STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1115

State of Minnesota,
Respondent,

vs.

Andrew Allen Schell,
Appellant.

Filed July 24, 2023
Affirmed
Wheelock, Judge

Douglas County District Court
File No. 21-CR-21-485

Keith Ellison, Attorney General, Lisa Lodin Peralta, Assistant Attorney General, St. Paul, Minnesota; and

Chad M. Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

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

Grant S. Gibeau, Special Assistant Public Defender, Taft, Stettinius & Hollister LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Wheelock, Judge; and Halbrooks, Judge.[*]

SYLLABUS

When law enforcement lawfully impounds a motor vehicle after a search for firearms under the automobile exception reveals controlled substances, law enforcement

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

retains the authority to further search the vehicle and any containers in it that may contain firearms or controlled substances while the vehicle remains in the custody and control of law enforcement and no facts or circumstances suggest that the search has become less reasonable in the six days following the vehicle's impoundment.

OPINION

WHEELOCK, Judge

Appellant challenges the district court's denial of his pretrial motion to suppress evidence recovered from a lockbox that was removed from appellant's impounded vehicle in the presence of law enforcement six days after appellant's arrest and the vehicle's impoundment. Because law enforcement retained the authority to search the vehicle and containers in the vehicle under the automobile exception to the Fourth Amendment's prohibition against warrantless searches and seizures during the six days the vehicle remained impounded, we affirm.

FACTS

The following facts are taken from the evidence introduced at the contested omnibus hearing. On March 13, 2021, a Douglas County deputy sheriff stopped the vehicle appellant Andrew Allen Schell was driving for brake-light and license-plate violations. The deputy noticed a gun in the vehicle, and neither Schell nor his passenger, Brooke Edwards, had a permit to carry a firearm. The deputy then searched the vehicle for weapons and found drug paraphernalia and substances that later tested positive for heroin and methamphetamine. He arrested Schell and Edwards and impounded the vehicle. The

record does not indicate that the sheriff's department conducted an inventory search of the vehicle.

Edwards posted bail on March 19, 2021, and asked the sheriff's office for permission to remove personal items from the impounded vehicle. A second deputy accompanied Edwards and another individual, A.W., to the impound lot, and a sergeant met them there. The sergeant testified at the omnibus hearing that Edwards's behavior was "odd in the fact that she was moving back and forth between the passenger compartment and the engine compartment, and it looked like there was a lot of busy work but there was nothing being done." He added that when people arrive at the impound lot to recover property, they typically "grab stuff" from the passenger compartment and load it into another vehicle. Instead, Edwards stayed outside the vehicle and removed her jacket despite it being a cold day. She then "began to place [the jacket] into the engine compartment and stuff it down into—down near the engine."

The sergeant learned that another deputy had found a gun and controlled substances inside the vehicle during the search on March 13. He determined that Edwards's "suspicious behavior" in the impound lot might indicate that she was attempting to remove an as-yet-undiscovered weapon from the vehicle. At that point, the sergeant got out of his car, approached Edwards, and asked what she was doing. He testified that Edwards was holding the jacket close to her body and that he grabbed her arm and asked her what was in her hands. The sergeant asked Edwards multiple times to give him the jacket as she attempted to give it to A.W., but A.W. refused to take it.

The sergeant then took Edwards's jacket, which was wrapped around a "hard object," and the deputy handcuffed Edwards. The sergeant unwrapped the jacket and found a black plastic lockbox. He testified that he suspected the box contained contraband and possibly a weapon. The sergeant opened the box, which was later determined to contain more than 50 grams of methamphetamine. The box also contained substances suspected to be 1.1 grams of cocaine, 17 Adderall pills, and 27 alprazolam pills, but these substances were not confirmed with lab testing. Jail staff also obtained text messages Schell and Edwards exchanged during the time Edwards was at the impound lot, which appear to discuss the location of an item concealed within the vehicle:

