United States Court of Appeals
For the Eighth Circuit

No. 18-1810

United States of America

Plaintiff - Appellee

v.

Alauna Gaye Morris

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Sioux City

Submitted: November 16, 2018
Filed: February 8, 2019

Before BENTON, BEAM, and ERICKSON, Circuit Judges.

BENTON, Circuit Judge.

Alauna Gaye Morris conditionally pled guilty to conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. The district court[1] sentenced her to 120 months' imprisonment. She appeals the denial of

[1]The Honorable Leonard T. Strand, Chief Judge, United States District Court for the Northern District of Iowa, adopting the report and recommendation of the

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her motion to suppress. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

I.

In September 2016, Deputy Taylor of the Clay County Sheriff's Office ("CCSO") stopped a recreational vehicle driven by Morris to execute an arrest warrant. After the arrest, Deputy Taylor and another deputy impounded the RV. During an inventory search, they found marijuana, two glass pipes, and a digital scale. They did not complete the inventory, testifying it "didn't seem reasonable to continue searching" because parts of the RV were "inaccessible." The next day, with a search warrant, they found 69.5 grams of meth at her residence. The next week, with a search warrant, they found 138 grams of meth and $9,500 in cash in the RV.

Morris moved to suppress "all evidence and 'fruits of the poisonous tree' obtained as a result of the unlawful seizure and search" of her RV. After a suppression hearing, the magistrate judge recommended denying the motion. The district court adopted the magistrate's findings and recommendation. Morris appeals, arguing the inventory search was unlawful. Reviewing the denial of a motion to suppress, this court reviews "legal conclusions de novo and factual findings for clear error." ***United States v. Woods***, 747 F.3d 552, 555 (8th Cir. 2014). "A credibility determination made by a district court after a hearing on the merits of a motion to suppress is virtually unassailable on appeal." ***United States v. Frencher***, 503 F.3d 701, 701 (8th Cir. 2007) (internal quotation marks omitted).

Honorable Kelly K.E. Mahoney, United States Magistrate Judge for the Northern District of Iowa.

II.

Morris argues the government failed to prove the CCSO had a standardized policy for impounding and inventorying vehicles. The record does not contain a copy of the written policy because Morris objected to its admission at trial. However, Deputy Taylor testified about it. According to him, since August 2015, the CCSO has had a written policy about impounding and inventorying vehicles. It designates four times a deputy may impound a vehicle: (1) abandonment; (2) accident; (3) driver arrest; or (4) traffic hazard. The policy allows, but does not require, deputies to release a vehicle to a registered, insured driver. It is CCSO practice to release vehicles only to drivers present at the time of the stop.

Once impounded, the policy requires deputies to inventory a vehicle's contents, including the trunk, for items valued at $25 or more. Although not written in the policy, it is CCSO practice to inventory containers if deputies believe they may have items valued at $25 or more. The policy requires deputies to complete a full inventory unless unreasonable to do so.

The absence of the written policy in the record does not preclude establishing its content. "While a written policy may be preferable, testimony can be sufficient to establish police impoundment procedures." ***United States v. Betterton***, 417 F.3d 826, 830 (8th Cir. 2005). Based on Deputy Taylor's testimony, the magistrate judge found that Deputy Taylor:

> [D]id follow the standardized criteria outlined in the written impound policy and the standard practices of the sheriff's office. Deputy Taylor was forthright when he testified. He is familiar with the practices of the sheriff's office, which were the same before and after the impound policy was written. I further credit Deputy Taylor's testimony about the policy and practices in light of his years of service with the sheriff's

> office, his duties as a routine patrol deputy, and the fact that he impounds vehicles several times per week.

Adopting the magistrate's findings, the district court added, "Regarding his department's policy, Taylor was unwavering that he knew that the arrest of the vehicle driver and existence of a roadside hazard were two instances in which the policy allows officers to impound a vehicle." The district court did not err in finding the CCSO had an impoundment and inventory policy.

III.

Morris next contends that either the deputies did not follow the policy or the policy contained "impermissible, unfettered discretion." "[A]n impoundment policy may allow some latitude and exercise of judgment by a police officer when those decisions are based on legitimate concerns related to the purposes of an impoundment." ***Id.*** (internal quotation marks omitted). The exercise of police discretion is not prohibited "so long as that discretion is exercised 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, 375 (1987).

The magistrate judge said:

> I find that Deputy Taylor followed the sheriff's office's policy in deciding to impound Defendant's RV. Two conditions that allow for impoundment existed in this case: the driver had been arrested and there was no other available driver, and the RV posed a hazard. Each of these conditions serve legitimate law enforcement functions of community caretaking and providing for public safety.

This finding was not clear error.

Morris argues the deputies should have allowed her husband to pick up the vehicle rather than impounding it. However, "[n]othing in the Fourth Amendment requires a police department to allow an arrested person to arrange for another person to pick up his car to avoid impoundment and inventory." ***United States v. Agofsky***, 20 F.3d 866, 873 (8th Cir. 1994). "Police may take protective custody of a vehicle when they have arrested its occupants, even if it is lawfully parked and poses no public safety hazard." ***United States v. Arrocha***, 713 F.3d 1159, 1163 (8th Cir. 2013). While the deputies could have allowed Morris's husband to pick up the RV, they were not required to do so. The district court did not err in finding that "[g]iven the fact that Morris was arrested alone in a rural area, Taylor's decision to use his discretion to impound the vehicle was legitimate and reasonable."

The district court also did not err in finding the deputies followed the inventory policy without "impermissible, unfettered discretion." "Inventory searches are one of the well-defined exceptions to the warrant requirement of the Fourth Amendment." ***United States v. Frasher***, 632 F.3d 450, 454 (8th Cir. 2011). "[I]nventory procedures serve to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." ***Bertine***, 479 U.S. at 372. "The search must be reasonable in light of the totality of the circumstances." ***United States v. Beal***, 430 F.3d 950, 954 (8th Cir. 2005).

Once impounded, the policy requires deputies to inventory the contents of the vehicle, including its trunk, for items valued at $25 or more. Consistent with the policy, two deputies inventoried the RV, compiling a list of items. During the inventory, they found marijuana and pipes in a closed sunglasses case, and a digital scale in a purse. Morris believes the inventory was improper because the policy does not address closed containers. This belief has no merit. Because the policy required an inventory of the entire vehicle, it was reasonable for the deputies to open containers believed to have items valued at $25 or more. *See* ***United States v.***

Wallace, 102 F.3d 346, 349 (8th Cir. 1996) (holding that a "policy requiring inventory of the contents of a vehicle and any containers therein covers inventory of locked trunks"); ***United States v. Como***, 53 F.3d 87, 92 (5th Cir. 1995) ("Allowing an officer to exercise his judgment based on concerns related to the objectives of an inventory search does not violate the Fourth Amendment."). As the magistrate judge found, "the deputies acted reasonably in looking inside Defendant's purse and the glasses case as both items could have likely contained items worth more than $25.00." The district court did not err in finding the inventory search complied with policy and was not unlawful.

The decision to terminate the inventory also complied with policy. As Deputy Taylor testified, the deputies "completed the inventory to the best of our ability." They terminated it not because they wanted to "apply for a search warrant," but because the back of the RV was a small, confined space, inaccessible due to the thorny plants, which Morris had described as "exotic." Rather than risk damaging the plants, they decided not to proceed. The magistrate judge found this testimony credible and "in line with the sheriff's office's inventory policy." This was not clear error.

The district court did not err in finding the deputies followed policy, reasonably exercising their discretion, when necessary, in impounding and inventorying the vehicle.

IV.

Morris maintains the district court erred in finding that "following a standardized policy excused the improper motive and subsequent search." "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 illegal activity." ***United States v. Harris***, 795 F.3d 820, 822 (8th Cir. 2015). "Rather,

when police are conducting inventory searches according to such standardized policies, they may keep their eyes open for potentially incriminating items that they might discover in the course of an inventory search, as long as their sole purpose is not to investigate a crime." ***Id.*** (internal quotation marks omitted). "The search of a vehicle to inventory its contents must nevertheless be reasonable under the totality of the circumstances, and may not be 'a ruse for a general rummaging in order to discover incriminating evidence.'" ***United States v. Taylor***, 636 F.3d 461, 464 (8th Cir. 2011), *quoting* ***Florida v. Wells***, 495 U.S. 1, 4 (1990) (internal citation omitted). "The reasonableness requirement is met when an inventory search is conducted according to standardized police procedures, which generally remove the inference that the police have used inventory searches as a purposeful and general means of discovering evidence of a crime." ***Id.*** (internal quotation marks omitted). "Even if police fail to adhere to standardized procedures, the search is nevertheless reasonable provided it is not a pretext for an investigatory search." ***Id.*** at 465.

The policy required the deputies to inventory all items valued at $25 or more. During the inventory, the deputies found incriminating evidence. Their suspicion Morris was engaged in criminal activity does not establish that the sole purpose of the search was investigative. *See* ***United States v. Pappas***, 452 F.3d 767, 771 (8th Cir. 2006) ("A valid traffic stop cannot be challenged, as Pappas alleges here, on the basis that the stop was actually a pretext for an investigation of another crime."). The district court did not err in finding that "Taylor was well within his department's policy to impound the vehicle for legitimate non-investigatory reasons."

* * * * * * *

The judgment is affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ALAUNA GAYE MORRIS, Defendant.	No. CR16-4096-LTS **ORDER**

This matter is before me on a Report and Recommendation (R&R) (Doc. No. 24) in which the Honorable Kelly Mahoney, United States Magistrate Judge, recommends that I deny defendant's motion to suppress (Doc. No. 11).

I. APPLICABLE STANDARDS

A district judge must review a magistrate judge's R&R under the following standards:

> Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

28 U.S.C. § 636(b)(1); *see also* Fed. R. Crim. P. 59(b). Thus, when a party objects to any portion of an R&R, the district judge must undertake a de novo review of that portion.

