

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 2:15-cr-29-FtM-29DNF

GEORGE JOYNER, III

GOVERNMENT'S RESPONSE TO DEFENDANT'S  
MOTION TO SUPPRESS EVIDENCE

COMES NOW the United States of America, by and through the undersigned Assistant United States Attorney, having received the defendant George Joyner, III's Motion to Suppress Evidence in the above referenced case, would ask that the Court deny the motion, and would state and support as follows:

FACTS

On August 10, 2013, officers on patrol observed that the driver of a gray Ford vehicle was not wearing a seatbelt. Additionally, the officers observed that the driver was holding a cellphone in front of him. While continuing to drive next to the vehicle, officers observed that the driver of the gray Ford vehicle suddenly changed lanes and appeared to cut off the driver of a white older model van. The officers observed that the driver of the gray Ford vehicle had not used a turn signal to indicate a change of lane, and the driver of the white van had to abruptly apply his brakes. Additionally, the officers observed that the driver of the gray Ford vehicle went out of his lane of travel and nearly struck the metal guard rail before returning into his proper lane of travel. Officers in a marked patrol unit

subsequently activated their emergency equipment and conducted a traffic stop of the Ford vehicle.

Fort Myers Police Officer Quinn made contact with the driver, the defendant George Joyner, III, and advised the defendant why he had been stopped. Officer Quinn asked Joyner for his driver's license. Joyner told Officer Quinn that his license was actually suspended. Officer Quinn conducted a driver's license inquiry through Fort Myers Police Department dispatch who confirmed that Joyner's license was suspended.

Consequently, the defendant was arrested for driving while license suspended. Further, the officer issued citations to the defendant for not wearing a seatbelt and failure to utilize a turn signal when changing lanes.

Since the defendant had been the only occupant of the vehicle, upon his arrest the officers made the determination to impound the vehicle. Consequently, as per the Fort Myers Police Department policy, the officers began making an inventory of the vehicle prior to having the vehicle towed from the scene by Alligator Towing. While conducting the vehicle inventory, officers located a laptop case containing a Compaq laptop computer, various digital media storage devices, two credit card readers, a credit card encoder, numerous credit cards, gift cards, credit card blanks, and several pieces of paper containing the names, dates of birth, and social security numbers of several individuals. Inside of Joyner's wallet, officers found thirteen various credit cards and gift cards, Chase bank account information, medical prescriptions for A.S.,

MoneyGram receipts, as well as scrap paper containing a name, date of birth and Social Security number for another person. Further, officers observed that the credit cards, some of which had account numbers handwritten on them, that had been found in Joyner's wallet matched the credit card blanks found in the black laptop case.

While officers were still on the scene, Joyner's wife, Therese Joyner, arrived and asked officers to turn the vehicle and its contents over to her. Joyner, who was in possession of approximately \$3,600.00, also stated that the items of evidence located in his vehicle were not his; instead, he claimed that they belonged to his wife.

Subsequent to his arrest, the defendant was advised of his *Miranda* warnings, and he agreed to speak to the officers. At the police department, post *Miranda* the defendant, George Joyner, III, admitted to the police that he had not been wearing his seatbelt until Veronica Shoemaker and Dr. Martin Luther King Junior Boulevard. Furthermore, he admitted to swerving off of the road because he had dropped his cell phone. Joyner also acknowledged that he had received notification from the Florida Department of Highway and Motor Vehicles that his driver's license was suspended. When officers asked the defendant about several of the items located in the vehicle, specifically a credit card re-encoder and numerous blank credit cards, Joyner stated that he was looking into offering gift cards for his boutique store, "I-Khandi."

Based on the items found in the vehicle during the inventory search, the officers believed that there was probable cause to believe that laws of the State of Florida against the criminal use of personal identification, fraudulent use of a credit card, use of scanning device or re-encoder to defraud, trafficking in counterfeit credit cards, and theft had been violated. On August 15, 2013, Officer Walter Mickey obtained a state search warrant to authorize the search of the electronic media, to specifically include such items located in the vehicle as, a Compaq laptop computer, several thumb drives, an external hard drive, credit card readers, and a credit card encoder.

