

**UNPUBLISHED**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DARCY JAY BETTERTON,

Defendant.

No. CR03-3014-MWB

**REPORT AND RECOMMENDATION  
ON MOTION TO SUPPRESS**

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This matter is before the court on a motion to suppress evidence and supporting brief (Doc. No. 17) filed October 6, 2003, by the defendant Darcy Jay Betterton (“Betterton”). After receiving an extension of time from the court, the plaintiff (the “Government”) resisted the motion on October 21, 2003 (Doc. Nos. 21 & 22). The Government later submitted a copy of the videotape from the traffic stop giving rise to this action, and a transcript of the videotape (Doc. No. 23).

Pursuant to the trial scheduling and management order, motions to suppress in this case were assigned to the undersigned United States Magistrate Judge for the filing of a report and recommended disposition. Accordingly, the court held a hearing on the motion on November 21, 2003. Assistant U.S. Attorney Kevin Fletcher appeared on behalf of the Government. Betterton appeared in person with his attorney, Assistant Federal Defender Robert Wichser. The Government offered the testimony of Carroll, Iowa, police officers Jason Fett and Kevin Fleecs. The following exhibits were admitted into evidence without objection: **Gov’t Ex. 1A**, videotape of the traffic stop on 11/20/02 (*see* Doc. No. 23);

**Gov't Ex. 1B**, transcript from the videotape (*id.*); **Gov't Ex. 2**, Carroll Police Department inventory policy; **Gov't Ex. 3**, Tow inventory dated 11-20-02 in Case #02-11488; and **Gov't Ex. 4**, photo of the area where the traffic stop occurred on 11/20/02. The motion is now fully submitted and ready for consideration.

### ***I. FINDINGS OF FACT***

The relevant facts are not in dispute. On November 20, 2002, Officer Jason Fett of the Carroll, Iowa, Police Department saw a red 1992 Pontiac driving on Grant Road in Carroll. He noticed the vehicle had a crack in the windshield that passed directly in front of the driver's line of sight and continued across the entire windshield. Officer Fett pulled the vehicle over at 3:36 p.m.<sup>1</sup>, in approximately the 900 block of Grant Road, intending to cite the driver for the equipment violation. The vehicle's occupant identified himself as Betterton, and stated he did not have a driver's license because his license had been suspended. He provided his date of birth so Officer Fett could verify his license status. Betterton stated the car was owned by his girlfriend, Pam Jones, and he had taken the car while Jones was sleeping.

Betterton waited in the Pontiac while Officer Fett returned to his patrol car to check on Betterton's driver's license status. While he was waiting for the dispatcher to call him back, Officer Fett called Officer Fleecs and asked him to come to the scene to assist in the traffic stop. Officer Fett testified he planned to arrest Betterton for driving under suspension, and he planned to have the vehicle towed because it was pulled over in a "no parking" zone and would be a safety hazard if left in that location. Officer Fett testified

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<sup>1</sup>The time Betterton was pulled over is also the time entered on an incident report prepared by the officers. The incident report indicates a narcotics investigation was started at 3:36 p.m. Officer Fett testified the time he entered on the report was the earliest time he became aware of Betterton, because that was the earliest possible time any investigation could have begun.

the decision to impound the vehicle was solely within his discretion, and there was no written departmental policy specifying the circumstances when vehicles could or should be impounded.

When Officer Fleecs arrived at the scene, Officer Fett asked Betterton to step out of the Pontiac and walk to the rear of the car. The officer placed Betterton under arrest at 3:54 p.m.<sup>2</sup>, patted him down for weapons, and put him into the back of his patrol car. He drove Betterton to the Carroll police station, where Betterton was booked for driving under suspension, and a repair notice was issued for the windshield. Betterton tried to contact a couple of people to come pick him up and pick up the vehicle, but was unable to reach anyone. After he signed the citation and repair notice, Betterton was released.

Officer Fleecs had remained at the scene of the traffic stop to await the arrival of the tow truck. The standard procedure of the Carroll Police Department is to tow impounded vehicles to a secure bay at the police station for purposes of an inventory search. In accordance with that procedure, the Pontiac was towed to the secure bay. The Carroll Police Department has a written policy concerning the inventory of impounded vehicles. *See* Gov't Ex. 2. The written policy requires all impounded vehicles to be inventoried completely. The policy provides, *inter alia*, "The inventory shall be written and shall include all articles and containers in the vehicle, and shall include a list of the contents of each container in the vehicle. Each container shall be opened unless the contents of a particular container are evident from its exterior." *Id.*

Pursuant to this policy, Officers Fett and Fleecs began to inventory the contents of the Pontiac. In the back seat, the officers located a black bag similar to a computer or laptop bag. Officer Fleecs unzipped the bag, and found another zipped bag inside. Officer

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<sup>2</sup>The time on the arrest report reflects the time the officers called Dispatch to report they were placing Betterton under arrest.

Fleecs unzipped the second bag and located a quantity of drugs. At that point, Officer Fett left to prepare a warrant for Betterton's arrest for possession of a controlled substance with intent to deliver, while Officer Fleecs completed the inventory of the vehicle.

Both of the officers testified that prior to the traffic stop, they had never encountered Betterton previously, and they knew nothing about prior encounters he may have had with law enforcement. Officer Fleecs recalled hearing Pam Jones's name before in connection with a charge for possession of drug paraphernalia, and he mentioned at the scene of the traffic stop that a warrant had been issued for Jones. Officer Fleecs was not involved in Jones's case, but had heard about it from another officer.

Both officers also testified that prior to finding the black bag in the back seat of the vehicle, they never thought the investigation related to anything more than a routine traffic stop.