Any portions of an R&R to which no objections have been made must be reviewed under at least a "clearly erroneous" standard. *See, e.g.*, *Grinder v. Gammon*, 73 F.3d

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793, 795 (8th Cir. 1996) (noting that when no objections are filed "[the district court judge] would only have to review the findings of the magistrate judge for clear error"). As the Supreme Court has explained, "[a] finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). However, a district judge may elect to review an R&R under a more-exacting standard even if no objections are filed:

> Any party that desires plenary consideration by the Article III judge of any issue need only ask. Moreover, while the statute does not require the judge to review an issue *de novo* if no objections are filed, it does not preclude further review by the district judge, sua sponte or at the request of a party, under a *de novo* or any other standard.

Thomas v. Arn, 474 U.S. 140, 150 (1985).

II. BACKGROUND

A. Procedural History

On November 16, 2016, the grand jury returned an indictment (Doc. No. 2) charging Morris with three counts related to the distribution of methamphetamine. The defendant filed his motion to suppress on December 16, 2016. The Government filed a resistance (Doc. No. 12) on December 22, 2016. Judge Mahoney conducted a hearing on January 17, 2017, and issued her R&R (Doc. No. 24) on February 10, 2017. Morris filed a timely objection (Doc. Nos. 25, 30), which the Government resisted (Doc. No. 31).

B. Relevant Facts

Judge Mahoney made detailed factual findings. Doc. No. 24 at 4-12. The parties have not specifically objected to any portion of Judge Mahoney's findings. Doc. No. 25.

Based on my de novo review, which included reviewing the transcript of the hearing, Government Exhibit 2 and defendant's Exhibits A through C, I find Judge Mahoney's findings to be accurate.

In short, this case involves a vehicle stop and impound search. Local law enforcement in Clay County, Iowa, received a tip that Morris was engaged in the distribution of methamphetamine. Clay County sheriff's deputies began surveilling her. On September 7, 2016, an unrelated warrant was issued for Morris' arrest in Palo Alto County, Iowa. Clay County deputies learned of the warrant the next day. Later that day, Clay County Deputy Spencer Taylor, who knew Morris from past experience, drove by her rural residence and saw a recreational vehicle (RV) leaving her driveway. Taylor ran the plates, learned the RV was registered to Morris and stopped the vehicle. The stop occurred on a country black-top road. Taylor had Morris exit the vehicle and arrested her pursuant to the arrest warrant. Shortly thereafter, Taylor requested a tow to impound the RV. The longer Morris was in custody, the more agitated she became. Taylor took Morris to the Sheriff's office while another officer, Deputy Schueller, stayed with the RV.

The main issue in this case is the vehicle impound. As Judge Mahoney explained:

> The impound record listed the "reason for impoundment" as "arrest." Ex. 2. Deputy Taylor acknowledged he could have exercised discretion and allowed Defendant, as she requested, to secure the vehicle rather than having it towed. He did not do so. Deputy Taylor testified that his decision to impound the RV was within the policy and practice of the sheriff's office. During re-cross-examination, Deputy Taylor answered "correct" to defense counsel's repeated questions that Deputy Taylor exercised discretion and did not follow "standardized criteria" in deciding to impound the RV. He reiterated several times throughout his testimony, however, that it was standard practice to impound vehicles under the type of circumstances presented in this case. Deputy Taylor testified that he made the decision to impound the RV based on multiple factors. First, as was common practice, he decided to impound because the driver had been arrested and no other driver was present. Second, he believed the RV posed a liability risk for multiple reasons: another vehicle could have struck the

> RV, it could have been vandalized, or someone could have broken into the RV if left on the side of the road. Deputy Taylor felt the RV presented "somewhat of a traffic hazard" parked at that location. He described the parked RV as "bottle-necking" the roadway. He considered the fact that at that time of day, traffic was heavier due to people driving home from work. According to Deputy Taylor, many vehicles use that road, and traffic seemed "fairly busy" that day. He was also not comfortable leaving the RV there because it presented a potential opportunity for someone to vandalize or break into the RV. According to him, any time a vehicle is left on the side of the road, locked or not, it is possible someone could break into the vehicle.
>
> According to Deputy Taylor, Defendant stated several times during the traffic stop that she wanted to secure her property.

Doc. No. 24 at 9-10.

Clay County's impound policy was not admitted into evidence. Judge Mahoney summarized Taylor's testimony about the policy as follows:

> The sheriff's office issued a written impound policy on August 1, 2015. According to Deputy Taylor, that policy was a written adaptation of the unwritten practices used by the sheriff's office prior to that time. The written policy provided four instances when a deputy may impound a vehicle: the vehicle was abandoned; the vehicle had been involved in an accident; the vehicle's driver had been arrested; or the vehicle posed a hazard. The policy and practice for the sheriff's office was to tow vehicles when they posed a hazard or when the sole occupant had been arrested. Deputy Taylor testified that the impound policy was also consistent with the goal of preventing liability for the sheriff's office. Liability could arise if a vehicle that deputies did not impound were to be struck, vandalized, or broken into.
>
> In regard to the driver's arrest provision of the policy, deputies are allowed to release the vehicle, rather than have it impounded, if there is a licensed driver available, and the vehicle was properly registered and insured. It is unclear from the record what, if anything, the policy says about what constitutes an "available" driver. Deputy Taylor testified that in practice, "available" means the licensed driver was present at the scene. . . . On cross-examination, Deputy Taylor agreed with defense counsel that "at the scene" was not in the written policy. Deputy Taylor testified that it

> was not standard practice to allow arrestees to contact someone to respond to the scene to drive the vehicle. Based on his experience, arrestees often lied and said a driver could respond to the scene quickly, and then deputies ended up waiting for a long period before the other driver actually arrived. Deputy Taylor said that in his experience, arrestees did this because they preferred not having their vehicles towed and impounded. He testified that deputies avoid trying to wait long periods for another driver to arrive and move the vehicle. Deputies do not tow every vehicle that falls under one of the policy's four categories. Deputy Taylor testified that they could exercise discretion under the policy.

Id. at 4-5. The evidence indicates that there were several individuals who could have picked up Morris' RV, although none were at the scene and it is unclear how much information about these individuals was communicated to the deputies.

As for why Taylor chose to impound the RV instead of leaving it, Judge Mahoney summarized his testimony as follows:

> It appears the policy allows deputies to exercise discretion in deciding whether a vehicle was abandoned or posed a hazard, and whether another driver was available. According to Deputy Taylor, whether a vehicle was impounded "depends on the circumstances." For instance, when the driver is arrested for driving offenses (such as driving while barred), the vehicle will "almost assuredly" be impounded. As another example, vehicles involved in accidents would usually be towed, although Deputy Taylor could not say definitively that this happened every time. He testified that "more often than not" in circumstances in which the driver was arrested and there were property concerns (the type of circumstances present in this case), the vehicle was impounded. Deputy Taylor testified that "by more often than not," he meant there were "outliers" when a vehicle in those circumstances would not be impounded. There are situations when vehicles that could be impounded are left on the side of the road. Deputy Taylor reiterated that the policy provided for impounding vehicles when the driver was arrested or the vehicle posed a hazard.

Id. at 5-6. Once the vehicle is secured, Taylor stated that, "deputies are required to inventory items that could be valued at more than $25.00. These items are recorded on an impound report that contains a description of the vehicle, the operator, the owner, the

reason for the tow, the towing service, and a list of items inventoried." *Id.* at 6. However:

> It is not clear what the policy says, if anything, about when and where the inventory search is to occur. Deputy Taylor testified that it is standard for deputies to inventory vehicles prior to impound. They always do so if the vehicle was to be towed to the tow service's lot rather than the sheriff's office secure impound lot. According to Deputy Taylor, one or two deputies generally conducted inventory searches. The policy directed deputies to stop the search if it was unreasonable to proceed. Nothing in the policy addressed searching inside containers. The practice, according to Deputy Taylor, was to look inside a container if it might contain something worth more than $25.00.

Id.

Taylor and Schueller ultimately conducted the inventory search of the RV after the vehicle reached the impound lot. However, a large portion of the RV was inaccessible because Morris was using the RV to transport large potted plants. In the portion of the vehicle that the officers could access, they found drug paraphernalia in a sunglasses case and a purse. The officers sought and were granted a search warrant for the RV and Morris' residence. During the exclusion of that warrant, the officers found a large quantity of methamphetamine at the residence (69.5 grams) and even more methamphetamine (138 grams) hidden in the RV. They also discovered a substantial amount of currency hidden in the RV.

C. Judge Mahoney's Findings

Regarding the vehicle impound, Judge Mahoney applied the appropriate standard, which will be discussed in detail below, and concluded as follows:

> Based on the entirety of Deputy Taylor's testimony, I find that he did follow the standardized criteria outlined in the written impound policy and the standard practices of the sheriff's office. Deputy Taylor was forthright when he testified. He is familiar with the practices of the sheriff's office, which were the same before and after the impound policy was written. I

further credit Deputy Taylor's testimony about the policy and practices in light of his years of service with the sheriff's office, his duties as a routine patrol deputy, and the fact that he impounds vehicles several times per week. It was my impression that his testimony about using discretion went to the fact that he would not say that every single vehicle that fell into one of the four categories was impounded. That makes sense, and it is the type of discretion that the law provides for. *See Arrocha*, 713 F.3d at 1163.

I find that Deputy Taylor followed the sheriff's office's policy in deciding to impound Defendant's RV. Two conditions that allow for impoundment existed in this case: the driver had been arrested and there was no other available driver, and the RV posed a hazard. Each of these conditions serve legitimate law enforcement functions of community caretaking and providing for public safety. Defendant does not challenge the validity of her arrest. Rather, she argues that Deputy Taylor erred in determining that no other driver was available and that the vehicle posed a hazard. Defendant contends that Deputy Taylor's decision was based solely on an investigatory motive. In determining whether the conditions of the sheriff's office's impoundment policy were met, Deputy Taylor was allowed to exercise discretion based on legitimate concerns related to the purposes of impoundment. *See Arrocha*, 713 F.3d at 1163.

