UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA, Plaintiff	:	
v.	:	C.A. No. 15-525
ROBERT F. STROM as the Finance Director of THE CITY OF CRANSTON, et al. Defendants	:	

PLAINTIFF'S POST-HEARING MEMORANDUM RESPECTING THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

Pursuant to Plaintiff's request at the March 25, 2019 hearing on the parties' cross-motions for summary judgment and the Court's permission, Plaintiff hereby submits this post-hearing memorandum to address two issues that arose during the hearing.

I. DEFENDANTS MUST HAVE STANDARDIZED, OBJECTIVE CRITERIA UPON WHICH TO BASE THEIR DECISION TO SEIZE FIREARMS OR REQUIRE A MENTAL HEALTH EXAMINATION PURSUANT TO THE COMMUNITY CARETAKING FUNCTION

Plaintiff continues to dispute that police may make a warrantless seizure of persons or property from a home pursuant to the community caretaking function. As Chief Justice Berger wrote in South Dakota v. Opperman:

> This Court has traditionally drawn a distinction between automobiles and homes or offices in relation to the Fourth Amendment…The reason for this well-established distinction is two-fold. First, the inherent mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible. [citations omitted]… Besides the element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office.

428 U.S. 364, 367 (1976), citing Camara v. Municipal Court, 387 U.S. 523 (1967), and See v. City of Seattle, 387 U.S. 541 (1967) (both holding that a warrant was required to effect an

unconsented administrative entry into private dwellings or commercial premises to ascertain health or safety conditions).

Moreover, absent a court order, neither the Constitutions nor any statute give the police roving responsibility to prevent any perceived danger in somone's home by seizing persons or property. See Ferreira v City of East Providence, 568 F.Supp.2d 197, 216 (D.R.I. 2008) (holding that police officers had no special duty to prevent suicide); Barratt v. Burlingham, 492 A.3d 1219, 1222 (R.I. 1985) (holding that police officer had no special duty to prevent drunk driving accident). In Barratt, Justice Shea wrote:

> A police officer's observation of a citizen's conduct that might foreseeably create a risk of harm to others, or the officer's temporary detention of a citizen is not sufficient in itself to create a "special relationship" that imposes on the officer such a special duty. [citation omitted]. If we were to hold otherwise, officers trying to avoid liability might be compelled to remove from the road all persons whom may pose any potential hazard and, in doing so, might find themselves subject, in many instances, to charges of false arrest.

492. A.2d at 1222. A finding by this Court that Defendants had such responsibility would open up a Pandora's Box of liability issues.

Plaintiff notes that during the hearing Defendants repeated a prior argument that they did not attempt to stop Plaintiff from acquiring other firearms after the subject seizures. Plaintiff agrees but this undisputed fact proves that Defendants' motives were illegitimate. If Defendants sincerely believed that that Plaintiff was suicidal (or a threat to his family), that he should not have firearms, and that they had a responsibility to prevent him from using firearms to harm himself or his family, then they had an obligation to prevent Plaintiff from obtaining other firearms. However, they did not. They merely refused to return the seized firearms without a court order, until Plaintiff filed suit. Then, they returned the firearms without a court order. This

proves that the seizures were nothing more than effort to avoid criticism and possible liability and not a sincere exercise of the community caretaking function.

Nonetheless, even assuming the community caretaking function permits police to seize persons and property from a home without a court order, Defendants must have standardized, objective criteria upon which to base their decision to do so. These circumstances are analogous to those in which police conduct a "inventory search" of an impounded vehicle. In that situation, the police must have standardized, objective criteria to justify the inventory search. See, Florida v. Wells, 495 U.S. 1 (1990) ("Wells"); Colorado v. Bertine, 479 U.S. 367 (1987) ("Bertine"); South Dakota v. Opperman, 428 U.S. 364 (1976) ("Opperman"); United States v. Infante-Ruiz, 13 F.3d 498 (1st Cir. 1994); United States v. Donnelly, 885 F.Supp. 300 (D.Mass. 1995); United States v. Colon Osorio, 877 F.Supp. 771 (D.P.R. 1994); State v. Grant, 840 A.2d 541, 550 (R.I. 2004) ("To be valid, the inventory search must be conducted pursuant to *standardized criteria*, or as part of an *established routine*; it may not serve as a pretext for 'a general rummaging in order to discovery incriminating evidence'" (emphasis original)).