> Edwards: What part of the front?!
> Schell: Passager [sic] front fender move that rag
> Schell: It's tucked in there nice babe you will see it god I hope you get it out safe

Based on the additional contraband found in the lockbox, the state charged Schell with one count of first-degree possession of a controlled substance in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2020), one count of aiding and abetting a first-degree controlled-substance crime in violation of Minn. Stat. §§ 152.021, subd. 2(a)(1), 609.05, subd. 1 (2020), and three counts of fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1) (2020). Schell moved to suppress the evidence discovered in the lockbox, arguing that "[t]he forceful taking, opening, and search of the locked box was an unlawful search and seizure of property without a warrant." The district court found that the search of the lockbox was supported by probable cause under the automobile exception to the Fourth Amendment's warrant requirement and denied the

motion to dismiss. Schell thereafter stipulated to the state's evidence and preserved for appeal the issue of whether the search and seizure of the lockbox was constitutional. The district court found Schell guilty of the first-degree controlled-substance offenses and sentenced him to 110 months in prison.

Schell appeals.

ISSUE

Did the district court err by denying appellant's motion to suppress evidence?

ANALYSIS

"When reviewing a pretrial motion to suppress, 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) (quoting *State v. Leonard*, 943 N.W.2d 149, 155 (Minn. 2020)). Schell argues that the district court erred in denying his motion to suppress the evidence found in the lockbox that Edwards removed from his vehicle because the sergeant did not have probable cause to search it pursuant to the automobile exception to the Fourth Amendment's warrant requirement. We are not persuaded.

"Unreasonable searches and seizures" are prohibited by the United States and Minnesota Constitutions. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "The touchstone of our analysis under the Fourth Amendment is always the reasonableness in all circumstances of the particular governmental invasion of a citizen's personal security." *State v. Bartylla*, 755 N.W.2d 8, 15 (Minn. 2008) (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977)).

A warrantless search is "per se unreasonable." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). "A search conducted without a warrant is unreasonable unless it satisfies one of the well-delineated exceptions to the warrant requirement." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (quotation omitted). One recognized exception is the "automobile exception," which allows a warrantless search of a vehicle if officers "have probable cause to believe the search will result in a discovery of evidence or contraband." *State v. Search*, 472 N.W.2d 850, 852 (Minn. 1991) (citing *United States v. Ross*, 456 U.S. 798 (1982)). Individuals have a lesser expectation of privacy in a motor vehicle than they would in a home or office, and the warrant requirements are accordingly less stringent. *See South Dakota v. Opperman*, 428 U.S. 364, 367 (1976). The mobile nature of vehicles can create situations in which "an immediate intrusion is necessary if police officers are to secure the illicit substance." *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999) (quoting *Ross*, 456 U.S. at 806-07).

Schell does not contest the validity of the initial search and seizure of his vehicle, and we observe that law enforcement was authorized to search the vehicle "and its contents, including all containers and packages" that may have concealed firearms or controlled substances, at the time of his arrest on March 13 pursuant to the automobile exception. *Ross*, 456 U.S. at 799; *see also State v. Barrow*, 989 N.W.2d 682, 688 (Minn. 2023) (holding that, pursuant to *Ross* and its progeny, law enforcement may search "closed containers" in a vehicle if there is probable cause to search that vehicle for contraband).

As there is also no dispute that Edwards had removed the lockbox from the vehicle immediately prior to its discovery and search, the state's principal argument is that the

search was justified by the automobile exception because law enforcement had probable cause to search the vehicle and its contents, which included the lockbox, when the lockbox was still inside of it.[1] Schell argues that the automobile exception to the warrant requirement did not apply because probable cause to believe the lockbox contained contraband did not arise until after the lockbox had already been removed from the vehicle.