With regard to the availability of another driver, Deputy Taylor acknowledged that he did not provide Defendant an opportunity to contact someone else to come to the scene and take the RV. Nothing in the law required Deputy Taylor to do so. . . I find that Deputy Taylor provided legitimate reasons for not waiting to see if another driver could come to the scene in a reasonable amount of time.

Doc. No. 24 at 17-19. Judge Mahoney also found:

Deputy Taylor also believed the RV posed a hazard. Protecting the safety of other drivers and protecting Defendant's property (both the RV and its contents) are legitimate, noninvestigatory functions. Here, Deputy Taylor testified that there was too much liability to the sheriff's office to leave the RV on the side of the road because the RV could have been struck, vandalized, or had items stolen from inside. He acknowledged that Defendant parked the RV as well as possible and that it was completely off the roadway. Nevertheless, his assessment of the risk was reasonable. Especially due to its size, the RV might have distracted drivers or caused

> them to change lanes unnecessarily. Both occurrences affect public safety. Similarly, even though this was not a high-crime area, Deputy Taylor's concerns of vandalism or someone breaking into the vehicle (perhaps the more likely risk, especially since this was an RV) were valid. That reasoning serves law enforcement's community-caretaker function. Therefore, I find that Deputy Taylor's decision to impound the RV was lawful under the hazard portion of the impound policy.

Id. at 19. Judge Mahoney specifically addressed, and rejected, Morris' allegation that the impound was pretextual. *Id.* at 20.

Judge Mahoney then considered timing and location of the search:

> Deputies Taylor and Schueller conducted the inventory search. This was consistent with the sheriff's office's policy to inventory all impounded vehicles and the standard practice of having one to two officers conduct such searches. The policy appears to be silent on timing and location of inventory searches. Deputy Taylor testified that inventories are completed at the scene if the vehicle is to be towed to the tow company's lot. In this case, the inventory was done at the sheriff's office's secure impound lot. At the scene, the vehicle involved (a midsize RV) was parked on the side of a county road with notable traffic. Because of Defendant's demeanor, Deputy Taylor felt it was important to transport her from the scene as soon as possible. This left one deputy at the scene to inventory the RV. The tow company was taking the RV to the sheriff's office's secure impound lot. I find that under these circumstances, it was reasonable for deputies to wait to inventory the vehicle at the impound lot.

Id. at 22. Judge Mahoney likewise found the inventory search constitutional:

> Deputy Taylor testified that the inventory policy directs deputies to inventory any item that could be worth more than $25.00. The policy is silent about the search of containers, which does not make the search of containers unlawful. *See Wallace*, 102 F.3d 349. There is nothing in this record that shows the deputies failed to follow the policy. Defense counsel implied something was improper because the government attorney did not receive a copy of the impound record until prior to the hearing. I find there is no evidence to support any assertion of impropriety. . . I find the deputies acted reasonably in looking inside Defendant's purse and the glasses case as both items could have likely contained items worth more than $25.00. I credit Deputy Taylor's testimony that they stopped the inventory search

> because it seemed unreasonable, with the presence of so many plants, to continue the search. Such actions were also in line with the sheriff's office's inventory policy.
>
> For these reasons, I find that the deputies conducted the inventory search within the policy and procedures of the sheriff's office and that the search was reasonable.

Id., at 22-23.

III. DISCUSSION

In her objection, Morris raises three arguments. First, that Taylor did not follow standardized criteria in impounding the RV. Second, that the RV was not impounded for a legitimate caretaking purpose. Third, that there was no policy regarding the opening of containers. Because the first two arguments relate to the impound, I will address them jointly before addressing the inventory search.

A. The Impound

1. Standard

The Fourth Amendment prohibits unreasonable searches and seizures. U.S. Const. amend IV. "Searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). However, law enforcement may search a lawfully impounded vehicle to compile an inventory of the vehicle's contents. *South Dakota v. Opperman*, 428 U.S. 364, 376 (1976). The Government has the burden of demonstrating that this exception applies.

In *Colorado v. Bertine*, 479 U.S. 367 (1987), the Supreme Court discussed the reasons for, and limits of, this exception. The Court explained that "inventory procedures serve to protect an owner's property while it is in the custody of the police,

to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." *Id.* at 372. The Court distinguished "police caretaking procedures" from criminal investigations, finding that the policies behind the probable cause and warrant requirements that apply during investigations "are not implicated in an inventory search." *Id.* at 371. The Court recognized that allowing law enforcement to exercise unfettered discretion in deciding whether or not to impound and inventory a vehicle could blur this distinction and allow the "caretaking" function to serve as a ruse for warrantless investigative searches. Thus, the Court made it clear that law enforcement's discretion must be "exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity." *Id.* at 375. Because the officers in *Bertine* acted pursuant to "standardized procedures," the Court held that evidence gathered during an inventory search of the defendant's vehicle should not have been suppressed. *Id.* at 375-76.

Under *Bertine*, then, "[t]he impounding of a vehicle passes constitutional muster so long as the decision to impound is guided by a standard policy—even a policy that provides officers with discretion as to the proper course of action to take—and the decision is made 'on the basis of something other than suspicion of evidence of criminal activity.'" *United States v. Kimhong Thi Le*, 474 F.3d 511, 514 (8th Cir. 2007) (quoting *Bertine*, 479 U.S. at 375). Moreover, "as long as impoundment pursuant to the community caretaking [or public safety] function is not a mere subterfuge for investigation, the coexistence of investigatory and caretaking [or public safety] motives will not invalidate the search." *United States v. Wallace*, 102 F.3d 346, 348 (8th Cir. 1996) (citing *United States v. Marshall*, 986 F.2d 1171, 1175-76 (8th Cir. 1993)).

The circuit courts of appeal differ on whether, and to what extent, law enforcement must rely on standard criteria in deciding whether to impound a vehicle pursuant to *Bertine*. *Compare United States v. McKinnon*, 681 F.3d 203, 208 (5th Cir. 2012) (the inquiry should be focused on "the reasonableness of the vehicle impoundment for a

community caretaking purpose without reference to any standardized criteria"); *United States v. Coccia*, 446 F.3d 233, 238 (1st Cir. 2006) (the absence of standardized criteria does not necessarily invalidate the impoundment as long as the impoundment was reasonable under the circumstances); *United States v. Smith*, 522 F.3d 305, 312 (3d Cir. 2008) (the adoption of a standardized impoundment procedure "merely supplies a methodology by which reasonableness can be judged and tends to ensure that the police will not make arbitrary decisions in determining which vehicles to impound" and that a decision to impound a vehicle without a standardized procedure is not a *per se* constitutional violation); *United States v. Duguay*, 93 F.3d 346, 351 (7th Cir. 1996) ("'[S]tandardized criteria or established routine must regulate' inventory searches. Among those criteria which must be standardized are the circumstances in which a car may be impounded.") (internal citation omitted); *United States v. Hockenberry*, 730 F.3d 645, 658 (6th Cir. 2013) ("[d]iscretion as to impoundment is permissible so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity"); *Sammons v. Taylor*, 967 F.2d 1533, 1543 (11th Cir. 1992) ("Even if an arrestee's vehicle is not impeding traffic or otherwise presenting a hazard, a law enforcement officer may impound the vehicle, so long as the decision to impound is made on the basis of standard criteria and on the basis of 'something other than suspicion of criminal activity.'"). The Eighth Circuit has explained its interpretation of *Bertine* as follows:

> Some degree of "standardized criteria" or "established routine" must regulate these police actions, which may be conducted without the safeguards of a warrant or probable cause, to ensure that impoundments and inventory searches are not merely a ruse for general rummaging in order to discover incriminating evidence.
>
> The requirement that discretion be fettered, however, has never meant that a decision to impound must be made in a "totally mechanical" fashion. . . It is not feasible for a police department to develop a policy that provides clear-cut guidance in every potential impoundment situation.… [T]estimony can be sufficient to establish police [impoundment] procedures. . . So long

> as the officer's residual judgment is exercised based on legitimate concerns related to the purposes of an impoundment, his decision to impound a particular vehicle does not run afoul of the Constitution.

United States v. Arrocha, 713 F.3d 1159, 1163 (8th Cir. 2013) (quoting *Petty*, 367 F.3d at 1012).

This standard is illustrated in *Petty*, in which the court found that a policy was sufficiently "standardized" when it provided that a vehicle could be towed when it was abandoned or no one was available to drive it. 367 F.3d at 1012. The court noted that the officer had to exercise some discretion in determining whether the driver was "available" or the vehicle was "abandoned." *Id.* As long as the officer's "residual judgment" or discretion was exercised based on legitimate concerns related to the purposes of an impoundment, it was sufficient. *Id.* In *Petty*, the driver had been arrested, his female companion wanted nothing to do with the car, the car was a rental and it was left unattended at 1:30 a.m. in a business parking lot in an area known for narcotics and prostitution. *Id.* The court found that the police were appropriately concerned with protecting the property of the rental company from damage or theft and "[i]t was not unreasonable for the police, having just arrested the party who leased the vehicle, to feel that they were responsible for safeguarding the car until it could be retrieved by the owner." *Id.* at 1013.

In short, for impoundment to be reasonable under Supreme Court and Eighth Circuit precedent, discretionary decisions to impound a vehicle must be guided by some degree of standardized criteria unless the reason for impoundment falls clearly within law enforcement's community caretaking or public safety functions. In exercising his or her discretion within those standardized criteria, the officer's decision to impound must be based on legitimate concerns related to the purposes of an impoundment. This "ensure[s] that impoundments and inventory searches are not merely a ruse for general rummaging in order to discover incriminating evidence." *Arrocha*, 713 F.3d at 1163.

