

United States Court of Appeals
For the Eighth Circuit

No. 18-1707

United States of America

Plaintiff - Appellee

v.

Michael A. Green

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: February 14, 2019

Filed: July 12, 2019

Before SMITH, Chief Judge, BENTON and STRAS, Circuit Judges.

SMITH, Chief Judge.

Michael Green entered a conditional plea of guilty to possession with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A). Green conditioned his plea on his retaining the right to

appeal the district court's¹ denial of his motion to suppress evidence seized pursuant to an inventory search of his vehicle. He asserts on appeal that officers violated the Grandview, Missouri, Police Department's tow policy, and therefore the Fourth Amendment, when they ordered a tow for the disabled vehicle he occupied. He contends the district court should have suppressed inculpatory evidence obtained during the vehicle's inventory search. Upon review, we affirm the denial of the motion to suppress.

I. Background

On the morning of September 4, 2014, Grandview, Missouri Police Officer Andrew Bolin answered a call about a suspicious person at 14700 Pine View Drive. When he arrived on the scene, Officer Bolin found Green asleep in the driver's seat of a 1996 Saturn sedan with its hood and trunk open. The car was parked in front of a stop sign near a busy residential intersection. Officer Bolin ran the license plate. The plate came back associated with a 1988 Oldsmobile and was registered to a Katherine Gooch in Boonville, Missouri.

Green awoke and explained to Officer Bolin that he was staying at a nearby motel and that his car had broken down the night before. When Officer Bolin asked for his driver's license, Green produced only an identification card. Officer Bolin confirmed with dispatch that Green did not have a valid driver's license. Dispatch also informed him that Green was on supervision following convictions for burglary and possession of a controlled substance and was known to be armed.

Officer Bolin asked Green for consent to search the car. Green declined. Green told him that his girlfriend, Katherine Gooch, owned the car, and provided a phone

¹The Honorable Greg Kays, United States District Judge for the Western District of Missouri, adopting the report and recommendation of the Honorable Sarah W. Hays, United States Chief Magistrate Judge for the Western District of Missouri.

number, but he then said that the number belonged to a different girlfriend. Officer Bolin decided to have the car towed because the car was disabled on a public roadway, blocking an intersection, with improper license plates, and Green did not have a valid driver's license even if the car would have started.

Green wanted to remove some of his property from the car, but Officer Bolin would not release any property that was not clearly identifiable as belonging to Green. Officer Bolin issued Green two traffic citations and informed him that he was free to go. Officer Bolin conducted an inventory search and found a zip pouch containing \$500, a bubble pipe, and a baggie containing about three grams of methamphetamine. He also found two more bags containing 387 grams of methamphetamine. Green was arrested and later indicted for possession with intent to distribute methamphetamine. He filed a motion to suppress the evidence discovered during the inventory search.

Citing the police department tow policy's definition of a "Custody Tow," the district court determined that the tow policy gives an officer discretion to tow a vehicle when it is "disabled on a public street." *United States v. Green*, No. 4:15-cr-00249, 2017 WL 902907, at *1 (W.D. Mo. Mar. 7, 2017). The district court concluded that the tow of Green's disabled vehicle complied with the standardized towing procedures. Thus, Officer Bolin's possible investigatory motive in towing the car and conducting the inventory search did not matter because the car would have been searched anyway due to its lawful impoundment. Green pleaded guilty following the district court's denial of his motion to suppress. As part of a plea deal, Green reserved the right to appeal the denial of the suppression motion.

II. Discussion

On appeal, Green raises a compound issue: "Does the seizure of a vehicle and a purported inventory search violate the Fourth Amendment if the police officer involved does not follow the police department's tow policy and seizes the car

because he believes it might be stolen or contain stolen property?” Appellant’s Br. at 2. This appeal, as Green states it, posits that Officer Bolin violated the Fourth Amendment by towing the car that Green occupied. Green bases that contention on two conditions he believes were present at the time the car was towed: (1) Officer Bolin did not follow the police department’s tow policy, and (2) Officer Bolin’s real reason for towing the car was his suspicion it might be stolen or contain stolen property. Green disputes the district court’s interpretation of the tow policy as well as some of the court’s factual findings. He argues that the vehicle must have qualified as “abandoned” in order for this tow to have been properly classified as a “Custody Tow” under the department’s tow policy. He also claims Officer Bolin violated the policy by not allowing Green to call for a tow himself—an allowance he asserts the policy’s “Non-custody Tow” procedures mandate. He argues that this violation, coupled with the officer’s improper investigatory motive, rendered the subsequent inventory search unreasonable.

We review the district court’s factual findings for clear error and its legal conclusions *de novo*. *United States v. Sallis*, 920 F.3d 577, 581 (8th Cir. 2019). “We will affirm the district court ‘unless the denial of the motion is unsupported by substantial evidence, based on an erroneous interpretation of the law, or, based on the entire record, it is clear that a mistake was made.’” *Id.* (quoting *United States v. Gunnell*, 775 F.3d 1079, 1083 (8th Cir. 2015)).

