

**UNITED STATES DISTRICT COURT**

**DISTRICT OF MAINE**

UNITED STATES OF AMERICA

v.

Criminal No. 00-104-P-C

JOHN WAYNE MYERS,

Defendant

GENE CARTER, District Judge

**MEMORANDUM OF DECISION AND ORDER**

In this case, Defendant John Wayne Myers, has been charged with knowing possession of firearms and ammunition, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). Defendant has moved to suppress ammunition found by police officers during a search of the vehicle that he was driving on the night of his arrest. For the reasons that follow, the Court will deny Defendant's motion to suppress this ammunition.

**FACTS**

The Court conducted a hearing on February 6, 2001, in which one police officer, Deputy David Rancourt, testified. The evidence adduced at this hearing revealed that the search of Myers's car took place at the Androscoggin County Sheriff's Department on October 25, 2000, following the car chase and arrest of Myers on Route 4 in Turner, Maine by Deputy Rancourt and five other officers.

Deputy Rancourt had acquired a significant amount of information about Myers prior to the chase that led to his stop and arrest. The day before, Rancourt had received a call from Timothy

Doyle, a lieutenant with the Maine State Police, informing him that Doyle had received a call from a man named Gene Richardson, who had reported that Myers, who had just visited Richardson's house, had recently been released from prison in Wisconsin and was on probation. Doyle also informed Rancourt that he had contacted the Wisconsin authorities and had learned that Myers had a restricted license and that a local warrant had been issued for Myers's arrest.<sup>1</sup> Subsequent phone conversations that Rancourt made on the 24<sup>th</sup> to Gene Richardson and Tom Renz, Myers's probation officer in Wisconsin, confirmed this information and also informed Rancourt that Myers was driving a Silver Reliant K car, with Wisconsin license plates issued under his name. During the phone conversation between Rancourt and Renz, Renz agreed to amend the warrant against Myers so that it would be entered into the national warrant system. Renz faxed a copy of the amended warrant request to Rancourt; this request indicated that Myers had been convicted of a felony. *See* Government's Exhibit 1.

On the next evening, October 25, 2000, shortly after the beginning of Rancourt's shift, Rancourt received a call from Michael Richardson, the son of Gene Richardson. Michael Richardson reported to Rancourt that Myers was at Gene Richardson's house and that Myers had changed the plates on his car to New Hampshire plates. Rancourt subsequently assisted the Wisconsin authorities in the completion of the amendment to Myers's warrant, and verified that the national warrant system contained an active warrant for the arrest of Myers. Rancourt next took steps to assemble additional personnel for the arrest of Myers. At approximately 7:45 p.m., Rancourt and five other police officers met at the Greenland Diner, which is located on Route 4, approximately one mile south of Gene Richardson's residence. From the lot of the Greenland Diner, Rancourt called Michael Richardson on his cellular phone, informing Richardson that the

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<sup>1</sup> The restricted status of Myers's license required him to have a non probationary driver with him while he was operating a motor vehicle.

officers planned to arrest Myers. Richardson informed them that Myers was standing in front of Gene Richardson's residence with Gene Richardson and his wife.<sup>2</sup> Deputy Rancourt and Trooper Keith Frank drove by the residence, confirmed this information, and subsequently returned to the lot of the Greenland Diner. Upon pulling into the lot, Rancourt received another call from Michael Richardson, who reported that Myers had just left Gene Richardson's residence and was driving south down Route 4 in his Reliant Silver K car. Rancourt informed the other officers that Myers was on his way towards the diner, and then he saw Myers's car. The officers exited the lot to pursue Myers. Rancourt drove behind the car of Sergeant Percy Turner, who was immediately behind Myers. During the pursuit of Myers, Rancourt was able to verify that Myers's car bore New Hampshire license plates, but he was unable to verify that the number on the plates matched the number that Richardson had reported to him. The officers used their blue lights and sirens to signal to Myers to pull over and, at one point, one of the officers drove next to Myers's car and motioned for Myers to pull over. Myers, however, did not pull over until that officer drove ahead of him and slowed down his cruiser in order to force Myers to slow down and stop.

Myers subsequently pulled his vehicle over into a breakdown lane that was eight to ten feet wide, exited, and was placed under arrest. During the apprehension of Myers, Sergeant Turner stated that he had observed Myers throw an object that appeared to be a gun out of the window of his vehicle at some point during the chase.<sup>3</sup> At the time of Myers's arrest, it was approximately 8:00 p.m. and dark outside, and the road was not well lit. Rancourt observed that food, clothing, and household items were packed into each passenger seat of the car, up to the level of the windows. Rancourt had the car towed by a private towing company to the Androscoggin County

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<sup>2</sup> Deputy Rancourt testified that, although Michael Richardson was not at his father's residence at this time, Richardson stated that he had learned this information from his father, who continued to call him from a cellular phone to keep him informed of the situation.