2. Discussion

Judge Mahoney found that the Clay County Sheriff's Department has a policy that a vehicle may be impounded when the vehicle's driver is arrested or the vehicle would pose a hazard, and that defendant's vehicle was properly impounded pursuant to that policy. As discussed above, law enforcement may impound a vehicle for reasons related to community caretaking or public safety. *See Opperman*, 428 U.S. at 368 ("The authority of police to seize and remove from the streets vehicles impeding traffic or threating public safety and convenience is beyond challenge."). Other reasonable circumstances for impounding a vehicle include when the driver has been arrested, when the driver's license has been suspended, when no one is available to drive the vehicle or when there is a risk of theft or vandalism. *See Arrocha*, 713 F.3d at 1163 ("Police may take protective custody of a vehicle when they have arrested its occupants, even if it is lawfully parked and poses no public safety hazard."); *United States v. Betterton*, 417 F.3d 826, 830 (8th Cir. 2005) (finding impoundment reasonable where car was stopped in a traffic lane in a no-parking zone and defendant could not drive the car because his license was suspended); *United States v. Garner*, 181 F.3d 988, 992 (8th Cir. 1999) (finding impoundment reasonable where vehicle was parked in no-parking zone on a busy street, was worth more than $15,000 and was in a high-crime area); *Petty*, 367 F.3d at 1012 (impoundment reasonable when passenger refused to drive vehicle after driver was arrested); *United States v. Harris*, 795 F.3d 820, 822 (8th Cir. 2015) (impound policy that provides a vehicle may be impounded when the driver is arrested and the vehicle would be left on a roadway is constitutionally sufficient.)

In her objection, Morris argues that Taylor did not follow a standardized policy and that, even if he did, defendant's vehicle did not, as a matter of fact, pose a safety hazard. At the outset, Morris is correct in that the Clay County officers involved in defendant's arrest were not fluent in the exact wording of their department's written impound policy. As noted by both Morris and Judge Mahoney, Taylor relied on the

written policy while testifying in court. Taylor admitted that he had not been trained on the written impound policy but understood the written impound policy to be a codification of the prior unwritten policy. Doc. No. 26 at 22-23. He admitted that he did not independently recall the four instances when deputies were allowed to impound a vehicle pursuant to the policy. *Id.* at 24. Taylor also acknowledged that allowing another licensed driver to pick up the vehicle was within his discretion under the policy. *Id.* at 41. However, Morris cites no law or standard that requires officers to memorize their department's impound policy verbatim. Instead, the applicable standards require that a policy exist, that the officers followed the policy, and that the search not be a pretext for "rummaging" for evidence.

Regarding his department's policy, Taylor was unwavering that he knew that the arrest of the vehicle driver and existence of a roadside hazard were two instances in which the policy allows officers to impound a vehicle. When asked about the policy, Taylor stated:

> The practice is if there's not another person there with a valid driver's license to remove the vehicle from the scene, there's too much liability for our office to just allow it to be left on the side of the road or potentially be struck or vandalized or have thefts occur out of. So typically in the exact situation that we were in, we would call for a tow truck to remove that vehicle from the scene and take it back to our secured impound lot at the Clay County Sheriff's Office.

Doc. No. 26 at 9-10. Taylor also stated that there is a procedure for towing a vehicle, which includes calling a tow company if the vehicle poses a hazard or if the driver is arrested *Id.* at 12, 14. Taylor testified that Morris was arrested and he believed the vehicle to be a potential hazard. *Id.* at 37-39, 40.

Even though the written policy was not admitted into evidence, no real argument was made that Taylor fabricated his statements regarding that policy. Judge Mahoney found him credible on the topic of the policy, as do I. Accordingly, because there is no real dispute that the Clay County Sheriff's Department had an impound policy and that

policy authorized impound in the facts of this case, Judge Mahoney's recommendation is clearly correct.

In her objection, Morris highlights the fact that Taylor quickly decided to impound the vehicle after making the traffic stop and arrest. Defendant cites *United States v. Bridges*, 245 F. Supp. 2d 1034 (S.D. Iowa 2003), in which the court stated that an officer's instantaneous decision to impound a vehicle gives rise to "a suggestion that the impoundment was done primarily in order to perform the inventory." *Id.* at 1037. It is unclear as to whether this is a correct statement of Eighth Circuit precedent, as the court cited no supporting case law and I have found none. Regardless, the facts in *Bridges* are radically different from those here. In *Bridges*, officers stopped a vehicle in a gas station parking lot for a traffic violation. Their department had a similar impound policy as in this case, allowing officers to impound due to hazards or in the case of arrest. Bridges was driving the car, and the police officers issued him a citation for driving without a license. However, he was not arrested or taken into custody. The officers then decided to impound the vehicle. Based on those facts, the court found the officers did not follow the applicable policy because the vehicle was not a hazard, as it was parked in a parking lot, and the driver was not arrested. Here, by contrast, Morris was driving a large RV, the vehicle was stopped on a public roadway and she was taken into custody. Nothing about the holding in *Bridges* supports Morris' argument that the impound of her RV was improper.

Morris also argues that Taylor did not explore other options for dealing with the vehicle and that the vehicle was not, in fact, a hazard. Neither argument is persuasive. Courts have repeatedly approved impound policies that give officers some amount of discretion. For instance in *Kimhong Thi Le*, cited above, an officer, acting pursuant to policy that allowed for the impoundment of a vehicle that the officer determined to be a hazard, impounded a vehicle that was overturned in a ditch forty feet away from the roadway. The officer reasoned that in poor weather the vehicle may attract others to stop

and investigate, thus posing a hazard. The Eighth Circuit held that so long as the officer's "judgment is exercised based on legitimate concerns related to the purposes of an impoundment, his decision to impound a particular vehicle does not run afoul of the Constitution." *Kimhong Thi Le*, 474 F.3d at 514 (internal citations omitted).

The evidence here demonstrates that this situation involved a relatively large RV parked on the side of a rural roadway. Common sense dictates that even though the RV was pulled onto the shoulder of the roadway, it still could pose a hazard by, for example, blocking visibility or impeding wide-bodied vehicles that may be traveling on the road. Because of the possible hazards, Taylor acted on legitimate concerns in impounding the vehicle. While Taylor had discretion under his department's policy to allow another civilian take custody of the vehicle, there is no indication that he had a legal obligation to do so. Given the fact that Morris was arrested alone in a rural area, Taylor's decision to use his discretion to impound the vehicle was legitimate and reasonable.

Finally, Morris makes much of the fact that Taylor testified he was not particularly interested in the contents of the RV. Morris states that this testimony is "plain absurd" and implies that Taylor wanted to inventory the RV. Doc. No. 30 at 6. However, even if an officer is interested in the contents of an impounded vehicle, that interest is not relevant so long as the officer followed standardized criteria or towed the vehicle for a legitimate community caretaking purpose. *See Petty*, 367 F.3d at 1013 ("That an officer suspects he might uncover evidence in a vehicle, however, does not preclude the police from towing a vehicle and inventorying the contents, as long as the impoundment is otherwise valid."). In this case, as noted above, Taylor was well within his department's policy to impound the vehicle for legitimate non-investigatory reasons. Accordingly, whether or not Taylor had any interest in the RV's contents is a moot issue.

Based on my de novo review, I agree with the Judge Mahoney that Morris' motion to suppress based on an allegedly-improper impound must be denied.

B. Inventory Search

Next, Morris argues that the inventory search was not conducted in a constitutional manner.

1. Standard

Judge Reade has aptly summarized the appropriate standard for evaluating an inventory search:

> A well-established exception to the Fourth Amendment's warrant requirement is the so-called inventory search exception. "Law enforcement officers may conduct a warrantless search when taking custody of a vehicle to inventory the vehicle's contents 'in order to protect the owner's property, to protect the police against claims of lost or stolen property, and to protect the police from potential danger.'" *United States v. Ball*, 804 F.3d 1238, 1240-41 (8th Cir. 2015) (quoting *United States v. Hartje*, 251 F.3d 771, 775 (8th Cir. 2001)). However, "[o]fficers 'may not raise the inventory-search banner in an after-the-fact attempt to justify what was … purely and simply a search for incriminating evidence ….'" *Id*. at 1241 (quoting *United States v. Beal*, 430 F.3d 950, 954 (8th Cir. 2005)). In conducting the inventory search, officers need not turn a blind eye toward "potentially incriminating items that they might discover in the course of an inventory search, as long as their sole purpose is not to investigate a crime." *Id*. (quoting *Beal*, 430 F.3d at 954). An inventory search must still comport with the Fourth Amendment's demand of reasonableness. *Id*. "The reasonableness requirement is met when an inventory search is conducted according to standardized police procedures, which generally remove the inference that the police have used inventory searches as a purposeful and general means of discovering evidence of a crime." *United States v. Smith*, 715 F.3d 1110, 1117 (8th Cir. 2013) (quoting *United States v. Taylor*, 636 F.3d 461, 464 (8th Cir. 2011)). Even when officers fail to strictly follow standardized procedure, suppression is not warranted unless there is "something else" that suggests that the inventory search was merely an illegitimate attempt to conduct a search for incriminating evidence. *Id*. at 1117-18 (quoting *United States v. Rowland*, 341 F.3d 774, 780 (8th Cir. 2003)).

United States v. Perez-Trevino, No. 15-CR-2037-LRR, 2016 WL 2752386, at *3 (N.D. Iowa May 10, 2016).

2. Discussion

Morris argues that the Clay County Sheriff's Department did not have a valid inventory search policy because the policy did not specifically contemplate the search of closed containers within the vehicle. Judge Mahoney found that search was a constitutional inventory search because the officers followed their department's policy. Regarding the closed container issue, Judge Mahoney found the lack of specifics in the policy regarding closed containers was not fatal. Doc. No. 24 at 21-23.

In support of her argument, Morris cites *Florida v. Wells*, 495 U.S. 1, 4 (1990), in which the Supreme Court held that when conducting a vehicle inventory search, the opening of containers within in the vehicle must be done pursuant to either a written policy or an established routine. Morris argues that Taylor opened containers in a haphazard manner and that his actions did not comport with any department policy. Morris argues that the inventory search and the opening of closed containers was done primarily to "rummage" for evidence.

