STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1732

State of Minnesota,
Respondent,

vs.

Steven Ken Le Walton,
Appellant.

Filed September 11, 2017
Affirmed
Johnson, Judge

Carver County District Court
File No. 10-CR-16-126

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark Metz, Carver County Attorney, Kevin A. Hill, Assistant County Attorney, Chaska, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi Lynn Proulx, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Kalitowski, Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

The Carver County District Court found Steven Ken Le Walton guilty of a first-degree controlled-substance crime based on evidence that he possessed methamphetamine in his car. Before trial, the district court denied Walton's motion to suppress the evidence of the methamphetamine in his car. We conclude that the evidence is admissible on the ground that the methamphetamine in his car inevitably would have been discovered in an inventory search after an impoundment. Therefore, we affirm.

FACTS

In January 2016, the Bureau of Criminal Apprehension (BCA) and the Southwest Metro Drug Task Force contacted the Chaska Police Department concerning an ongoing drug investigation involving Walton. In an initial conversation, the BCA and the task force told Officer Moore that Walton's driver's license had been revoked. In a subsequent conversation on January 28, the BCA and the task force told the Chaska Police Department that a confidential informant had said that Walton would drive to his residence that day after purchasing a large quantity of methamphetamine. Based on that information, Officer Moore and three other officers watched for Walton near Walton's residence.

At approximately 11:00 p.m., Officer Moore saw a car that was the same model and color as Walton's car. Officer Moore stopped Walton's car based on his suspicion that Walton was driving after his license had been revoked. As Officer Moore approached Walton's car, he drew his service weapon because he was concerned for his safety due to the large quantity of drugs potentially in Walton's possession and the officer's knowledge

that Walton used drugs and had been verbally aggressive toward police officers in the past. When Officer Moore asked Walton for his driver's license, Walton gave him a clipped Wisconsin license card and some papers relating to a Minnesota license. Officer Moore returned to his squad car to determine whether Walton had a valid driver's license and confirmed that he did not. Officer Moore returned to Walton's car and informed him that he would be cited for driving after revocation and that his car would be towed away and impounded.

Officer Moore then asked Walton to step out of the car. Officer Moore handcuffed Walton and informed him that he was being detained but not arrested. Officer Moore conducted a pat search of Walton and found two pipes in Walton's pockets: one that smelled of burnt marijuana and one that was covered in white residue. Officer Moore field-tested the second pipe, which tested positive for methamphetamine. Officer Moore arrested Walton for possession of methamphetamine and placed him in the back of the squad car. Officer Moore then searched Walton's car and found a large plastic bag under the driver's seat, which contained 115 grams of methamphetamine.

The next day, the state charged Walton with one count of a first-degree controlled-substance crime, in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2014), based on the allegation that he possessed 115 grams of methamphetamine in his car. In February 2016, Walton moved to suppress the evidence of the methamphetamine in his car and to dismiss the charges. In March 2016, the district court conducted an evidentiary hearing at which Officer Moore was the sole witness.

In April 2016, the district court issued an order in which it denied Walton's motion to suppress evidence. The district court determined that (1) Officer Moore conducted a lawful investigatory stop of Walton's car based on a reasonable, articulable suspicion that he was driving after a license revocation; (2) Officer Moore did not unlawfully expand the scope of the investigatory stop; (3) Officer Moore conducted a valid pat search of Walton's person because he had a reasonable belief that Walton was armed and dangerous; (4) Officer Moore lawfully discovered drug paraphernalia on Walton's person based on the plain-feel exception to the warrant requirement, which justified Walton's arrest; (5) Officer Moore lawfully searched Walton's car incident to his arrest; and (6) the methamphetamine in Walton's car also should not be suppressed because it inevitably would have been discovered in an inventory search after the car was towed and impounded.

In May 2016, Walton waived his right to a trial by jury and stipulated to the prosecution's case, and the parties agreed that the district court's ruling on the pre-trial motion would be dispositive. *See* Minn. R. Crim. P. 26.01, subd. 4. The district court found Walton guilty and sentenced him to 65 months of imprisonment. Walton appeals.

D E C I S I O N

Walton argues that the district court erred by denying his motion to suppress evidence.

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and states that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and

the persons or things to be seized." U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. A warrantless search is presumed to be a violation of the Fourth Amendment, which requires that any evidence obtained in the search be excluded from evidence at trial. *Missouri v. McNeely*, 569 U.S. 141, ___, 133 S. Ct. 1552, 1558 (2013); *State v. Rhode*, 852 N.W.2d 260, 263 (Minn. 2014). But evidence discovered in a warrantless search may be admissible if there is a recognized exception to the Fourth Amendment's warrant requirement or to the exclusionary rule. *See Rohde*, 852 N.W.2d at 263..

On appeal, Walton contends that Officer Moore's pat search of his person was unlawful on the ground that the officer did not have a reasonable belief that he was armed and dangerous. He contends that Officer Moore did not have probable cause to arrest him because the pat search was unlawful. He contends that Officer Moore's search of his car was unlawful because the automobile exception to the warrant requirement does not apply (although the district court reasoned that the search of the car was a valid search incident to arrest). And he contends that the inevitable-discovery doctrine does not apply because Officer Moore would have performed an inventory search for purposes of gathering evidence, not to safeguard the car and its contents.

