

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
 :
 vs. : CR-171-2020
 :
 AMY CACCIOLA, :
 Defendant :
 :

Cynthia Hatton, Esquire
Matthew Mottola, Esquire

Counsel for Commonwealth
Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - December 6, 2021

An "inventory search" is a routine and common warrantless search of the contents of an impounded vehicle conducted to identify and safeguard valuables. However, there are occasions where the person responsible for inventory searching crosses the proverbial line into more of an investigative search. When that occurs, the fruits of that search must be suppressed. Such was the claim here prompting the filing of a Motion to Suppress. After hearing, this Court **GRANTS** the Defendant's Motion in part, but also **DENIES** it in part.

FACTUAL AND PROCEDURAL BACKGROUND

On October 24, 2019, while on routine patrol on Pohopoco Drive, Franklin Township, Carbon County, DCNR¹ Ranger David Roberts

¹ Department of Conservation and Natural Resources.

(hereinafter "Roberts") observed a vehicle with an inoperable brake light. Roberts initiated a traffic stop on this vehicle which also had affixed to it a South Carolina Farm Vehicle license plate. Ultimately, Roberts learned that the vehicle was stolen out of South Carolina and that the operator of the vehicle, Brittany Ackley (hereinafter "Ackley") had a suspended driver's license and the passenger Amy Cacciola (hereinafter "Cacciola") had an expired driver's license. As a result, Roberts removed both individuals from the vehicle and seized the subject vehicle with the intent to impound it due to the lack of an owner/driver to remove it from the scene.

Roberts then placed a call for a tow truck to remove this vehicle, however, before the tow truck arrived, Roberts believed it necessary to conduct an inventory search pursuant to DCNR policy² in light of the fact that the vehicle was stolen and Ackley noted that there were a number of bags in the vehicle that belonged to her, claiming she was in the process of moving.

In the course of conducting his inventory search, Roberts came across a Vera Bradley purse located on the floor on the passenger side of the vehicle. Neither occupant admitted ownership of this bag. Upon opening the purse Robert found a clear glass smoking device which contained a white-yellow residue, later

² See Commonwealth Exhibit #3.

determined to be methamphetamine.³ Roberts continued to look through the main compartment of the purse where he located a pack of Marlboro cigarettes. Roberts proceeded to open the closed pack of cigarettes which revealed two clear plastic baggies containing methamphetamine.^{4,5} Lastly, in the outer storage area of the purse, Roberts located a business card from Michael Jorda, a Carbon County Probation Officer. Noted thereon was appointment information which read, "report tomorrow at 9:00 A.M." Roberts later learned that it was Cacciola who had the appointment with Probation Officer Jorda.

As a result, Cacciola was charged with violations of 35 P.S. §780-113(A)(16) - Possession of a Controlled Substance and 35 P.S. §780-113(A)(32) - Possession of Drug Paraphernalia. After hearing held and briefs lodged, this matter is ripe for disposition.

LEGAL DISCUSSION

In her Motion to Suppress, Cacciola argues that three (3) different items located as a result of Roberts' search, namely: 1) glass smoking pipe; 2) two clear baggies containing methamphetamine; and 3) Officer Jorda's business card, should be suppressed. In her post-hearing brief, Cacciola appears to abandon

^{3,5} See Commonwealth Exhibit #1.

⁴ Robert testified that DCNR policy pertaining to inventory searches authorizes an officer to open any closed containers or compartments of the vehicle in pursuit of an inventory procedure. He further testified that in his experience plenty of things are placed in cigarette packets.

the suppression request of the glass smoking pipe. For that reason, along with other reasons which will become evident in this Opinion, this Court will deny her request to suppress that piece of evidence. This Opinion will address in greater detail the legality of the remaining aspects and results of Roberts' search.

I. Inventory Search Considerations

"Inventory searches serve one or more of the following purposes: (1) to **protect the owner's property while it remains in police custody**; (2) to **protect the police against claims or disputes over lost or stolen property**; (3) to protect the police from potential danger; and (4) to assist the police in determining whether the vehicle was stolen and then abandoned." *Commonwealth v. Henley*, 909 A. 2d 352, 359 (Pa.Super. 2006). (emphasis added). An inventory search of an automobile is permissible when "(1) the police have **lawfully impounded the automobile**; and (2) the police have acted in accordance with a **reasonable, standard policy** of routinely securing and inventorying the contents of the impounded vehicle." *Commonwealth v. Chambers*, 920 A.2d. 892, 895 (Pa.Super. 2007). (emphasis added).

Here, the Bureau of State Parks' policy on inventory searches of vehicles states:

" . . . Officers are authorized to conduct inventory searches of vehicles taken into custody pursuant to any legally proper investigation or arrest of persons accused of violating the criminal laws.

