IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,	*	
	*	
Plaintiff,	*	CRIMINAL NO. 00-258
	*	
v.	*	
	*	
TERRY LEE RESCHLY and STEVEN LEE ROYER,	*	RULING DENYING IN PART AND GRANTING IN PART MOTION TO SUPPRESS
	*	
Defendants.	*	

Defendant Reschly's motion to suppress is before the court.

Defendant Reschly (hereinafter "defendant") moves to suppress all physical evidence seized during a warrantless stop and search of his vehicle, two searches of his residence and place of business pursuant to search warrants, and a warrantless search of his place of business. The government resists. Evidence was received during an April 25, 2001 hearing, and defendant filed a post-hearing memorandum.

FACTS

On October 7, 2000, Sergeant David Schweitzer of the Washington County Police Department observed defendant driving a vehicle with an attached open-air trailer. Schweitzer knew that defendant's driver's license had been revoked, and he confirmed that fact with the dispatcher. Schweitzer stopped the vehicle and arrested defendant for Driving Under Suspension in violation of Iowa law. When defendant pulled over, Schweitzer observed him moving around and leaning over to his right side, like he was hiding something. Schweitzer then searched the interior of the

passenger compartment of the vehicle. He seized two items commonly used in manufacturing methamphetamine, coffee filters and an aerator, and opened a small medical tape dispenser, in which he found a substance he believed to be methamphetamine. Schweitzer knew that defendant had previously been convicted for distributing narcotics. In addition, he had intelligence information from Officer Jerry Dunbar that defendant was manufacturing methamphetamine.

After Schweitzer found the methamphetamine, he called two other officers, including Chad Ellis, for assistance. From outside the trailer, Officer Ellis saw a green box in the trailer which was partially open. He saw plastic tubing protruding from the box and recognized the tubing as an item commonly used in manufacturing methamphetamine. Ellis, from his position outside the trailer, opened the box and seized the tubing and other items in the box.

Later on October 7, Officer Dunbar obtained a warrant to search defendant's residence and place of business, Reschly Metals, in Washington, Iowa, and the residence of co-defendant Steven Royer, a passenger when the vehicle was stopped. The searches were executed that day, and officers seized contraband and various items related to the manufacturing of methamphetamine. On October 9, Dunbar obtained a second warrant to search defendant's residence and place of business. During the execution of this search warrant, the officers seized additional items related to the manufacturing of methamphetamine.

On October 17, Washington law enforcement officers obtained information about items allegedly buried on the Reschly Metals property. Officer Dunbar spoke with the Washington County Attorney about getting a search warrant, but the County Attorney

advised the officer that no warrant was needed under the "open fields" doctrine.

On that same day, October 17, officers returned to Reschly Metals without a search warrant. They found a closed gate, a fence barring entrance to the property, and a "no trespassing" sign. The officers then walked along the side of the property until they reached an opening in the fence used to permit entrance to and exit from a neighbor's farm field. They entered the Reschly Metals property through that opening. When on the property, an officer kicked aside some surface soil that appeared to have been previously disturbed, and saw the top of an LP tank. The officers dug the tank out of the ground, and then used a backhoe to excavate more earth, uncovering and seizing additional evidence.

LEGAL STANDARDS

The Fourth Amendment prohibits unreasonable searches and seizures, and warrantless searches are per se unreasonable. Mincey v. Arizona, 437 U.S. 385, 390 (1978) (citations omitted). The warrant requirement, however, is subject to specifically established and well-delineated exceptions. Id. (citations omitted). The government bears the burden of demonstrating that an exception applies. United States v. Jeffers, 342 U.S. 48, 51 (1951) (citation omitted).

A search warrant is valid if it is based upon a finding of probable cause by a neutral and detached judicial officer. Walden v. Carmack, 156 F.3d 861, 870 (8th Cir. 1998) (citations omitted). Probable cause requires that the facts set forth in an affidavit supporting a search warrant application demonstrate a fair probability that contraband or evidence of a crime will be

found in a particular location. Illinois v. Gates, 462 U.S. 213, 238 (1983).

ANALYSIS

A. Vehicle Search

Under the search-incident-to-arrest exception to the search warrant requirement, when the police make a lawful custodial arrest of an occupant of a vehicle, they may, as a contemporaneous incident of that arrest, search the passenger compartment of the vehicle and open any closed containers found therein. New York v. Belton, 453 U.S. 454, 460-61 (1981). A search incident to arrest may be conducted even when the custodial arrest is for a traffic violation, such as driving without a driver's license. Gustafson v. Florida, 414 U.S. 260, 266 (1973). Defendant and his vehicle were searched incident to a lawful custodial arrest for Driving Under Suspension, and the search of the medical tape dispenser found in the passenger compartment of the vehicle was therefore constitutional.

