This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0995

State of Minnesota,
Respondent,

vs.

Orlando Omar Castillo,
Appellant.

Filed June 13, 2022
Affirmed
Larkin, Judge

Carver County District Court
File No. 10-CR-20-997

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

Mark Metz, Carver County Attorney, Andrew D. Delain, Assistant County Attorney, Chaska, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction for unlawful possession of a firearm, arguing that the district court erred by denying his motion to suppress the firearm, which was discovered during a warrantless vehicle search. He also challenges his sentence, arguing

that the district court abused its discretion by denying his motion for a downward sentencing departure. We affirm.

FACTS

On October 11, 2020, a deputy monitoring highway traffic in an active construction zone saw a vehicle driven by appellant Orlando Omar Castillo in the closed westbound lane. The deputy pulled alongside Castillo at a median crossover to inform him that he could not drive in the closed section of the highway. The deputy exited his squad car, approached the driver's door, and saw what appeared to be a handgun on the front passenger seat. The deputy asked Castillo to exit the vehicle, but Castillo refused, became argumentative, and made "odd comments." The deputy suspected that Castillo was intoxicated. The deputy called for assistance, and additional officers responded. The responding officers saw an open container of beer in the center console while standing outside of Castillo's vehicle.

The deputy learned that Castillo lived in Arlington, so he asked dispatch to see if anyone could provide information about him. The Arlington police chief responded and agreed to drive to the scene to transport Castillo home. The police chief arrived and spoke to Castillo. Castillo handed him the handgun through the window, and it turned out to be a BB gun. Castillo finally agreed to exit his vehicle approximately two hours after the deputy had initially approached him. When he got out of the vehicle, he left its engine running and its keys locked inside. The vehicle was in the median crossover lane used to access "Wells Avenue and the 212 Equipment dealership."

The deputy was willing to allow a family member to pick up the vehicle, but it could not be left in the open traffic lane. And because the keys were locked in the vehicle, there was no immediate way for officers to allow Castillo to move his car out of the traffic lane or to move it themselves. One officer observed that there were visible personal effects in the vehicle, including money on the front passenger seat and a cell phone on the dashboard.

Castillo left with the police chief, and a decision was made to impound his vehicle. Prior to the vehicle being towed, an officer used his lock tools to enter the vehicle, and a search was conducted. Law enforcement located a half-full can of beer, additional beer cans, and a loaded sawed-off shotgun inside a plastic bag on the front passenger seat.

The state charged Castillo with five criminal offenses, including misdemeanor possession of an open container and three felony firearm-related counts. Castillo moved to suppress the evidence recovered from his car and dismiss the charges, arguing that the evidence was discovered as the result of an unlawful warrantless search. The district court denied Castillo's motion, concluding that the automobile and inventory exceptions to the warrant requirement justified the search.

Castillo waived his right to a jury trial and stipulated to the prosecution's case, under Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the district court's pretrial ruling. The district court found Castillo guilty of the three firearm-related charges, and the remaining charges were dismissed by agreement of the state.

Castillo moved for a sentencing departure. He asked the district court to depart from the mandatory minimum 60-month executed sentence and to impose a 21-month stayed sentence. The district court denied Castillo's motion, entered judgment of conviction on

count two, unlawful possession of a firearm by an individual convicted of a crime of violence, and imposed a 60-month executed sentence. Castillo appeals.

DECISION

I.

Castillo contends that the district court erred by denying his suppression motion. When reviewing a pretrial order on a motion to suppress evidence, we review the district court's factual findings for clear error and its legal determinations de novo. *State v. Sargent*, 968 N.W.2d 32, 36 (Minn. 2021).

The state and federal constitutions protect against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches and seizures are per se unreasonable, subject to a few established exceptions. *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993). The state bears the burden of establishing that an exception to the warrant requirement existed. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). In this case, the district court in this case relied on two exceptions. We consider each in turn.

Automobile Exception

The automobile exception to the warrant requirement permits police to search a vehicle without a warrant, including closed containers in the vehicle, "if there is probable cause to believe the search will result in a discovery of evidence or contraband." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (quotation omitted). "Probable cause exists when there are facts and circumstances sufficient to warrant a reasonably prudent person to believe that the vehicle contains contraband." *Id.* (quotation omitted).

Castillo concedes that the officers had probable cause to search his vehicle for evidence of the open-container offense and "were justified in collecting the open container from the center console." But he argues that "the further search of the car, particularly the search of the bag where the shotgun was found, exceeded the scope of the probable cause."

