

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	21 Cr. 746 (MKV)
-against-	:	
ADEDAYO ILORI,	:	
	:	
Defendant.	:	

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT
ADEDAYO ILORI'S MOTION TO SUPPRESS PHYSICAL EVIDENCE**

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PRELIMINARY STATEMENT

Defendant Adedayo Ilori respectfully submits this Memorandum of Law in support of his pre-trial motion, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, for an order suppressing physical evidence seized from his person and the vehicle he was occupying at the time of the execution of a search warrant. The evidence at issue in this case was reportedly recovered from Mr. Ilori's person and the vehicle he was occupying. As described below, certain evidence recovered from the vehicle was taken from areas searched beyond the requirements of the search warrant and cannot be excused by any other legal doctrine. Accordingly, all evidence resulting from the improper portions of the search should be suppressed.

The location of certain other items of evidence is unclear, and we ask the Court to hold a hearing to clarify this issue.

STATEMENT OF FACTS

On October 8, 2021, Mr. Ilori was in the driver's seat of his co-defendant's car, a 2021 Mercedes sedan, which was legally parked in Long Island City. He was approached by federal agents who told him to exit the vehicle, which he did. The agents had a search warrant, attached as Exhibit A, to search Mr. Ilori and "the area within his immediate reach."

While it was convenient for the agents, who had been surveilling the vehicle for some time prior to Mr. Ilori's arrival, to wait for Mr. Ilori to enter the vehicle in order to be able to search portions of the passenger compartment, it does not appear that their actions were improper. Mr. Ilori and the vehicle's passenger compartment were searched.

Though the agents allege that certain items were found on Mr. Ilori and some in the passenger compartment of the vehicle, as per the agents' Memorandum of Investigation (Exhibit B), Mr. Ilori's memory of the items in his possession vary from the agents'. *See* Declaration of Adedayo Ilori.

As per Mr. Ilori's attached Declaration, the occupants of this vehicle cannot access the trunk of the vehicle from the passenger compartment. Nonetheless, the agents searched the trunk of the vehicle and recovered additional items that the government apparently intends to use against him.

As per Mr. Ilori, at no time did he give the agents permission to search his person or any part of the vehicle.

Subsequent to the search, the agents called AUSA Daniel Nessim, who authorized Mr. Ilori's arrest. Exhibit B. It does not appear any additional searches of Mr. Ilori or the vehicle occurred post-arrest.

ARGUMENT

I. Items Allegedly Recovered from Mr. Ilori Did Not Provide Probable Cause to Search the Vehicle's Trunk

“[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507 (1967). One such exception is the “automobile exception.” It permits law enforcement to conduct a warrantless search of a readily mobile vehicle where there is probable cause to believe that the vehicle contains contraband. *See, e.g., Pennsylvania v. Labron*, 518 U.S. 938, 940, 116 S.Ct. 2485(1996) [emphasis added]. Where the probable cause upon which the search is based “extends to the entire vehicle,” the permissible scope of a search pursuant to this exception includes “every part of the vehicle and its contents [including all containers and packages] that may conceal the object of the search.”” *United States v. Harwood*, 998 F.2d 91, 96 (2d Cir.1993) (quoting *United States v. Ross*, 456 U.S. 798, 825, 102 S.Ct. 2157 (1982)); *see also California v. Acevedo*, 500 U.S. 565, 580, 111 S.Ct. 1982 (1991).

Nothing the agents allegedly recovered from Mr. Ilori’s person gave rise to probable cause to believe that the vehicle contained contraband. As such, the automobile exception was not triggered and the trunk of the vehicle should not have been searched.

II. Items Allegedly Recovered from the Vehicle’s Passenger Compartment Did Not Provide Probable Cause to Search the Vehicle’s Trunk

Similarly, nothing recovered from the vehicle’s passenger compartment gave rise to probable cause to believe that the vehicle contained contraband. As per the Memorandum of Investigation (Exhibit B), the only things the agents identify as recovered from the vehicle’s passenger compartment were a Samsung cell phone and a parking receipt. There is no articulable basis to

believe that contraband would have been found in the trunk based upon the recovery of a cell phone and a parking receipt. Therefore, the automobile exception does not apply.

III. Inevitable Discovery Does Not Apply to the Items in the Trunk

Under the inevitable discovery doctrine, “evidence that was illegally obtained will not be suppressed ‘if the government can prove that the evidence would have been obtained inevitably’ even if there had been no statutory or constitutional violation.” *United States v. Roberts*, 852 F.2d 671, 675–76 (2d Cir.), cert denied, 488 U.S. 993, 109 S.Ct. 556 (1988) (quoting *Nix v. Williams*, 467 U.S. 431, 447, 104 S.Ct. 2501 (1984)). In some cases, the government successfully invokes the inevitable discovery exception on the basis of inventory search procedures. In such cases, the court typically concludes that even if the invalid search had not been conducted, the evidence would nonetheless have been discovered in the course of a valid inventory search conducted pursuant to standardized, established procedures. See, e.g., *United States v. Griffiths*, 47 F.3d 74, 78 (2d Cir.1995). In these cases, the Second Circuit has held that the government must prove three things: (1) that the police had legitimate custody of the vehicle or other property being searched, so that an inventory search would have been justified, see *United States v. Jenkins*, 876 F.2d 1085, 1088 (2d Cir.1989); (2) that when the police in the police agency in question conducted inventory searches, they did so pursuant to “established” or “standardized” procedures, see *Griffiths*, 47 F.3d at 78; and (3) that those inventory procedures would have “inevitably” led to the “discovery” of the challenged evidence, see *id.* at 77–78; *Jenkins*, 876 F.2d at 1088.

There is no evidence that any of the prongs of the inevitable discovery standard can be satisfied in this case.

CONCLUSION

For the foregoing reasons, Adedayo Ilori respectfully requests that the Court issue an Order suppressing the evidence illegally obtained in violation of his Fourth Amendment rights, and order such other and further relief as the Court deems just and proper, including the filing of post-hearing memoranda if deemed necessary.

Dated: New York, New York
May 12, 2022

Respectfully Submitted,

PETER E. BRILL, ESQ.

A handwritten signature in black ink, appearing to read 'P. Brill', is written over a horizontal line.