<sup>3</sup> The officers subsequently found a firearm alongside the road, approximately fifty to seventy-five yards north of the location of the

Sheriff's Department. Rancourt and another officer, Deputy Clifford, conducted a warrantless search of the car at the Sheriff's Department at approximately 9:20 p.m. Each officer made a log of the items that they found during this search. *See* Government's Exhibits 3, 4. The officers discovered ammunition during the search. Although Myers informed the officers at the scene of his arrest that everything in the car belonged to him and asked the officers for his prescription medicine, Myers was not asked to remove valuables from the car.

### **DISCUSSION**

Myers has moved to suppress the ammunition that was found in the car, claiming that the search of the car violated the Fourth Amendment. Although, prior to the hearing, Myers contended that the search of the car was not incident to a lawful arrest because the police officers had neither probable cause nor reasonable suspicion to stop or arrest him, the Court understands from Myers's post-hearing brief that he no longer challenges the search on this ground. Instead, Myers makes three arguments in support of his motion for suppression of the ammunition as the fruit of an unlawful search of the car. First, Myers argues that the search of the car did not constitute a valid inventory search because the police officers failed to conduct it in accordance with the standardized policies and procedures of the Androscoggin County Sheriff's Department. Second, Myers contends that the search of the car did not fall within the automobile exception to the warrant requirement because the officers did not have probable cause to believe that the car would contain evidence of crime or contraband at the time that they conducted the search. Third, Myers maintains that the temporal lag between his arrest and the search of the car prevents the search from falling into the search-incident-to-arrest exception to the warrant requirement. Myers's motion for suppression of the ammunition will fail if the Court rules against Myers on any of the

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stop.

arguments that he has invoked, for each of the exceptions discussed in Myers's arguments will, standing alone, validate the search of the vehicle.

The Court first turns to the question of whether the officers' search of Myers's car constituted a valid inventory search. Police may conduct routine inventory searches of lawfully seized or impounded motor vehicles without violating the Fourth Amendment if the policy comports with a police department's standardized criteria for such searches. *See Florida v. Wells*, 495 U.S. 1, 4-5, 110 S. Ct. 1632, 1635 (1990); *South Dakota v. Opperman*, 428 U.S. 364, 369, 96 S. Ct. 3092, 3098-99 (1976). Inventory searches serve three purposes: the protection of the owner's property during the course of the vehicle's impoundment, the protection of the police against false claims of lost or stolen property; and the protection of the police and the public from potential danger. *See Colorado v. Bertine*, 479 U.S. 367, 372, 107 S. Ct. 738, 741 (1987). Searches that serve investigative rather than inventory purposes do not fall within this exception to the warrant requirement. *See Wells*, 495 U.S. at 4, 110 S. Ct. at 1635 (explaining that policy regarding search of containers inside vehicles must not allow a degree of latitude so as to permit an investigative search). Myers does not challenge the lawfulness of the seizure and impoundment of his car and does not contest that the Androscoggin County Sheriff's Department has a standardized policy and set of procedures for conducting inventory searches. *See* Government's Exhibit 2 (hereinafter "Androscoggin Inventory Search Policy"). However, Myers points to two deviations from this policy in support of his contention that the search of his vehicle was not a valid inventory search: the removal of the vehicle from the scene of the arrest and the officers' failure to ask Myers to remove his valuables from the car. Rather than arguing that these acts and omissions in themselves violate the Fourth Amendment, Myers argues that the fact of their deviation from the policy undermines the policies justifying inventory searches, suggests that

investigative instead of inventory purposes motivated the search, and, thus, renders the search invalid. The Government responds that the Androscoggin Inventory Search Policy and state law allowed for the removal of Myers's car from the scene of the arrest and that, given the fact that the officers were taking Myers into custody, asking Myers to remove valuables from his car would have been a futile exercise and was not required by the policy.

Myers's argument invokes two aspects of the Androscoggin Inventory Search Policy. First, the policy provides that "[a]n inventory should be conducted in the location at which the vehicle is seized unless limited by reasons of safety or practicability," in which case the inventory may be conducted after the impoundment of the vehicle. *See* Androscoggin Inventory Search Policy § III(B)(2). Second, the policy requires officers to ask the owner or operator of the vehicle whether the vehicle contains any items of value. *See id.* § III(B)(3). If possible, officers should ask the owner or operator to remove all valuable items from the vehicle prior to its impoundment. *See id.* In cases in which making this request is not possible, the policy requires officers to inventory the items prior to the vehicle's impoundment and to ask the owner or operator to "verify the completeness of the inventory by signature." *Id.* The Court finds that the officers complied with § III(B)(2) of the policy. Although they did not conduct the search of the vehicle at the scene of the seizure, the darkness at the scene, the lawful speed of travel on the road, and the amount of items packed into the car justified the officers' application of the impoundment exception to the policy based on both safety and practicability concerns. Hence, the Court concludes that the officers' decision to impound the car prior to the search was reasonable and did not deviate from the standardized procedures. From Officer Rancourt's testimony, it does appear that the officers failed to comply with § III(B)(3) of the policy by not asking Myers whether the car contained any valuables. Although the Government attempts to portray this inquiry as futile in light of the

