

# The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

V.

CHRISTOPHER ARCHAMBAULT

NO. 218-2020-CR-00585

## **ORDER ON DEFENDANT'S MOTION TO SUPPRESS AND DISMISS**

Defendant Christopher Archambault stands charged with two counts of possession of a controlled drug with the intent to sell or dispense. See Docs. 18–19 (Indictments). The charges arise out of a motor vehicle stop conducted by Officer Patrick Cremin and (eventually) Officer Joseph Dyrkacz of the Northwood Police Department. Defendant now moves to suppress all evidence derived from a roadside search of the stopped vehicle, and to dismiss the pending charges. See Doc. 20. The State objects. See Doc. 24. The Court held an evidentiary hearing on the matter on July 7, 2021, and September 24, 2021. Defendant thereafter filed a supplement to his motion. See Doc. 29. The Court has carefully considered the evidence submitted at the hearing, the parties' arguments, and the applicable law. While this case presents a "close call," for the reasons that follow, the Court concludes Defendant's motion to suppress and dismiss must be **GRANTED**.

## **FACTUAL FINDINGS**

The Court finds the following facts, drawn from the testimony of Officers Cremin and Dyrkacz and the exhibits submitted at the hearing, relevant to Defendant's motion. On July 28, 2020, at approximately 3:15 p.m., Officer Cremin received a report from

another member of law enforcement that a woman believed to have an outstanding arrest warrant was at the Northwood Park and Ride. Officer Cremin responded to the area. He located a woman across the street from the Park and Ride, at the Family Dollar store. Upon inquiry, Officer Cremin identified the woman as Caley Chulada. Ms. Chulada did not have any outstanding arrest warrants, and had apparently been misidentified by the other officer.<sup>1</sup>

Ms. Chulada advised that her friends, who were travelling in a blue pickup truck with a ladder rack, left her at the Park and Ride. Eventually, Officer Cremin observed the blue pickup truck enter the Family Dollar parking lot. By running a check on the truck's license plate, Officer Cremin learned that the registered owner was another female who had an outstanding arrest warrant. Believing the female driver of the truck was a similar height and weight as the registered owner, Officer Cremin decided to conduct a motor vehicle stop of the truck.

Officer Cremin followed the truck out of the Family Dollar parking lot and onto the roadway. When he activated his emergency lights, the truck pulled into the entrance of the Park and Ride, then came to a stop. Officer Cremin subsequently determined the female driver was not the registered owner of the truck, but a different female named Amanda Allen. Officer Cremin learned Ms. Allen also had an outstanding arrest warrant and that her driver's license was suspended. He thus placed Ms. Allen under arrest.

At some point Officer Dyrkacz arrived at the scene. While Officer Cremin was focused on Ms. Allen, Officer Dyrkacz spoke to Defendant, at which time he determined Defendant did not possess a valid driver's license.

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<sup>1</sup> During this time, Officer Cremin also determined Ms. Chaluda did not have a valid driver's license.

As a result, Officer Cremin explained that because the truck was stopped in the entrance to the Park and Ride, and neither Defendant nor Ms. Chulada could lawfully move it, the truck had to be towed. He further explained he was going to conduct an inventory search of the truck prior to towing. Ms. Chulada asked whether she and Defendant could retrieve their belongings from the truck. Officer Cremin advised they could retrieve their belongings, but anything they removed from the truck would be checked for weapons. At the hearing, both officers acknowledged they had no basis to believe Defendant or Ms. Chulada presented a threat.<sup>2</sup>

Notably, Officer Cremin's bodycam footage from this timeframe depicts a hot pink item sticking out from under a white piece of clothing on the front passenger seat of the truck. See Def.'s Ex. D, "Allen\_&\_Archambault.mp4" at 12:10. Ms. Chulada initially picks up the hot pink item in a manner that suggests she planned to remove it from the truck. Id. at 12:17. After Officer Cremin advises that he will check any items removed from the truck for weapons, his bodycam turns to Defendant. Id. at 12:39–53. Seconds later, Ms. Chulada is shown gathering several items from the truck's dashboard in order to remove them from the truck. Id. at 12:57–13:10.