The reason for this requirement is the same here as the analogous requirement of such criteria for a warrantless inventory search, i.e., preventing the violation of constitutional rights through unbridled police discretion. See Wells, 495 U.S. at 4. ("The individual police officer must not be allowed so much latitude that inventory searches are turned into 'a purposeful and general means of discovering evidence of crime.'"). While Rhode Island law is not as developed as federal law, the Court can reasonably predict that our state courts would apply standards at least as demanding as the federal courts. Pimental v. Department of Transportation, 561 A.2d 1348, 1352-53 (R.I. 1989); State v. von Bulow, 475 A.2d 995, 1019-20 (R.I. 1984).

Federal courts in this circuit have required strict proof of such objective, standardized criteria. United States v. Infante-Ruiz, 13 F.3d at 504; United States v. Donnelly, 885 F.Supp. at 307-08; United States v. Colon-Osorio, 877 F.Supp. at 778. In Infante-Ruiz, police officers stopped a car to arrest a passenger who was the defendant on an outstanding federal warrant. They obtained the driver's permission to search the car and found a briefcase in the trunk which the driver said belonged to the defendant. The police searched the briefcase without the defendant's permission and found an illicit firearm. Defendant moved to suppress the evidence of the firearm. The district court upheld the warrantless search of the briefcase based in part on the doctrine of inevitable discovery because the gun would have been found during an inventory search.

On appeal, the First Circuit first commented that it was doubtful that the police would have taken custody of the car because only the passenger was arrested. 13 F.3d at 503-04.

> Second, the government failed to introduced evidence that their actions were controlled by established procedures and standardized criteria, as required by Opperman, Bertine, and Wells, supra. No officer testified that policy dictated that they seize the car, search its contents including closed containers, and return it to the rental agency. The government did not introduce into evidence a written policy to that effect, nor did an officer testify that an oral policy or established routine existed.

Id. at 504. The Court noted that one police officer had said that a regulation did dictate how inventory searches were conducted when they were performed. However, he did not follow it. The inventory list that was introduced at trial did not include the gun. The First Circuit held the government failed to establish that the inventory search was proper.

In Donnelly, the police were investigating a report by a store that defendant was attempting to sell radios that were registered to a different person (who turned out to be defendant's father-in-law). The police arrested defendant and conducted a search of his van

during which they discovered a gun and ammunition in the glove compartment. Defendant was charged with being a felon in possession of a firearm and ammunition. Defendant moved to suppress the evidence of the search. The government argued the inevitable discovery doctrine because the gun would have been found during a "routine inventory" conducted after the vehicle was impounded.

Judge Gertner said an inventory search must be conduced according to standardized procedures and it must be undertaken for a non-investigatory purpose. 885 F.Supp. at 305, citing Bertine, 479 U.S at 375. First, Judge Gertner found that the police policy respecting inventory searches addressed what to do once a vehicle is impounded, not the circumstances under which it should be impounded. 885 F.Supp. at 306. Rather, the police officer testified that it was "judgment call" as to whether to tow an arrestee's vehicle. He testified that without citing to any specific standard that, if he determined that car was the arrestee's, he would "probably" tow it "for safekeeping."

Judge Gertner noted that it is insufficient compliance with the Fourth Amendment that the inventory search "is of a kind usually taken by police departments" or that it was the police officer's individual "standard" procedure. Id., n. 13, citing United States v. Hellman, 556 F.2d 442, 444 (9th Cir. 1977); and People v. Long, 419 Mich. 636, 647, 359 N.W.2d 194 (1984) ("Without a department policy, too much discretion is placed in the hands of a police officer. His decision to search may be an arbitrary one.").

> A rule that leaves it completely to the discretion of the officer—as Lirosi's testimony suggests—runs the risk that officers who have arrested someone, who have no basis to search a car but think it might be helpful, or have been investigating an individual, might impound as a ruse to conduct a criminal search. The issue, both as a matter of constitutional law and policy, is to structure ways to control discretion.

Id. at 307, n. 14, citing LaFave, Controlling Discretion by Administrative Regulations: The Use, Misuses, and Nonuse of Police Rules and Policies in Fourth Amendment Adjudication, 89 Mich.L.Rev. 442 (Dec. 1990). Judge Gertner also found there was no evidence the vehicle needed to be impounded and therefor, no basis to conduct the inventory search. Id. at 307. She granted the motion to suppress. Id. at 308.

Similarly, in Colon-Ocasio, the government attempted to justify the warrantless seizure of defendant's alleged weapons as part of an inventory search. The district court said:

> [T]he Government failed to introduce any evidence that their actions were controlled by established procedures and standardized criteria as required by Supreme Court case law. [citation omitted]. To our surprise, no officer testified that a standard policy dictated that the procedure was to seize the car and its contents, tow it away from the gathering crowds, and transport it to the FBI headquarters for search purposes. As in Infante-Ruiz, the Government did not introduce into evidence a written policy covering these aspects. No officer testified that the circumstances of the moment so justified and that at least an oral policy or established routine existed. In the absence of such evidence, the Government failed to carry its burden of showing that the items in question would have been inevitably discovered.

877 F.Supp. at 778. The district court granted defendant's motions to suppress. Id.

Similarly, here, Defendants have provided no written policy that authorizes their seizures of Plaintiff and his firearms for "safekeeping" pursuant to the community caretaking function. (SUF 10). To the extent there is a relevant policy and training, it contradicts Defendants' actions. (SUF 17, 36). Further, Defendants identify no unwritten policy setting forth objective, standardized criteria upon which to base these decisions. (SUF 20). To the contrary, Defendants unanimously testified that such decisions are based on the individual officer's judgment as determined by his individual experience, which may vary from other officers' experiences. (SUF 32-33, 99). Further, this is in stark contrast to Defendants' written procedures, in the form of General Orders and/or training, applicable to criminal seizures. (SUF 15). Moreover, their

actions contradict their GOs and training respecting persons with supposed mental health issues. (SUF 36-37, 79, 103).

It is undisputed that Plaintiff was not at imminent or acute risk of suicide. (SUF 136). Plaintiff never threated to commit suicide. (SUF 78, 109). Plaintiff was "fine," "calm," "cooperative," and not suicidal when Defendants spoke with hm. (SUF 67, 70, 72, 81). Sgt. Barth did not apply any psychological or psychiatric criteria when he made the decision to require Plaintiff to have a psychological evaluation. (SUF 158). At the time of his deposition, he could not recall any mental health training he had received. (SUF 163). He testified he was just "going on his experience." (SUF 156). The hospital discharged Plaintiff after he spoke with a social worker. (SUF 121).

The absence of an applicable GO is particularly striking given how often Defendants seize persons for mental health evaluations or seize their firearms for safekeeping. (SUF 145-46, 157). They have adopted GOs applicable to numerous criminal investigations. There is no legitimate justification for the failure to have a written policy respecting seizures pursuant to the community caretaking function. A written policy would help ensure that such seizures comply with the requirements of the Fourth Amendment and Art. 1, Sec. 6 of the Rhode Island Constitution. See, Murvin v. Jennings, 259 F.Supp.2d 180, 187 (D.Conn. 2003) (a municipality can be liable for failure to have a policy that prevents constitutional violations by police).

Here, Defendants justify their seizures based on the idiosyncratic training and experience of which ever senior police officer happens to respond to the scene of a domestic disturbance (or of the supervisor who is contacted by telephone). That is neither standardized nor objective. Accordingly, it is unconstitutional.

During the hearing, Defendants conceded that if this was a criminal matter, they could not have seized either Plaintiffs or their property because there were no exigent circumstances. They justified their actions on the grounds that because this was not a criminal investigation, they supposedly could not obtain a search warrant or court order to make their seizures, and therefore they were justified in seizing Plaintiff and his property without an order. The upshot of Defendants' argument is astonishing: a person in a purely verbal domestic dispute has fewer constitutional protections against seizures than a person being investigated for a crime.

However, both parts of Defendants' argument are false as a matter of law. As Plaintiff has argued previously, it is pluperfectly clear that the Fourth Amendment and Art. 1, Sec. 6 of the Rhode Island Constitution apply to civil investigations and seizures, as well as criminal ones. Moreover, the General Assembly has provided statutory mechanisms for Defendants to seize persons or firearms when there is an imminent danger. The Rhode Island Mental Health Law provides for the issuance of an order to take a person for treatment whose "continued unsupervised presence in the community would create an imminent likelihood of serious harm by reason of mental disability." R.I.Gen.L. § 40.1-5-7(a) and (b).

The Rhode Island Firearms Act prohibits people who are mentally incompetent from possessing firearms. R.I.Gen.L. § 11-47-6. Presumably, someone who can be committed because he is imminently dangerous to others due to his mental disability is also mentally incompetent for purposes of possessing a firearm, at least temporarily. See, R.I.Gen.L. § 40.1-5-2(8).[1] Courts equate serious mental disabilities with mental incompetence. See, Greenwood v United States, 350 U.S. 366, 373 (1956); Heroux v. Gelineau, No. PC-1992-5807, 2001 WL

[1] "'Mental disability' means a mental disorder in which the capacity of a person to exercise self control or judgment in the conduct of his or her affairs and social relations, or to care for his or her personal needs, is significantly impaired."