A subsequent forensic analysis of the Compaq laptop computer revealed files on the Compaq laptop computer which contained information on how to create fake identification cards, fake utility bills, fake insurance information, fake registrations as well as several how-to tutorials on creating fake ID cards. The forensic analyst also located an Excel spreadsheet named "employees" which contained the personally identifiable information (PII) of 163 individuals. The PII included names, dates of birth, social security numbers, sex, as well as marital status.

Subsequently, officers with the Fort Myers Police Department contacted the IRS in November 2013, and provided a copy of the spreadsheet for further investigation into the potential use of the personal identification information belonging to others.

Agents with the IRS reviewed the data contained in the Excel spreadsheet and discovered that multiple tax returns were filed between January 2012 and June 2012. In furtherance of this investigation, agents with the IRS began researching these filed tax returns further; the agents discovered that there were multiple filings from the same internet protocol (IP) address. The IP service provider identified the subscriber through registration records as being the defendant's wife, with an address in Lehigh Acres, Florida for two of the three IP addresses captured during the electronic filing of the various tax returns. The defendant's driver's license provided that he resided at the same identified residence in Lehigh Acres, Florida.

In addition, during the course of the investigation, investigators conducted interviews with several of the individuals identified from the PII found on the laptop computer. The individuals interviewed told agents that they did not know the defendant; the individuals had not given the defendant permission to possess or use their information.

#### MEMORANDUM OF LAW

On August 10, 2013, the defendant's vehicle was stopped after police officers observed that he had committed traffic violations of failing to wear a seatbelt and failing to use a turn signal when changing lanes. The stop of the defendant's vehicle was valid.

The Eleventh Circuit held that "a traffic stop is valid 'if it is either based upon probable cause to believe a traffic violation has occurred or justified by

reasonable suspicion in accordance with *Terry*.” *United States v. Gray*, 544 Fed.Appx. 870, 883 (11<sup>th</sup> Cir. 2013) (quoting *Harris*, 526 F.3d at 1337)). The Eleventh Circuit has held that “a police officer may stop a vehicle ‘when there is . . . probable cause to believe that a driver is violating any one of the multitude of applicable traffic and equipment regulations’ relating to the operation of motor vehicles.” *United States v. Dunkley*, 911 F.2d 522, 524 (11<sup>th</sup> Cir. 1990) (quoting *United States v. Strickland*, 902 F.2d 937, 940 (11<sup>th</sup> Cir. 1990)).

More specifically, the Eleventh Circuit has recognized that “under Florida law, driving without wearing a seatbelt is a traffic violation.” *United States v. Gayle*, No. 14-10578, 2015 WL 1881120, at \*6 (11<sup>th</sup> Cir. Apr. 27, 2015)(citing Fla. Stat. § 316.614(4)(b) and (8)). Therefore, the defendant’s initial stop in this case was proper because the officers had probable cause to believe that the traffic violations of not wearing a seatbelt and failure to use a turn signal when changing lanes had occurred. *See United States v. Gayle*, No. 14-10578, 2015 WL 1881120, at \*6 (11<sup>th</sup> Cir. Apr. 27, 2015).

Once the officers made contact with the driver, the defendant, and requested his driver’s license, the officers learned that the defendant’s license had been suspended. Consequently, the officers had probable cause to arrest the defendant for driving while license suspended, in violation of Florida Statute.

Further, the officers were permitted to impound the vehicle that the defendant had been driving. This vehicle was a rental vehicle and the defendant was the sole occupant at the time of the stop; in addition, the defendant was not

listed at an authorized driver on the rental agreement. The police officers were permitted to tow this vehicle and the rental car company would subsequently be notified of the vehicles location.