When conducting an inventory search, the State Park Officer is authorized to open **any closed containers** or compartments of the vehicle in pursuit of his or her lawful investigation and/or inventory procedure. The Officer must attempt to avoid damage to the vehicle or containers therein when the contents of a closed or locked container can be adequately ascertained by a simple examination of the exterior of the container." (See Commonwealth Exhibit #3.) (emphasis added)

"An inventory search is reasonable if it is conducted pursuant to reasonable standard police procedures and **in good faith** and **not for the sole purpose of investigation.**" *Commonwealth v. Lagenella*, 83 A.3d 94,103 (2013). (emphasis added). The sole factor that distinguishes an investigatory search and an inventory search of a vehicle is the officer's motive. *Henley*, Supra 909 at 365. ". . .[i]t is **not necessary** that the evidence is **in plain view**, so long as the search is reasonable and does not go beyond the formalities of an inventory search . . ." *Commonwealth v. Woody*, 679 A.2d 817, 819 (Pa. Super. 1996). (emphasis added).

II. Inventory Search Procedure

Here, Roberts followed the proper procedure by legally impounding the vehicle involved and commencing an inventory search of the vehicle.

After initiating a valid traffic stop, Roberts discovered that neither Ackley nor Cacciola had valid driver licenses and were unable to legally drive the vehicle. Further, the vehicle was reported stolen. As a result, Roberts had to call a tow truck and start the process of impounding the vehicle. Roberts then began to search the vehicle for "purposes of protecting the owner's property and to protect the [troopers] from being accused of misplacing any personal property" within the vehicle. *Henley*, Supra, at 359.

In accordance with the applicable case law and the Bureau of State Parks' policy, Roberts followed the proper procedure when impounding the vehicle and commencing an inventory search. This Court must, however, now determine whether the entirety of the

search was "inventory" in nature or something more which could lead to the suppression of evidence.

A. Glass Smoking Pipe

Roberts' search of the main compartment of Cacciola's purse, where he discovered and seized the glass smoking pipe, is permissible and should not be suppressed.

Usually a purse carries things of value such as cash or personal information. Due to this fact, Roberts has a duty to complete an inventory search *to protect the owner's property and to protect the police against claims or disputes over lost or stolen property.*

Henley, Supra at 359. (emphasis added). It was reasonable for Roberts to open the main compartment of the purse with the intent and prospect of finding anything of value to mark down for the inventory search. The glass smoking pipe was located within the main compartment of the purse with nothing concealing it. Thus, Roberts was acting in good faith and not for the sole purpose of investigation" when he located this item. *Lagenella, Supra* at 103. Accordingly, with regard to the glass smoking pipe, Defendant's motion to suppress should be **DENIED**.

B. Marlboro Cigarette Pack

Roberts next located a Marlboro cigarette pack in the main compartment of the purse. He opened this pack of cigarettes because "in his experience plenty of things are placed in cigarette packs." While this may be accurate, Roberts did not explain what he would

need to inventory about the contents of a cigarette pack which would be necessary "to protect the owner's property, and to protect the police against claims or disputes over lost or stolen property." *Henley*, Supra at 359.

Again, it is permissible to search within a purse when conducting an inventory search to search for valuables, however, even inventory searches have limitations. Although the Bureau of State Parks' policy allows for officers to open closed containers found in a vehicle, a pack of cigarettes is not a container that needs to be further searched for valuables.⁶ It is extremely unlikely that a pack of cigarettes would hold anything of value. Thus, it appears that when Roberts opened the pack of cigarettes, his purpose for the inventory search changed to an investigatory search. *Id* at 365. As a result, Roberts' search of the pack of cigarettes can be perceived as not having been conducted in good faith nor in accordance with established principles of law pertaining to inventory searches. *Lagenella*, Supra at 103. Therefore, with regard to the two bags of methamphetamines found within the pack of cigarettes, Defendant's motion to suppress will be **GRANTED**.

⁶ While this Court has not been asked to pass judgment on the broad "inventory search authority" set forth in the DCNR policy, it does appear that this authority does not fully comport with existing case law.

C. Probation Officer's Business Card

Lastly, Roberts searched the outer pocket of the purse where he discovered a business card of a Carbon County Probation Officer. Although the Officer's business card is not something of value, Roberts' search and discover of the card is justifiable. Before the inventory search began, neither Cacciola nor Ackley took ownership of the purse. Also, before commencing the inventory search Roberts became aware that the vehicle was reported stolen and that it was necessary to ascertain the owner of the property subject to the inventory search. Therefore, it was not unreasonable for Roberts to look for information pertaining to the owner of the purse in order to establish the owner of items identified in the inventory search. Thus, this Court finds that Roberts' searching of the other pockets were justified and done in good faith. As a result, the evidence and use of Officer Jorda's business card will not be suppressed.

CONCLUSION

Based on the above analysis, this Court enters the following:

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ORDER OF COURT

AND NOW, this 6TH day of December, 2021, upon consideration of the "Suppression Motion" filed by the Defendant, Amy Cacciola, the brief lodged in support thereof and the Commonwealth's brief lodged in opposition thereto, it is hereby **ORDERED and DECREED** as follows:

1. Defendant's request to suppress the evidence of a clear glass smoking pipe containing methamphetamine residue is **DENIED**;
2. Defendant's request to suppress the evidence of a business card of Carbon County Adult Probation Officer, Michael Jorda is **DENIED**; and
3. Defendant's request to suppress the evidence of two clear plastic bags containing methamphetamine is **GRANTED**.

BY THE COURT:


Joseph J. Matika, J.