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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0918**

State of Minnesota,
Respondent,

vs.

Jordan Adrian Walz,
Appellant.

**Filed April 20, 2020
Reversed
Worke, Judge**

Dakota County District Court
File No. 19HA-CR-17-4406

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

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Florey, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court erred by denying his suppression motion because the inventory search of the vehicle he was driving was unconstitutional. Because

the district court clearly erred in its factual findings and the police failed to follow the departmental towing policy, we reverse.

FACTS

On October 25, 2017, appellant Jordan Adrian Walz crashed a vehicle into a tree. Officer Murr responded to the scene and had the vehicle impounded. During an inventory search, Officer Murr found a firearm and drug evidence. Walz was charged with unlawful possession of a firearm, fifth-degree possession of a controlled substance, and careless driving.

Walz moved to suppress the firearm and drug evidence, arguing that the search of the vehicle was unlawful because impoundment was unnecessary.¹ The district court held an omnibus hearing, at which it received Officer Murr's body camera footage² and heard Officer Murr's testimony. The district court also received a copy of the police department's vehicle towing and release policy.

Officer Murr's body camera footage reflected the following. Upon arriving at the scene, Officer Murr asked the vehicle's occupants what had happened. They told her that they were fighting and Walz "jerked the wheel." Officer Murr asked if they were injured,

¹ In response to Walz's suppression motion, the state argued that he lacked standing to challenge the inventory search of the vehicle. In ruling on Walz's suppression motion, the district court did not address the state's argument on standing. On appeal, the state did not raise an argument about standing in its brief and we decline to address the issue as it has been waived. *See State v. Grecinger*, 569 N.W.2d 198, 193 n.8 (Minn. 1997) (noting that issues not argued in briefs are deemed waived on appeal).

² At times, it appears that Officer Murr disabled the audio recording on her body camera. While it is not clear whether this was done in accordance with policies, we caution against this practice given the purpose of a body camera.

and they told her that they were “okay.” Officer Murr then asked for identification and who owned the vehicle. Audio from the video is not clear, but context indicates that Walz mumbled a word that sounded like “mine.” Officer Murr then asked Walz if he had a valid driver’s license, and he told her he did not. Officer Murr also requested insurance information.

Officer Murr asked dispatch to run the occupants’ identifications. Dispatch informed her that Walz’s license was revoked. Officer Murr provided dispatch with the vehicle’s license plate number and asked that it be added to the report. After another brief exchange with the passenger regarding the reason she and Walz were in Hastings, Officer Murr requested that dispatch call a tow truck.

Officer Murr then informed another officer that she noticed a case in the back of the vehicle and stated “it’s not their vehicle, of course.” The other officer responded, “oh, well you’ve got to inventory,” to which Officer Murr responded, “yep, we do.” Officer Murr picked up a backpack from inside the vehicle and rummaged through it. She also searched another small bag and looked in the center console.

Next, Officer Murr requested that dispatch provide her information about the vehicle’s owner. Dispatch informed Officer Murr that the owner was from Lino Lakes. Officer Murr then questioned Walz about his connection to the vehicle. Walz stated they borrowed the vehicle from a friend with the middle name “Nemo.” In continuing the inventory search, Officer Murr found the firearm and drug evidence.

Officer Murr stated that after learning the vehicle’s occupants’ identities, she “asked whose vehicle it was because it came back to somebody else—neither of the people inside.”

She also testified that “Nemo” was not affiliated with the vehicle’s registration. She testified that when she attempted to ascertain who Nemo was, Walz was unable to provide his full name. Officer Murr stated that at that point she was unsure whether the vehicle was stolen and did not have a chance to contact the owner.

Officer Murr testified that she called for a tow truck because the vehicle was inoperable. She also clarified that the vehicle was located on private property. After requesting a tow, she stated that she then began to inventory the vehicle.