“The central question in evaluating the propriety of an inventory search is whether, in the totality of the circumstances, the search was reasonable.” *United States v. Kennedy*, 427 F.3d 1136, 1143 (8th Cir. 2005). An inventory search is reasonable if it is “conducted according to standardized police procedures,” because doing so “vitiate[s] concerns of an investigatory motive or excessive discretion.” *United States v. Marshall*, 986 F.2d 1171, 1174 (8th Cir. 1993).

“[P]olice may exercise discretion to impound a vehicle, ‘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.’” *United States v. Petty*, 367 F.3d 1009, 1012 (8th Cir. 2004) (quoting *Colorado v. Bertine*, 479 U.S. 367, 375 (1987)). This requirement “ensure[s] that impoundments and inventory searches are not merely ‘a ruse for general rummaging in order to discover incriminating evidence.’” *Id.* (quoting *Florida v. Wells*, 495 U.S. 1, 4 (1990)). But a policy cannot feasibly give “clear-cut guidance in every potential impoundment situation.” *Id.* “As with an inventory search, an impoundment policy may allow some ‘latitude’ and ‘exercise of judgment’ by a police officer when those decisions are based on concerns related to the purposes of an impoundment.” *Id.* (quoting *Wells*, 495 U.S. at 4). Here, Green challenges Officer Bolin’s decision to order the impoundment of the vehicle as motivated by investigatory curiosity rather than public safety.

Upon review, we conclude that Green has not shown that Officer Bolin failed to follow the tow policy in a manner that renders the tow and subsequent search unreasonable. The policy in question is a portion of the Grandview Police Operations Manual. The manual provides Standard Operating Procedures for vehicle tows. It identifies two types of tows—Custody Tows and Non-Custody Tows. The policy provides the following definition of a “Custody Tow”:

Custody Tow - A vehicle is towed because it is parked illegally, stolen and recovered, abandoned, disabled on a public street, ordered removed by the Police Department or other authorized agent of the City because of a violation of law (including trespass to private property), vehicles impounded by the Police Department, and vehicles ordered removed from private or public property by the Municipal Court under the nuisance ordinances of the City. Tows resulting from accidents are custody tows if the operator is arrested or incapacitated to the extent that he is unable to request a tow service.

Appellant's Addendum at 1. Officer Bolin faced a factually complex scene in deciding to tow the car. These facts included: (1) the car was illegally parked in the lane of traffic; (2) the car's presence created a public safety hazard by impeding traffic; (3) the car was disabled and could not move on its own power; (4) vehicles approaching the intersection behind the car were forced to drive in the opposing lane of traffic to avoid hitting it; (5) the car's license plates were registered to another vehicle, in violation of the law; (6) Green did not possess a valid driver's license; and (7) Green had ostensibly been there for hours and had not arranged for the car's removal.

The facts surrounding the tow of the car that Green occupied meet the definition of "Custody Tow" in several respects—e.g., "parked illegally," "disabled on a public street," "ordered removed . . . because of a violation of law." Green argues that these facts, however, did not justify the tow because Green had not abandoned the car. Green favors an interpretation that would treat these facts as only applicable to an abandoned vehicle.

To support his interpretation of the tow policy, Green points to the "Towing Procedure for Custody Tows" that follows the definition. The policy first describes how to order a Custody Tow and how to complete a corresponding tow form, then it breaks up the procedures under subheadings for abandoned vehicles, accidents, arrested persons, and stolen/wanted vehicles. The relevant procedures read as follows:

1.3. Abandoned Vehicles - Employees of the Grandview Police Department may authorize the contract tow service to remove the following vehicles to a place of secure storage:

.....

1.3.2. Vehicles disabled to constitute an[] obstruction to traffic, and the person in charge of the vehicle is unable to provide for its removal.

1.3.3. Illegally parked vehicles placed in such a manner as to constitute a definite hazard or obstruction to the movement of traffic.

....

1.3.7. Under emergency circumstances where the vehicle restricts the use of a public street or highway.

1.3.8. Vehicles parked on a public street without license plates, with plates reported stolen or taken without the consent of the owner.

Appellant's Addendum at 2. We note that subheading 1.3. presents a departure from the policy's general construction: "1.4. Accidents," "1.5. Arrested Persons," and "1.6. Stolen/Wanted Vehicles" stand alone as subheadings, with procedural provisions following below them. By comparison, subheading 1.3. contains an explanatory addition, which supports two plausible interpretations of the policy: (1) the provisions under subheading 1.3. only apply to abandoned vehicles, as generally defined, that fall into one of the eight listed categories; or (2) the provisions actually define what constitute "Abandoned Vehicles" for purposes of the policy.

Green argues that "[t]he tow policy does not define what constitutes an abandoned vehicle" and emphasizes that "[t]he Grandview Municipal Code defines an abandoned vehicle as 'any *unattended* motor vehicle . . . subject to removal from public or private property as provided in this Article, whether or not operational.'" Appellant's Br. at 21–22 (quoting Grandview, Mo., Code of Ordinances art. IX, § 14-149 (Feb. 22, 2000)). Green asserts that since the car was not "unattended," Officer Bolin was instead required to abide by the policy's "Non-custody Tow" procedures. These procedures provide that "a citizen requesting assistance in removing their disabled vehicle may request any licensed tow service located within the City, and the

Department will attempt to contact them on behalf of the citizen.” Appellant’s Addendum at 4. Because Green requested assistance in procuring a private tow, he argues, Officer Bolin should have called for one on his behalf instead of impounding the vehicle.

