STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0400

State of Minnesota,
Respondent,

vs.

Gerardo Cory Lopez,
Appellant.

Filed March 9, 2020
Affirmed
Hooten, Judge

Kandiyohi County District Court
File No. 34-CR-17-1153

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

O. Joseph Balthazor, Jr., Special Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Reilly, Judge.

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

HOOTEN, Judge

In this direct appeal, appellant argues that the methamphetamine found in the vehicle he was driving must be suppressed, and his conviction of possession of a controlled-substance must be reversed, because the warrantless inventory search of the vehicle was unreasonable as the vehicle was not properly impounded and the inventory search exceeded the scope of the sheriff's policy. Appellant also argues that the warrantless search was not justified by the automobile exception or the inevitable discovery doctrine. We affirm.

FACTS

In early December 2017, Commander Ross Ardoff of the drug and gang task force of the Kandiyohi County Sheriff's Office recognized the driver of a black pickup truck as appellant Gerardo Cory Lopez. Commander Ardoff was familiar with Lopez through prior arrests for drug sales and warrants. The commander ran a driver's license check on Lopez and discovered that his license was canceled. The commander activated the lights on his vehicle and initiated a traffic stop. Commander Ardoff saw Lopez look in his rearview mirror, then "scrabble [sic] repeatedly towards the center console area reaching down." Based on the commander's training and experience, this appeared to indicate that Lopez was hiding something.

When Lopez finally pulled over, Commander Ardoff approached Lopez's vehicle and began to speak with him. Lopez "appeared to be nervous—more nervous than normal," "somewhat quiet," and his voice "crackled" when speaking. The commander told

Lopez that he stopped him for driving with a canceled license and asked Lopez for proof of insurance. Lopez gave him an expired insurance card, but said that he would call his girlfriend to bring the current insurance information. Lopez made a phone call and told the commander that his girlfriend was on her way with the insurance information. Because Lopez spoke in Spanish while on the phone, the commander did not understand the content of the call. The commander neither spoke with nor saw Lopez's girlfriend arrive although she later testified that she arrived on the scene.

Commander Ardoff told Lopez that the vehicle he was driving was registered to someone else. Lopez explained that he had bought the vehicle from the registered owner, but that Lopez did not know how to reach him. Because Lopez had four or five prior driving-after-cancellations in the past year, Commander Ardoff placed Lopez under arrest for driving with a canceled license. During a search incident to arrest, $1,423 in cash was found on Lopez's person.

Commander Ardoff impounded Lopez's vehicle, concluding it was necessary that the car be taken into custody for safekeeping for the following reasons: (1) the person driving the vehicle was arrested; (2) the vehicle was not registered to the driver; and (3) there was no proof of insurance on the vehicle. As the commander could not contact the owner of the vehicle "to find out if it was okay if it could be left there," he decided to tow the vehicle for safekeeping pursuant to the sheriff's office's policy.

Commander Ardoff and Agent Josh Helgeson, who had arrived on the scene, conducted an inventory search of the vehicle before it was towed. Agent Helgeson found

what looked like broken glass from a methamphetamine pipe on the floor, and Commander Ardoff found two bags of methamphetamine under the cup holder in the center console.

Following these events, the state charged Lopez with second-degree possession of 25 grams or more of methamphetamine under Minn. Stat. § 152.022, subd. 2(a)(1) (2016), and driving after cancellation under Minn. Stat. § 171.24, subd. 3 (2016).

Lopez moved to suppress the methamphetamine found under the cup holder and to dismiss the drug charge against him. At the omnibus hearing, Commander Ardoff, Lopez, and Lopez's girlfriend testified. The district court denied Lopez's motion, finding that the search was a valid inventory search, but noted that Lopez "raised valid concerns that the decision to impound the vehicle may have been motivated, at least partially, by a desire to investigate [Lopez]." Despite this, the district court concluded that Commander Ardoff was motivated, at least in part, by concerns for the registered owner's property.