We conclude that the district court did not err by denying Schell's motion to suppress evidence because (1) the initial search and impoundment of the vehicle was lawful, (2) the vehicle remained impounded at the time Edwards removed the lockbox from the engine area of the vehicle, (3) the delay between the vehicle's impoundment and the search of the lockbox did not otherwise implicate Fourth Amendment concerns, and (4) the lockbox constituted a container in the vehicle such that the original probable cause supported law enforcement's search of the lockbox.

Delay in Search of Schell's Vehicle and Its Contents

Probable cause to search Schell's vehicle continued to exist after law enforcement impounded it. The United States Supreme Court has determined that probable cause to search a vehicle does not expire when it is impounded: "[O]fficers may conduct a warrantless search of the vehicle even after it has been impounded and is in police custody." *Michigan v. Thomas*, 458 U.S. 259, 261 (1982) (citing *Chambers v. Maroney*, 399 U.S. 42 (1970)). And in *United States v. Johns*, the Court held that a lawful warrantless search can

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[1] The state argues in the alternative that the search of the lockbox was authorized by additional exceptions to the warrant requirement. Because we conclude that the automobile exception justified the search of the lockbox, we do not address the state's alternative arguments.

remain reasonable when an impounded vehicle or its contents are not searched immediately and that "[t]here is no requirement that the warrantless search of a vehicle occur contemporaneously with its lawful seizure." 469 U.S. 478, 484, 487-88 (1985).

In *Johns*, U.S. Customs officials seized two pickup trucks pursuant to a drug-smuggling investigation. *Id.* at 481. They removed packages from the trucks and placed them in a Drug Enforcement Administration (DEA) warehouse, and government agents did not inspect those packages until three days later. *Id.* The Court held that the agents had probable cause and that "the warrantless search three days after the packages were placed in the DEA warehouse was reasonable." *Id.* at 487. The *Johns* Court noted that there is no specific temporal limitation on a warrantless search that is justified by probable cause, *id.* at 484-85, and cited a footnote in *Ross* that states that "if an immediate search on the street is permissible without a warrant, a search soon thereafter at the police station is permissible if the vehicle is impounded," 456 U.S. at 807 n.9. The Court said the delay cannot be indefinite and cited, with approval, *Cooper v. California*, 386 U.S. 58, 61-62 (1967), which held that a search of an automobile occurring a week after it was seized pending forfeiture was reasonable. *Johns*, 469 U.S. at 487-88.

Here, the time between the original impoundment of Schell's vehicle and the discovery of the lockbox was six days. The parties do not dispute that the impoundment of the vehicle was lawful or that it remained in the exclusive care and custody of law enforcement prior to the removal of the lockbox. And there is no reason apparent from the record to suspect that the warrantless search of the vehicle became less reasonable during that time. *See id.* at 487 (noting that there was no evidence in that case that the delay

"adversely affected legitimate [privacy or possessory] interests protected by the Fourth Amendment"). We therefore reach a similar conclusion. Because law enforcement had probable cause to search Schell's vehicle for weapons and controlled substances at the time it was impounded, the vehicle remained in the exclusive custody and control of law enforcement following impoundment, and no facts or circumstances suggest that probable cause to believe the vehicle contained additional contraband was dispelled during impoundment, we hold that law enforcement was authorized under the automobile exception to the warrant requirement to search Schell's vehicle—as well as any containers within it that could conceal weapons or controlled substances—at the time Edwards arrived at the impound lot to remove property from the vehicle.[2]

Search of the Lockbox

Having concluded that a search of Schell's vehicle was lawful under the automobile exception because it was based on probable cause that continued to exist at the time Edwards visited the impound lot, we next determine whether this authorization extended to the search of the lockbox that Edwards removed from the engine compartment.

Schell argues that the search authorized by the automobile exception to the warrant requirement could not include the lockbox because the lockbox was seized and searched outside of the vehicle "after it had been fully removed and wrapped in [Edwards's] jacket." Schell asserts that "once a closed container is removed from the vehicle by its owner, the

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[2] Even assuming, without deciding, that fresh probable cause was needed to support an additional search of the vehicle, we observe that the totality of circumstances supports the conclusion that law enforcement had probable cause to believe the vehicle contained additional contraband or evidence of a crime.

automobile exception no longer applies and the police again require a warrant to search that container." Schell is incorrect.