872999 at *4 (R.I.Super. July 27, 2001). The Court should read the two statutes *in pari materia.* Horn v. Southern Union Co., 927 A.2d 292, 295 (R.I. 2007).

Rhode Island's statutory chapter on search warrants states a warrant may be issued to search for and seize "[p]roperty kept…in violation of law." R.I.Gen.L. § 12-5-2(2). The statute does not require that the violation be criminal or that there be a criminal investigation. See, R.I.Gen.L. § 12-5-3(a)(1) (stating that a warrant shall issue only upon complaint by "a person specifically authorized by law to bring complaints for violation of the law which it is his or her responsibility to enforce"). Accordingly, Defendants could have and should have sought a search warrant or court order to make their seizures if they genuinely believed Plaintiff was an imminent threat to himself or others because of his mental condition and the presence of his firearms in the house.

Finally, there is a practical, policy consideration. If people are subject to random seizures of their persons and property in their homes whenever they call the police about a domestic disturbance, they will stop calling the police. Certainly, Plaintiff will never call the police to his house again.

II. RHODE ISLAND IS NOT A COMMUNITY PROPERTY STATE AND PLAINTIFF'S FIREARMS WERE NOT MARITAL PROPERTY

During the hearing, the Court questioned whether Plaintiff's wife could consent to the search for and seizure of Plaintiff's firearms because Rhode Island is a so-called "community property" state. As an initial matter, Rhode Island is not a community property state. Gaipo v. Gaipo, 102 R.I. 28, 29, 227 A.2d 581, 581 (1967) ("The community property concept is not

observed in this state and under our law defendant has no attachable interest in the judgment obtained by his wife against the garnishee Bowes.").[2]

Rather, Rhode Island is a "marital property" state. Accordingly, property owned by one spouse before the marriage remains the property of that spouse after the marriage. R.I.Gen.L. § 15-5-16.1(b) ("The court may not assign property or an interest in property held in the name of one of the parties if the property was held by the party prior to the marriage."); Hurley v. Hurley, 610 A.2d 89, 85 (R.I. 1992) (house purchased by the wife before the marriage remained the wife's property after marriage).

Here, Plaintiff purchased his two handguns in the "early 1980s." (Plaintiff's Answer to Interrogatory No. 18, Exhibit A, attached). He married his wife, Kim, in 1993. (E. Caniglia deposition, p. 11, Exhibit B, attached; K. Caniglia deposition, p. 10, Exhibit C, Attached). Kim Caniglia testified that Plaintiff "owns the guns but they're in our house." (Exhibit C). Accordingly, the two handguns that Defendants seized remained Plaintiff's property and his wife could not consent to the seizure. Moreover, Plaintiff expressly objected to the seizure. (SUF 84-85).

Indeed, if the Defendants had any serious concerns about the ownership of the guns, they should not have released them to Plaintiff after he filed suit. Instead, they should have required his wife to consent to the release to Plaintiff or they should have filed an interpleader action. The fact that Defendants simply released the guns to Plaintiff is an admission of his ownership.

[2] In any event, it seems unlikely that the Supreme Court would hold that the scope of the Fourth Amendment depends on whether a person lives in a "community property" state. See, United States v. Jones, 565 U.S. 400, 425-26 (2012) (Alito, J., concurring); see also Alderman v. United States, 394 U.S. 165, 174 (1969) ("Fourth Amendment rights are personal rights."). If the Fourth Amendment depended on state property law, then arguably the police could not search a home owned by the entirety unless they had the consent of both spouses. Similarly, if they required a warrant to search the house, then arguably they would have to serve the warrant on both spouses.

Because Defendants did not obtain a court order to seize the firearms, there was no exigency, and the community caretaking function does not authorize the seizure of property from a home without a court order, Defendants' seizure of the handguns violated the Fourth Amendment and Art. 1, Sec. 6 of the Rhode Island Constitution.

CONCLUSION

The Court should grant Plaintiff's Motion for Partial Summary Judgment and deny Defendants' Summary Judgment Motion.

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CERTIFICATION

I hereby certify that on March 28, 2019, a copy of the foregoing was filed and served electronically on all registered CM/ECF users through the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

/s/ Thomas W. Lyons