

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

IN THE COURT OF COMMON PLEAS
CASE NO. CR 537239

STATE OF OHIO)
)
)
) Plaintiff)
)
) vs.)
)
) FIDEL KEMP)
)
) Defendant)

OPINION

Shirley Strickland Saffold, Judge:

The facts of this criminal matter are alleged to be as follows. On or about 4/27/10 in the area of East 9th Street and Prospect Avenue, in the City of Cleveland, while observing traffic and conducting a random license plate check, Cleveland Police Department officers ran a check of Defendant's, Fidel Kemp (hereinafter "Defendant"), license plate. This check revealed that the vehicle had an FRA suspension and that the owner had a suspended driver's license.

A traffic stop of the vehicle was conducted. Defendant was informed as to why he was stopped. Defendant produced a state identification card and stated that he did not have a license. Defendant was then placed under arrest for driving under suspension.

A tow of Defendant's vehicle was then necessary, due to the fact that no other passengers were present to drive the vehicle. As a result of the tow, the officers conducted an inventory search of the vehicle. The officers maintain that the inventory search was conducted in accordance with the Cleveland Police Policy and Procedure. During the inventory search officers discovered suspected drugs and two scales with apparent drug residue located behind the passenger seat.

Defendant has argued according to the State of Ohio's Opposition to Defendant's Motion to Suppress Evidence of Vehicle Search, that the officer's search of Defendant's vehicle without a warrant is unreasonable under *Arizona v. Gant* (2009), 129 S. Ct. 1710, and *State v. Damion Burke*. However, the reliance of these cases is misplaced.

Arizona v. Gant is a case dealing solely with the issue of search incident to an arrest. That is not the situation at hand. The situation at hand involves an inventory search, not a search incident to an arrest. An inventory search of a vehicle is legal only if the vehicle is legally impounded. Ohio Jurisprudence, 3rd Edition § 182 Inventory Search, *See also State v. Rose*, 118 Ohio App. 3d 864. Similarly, *State v. Damion Burke*, also deals with searches incident to arrest.

The Supreme Court outlined three criteria for a proper inventory search in *State v. Hathman* (1992), 65 Ohio St. 3d 403. The criteria are as follows:

1. An inventory search of a lawfully impounded automobile must be conducted in good faith and not be for the sole purpose of investigation;
2. An inventory search must be conducted according to a reasonable standardized procedure or established routine; and
3. If closed containers are discovered during the search, they can be opened only if a standardized policy specifically governing the opening of closed containers exists.

See also Ohio Jurisprudence, 3rd Edition § 182 Inventory Search.

As stated in the second element of the *Hatham* case, "In order to be valid...the search must be conducted in accordance with standard police procedure and not as a subterfuge for an evidentiary search." *State v. Semenchuck*, 122 Ohio App. 3d 30, 39, *See also* Ohio Jurisprudence, 3rd Edition § 182 Inventory Search.

In a case analogous to the one at hand, a defendant was pulled over legally, and subsequently arrested on an outstanding felony warrant and for driving with a suspended license. *West v. Duncan*, 179 F. Supp 2d 794. There, the court found that the inventory search was valid since it was conducted in compliance with the City of Aurora Police Department's vehicle

inventory policy and it was conducted only after it was determined that the car would need to be towed. *Id.* at 803, *See also* Ohio Jurisprudence, 3rd Edition § 182 Inventory Search.

In the State of Ohio's Supplemental Response to Defendant's Motion to Suppress Evidence of Vehicle Search, the State correctly asserts that the inventory searches have consistently been upheld as reasonable when conducted in accordance with established police protocol as a means to protect the police from citizens allegations of property gone missing from vehicles subject to a lawful tow and impound. The Appellate Court for the 10th District articulated this idea in *State v. Huddleston*, 877 N.E. 2d 354, when it stated, "Constitutionally permissible inventory searches of lawfully impounded vehicles are done 'to protect an owner's property, and to guard the police from danger.'" *Id.* at ¶ 12, citing *Colorado v. Bertine* (1987), 479 U.S. 367, *See also* Ohio Jurisprudence, 3rd Edition § 182 Inventory Search.

Similarly, here, it is the stance of the police officers that an inventory search was conducted only after the determination that the vehicle would be towed. Furthermore, the inspection was conducted in accordance with the Cleveland Police Policy and Procedure.

As such, based upon the research and the Motions presented, the search of the Cleveland Police Department was reasonable and valid and the Motion to Suppress should be denied.

SHIRLEY STRICKLAND SAFFOLD, JUDGE

Date: _____, 2010