

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NICHOLAS WALTER TOWNS,

Defendant-Appellee.

UNPUBLISHED

December 10, 2020

No. 351931

Wayne Circuit Court

LC No. 19-006691-01-FH

Before: MURRAY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

The prosecutor appeals as of right the trial court order granting defendant’s motion to dismiss the case. Finding error warranting reversal, we reverse and remand for reinstatement of the charge of possession of 50 to 449 grams of cocaine, MCL 333.7403(2)(a)(iii), and for further proceedings consistent with this opinion.

I. BASIC FACTS AND PROCEDURAL HISTORY

The facts are undisputed. On July 16, 2019, Detroit Metro Airport Police Officer Ashley Alchin¹ observed defendant texting while driving and not wearing a seatbelt. She entered defendant’s license plate into the Law Enforcement Information Network (LEIN) system, and the search revealed that the plate was “flagged not a valid plate confiscate for fraudulent insurance application.” Accordingly, Officer Alchin conducted a traffic stop of defendant’s vehicle. She advised defendant that he was under arrest for having an unregistered motor vehicle. He was handcuffed and placed in the back of the police vehicle without incident.

¹ At the hearing on the motion to suppress evidence, the prosecutor stated that the officer was present and available for testimony or to answer questions. The defense responded that the motion was not scheduled for an evidentiary hearing, did not believe that testimony was necessary, and in light of the parties agreement “on the facts as to what they are.”

After the arrest, Officer Alchin called Martin Towing to tow defendant's vehicle. Before the arrival of the tow truck, Officer Alchin searched all areas of defendant's vehicle. During the search, a black cooler was found underneath the passenger seat and inside the cooler was a glove containing a bag of white powder. The white powder was later determined to be cocaine.

Defendant moved for the suppression of the evidence, alleging that an inventory search was not conducted because it did not follow Detroit Metro Police policy in light of the failure to complete a vehicle inventory form. After defendant was arrested and placed in the vehicle, the defense asserted that the police were required to obtain a warrant for any search. In light of the deficiencies in the inventory search and the failure to obtain a warrant, defendant sought the suppression of the evidence. On the contrary, the prosecutor claimed that a valid inventory search occurred pursuant to standard police policy irrespective of the failure to complete an inventory form. Additionally, the prosecutor filed a supplemental response to the motion to suppress that included the impound ticket for defendant's vehicle. This ticket delineated the date and time of the incident, the vehicle, the driver's name and address, the reason for the impound, the towing company, the items removed from the vehicle, and the items given to defendant. The trial court granted the motion to suppress, concluding that the failure to complete an inventory form rendered "the inventory search invalid." On the day scheduled for trial, the prosecutor stated that it could not proceed without the evidence, and the trial court granted defendant's motion to dismiss.

II. ANALYSIS

The prosecution contends that the trial court erred in suppressing the evidence and dismissing the case because the officer conducted a valid inventory search of defendant's vehicle. We agree.

"We review for clear error findings of fact made by a trial court at a hearing on a motion to suppress evidence predicated on allegations that the police violated a defendant's constitutional rights." *People v Hill*, 299 Mich App 402, 405; 829 NW2d 908 (2013). "A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *People v Roberts*, 292 Mich App 492, 502; 808 NW2d 290 (2011) (quotation marks and citation omitted). However, this Court reviews de novo the trial court's ultimate ruling on the motion to suppress. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

The United States Constitution and the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. A traffic stop is valid when a police officer has "an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law," *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999), or when the officer has probable cause to believe that the driver of a vehicle has committed a traffic violation, *People v Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002). The trial court's decision to suppress evidence is warranted when the traffic stop was unreasonable. *Id.* at 363-364. "The right to be secure against unreasonable searches and seizures absent a warrant based upon probable cause is subject to several specifically established and well-delineated exceptions." *People v Kazmierczak*, 461 Mich 411, 417-418; 605 NW2d 667 (2000). "The performance of an inventory search by the police in accordance with departmental regulations is such an established exception to the warrant requirement." *People v*

Toohey, 438 Mich 265, 271; 475 NW2d 16 (1991). Inventory searches of impounded vehicles are reasonable to the extent they conform to standard police procedures and the principles underlying the community-caretaking function. *Id.* at 275-276. “To be constitutional, an inventory search must be conducted in accordance with established departmental procedures, which all police officers are required to follow, and must not be used as a pretext for criminal investigation.” *Id.* at 284.

Compliance with established departmental procedures is necessary to prevent police officers from using inventory searches as “a ruse for general rummaging in order to discover incriminating evidence.” *Florida v Wells*, 495 US 1, 4; 110 S Ct 1632; 109 L Ed 2d 1 (1990). Therefore, “[t]he policy or practice governing inventory searches should be designed to produce an inventory.” *Id.* The policy may direct that officers open all containers without violating the constitution and may even allow each individual officer to exercise discretion. *People v Poole*, 199 Mich App 261, 266; 501 NW2d 265 (1993).

We conclude that Officer Alchin properly followed policy in deciding to tow and impound defendant’s vehicle, and in conducting the inventory search. Defendant has not shown that Officer Alchin’s search was used as a ruse for general rummaging to produce incriminatory evidence. The Detroit Metro Airport Police Department policy permits police officers to tow a vehicle “if the vehicle is discovered to be a hazard or in violation of ordinance or law.” It is undisputed that defendant’s commission of traffic violations of texting while driving and not wearing a seatbelt caused Officer Alchin to check defendant’s license plate in the LEIN system. It is also undisputed that defendant was arrested for the misdemeanor offense of driving an unregistered vehicle subject to confiscation due to a fraudulent insurance application. Because the policy required the vehicle to be towed in this situation, Officer Alchin was permitted to conduct an inventory search to ensure that there were no valuables in the vehicle. Contrary to defendant’s assertion, there is no evidence that the inventory search was conducted for investigative purposes; Officer Alchin followed the departmental policy in deciding to tow and impound the vehicle.

Furthermore, Officer Alchin properly documented the incident and the items removed from the car in the impound ticket after defendant’s arrest. Indeed, the Detroit Metro Airport Police Department had a policy regarding inventory searches of impounded vehicles, and Officer Alchin conducted an inventory search of the vehicle in accordance with that policy, even if she did not strictly comply with every requirement of the policy by completing a case report, a tow tag, and a vehicle inventory form. Defendant suggests that the policy required police officers to complete “A Vehicle Inventory” form for each vehicle search and scan the completed form into the CLEMIS (Courts and Law Enforcement Management Information System) system. But the language of the Detroit Metro Airport Police Department policy does not mandate the conclusion that the only way to satisfy policy requirements is by completing the inventory form. Using her discretion, Officer Alchin documented the other fields that were required of this inventory search in the impound ticket, including a description of the vehicle, the reason for impoundment, and the owner of the vehicle, which was enough to meet the policy’s requirement that an inventory form must be

completed for each vehicle search.² Because there is no indication that the inventory search was a pretext for an investigatory search, the failure to satisfy a ministerial paperwork requirement or adhere completely to every aspect of the standardized departmental procedures does not render the inventory search invalid.

Reversed and remanded for reinstatement of the charge of possession of 50 to 449 grams of cocaine and for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Kirsten Frank Kelly

/s/ Cynthia Diane Stephens

² Because defendant declined the offer to have Officer Alchin testify, it is unknown why a standard inventory form was not completed. Officer Alchin was not questioned whether there was a change to the written policy or whether her partner or a superior was responsible for its preparation.