STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1826

State of Minnesota,
Respondent,

vs.

Matthew Allen Wendland,
Appellant.

Filed November 25, 2013
Affirmed
Smith, Judge

Hennepin County District Court
File No. 27-CR-10-25214

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, George David Kidd, Certified Student Attorney, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Presiding Judge; Ross, Judge; and Rodenberg, Judge.

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

SMITH, Judge

We affirm appellant's conviction of being a prohibited person in possession of a firearm because the district court did not err by denying appellant's motion to suppress

evidence seized during the inventory search of his vehicle. We decline to rule on the issue of whether the inventory search was permissibly conducted pursuant to standardized procedures because the issue was not raised before the district court.

FACTS

On June 1, 2010, at approximately 11:15 p.m., Maple Grove Police Officer Adam Marinello observed a vehicle violate several traffic laws near and on Interstate 94. Officer Marinello initiated a stop and the driver parked his vehicle along an exit ramp, with the front of the vehicle in the exit lane. Officer Marinello approached the vehicle and observed that the driver, subsequently identified as appellant Matthew Allen Wendland, was the sole occupant. Officer Marinello ran Wendland's name through the law enforcement database and, upon learning that Wendland's driver's license was suspended, indicated that he was going to impound the vehicle. Wendland advised Officer Marinello that he had a licensed driver available to safely park the vehicle who was "not even five minutes away," but because the vehicle was partially in a lane of traffic, and it was dark and pouring rain, Officer Marinello decided to impound the vehicle.

Wendland was placed in the back of Officer Marinello's squad car. Officer Marinello and an accompanying officer then conducted an inventory search of Wendland's impounded vehicle to ensure any private property in the vehicle was recorded before the vehicle was towed. The search produced a small baggy of marijuana, a colored glass pipe, a .380-caliber bullet, and—inside a work glove in the passenger seat's back pouch—a gun. Based on a 1991 felony conviction, Wendland was charged

with being a prohibited person in possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2008).

Wendland moved to suppress the evidence obtained during the inventory search, arguing that Officer Marinello lacked authority to impound his vehicle. The district court denied Wendland's motion to suppress, finding that impoundment was proper because the vehicle constituted a safety hazard. Wendland agreed to a trial on stipulated facts, thereby preserving the suppression issue for appeal. The district court found Wendland guilty of being a prohibited person in possession of a firearm and sentenced him to 60 months' imprisonment, but stayed execution of the sentence and placed Wendland on probation for five years. This appeal followed.

D E C I S I O N

Wendland challenges the district court's denial of his motion to suppress evidence seized during the inventory search of his vehicle. "When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). We independently review the facts not in dispute and determine, as a matter of law, whether the evidence at issue warrants suppression. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

I.

Wendland argues that, because Officer Marinello lacked authority to impound his vehicle, the impoundment and corresponding inventory search violated his constitutional

protection against unreasonable searches and seizures. *See* U.S. Const. amend. IV; Minn. Const. art. I, § 10. It is undisputed that Officer Marinello did not have a warrant to search Wendland's vehicle. As a general rule, warrantless searches are per se unreasonable. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). But certain exceptions permit warrantless searches. *Geer v. State*, 406 N.W.2d 34, 35 (Minn. App. 1987), *review denied* (Minn. July 15, 1987). Inventory searches are one such exception. *Colorado v. Bertine*, 479 U.S. 367, 371, 107 S. Ct. 738, 741 (1987). It is the state's burden to establish that the inventory-search exception applies in a particular case. *See Ture*, 632 N.W.2d at 627.

Because impoundment of a vehicle justifies an inventory search, "the threshold inquiry when determining the reasonableness of an inventory search is whether the impoundment of the vehicle was proper." *Gauster*, 752 N.W.2d at 502. A proper impoundment requires that the state have an interest in the impoundment that outweighs an individual's Fourth Amendment right to be free from unreasonable searches and seizures. *Id.* Under Minnesota law, impoundment of an unattended vehicle is proper when a police officer determines that it "constitute[s] an accident or traffic hazard to the traveling public." Minn. Stat. § 168B.04, subd. 2(b)(1)(ii) (2008); *see also Gauster*, 752 N.W.2d at 504 (recognizing that if the vehicle at issue had presented a safety hazard, the officer would have been authorized to immediately impound it).

Wendland first argues that his vehicle did not constitute a safety hazard. But the record establishes that his vehicle was parked partially in an interstate exit lane on a dark,

rainy night. The district court's finding that the vehicle constituted a safety hazard is not clearly erroneous.

Relying on *Gauster*, Wendland next argues that because his traffic violations were not arrestable offenses, his vehicle was not left unattended and immediate impoundment was improper. *See Gauster*, 752 N.W.2d at 506–08 (because Gauster was not under arrest, he was "available to take custody of the vehicle and make proper arrangements."). But in *Gauster*, the defendant's vehicle did not present a safety hazard. *Id.* at 504. Rather, the impoundment of Gauster's vehicle was based on the caretaking function. *Id.* at 505–08. Here, the record establishes that Wendland's vehicle created a safety hazard. Thus, as the *Gauster* court recognized, the police were authorized "to impound [the vehicle] immediately." *Id.* at 504.

In support of his contention that another driver should have been permitted to take custody of his vehicle, to avoid leaving it unattended, Wendland also relies on *State v. Goodrich*, 256 N.W.2d 506 (Minn. 1977). Under *Goodrich*, an impound is unreasonable where police assume custody of a vehicle "for no legitimate state purpose other than safekeeping, and where defendant had arranged for alternative means, not shown to be unreasonable, for the safeguarding of his property." *Id.* at 507. However, the impoundment of Wendland's vehicle was not justified solely by the need to keep his personal effects safe. As *Gauster* made clear, when the vehicle constitutes a safety hazard and the defendant is unable to drive the vehicle, the officer may immediately impound the vehicle under Minn. Stat. § 168B.04, subd. 2(b)(1)(ii). 752 N.W.2d at 504.

Because Wendland's suspended license rendered him unable to drive the vehicle and because the district court's finding that Wendland's vehicle constituted a safety hazard is not clearly erroneous, the impoundment of his vehicle was valid. Therefore, Wendland is not entitled to relief on this ground.

II.

For the first time on appeal Wendland challenges the inventory search procedure, arguing that the state failed to provide sufficient evidence of existing regulations or departmental procedures governing police discretion during an inventory search. Ordinarily we will not decide issues raised for the first time on appeal, even if the issues involve constitutional questions regarding criminal procedure. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). We conclude that Wendland waived the standardized-procedure claim by failing to raise it at the district court. Therefore, Wendland is not entitled to relief on this ground.

Affirmed.