threshold was met for *Hill's* vehicle exception to apply and the evidence of Ceruti's possession of drugs must not be suppressed.

B. Evidence from Ceruti's vehicle was lawfully recovered pursuant to the inventory search exception.

It remains settled law even after *Arizona v. Gant*, 556 U.S. 332 (2009), that an inventory search of an impounded vehicle also 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. *United States v. Frasher*, 632 F.3d 450, 454 (8th Cir. 2010); *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." *Colorado v. Bertine*, 479 U.S. 367, 374-75 (1987).

"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 Eighth Circuit has 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.") (*quoting 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).

In this case, officers had high probability to conclude both that Ceruti had engaged in obtaining illicit drugs and that he was operating a vehicle without a valid drivers license. Thus, his arrest was justified. The subsequent inventory search of the vehicle Ceruti had been driving was reasonable under the standards set forth in *United States v. Hall*. Pursuant to KCMOPD Towing and Protective Custody Procedure, "Vehicles will be towed when the vehicle is known or believed to have been used in the commission of a crime and has evidentiary value, unless it is

processed at the scene and can be released to the owner/operator." (Proc. Inst. A-1).[3] The towing policy requires police officers to conduct a content inventory for the towing and protective custody of all vehicles. (Proc. Inst. 1). When conducting a content inventory, police officers are permitted to open any locked or closed compartments. (Proc. Inst. 1).

Here, the officers had a high degree of probable cause to suspect Ceruti had used the vehicle he had been operating in the commission of a crime and, based on those observations, they had reason to believe it therein had evidentiary value of an illicit drug transaction. Furthermore, the vehicle could not be released to the owner in accordance with KCMOPD Procedural Instructions Annex A, Section A relating to General Towing Requirements, as the vehicle was owned by Ceruti who had lawfully been placed under arrest.[4] Therefore, evidence confiscated from the vehicle should not be suppressed, as it was obtained in accordance with a reasonable inventory search. Thus, the search of the vehicle was permissible under the inventory exception – and Ceruti's Motion to Suppress Evidence of possessing 20 grams of crack cocaine and marijuana weighing approximately 900 grams should have been denied.

C. Ceruti's statement made to police before being read his *Miranda* rights should not be suppressed, nor should evidence of drugs found inside his vehicle, pursuant to the inevitable discovery rule.

The inevitable discovery exception to the exclusionary rule is closely related to the independent source doctrine. *See e.g., U.S. v. Mendez*, 315 F.3d 132, 138-39 (2d Cir. 2002)

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[3] "Proc. Inst." refers to the Kansas City Missouri Police Department Procedural Instruction effective Nov. 11, 2009.

[4]Even if the vehicle wasn't owned by Ceruti or even if it could have been left at the scene, the policy allowed the search and the search was done *prior* to the vehicle being towed from the scene, so there was no harm even from a *potential* violation.

(evidence seized in warrantless car search admissible because discovery inevitable upon valid inventory search of impounded vehicles); *U.S. v. Brathwaite*, 458 F.3d 376, 382 (5th Cir. 2006) (defendant's statements about felony status admissible despite lack of *Miranda* warnings because officers were conducting background check during questioning and records showed criminal history). Under this exception, a court may admit illegally obtained evidence if the evidence would inevitably have been discovered through independent, lawful means. *Nix v. Williams*, 467 U.S. 431, 446-47 (1984). Without such an exception, the statements obtained from police from a defendant illegally are suppressed and the evidence obtained therefrom is excluded based on the "fruit of the poisonous tree" doctrine. *See U.S. v. Barth,* 288 F.Supp.2d 1021, 1030 (8th Cir. 2003).

Here, Ceruti made a statement at the scene that he had "two pounds of weed..." inside the vehicle. This statement was made before he was read his Miranda rights[5] and after he was placed into custody. Traditionally, this statement would be held inadmissible as would the evidence of drugs that were subsequently discovered. However, the inevitable discovery doctrine must be applied.

The test for inevitable discovery as set forth in *Nix* includes two elements. *Nix*, 467 U.S. at 444. First, there must be an ongoing line of investigation that is distinct from the impermissible or unlawful technique. *Id*. Here, the first element is satisfied. The search was being conducted pursuant to the vehicle exception outlined in *Hill* and an inventory search outlined in *Hall*, which lawfully allowed the officers to search the location where the drugs were

[5]Ceruti subsequently made a *Miranda* statement at the police station. The R & R did not suppress that statement.

actually found. Second, there must be a showing of a reasonable probability that the permissible line of investigation would have led to the independent discovery of the evidence. *Id.* In spite of Ceruti's statement at the scene that his vehicle contained a significant quantity of marijuana, the officers had probable cause to justify both an inventory search and satisfy the requirements for the vehicle exception to a search without warrant. Based on those accepted rules, the officers lawfully discovered the drugs on the floorboard. Thus, both the statement Ceruti made to officers at the scene and the subsequent discovery of drugs in the vehicle are admissible as evidence against the defendant.

III. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court not accept the Chief Magistrate's Report and Recommendation and instead 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 October 18, 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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