Kimhong Thi Le, discussed above, addressed this issue as follows:

> Trooper Vance's search of the SUV, including opening the duffle bags containing the marijuana, was consistent with North Dakota Highway Patrol policy to "conduct a detailed inspection and inventory of all impounded vehicles." Trooper Vance testified that he was trained to open closed containers during inventory searches and that it is his standard practice to do so. Such oral testimony is sufficient to establish the requisite standardized procedures required to comport with the Fourth Amendment. *See United States v. Low*e, 9 F.3d 43, 46 (8th Cir.1993) (holding that evidence of a written policy is not required and that oral testimony about a standard policy to open closed containers during an inventory search is sufficient to meet the Fourth Amendment's reasonableness requirement). Thus, the search did not run afoul of the Constitution.

Kimhong Thi Le, 474 F.3d at 515. Here, Taylor testified that the department's policy is to have deputies conduct an inventory search of all impounded vehicles and to look for all items that exceeded $25.00 in value. *Id*. at 15-16. He stated that the policy requires that the search be discontinued if it became unreasonable to proceed. *Id*. at 18. He acknowledged that the policy does not specifically address looking in enclosed containers. *Id*. at 48. However, he stated because the policy requires officers to look for valuables worth more than $25.00: "My understanding is that if something of value could reasonably be inside [a container], you know, that's something that needs to be inventoried." *Id*. at 49. As such, he stated: "That's practice, yes." *Id*.

Under *Kimhong Thi Le*, an unwritten practice of searching closed containers is sufficient to survive a constitutional challenge. Based on Taylor's testimony, which I find to be credible, I find that the policy of the Clay County Sheriff's Department is to conduct an inventory search of all impounded vehicles and to look for all items that exceeded $25.00 in value. I further find that pursuant to this policy, the standard practice is to search any containers that can hold items worth more than $25.00 value. Taylor's search comported with that practice. Accordingly, based on my de novo review of the record in this case, I agree with Judge Mahoney that Morris' motion to suppress based on an allegedly-improper inventory search must be denied.[1]

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[1] As noted above – and emphasized by the Government (*See* Doc. No. 31 at 18) – even if a search does not comply with a standard procedure, some evidence must suggest the search was pretextual before the evidence will be suppressed. *See, e.g., Taylor*, 636 F.3d at 465. Because I find that Taylor's search complied with a standard procedure, I need not reach the issue of whether "something else" suggested an investigatory search. However, I note Morris has pointed to numerous facts indicating an investigatory motive for the search, including (1) the fact that the deputies had received a tip regarding Morris' alleged drug distribution, (2) the deputies were investigating Morris prior to her arrest, (3) Taylor stayed on duty long after the end of his shift to conduct the inventory search and (4) deputies sought a search warrant and abandoned the inventory search as soon as they discovered drug paraphernalia. These facts, in combination,

IV. CONCLUSION

1. For the reasons set forth herein, I **adopt** the Report and Recommendation (Doc. No. 24) in which Judge Mahoney recommends that I deny defendant's motion to suppress evidence.

2. Defendant's objection (Doc. No. 25) to the Report and Recommendation is **overruled**.

3. Defendant's motion to suppress (Doc. No. 11) is **denied**.

IT IS SO ORDERED.

DATED this 15th day of August, 2017.

Leonard T. Strand, Chief Judge

suggest that Taylor may have had an investigatory interest in conducting the inventory search. Absent my finding that the department's standard practice provided for the container search, these facts would support suppression of the evidence at issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ALAUNA GAYE MORRIS, Defendant.	No. 5:16-CR-4096-LTS **REPORT AND RECOMMENDATION**

APPENDIX C

I. INTRODUCTION

The grand jury charged the Defendant, Alauna Gaye Morris, in a three-count indictment with drug-trafficking offenses from 2015 through September 14, 2016. Doc. 2.[1] These charges stem, in part, from the seizure of drugs and paraphernalia during a search of Defendant's recreational vehicle (RV) on September 8, 2016, and during later searches of the RV and Defendant's residence. Defendant challenges the impoundment and inventory search of her RV on September 8, 2016. Doc. 11. She moves to suppress all evidence obtained during the inventory search and subsequent searches pursuant to a search warrant. Doc. 11. The United States (the government) resists Defendant's motion. Doc. 12. On January 17, 2017, I held a hearing on the motion. Doc. 17. The parties later filed the exhibits admitted during the hearing following the hearing.[2] Doc. 17, 18, 19.

For the reasons explained below, I respectfully recommend that the court **deny** Defendant's motion to suppress.

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[1] "Doc." refers to the criminal docket in this case. "MJ Doc." refers to the docket in the predecessor case in 16-MJ-274. Each is followed by the number corresponding to the docket entry. "Exhibit" and "Ex." refers to the exhibits, followed by exhibit number and time on the recording, admitted during the suppression hearing on January 17, 2017.

[2] I admitted Exhibit B, which consists of two videos and one audio recording, into evidence without objection during the motion hearing on January 17, 2017. The United States, with the agreement of the parties and pursuant to my order, submitted Exhibit B to the court following the hearing. Due to technical difficulties, I was not able to review this exhibit until February 2, 2017. It appears from my review that Exhibit B(1) is a video from Deputy Schueller's body camera, that Exhibit B(2) is a video from Deputy Schueller's patrol vehicle, and that Exhibit B(3) is an audio recording from inside Deputy Taylor's patrol vehicle.

II. PROCEDURAL HISTORY

On November 1, 2016, the government charged Defendant by criminal complaint with one count of conspiracy to distribute a controlled substance. MJ Doc. 1. Defendant made her initial appearance before this court on November 3, 2016. MJ Doc. 6. On November 16, 2016, the grand jury returned an indictment charging Defendant with conspiracy to distribute methamphetamine from 2015 until September 9, 2016 (Count 1), and possession with intent to distribute methamphetamine on September 9, 2016 (Count 2), and on September 14, 2016 (Count 3). Doc. 2. The court originally scheduled trial for January 3, 2017. Doc. 6. On December 12, 2016, the court granted Defendant's motion and continued trial to February 6, 2017. Doc. 10. On December 16, 2016, Defendant filed the motion to suppress. Doc. 11. The Government filed a resistance to the motion on December 22, 2016. Doc. 12. Based on the filing of this motion, the court granted Defendant's second and unresisted motion to continue trial and scheduled trial for March 6, 2017. Doc. 14. During a status conference on February 3, 2017, the court granted Defendant's third and unresisted motion to continue based on the pending motion to suppress. Doc. 22. Trial is now scheduled for the two-week setting that begins on April 3, 2017. Doc. 23.

At the motion hearing on January 17, 2017, the government presented testimony from Clay County (Iowa) Sheriff's Office Deputy Spencer Taylor. Defendant presented testimony from Defendant's husband, Joseph Walter Morris. The government offered Exhibit 1 (Clay County Sheriff's Office Impound Policy) and Exhibit 2 (vehicle impound record for Defendant's RV on September 8, 2016). Defendant offered Exhibit A (state arrest warrant from September 7, 2016), Exhibit B (three videos of the traffic stop), and Exhibit C (Morris's Driver's Daily Log dated September 8, 2016). I sustained

Defendant's objection to the admission of Exhibit 1. I admitted the remaining exhibits into evidence.

III. RELEVANT FACTS[3]

A. Clay County Sheriff's Office Impound and Inventory Policies

Deputy Taylor[4] has been a deputy with the Clay County Sheriff's Office (sheriff's office) since approximately 2012. He testified he was familiar with the impound and inventory policy and practices of the sheriff's office. As part of his duties as a patrol deputy, he impounds vehicles several times per week. The sheriff's office issued a written impound policy on August 1, 2015. According to Deputy Taylor, that policy was a written adaptation of the unwritten practices used by the sheriff's office prior to that time. The written policy provided[5] four instances when a deputy may impound a vehicle: the vehicle was abandoned; the vehicle had been involved in an accident; the vehicle's driver had been arrested; or the vehicle posed a hazard. The policy and practice for the sheriff's office was to tow vehicles when they posed a hazard or when the sole occupant had been arrested. Deputy Taylor testified that the impound policy

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[3] The relevant facts contained in this section came from the Affidavit submitted in support of the criminal complaint (MJ Doc. 1), Defendant's Brief in Support of Motion to Suppress (Doc. 11-1), the government's Brief in Opposition to Defendant's Motion to Suppress (Doc. 12), testimony presented during the suppression hearing, and the recordings contained in Exhibit B from the suppression hearing. Times listed in this factual summary are approximate.

[4] Deputy Taylor received a degree in criminal justice from Iowa State University and graduated with the 243rd class of the Iowa Law Enforcement Academy. He testified his duties with the sheriff's office included conducting routine patrol, responding to complaints, executing warrants, and preventing crime.

[5] The actual written policy was not admitted into evidence. Deputy Taylor testified to what the policy provided. Based on my observations, it appeared that Deputy Taylor read from the policy when he stated the four circumstances in which a vehicle could be impounded.

was also consistent with the goal of preventing liability for the sheriff's office. Liability could arise if a vehicle that deputies did not impound were to be struck, vandalized, or broken into.

In regard to the driver's arrest provision of the policy, deputies are allowed to release the vehicle, rather than have it impounded, if there is a licensed driver available, and the vehicle was properly registered and insured. It is unclear from the record what, if anything, the policy says about what constitutes an "available" driver. Deputy Taylor testified that in practice, "available" means the licensed driver was present at the scene. Deputies generally impound vehicles when there is no licensed and insured driver at the scene. On cross-examination, Deputy Taylor agreed with defense counsel that "at the scene" was not in the written policy. Deputy Taylor testified that it was not standard practice to allow arrestees to contact someone to respond to the scene to drive the vehicle. Based on his experience, arrestees often lied and said a driver could respond to the scene quickly, and then deputies ended up waiting for a long period before the other driver actually arrived. Deputy Taylor said that in his experience, arrestees did this because they preferred not having their vehicles towed and impounded. He testified that deputies avoid trying to wait long periods for another driver to arrive and move the vehicle.