The policy’s construction is admittedly not an exemplar of clarity, but the district court’s interpretation of the policy as authorizing a Custody Tow given the operative facts was reasonable. First, the Custody Tow definition distinguishes “abandoned” vehicles from those that are “parked illegally,” “disabled on a public street,” and “ordered removed” for violations of law, but there are no Custody Tow provisions that address the latter three categories except under the ambiguous subheading of “Abandoned Vehicles.” Second, there are no Custody Tow provisions for trespassing or nuisance vehicles whatsoever, despite their explicit inclusion in the Custody Tow definition. This suggests that the Custody Tow procedures outlined in the policy should not be considered exhaustive. Third, as Green concedes, the policy itself does not precisely define “abandoned.” Instead, the policy gives examples of abandoned vehicles in subsections 1.3.1. through 1.3.8. A reasonable interpretation of the policy provides officers a measure of discretion to determine when a vehicle meets the criteria illustrated by the examples. *See Petty*, 367 F.3d at 1012 (finding that a department policy which allowed for police discretion to determine whether a driver was “available” or a vehicle was “abandoned” constituted sufficiently standardized procedures). Viewing the record facts, we conclude Officer Bolin’s decision to inventory and tow the vehicle was based on “something other than suspicion of evidence of criminal activity.” *Bertine*, 479 U.S. at 375. We agree with the district court that Officer Bolin reasonably ordered the impoundment pursuant to the police department policy’s “Custody Tow” definition.

The decision to impound a vehicle need not “be made in a ‘totally mechanical’ fashion” because “[i]t is not feasible for a police department to develop a policy that provides clear-cut guidance in every potential impoundment situation.” *Petty*, 367

F.3d at 1012 (quoting *Wells*, 495 U.S. at 4). When Officer Bolin arrived at the scene, Green was “passed out” in the driver’s seat of the disabled car. Tr. of Hr’g on Mot. to Suppress at 8, *United States v. Green*, No. 4:15-cr-00249 (W.D. Mo. Dec. 20, 2016), ECF No. 42. He knew Green did not have a driver’s license and that he did not own the car. Though the car was inoperable and constituted a public safety hazard, Green did not appear to have taken any significant steps toward procuring a tow. He gave confused, if not evasive, answers to the officer’s questions. Officer Bolin’s refusal to release the vehicle to Green was not unreasonable under these circumstances. *See United States v. Long*, 906 F.3d 720, 725 (8th Cir. 2018), *petition for cert. filed*, No. 18-9801 (U.S. June 13, 2019).

In *Long*, we upheld the decision to immediately impound a rental car that had been parked without permission in a homeowner’s backyard. *Id.* at 724. Before the tow truck arrived, the driver returned to the vehicle and explained to officers that he had parked there to avoid being seen while he visited the nearby home of a girlfriend. *Id.* at 722. Although he claimed to have permission to drive the vehicle, which had been rented in someone else’s name, he did not provide keys and he could not reach the purported renter. *Id.* We found that his presence did not “lessen[] the need or the propriety of towing the vehicle and performing an inventory search” since his “behavior and explanations” had “left officers with little assurance that it would have been appropriate to release the vehicle to his control.” *Id.* at 725.

In this case, it is undisputed that the vehicle required towing, regardless of who ordered the tow. Officer Bolin decided he needed to act immediately, and he reasonably questioned the propriety of releasing the vehicle to Green’s control. His actions were consistent with his role as a community caretaker, and his decision was largely “based on concerns related to the purposes of an impoundment.” *Petty*, 367 F.3d at 1012; *see also id.* at 1011–12 (“Impoundment of a vehicle for the safety of the property and the public is a valid ‘community caretaking’ function of the police.” (quoting *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)); *South Dakota v.*

Opperman, 428 U.S. 364, 369 (1976) (“The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.”).

We also conclude that Officer Bolin did not violate the “Non-custody Tow” provisions that Green argues must govern this case. That portion of the policy explicitly grants discretion to officers in dealing with disabled vehicles: “Whenever an officer considers it necessary to remove a vehicle, he or she may consult with the owner to obtain a towing firm of their choice if time constraints allow.” Appellant’s Addendum at 4. If that course of action is for some reason unsatisfactory, “the officer will contact the city’s contract tow service for immediate removal, and remain at the scene until the vehicle is removed.” *Id.* Officer Bolin decided a tow was necessary, and he knew Green was not the car’s owner. Instead of taking time to track down Gooch—the car’s owner—Officer Bolin decided to order the immediate removal of her vehicle, which was broken down, parked in front of an intersection, and bearing license plates registered to a different car altogether. Even as Officer Bolin was talking to Green, other vehicles were forced to drive around them, into the opposing traffic lane, to avoid the obstruction the disabled vehicle caused. The officer was justifiably concerned about the immediate threat the vehicle posed to public safety, and he acted within the discretion afforded him by the policy in ordering its immediate removal. Even if this were considered a “Non-custody Tow,” the policy provides that “[a]ll vehicles towed at the direction of a police officer shall undergo an inventory of contents.” *Id.* Officer Bolin followed the policy by ordering the inventory search.