Lopez moved for a second omnibus hearing. He argued that law enforcement could not remove a cup holder in the course of an inventory search. At the hearing, the state offered testimony from Commander Ardoff and Agent Helgeson, photographs from the inventory search, a video reenactment of agents lifting up the cup holder, and a copy of Kandiyohi County Sheriff's Office towing policy. Following the hearing, the district court again denied Lopez's motion, concluding that law enforcement acted consistently with the sheriff's standard inventory search policies in searching the area underneath the cup holder.

Lopez agreed to a stipulated facts bench trial. The district court found Lopez guilty of both charges and sentenced Lopez to 95 months in jail for second-degree possession and 90 days for driving after cancellation. This appeal follows.

D E C I S I O N

Lopez challenges the search of his vehicle on multiple grounds. Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "In general, warrantless searches and seizures are unreasonable in the absence of a legally recognized exception to the warrant requirement." *State v. Horst*, 880 N.W.2d 24, 33 (Minn. 2016). In this case, law enforcement did not have a warrant authorizing the search of Lopez's vehicle. Therefore, unless an exception to the warrant requirement applied, the search of Lopez's vehicle was unconstitutional. *See State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001) (stating that the warrantless search of a vehicle, absent an exception, is unconstitutional). It is the state's burden to demonstrate that an exception to the warrant requirement applies in a particular case. *Id.* "When the facts are undisputed, this court reviews de novo a district court's denial of a motion to suppress." *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001).

Lopez challenges the district court's decision that the inventory search exception applied to the search of his vehicle by making two arguments. First, he argues that impounding his vehicle was improper. Second, he argues that law enforcement exceeded the scope of the towing policy for the sole purpose of investigating Lopez.

A. The impoundment was reasonable.

One exception to the warrant requirement is an inventory search. *State v. Holmes*, 569 N.W.2d 181, 186 (Minn. 1997). Law enforcement may search a vehicle without a warrant for "the discrete purpose of taking an inventory of items inside an impounded vehicle" because "police are performing administrative or caretaking functions designed

to serve two distinct interests: the protection of the owner's property inside the vehicle, and the protection of the police from claims that they lost or damaged property within their control." *Id.* The inventory search exception allows "police to search a vehicle provided they (1) follow standard procedures in carrying out the search and (2) perform the search, at least in part, for the purpose of obtaining an inventory and not for the sole purpose of investigation." *Ture*, 632 N.W.2d at 628.

Courts must first address whether impoundment was reasonable. *State v. Rohde*, 852 N.W.2d 260, 264 (Minn. 2014) ("[I]f the impoundment was unreasonable, then the resulting search was also unreasonable."). Impoundment is reasonable when the state has an interest in impounding a vehicle "that outweighs the individual's Fourth Amendment right to be free of unreasonable searches and seizures." *Id.* "If impoundment is not necessary, then the concomitant [inventory] search is unreasonable." *State v. Goodrich*, 256 N.W.2d 506, 510 (Minn. 1977).

Law enforcement has authority to "remove from the streets vehicles impeding traffic or threatening public safety and convenience." *Rohde*, 852 N.W.2d at 264 (concluding that, when a vehicle was not violating any parking laws, impeding traffic, or posing a threat to public safety, impoundment was unnecessary). Law enforcement also has authority to impound a vehicle to protect the property from theft and to protect law enforcement from claims of theft. *Id.* at 265. This authority arises "when it becomes essential for [law enforcement] to take custody of and responsibility for a vehicle due to the incapacity or absence of the owner, driver, or any responsible passenger." *City of St. Paul v. Myles*, 218 N.W.2d 697, 701 (Minn. 1974).

i. The vehicle did not constitute a threat to public safety or an impediment to traffic.

Lopez argues that law enforcement did not have authority to impound the vehicle because it did not impede traffic or threaten public safety or convenience. Commander Ardoff testified, and the district court found, that the vehicle was parked in a legal parking space and was not blocking traffic. Therefore, law enforcement did not have authority to impound the vehicle based on public safety.

ii. Law enforcement had authority to protect the vehicle from theft or from claims of theft against the sheriff's office.

