

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

425

KA 05-02505

PRESENT: HURLBUTT, J.P., MARTOCHE, CENTRA, PERADOTTO, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ORLANDO RIVERA, JR., DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JANET C. SOMES OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (LESLIE E. SWIFT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Patricia D. Marks, J.), rendered August 17, 2005. The judgment convicted defendant, upon his plea of guilty, of, inter alia, criminal possession of a controlled substance in the third degree (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of, inter alia, two counts of criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1], [12]), defendant contends that the police conducted an illegal inventory search of his vehicle and thus that County Court erred in refusing to suppress the drugs found during that search. We reject defendant's contention. "Following a lawful arrest of the driver of an automobile that must be then impounded, the police may conduct an inventory search of the vehicle" pursuant to established police policy (*People v Johnson*, 1 NY3d 252, 255). Contrary to defendant's contention, the applicable order of the Rochester Police Department concerning inventory searches sets forth "a standard procedure that was rationally designed to meet the objective justifying the search and that limited the . . . discretion" of the police in conducting the search (*People v Cooper*, 48 AD3d 1055, 1056, lv denied 10 NY3d 861; see *People v Galak*, 80 NY2d 715, 719; *People v Wilburn*, 50 AD3d 1617, 1618, lv denied 11 NY3d 742). Here, the People met their burden of establishing that the police followed the procedure set forth in that order in conducting the inventory search (*cf. People v Elpenord*, 24 AD3d 465, 467; *People v Acevedo-Sanchez*, 212 AD2d 1023, lv denied 85 NY2d 935). Contrary to defendant's further contention, the record establishes that the police prepared a "meaningful inventory list"

(*Johnson*, 1 NY3d at 256).

Entered: March 20, 2009

JoAnn M. Wahl
Clerk of the Court