When asked about the towing policy, Officer Murr stated that normally officers would tow a vehicle that was involved in an accident, disabled, and located on private property. Officer Murr testified that she followed the towing policy. When asked whether Walz or the passenger could have made arrangements to tow the vehicle, Officer Murr agreed that they could have, but stated that she did not allow them that opportunity.

The district court denied Walz’s suppression motion. The district court determined that, under the circumstances, impoundment was proper to remove the vehicle from private property. The district court noted that Walz was not the owner of the vehicle and that it had been reported missing. The district court also determined that Walz initially stated that the vehicle was his and then could not specifically identify the person who purportedly gave him permission to use the vehicle. In denying his motion, the district court relied on the fact that Officer Murr had reason to believe that Walz was wrongfully in possession of the vehicle and that impoundment was necessary to safeguard the vehicle and its contents.

The district court further determined that Officer Murr had followed the towing policy. In making this determination, the district court focused on the language of the

towing policy providing that when a vehicle is involved in a traffic collision, an officer shall have a driver select a towing company if reasonably possible. The district court concluded that, in this case, it was not reasonable to release the vehicle to Walz or the passenger because they did not appear to have authority to possess the vehicle.

Walz stipulated to the prosecution's case on all three counts pursuant to Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the district court's ruling on his suppression motion. The district court found Walz guilty as charged and this appeal followed.

D E C I S I O N

Walz argues that the district court erred by denying his suppression motion, claiming that the search of the vehicle was illegal. When reviewing a district court's pretrial ruling on a motion to suppress evidence, this court reviews factual findings for clear error and legal determinations de novo. *State v. Diede*, 795 N.W.2d 836, 849 (Minn. 2011). "Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred." *Id.* at 846-47.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, warrantless searches are unreasonable unless an exception to the warrant requirement applies. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). An inventory search of a lawfully impounded vehicle is one exception to the warrant requirement. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). The state has the burden of demonstrating that the inventory exception applies. *Id.*

To determine whether an inventory search is lawful, an appellate court must "look, as a threshold inquiry, to the propriety of the impoundment, since the act of impoundment

gives rise to the need for and justification of the inventory.” *State v. Goodrich*, 256 N.W.2d 506, 510 (Minn. 1977). When impounding a vehicle, the state’s interest must outweigh an individual’s right to be free from unreasonable searches and seizures. *Id.* The state’s interest in impounding a vehicle can outweigh an individual’s right to be free from unreasonable searches and seizures when “public safety is put at risk by leaving the vehicle in place,” or necessary to safeguard private property from theft and protect the police from claims that may arise therefrom. *State v. Rohde*, 852 N.W.2d 260, 265 (Minn. 2014). Public safety is implicated “when there has been a vehicle accident, to permit the uninterrupted flow of traffic, or when vehicles have violated parking ordinances.” *Id.* Impoundment and inventory searches are permissible so long as law enforcement abides by standardized criteria. *State v. Robb*, 605 N.W.2d 96, 104 (Minn. 2000). “If impoundment is not necessary, then the concomitant search is unreasonable.” *Goodrich*, 256 N.W.2d at 510.

Factual findings

Walz challenges the district court’s factual findings, contending that the district court erred by finding that Walz initially claimed that the vehicle was his and then later admitted that he did not know the registered owner. But on this record, we conclude that the district court did not err by making this finding. Officer Murr’s body camera footage indicates that Walz may have mumbled that the vehicle was his after she inquired about the vehicle’s ownership. Further, Officer Murr did not ask any follow-up questions that would be expected had Walz responded that someone else owned the vehicle. And later,

after Officer Murr began the inventory search, Walz told her that he had borrowed the vehicle but did not know the vehicle's registered owner.