We conclude that the decision to impound the vehicle complied with the police department’s tow policy. Because the impoundment was valid, and because Officer Bolin’s “sole purpose” for impounding the vehicle was not to investigate criminal activity, *Petty*, 367 F.3d at 1013, the corresponding inventory search was reasonable.

III. *Conclusion*

We accordingly affirm the district court's denial of Green's motion to suppress.

United States Court of Appeals

For The Eighth Circuit

Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24,329

St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

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July 12, 2019

Ms. Rebecca L. Kurz
FEDERAL PUBLIC DEFENDER'S OFFICE
Suite 300
818 Grand Avenue
Kansas City, MO 64106-0000

RE: 18-1707 United States v. Michael Green

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review [Federal Rules of Appellate Procedure](#) and the [Eighth Circuit Rules](#) on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

YML

Enclosure(s)

cc: Mr. Don Michael Green
Mr. Michael A. Green
Mr. Todd M. Schultz
Ms. Paige Wymore-Wynn

District Court/Agency Case Number(s): 4:15-cr-00249-DGK-1

United States Court of Appeals

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July 12, 2019

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RE: 18-1707 United States v. Michael Green

Dear Sirs:

A published opinion was filed today in the above case.

Counsel who presented argument on behalf of the appellant and appeared on the appellant's brief was Rebecca L. Kurz, AFPD, of Kansas City, MO.

Counsel who presented argument on behalf of the appellee and appeared on the appellee's brief was Don Michael Green, AUSA, of Kansas City, MO.

The judge who heard the case in the district court was Honorable David Gregory Kays. The judgment of the district court was entered on March 22, 2018.

If you have any questions concerning this case, please call this office.

Michael E. Gans
Clerk of Court

YML

Enclosure(s)

cc: MO Lawyers Weekly

District Court/Agency Case Number(s): 4:15-cr-00249-DGK-1

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

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) Case No. 15-00249-01-CR-W-DGK
)
)
MICHAEL A. GREEN,)
)
)
Defendant.)

REPORT AND RECOMMENDATION

This matter is currently before the Court on defendant Green's Motion to Suppress Evidence. For the reasons set forth below, it is recommended that this motion be denied.

I. INTRODUCTION

On July 29, 2015, the Grand Jury returned a one count indictment against defendant Michael A. Green. The indictment charges that on September 4, 2014, defendant Green knowingly possessed with the intent to distribute fifty grams or more of methamphetamine.

On December 14, 2016, an evidentiary hearing was held on defendant's motion to suppress. Defendant Green was represented by Assistant Federal Public Defender Todd M. Schultz. The Government was represented by Assistant United States Attorney D. Michael Green. The Government called Detective Andrew Bolin of the Grandview Police Department as a witness. The defense called no witnesses to testify.

II. FINDINGS OF FACT

On the basis of the evidence adduced at the evidentiary hearing, the undersigned submits the following proposed findings of fact:

1. On September 4, 2014, at approximately 9:20 a.m., Detective Andrew Bolin, then a patrol officer, was dispatched to the area of 14700 Pine View Drive, Grandview, Missouri, on a suspicious person call. (Tr. at 3) The calling party reported that an individual had approached their residence and requested a drink. (Tr. at 3) The calling party was concerned due to a recent burglary. (Tr. at 3)

2. Detective Bolin described the area as residential. (Tr. at 4) Pine View Drive is a residential street and 147th Street, the cross street, is essentially a thoroughfare. (Tr. at 4) At this time of the morning, 147th Street was relatively busy. (Tr. at 4) When Detective Bolin got to the intersection of Pine View Drive and 147th Street, he observed a sedan parked at the intersection, in front of the stop sign. (Tr. at 5) The hood and trunk of the sedan were up and tools were strewn about the vehicle. (Tr. at 5)

3. Detective Bolin parked behind the sedan, got out of his patrol vehicle and found a man passed out in the driver's seat of the sedan. (Tr. at 5, 7-8) Detective Bolin had dispatch run the license plate on the sedan and it responded to a 1988 Oldsmobile. (Tr. at 11) However, the vehicle was actually a 1996 Saturn. (Tr. at 11) Detective Bolin testified that it is illegal to operate a vehicle on the public streets with a license plate that does not go to that particular vehicle. (Tr. at 11) Detective Bolin also provided dispatch with the VIN (Vehicle Identification Number) from the vehicle. (Tr. at 11-12) Dispatch could find no record of this VIN. (Tr. at 49) Detective Bolin found this unusual. (Tr. at 49)

4. Detective Bolin spoke to the man in the vehicle. (Tr. at 12) The man identified himself as Michael Green. (Tr. at 8) Green told Detective Bolin that his car had broken down off the interstate the night before and that he was staying at the Econo-Lodge. (Tr. at 12-13) Detective Bolin testified that there was no Econo-Lodge in the area. (Tr. at 12) Detective Bolin asked Green for some identification and Green provided him with a Missouri identification card; he did not have a driver's license. (Tr. at 13) Detective Bolin also determined through dispatch that Green did not have a driver's license. (Tr. at 13) Detective Bolin testified that it is illegal to operate a vehicle on the public streets without a valid driver's license. (Tr. at 13-14) Dispatch also advised that Green was under state supervision for possession of a controlled substance and burglary and that he was known to be armed. (Tr. at 16) Additional officers arrived on the scene. (Tr. at 14-15)