We first consider Walton's contention concerning the inevitable-discovery doctrine and the inventory search. The United States Supreme Court adopted the inevitable-discovery doctrine as an exception to the exclusionary rule to ensure that the "exclusion of evidence that would inevitably have been discovered" does not "put the government in a worse position, because the police would have obtained that evidence if no misconduct had taken place." *Nix v. Williams*, 467 U.S. 431, 444, 104 S. Ct. 2501, 2509 (1984). If "the

fruits of a challenged search 'ultimately or inevitably would have been discovered by lawful means,' then the seized evidence is admissible even if the search violated the warrant requirement." *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (quoting *Nix*, 467 U.S. at 444, 104 S. Ct. at 2509). The state bears the burden of establishing the exception by a preponderance of the evidence. *Id.* The state may not rely on speculation but, rather, must base the exception "on demonstrated historical facts capable of ready verification or impeachment." *Nix*, 467 U.S. at 444 n.5, 104 S. Ct. at 2509 n.5. This court applies a clear-error standard of review to findings of fact relevant to the inevitable-discovery doctrine and a *de novo* standard of review to the legal analysis based on those facts. *State v. Diede*, 795 N.W.2d 836, 849 (Minn. 2011).

In this case, the district court reasoned that the methamphetamine in Walton's car inevitably would have been discovered by an inventory search. In appropriate circumstances, a law-enforcement officer may, consistent with the Fourth Amendment, impound a vehicle and perform an inventory search of the vehicle without obtaining a warrant. *Colorado v. Bertine*, 479 U.S. 367, 371, 107 S. Ct. 738, 741 (1987); *South Dakota v. Opperman*, 428 U.S. 364, 373, 96 S. Ct. 3092, 3099 (1976); *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008); *State v. Goodrich*, 256 N.W.2d 506, 509-10 (Minn. 1977). An impoundment and inventory search may satisfy the Fourth Amendment's reasonableness requirement if a law-enforcement officer "remove[s] from the streets vehicles impeding traffic or threatening public safety and convenience." *Opperman*, 428 U.S. at 369, 96 S. Ct. at 3097. An inventory search also may satisfy the Fourth Amendment's reasonableness requirement if it "serve[s] 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." *Bertine*, 479 U.S. at 372, 107 S. Ct. at 741. But an inventory search is not permissible if a law-enforcement officer acts "in bad faith or for the sole purpose of investigation." *Id.* The state bears the burden of proving that the inventory-search exception to the warrant requirement applies. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001).

Walton contends that Officer Moore would not have performed a valid inventory search because his sole motivation was to discover evidence of a crime, not to safeguard property. The district court found otherwise. The district court found that "Officer Moore credibly and reasonably determined" that he had "a duty to remove [Walton's] vehicle from the roadway in order to prevent another accident from happening." The district court noted Officer Moore's testimony that he made that determination based on "the time of day, which was nighttime, the lack of lighting on the roadway, [and] the speed limit on Creek Road, which was 55 miles an hour." In addition, Officer Moore testified that there was snow on the ground and that he was concerned that Walton's car might cause an accident if it were left on the side of the road. Officer Moore also testified that his decision to tow and impound Walton's car was consistent with a written policy of the Chaska Police Department and that he would have conducted an inventory search of the vehicle after it was impounded. On cross-examination, Walton's attorney did not attempt to discredit Officer Moore's decision to tow and impound the car and did not attempt to elicit evidence that Officer Moore's sole purpose was investigatory. The lack of such evidence prevents this court from overturning the district court's findings. *See id.* at 629 (concluding that

search was proper because it "was conducted in accordance with standard procedure" and was at least partially motivated by inventory purposes).

Walton also contends that an inventory search was not inevitable because he should have been "afforded an opportunity to move the vehicle to a safer location further off the road, or locate a licensed driver to take possession of his vehicle." His contention is not supported by the evidentiary record. Because Walton did not have a valid driver's license, he could not move the car himself. Officer Moore testified that Walton did not request an opportunity to find another person to move the vehicle. Officer Moore further testified that he knew that Walton was married and that Walton's wife did not have a driver's license, which might explain why Walton did not request that she be allowed to move the car. Officer Moore testified that Walton's car was parked along a "narrow two-lane road" with "very narrow shoulders." The record does not contain evidence of any ready alternatives to Officer Moore's decision to tow and impound the car.

In light of the evidence presented at the evidentiary hearing, the district court did not clearly err by finding that Officer Moore would have conducted an inventory search of Walton's car and, thus, inevitably would have discovered the methamphetamine in the car. The inevitable-discovery doctrine is a sufficient basis for denying the motion to suppress evidence. Based on that conclusion, we need not consider Walton's contentions that the pat search was unlawful, that Officer Moore did not have probable cause to arrest him, and that Officer Moore's search of the car was not lawful as a search incident to arrest.

Affirmed.