The Minnesota Supreme Court recently held that police are permitted to search any container that was inside a vehicle at a time when there was probable cause to search that vehicle pursuant to the automobile exception. *Barrow*, 989 N.W.2d at 688. In *Barrow*, police stopped a car for a lane-change violation and, upon smelling the odor of marijuana inside, ordered the driver and passenger out of the car in order to search it. *Id.* at 684. Upon exiting the car, the passenger—Barrow—attempted to take her purse with her. *Id.* An officer returned Barrow's purse to the inside of the car and searched it along with the interior of the car. *Id.* Inside the purse, the officer found a controlled substance for which Barrow did not have a prescription. *Id.* Barrow moved to suppress the evidence obtained from the search of her purse, arguing that the automobile exception to the warrant requirement did not apply because the purse was an extension of her person rather than a container within the car. *Id.*

The supreme court rejected Barrow's claim that her purse was legally distinguishable from any other container within a vehicle and affirmed the search of the purse: "Because Barrow's purse is a container that was inside the car at the time probable cause arose, and her purse could contain marijuana, the officer was permitted to search the purse under the automobile exception." *Id.* at 688. Although Barrow did not specifically argue that her removal of her purse from the car exempted it from a search pursuant to the automobile exception, the court's articulation of the applicable law nevertheless wholly resolves the question here. Because the parties do not assert, and there is no reason to

believe, that the lockbox had not been inside the vehicle continuously since the time it was impounded, the lockbox—like the purse in *Barrow*—is a container that was inside the vehicle at the time when probable cause to search the vehicle arose and that could contain a firearm or controlled substances. Thus, like the police in *Barrow*, the sergeant here was permitted to search the lockbox under the automobile exception to the warrant requirement.

That Edwards had removed this container from the vehicle immediately prior to the sergeant seizing and searching it is irrelevant to this analysis.[3] Indeed, adopting Schell's position would lead to the absurd result of permitting an occupant of a vehicle to prevent law enforcement from searching a container that would otherwise be subject to search under the automobile exception merely by successfully removing it from the vehicle. Accordingly, we reject it.

Similarly irrelevant is whether the sergeant needed independent probable cause to believe the lockbox itself contained contraband after it was removed from the vehicle. Schell provides no authority for the proposition that additional probable cause particularized to a given container is required before that container may be searched outside of the vehicle in which it was located. Rather, precedent makes clear that authorization to search a container within a vehicle is derived from there being probable cause to believe

[3] In support of his argument in this regard, Schell cites two nonprecedential opinions of this court in which we concluded that the warrantless search of a container that had been removed from a vehicle was not permitted under the automobile exception. *State v. Khampanyavong*, No. A12-0449 (Minn. App. Dec. 24, 2012); *State v. Millers*, No. C6-02-1016 (Minn. App. Dec. 10, 2002). These cases are inapposite, however, because in neither case did law enforcement have probable cause to search the vehicle at the time the container was inside of that vehicle.

that the *vehicle* contains evidence or contraband and that the container "could" contain the items for which probable cause to search exists. *Barrow*, 989 N.W.2d at 688. Because both of these elements are satisfied here, the warrantless search of the lockbox was permissible.

DECISION

The district court properly denied Schell's motion to suppress evidence. Because law enforcement had probable cause to believe that Schell's vehicle contained firearms or controlled substances at the time it was impounded, because the vehicle remained in the exclusive custody and control of law enforcement following impoundment, and because no facts or circumstances suggest that probable cause had been dispelled or that the search had otherwise become less reasonable in the six days following the vehicle's seizure, the sergeant was permitted to search the lockbox that Edwards removed from the vehicle pursuant to the automobile exception to the warrant requirement.

Affirmed.