5. Detective Bolin asked defendant Green to get out of the vehicle. (Tr. at 16) Detective Bolin was concerned by the story he was receiving from Green. (Tr. at 16) Green was in a high-crime neighborhood in Grandview in a car that was not registered to him with plates that did not belong on the car. (Tr. at 16) Green said that the car belonged to his girlfriend and provided a telephone number for a girlfriend, but then said that the phone number he provided was not the girlfriend who owned the vehicle. (Tr. at 18) Green told Detective Bolin that he had some friends coming to get him, but he would not provide any names. (Tr. at 20) Green was unable to provide any proof of insurance for the vehicle. (Tr. at 19)

6. Detective Bolin asked defendant Green if there was anything illegal in the vehicle and Green told him that there was not. (Tr. at 45) Detective Bolin asked Green for consent to search the vehicle. (Tr. at 17) Green declined. (Tr. at 17)

7. Detective Bolin decided to have the vehicle towed. (Tr. at 19, 21-22) The factors Detective Bolin took into account in his decision included that the vehicle was broken down on a public roadway, the vehicle was parked in front of an intersection,¹ the vehicle was on a public roadway without displaying proper plates, defendant Green was an invalid driver and Green was unable to provide any proof of insurance. (Tr. at 19, 22) Green implied to Detective Bolin that he had already made arrangements for a tow, but when Detective Bolin tried to confirm that by obtaining the tow company's name or number, Green declined to provide that information. (Tr. at 22-23) The vehicle had been broken down at this intersection for several hours. (Tr. at 47-48)

8. The Grandview Police Department Standard Operating Guidelines for Custody and Non-Custody Tows provides the following definition for a Custody Tow: "A vehicle is towed because it is ... disabled on a public street" (Government's Ex. 2 at 1) Detective Bolin testified that based on his judgment as an officer and given the police policy in place, the vehicle had to be towed. (Tr. at 48) The tow policy further provides that an inventory of the contents of a vehicle must be completed before a vehicle is towed. (Tr. at 22; Government's Ex. 2 at ¶ 3.1)

9. Defendant Green was presented with two traffic citations and was told that he was not under arrest. (Tr. at 25-26) Green eventually left the scene. (Tr. at 27)

10. Officers performed an inventory search of the vehicle. (Tr. at 27) Inside a brown zippered pouch, officers found approximately \$500 in cash, a bubble pipe which is commonly used to ingest methamphetamine, and approximately three grams of methamphetamine. (Tr. at 30-31; Government's Exs. 9-12) Officers also found two baggies containing methamphetamine within what appeared to be a trash bag. (Tr. at 32; Government's Exs. 13-14) The two baggies contained over 400 grams of methamphetamine. (Tr. at 33)

11. A patrol officer was sent to try and locate defendant Green who had left the scene. (Tr. at 33-34) Green was found at a nearby gas station and placed under arrest. (Tr. at 34)

III. DISCUSSION

Defendant Green seeks to "suppress all evidence and testimony relating to such evidence

¹Other vehicles were being forced to drive in the opposing lane of traffic in order to avoid hitting defendant Green's vehicle. (Tr. at 23-24)

that was obtained from the search of Mr. Green's vehicle because such search violated Mr. Green's rights under the Fourth Amendment to the United States Constitution." (Motion to Suppress Evidence (doc #25) at 1) According to defendant, the search cannot be justified as an inventory search because the decision to tow the vehicle and inventory its contents was not conducted pursuant to any standardized departmental policy, but was instead made to facilitate an exploratory search for evidence of criminal activity that is prohibited by the Fourth Amendment. (Id. at 3) Defendant argues that because his vehicle was not abandoned or left unattended and because he had the intention of arranging for its removal, the officers' decision to tow the vehicle was contrary to state law. (Id.)

As set forth by the United States Supreme Court in South Dakota v. Opperman, 428 U.S. 364 (1976):

In the interests of public safety and as part of what the Court has called "community caretaking functions," ... automobiles are frequently taken into police custody. ... To permit the uninterrupted flow of traffic ..., disabled ... vehicles will often be removed from the ... streets at the behest of police engaged solely in caretaking and traffic-control activities. ... The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.

Id. at 368-69 (citation omitted). Accord United States v. Harris, 795 F.3d 820, 822 (8th Cir. 2015). See also State v. Kelley, 678 S.W.2d 852, 854 (Mo. Ct. App. 1984) ("impoundment of a vehicle, and a subsequent inventory, without a warrant, is justified ... if the location or condition of the vehicle is such that the safety or interest of the public requires its removal and police intervention is the only viable option.")

Defendant Green's vehicle was broken down on a public roadway in front of an intersection causing other vehicles to be forced to drive in the opposing lane of traffic in order to avoid hitting it. (See Fact No. 7, supra) Despite being broken down for several hours, the driver

of the vehicle apparently had made no arrangements to have the vehicle towed. (Id.) The Grandview Police Department Standard Operating Guidelines for Custody and Non-Custody Tows provides the following definition for a Custody Tow: “A vehicle is towed because it is ... disabled on a public street” As set forth above, defendant Green’s vehicle certainly falls under the definition of a custody tow as it had been broken down at this intersection for several hours. (See Fact No. 8, supra) Detective Bolin testified that based on his judgment as an officer and given the police policy in place, the vehicle had to be towed. (Id.) The tow policy further provides that an inventory of the contents of a vehicle must be completed before a vehicle is towed. (Id.)

