

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY MOTLEY,

Defendant-Appellant.

UNPUBLISHED

March 15, 2007

No. 267298

Oakland Circuit Court

LC No. 2005-201058-FH

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, possession of a firearm during the commission of a felony, MCL 750.227b, and driving while license suspended, second offense, MCL 257.904(3). He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 1 to 20 years each for the felon-in-possession and CCW convictions, and 285 days for the suspended license conviction, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant challenges the trial court's denial of his motion to suppress a firearm that the police recovered from the trunk of his vehicle during a warrantless search following defendant's arrest. Although the prosecution relied on the inventory search exception to the warrant requirement to justify the seizure, defendant claims that there was inadequate evidence of a departmental policy to validate the seizure under the inventory search exception.

This Court reviews a trial court's factual findings in a suppression hearing for clear error. But the "[a]pplication of constitutional standards regarding searches and seizures to essentially uncontested facts is entitled less deference; for this reason, we review de novo the trial court's ultimate ruling on the motion to suppress." *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005) (citations omitted).

In *People v Toohey*, 438 Mich 265, 275; 475 NW2d 16 (1991), our Supreme Court, quoting with approval *South Dakota v Opperman*, 428 US 364, 369; 96 S Ct 3092; 49 L Ed 2d 1000 (1976), observed the following regarding inventory searches and the policy reasons for allowing them:

“When vehicles are impounded, local police departments generally follow a routine practice of securing and inventorying the automobiles' contents. These procedures developed in response to three distinct needs: the protection of the owner's property while it remains in police custody; the protection of the police against claims or disputes over lost or stolen property; and the protection of the police from potential danger. The practice has been viewed as essential to respond to incidents of theft or vandalism.”

The *Toohey* Court concluded, “To be constitutional, an inventory search *must* be conducted in accordance with established departmental procedures, which all police officers are required to follow, and *must not* be used as a pretext for criminal investigation.” *Toohey, supra*, p 284 (citations omitted).

Contrary to what defendant argues, the testimony at the evidentiary hearing adequately established the existence of a departmental policy concerning the inventorying of vehicles that were being impounded. The officer testified that inventory searches of vehicles that are being impounded are performed pursuant to departmental policy. The prosecution was not required to provide written policies; “[t]he testimony of police officers may be sufficient to establish the existence of a standard procedure or routine.” *People v James Green*, 260 Mich App 392, 411; 677 NW2d 363, lv den 471 Mich 873 (2004), overruled in part on other grounds, *People v Anstey*, 476 Mich 436; 719 NW2d 579 (2006).

Defendant contends that the search cannot be upheld as an inventory search because the officer testified that he was checking the inside of the car for “any type of valuable, any type of *evidence*.” As previously indicated, an inventory search “*must not* be used as a pretext for criminal investigation.” *Toohey, supra*, p 284. In this case, however, the officer testified that inventory searches are conducted pursuant to departmental policy and that he does an inventory search whenever he arrests someone in a moving vehicle because “that’s what they want us to do.” The officer’s testimony indicates that the search was conducted pursuant to a departmental policy that all officers must follow, and the officer’s isolated use of the word “evidence” does not establish that the search was pretextual.

Affirmed.

/s/ Deborah A. Servitto

/s/ Michael J. Talbot

/s/ Bill Schuette