Lopez argues next that law enforcement did not have authority to impound the vehicle because the state had little interest in impounding the vehicle to protect the property from theft or law enforcement from claims of theft. Lopez relies on *State v. Goodrich* for the assertion that, although the vehicle was not registered to Lopez, in the absence of a reason to believe that Lopez wrongfully possessed the vehicle, impoundment was unnecessary. 256 N.W.2d at 511 (stating that where there is no reason to believe a defendant wrongfully possesses a vehicle, impoundment is unnecessary). But the facts in *Goodrich* are distinguishable from the case at issue.

In *Goodrich*, the defendant was arrested for driving while intoxicated. *Id.* at 508. At the time, the defendant was driving a vehicle that was not registered to him but had arranged for his brother to take the vehicle upon his arrest. *Id.* In fact, the defendant's brother arrived on the scene and asked the officers if he could take the vehicle. *Id.* The supreme court concluded that impoundment was unnecessary because the defendant had arranged an alternative to towing the vehicle and there was no need to protect his property

from theft or claims of theft by the police because the defendant would continue to assume responsibility for the vehicle. *Id.* at 511.

In this case, Lopez told law enforcement that his girlfriend was on her way to show proof of insurance. But he did not tell law enforcement that he had arranged another way for the vehicle to be transported. Furthermore, Lopez's girlfriend testified that she never got out of her vehicle and never spoke with law enforcement. Commander Ardoff testified that he never saw Lopez's girlfriend, or anyone else, arrive. The district court found that Lopez's girlfriend arrived on the scene but did not approach law enforcement. Law enforcement also testified that the impoundment of the vehicle was not based solely on the fact that someone other than Lopez was designated as the registered owner, but was also based on the fact that Lopez could not show the vehicle was insured. Because Lopez was arrested and there was no alternative accommodation for the vehicle, law enforcement impounded the vehicle. Law enforcement, therefore, had the authority to impound the vehicle to protect the property from theft or claims of theft by law enforcement.

iii. Lopez's arrest was valid.

Lopez also argues that the district court erred by determining that the impoundment was proper because his arrest was improper. "[A]n officer may make a warrantless misdemeanor arrest only if the offense is attempted or committed in his presence." *State v. Jensen*, 351 N.W.2d 29, 31–32 (Minn. App. 1984) (citing Minn. Stat. § 629.34, subd. 1 (1982)). When a person receives a citation for a misdemeanor, the officer must release the person "unless it reasonably appears: (1) the person must be detained to prevent bodily injury to that person or another; (2) further criminal conduct will occur; or (3) a substantial

likelihood exists that the person will not respond to a citation." Minn. R. Crim. P. 6.01, subd. 1(a). The district court found that it was reasonable for Commander Ardoff to assume that arresting Lopez would prevent his further criminal conduct of driving after cancellation because Lopez had multiple driving-after-cancellation charges in the recent past. Additionally, there were no passengers in the vehicle who could drive the car away, and Lopez did not arrange for another person to drive the vehicle. Accordingly, we are satisfied that the district court did not err by determining that the arrest was proper because there was a reasonable probability that arresting him would prevent further criminal conduct.

Lopez asserts that a person can never be arrested for failing to have a valid driver's license based on a footnote from *State v. Gauster*: "[L]ack of a driver's license, by itself, is not a reasonable basis for subjecting the driver to a custodial arrest for a minor traffic offense." 752 N.W.2d 496, 504 n.3 (Minn. 2008) (quotation omitted). But this footnote cites to *State v. Askerooth*, which dealt with a person who did not have his driver's license on him when he was stopped by the police, and the police required him to wait in a squad car while they ran his information. 681 N.W.2d 353, 365 (Minn. 2004). Therefore, the quote in *Gauster* simply stands for the proposition that failing to *carry* a driver's license when pulled over, and not the nonexistence of a valid license, is an unreasonable basis to subject a person to a custodial arrest. In this case, Lopez committed the crime of driving after his license was canceled and, based on the concern that Lopez would continue to drive with a canceled license, the arrest was proper.

iv. Lopez did not arrange a reasonable alternative to impoundment.