“The inventory search exception to the Fourth Amendment’s warrant requirement permits law enforcement to inventory the contents of a vehicle that is lawfully taken into custody, even without a warrant or probable cause to search.” United States v. Garreau, 658 F.3d 854, 857 (8th Cir. 2011). An inventory search of a vehicle is valid if it is conducted pursuant to standardized police procedures and not done in bad faith or for the sole purpose of investigation. See Colorado v. Bertine, 479 U.S. 367, 372 (1987). In United States v. Arrocha, 713 F.3d 1159 (8th Cir. 2013), the Eighth Circuit Court of Appeals provided the following guidance, which appears pertinent in this case:

Arrocha asserts on appeal that the police were merely rummaging ... in order to discover incriminating evidence. ... Although the disturbance calls gave the officers reason to suspect there might be a gun in Arrocha’s car, when there is a valid reason to impound a vehicle, “[t]he presence of an investigative motive does not invalidate an otherwise valid inventory search.” United States v. Garner, 181 F.3d 988, 991 (8th Cir. 1999), cert. denied, 528 U.S. 1119 (2000).

Arrocha, 713 F.3d at 1163-64. See also United States v. Harris, 795 F.3d 820, 822 (8th Cir. 2015) (“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.””)(quoting United States v. Marshall, 986 F.2d 1171, 1176 (8th Cir. 1993)); United States v. Garreau, 658 F.3d 854, 858 (8th Cir. 2011).

The Court finds that the decision to tow defendant Green’s vehicle was made on the basis of safety and that Detective Bolin had no other viable alternative to having the vehicle towed. The Court further finds that the inventory search of the vehicle was conducted pursuant to standardized police procedures and that it was not done in bad faith of for the sole purpose of investigation. There is no constitutional violation.

IV. CONCLUSION

Given the foregoing, it is

RECOMMENDED that the Court, after making an independent review of the record and applicable law, enter an order denying defendant Green’s Motion to Suppress Evidence (doc #25).

Counsel are reminded they have fourteen days after being served a copy of this Report and Recommendation within which to file and serve objections to same. A failure to file and serve objections by this date shall bar an attack on appeal of the factual findings in this Report and Recommendation which are accepted or adopted by the district judge, except on the grounds of plain error or manifest injustice.

/s/ *Sarah W. Hays*
SARAH W. HAYS
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

Pending before the Court are Defendant's Motion to Suppress (Doc. 25), the Government's opposition (Doc. 26), United States Magistrate Judge Sarah W. Hays's Report and Recommendation (Doc. 43), and Defendant's objections (Doc. 49). After carefully reviewing Judge Hays's report and conducting an independent review of the applicable law and record, *see* L.R. 74.1(a)(2), the Court ADOPTS the report and DENIES Defendant's motion.

Having reviewed the transcript from the suppression hearing (Doc. 42) and the admitted exhibits, the Court finds as follows. On September, 4, 2014, Detective Andrew Bolin (“Bolin”) was dispatched to the area of 14700 Pine View Drive, Grandview, Missouri. Bolin observed Defendant’s vehicle stopped in the roadway in front of a stop sign. When questioned by Bolin, Defendant explained his vehicle had broken down the night before. Defendant also stated the vehicle belonged to his girlfriend.

After contacting dispatch, Bolin determined Defendant did not have a valid driver's license, he was under state supervision for possession of a controlled substance and burglary, and he was known to be armed. Defendant was unable to provide proof of insurance for the vehicle.

The Grandview Police Department Standard Operating Guidelines for Custody and Non-

Custody Tows provides a vehicle can be towed because it is “disabled on a public street” and must be completed before a vehicle is towed. Gov’t Ex. 2 at 1. Bolin decided to tow the vehicle after considering the following factors: the vehicle was broken down on a public roadway; other vehicles were forced to drive in the opposing lane of traffic to avoid Defendant’s vehicle; the vehicle did not display proper plates; Defendant did not have a driver’s license; and Defendant could not provide proof of insurance.

Before towing the car, officers performed an inventory search of the vehicle and found cash, drugs, and drug paraphernalia. Defendant now seeks to suppress all evidence and testimony relating to the evidence obtained through the search of the vehicle.

An inventory search is valid if it is conducted pursuant to standard police procedures and not done in bad faith or for the sole purpose of investigation. *Colorado v. Bertine*, 479 U.S. 367, 372 (1987). “The presence of an investigative motive does not invalidate an otherwise valid inventory search.” *United States v. Garner*, 181 F.3d 988, 991 (8th Cir. 1999).

The Court finds the decision to tow Defendant’s vehicle was made on the basis of safety and the inventory search was made pursuant to standardized police procedures. Accordingly, the Court ADOPTS Judge Hays’s Report and Recommendation (Doc. 43) and DENIES Defendant’s Motion to Suppress Evidence (Doc. 25).

IT IS SO ORDERED.

Dated: March 7, 2017

/s/ Greg Kays
GREG KAYS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-1707

United States of America

Appellee

v.