Deputies do not tow every vehicle that falls under one of the policy's four categories. Deputy Taylor testified that they could exercise discretion under the policy. He said this was because it was hard to predict factors that may be present in any given situation. It appears the policy allows deputies to exercise discretion in deciding whether a vehicle was abandoned or posed a hazard, and whether another driver was available. According to Deputy Taylor, whether a vehicle was impounded "depends on the circumstances." For instance, when the driver is arrested for driving offenses (such as driving while barred), the vehicle will "almost assuredly" be impounded. As another

example, vehicles involved in accidents would usually be towed, although Deputy Taylor could not say definitively that this happened every time. He testified that "more often than not" in circumstances in which the driver was arrested and there were property concerns (the type of circumstances present in this case), the vehicle was impounded. Deputy Taylor testified that "by more often than not," he meant there were "outliers" when a vehicle in those circumstances would not be impounded. There are situations when vehicles that could be impounded are left on the side of the road. Deputy Taylor reiterated that the policy provided for impounding vehicles when the driver was arrested or the vehicle posed a hazard.

Deputy Taylor described that the standard procedure when a vehicle was towed was to contact a towing company in Spencer, Iowa. The towing company then took the vehicle to the sheriff's office if directed to do so. Deputy Taylor later testified on cross-examination that towed vehicles were generally taken to the towing service's lot. Under the sheriff's office policy, deputies are required to inventory items that could be valued at more than $25.00. These items are recorded on an impound report that contains a description of the vehicle, the operator, the owner, the reason for the tow, the towing service, and a list of items inventoried. Ex. 2. It is not clear what the policy says, if anything, about when and where the inventory search is to occur. Deputy Taylor testified that it is standard for deputies to inventory vehicles prior to impound. They always do so if the vehicle was to be towed to the tow service's lot rather than the sheriff's office secure impound lot. According to Deputy Taylor, one or two deputies generally conducted inventory searches. The policy directed deputies to stop the search if it was unreasonable to proceed. Nothing in the policy addressed searching inside containers. The practice, according to Deputy Taylor, was to look inside a container if it might contain something worth more than $25.00.

B. Defendant's Arrest and the Impound of the RV

In March 2016, law enforcement in Clay County, Iowa, received information from a person in jail that Defendant was involved in distributing methamphetamine. On September 7, 2016, Deputy Casey Timmer with the sheriff's office conducted surveillance at Defendant's rural Spencer residence in Clay County. After seeing vehicles coming and going from the residence, Deputy Timmer requested assistance with the surveillance. Two other deputies, including Deputy Taylor, responded and helped with the surveillance. Deputies conducted surveillance for approximately one to one and a half hours, during which time they saw multiple vehicles visit Defendant's residence. They believed those vehicles belonged to or were driven by persons associated with the use or distribution of methamphetamine, some with prior drug-related arrests. The same day, the Palo Alto County (Iowa) Clerk's Office issued a warrant for Defendant's arrest for false reporting of a financial transaction (Exhibit A). Exhibit A contains a stamp "Received IA State Patrol Comm" with an apparent time of "12:20." Deputy Taylor did not know the facts of the underlying charge but did not dispute that the alleged false report occurred in January 2016.

The following day, September 8, 2016, Deputy Taylor learned of the Palo Alto County arrest warrant when Deputy Timmer showed it to him. It was common practice, according to Deputy Taylor, for deputies to discuss active warrants or persons of interest. In addition to being aware of the historical information about Defendant distributing methamphetamine and the prior day's surveillance, Deputy Taylor had previously encountered Defendant and knew what she looked like.[6] After learning about the arrest warrant, Deputy Taylor testified he "went about [his] business," which included handling

[6] Deputy Taylor identified Defendant in the courtroom during the suppression hearing.

complaints and other duties. He denied driving by Defendant's residence multiple times that day.

Late that afternoon, around 4:20 p.m., Deputy Taylor drove past Defendant's residence on 350th Street, which is the same street on which the sheriff's office is located. He saw an RV coming down the driveway as he drove past. While he saw the driver had long hair,[7] Deputy Taylor was not able to identify the driver. Deputy Taylor believed the driver might have been Defendant, who he knew had an active arrest warrant. Deputy Taylor turned around, drove by the RV, turned around again, and then followed the RV. There was a car in between the RV and Deputy Taylor's vehicle. He was not able to tell how many people were inside the RV. After the other car turned off, Deputy Taylor conducted a license plate check and learned that the RV was registered to Defendant. At 4:29 p.m., Deputy Taylor initiated a traffic stop of the RV on 350th Street, approximately seven miles from Defendant's residence. Defendant was the sole occupant and the driver of the RV. Exhibit 2(B) shows Defendant's vehicle to be a midsize RV.

Deputy Taylor described 350th Street, also known as B-24, as a county black top. There were no streetlights and no residences in the area. It was not a high-crime area. While the road had some hills, Exhibit B(2) shows the area near the traffic stop to be relatively flat. Morris, Defendant's husband, testified he often saw vehicles parked on the side of that road. During the traffic stop, Defendant stopped the RV on the shoulder of the road. The RV was off the roadway, with its tires outside the fog line. Deputy Taylor had no real concerns with the way Defendant had parked her vehicle. Exhibit B(2) shows the midsize RV parked across from a T-intersection (to the left of and across

[7] Based on my observations during the suppression hearing, Defendant has long hair.

350th Street from the RV) and beside a street sign (to the right of the RV). On cross-examination, Deputy Taylor agreed that Defendant parked on the only space available on 350th Street. He also said that it was unlikely that other vehicles would have struck the RV with it parked there. Nevertheless, Deputy Taylor testified that based on his training as a traffic officer, any obstacle could pose a hazard.

During the traffic stop, Deputy Taylor confirmed the Palo Alto arrest warrant. He had Defendant exit her vehicle, handcuffed and arrested her on that warrant, and placed her in the backseat of a patrol vehicle. Deputy Taylor provided Defendant her *Miranda* warnings at 4:41 p.m. (Exhibit B(1), 0:10), while she was in the backseat of the patrol vehicle. Deputy Schueller had arrived by that point to assist Deputy Taylor.[8] After Deputy Taylor provided Defendant's *Miranda* warnings, they engaged in a brief conversation, mainly about the Palo Alto County charges underlying Defendant's arrest. Just prior to Deputy Taylor closing the door of the patrol vehicle (he was outside the vehicle), Defendant said she could secure her property and something about a tow. Ex. 2B. Deputy Schueller then asked Deputy Taylor if he was going to request a tow. At that point, approximately one minute and twenty seconds after the *Miranda* warnings, Deputy Taylor requested a vehicle to tow the RV for impound. Ex. B(1), B(3).

The impound record listed the "reason for impoundment" as "arrest." Ex. 2. Deputy Taylor acknowledged he could have exercised discretion and allowed Defendant, as she requested, to secure the vehicle rather than having it towed. He did not do so. Deputy Taylor testified that his decision to impound the RV was within the policy and practice of the sheriff's office. During re-cross-examination, Deputy Taylor answered

[8] It is not clear from the evidence, including Exhibit B, when Deputy Schueller actually arrived. Exhibit B(1) is a video that appears to be from Deputy Schueller's body camera and begins just before Deputy Taylor provides Defendant with her *Miranda* warnings.

"correct" to defense counsel's repeated questions that Deputy Taylor exercised discretion and did not follow "standardized criteria" in deciding to impound the RV. He reiterated several times throughout his testimony, however, that it was standard practice to impound vehicles under the type of circumstances presented in this case. Deputy Taylor testified that he made the decision to impound the RV based on multiple factors. First, as was common practice, he decided to impound because the driver had been arrested and no other driver was present. Second, he believed the RV posed a liability risk for multiple reasons: another vehicle could have struck the RV, it could have been vandalized, or someone could have broken into the RV if left on the side of the road. Deputy Taylor felt the RV presented "somewhat of a traffic hazard" parked at that location. He described the parked RV as "bottle-necking" the roadway. He considered the fact that at that time of day, traffic was heavier due to people driving home from work. According to Deputy Taylor, many vehicles use that road, and traffic seemed "fairly busy" that day. He was also not comfortable leaving the RV there because it presented a potential opportunity for someone to vandalize or break into the RV. According to him, any time a vehicle is left on the side of the road, locked or not, it is possible someone could break into the vehicle.

According to Deputy Taylor, Defendant stated several times during the traffic stop that she wanted to secure her property. Although not exactly clear, it appears Defendant made these statements after Deputy Taylor decided to impound the RV. It was after he made that decision that Defendant also said she had a lot of money, perishables, and exotic plants inside the RV. In response to Deputy Taylor's question about where she was headed, Defendant said she had been on her way to Arkansas to get birds; Deputy Taylor confirmed there were no birds inside the RV. Ex. B(3), 6:10-6:35. She also explained that her husband was "over the road," which appears to refer to his occupation

as an over-the-road truck driver. Deputy Taylor did not recall whether Defendant said anything about her husband's current location.

It appears from the recordings that it was hot outside at the time during the traffic stop. Ex. B(1). Deputy Taylor at one point wiped Defendant's forehead, and Defendant complained of being hot. Ex. B(1). Defendant appeared to be agitated but relatively calm at the time she received her *Miranda* warning. Ex. B(1). Deputy Taylor described Defendant's demeanor later in the encounter as extremely aggressive, and he stated that she appeared to be concerned he was not properly securing her property. During a portion of the audio recording from inside Deputy Taylor's patrol vehicle, Defendant sounds upset and uses multiple expletives (apparently to herself). Ex. B(3), 5:35-6:03. Based on Defendant's demeanor, Deputy Taylor believed it was important to transport her from the scene quickly.[9] Deputy Taylor transported Defendant to the sheriff's office. Deputy Schueller stayed with the RV until it was towed at around 5:20 p.m. The RV was towed to the sheriff's office's secure impound lot.[10]

At the time he stopped Defendant's RV, Deputy Taylor suspected her involvement in criminal activity, based on the historical information as well as the surveillance at her residence the day before. Deputy Taylor testified that when he stopped Defendant's vehicle, he did not want to search it. His primary concern was arresting Defendant on the active warrant. According to him, any concern with the vehicle was secondary.