"The scope of a warrantless search under the automobile exception is defined by the object of the search and the places in which there is probable cause to believe the object may be found." *State v. Gauster*, 752 N.W.2d 496, 508 (Minn. 2008) (quotations omitted). In *State v. Schuette*, this court held that an officer was permitted, under the automobile exception, to search a rolled-up grocery bag for evidence of an open-container violation, as the bag "reasonably may have contained additional cans or bottles." 423 N.W.2d 104, 106 (Minn. App. 1988).

Here, law enforcement issued Castillo a citation for an open-container violation after observing an open container of beer in his center console. While searching the vehicle, officers discovered the shotgun inside a plastic bag on the passenger seat. Given the plastic bag's proximity to Castillo and the open beer in his center console, as well as the bag's potential for concealing additional alcohol containers, law enforcement did not exceed the scope of their search by inspecting the contents of the plastic bag. *See id.*

Inventory Exception

Under the inventory-search exception to the warrant requirement, law enforcement may search a properly impounded vehicle. *Gauster*, 752 N.W.2d at 502; *State v. Rohde*, 852 N.W.2d 260, 263 (Minn. 2014). "Inventory searches are considered reasonable because of their administrative and caretaking functions." *Gauster*, 752 N.W.2d at 502.

"These functions 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." *Id.* (quotation omitted).

"[T]he threshold inquiry when determining the reasonableness of an inventory search is whether the impoundment of the vehicle was proper." *Id.* "For impoundment to be proper, the state must have an interest in impoundment 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." *Id.* (quotation omitted). In examining the state's interest in impoundment, courts ask whether officers "had any authority or purpose that justified the impoundment." *Rohde*, 852 N.W.2d at 264.

Castillo concedes that police may impound vehicles to protect the defendant's property from theft and may remove vehicles that impede traffic or threaten public safety. Indeed, "police, in the interests of public safety, have the authority to remove from the streets vehicles impeding traffic or threatening public safety and convenience." *Id.* (quotation omitted). "Additionally, police may impound a vehicle to protect the defendant's property from theft and the police from claims arising therefrom." *Id.* (quotation omitted).

Here, Castillo locked the doors to his vehicle and left its engine running in the median crossover lane used to access Wells Avenue and a local business. Additionally, personal effects, including money and a cell phone, were visible on the front passenger seat and dashboard of Castillo's vehicle from outside the vehicle. Given that Castillo's vehicle

impeded traffic and created a hazard, as well as the need for police to protect the personal property inside the vehicle, the officers properly impounded the vehicle.

In determining the reasonableness of an inventory search, courts also consider whether police carried out the search in accordance with standard procedures. *State v. Holmes*, 569 N.W.2d 181, 187 (Minn. 1997); *Gauster*, 752 N.W.2d at 503. That limitation prevents officers from having "so much latitude that inventory searches are turned into a purposeful and general means of discovering evidence of crime." *Florida v. Wells*, 495 U.S. 1, 4 (1990) (quotation omitted).

A Carver County impound directive stated that a vehicle shall be impounded and inventoried if the "vehicle is an immediate roadway hazard or has been abandoned on public property." However, the directive also stated that "[d]eputies shall not impound vehicles belonging to drivers or owners when the driver/owner is merely cited and released."

Although the officers were faced with conflicting criteria regarding impoundment, the officers acted in accordance with a clear directive requiring the impoundment of vehicles posing an immediate roadway hazard, and we therefore cannot say that the impoundment was "a ruse for a general rummaging in order to discover incriminating evidence." *See Wells*, 495 U.S. at 4; *see also* Minn. Stat. § 168B.04, subd. 2(b)(1)(ii) (2020) (stating that a vehicle may be immediately impounded if it is "located so as to constitute an accident or traffic hazard to the traveling public, as determined by a peace officer").

Castillo concedes that "the officers may have had a legitimate purpose in moving the vehicle to safer location or in ensuring the safety of Castillo's belongings," but he argues that officers "could have ensured the safety of other motorists and Castillo's property without impounding and searching the car." He asserts that "police could have moved the car and secured it for Castillo's family." He also argues that the police "could have stowed the personal items in the [vehicle's] glove box or trunk for safekeeping."

