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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

PAVIELLE WALTON, *Appellant*.

No. 1 CA-CR 16-0205
FILED 9-28-2017

Appeal from the Superior Court in Maricopa County
No. CR2012-007445-003
The Honorable Dean M. Fink, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Elizabeth B. N. Garcia
Counsel for Appellee

The Stavris Law Firm, PLLC, Scottsdale
By Christopher Stavris
Counsel for Appellant

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Peter B. Swann joined.

C A T T A N I, Judge:

¶1 Pavielle Walton appeals his convictions and sentences for two counts of armed robbery, two counts of aggravated assault, two counts of kidnapping, and one count of misconduct involving weapons. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 In November 2011, members of the Mesa Police Department noticed a black car with four occupants slowly following a woman through a strip mall parking lot. After passing the woman, the car slowly circled a nearby bank and then traveled through the loading docks behind the strip mall.

¶3 The police officers followed the car and saw the driver commit several traffic violations, including cutting across several lanes of traffic to make a turn. The car slowly traveled through two more strip mall parking lots, and eventually parked.

¶4 When the driver and the front seat passenger got out of the car, the officers stopped and detained them and two other passengers. The front seat passenger and one of the backseat passengers were both carrying concealed handguns. One of the detectives noticed the handle of another handgun protruding from the pocket on the back of the driver's seat. The driver's side backseat passenger admitted having this handgun and that he was a prohibited possessor.

¶5 The officers identified the driver as Walton, ran a check on his license, and discovered that it was suspended. Because Walton's license was suspended, the officers began the process of towing and impounding the car. *See* Ariz. Rev. Stat. ("A.R.S.") § 28-3511(A)(1), (E).¹

¹ Absent material revisions after the relevant date, we cite a statute's current version.

STATE v. WALTON
Decision of the Court

¶6 Several officers searched the vehicle before impound. As items were removed, a detective noticed clothing that he suspected was connected to a recent armed robbery of a video game store in Gilbert, including a red jacket similar to one worn by one of the robbers. The detective took photographs of these items and later gave copies of these photographs to a Gilbert Police detective.

¶7 Based on these photographs, the Gilbert Police Department obtained a warrant to search the vehicle. Officers seized items they believed were connected to the video game store robbery, including hats, jackets, and latex gloves.

¶8 Walton was charged with one count of conspiracy to commit armed robbery, two counts of armed robbery, two counts of aggravated assault, two counts of kidnapping, one count of misconduct involving weapons, and one count of threatening or intimidating. Three other men who took part in the robbery (two of whom were present in the car during the November 2011 search) entered plea agreements. Walton challenged the vehicle search in a *pro per* motion to suppress, which the superior court denied after an evidentiary hearing.

¶9 Walton waived his right to a jury trial. The charges of conspiracy to commit armed robbery and threatening or intimidating were dismissed without prejudice before trial. The court found Walton guilty of the remaining charges and imposed sentences of incarceration totaling 19.75 years. Walton timely appealed, and we have jurisdiction under A.R.S. § 13-4033.

DISCUSSION

¶10 Walton argues that the inventory search of his car before it was impounded violated his Fourth Amendment Rights, and that the evidence discovered during that search should have been suppressed.² We review the superior court's ruling for an abuse of discretion, but review any legal conclusions *de novo*. *State v. Peterson*, 228 Ariz. 405, 407-08, ¶ 6 (App. 2011). "We view the evidence presented at the suppression hearing in the

² Walton also argues that the evidence should have been suppressed under Article 2, Section 8 of the Arizona Constitution. But because "the exclusionary rule is applied no more broadly under our state constitution than it is under the federal constitution outside the home-search context," we need not separately address the admissibility of the evidence under the Arizona Constitution. *See State v. Hummons*, 227 Ariz. 78, 82, ¶ 16 (2011).

STATE v. WALTON
Decision of the Court

light most favorable to upholding the trial court's ruling." *State v. Organ*, 225 Ariz. 43, 46, ¶ 10 (App. 2010).

¶11 The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. A warrantless search of a person or his property is "per se unreasonable" unless the search is covered by one of "a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). Inventory searches fall into one such exception. *Colorado v. Bertine*, 479 U.S. 367, 371 (1987); *Organ*, 225 Ariz. at 48, ¶ 20. These searches "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." *Bertine*, 479 U.S. at 372.

¶12 "An inventory search of a vehicle is valid if two requirements are met: (1) law enforcement officials must have lawful possession or custody of the vehicle, and (2) the inventory search must have been conducted in good faith and not used as a subterfuge for a warrantless search." *Organ*, 225 Ariz. at 48, ¶ 21. Although an officer cannot perform an inventory search solely in the hope of finding evidence, an inventory search satisfies the good faith requirement when the inventory search is reasonable under the circumstances. *In re One 1965 Econoline*, 109 Ariz. 433, 435 (1973); *see also State v. Davis*, 154 Ariz. 370, 375 (App. 1987). When an inventory search follows a set of standard procedures, we presume the search was conducted in good faith. *Organ*, 225 Ariz. at 48, ¶ 21.

¶13 Walton appears to concede that the officers had reasonable suspicion that he and his passengers were engaged in criminal activity, justifying the initial detention. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968); *State v. Evans*, 237 Ariz. 231, 234, ¶ 7 (2015). And Walton implicitly acknowledges that the officers had lawful possession of his vehicle. Nevertheless, he argues that the inventory search was not conducted in good faith, noting that no officer testified as to who ordered the search, and that the tow sheet prepared by the officers did not list any property.³

³ Although his argument focuses on the propriety of the inventory search, Walton also appears to be challenging the seizure of the 9-mm handgun that was protruding from the pocket on the back of the driver's seat. The backseat passenger admitted possessing this gun and that he was a prohibited possessor. Thus, the officer properly seized this gun as

STATE v. WALTON
Decision of the Court

¶14 The superior court did not abuse its discretion by rejecting Walton’s Fourth Amendment argument. At the suppression hearing, one of the officers testified that it is part of “normal policy” to search the property found in vehicles subject to a 30-day impound. Although none of the officers testified as to who ordered an inventory search, and none of the officers testified that they were specifically following standard procedures, the testimony adequately established that the officers were following police department policy by conducting an inventory search. And although the tow sheet did not list any items, the officer’s testimony suggested that officers typically only document certain property, such as “high value items.” See also *Organ*, 225 Ariz. at 48, ¶ 24 (“Defendant cites no cases, and we found none, holding that every item in the vehicle, regardless of value, must be included on the inventory report.”). Walton does not cite to any unusual behavior by the officers that was inconsistent with the routine search of a vehicle subject to a 30-day impound, and regardless of any hidden subjective intentions of the officers, the search was objectively reasonable under the circumstances. See *In re One 1965 Econoline*, 109 Ariz. at 435.

CONCLUSION

¶15 For the foregoing reasons, Walton’s convictions and sentences are affirmed.



AMY M. WOOD • Clerk of the Court
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evidence of a crime within his plain view. See *Horton v. California*, 496 U.S. 128, 133–34 (1990) (“If an article is already in plain view, neither its observation nor its seizure would involve any invasion of privacy.”).