SLIP OPINION

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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 09-631

	Opinion Delivered NOVEMBER 11, 2009
PEDRO LOPEZ APPELLANT	APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT, [NO. CR-08-393]
V.	HONORABLE GAYLE K. FORD, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Pedro Lopez appeals his conviction for possession of a controlled substance (marijuana) with intent to deliver after a bench trial in Lonoke County Circuit Court. Appellant challenges the denial of his motion to suppress the drugs, over one hundred pounds of marijuana concealed in the gas tank of the vehicle he was driving. There was no question that the police officer had cause to pull the vehicle over along I-40 for a speeding violation and had cause to arrest appellant for failure to have a valid driver's license. There was no question that the vehicle was properly impounded. The sole issue was whether appellant's right to be free from unreasonable searches and seizures was violated because the officer searched the vehicle's gas tank without benefit of a search warrant. We have reviewed this appeal under the proper standards and affirm the denial of the motion to suppress.

Our standard of review for a trial court's decision to grant or deny a motion to suppress requires us to make an independent determination based on the totality of the circumstances, to review findings of historical fact for clear error, and to determine whether those facts give rise to reasonable suspicion or probable cause. *George v. State*, 358 Ark. 269, 189 S.W.3d 28 (2004).

Here, once appellant was arrested, the officer began to perform an inventory search while waiting for a wrecker to tow the vehicle. Under the driver's seat was an open can of beer along with marijuana seeds and stems. The officer also smelled the faint odor of marijuana. A drug-detecting dog was run around the vehicle, and although it showed interest, it did not "alert." While waiting on the wrecker to arrive, the officer looked underneath the truck, noticing that the gas tank appeared to be altered in some fashion.

The officer explained that he had hundreds of hours of professional training in detecting drug trafficking and even taught such courses at the State Police Academy. He testified that in his professional experience, appellant's vehicle showed indicators of concealment of narcotics. The officer described the alterations as new clamps underneath the vehicle, visible indications that the bolts had recently been turned, and weld markings at the rear of the tank.

After the vehicle arrived at impound, the officer ran a density meter on the gas tank, which gave indication that something might be inside the tank. The officer then used a fiber-

optic camera to look down inside the tank, where he saw two metal boxes that took up the majority of the tank space. Once the boxes were removed, they revealed 147 pounds of marijuana in total. Appellant contends that because the vehicle was impounded, there was no exigency and that a warrant was required. We disagree.

As a general rule, all searches conducted without a valid warrant are unreasonable unless shown to be within one of the exceptions to the rule that a search must rest upon a valid warrant. *Kirk v. State*, 38 Ark. App. 159, 832 S.W.2d 271 (1992). The burden is on the State to establish an exception to the warrant requirement. *Fultz v. State*, 333 Ark. 586, 972 S.W.2d 222 (1998); *Izell v. State*, 75 Ark. App. 377, 58 S.W.3d 400 (2001).

Rule 12.6(b) of the Arkansas Rules of Criminal Procedure provides that "[a] vehicle impounded in consequence of an arrest, or retained in official custody for other good cause, may be searched at such times and to such extent as is reasonably necessary for safekeeping of the vehicle and its contents." Police officers may conduct a warrantless inventory search of a vehicle that is being impounded in order to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger. *Thompson v. State*, 333 Ark. 92, 966 S.W.2d 901 (1998). An inventory search, however, may not be used by the police as a guise for general rummaging for incriminating evidence. *Id*. Thus, the police may impound a vehicle and inventory its

contents only if the actions are taken in good faith and in accordance with standard police procedures or policies. *Id*.

This search was continued after the vehicle was impounded, but it was not necessarily part and parcel of an inventory search. This was a valid warrantless search because there was probable cause to seize the object of the search—namely, narcotics. The odor of marijuana coming from a vehicle is sufficient to arouse suspicion and provide probable cause for the search of that vehicle. *Green v. State*, 334 Ark. 484, 978 S.W.2d 300 (1998). As our supreme court held in *McDaniel v. State*, 337 Ark. 431, 440, 990 S.W.2d 515 (1999):

> We are readily mindful of the priceless value of constitutional liberties. They cannot be lightly infringed upon or they will inevitably be whittled away to worthless. In the instant case, the precedents governing automobile searches make it apparent, for better or worse, that driving citizens and their cargo are less protected than when at home. The facts and the law applicable to the instant case compel a holding that probable cause justified the search of appellant's vehicle and that the scope of that search could include containers within the automobile that could contain the suspected and ultimately discovered marijuana. We therefore affirm the trial court's denial of appellant's motion to suppress.

Given the totality of circumstances here, the officer was justified in searching the gas tank. The officer observed marijuana seeds and stems under the driver's seat; there was faint odor of marijuana in the vehicle; and the gas tank exhibited signs of tampering, typical of drug-smuggling. At that point, all the officer's activities were well within the scope of his authority by virtue of the legal stop, detention, and arrest. The officer complied with standard procedures to contact a wrecker service, conduct appropriate inventory activities,

and observe what was available to the naked eye. It was at that point that the officer gleaned probable cause to search the vehicle.

As a general rule our Supreme Court permits the search of an arrestee's vehicle only when the arrestee is within reaching distance of the vehicle or it is reasonable to believe that the vehicle contains evidence of the offense of arrest. *See Arizona v. Gant*, 77 USLW 4285, 120 S.Ct. 1710 (April 21, 2009). However, there are other established exceptions to the warrant requirement that authorize a vehicle search under additional circumstances when safety or evidentiary concerns demand it. *See id.* One of those exceptions is when probable cause arises of another offense, and in that instance, the scope of a warrantless search of an automobile is defined, not by the nature of the container in which contraband is secreted, but rather by the object of the search and those places in which there is probable cause to believe that it may be found. *United States v. Ross*, 456 U.S. 798 (1982) cited in *Arizona v. Gant*, 77 USLW 4285, 120 S.Ct. 1710 (April 21, 2009).

In this case, the officer gleaned probable cause to search this vehicle for narcotics as he waited for the wrecker to tow the vehicle to impound. The search of this automobile was thus appropriate under the Constitutions and our Rule of Criminal Procedure 14.1. The justification to conduct such a warrantless search did not vanish once the vehicle was immobilized or impounded. *See Bohanan v. State*, 324 Ark. 158, 919 S.W.2d 198 (1996).

For the foregoing reasons, we affirm the denial of appellant's motion to suppress and resulting conviction.

HENRY and BROWN, JJ., agree.