The Eleventh Circuit stated that:

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 evidence of criminal activity." If the vehicle has been lawfully impounded, the law enforcement officer may conduct an inventory search, including a search of closed containers, provided the search is conducted pursuant to standardized criteria. Because an inventory search is an exception to the Fourth Amendment's warrant requirement, however, the government officer has the burden to show that the requirements of the inventory search exception have been met.

*Sammons v. Taylor*, 967 F.2d 1533, 1543 (11<sup>th</sup> Cir. 1992) (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971)). Further, the Eleventh Circuit has stated that "if a search is to be upheld under the inventory search doctrine, therefore, the police must first have the authority to impound the vehicle and must then follow the procedures outlined in the policy." *United States v. Williams*, 936 F.2d 1243, 1248 (11<sup>th</sup> Cir. 1991). Additionally, the Eleventh Circuit stated that "the established procedure, however, need not be detailed. For example, we have upheld an inventory search where the district court had indicated that a police department's policy 'permitted impoundment under the circumstances' and 'the defendant had not countered the assertion.'" *United States v. Joseph*, No. 14-14300, 2015 WL 2190868, at \*2 (11<sup>th</sup> Cir. May 12, 2015) (quoting *United States v. Johnson*, 777 F.3d 1270, 1277 (11<sup>th</sup> Cir. 2015)).

The officers were following the policies of the Fort Myers Police Department in making the determination to tow the vehicle that was found to be driven by an unauthorized driver with an invalid driver's license. The rental car company would be contacted regarding the impoundment of the vehicle and the rental company would be able to make arrangements for the return of their vehicle. In addition, the officers were following their agency's policy in inventorying the contents of the vehicle for personal items before the vehicle was released to the responding tow company.

The Supreme Court stated that "by securing the property, the police protected the property from unauthorized interference. Knowledge of the precise nature of the property helped guard against claims of theft, vandalism, or negligence. Such knowledge also helped to avert any danger to police or others that may have been posed by the property." *Colorado v. Bertine*, 479 U.S. 367, 373 (1987); *see also South Dakota v. Opperman*, 428 U.S. 364, 369 (1976).

The officers were within their right to arrest the defendant and subsequently impound and search the rental vehicle. *See United States v. Joseph*, No. 14-14300, 2015 WL 2190868, at \*2 (11<sup>th</sup> Cir. May 12, 2015). The police followed standard procedure in impounding this rental vehicle; this was not a pretext to conceal an investigatory police motive. *See South Dakota v. Opperman*, 428 U.S. 364, 376 (1976).

Further, when the officers discovered the blank credit cards, the credit card reader, the credit card encoder, and the other items found in the vehicle

during the inventory search, the officers had sufficient probable cause to believe that the vehicle contained evidence of fraudulent use of a credit card, criminal use of personal identification, trafficking in counterfeit credit cards, and theft. *See United States v. Reeves*, No. 14-12354, 2015 WL 1219588, at \*4 (11<sup>th</sup> Cir. March 18, 2015). Further, any reasonable officer with training and experience with counterfeit credit card fraud and identity theft would have concluded that the vehicle contained evidence of fraud based on these items and the laptop computer found in the vehicle. *See United States v. Reeves*, No. 14-12354, 2015 WL 1219588, at \*4 (11<sup>th</sup> Cir. March 18, 2015).

On August 15, 2013, Officer Walter Mickey submitted an affidavit for a search warrant to a State Judge in Lee County, Florida. In the affidavit, the officer identified the property that he was seeking authorization to search, and he specified the laws of the State of Florida that he believed has been violated based on the police investigation in this case. The officer set forth the facts sufficient to establish probable cause to search the requested items. The search warrant was authorized on August 15, 2013, and it included the specific items to be searched and seized in this case. The search warrant states that the Judge expressly found probable cause for the issuance of the search warrant and authorized the search of any and all computers and computer media, and all stored electronic information in any form which could house personal identification information.