Lopez argues that law enforcement should have waited for Lopez's girlfriend to arrive before impounding his vehicle because she could have driven the vehicle away.

Law enforcement is not required to give a driver the opportunity to make alternative arrangements if the driver's car is to be towed. *Colorado v. Bertine*, 479 U.S. 367, 372–74, 107 S. Ct. 738, 742 (1987). But "police still may be under an obligation to permit a driver to make reasonable alternative arrangements when the driver is able to do so and specifically makes a request to do so." *Gauster*, 752 N.W.2d at 508.

Lopez did not ask law enforcement if he could arrange for someone to pick up the vehicle. He did not tell them that his girlfriend could pick up the vehicle. And Lopez's girlfriend never made her presence known to law enforcement. Based on these facts, law enforcement was not precluded from impounding the vehicle.

Accordingly, we conclude that the impoundment of Lopez's vehicle was proper.

B. The inventory search was reasonable.

Lopez argues that, even if the impoundment was proper, law enforcement performed an unreasonable inventory search because they exceeded the scope of their office's policy and searched the vehicle for the sole purpose of investigating Lopez.

Appellate courts accord deference to law enforcement caretaking procedures that are designed to protect vehicles in law enforcement custody. *Holmes*, 569 N.W.2d at 186–87. "In determining the reasonableness of an inventory search . . . courts must ask whether police carried out the search in accordance with standard *procedures* in the local police department." *Id.* at 187. Law enforcement must also "conduct[] the search, at least in part,

for the purpose of obtaining an inventory." *Id.* at 188; *see also Bertine*, 479 U.S. at 372, 107 S. Ct. at 741 (stating that searches conducted "in bad faith or for the sole purpose of investigation" are not valid inventory searches).

i. The inventory search was consistent with the sheriff's office's standard policy procedures.

Lopez argues that law enforcement's search under the cup holder was inconsistent with Kandiyohi County Sheriff's Office's towing policy. The policy provides:

> All property contained within a [sic] impounded vehicle, valued at $50.00 or more, shall be inventoried and listed on the vehicle storage form. This includes the trunk and any compartments or containers, even if they are closed and/or locked. Deputies conducting inventory searches should be as thorough and accurate as practicable in preparing an itemized inventory.

Lopez argues that the space under the cup holder in the center console is not a "container" or "compartment" under the policy, and therefore law enforcement expanded the scope of the policy. As Lopez points out, the United States Supreme Court has defined "container" in the context of a search incident to arrest as "any object capable of holding another object" and "includes closed or open glove compartments, consoles, or other receptacles." *New York v. Belton*, 453 U.S. 454, 461, 101 S. Ct. 2860, 2864 n.4 (1981), *abrogated by Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710 (2009). The American Heritage Dictionary defines "container" as "a receptacle, such as a carton, can, or jar, in which material is held or carried." *The American Heritage College Dictionary* 396 (5th ed. 2018). "Compartment" is defined as "[o]ne of the parts or spaces into which an area is subdivided." *The American Heritage College Dictionary* 375 (5th ed. 2011).

Commander Ardoff testified that, in his experience, people use the space under a removable cup holder in the center console to store items, even though the purpose of a cup holder is to hold cups. The district court admitted a "reenactment" video into evidence whereby agents displayed how easily the removable cup holder can be lifted up and that there is space beneath the cup holder in the center console to store items. Based on this, we conclude that the district court's assessment that the cup holder was a container or compartment was not clear error, and the search underneath the cup holder was consistent with the sheriff's inventory search policy.

