

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	I.D. No. 0404005780
v.)	
)	
BLAIR S. BROWNELL,)	
)	
Defendant.)	

Submitted: October 4, 2004
Decided: January 28, 2005

ORDER

Motion to Suppress. GRANTED

Victoria R. Witherell, Deputy Attorney General, Department of Justice, 820 North French Street, Wilmington, Delaware. Attorney for the State of Delaware.

Joseph A. Hurley, 1215 King Street, Wilmington, Delaware. Attorney for Defendant.

CARPENTER, J.

Before the Court is Defendant's Motion to Suppress. For the reasons set forth below, the Court grants the motion.

I. Facts

On November 22, 2003, Defendant was involved in a two vehicle accident. Officer Clark ("Clark"), of the New Castle County Police, responded to the accident scene. Defendant appeared to be under the influence of alcohol and/or drugs and was unable to locate his license and registration. Because of the Defendant's conduct, Clark conducted a limited search of the Defendant's vehicle in order to obtain pedigree information and during the course of the search discovered and removed a film canister. Upon opening the canister, Clark believed he had discovered what looked like marijuana. The canister and its contents were subsequently turned over to the investigating officer, Officer Dulin ("Dulin"). Upon completion of Dulin's accident investigation, the Defendant's vehicle was towed and a search of the vehicle was conducted by Dulin prior to impoundment.

II. Discussion

Defendant moves to suppress the evidence obtained by the State as a result of the roadside detention and subsequent search of the Defendant's vehicle, claiming that it was obtained in violation of the Fourth Amendment. The State concedes that

the initial seizure of the film canister was warrantless and improper¹ but argues that the evidence is still admissible because it would have been inevitably discovered by Dulin, who conducted an inventory search of the vehicle.

On a motion to suppress, the State bears the burden of establishing that the challenged search or seizure comported with the rights guaranteed to the defendant by the U.S. Constitution and Delaware statutory law.² The “inevitable discovery” exception to the exclusionary rule provides that evidence obtained unlawfully will be admissible if the State can prove that such evidence would have been discovered in spite of the illegal police conduct.³

Inventory searches are a well-defined exception to the warrant requirement of the Fourth Amendment.⁴ They are conducted for the following three purposes:

1. to protect the owner from theft or damage while the vehicle is under police control;
2. to protect police from false claims; and
3. to protect police from danger.⁵

¹The Court agrees that there was no reasonable basis to believe that pedigree information would be found inside of a film canister and therefore, at the time of its seizure, there was no justifiable basis to search the container.

²*State v. Matos*, 2001 WL 1398585, at *2 (Del. Super.).

³*Hardin v. State*, 844 A.2d 982, 987 (Del. 2004).

⁴*State v. Deputy*, 2001 WL 1729120, at *2 (Del. Super.).

⁵*State v. Tuck*, 1994 WL 89026, at *2 (Del. Super.).

This Court has held that inventory searches are lawful when they are “made to safeguard property for the benefit of the owner, police and tow company, and not under pretext to gather evidence without a warrant.”⁶ The State has the burden to show that the inventory search was conducted in good faith “in furtherance of the police caretaking function and not as a pretext for an investigatory motive.”⁷

In this case, the State is legally correct. The Court has no doubt that if the evidence established that this was a run of the mill inventory search after the accident and if it was established that clearly articulated police procedures had been followed, there would be no question that the seizure would have been upheld and the film canister and its contents would have been admissible. But instead of establishing some minimum threshold or knowledge base of the officer regarding police procedures for an inventory search or even taking the time to set forth on the record what occurred in this particular case, the State simply asked the officer if he followed standard operating procedures to which he answered “yes.” There was no testimony as to his knowledge of those procedures, no testimony as to what those procedures may entail, or even if the process is one the officer was trained on during his time in the police academy.

⁶*Lively v. State*, 427 A.2d 882, 883 (Del. 1981) .

⁷*State v. Miller*, 420 A.2d 181, 184 (Del. Super. Ct. 1980).

Having no independent basis to find support for an appropriately conducted inventory search, the Court is left simply to rely upon the officer that he did it right. In essence, the State has asked the Court to fill in the blanks using the Court's knowledge of an inventory search which simply is not permissible. The burden here is upon the State and not the Court. This is particularly troublesome since the Court finds the credibility of the police officer here was suspect based upon the previous seizure of the container, his knowledge of its contents and his belief that searching for contraband was a legitimate purpose of inventory searches.

When all of the above is taken together, the Court finds that the State has failed to present a sufficient record regarding the inventory search and has failed to meet its burden of establishing that the seizure here comported with federal and state constitutional rights. Therefore, the State's attempt to admit the evidence based on the "inevitable discovery" exception fails.

For the reasons set forth above, the motion is GRANTED.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.