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[9] Because it appears that Defendant's statements and her more excited behavior occurred after Deputy Taylor decided to impound the RV, I find that such factors did not influence his decision to impound but could have affected the manner in which the inventory search occurred.

[10] The lot is not generally accessible to the public, and access is limited to deputies who have openers to enter the lot.

C. Available Driver to Move the RV

Morris, Defendant's husband, is an over-the-road truck driver. He works full time and is the owner-operator of one truck. On the day of Defendant's arrest, he had driven back to Spencer. According to his recollection and his logbook (Exhibit C), around the time of Defendant's traffic stop and arrest, Morris was in Spencer at a truck stop. As was his habit, Morris stopped there for coffee and to visit when he returned to town. The truck stop was approximately five miles from the residence he had shared with Defendant since 1990. Morris had his cell phone with him, and if Defendant had called him, he would have responded to move the RV from the side of the road. According to Morris, the vehicle had proper registration and insurance. He testified several neighbors would also have been available to move the RV. There is no indication that Deputies Taylor or Schueller were aware of any of this information when Deputy Taylor decided to impound the RV.

D. Inventory Search of the RV

Pursuant to policy and general practice, Deputies Taylor and Schueller conducted an inventory search of the RV. This was done at the secure impound lot the same day as Defendant's arrest. According to Deputy Taylor, the inventory search was not conducted prior to the tow because Defendant was extremely upset. On the impound record, Deputy Taylor identified the vehicle but did not include mileage or VIN. Ex. 2. It appears that he provided mileage to dispatch by radio while at the scene. Ex. B(2), 6:10. Deputy Taylor documented ten items on the impound record: (1) long life pad; (2) Sirius XM receiver; (3) Craftsman flashlight; (4) CD case with CDs; (5) makeup bag containing makeup; (6) assorted plants; (7) tool box with assorted tools; (8)

"Creative" brand speakers; (9) spectrum surround sound; and (10) Sabre OC spray. Deputy Taylor testified that the impound form was not 100% completed. Deputy Taylor also found a pink glasses case inside a Lays bag that contained chips. Inside the glasses case, which he believed could have contained expensive glasses,[11] he found drug paraphernalia (two glass pipes) and marijuana. The deputies also found a scale inside a purse that was between the seats in the front of the RV. The deputies did not search the back half of the RV (described as the living area) because it was inaccessible due to the number of plants in that area. Deputy Taylor testified they were concerned about damaging the plants and risking injury since many of the plants had thorns. Deputy Taylor testified this was consistent with the policy, which directs deputes to stop inventory searches when it is unreasonable to proceed.

Based at least in part on the paraphernalia and scale found during the inventory search, deputies obtained search warrants for the RV and for Defendant's residence. They executed the warrant at Defendant's residence in the early morning hours[12] of September 9, 2016. During that search, they located 69.5 grams of methamphetamine. Four deputies executed the warrant for the RV on September 14, 2016. Deputy Taylor described that search as "much more methodical and invasive" than the inventory search on September 8th. Deputies located 138 grams of methamphetamine inside a locked dictionary box and approximately $9,500 in United States currency inside a locked seat at the rear of the RV.

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[11] Deputy Taylor based this conclusion on the fact that he owns Oakley-brand glasses, which cost more than $100 per pair.

[12] Deputy Taylor assisted with the execution of the search warrant at the residence. The traffic stop of Defendant's RV was conducted near the end of Deputy Taylor's shift, and he believes he stayed beyond his schedule to assist with the search warrant. This was not unusual as deputies often finish work that was ongoing at the end of their shifts.

IV. DISCUSSION

Defendant asks the court to suppress all evidence obtained on September 8, 2016, during the inventory search of Defendant's vehicle. Doc. 11. Defendant argues that the decision to impound the RV was not made based on law enforcement's community caretaking or public safety functions and that deputies did not follow the sheriff's office's standardized criteria. Doc. 11-1. Defendant argues that the parked RV did not present a hazard, that there was no risk of the RV being stolen or vandalized, that her husband or another person could have come to the scene to remove the RV, and that the deputies suspected Defendant of criminal activity. Doc. 11-1. Defendant argues that Deputy Taylor used improper discretion, rather than following standardized criteria and policies, in deciding to impound the RV and in conducting the inventory search. Defendant argues that the court should suppress evidence seized both during and as a result of the inventory search.

The government resists suppression, arguing the decision to impound the RV was lawful and in accordance with the sheriff's office's policy. The government maintains that Defendant's arrest, as well as the hazards posed from leaving the RV on the side of the road, justified the decision to impound. In support of these arguments, the government points to the fact that Defendant was the sole occupant of the RV, and there is no requirement that deputies provide an arrestee an opportunity to call someone to come to the scene to remove a vehicle. The government argues that because the decision to impound the RV was reasonable, suppression is not required.

The government bears the burden, when it seeks to introduce evidence seized without a search warrant, of establishing that a valid exception to the warrant requirement

existed and that law enforcement's actions fell within that exception. *United States v. Marshall*, 986 F.2d 1171, 1173 (8th Cir. 1993).

A. Lawful Vehicle Impoundment

If properly implemented, a law enforcement agency's practice of impounding vehicles and conducting inventory searches of such vehicles "do not run afoul of the Fourth Amendment's search warrant requirement." *United States v. Arrocha*, 713 F.3d 1159, 1162 (8th Cir. 2013) (citing *South Dakota v. Opperman*, 428 U.S. 364, 376 (1976)). "Impoundment of a vehicle for the safety of the property and the public is a valid 'community caretaking' function of the police." *United States v. Petty*, 367 F.3d 1009, 1011-12 (8th Cir. 2004) (quoting *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)). Impoundment is lawful if the decision to impound is guided by a standard policy and is based on a non-investigatory law enforcement function. *See United States v. Le*, 474 F.3d 511, 514 (8th Cir. 2007) (citing *Colorado v. Bertine*, 479 U.S. 367, 375 (1987)). An officer's testimony "is sufficient to establish the requisite standardized procedures required to comport with the Fourth Amendment[;]" a written policy is not required. *Id.* at 515; *accord United States v. Betterton*, 417 F.3d 826, 830 (8th Cir. 2005). Officers may impound a vehicle when the occupants have been arrested, even if the vehicle is lawfully parked and does not pose a public-safety hazard. *Arrocha*, 713 F.3d at 1163. Officers can also impound a vehicle that "imped[es] traffic or threaten[s] public safety and convenience." *Betterton*, 417 F.3d at 830 (quoting *Opperman*, 428 U.S. at 369).

The Fourth Amendment allows officers to exercise discretion under impound policies in deciding whether to impound a vehicle or leave it parked at the scene, "so long as that discretion is exercised according to standard criteria and on the basis of

something other than suspicion of evidence of criminal activity." *Arrocha*, 713 F.3d at 1162-63 (quoting *Bertine*, 479 U.S. at 375). An officer's exercise of discretion must be guided by "[s]ome degree of 'standardized criteria' or 'established routine' . . . to ensure that impoundments and inventory searches are not merely 'a ruse for general rummaging in order to discover incriminating evidence.'" *Petty*, 367 F.3d at 1012 (quoting *Florida v. Wells*, 495 U.S. 1, 4 (1990)). Discretion is allowed because it is not possible or realistic for law enforcement agencies to have absolute standards covering every possible situation that may arise. *Id.*

"So long as the officer's residual judgment is exercised based on legitimate concerns related to the purposes of an impoundment, his decision to impound a particular vehicle does not run afoul of the Constitution." *Id.* For instance, a policy that allows officers to determine when a vehicle poses a hazard, a condition for which the policy allows impoundment, is "sufficiently standardized to comport with the Fourth Amendment's reasonableness requirement." *Le*, 474 F.3d at 514. Officers may also exercise discretion "to determine whether a driver is 'available' or a vehicle is 'abandoned'" under a policy that allows officers to impound a vehicle, release it to another driver, or leave it parked at the scene. *Petty*, 367 F.3d at 1011-12. An officer's exercise of discretion does not require suppression when the officer has a valid reason to impound a vehicle, and there is no evidence that the decision to impound was a "ruse for general rummaging" to find evidence, even if the officer has reason to believe the vehicle may contain evidence of a crime. *Arrocha*, 713 F.3d at 1163-64.

"Nothing in the Fourth Amendment requires [officers] to allow an arrested person to arrange for another person to pick up his car to avoid impoundment and inventory." *United States v. Agofsky*, 20 F.3d 866, 873 (8th Cir. 1994) (citing *Bertine*, 479 U.S. at 372). Similarly, even if a registered owner of the vehicle arrives before it is towed from

the scene, officers are not required to release the vehicle to the owner. *See United States v. Beal*, 430 F.3d 950, 954 (8th Cir. 2005). This allows officers to avoid disputes over the vehicle's ownership or property contained inside the vehicle. *Id.* "The reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative 'less intrusive' means." *Bertine*, 479 U.S. at 373 (quoting *Illinois v. Lafayette*, 462 U.S. 640, 647 (1983)).

B. The Decision to Impound Defendant's RV

Defendant argues that Deputy Taylor did not follow standard criteria in deciding to impound Defendant's RV. Defendant bases this argument on Deputy Taylor's acknowledgement that the policy allows for discretion and that he used discretion in implementing the policy. In particular, Defendant points to Deputy Taylor's responses during re-cross-examination of "correct" when counsel said he did not follow standardized criteria. I reach the opposite conclusion. Based on the entirety of Deputy Taylor's testimony, I find that he did follow the standardized criteria outlined in the written impound policy and the standard practices of the sheriff's office. Deputy Taylor was forthright when he testified. He is familiar with the practices of the sheriff's office, which were the same before and after the impound policy was written. I further credit Deputy Taylor's testimony about the policy and practices in light of his years of service with the sheriff's office, his duties as a routine patrol deputy, and the fact that he impounds vehicles several times per week. It was my impression that his testimony about using discretion went to the fact that he would not say that every single vehicle that fell into one of the four categories was impounded. That makes sense, and it is the type of discretion that the law provides for. *See Arrocha*, 713 F.3d at 1163.