Officer Cremin subsequently begins searching the truck, starting with the front passenger door. Id. at 13:46. He does not orally describe what he sees in that location, and his bodycam footage does not provide a clear view. Id. Next, he opens the glovebox, where he locates a small black object. Id. at 13:51. After manipulating the object for approximately twenty seconds, he is able to open it and determine it is a

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<sup>2</sup> Officer Cremin noted that whenever someone gets arrested, tensions can be high. However, he did not indicate Defendant or Ms. Chulada did anything to suggest they posed a threat. The Court's review of the bodycam footage confirms that neither individual acted in a threatening manner.

scale. See id. at 13:51–14:14. Officer Cremin orally describes several other items in the glovebox, including a cell phone, syringes, and \$365 in cash. See id. at 14:18–:52. However, he does not describe every item in the glove box and his bodycam footage does not clearly show each item in that location. See id.

Officer Cremin next explores items on the truck's dashboard. He again orally describes only some items. See id. at 15:02–:11. While searching the dashboard, Officer Cremin finds the hot pink item Ms. Chaluda previously retrieved from the front passenger seat. Id. at 15:12. Upon opening it, Officer Cremin finds syringes, needles, and illegal drugs. See id. at 15:13–:21. He then discontinues his search of the truck.

After describing to Defendant and Ms. Chulada what he found in the truck, Officer Cremin states, “unless one of the three of you takes custody of all three of those objects . . . .” Id. at 18:17–:33. Defendant interrupts, indicating he borrowed the car and so he “guess[es]” he will take custody of the items. Id. at 18:33–:36. Officer Cremin responds, “So you’re saying the drugs are yours, money’s yours, the scale’s yours?” Id. at 18:36–:40. Defendant replies, “We just borrowed the car, but I’ll, I’ll take ‘em.” Id. at 18:40–:44. Officer Cremin clarifies, “You’ll take the charges?” Id. at 18:44–:46. Defendant responds, “I have to, right? I’m the one that borrowed the car.” Id. at 18:46–:48. Thereafter, Officer Cremin places Defendant under arrest. Id. at 19:08.

On July 29, 2020, Officer Cremin applied for a search warrant for the truck. See Def.’s Ex. C. His supporting affidavit states, among other things, that after he found drugs inside the truck, he “spoke with [Defendant] who took full responsibility for the items located in the vehicle.” Id. at 3. After the search warrant application was granted, Officer Cremin conducted a detailed search of the truck. See Def.’s Ex. D,

"Search\_Warrant\_2.mp4". On the floor area of the backseat, Officer Cremin located a blue zippered pouch containing approximately \$2,706.00 in cash as well as a "very large quantity" of what Officer Cremin believed was crystal methamphetamine, eleven small bags of white and brownish powder consistent with fentanyl, a small sandwich bag of marijuana, and a "meth pipe" with residue.

Although the Northwood Police Department's inventory policy (the "Policy") requires that officers "inventory all property or items . . . using a **Northwood Police Department Vehicle Inventory** form" (the "Form"), see State's Ex. 3 (Policy) at 2 (emphasis in original), it is undisputed Officer Cremin took no written notes during his July 28, 2020 roadside search of the truck, and he never filled out the Form vis-à-vis that search. See Doc. 24 ¶ 49 ("It appears that no written list of all items was generated . . ."). Officer Cremin explained during his testimony he felt filling out the Form was unnecessary because his bodycam footage captured the search, and items of evidentiary or substantial monetary value were listed in his search warrant application.