The search of defendant's open trailer was permissible under the automobile exception to the search warrant requirement. A police officer may conduct a warrantless search of an entire automobile if probable cause exists to believe that it contains contraband, or the fruits or instrumentalities of a crime. United States v. Thompson, 906 F.2d 1292, 1298 (8th Cir. 1990) (citations omitted); see also United States v. Ross, 456 U.S. 798, 821 & n.28 (1982) (when police have probable cause to search entire vehicle, they may search every part of the vehicle and its contents, including all containers and packages in the vehicle). The automobile exception also applies to other types of motorized vehicles. See, e.g., California v. Carney, 471 U.S. 386, 393 &

n.2 (1985). Because the search incident to arrest of the passenger compartment of defendant's vehicle uncovered suspected contraband, and because of the other information the officers had about defendant, the officers had probable cause to search the trailer.

Alternatively, Officer Ellis's search of the trailer was valid pursuant to the plain view exception to the search warrant requirement. The warrantless seizure of evidence in the plain view of an officer is constitutional if (1) the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed, (2) the item's incriminating character is immediately apparent, and (3) the officer has a lawful right of access to the item. Horton v. California, 496 U.S. 128, 136-37 (1990). All three requirements are met here.

B. Searches Pursuant to Warrants

Because the vehicle search on October 7, 2000 was constitutional, information obtained as a result of that search was properly included in the search warrant applications. Officer Dunbar testified at the hearing as to his personal knowledge of other matters contained in the affidavit in support of the search warrant applications. The applications do not contain stale information. After careful review of the warrant applications and the evidence presented at the hearing, I conclude that the search warrants dated October 7 and 9, 2000, are supported by probable cause and are valid.

C. Warrantless Search of Reschly Metals

The Warrant Clause of the Fourth Amendment extends to business and commercial establishments as well as private homes. Marshall v. Barlow's, Inc., 436 U.S. 307, 311 (1978). "The

businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property." See v. City of Seattle, 387 U.S. 541, 543 (1967). The defendant argues that the warrantless search on October 17, 2000 was an unconstitutional intrusion upon his business premises, while the government asserts that the property was unprotected under the "open fields" doctrine articulated in Hester v. United States, 265 U.S. 57, 59 (1924) and reaffirmed in Oliver v. United States, 466 U.S. 170, 177 (1984). The question, therefore, is whether the property searched was more akin to a business establishment or an open field surrounding a business.

At the time of the search, the officers knew that defendant was in the business of recycling metals, and that they were entering his private business property. Cars, trailers, appliances, and other metal items are stored on the property as part of defendant's business. Upon their arrival, the officers found a closed gate, a fence barring entrance to the property, and a "no trespassing" sign. To gain access to the area, they walked along the side of the property until they reached an opening in the fence used to accommodate ingress and egress to and from a neighbor's farm field. There is no indication that they were in any way invited to enter, or that the area is open to the general public.

The outdoor nature of defendant's business property is similar to the outdoor industrial complex in Dow Chemical Co. v. United States, 476 U.S. 227 (1986). Although the Court in that case found that aerial surveillance of Dow's industrial complex did not violate the Fourth Amendment, id. at 239, here there was an actual physical invasion of the property followed by digging

and excavation with a backhoe. As the Court observed in Dow: "Any actual physical entry by EPA into any enclosed area would raise significantly different questions . . . ." Id. at 237; see United States v. Swart, 679 F.2d 698, 702 (7th Cir. 1982) (finding that search of a business for repairing and rebuilding vehicles "does not involve an open field but outside business premises that were closed for the day.").

The fact that defendant's business property is outdoors does not make it an open field. He was entitled to no lesser degree of Fourth Amendment protection than a person operating his business inside a closed warehouse. On October 17, defendant had a legitimate expectation of privacy in the property, including the portion beneath the surface. It was a privacy expectation that was objectively, not just subjectively, reasonable. Rakas v. Illinois, 439 U.S. 128, 143-44 & n.12 (1978). I conclude that the property searched is an outdoor business premises protected by the Fourth Amendment, not an unprotected open field. The warrantless search of the property was unreasonable and violated the Fourth Amendment, and all evidence seized as a result of the search must be suppressed.

RULING AND ORDER

Defendant's motion to suppress is DENIED as to physical evidence seized during the warrantless stop and search of his vehicle and during the two searches of his residence and place of business pursuant to search warrants, and is GRANTED as to evidence seized during the warrantless search of Reschly Metals on October 17, 2000.

IT IS ORDERED that the government shall not seek to introduce into evidence at the trial of this case evidence seized

in the October 17, 2000 warrantless search of Reschly Metals or testimony of observations made during that search.

DATED this 17 day of May, 2001.

HAROLD D. VIETOR
Senior U.S. District Judge