I find that Deputy Taylor followed the sheriff's office's policy in deciding to impound Defendant's RV. Two conditions that allow for impoundment existed in this case: the driver had been arrested and there was no other available driver, and the RV posed a hazard. Each of these conditions serve legitimate law enforcement functions of community caretaking and providing for public safety. Defendant does not challenge the validity of her arrest. Rather, she argues that Deputy Taylor erred in determining that no other driver was available and that the vehicle posed a hazard. Defendant contends that Deputy Taylor's decision was based solely on an investigatory motive. In determining whether the conditions of the sheriff's office's impoundment policy were met, Deputy Taylor was allowed to exercise discretion based on legitimate concerns related to the purposes of impoundment. *See Arrocha*, 713 F.3d at 1163.

With regard to the availability of another driver, Deputy Taylor acknowledged that he did not provide Defendant an opportunity to contact someone else to come to the scene and take the RV. Nothing in the law required Deputy Taylor to do so. *See Beal*, 430 F.3d at 954; *Agofsky*, 20 F.3d at 873. Deputy Taylor first testified that under the impound policy, when a driver had an active warrant and no one else was available to come to the scene, the vehicle would be towed. He further testified that in practice, another "available" driver meant a driver already on the scene. This appears to be a discrepancy, but for the reasons stated above, I found Deputy Taylor's testimony about the standard practices of the sheriff's office to be credible. Deputy Taylor testified that deputies generally did not allow arrestees to make other arrangements when they were the sole occupant of the vehicle. Furthermore, he testified that based on his experience, it is often impractical to wait for another person to arrive at the scene to retrieve a vehicle. I find that Deputy Taylor acted in conformity with the policy and practices of the sheriff's office in deciding to impound the vehicle due to Defendant's arrest. This includes his

decision not to allow Defendant to arrange for another driver to come to the scene. To the extent that the determination of availability of another driver involved the exercise of discretion, I find that Deputy Taylor provided legitimate reasons for not waiting to see if another driver could come to the scene in a reasonable amount of time.

Defendant's arrest was not the sole basis for impoundment in this case; Deputy Taylor also believed the RV posed a hazard. Protecting the safety of other drivers and protecting Defendant's property (both the RV and its contents) are legitimate, non-investigatory functions. Here, Deputy Taylor testified that there was too much liability to the sheriff's office to leave the RV on the side of the road because the RV could have been struck, vandalized, or had items stolen from inside. He acknowledged that Defendant parked the RV as well as possible and that it was completely off the roadway. Nevertheless, his assessment of the risk was reasonable. Especially due to its size, the RV might have distracted drivers or caused them to change lanes unnecessarily. Both occurrences affect public safety. Similarly, even though this was not a high-crime area, Deputy Taylor's concerns of vandalism or someone breaking into the vehicle (perhaps the more likely risk, especially since this was an RV) were valid. That reasoning serves law enforcement's community-caretaker function. Therefore, I find that Deputy Taylor's decision to impound the RV was lawful under the hazard portion of the impound policy.

To support her argument that impoundment was a ruse for deputies to search the RV, Defendant points to the prior day's surveillance, the timing of the Palo Alto arrest warrant, and the timing of her arrest the following day. It appeared from Deputy Taylor's testimony that Deputy Timmer was investigating Defendant's alleged drug distribution. I understand Defendant's concerns with the timing of the issuance of the Palo Alto arrest warrant. It is not clear what time of day the warrant was issued, or

whether deputies conducted surveillance before or after that time. It is likewise unclear what led to the issuance of that warrant, and I decline to speculate on that point. I believed Deputy Taylor's testimony that he was not staking out Defendant's residence the following day when he conducted the traffic stop. I base this on my observations of his testimony, as well as the fact that Defendant's residence and the sheriff's office are on the same road that Deputy Taylor was driving on when he testified he first saw the RV. I also find it likely that had Deputy Taylor wanted only to search for evidence, he and Deputy Schueller would have conducted a thorough and complete inventory search. Deputy Taylor suspected Defendant of being involved in criminal activity, but that is not relevant based on my findings that he followed the sheriff's office's policy and practices and had legitimate, non-investigatory motives for impounding the RV.

C. Lawful Inventory Searches

Officers may search a lawfully impounded vehicle without a warrant to inventory its contents. *Le*, 474 F.3d at 515 (citing *Opperman*, 428 U.S. at 376). They can do so even if they suspect the vehicle may contain evidence of a crime. *Marshall*, 986 F.2d at 1176. Inventory searches protect vehicles owners' property, and they protect officers and their agencies from claims of lost or stolen property and from potential dangers inside the vehicle. *Beal*, 430 F.3d at 954. To be valid, inventory searches must serve both a legitimate governmental function and "'be conducted pursuant to standard police procedures,'" which means, "standardized criteria or established routine." *Marshall*, 986 F.2d at 1175 (quoting *United States v. Davis*, 882 F.2d 1334, 1339 (8th Cir. 1989)). Conducting inventory searches under standardized police procedures alleviates concerns that officers may search merely to obtain evidence or that they will exercise too much discretion. *Id.* at 1174.

Officers must conduct inventory searches in accordance with their agencies' standardized policies, meant to protect the impounded vehicles and their contents. *Betterton*, 417 F.3d at 830. Such policies do not have to "dictate when an officer may open a locked trunk" or container. *United States v. Wallace*, 102 F.3d 346, 349 (8th Cir. 1996). Officers cannot later claim the cover of an inventory search to justify what was clearly a hunt for incriminating evidence. *Beal*, 430 F.3d at 954. Officers are allowed, however, to be alert for potentially incriminating items during a lawful inventory search. *Id.* at 954. "The central question in evaluating the propriety of an inventory search is whether, in the totality of the circumstances, the search was reasonable." *Arrocha*, 713 F.3d at 1164 (quoting *United States v. Frasher*, 632 F.3d 450, 454 (8th Cir. 2011)). Those circumstances include whether the search comported with the law enforcement agency's standardized policy. *Le*, 474 F.3d at 515.

"Even if police fail to adhere to standardized procedures, the search is nevertheless reasonable provided it is not a pretext for an investigatory search. 'Something else' must be present to suggest that the police were engaging in their criminal investigatory function, not their caretaking function, in searching the defendant's vehicle." *United States v. Taylor*, 636 F.3d 461, 465 (8th Cir. 2011) (citations omitted) (quoting *United States v. Rowland*, 341 F.3d 774, 780-81 (8th Cir. 2003)). Police must act in good faith. *See, e.g.*, *Agofsky*, 20 F.3d at 873. Suppression is warranted when a purported inventory search is performed without standardized procedures and "substantial evidence of an investigatory motive" exists. *See Marshall*, 986 F.2d at 1175. Suppression is also warranted when there are no standardized procedures or officers do not follow existing procedures, and the search was a pretext to locate evidence. *See Taylor*, 636 F.3d at 465.

D. The Inventory Search of the RV

In this case, Deputies Taylor and Schueller conducted the inventory search. This was consistent with the sheriff's office's policy to inventory all impounded vehicles and the standard practice of having one to two officers conduct such searches. The policy appears to be silent on timing and location of inventory searches. Deputy Taylor testified that inventories are completed at the scene if the vehicle is to be towed to the tow company's lot. In this case, the inventory was done at the sheriff's office's secure impound lot. At the scene, the vehicle involved (a midsize RV) was parked on the side of a county road with notable traffic. Because of Defendant's demeanor, Deputy Taylor felt it was important to transport her from the scene as soon as possible. This left one deputy at the scene to inventory the RV. The tow company was taking the RV to the sheriff's office's secure impound lot. I find that under these circumstances, it was reasonable for deputies to wait to inventory the vehicle at the impound lot.

Deputy Taylor testified that the inventory policy directs deputies to inventory any item that could be worth more than $25.00. The policy is silent about the search of containers, which does not make the search of containers unlawful. *See Wallace*, 102 F.3d 349. There is nothing in this record that shows the deputies failed to follow the policy. Defense counsel implied something was improper because the government attorney did not receive a copy of the impound record until prior to the hearing. I find there is no evidence to support any assertion of impropriety. The deputies completed an inventory form (Exhibit 2), which contains a list of several non-incriminating items of property. Each of those items appears to have a value of more than $25.00. It is unclear under what circumstances the deputies decided to look inside a chip bag that contained chips, and Defendant did not raise the issue. I find the deputies acted reasonably in looking inside Defendant's purse and the glasses case as both items could

have likely contained items worth more than $25.00. I credit Deputy Taylor's testimony that they stopped the inventory search because it seemed unreasonable, with the presence of so many plants, to continue the search. Such actions were also in line with the sheriff's office's inventory policy.

For these reasons, I find that the deputies conducted the inventory search within the policy and procedures of the sheriff's office and that the search was reasonable.

V. CONCLUSION

For the foregoing reasons, I RESPECTFULLY RECOMMEND that Defendant's motion to suppress (Doc. 11) be **denied**.

Objections to this Report and Recommendation, in accordance with 28 U.S.C. § 636(b)(1), Federal Rule of Criminal Procedure 59(b), and Local Criminal Rule 59, must be filed within fourteen days of the service of a copy of this Report and Recommendation; any response to the objections must be filed within seven days after service of the objections. A party asserting such objections must arrange promptly for the transcription of all portions of the record that the district court judge will need to rule on the objections. LCrR 59. Objections must specify the parts of the Report and Recommendation to which objections are made, as well as the parts of the record forming the basis for the objections. *See* Fed. R. Crim. P. 59. Failure to object to the Report and Recommendation waives the right to de novo review by the district court of any portion of the Report and Recommendation, as well as the right to appeal from the

findings of fact contained therein. *United States v. Wise*, 588 F.3d 531, 537 n.5 (8th Cir. 2009).

IT IS SO ORDERED this 10th day of February, 2017.

Kelly K.E. Mahoney
United States Magistrate Judge
Northern District of Iowa

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-1810

United States of America

Appellee

v.

Alauna Gaye Morris

Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Sioux City
(5:16-cr-04096-LTS-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Kelly did not participate in the consideration or decision of this matter.

April 08, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX D