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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0072

State of Minnesota,
Respondent,

vs.

Anthony Arnold Dettmann,
Appellant.

Filed December 11, 2017
Reversed and remanded
Hooten, Judge

Pine County District Court
File No. 58-CR-15-496

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

Reese Frederickson, Pine County Attorney, Michelle R. Skubitz, Assistant County Attorney, Pine City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender; and

Ruth Shnider, Liz Kramer, Stinson Leonard Street LLP, Special Assistant Public Defenders, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Hooten, Judge; and Smith, T., Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant contends that the district court erred by failing to suppress the controlled substance a state trooper found in his vehicle after impounding the vehicle and performing an inventory search. Appellant argues that impounding his vehicle was constitutionally unreasonable because, as the state conceded, appellant was not under arrest or incapacitated, the vehicle was not impeding traffic or threatening public safety, and the trooper did not have probable cause to seize the vehicle. Because the impoundment of the vehicle was not a valid exercise of the trooper's community caretaking function, we reverse and remand.

FACTS

At approximately 4:19 p.m. on June 17, 2015, state trooper Brett Westbrook was patrolling in Pine City, Minnesota and observed a gray vehicle make a quick lane change and move into a parking space in front of the old courthouse. Westbrook ran the vehicle's Wisconsin license plate and learned that the plate was for a Chevy Lumina with suspended registration. However, the gray vehicle Westbrook observed was a Pontiac Bonneville, not a Lumina, prompting Westbrook to pull off the road and wait for the vehicle to drive by him again. A few minutes later, the vehicle drove by and Westbrook followed it. While following the vehicle, Westbrook observed it straddle two lanes of traffic before making a left hand turn. Westbrook activated his lights and siren, and the vehicle drove into a bank parking lot and parked diagonally in the back lot where vehicles are rarely parked. The

parking lot is a private non-residential lot with approximately 50 spaces and does not have signage indicating no trespassing.

Westbrook approached the vehicle, and the driver identified himself as appellant Anthony A. Dettmann. Because the license plate on the vehicle was registered to a different vehicle, Westbrook performed a registration check on both the vehicle identification number and the license plate. The vehicle was most recently registered in Minnesota in 2013, to someone other than Dettmann, and there was no stolen vehicle report. Dettmann told Westbrook that he was having trouble transferring the title to the vehicle, and that he had exchanged the license plates from his old vehicle to this vehicle so that he could drive it on the highways. In Wisconsin, as Westbrook later testified, license plates do not follow a vehicle, they follow the owner of the vehicle.[1] Westbrook testified that if someone owns two vehicles in Wisconsin, it is not illegal to move the license plates from one vehicle to the second vehicle.

When Westbrook asked for proof of insurance, Dettmann responded that he was unable to provide proof of insurance. Also, when asked for proof of purchase of the vehicle, Dettmann responded that he did not have any paperwork or documentation with him or in the vehicle. Westbrook was prepared to issue Dettmann citations for driving

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[1] *See* Wis. Stat. § 342.15 (4)(a) (2015–16) ("If the vehicle being transferred is a motorcycle or an automobile . . . the owner shall remove the registration plates and retain and preserve them for use on any other vehicle of the same type and gross weight which may subsequently be registered in his or her name.").

without a valid driver's license and illegal use of license plates, but had decided not to arrest Dettmann.

Because it was almost 4:30 p.m. and the bank was about to close, Dettmann asked Westbrook if he could go into the bank and cash a check, and Westbrook agreed. While Dettmann was in the bank, Westbrook decided to tow the vehicle because ownership of the vehicle had not been established. Westbrook did not discuss his intention to tow or search the vehicle with Dettmann. After calling for the tow, Westbrook began an inventory search of the vehicle to document items of value. On the front passenger seat, Westbrook discovered a small pouch containing a white crystalline material that later tested positive for 0.063 grams of methamphetamine. He also found a glass pipe in the center console. Westbrook drove his squad car to the bank entrance, and placed Dettmann under arrest when he exited the bank.

The state patrol has a written policy on vehicle towing which states, "Vehicles may be towed or removed and held in custody . . . [w]hen proof of ownership or identification of the vehicle must be established." Westbrook testified that he did not have probable cause to believe the vehicle was stolen, and that he relied on the state patrol tow policy as authorization for the impoundment and subsequent inventory search of the vehicle. He stated, "I was unsure of the identi[t]y of the vehicle, if [Dettmann] owned it, if he had insurance on it, all of those things, the totality of the circumstances there, but I could not prove that vehicle belonged to him." Westbrook also testified that his focus was not on investigating controlled substances; he expected to issue citations, tow the vehicle, and go home at 5:00 p.m.