Even though the record indicates that the deputy initially agreed to allow Castillo to arrange for the vehicle's removal, there is no indication that such arrangements were ever made. To the contrary, Castillo left the scene with his vehicle running in the roadway and its keys locked inside. And, as found by the district court, given Castillo's condition at the time of the incident, it was "uncertain" whether Castillo had the "capacity" to make such arrangements. Moreover, Castillo does not cite authority indicating that law enforcement was obligated to move the vehicle so his family members could pick or to secure his personal property within the vehicle at the scene. Indeed, such an approach could expose the police to the types of claims that an inventory search is intended to prevent. *See Rohde*, 852 N.W.2d at 264 ("[P]olice may impound a vehicle to protect the defendant's property from theft and the police from claims arising therefrom." (quotation omitted)).

In sum, the impoundment was proper, and the inventory search was reasonable.[1]

---

[1] The state also argues that law enforcement had probable cause to search the vehicle because Castillo was illegally transporting the BB gun. Castillo argues that this argument is not properly before this court on appeal. Because we affirm based on the grounds raised and decided in district court, we need not decide whether the state's argument is properly before us.

II.

Castillo contends that the district court abused its discretion in denying his motion for a downward sentencing departure, arguing that he is particularly amenable to probation, that his conduct was less serious than "typical for a firearms offense," and that he lacked "substantial capacity for judgment" due to mental impairment.

Castillo was convicted of, and sentenced for, violating Minn. Stat. § 624.713, subd. 1(2) (2020), which subjected him to a mandatory minimum five-year sentence. Minn. Stat. § 609.11, subd. 5(b) (2020). However, the district court was permitted by statute to depart from the mandatory minimum sentence if it found "substantial and compelling reasons to do so." *Id.*, subd. 8(a) (2020).

We review the district court's sentencing decision for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014); *State v. Larson*, 473 N.W.2d 907, 909 (Minn. App. 1991). Only in a "rare" case will we reverse the district court's refusal to depart from a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). We generally will not disturb a presumptive sentence if "the record shows that the sentencing court carefully evaluated all the testimony and information presented," even if reasons for a departure exist. *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013); *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006).

When considering a dispositional departure, the district court generally focuses on the defendant as an individual. *State v. Heywood*, 338 N.W.2d 243, 244 (Minn. 1983). A defendant's particular amenability to probation may justify a dispositional departure. *Soto*,

855 N.W.2d at 308. Relevant factors for determining whether the defendant is particularly amenable to probation include the defendant's age, prior criminal record, remorse, cooperation, attitude in court, and support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

In determining whether to grant a durational departure, a district court must focus on the defendant's conduct and consider whether it was "significantly less serious than that typically involved in the commission of the offense." *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985).

We are satisfied that the district court carefully considered the information presented before declining to grant a departure. The district court reviewed the presentence-investigation report (PSI) and "everything" submitted by the defense in support of the departure. The district court heard arguments from both parties and took approximately "20 minutes" to "consider the arguments" before reaching a sentencing decision. The district court explained that decision as follows:

> [E]ven if I were to [find] that you are particularly amenable or particularly suitable to treatment, that doesn't mean I'm required to depart from the sentencing guidelines. And I look at this offense and I consider this to be a very serious offense. You are a convicted -- a person convicted of a prior crime of violence. You are prohibited from possessing firearms. And as [the prosecutor] noted, this wasn't a hunting firearm. This wasn't another type of lawful firearm. This was an unlawful firearm which has no lawful purpose, and it's significantly concerning that you had possession of that weapon, that that weapon was loaded, that this was -- I don't think it was a standoff with police, that's not how I would describe it, but it certainly was concerning circumstances as to the presence of that weapon, the state that you were in, and the manner in which this offense occurred. I'm very thankful, I'm sure

> you're very thankful that nothing happened more serious than this, but the potential was absolutely there. And when I look at the seriousness of this offense, I also don't believe that a departure from the mandatory minimum sentence is appropriate.

Castillo notes that the PSI recommended probation and argues that the *Trog* factors supported a dispositional departure in this instance. But, as Castillo concedes, he had violated probation in the past. The district court considered the PSI and *Trog* factors, and ultimately determined that Castillo was not "particularly" amenable to probation. And, the district court provided a detailed and reasoned explanation for its decision, even though it was not required to do so. *See State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985) ("[A]n explanation is not required when the court considers reasons for departure but elects to impose the presumptive sentence.").

On this record, we discern no abuse of discretion. This is not a "rare" case justifying reversal of a presumptive sentence. *See Kindem*, 313 N.W.2d at 7.

Affirmed.