Michael A. Green

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:15-cr-00249-DGK-1)

ORDER

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

September 03, 2019

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

/s/ Michael E. Gans



OPERATIONS MANUAL

405.1

**Custody and Non-Custody Tows
Standard Operating Guidelines (SOG)
Grandview Police Department**

Issue Date: 5/3/89
Effective Date: 4/3/95
Revision Date:
Review Date: 4/1/00, 9/15/06
Accreditation Index:
Rescinds: GO 89-2
Part: Operations
Chapter: Traffic Operations

Policy

The Department hereby establishes policy for processing custody and non-custody vehicle tows by its employees within the constraints imposed by Municipal Ordinance and Missouri State Law.

Definitions

Custody Tow - A vehicle is towed because it is parked illegally, stolen and recovered, abandoned, disabled on a public street, ordered removed by the Police Department or other authorized agent of the City because of a violation of law (including trespass to private property), vehicles impounded by the Police Department, and vehicles ordered removed from private or public property by the Municipal Court under the nuisance ordinances of the City. Tows resulting from accidents are custody tows if the operator is arrested or incapacitated to the extent that he is unable to request a tow service.

Non-Custody Tow - A vehicle is towed at the request of a citizen for assistance in the removal of his/her vehicle.

Procedure

1. TOWING PROCEDURE FOR CUSTODY TOWS

- 1.1. The officer requesting the custody tow will notify Communications that custody tow service is needed. (Communications will be responsible for notification to the City's contractual tow service.)
- 1.2. The officer will complete the Crime Inquiry and Inspection Report/Authorization to Tow form [DOR-4569 (8-96)] per the instructions for that form.
- 1.3. Abandoned Vehicles - Employees of the Grandview Police Department may authorize the contract tow service to remove the following vehicles to a place of secure storage:
 - 1.3.1. Vehicles left unattended on the right-of-way for more than forty-eight hours.
 - 1.3.2. Vehicles disabled to constitute and obstruction to traffic, and the person in charge of the vehicle is unable to provide for its removal.
 - 1.3.3. Illegally parked vehicles placed in such a manner as to constitute a definite hazard or obstruction to the movement of traffic.
 - 1.3.4. Where a vehicle is in such disrepair that being operated on the streets would create a serious safety hazard.
 - 1.3.5. Any vehicle police have reasonable grounds to believe has been involved in a hit-and-run accident.
 - 1.3.6. A vehicle whose operator is arrested.
 - 1.3.7. Under emergency circumstances where the vehicle restricts the use of a public street or highway.
 - 1.3.8. Vehicles parked on a public street without license plates, with plates reported stolen or taken without the consent of the owner.
 - 1.3.9. When a vehicle is left abandoned on private property the responsibility to have, it removed is that of the person responsible for ownership or management of the property.
- 1.4. Accidents
 - 1.4.1. Tows involving accidents will be handled as non-custody tows and no tow report is needed, unless the driver is arrested or transported for medical care and a qualified passenger is not available.
- 1.5. Arrested Persons
 - 1.5.1. If permission is obtained from the driver/owner and the Authorization Not to Tow Form is completed the vehicle may be left parked if in an area that it does not create a traffic hazard. The windows of the vehicle will be closed and the doors locked.

1.5.2. In the event the driver/owner is arrested and the vehicle is impounded the following steps will be taken:

1.5.2(a). If the vehicle is needed for evidence or a hold is requested by another agency, it will be towed to the police garage or tow lot at their discretion.

1.5.2(b). The tow report shall be completed

1.5.2(c). The vehicle may be released to a responsible/qualified person as designated by the owner. This shall only be done when the owner/operator has the ability to make a sound and reasonable decision to release the vehicle. Officers should take into consideration the subject's mental state and any degree of alcohol or drug usage.

1.6. Stolen / Wanted Vehicles

1.6.1. Vehicles Stolen and Recovered in Grandview

1.6.1(a). Such vehicles should be processed by the recovering officer and released at the scene whenever possible. The trunk and glove box shall be checked before release.

1.6.1(b). If not processed, the patrol supervisor shall decide whether to hold the vehicle for evidence or release it to the owner at the scene.

1.6.1(c). If held for evidence, the detective supervisor shall be notified.

1.6.2. Vehicles stolen from Grandview and recovered in another jurisdiction.

1.6.2(a). If recovered by an agency in the metropolitan area a hold shall be placed on the vehicle.

1.6.2(b). If recovered outside the metropolitan area the patrol sergeant shall determine if a hold shall be placed on the vehicle. If there is no hold, notify the owner for necessary arrangements for release of the vehicle.

1.6.2(c). The Detective Unit supervisor shall be notified if it is during working hours.

1.6.3. Vehicles Stolen from an outside jurisdiction and recovered in Grandview.

1.6.3(a). The dispatcher shall notify the reporting agency.

1.6.3(b). The vehicle may be towed by the City's contract tow service.

1.6.3(c). The reporting agency may request a hold to be placed on the vehicle for processing.

1.6.3(d). The vehicle may be released to the owner at the scene if time constraints allow. The trunk and glove box will be checked before release of the vehicle.

1.6.4. Any vehicle used in the commission of a crime in Grandview may be towed at the discretion of a detective or shift supervisor to the police garage and secured for processing. Evidence tape will be placed between the two bays and not removed until a detective or responsible officer authorizes its release.