#### ANALYSIS

Defendant raises several arguments in support of his motion to suppress and dismiss. See Docs. 20, 29. Though Defendant's motion invokes the New Hampshire Constitution and the Federal Constitution, the State Constitution is at least as protective as its federal counterpart in this area of search and seizure jurisprudence. Compare N.H. CONST. pt. I, art. 19, with U.S. CONST. amend. IV. Accordingly, the Court will address Defendant's claims under the State Constitution, citing to federal cases for guidance only. See State v. Bell, 164 N.H. 452, 455 (2012). Further, for the reasons that follow, the Court concludes the State has not carried its burden of proving the

roadside search of the truck was lawful. See State v. Newcomb, 161 N.H. 666, 670 (2011) (noting the State has the burden of proving a search falls within an exception to the warrant requirement); State v. Gallant, 133 N.H. 138, 144 (1990) (indicating the applicable burden of proof is by a preponderance of the evidence). The Court thus declines to reach Defendant's alternative arguments. See Canty v. Hopkins, 146 N.H. 151, 154 (2001) (declining to reach an issue that did not alter the court's conclusion).

Part I, Article 19 of the New Hampshire Constitution ensures that all persons are protected from unreasonable searches and seizures by the government. State v. Craveiro, 155 N.H. 423, 426 (2007). In the absence of a warrant, all searches and seizures are per se unreasonable "unless they fall within the narrow confines of a judicially crafted exception." Id. Here, Defendant acknowledges inventory searches conducted pursuant to a neutral police policy fall within a well-defined exception to the warrant requirement. See Doc. 20 ¶ 33; see generally Newcomb, 161 N.H. at 670 (discussing inventory searches). Defendant argues, however, that Officer Cremin's roadside search of the truck was not a true inventory search. See Doc. 20 ¶¶ 33–36.

There is no dispute Officer Cremin failed to complete the Form required by the Policy. Moreover, although Officer Cremin suggested his bodycam footage and/or his search warrant affidavit fulfilled the Form's purpose, the Court disagrees. The Policy does not suggest bodycam footage or search warrant affidavits are acceptable substitutes for the Form. See State's Ex. 3. Moreover, neither the bodycam footage nor the search warrant affidavit documented all items found during the roadside search. The Court thus concludes Officer Cremin violated the Policy by failing to complete the Form or otherwise create a sufficient record vis-à-vis the roadside search.

The Court must now determine whether this conclusion results in suppression. The New Hampshire Supreme Court has made clear that evidence discovered in an area of a vehicle not covered by an inventory policy must be suppressed. See, e.g., Newcomb, 161 N.H. at 672 (suppression warranted where search of cargo area of U-Haul truck did not conform to inventory policy, which permitted search of “trunks”); State v. Finn, 146 N.H. 59, 62 (2001) (search of zipped bag unconstitutional as department had no policy on searching closed containers). The Supreme Court has not, however, addressed whether an officer’s failure to generate the written inventory required by the applicable inventory policy renders the entire search unconstitutional. Accordingly, the Court “look[s] to other jurisdictions for guidance” with respect to this issue. Stateline Steel Erectors, Inc. v. Shields, 150 N.H. 332, 334 (2003).

The focus in the relevant caselaw is whether, based on the totality of the circumstances, the purported inventory search was reasonable. United States v. Nevatt, 960 F.3d 1015, 1020 (8th Cir. 2020); see generally South Dakota v. Opperman, 428 U.S. 364, 373–75 (1976) (noting the United States Supreme Court’s historical focus on whether a police intrusion into a vehicle was “aimed at securing or protecting the car and its contents,” and explaining that “as in all Fourth Amendment cases, [courts] . . . look to all the facts and circumstances” to determine whether “a search and seizure is unreasonable”); N.H. CONST. pt. I, art. 19 (protecting against unreasonable searches and seizures); U.S. CONST. amend. IV (same). In analyzing that issue, courts assign particular significance to whether the search was pretextual or otherwise motivated by some deviant factor. See Florida v. Wells, 495 U.S. 1, 4 (1990) (explaining “an inventory search must not be a ruse for a general rummaging in order to discover

incriminating evidence” (citations omitted)). For that reason, courts generally hold that a minor deviation from a standardized inventory policy does not automatically result in suppression. See United States v. Rowland, 341 F.3d 774, 780 (8th Cir. 2003) (explaining “[c]ompliance with procedures merely tends to ensure the intrusion is limited to carrying out the government’s care-taking function”); accord United States v. Taylor, 636 F.3d 461, 465 (8th Cir. 2011) (“Even if police fail to adhere to standardized procedures, the search is nevertheless reasonable provided it is not a pretext for an investigatory search.”). Rather, to warrant suppression, “‘something else’ must be present” to suggest police “were engaging in their criminal investigatory function, not their caretaking function,” when conducting the search. Taylor, 636 F.3d at 465.

