

Cite as 2010 Ark. App. 539

**ARKANSAS COURT OF APPEALS**DIVISION II  
No. CACR09-1229

BRODERICK J. COOPER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** June 30, 2010APPEAL FROM THE CLARK  
COUNTY CIRCUIT COURT  
[NO. CR-07-172]HONORABLE ROBERT E.  
McCALLUM, JUDGE

AFFIRMED

**JOSEPHINE LINKER HART, Judge**

Broderick J. Cooper was found guilty in a Clark County jury trial of possession of crack cocaine with intent to deliver. He was sentenced to 162 months in the Arkansas Department of Correction. On appeal, he argues that the trial court erred by denying his motion to suppress physical evidence seized from his car during the inventory search. We affirm.

None of the pertinent facts are in dispute, inasmuch as the events were captured on video. Cooper was stopped for driving 64 miles per hour in a 55-mile-per-hour zone by State Police Corporal David Forthman. Cooper informed Corporal Forthman that his driver's license was suspended. During the stop, Gurdon City Marshall Don Childress advised Corporal Forthman to "check for 509," which means illegal narcotics. When he conducted a records check, Corporal Forthman confirmed that Cooper's license was suspended. He also

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learned that Cooper had active felony warrants from Pensacola, Florida, and active misdemeanor warrants from Rogers, Arkansas, and that Florida was willing to extradite Cooper. Corporal Forthman further discovered that Cooper's car was uninsured and bore a fictitious tag. Cooper was told to step out of the car. Corporal Forthman handcuffed him and placed him in the back of his patrol car.<sup>1</sup>

Corporal Forthman asked Cooper if he knew someone who could come and get his car. Cooper stated that he could ask his grandmother to bring a friend to remove the car. Cooper's grandmother was a resident of Gurdon, which was five or six miles away from where he was stopped. Corporal Forthman, however, never allowed Cooper to arrange to have the car picked up. He candidly admitted that by this time, he had begun to suspect that Cooper had drugs in the car. Corporal Forthman stated that he developed his suspicion when Cooper "paused" before answering his question regarding whether he had any drugs in the car, although he also noted that there were several other "red flags."

Corporal Forthman began an inventory search of the car in accordance with the Arkansas State Police policy manual.<sup>2</sup> He used Cooper's keys to open the trunk, and he

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<sup>1</sup> Although it is not germane to our analysis, Corporal Forthman specifically told Cooper that he was *not* under arrest at that time.

<sup>2</sup> In pertinent part, the manual states:

An Arkansas State Police officer directing that a motor vehicle be seized, towed or impounded as a consequence of an arrest or for other good cause shall conduct an administrative inventory of the motor vehicle pursuant to the following procedures:

> The Arkansas State Police officer shall perform the inventory in the location at which the vehicle is seized, towed from or impounded unless limited by reasons of

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found a collapsible cooler that contained packages of crack cocaine, scales, and other drug paraphernalia. When Trooper Chris Hunter arrived, Corporal Forthman asked him if he wanted to “look for dope because he was better at looking for dope than [Forthman] was.” Trooper Hunter completed the inventory search. They then removed the license plate from the vehicle because they were fictitious.

At the conclusion of the suppression hearing, and after arguments of counsel, the trial court denied Cooper’s motion to suppress. The trial court specifically found that the inventory search was proper. The case went to trial, and Cooper was convicted as charged.

On appeal, Cooper argues that the trial court erred by denying his motion to suppress the physical evidence because it was “unreasonable.” He concedes that there was reasonable cause to detain him based on the Florida and Arkansas warrants, but he contends that these warrants “did not generate reasonable suspicion to search his car’s trunk and the container therein.” This argument is unpersuasive.

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safety or practicality. If the inventory is not conducted prior to the vehicle being transported, the inventory may be conducted within a reasonable time following the seizure, towing or impoundment as reasonably necessary for safekeeping of the vehicle and its contents.

- > The entire vehicle shall be inspected and inventoried, including the passenger compartment and trunk. All containers, sealed, locked or otherwise, shall be opened unless the contents are otherwise identifiable.
- > All items of significant value shall be listed on an ASP Vehicle Storage Report at the time the inventory is conducted.
- > Any contraband or evidence discovered during the inventory shall be handled pursuant to this Manual and the Arkansas Rules of Criminal Procedure.

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When we review the denial of a suppression motion, this court makes an independent examination of the evidence based on the totality of the circumstances, and we will not reverse the trial judge's decision unless it is clearly against the preponderance of the evidence. *Welch v. State*, 330 Ark. 158, 955 S.W.2d 181 (1997). Inventory searches are excepted from the requirement of probable cause and a search warrant. *Id.* The purpose of an inventory search is to protect the property, the police, and the public and police officers can better account for the property if they have an accurate record of what is contained in a vehicle when it is impounded. *Id.* To be valid, an inventory search must be undertaken pursuant to standard operating procedures established by the law enforcement agency conducting the search. *Id.* Even if less intrusive means existed of protecting the property, the police are not obligated by the Constitution to make "fine and subtle distinctions in deciding which containers or items may be searched and which must be sealed as a unit." *Id.* (citing *Colorado v. Bertine*, 479 U.S. 367, 375 (1987)).

Contrary to Cooper's assertions, probable cause was not required to conduct the inventory search at issue. *Id.* Furthermore, in performing the inventory search, Corporal Forthman clearly followed the written policy of the Arkansas State Police. The fact that the police were aware that an inventory search could also turn up contraband does not make the search constitutionally infirm. *Id.* Before the law mandates the courts to suppress an inventory search based on an ulterior motive for the search, the movant is required to show that the troopers conducted the inventory search in bad faith for the sole purpose of collecting

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evidence. *Id.* This factual predicate is not present in this case. We find no significance in Corporal Forthman's question to Cooper as to whether he could find someone to retrieve his vehicle. Not only was this option not offered to Cooper, it was not a legally viable option for the officer to allow one of Cooper's friends to drive the car from the arrest site without a valid license plate. Here, as in *Welch*, the trial court did not find that there was an ulterior motive on the part of the police, and we decline to superimpose our view of the testimony over that of the trial court's when the law enforcement officers are following standard procedure and in the absence of proof that the sole motivation for the search was to collect evidence.

Affirmed.

GLOVER and HENRY, JJ., agree.