1.6.5. Seizures

1.6.5(a). Vehicles used about illegal manufacture, transportation, sale, or distribution of a controlled substance may be seized.

1.6.5(b). Vehicles subject to seizure shall be towed to the tow lot, police garage, or City maintenance garage as determined by the Patrol Sergeant.

1.6.5(c). The Detective Unit shall be notified of any vehicle impounded for possible forfeiture.

2. TOWING PROCEDURE FOR NON-CUSTODY TOWS

2.1. A citizen requesting assistance in removing their disabled vehicle may request any licensed tow service located within the City, and the Department will attempt to contact them on behalf of the citizen.

2.2. In the event, the citizen does not have a specified request for assistance, the Department member will advise the dispatcher to contact the City's contractual tow service. Officers shall not use their patrol cars to pull any vehicle. Officers may, in properly equipped vehicles, push vehicles from the traveled portion of the roadway.

2.3. Disabled Vehicles.

2.3.1. Whenever an officer considers it necessary to remove a vehicle, he or she may consult with the owner to obtain a towing firm of their choice if time constraints allow.

2.3.2. If this is not satisfactory the officer will contact the city's contract tow service for immediate removal, and remain at the scene until the vehicle is removed.

2.4. Accidents

2.4.1. Where a tow is needed at an accident scene, officers will attempt to determine if the owner or driver of the vehicle has a preference of Tow Company.

2.4.2. If the owner or driver has no preference, the City's contract company shall be used.

3. VEHICLE INVENTORY

3.1. All vehicles towed at the direction of a police officer shall undergo an inventory of contents.

3.2. The inventory shall be conducted by the officer who completes the tow report.

3.2.1. A stolen vehicle may be inventoried by Detective personnel if it is towed to the station and protected for evidence.

3.3. The inventory is conducted for protecting the personal property of persons whose vehicles are towed under circumstances where they cannot arrange for the safekeeping of items contained in the vehicle.

3.4. Vehicles shall be inventoried before removal from the scene unless the vehicle is being towed to the police garage.

3.5. The scope of the inventory shall include the interior of the vehicle and areas, which can be readily entered without the use of force.

3.5.1. If a container is located during the inventory search, whose contents officers determine they are unable to ascertain from examining the exterior, officers may open such containers and examine the contents.

3.5.2. If force is required to inventory a vehicle, the Patrol Sergeant shall be contacted.

3.6. The contents discovered during the course of the inventory will normally remain in the vehicle.

3.7. Contraband, evidence, and items of great value not properly protected while at the storage facility shall be removed by the officer conducting the inventory and shall be placed into the Property Room.

3.7.1. Such items should be listed on the property section of the Tow Report and noted that items were removed.

4. VEHICLE OWNER NOTIFICATION

4.1. Upon towing of any vehicle the Records Unit Supervisor shall make inquiry with NCIC and MULES to determine if the vehicle has been reported stolen. 4.1(a). The Records Unit Supervisor shall see that a report is submitted to the Missouri Director of Revenue as required by sections 304.155 and 304.157 of the Revised Statutes of Missouri, and Section 14-150 of the Grandview City Code, within five (5) working days of the towing of the vehicle.

4.1(b). Within three (3) working days after impoundment the Records Unit Supervisor shall diligently inquire as to the ownership of any unredeemed vehicle and in all cases shall mail notice of vehicle impoundment to the registered owner thereof by certified mail. The Sgt., investigations unit, shall make every effort to contact the owner by phone and document contact by supplemental report.. Said notice shall notify the owner of the following:

- The date the vehicle was towed;
- The location of the vehicle;
- The process to have the vehicle released;

- The right of the person who towed the vehicle to obtain a certificate of title on the vehicle if the towing and storage charges are not paid;
- That the owner has the opportunity to dispute the tow charge by immediately conferring with the senior officer in charge at police headquarters;
- That in the event the conference with the senior police officer does not resolve the dispute, he shall be entitled to a hearing before Chief of Police if requested within fifteen days of being notified of the impoundment.

4.2. A vehicle not claimed within sixty (60) days from the date of the registered letter may be disposed of by the City's tow contract company.

5. RIGHT OF APPEAL ABANDONED VEHICLES (GRANDVIEW MUNICIPAL CODE 14.149B)

5.1. If the owner or authorized operator of the motor vehicle cannot be ascertained or located, the notice pending impoundment shall be placed in a conspicuous spot on the vehicle for seventy-two hours.

5.2. An owner or authorized operator may request a hearing within the seventy-two hour notice period.

6. RIGHT OF APPEAL OF UNREDEEMED VEHICLES (GRANDVIEW MUNICIPAL CODE 14.150B)

6.1. Within three working days after impoundment, the Chief of Police or his authorized representative shall diligently inquire as to the ownership of any unredeemed vehicle.

6.2. Every effort shall be made to notify an owner by telephone and certified mail.

6.3. The notice shall advise the owner or authorized operator of the location of the towed vehicle.

6.4. The notice shall advise the owner or authorized operator of the right to dispute the tow charge immediately conferring with the senior officer in charge at police headquarters.

6.5. If unresolved, the owner/authorized operator may request a hearing with the City Finance Director.

Charles Iseman
Chief of Police