In Taylor, the Eighth Circuit found “something else” where the officer failed to fully complete the requisite inventory form, and “testified that the basis for the traffic stop . . . and the inventory search was the officer’s belief [the defendant] had narcotics in his vehicle.” 636 F.3d at 464–65. On these facts, the Eighth Circuit concluded that “the inventory was merely a pretext for an investigatory search.” Id. at 465. Similarly, in United States v. Haro-Salcedo, the Tenth Circuit held that a law enforcement’s failure to complete a written inventory form, coupled with his testimony that he searched the vehicle “to examine a box he believed may have contained contraband . . . strongly support[ed] the . . . conclusion that [the officer] used the roadside inventory as a pretextual investigatory search.” 107 F.3d 769, 770–73 (10th Cir. 1997). Id.<sup>3</sup>

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<sup>3</sup> See also State v. Williams, 382 S.W.3d 232, 241-242 (Mo. Ct. App. 2012) (finding inventory search pretextual where officer ran “her hands over the interior door panels, apparently feeling for hidden objects or compartments,” took no notes, and searched the vehicle for almost twenty minutes); State v. Stauder, 264 S.W.3d 360, 364 (Tex. App. 2008) (affirming suppression because “[t]he trial court could have concluded that, based upon the officers’ complete failure to fill out any inventory form as required, the inventory was merely a ruse to search” defendant’s vehicle).



By contrast, where nothing suggests an inventory search was pretextual, courts have been more willing to excuse nonconformities with established police policies. For instance, in Commonwealth v. Torres, the Massachusetts Court of Appeals upheld a search where police failed to complete any inventory form. 5 N.E.3d 564, 565 (Mass. App. Ct. 2014). The Torres court likened the failure to fill out the inventory form to a ministerial error in returning a search warrant. See id. at 565–66; see also Commonwealth v. Kaupp, 899 N.E.2d 809 (Mass. 2009) (holding “required warrant return procedures are ministerial, and failure to comply therewith is not ground for voiding an otherwise valid search”); accord State v. Brown, 125 N.H. 346, 351 (1984) (explaining “technical violations of RSA chapter 595-A do not require suppression of the items seized”). Noting there was no evidence the search was pretextual, the Torres court held that an “after-the-fact documentation error does not by itself invalidate an otherwise valid search.” Torres, 5 N.E.2d at 566–67<sup>4</sup>; see United States v. Smith, 715 F.3d 1110, 1117–18 (2013) (explaining whether pretext exists is a “question of fact”).

Here, in arguing the roadside search was not pretextual, the State emphasizes that Officer Cremin would not have towed the truck if Defendant or Ms. Chulada possessed a valid driver’s license. See Doc. 24 ¶ 51. While the Court agrees this is relevant, the Court must also consider other relevant facts and circumstances. In doing so, the Court is very troubled by Officer Cremin’s statement to Defendant and Ms.

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<sup>4</sup> See also United States v. Mundy, 621 F.3d 283, 293 (3d Cir. 2010) (“[F]ailure to follow through with standard procedures does not necessarily render the search unreasonable.”); United States v. Lomeli, 76 F.3d 146, 148-49 (7th Cir. 1996) (upholding inventory search done at police station where policy required it to be conducted at the scene); United States v. Trullo, 790 F.2d 205, 206 (1st Cir. 1986) (“We will not hold that the officer’s failure, technically, to follow the inventory form procedures . . . meant it was not an inventory search.”); United States v. Reyes-Vencomo, 866 F. Supp. 2d 1304, 1350 (D.N.M. 2012) (upholding inventory search conducted in an “orderly” fashion where officers were not rummaging for incriminating evidence and nothing indicated officers were “acting in bad faith”).