Walz also argues that the district court erred by finding that dispatch informed Officer Murr that the owner reported the vehicle missing. We agree. The state conceded that there is no indication in the record that Officer Murr learned that the vehicle was reported missing prior to the impoundment. And our review of the record indicates that, while Officer Murr learned the identity of the vehicle's owner from dispatch after she began the inventory search, she did not learn that the vehicle was stolen until the following day when she contacted the registered owner. Therefore, the district court clearly erred by making this finding.

Reasonableness of impoundment

Walz argues that impoundment was unreasonable because he was uninjured and able to make arrangements to remove the vehicle. He argues that the towing policy required Officer Murr to allow him, as the driver, to select a towing company. We agree.

The towing policy, in relevant part, provides,

REMOVAL OF VEHICLE DISABLED IN A TRAFFIC COLLISION

When a vehicle has been involved in a traffic collision and must be removed from the scene, the officer shall have the driver select a towing company, if reasonably possible, and shall relay the request for the specified towing company to the dispatcher. When there is no preferred company requested, a company will be selected by the on scene officer.

If the owner is incapacitated or for any reason it is necessary for the Department to assume responsibility for a vehicle involved in a collision, the officer shall request the dispatcher to call a company selected from the list of towing

companies. The officer will then conduct an inventory and store the vehicle using a CJIN Tow Sheet.

Thus, the towing policy required Officer Murr to ask Walz, as the driver of the vehicle, whether he had a preference about the towing company and only permitted the impoundment of the vehicle when necessary for the department to assume responsibility for it.

During her testimony, Officer Murr confirmed that the vehicle was not parked on a paved highway or roadway, neither occupant was incapacitated, the vehicle was not being held for an investigation, the vehicle was not obstructing traffic in violation of any state or local regulations, and it was not a traffic hazard. Prior to the search, the only reason Officer Murr had to arrest Walz was because he had been driving with a revoked license. Neither Walz nor the passenger were arrested until after the search. Officer Murr confirmed that she did not have probable cause to search the vehicle when she arrived at the scene, there were no emergency circumstances to search the vehicle, no evidence had been in plain view, and she did not ask Walz for consent to search the vehicle. Finally, Officer Murr stated that she was unsure about whether the vehicle had been stolen at the time of impoundment because she did not learn that information until contacting the registered owner “[a] day after the accident.” Therefore, law enforcement had no reason to take responsibility for the vehicle. *See Gauster*, 752 N.W.2d at 504-06 (noting police had no reason to take responsibility of vehicle when driver was not under arrest prior to impoundment, vehicle did not constitute a traffic hazard, vehicle was not parked in a

manner that violated parking restrictions, and driver was available to take custody of vehicle and make arrangements).

Further, at the time of impoundment, Officer Murr knew only that Walz's license had been revoked and that the insurance listed the apparent registered owner. However, simply not being the registered owner of a vehicle, by itself, does not provide law enforcement with a valid basis for impoundment. *See Goodrich*, 256 N.W.2d at 511 ("The mere fact that the automobile was not registered to defendant, in the absence of reason to believe that the defendant was wrongfully in possession of it, does not render impoundment reasonable . . .").

Because Officer Murr did not have adequate information regarding whether the vehicle was stolen at the time of impoundment and there was no other reason necessitating that the department take possession of the vehicle, the impoundment was unreasonable. Therefore, the district court erred by determining that impoundment was reasonable and denying Walz's suppression motion.

Officers could have easily avoided violating Walz's right to be free from unreasonable searches and seizures by waiting until they had more information about the vehicle's owner and determining whether Walz was an authorized user. This case also demonstrates the importance of law enforcement having updated towing policies and police departments ensuring that its officers are knowledgeable about such policies. The towing policy in this case does not appear to have been updated for quite some time given that it references statutes that were renumbered in 2012. Further, it does not appear that any of the other officers on scene were knowledgeable about the towing policy given that they did

not remind Officer Murr about its terms. While we understand the realities that officers face when conducting their duties in the field, compliance with towing policies is imperative to ensure the correct balance in protecting the interests of both individuals and law enforcement.

Reversed.