The district court denied Dettmann's motion to suppress evidence, and the case proceeded to a trial on stipulated facts. *See* Minn. R. Crim. P. 26.01, subd. 4. The district court found Dettmann guilty of possession of a controlled substance in the fifth degree, Minn. Stat. § 152.025, subd. 2(a)(1) (2014). Dettmann appealed the denial of his motion to suppress evidence.

D E C I S I O N

When reviewing a district court's ruling on a motion to suppress evidence, we review the district court's factual findings for clear error, but review the legal conclusions de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). "When the facts are not in dispute and the district court's decision is a question of law, this court may independently review the facts and determine as a matter of law whether the evidence need be suppressed." *State v. Paul*, 548 N.W.2d 260, 264 (Minn. 1996).

Both the United States and Minnesota Constitution prohibit "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10; *State v. Rohde*, 852 N.W.2d 260, 263 (Minn. 2014). Because the language in the two provisions are almost identical, and our supreme court has not held that Article I, Section 10, of the Minnesota constitution provides Minnesotans with more protection than the federal Constitution, the analysis under each provision is the same. *Rohde*, 852 N.W.2d at 263.

In general, "warrantless searches are per se unreasonable." *Gauster*, 752 N.W.2d at 502. However, there are several well-defined exceptions to the warrant requirement, and a search which qualifies for one of these exceptions is not unreasonable. *See id.* One such exception is an inventory search. *Id.* Inventory searches and "inventory procedures serve

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, and to guard the police from danger," and "are considered reasonable because of their administrative and caretaking functions." *Colorado v. Bertine*, 479 U.S. 367, 372, 107 S. Ct. 738, 741 (1987); *Gauster*, 752 N.W.2d at 502. The traditional requirements of a warrant and probable cause are not implicated when police undertake administrative and caretaking functions precisely because such functions are unrelated to criminal investigations. *See South Dakota v. Opperman*, 428 U.S. 364, 370 n.5, 96 S. Ct. 3092, 3097 n.5 (1976) (explaining why probable cause analysis is inapplicable to administrative and caretaking functions).

However, because an inventory search only occurs *after* police have taken custody of a piece of property, an inventory search is only reasonable if taking custody of the property was reasonable. *Rohde*, 852 N.W.2d at 264 ("[I]f the impoundment was unreasonable, then the resulting search was also unreasonable."). Thus, the threshold inquiry in this case is whether the impoundment of Dettmann's vehicle was reasonable. *See id.* The state bears the burden of proving that the impoundment of the vehicle was reasonable. *See State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001); *see also Rohde*, 852 N.W.2d at 264.

Two requirements must be met for an impoundment to comply with the Fourth Amendment. First, an impoundment is reasonable only if the state has "an interest in impoundment that outweighs the individual's Fourth Amendment right to be free of unreasonable searches and seizures." *Rohde*, 852 N.W.2d at 264 (quotation omitted). The state's interest in impounding an individual's vehicle can outweigh an individual's right

when "public safety is put at risk by leaving the vehicle in place," or when impoundment is necessary to protect the property from "unauthorized interference" and protect police from claims related to leaving the property unattended, such as theft. *Bertine*, 479 U.S. at 373, 107 S. Ct. at 742; *Rohde*, 852 N.W.2d at 265. Public safety is implicated when, for example, "there has been a vehicle accident, to permit the uninterrupted flow of traffic, or when vehicles have violated parking ordinances and thus jeopardize the public safety and the efficient movement of traffic." *Rohde*, 852 N.W.2d at 265. Second, the impoundment of the vehicle must "be conducted pursuant to standardized criteria." *Gauster*, 752 N.W.2d at 503.

Dettmann argues that the state's interest in impounding his vehicle did not outweigh his right to be free of unreasonable searches and seizures. The state concedes that the trooper did not have probable cause to believe that Dettmann's vehicle was stolen and that the "vehicle was not impeding traffic or threatening public safety." The state also makes no assertion that, prior to the seizure of Dettmann's vehicle, Dettmann was incapacitated or under arrest. Instead, the state argues that the impoundment of Dettmann's vehicle was proper based on police caretaking authority to protect the owner's property. "This authority arises 'when it becomes essential for [the police] to take custody of and responsibility for a vehicle *due to the incapacity or absence of the owner, driver, or any responsible passenger*.'" *Rohde*, 852 N.W.2d at 265 (alteration in original) (emphasis added) (quoting *City of St. Paul v. Myles*, 298 Minn. 298, 304, 218 N.W.2d 697, 701 (1974)). The district court concluded that Westbrook was acting in furtherance of this community caretaking function when seizing Dettmann's vehicle because Dettmann had

"no documentation available to support his claim of ownership of the vehicle, and while no vehicle theft report had as yet been filed, it was plausible that such report might be submitted."

The district court erred because the driver and owner of the vehicle was present and had capacity to take responsibility for the vehicle. When a driver is arrested, police often will need to do something with the vehicle so it is not left unattended for an indeterminate amount of time. *Id.* at 266. But "cases in which the driver of a vehicle is arrested are *fundamentally different* from cases in which the driver remains free." *Id.* (emphasis added). When the driver is free, the driver remains responsible for the vehicle, and police have "no interest in protecting the property from theft or other claims arising from police control of the vehicle." *Id.* Because Dettmann was not under arrest prior to Westbrook finding the methamphetamine, and the state does not make an argument that Dettmann lacked capacity, the state had no caretaking interest in impounding the vehicle.

In response, the state argues that it could not release the vehicle to Dettmann because he could not prove that he owned the vehicle, and therefore Westbrook was taking responsibility for the vehicle to prevent theft. But, the question is not whether the state can release the vehicle to Dettmann, but whether it had authority to seize it from him in the first place.[2] Because Dettmann claimed he owned the vehicle, the only way the state could believe ownership of the vehicle was in question was by determining that Dettmann's possession of the vehicle was a crime, which places the seizure outside of a community

[2] Impounding a vehicle is a seizure under the Fourth Amendment. *See Opperman*, 428 U.S. at 369, 96 S. Ct. at 3097 (equating impounding vehicle with seizing vehicle).

caretaking function and into the realm of criminal investigation—requiring probable cause. *See State v. Goodrich*, 256 N.W.2d 506, 511 (Minn. 1977) (holding a vehicle impoundment unreasonable where the officer testified "that he did not know [the vehicle] was not stolen and that it was possibly a stolen car which had not yet been reported" (emphasis omitted)); *see also* Minn. Stat. § 609.52, subd. 2(a)(17) (2014) (theft of motor vehicle); Minn. Stat. § 609.53 (2014) (receipt of stolen property); *United States v. Sims*, 424 F.3d 691, 693 (8th Cir. 2005) ("A police department may not avoid the constitutional requirement of probable cause simply by adopting a standard policy to impound vehicles based only on a 'belief' that the vehicle was involved in the commission of a crime and has evidentiary value. A seizure based solely on suspicion that the vehicle constitutes or contains evidence of criminal activity must be supported by probable cause.").

The state cannot impound and conduct an inventory search of a vehicle where the state's only motive is criminal investigation, and here the state's only motive was investigating whether Dettmann's possession of this vehicle was a crime. *See Bertine*, 479 U.S. at 372, 107 S. Ct. at 741 ("[T]here was no showing that the police, who were following standardized procedures, acted in bad faith or for the sole purpose of investigation."); *Ture*, 632 N.W.2d at 629 ("[A]n inventory search need only be conducted in part for the purpose of obtaining an inventory. To be invalid, the investigatory motive must be the sole purpose behind the search, meaning that the search would not have occurred but for the investigatory motive." (emphasis and citation omitted)). Because Westbrook's only motive in impounding the vehicle was to investigate criminal activity and the state

concedes there was not probable cause to impound the vehicle on this basis, the impoundment violated the Fourth Amendment.

The state's other arguments are also unpersuasive. The state asserts that Westbrook had no expectation of finding evidence of any additional crime when he searched the vehicle. But that argument misses the point because the very decision to impound the vehicle was based solely on suspicion of a crime, and was therefore unreasonable from the beginning. *See Rohde*, 852 N.W.2d at 264 ("[I]f the impoundment was unreasonable, then the resulting search was also unreasonable."). We also reject the state's attempt to justify the impoundment as a *Terry* investigatory stop, for "the right of police officers to stop a suspicious person does not extend to a right of search in the absence of probable cause." *State v. Fish*, 280 Minn. 163, 167, 159 N.W.2d 786, 789 (1968).

Finally, we note that while the state patrol towing policy does allow impounding vehicles "[w]hen proof of ownership or identification of the vehicle must be established," compliance with the policy cannot salvage an otherwise unreasonable seizure and make it constitutional. *See United States v. Sanders*, 796 F.3d 1241, 1250 (10th Cir. 2015) ("Protection against unreasonable impoundments, even those conducted pursuant to a standardized policy, is part and parcel of the Fourth Amendment's guarantee against unreasonable searches and seizures."); *cf. Rohde*, 852 N.W.2d at 264 ("[T]his focus on whether the impoundment was authorized by Minnesota law is misplaced, because the real question in this case is whether the impoundment was reasonable *under the Fourth Amendment*.")

Because Dettmann was not under arrest or incapacitated, and Westbrook did not have probable cause to seize Dettmann's vehicle, we conclude that the seizure of Dettmann's vehicle violated his Fourth Amendment right against unreasonable searches and seizures. We therefore reverse the district court's denial of Dettmann's motion to suppress and remand to the district court for further proceedings consistent with this opinion.

Reversed and remanded.