Chulada that any belongings they removed from the truck would be searched for weapons. As neither Defendant nor Ms. Chulada presented any appreciable danger, the officers were not entitled to search their belongings for weapons. See State v. Broadus, 167 N.H. 307, 310–11 (2015). Contrary to the State’s suggestion, Officer Cremin’s comments certainly appear to have deterred Ms. Chulada from removing the hot pink item from the truck. The Court can only speculate as to what other items Ms. Chulada and/or Defendant might have taken with them but for Officer Cremin’s comments. In any event, this fact lends support to Defendant’s argument that the so-called inventory search was unreasonable.

Next, the bodycam footage supports Defendant’s claim that Officer Cremin’s roadside search appeared more consistent with a general rummaging for evidence than an effort to inventory the contents of the truck. Officer Cremin did not orally describe each item he observed, he took no notes, and he did not make sure that his bodycam captured every item. When he came upon the black scale, he could have documented the brand name of the item and moved on, or removed it from the truck for safekeeping. Instead, he spent a relatively substantial amount of time (in the context of his overall search) working to open it. The Policy permitted him to open closed containers, but his focus on this unknown item—in contrast to his lack of focus on other items in the truck—suggests he was trying to determine whether this item had evidentiary value.

Moreover, Officer Cremin’s orderly approach in searching the truck the next day—at which time he recorded his search on his bodycam, a fellow officer also recorded it, and the other officer took notes—stands in stark contrast to the frantic, disorderly search he conducted at the roadside. While one might argue the roadside

search was rushed so officers could remove the vehicle from the entryway to the Park and Ride, Officer Cremin's other on-scene conduct did not convey a sense of urgency.

Lastly, the Court cannot ignore the manner in which Officer Cremin memorialized his post-search conversation with Defendant in his search warrant affidavit. Although Officer Cremin's description was technically correct, it did not provide a fair or accurate picture of that conversation. The Court recognizes that this issue did not impact the sufficiency of the search warrant application, but it nevertheless bears on the Court's view of Officer Cremin's credibility, generally.

In light of the foregoing, though this case presents a close call, the Court concludes the State failed to carry its burden of demonstrating the legality of the roadside search. See Newcomb, 161 N.H. at 670; Gallant, 133 N.H. at 144. Officer Cremin deviated from the Policy, and the surrounding facts and circumstances do not convince the Court that the so-called inventory search was otherwise reasonable. See Opperman, 428 U.S. at 373–75 (noting focus is on whether a police intrusion into vehicle was “aimed at securing or protecting the car and its contents,” and explaining courts “look to all the facts and circumstances” to determine whether “a search and seizure is unreasonable”); see generally N.H. CONST. pt. I, art. 19 (protecting against unreasonable searches and seizures); U.S. CONST. amend. IV (same). Among other things, Officer Cremin's comments about searching items removed from the truck for weapons deterred Ms. Chulada from removing the hot pink item, and could well have deterred Defendant and Ms. Chulada from removing the blue pouch as well. On the record presented, the Court cannot find, by a preponderance of the evidence, that Officer Cremin's roadside search was a valid exercise of his “caretaking function” and

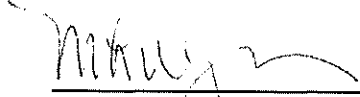
not his "criminal investigatory function." See Taylor, 636 F.3d at 465. Accordingly, the Court concludes the evidence at issue must be suppressed, and the corresponding charges must therefore be dismissed.

CONCLUSION

For the reasons set forth above, Defendant's motion to suppress and dismiss is **GRANTED**.

So ordered.

November 1, 2021  
Date

  
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Marguerite L. Wageling  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 11/08/2021