The Supreme Court stated that:

The Warrant Clause of the Fourth Amendment categorically prohibits the issuance of any warrant except one “particularly describing the place to be searched and the persons or things to be seized.” The manifest purpose of this particularity requirement was to prevent general searches. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit. Thus, the scope of a lawful search is “defined by the object of the search and the places in which there is probable cause to believe that it may be found.

*Maryland v. Garrison*, 480 U.S. 79, 84 (1987) (quoting *United States v. Ross*, 456 U.S. 798, 824 (1982)). Further, the Eleventh Circuit found that “the fourth amendment requires merely that the search warrant describe the premises in such a way that the searching officer may ‘with reasonable effort ascertain and identify the place intended.’” *United States v. Weinstein*, 762 F.2d 1522, 1532 (11<sup>th</sup> Cir. 1985) (quoting *Steele v. United States*, 267 U.S. 498, 503 (1925)).

Furthermore, “the particularity requirement prevents ‘general, exploratory rummaging in a person’s belongings,’ but ‘elaborate specificity is unnecessary.’” *United States v. Bradley*, 644 F.3d 1213, 1259 (11<sup>th</sup> Cir. 2011) (quoting *United States v. Betancourt*, 734 F.2d 750, 754 (11<sup>th</sup> Cir. 1984)). The Eleventh Circuit found that:

“A warrant’s description of the place to be searched need not meet technical requirements nor have the specificity sought by conveyancers. It need only describe the place to be searched with sufficient particularity to direct the searcher, to confine his examination to the place described, and to advise those being searched of his authority.”

*United States v. Weinstein*, 762 F.2d 1522, 1532 (11<sup>th</sup> Cir. 1985)(quoting *United States v. Haydel*, 649 F.2d 1152, 1157 (5<sup>th</sup> Cir. 1981)).

In this case, the search warrant specified the property subject to search and the search warrant specified that the items were being stored at the Fort Myers Police Department. The items to be searched were described with sufficient particularity in this case.

Further, the Eleventh Circuit has found that “when an exact description of the objects of the search is a ‘virtual impossibility, . . . the searching officer can only be expected to describe the generic class of items he is seeking.” *United States v. Moody*, 977 F.2d 1425, 1432 (11<sup>th</sup> Cir. 1992)(quoting *United States v. Davis*, 589 F.2d 904, 906 (5<sup>th</sup> Cir. 1979)).

“A particular warrant also ‘assures the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search.” *Groh v. Ramirez*, 540 U.S. 551, 561 (2004) (quoting *United States v. Chadwick*, 433 U.S. 1, 9 (1977)).

In this case, the search warrant was supported by probable cause and it was not over-broad. Further, due to the nature of this investigation into the criminal use of personal identification and fraudulent use of credit cards, a search warrant which authorizes the search of all stored electronic information which could house personal identification information and any information pertaining to the use of personal identification information does describe with particularity the items to be seized and searched. See *United States v. Majors*, 196 F.3d 1206,

1216 (11<sup>th</sup> Cir. 1999).

In conclusion, there was a valid stop of the vehicle that the defendant was operating on August 10, 2013. There was probable cause to arrest the defendant for driving on a suspended license at this date. The officers were permitted to impound the rental vehicle, and they properly conducted an inventory search of the vehicle before having the tow company remove the vehicle from the scene of the traffic stop, which is the policy of the Fort Myers Police Department. The observations made by the officers during the inventory search did provide probable cause to seek a search warrant to seize and search specified items located in the vehicle, and such items were particularly described in the search warrant in this case.

WHEREFORE, the government respectfully requests that the defendant's Motion to Suppress be denied.

Respectfully submitted,

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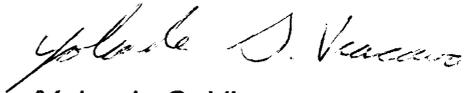
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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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s/Yolande G. Viacava  
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