Lopez also argues that the cup holder was a car part that may not be removed when conducting an inventory search. Lopez relies on an unpublished case from this court that held that the police were not permitted to search behind a loose speaker in a vehicle as part of an inventory search because "[i]t is not reasonable to believe that an officer would expect to find the same type of personal belongings behind a loose speaker that would be found in a glove compartment, trunk, box, or suitcase." *State v. Huber*, No. A06-1408, 2007 WL 48884, at *4 (Minn. App. Jan. 9, 2007). But the facts in this case are much different than those in *Huber*. The officer in *Huber* noticed that the speaker on the driver-side door was "slightly detached." *Id.* But, he had to pull the speaker back two inches to see what was behind it. *Id.* at *1. We found this to be unreasonable. *Id.* at *4.

In this case, we conclude that it was reasonable for law enforcement to believe, based on their past experiences of people storing personal items under a removable cup holder, that Lopez may have stored personal items under the cup holder. The space underneath the cup holder, even viewed from the interior of the vehicle, appears large and

as if there is space underneath for items to be stored. The cup holder was also part of the center console, which is intended for the storage of items. Unlike a speaker that is slightly detached from the door, it was reasonable for law enforcement to believe that someone may store personal items in the space beneath the cup holder.

Based on these reasons, the district court did not clearly err by determining that searching under the cup holder was consistent with the department's policy.

ii. The search was not conducted for the sole purpose of investigating Lopez.

Lopez argues that the inventory search was a pretext for an investigation. "[S]earches conducted in bad faith or for the sole purpose of investigation are not otherwise valid as inventory searches." *Holmes*, 569 N.W.2d at 188. A search is done in bad faith when the search otherwise would not have occurred. *Id.* Appellate courts may look to the following factors to determine whether the search was valid: (1) whether the search occurred at the scene of the crime, (2) whether the search was conducted by an investigative officer, (3) whether formal inventory sheets were completed, (4) whether the officer made note of personal effects or only focused on the contraband, and (5) whether the vehicle was eventually impounded. *Id.* No one fact is dispositive, but must be reviewed collectively. *Id.*

In this case, the search was: (1) conducted at the scene of the crime, and (2) performed by agents of the drug task force. The first two factors are harmful to the state's position and suggests an unreasonable search. However, law enforcement: (3) completed formal inventory sheets, and (4) made note of the cell phones found in the vehicle and a document in the registered owner's name found in the driver's visor. Although they did

not document a coat in the backseat or a large speaker, this does not necessarily harm the state's position that the search was reasonable. As the district court noted, the policy was to inventory items that are $50 or more in value, and "[i]t was not clear that the coat was worth $50." Additionally, law enforcement noted that they saw "aftermarket stereo equipment in the vehicle including a large speaker under the rear driver's side seat." The district court considered this a fixture of the vehicle, and determined that it may not have been appropriate to inventory the speaker. The third and fourth factors therefore favor the state's position that the search was reasonable. Regarding the fifth factor, Lopez's vehicle was actually towed, which favors the state.

While some of the factors are harmful to the state's position, Lopez must show that the *sole* reason for the inventory search was to investigate him. As the district court notes, Lopez "raised valid concerns that the decision to impound the vehicle may have been motivated, at least partially, by a desire to investigate" him. But unless there is record evidence to show that the investigation was the sole reason for the inventory search, the search was proper. We agree with the district court's conclusions and hold that the district court did not clearly err by finding that law enforcement did not conduct the inventory search for the sole purpose of investigating Lopez.

In conclusion, based upon the facts that Lopez was arrested, he was not the registered owner of the vehicle, he did not have proof of insurance, and he did not arrange or request to arrange an alternative to impoundment, the district court did not err by finding that law enforcement acted reasonably in impounding the vehicle for safekeeping. We further conclude that because there was evidence in the record that the space underneath a

removable cup holder in the vehicle was often used to store items, the district court did not clearly err by determining that the inventory search was in compliance with the Kandiyohi County Sheriff's Office towing policy.[1]

Affirmed.

[1] Because the inventory search exception applies to the search of Lopez's vehicle, we need not address his additional arguments that the automobile exception and the inevitable discovery doctrine do not apply to the search of the vehicle and the discovery of methamphetamine.