

APPENDIX A

FILED

NOT FOR PUBLICATION

OCT 23 2018

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 17-50130

Plaintiff-Appellee,

D.C. No. 3:16-cr-01249-H-1

v.

MEMORANDUM*

LAMONTE DIONDRE GASTON, AKA
Crazy L,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Argued and Submitted August 8, 2018
Pasadena, California

Before: GRABER, WARDLAW, and CHRISTEN, Circuit Judges.

Lamonte Gaston, Sr. (Gaston) was convicted of being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Gaston appeals the district court's order denying his motion to suppress evidence

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

discovered during a warrantless search of his vehicle.¹ We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court's findings of fact at a suppression hearing are reviewed for clear error. *United States v. Feldman*, 788 F.2d 544, 550 (9th Cir. 1986).

1. A reasonable inventory search is “a well-defined exception to the warrant requirement” because “[t]he policies behind the warrant requirement are not implicated in an inventory search.” *Colorado v. Bertine*, 479 U.S. 367, 371 (1987). “[A]n inventory search must conform to a standardized and established local procedure.” *United States v. Bowhay*, 992 F.2d 229, 230 (9th Cir. 1993).

Inventory search procedures can be formed by “standardized criteria *or* established routine.” *Florida v. Wells*, 495 U.S. 1, 4 (1990) (emphasis added) (citation omitted).

In this case, officers from the San Diego Police Department (“SDPD”) arrested Gaston in his vehicle pursuant to a valid misdemeanor arrest warrant and then impounded the car he had been driving. SDPD policy provides that “[p]ersonnel ordering a tow shall conduct an inventory.” Section (a) of the policy authorizes officers to search “all areas of the vehicle where valuables are likely to

¹ The parties are familiar with the facts so we recite only those necessary to resolve Gaston's appeal.

be stored, including any containers within the vehicle.” While conducting an inventory search of Gaston’s car, officers opened the trunk and found a lock box. When the officers asked Gaston about its contents, he responded that “there was a whole bag of jewelry inside.”

At an evidentiary hearing, SDPD officers testified that they routinely open a locked container if it is “reasonably available to be opened at the scene” and “as long as they’re not damaging the box or breaking it.” The district court found, based in part on the officers’ testimony, that the SDPD had a routine practice of opening locked containers if they can be readily opened during an inventory search. This finding was not clearly erroneous and the routine practice does not conflict with the SDPD’s written policy. Accordingly, the district court’s finding that the search was conducted within the framework of sufficiently established policy and practice was not clearly erroneous. *See Wells*, 495 U.S. at 4.

2. As the dissent rightly observes, the facts suggest that one of the searching officers’ motives was an ongoing criminal investigation. Although “an inventory search is invalid if it was a pretext for an investigative search,” a search conducted with the dual motives of inventory and investigation is permissible. *Bowhay*, 992 F.2d at 231. The district court found that the officers were motivated, at least in part, by policy requiring an inventory search for valuable items. On the

record before us, we cannot say that this finding was clearly erroneous.

SDPD policy requires officers to search areas where “valuable items” are likely to be kept during an inventory search. The inventorying officers testified that they were “looking for valuables” when they opened the lock box because “usually people keep valuable stuff in lock boxes.” Notably, the officers’ actions were consistent with Gaston’s statement that the lock box contained jewelry. The officers “wanted to make sure that if there was a whole bag of jewelry in there that it needs to be itemized and documented prior to any impounds.”

AFFIRMED.