STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED November 6, 2007
v	No. 272351 Wayne Circuit Court
MATTHEW WAYNE OWENS, Defendant-Appellee.	LC No. 06-003636-01

Before: Zahra, P.J., and White and O'Connell, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order dismissing charges of possession of a "Taser" electric-shock device, MCL 750.224a(1), and driving on a suspended license, MCL 257.904(3)(a). The dismissal followed the trial court's grant of defendant's motion to suppress the evidence that he possessed the device. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was arrested for driving on a suspended license following a traffic stop that occurred at a gas station. The arresting officer radioed for a truck to come and tow the car, and he conducted a search of the car before the truck arrived. The shock device was found between the driver's-side seat and the console. The trial court held that the departmental policy regarding impoundment was overly broad and that impoundment of a car parked on private property was improper, especially because defendant was not given an opportunity to make alterative arrangements to secure the car.

"This Court's review of a lower court's factual findings in a suppression hearing is limited to clear error, and those findings will be affirmed unless we are left with a definite and firm conviction that a mistake was made." *People v Marcus Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). However, we review de novo the court's ultimate decision on the motion and any legal issues that affected that decision. *People v Garvin*, 235 Mich App 90, 96-97; 597 NW2d 194 (1999).

A valid inventory search is an exception to the warrant requirement. *People v Houstina*, 216 Mich App 70, 77; 549 NW2d 11 (1996). "[S]uch a search is considered to be an administrative function rather than a part of a criminal investigation." *Id*. The purposes of an inventory search of an impounded vehicle are "(1) protection of the owner's property while in police custody, (2) protection of police against claims of lost or stolen property, and (3)

protection of the police from potential physical danger." *People v Toohey*, 438 Mich 265, 284; 475 NW2d 16 (1991). "[T]he validity of the inventory search depends on whether there were standardized criteria, policies, or routines regulating how inventory searches were to be conducted." *People v Poole*, 199 Mich App 261, 265; 501 NW2d 265 (1993). "An inventory search that is conducted pursuant to standardized police procedure is considered reasonable because the resulting intrusion will be limited to the extent it is necessary to fulfill the caretaking function." *Toohey*, *supra* at 275-276. "The goal is to prevent inventory searches from being used as 'a ruse for general rummaging in order to discover incriminating evidence' and, therefore, the applicable policy 'should be designed to produce an inventory.'" *Poole*, *supra* at 266, quoting *Florida v Wells*, 495 US 1, 4; 110 S Ct 1632; 109 L Ed 2d 1 (1990).

Although the relevant facts of this case closely match the facts in *Poole*, the trial court did not find that the officer's inventory procedure fit within the inventory exception to the warrant requirement.[1] However, it did not find that the officer violated police procedure. Instead, it found that the procedure itself was unreasonable, holding that a police policy of impounding a car whenever a legal driver could not remove it to a secure location was overly broad. In reaching its result, the trial court took constructive notice of the unproved proposition that gas stations usually allow individuals to park their cars and leave them unattended, and it ruled that the impoundment was improper because the car was already legally parked on private property.

We disagree with the trial court's unsupported factual findings and its legal conclusion in this case. Defendant did not own the private property on which the car was parked, so the trial court's reliance on *People v Siegel*, 95 Mich App 594; 291 NW2d 134 (1980), is unjustified. Defendant's own testimony demonstrated that he had no reasonable expectation that he could simply leave the car at the gas station. See *People v Krezen*, 427 Mich 681, 687-688; 397 NW2d 803 (1986). The car was in a parking place designated for temporary parking while patronizing the gas station. Defendant's testimony demonstrated that gym bags containing various possessions were in plain sight inside the passenger compartment, and there was no one present to take custody of the car or protect it from vandalism or theft. *Id*. Under the circumstances, we reject the trial court's blanket finding that the police procedure for impoundment under such circumstances was unreasonable. *Id*. Although the officer could have offered defendant an opportunity to make alternative arrangements for his car, the failure to do so does not render the impoundment unreasonable. *Colorado v Bertine*, 479 US 367, 373-374; 107 S Ct 738; 93 L Ed 2d 739 (1987).

Although there may be some situations in which impoundment under such a broad policy would violate the Fourth Amendment, that possibility does not justify suppression when the facts of the defendant's case indicate that the impoundment decision was reasonable. *Krezen*, *supra* at 685-686. Because the impoundment under the circumstances of this case was reasonable, and

[1] We note that the trial court did not find that the search was justified as a search incident to defendant's valid arrest, even though the shock device was found immediately adjacent to the defendant's driver's-side seat. *Poole*, *supra* at 264.

the officer carried out the inventory search pursuant to departmental policy, the trial court erred in granting defendant's motion to suppress. *Poole*, *supra* at 265.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell

I concur in result only.

/s/ Helene N. White