officers' taking of Myers into custody, the policy explicitly sets forth procedures for situations in which an owner cannot remove the items from a vehicle. While the officers' failure to make this inquiry does undermine the policy of protecting the Government against false claims of lost or stolen property, this inquiry in itself is not constitutionally required and the Court finds that this deviation from the Androscoggin Inventory Search Policy does not implicate the concern of enabling officers' use of inventory searches as "a ruse for a general rummaging in order to discover incriminating evidence." *Wells*, 495 U.S. at 4, 110 S. Ct. at 1635. Hence, the Court holds that the search of Myers's car after its impoundment constituted a valid inventory search.

The Court also finds that the search of the car fulfilled the requirements of the automobile exception doctrine. The automobile exception to the warrant requirement allows police officers to search a vehicle without first obtaining a warrant if the officers have probable cause to believe that the vehicle is transporting contraband or evidence of suspected criminal activity. *See United States v. Ross*, 456 U.S. 798, 807, 102 S. Ct. 2157, 2163 (1982). The authority for a warrantless search under this doctrine is not confined to the scene of the stop; as long as officers have the requisite probable cause, the search may be conducted after the automobile's impoundment. *See Michigan v. Thomas*, 102 S. Ct. 3079, 3080-81, 458 U.S. 259, 261 (1982); *Texas v. White*, 423 U.S. 67, 68, 96 S. Ct. 304, 305 (1975). Myers argues that the officers did not have probable cause to believe that his car contained any contraband or evidence of criminal activity. The Government responds that they had probable cause to believe that the car would contain evidence of the crimes of unlawful possession of a firearm and unlawful attachment of license plates that were not registered to the car based on the following information: Myers's felony conviction in Wisconsin, Lieutenant Turner's observation of Myers's throwing of an object that appeared to be a gun out of his window during the chase, and the information regarding Myers's switching of the license plates

on his car. Myers has attempted to impeach the credibility of Turner's professed belief that the object thrown from the car appeared to be a gun by citing to an affidavit submitted in support of a warrant to search a toolbox found inside the car that states only that Turner saw Myers throw "items" from the car. Affidavit of Kathryn M. Spellacy (Government's Exhibit 5) ¶ 2. The Court, however, finds Rancourt's testimony regarding what he had learned from Turner credible, and holds that the information available to the officers at the time they stopped the vehicle did give them probable cause to believe that Myers's car contained evidence of the suspected crimes. The search of the car, therefore, satisfies the automobile exception to the warrant requirement.

Myers also opposes the characterization of this search as a search incident to a lawful arrest. When a police officer "has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that vehicle." *New York v. Belton*, 453 U.S. 454, 460, 101 S. Ct. 2860, 2864 (1981). Myers challenges the contemporaneity of the search. The Court of Appeals for the First Circuit has not yet determined whether a one-hour delay between an arrest and the search of a vehicle defeats the characterization of the search as a search incident to a lawful arrest. In *United States v. Doward*, 41 F.3d 789, 793 (1<sup>st</sup> Cir. 1994), the Court of Appeals held that a three-minute delay between the arrest of the defendant and the initiation of the search satisfied the contemporaneousness requirement. In this same opinion, however, the court referred to a delay of thirty to forty-five minutes as a situation that would "raise judicial eyebrows." *See id.* at 793 n.3 (referring to *United States v. Vasey*, 834 F.2d 782, 787 (9<sup>th</sup> Cir. 1987) (invalidating search)). Because the Court has already determined that Myers's motion to suppress the ammunition fails under the inventory search and automobile exceptions to the warrant requirement, the Court need not decide this issue of first impression.

## CONCLUSION

For the reasons discussed above, the Court has concluded that the search of Defendant's vehicle on the evening of October 25, 2000, was lawful because it constituted a valid inventory search and fell within the automobile exception to the warrant requirement. Accordingly, the Court **ORDERS** that the Defendant's Motion to Suppress the ammunition be, and it is hereby, **DENIED**.

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GENE CARTER  
District Judge

Dated at Portland, Maine this 2nd day of March, 2001.

JOHN WAYNE MYERS (1)  
defendant

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