

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.)
)
CHRISTOPHER ISOM,)
)
 Defendant.)

No. 02-20292-MaV

REPORT AND RECOMMENDATION
ON DEFENDANT'S MOTION TO SUPPRESS

The defendant, Christopher Isom, has been indicted on one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). This charge arises out of an investigation by a police officer of a collision involving a vehicle driven by Isom and the subsequent seizure from the vehicle by the police officer of a 9MM, semi-automatic pistol. Isom moved to suppress the weapon and any statements made by him. His motion was referred to the United States Magistrate Judge for a report and recommendation.

Pursuant to the reference order, an evidentiary hearing was held on January 17, 2003. At the hearing, the government presented one witness, Officer Jocelyn Robinson of the Memphis Police

Department.¹

After careful consideration of the statements of counsel, the testimony of the witness, and the entire record in this cause, the court submits the following findings of facts and conclusions of law and recommends that the motion to suppress be denied.

PROPOSED FINDINGS OF FACT

Because Officer Robinson was the only witness to testify² and her testimony was uncontradicted, the court accepts as fact her version of the events.

On September 4, 2001, Officer Robinson witnessed a two-vehicle traffic accident. Officer Robinson responded to the accident and ascertained that Isom was the driver of one of the involved vehicles. Two unidentified passengers also occupied the vehicle. Officer Robinson requested Isom's driver's license along with the driver's licenses of the two passengers. Neither Isom nor either passenger produced a driver's license. Subsequently, Officer Robinson discovered that Isom's license was suspended. Officer Robinson did not ask about, and Isom did not volunteer, any

¹ Isom presented no witnesses on the constitutionality of the search and seizure; he did, however, take the stand and testify only as to the issue of standing which the government raised at the hearing. Because the inventory exception to the search warrant requirement is dispositive of Isom's motion to suppress, the standing issue is not addressed herein.

² See n. 1 *supra*.

information about his prior criminal history. Upon running the vehicle's tags, Officer Robinson learned that it was registered in Nashville, Tennessee to National Rent-A-Car and that the vehicle had not been listed as stolen by the National Crime Information Center (NCIC) database. Officer Robinson asked Isom for the vehicle's rental papers. Isom could not provide any rental papers for the vehicle but stated that the vehicle had been rented by his cousin. Because none of the vehicle's occupants had a valid driver's license, Officer Robinson decided to impound the vehicle in accordance with Memphis Police Department policy.

Neither Isom nor the passengers gave permission to search the vehicle. Officer Robinson searched the vehicle and discovered a silver-plated 9MM pistol under the front passenger seat. Officer Robinson issued Isom a misdemeanor citation, charging him with driving with a suspended license, following too closely, and possessing a gun. The vehicle was then towed to an impound lot, and Isom and the passengers were released at the scene.

PROPOSED CONCLUSIONS OF LAW

Isom argues that the search was unlawful and that all fruits thereof should be suppressed because the search does not fall under any exception to his Fourth Amendment right to be free from unreasonable searches and seizures. Specifically, Isom argues that the search was illegal because he had not been arrested at the time

and, therefore, there could be no exception for a search incident to arrest. Isom acknowledges, however, that if Officer Robinson's decision to have the vehicle impounded was lawful, the search was probably valid as an inventory search.

The government argues that the search was valid as a search incident to arrest because a misdemeanor citation may be issued in lieu of continued arrest and transportation of a defendant. The government contends that the fact that Isom was issued a misdemeanor citation and was not transported does not alter the fact that he was arrested. In addition, the government asserts that the search was valid as an inventory search prior to impounding the vehicle. The government contends that because none of the vehicle's occupants had a driver's license, Officer Robinson acted lawfully in having the vehicle towed from the scene.

Generally, the Fourth Amendment prohibits warrantless searches. U.S. CONST. amend. IV; *United States v. Roark*, 36 F.3d 14, 17 (6th Cir. 1994) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). However, there are exceptions to this general rule. The government argues that two exceptions to the warrant requirement apply to Officer Robinson's search of the vehicle driven by Isom: 1) a search incident to a lawful arrest; and 2) an inventory search of a legally seized vehicle. Addressing the government's arguments in reverse order, the court first considers

the exception for an inventory search of a lawfully seized vehicle.

A. Exception for an Inventory Search of a Seized Vehicle

Inventory searches are an exception to the warrant requirement of the Fourth Amendment. This exception arises when law enforcement officers search a vehicle legitimately seized in accordance with accepted police procedure. *United States v. Hurst*, 228 F.3d 751, 758 (6th Cir. 2000); *United States v. Lumpkin*, 159 F.3d 983, 987 (6th Cir. 1998). Inventory searches are permitted in part because they protect an owner's property while it is in police custody and insure against claims of lost, stolen, or vandalized property. *Colorado v. Bertine*, 479 U.S. 367, 372 (1987). Also, while an inventory search may not be conducted for the sole purpose of investigation, the presence of an investigative motive does not invalidate an otherwise valid inventory search. *Lumpkin* 159 F.3d at 987.

Following Memphis Police Department procedure, Officer Robinson had the vehicle impounded because none of its occupants, including Isom, produced a driver's license and no one had any registration or rental papers for the vehicle. The officer's search of the vehicle was not made until after the determination to have the vehicle towed from the scene. Therefore, the vehicle search at issue, although conducted without a warrant, was lawfully performed pursuant to the inventory search exception to the Fourth

Amendment. After considering the testimony of Officer Robinson and the totality of the circumstances, this court concludes that the vehicle was seized in accordance with Memphis Police Department policy, and that Officer Robinson acted in good faith in performing a vehicle inventory search following that seizure.

B. Exception for a Search Incident to a Lawful Arrest

The inventory search exception issue is dispositive of this motion. Therefore, this court does not address the government's argument that the vehicle search was valid incident to an arrest.

RECOMMENDATION

It is therefore recommended for the reasons set forth above that Isom's motion to suppress the seized gun and any of his statements made to police subsequent to his detention be denied.

Respectfully submitted,

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE
Date: _____

NOTICE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN TEN (10) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN TEN (10) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.

ANY PARTY OBJECTING TO THIS REPORT MUST MAKE ARRANGEMENTS FOR A TRANSCRIPT OF THE HEARING TO BE PREPARED.