At some point before the inventory was commenced, an individual named Dana Marie Vonnahme arrived at the Carroll police station to pick up the Pontiac. She did not have money to pay the tow bill, and she was not the registered owner of the vehicle. Officer Fett told Vonnahme that he had to inventory the vehicle pursuant to departmental policy before it would be released.

## ***II. ANALYSIS***

Betterton argues the inventory search was a pretext for a drug investigation and the search violated his Fourth Amendment rights. He seeks to suppress all items found during the search and all evidence flowing from those items.

In *United States v. Rowland*, 341 F.3d 774 (8th Cir. 2003), the court explained:

Law enforcement may search a lawfully impounded vehicle to compile an inventory list of the vehicle's contents without violating the Fourth Amendment. *South Dakota v.*

*Opperman*, 428 U.S. 463, 476, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976). To do so, officers need neither search warrant nor probable cause, for they are not investigating a crime; instead, they are “performing an administrative or care-taking function.” [*United States v. Marshall*, 968 F.2d [1171,] 1174 (8th Cir. 1993)] (explaining *Opperman*). In performing this function, officers may legitimately be protecting the owner’s property while it remains in custody. *Opperman*, 428 U.S. at 369, 96 S. Ct. 3092. They may be protecting themselves from claims of lost or damaged property or from any potential danger posed by the unknown contents of the vehicle. *Id.* The only limit on such searches is they must be reasonable under the circumstances. *Id.* Inventory searches are reasonable if “conducted according to standardized police procedures, which vitiate concerns of an investigatory motive or excessive discretion.” *Id.*

*Rowland*, 341 F.3d at 779. Thus, if Officer Fett’s impoundment of Betterton’s vehicle was lawful, then the officers could conduct an inventory search pursuant to the department’s standard policy.

Betterton argues the vehicle’s impoundment was not lawful, and contends *United States v. Bridges*, 245 F. Supp. 2d 1034 (S.D. Iowa 2003), is dispositive of the issue. In *Bridges*, officers stopped a vehicle being driven by the defendant in the parking lot of a gas station/store, for an improper rear lamp and violation of seat belt requirements. The officers decided to impound the vehicle when they learned that neither the defendant nor his passenger had a valid driver’s license. They subsequently conducted an inventory search and discovered a quantity of methamphetamine. The defendant moved to suppress the evidence, claiming the search violated the Fourth Amendment.

The police department had a written policy that specified the circumstances when officers could impound vehicles. Among other things, the policy allowed impoundment when the driver was arrested, when a serious accident had occurred, or when the vehicle

was parked or abandoned on the traveled portion of a roadway. The court noted none of the specific circumstances set forth in the impoundment policy were present in the case. The court explained the impoundment did not serve either a community caretaking or a public safety function. The defendant was merely cited and released; he was not arrested. Thus, he and his passenger were available to protect the vehicles and its contents, and to make arrangements to have the vehicle moved from the parking lot by a tow truck or a licensed driver. The vehicle was not threatening the public's safety while it was parked in the parking lot. The court held:

Where there is no identifiable community caretaking or public safety function served by the impoundment of Defendant's vehicle, a reasonable person could conclude that the impoundment was a mere subterfuge for investigation. Further, the fact that the impoundment was done so quickly, without other options being pursued, creates a suggestion that the impoundment was done primarily in order to perform the inventory. . . . [T]o allow an impoundment and inventory search under these circumstances would routinely allow law enforcement officers to "raise the inventory-search banner in an after-the-fact attempt to justify what was . . . purely and simply a search for incriminating evidence". [*United States v. Hartje*, 251 F.3d [771,] 776 [(8th Cir. 2001)] (quoting [*United States v. Marshall*, 986 F.2d [1171,] 1175 [(8th Cir. 1993)]]. The Fourth Amendment would provide no limit in the wake of such a practice.

*Bridges*, 245 F. Supp. 2d at 1037.

*Bridges* is distinguishable from the present case on its facts. In this case, Betterton was arrested and removed from the scene. Neither he nor the vehicle's registered owner was present and available to protect the vehicle and its contents, or to make arrangements to have the vehicle moved. In addition, the vehicle was parked in a "no parking" zone in a place that would impede the safe flow of traffic. The court finds Officer Fett's decision

to impound the vehicle served both community caretaking and public safety functions. The court further finds the impoundment was not a pretext for any investigation.

Having lawfully impounded the vehicle, the officers conducted a lawful inventory search pursuant to the department's written policy.<sup>3</sup> *See Rowland, supra.*

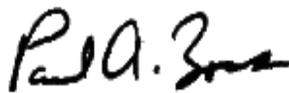
### **III. CONCLUSION**

For the reasons discussed above, **IT IS RECOMMENDED**, unless any party files objections to this Report and Recommendation within 10 days from the date hereof, that Betterton's motion to suppress be **denied**.

Any party who objects to this report and recommendation must serve and file specific, written objections within 10 court days from this date. Any response to the objections must be served and filed within 5 court days after service of the objections. A party objecting to the report and recommendation must arrange promptly for a transcription of all portions of the record the district court judge will need to rule on the objections.

**IT IS SO ORDERED.**

**DATED** this 24th day of November, 2003.



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PAUL A. ZOSS  
MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT

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<sup>3</sup>Notably, however, the officers could have searched the vehicle incident to Betterton's arrest in any event. *See, e.g., New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981); *United States v. Robinson*, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973); *United States v. Searcy*, 181 F.3d 975, 979 (8th Cir. 1999); *United States v. Williams*, 165 F.3d 1193, 1195 (8th Cir. 1999); *United States v. Snook*, 88 F.3d 605, 608 (8th Cir. 1996).