**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A08-1987**

State of Minnesota,
Respondent,

vs.

Darrell Joel McCutchison,
Appellant.

**Filed September 1, 2009**
**Affirmed**
**Lansing, Judge**

Hennepin County District Court
File No. 27-CR-08-20390

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Lansing, Presiding Judge; Peterson, Judge; and Hudson, Judge.

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

**LANSING**, Judge

At a contested omnibus hearing on charges of carrying a weapon without a permit and ineligible person in possession of a firearm, Darrell McCutchison moved to suppress the firearm on the basis that it was discovered in violation of his constitutional right against unreasonable searches. The district court denied the motion and found McCutchison guilty in a stipulated-facts trial. On appeal, McCutchison renews his constitutional challenge. Because the district court properly concluded that the firearm was admissible under the inevitable-discovery doctrine, we affirm.

## F A C T S

A Minneapolis police officer arrested Darrell McCutchison in April 2008 after the officer found a firearm in a van that McCutchison was driving. The state initially charged McCutchison with carrying a weapon without a permit, but amended the complaint in May 2008 to add the offense of ineligible person in possession of a firearm.

At a contested omnibus hearing, McCutchison challenged the admissibility of the firearm on the ground that the officer who searched the vehicle and discovered the firearm violated McCutchison's constitutional right against unreasonable searches. In response, the state presented testimony from the police officer who arrested McCutchison.

The officer testified that about 1:30 a.m. on April 23, 2008, he saw the driver of a van pull into a parking lot and talk with two women who were "known for prostitution." When the driver left the parking lot, he did not signal his left turn. The police officer and

his partner followed the van in their squad car. When the driver "turned left, failing to signal his change of course again," the officers activated the squad's emergency lights, and the van's driver slowed down and stopped in a traffic lane.

The officer walked up to the driver's door and asked for identification. The officer's partner "cover[ed] the passenger side of the [van]." The driver was alone in the van and was cooperative. He said that his driver's license had been suspended and identified himself as Darrell McCutchison, but the officers could not immediately verify the identification. McCutchison also told the officers he did not own the van but "knew the owner." The officer asked McCutchison to step out of the van. The officer's partner "[took] control of [McCutchison]," "did a quick pat down for weapons," and took McCutchison to the squad car to verify his identity.

When McCutchison walked back to the squad car with the officer's partner, the officer checked the area of the vehicle where McCutchison had been sitting. He was looking only for "something that would hurt us initially in the stop if we let him back in the car." He picked up a pillow that was on the floorboard because it was blocking his view, and he noticed that the pillow was very heavy. Because of the disproportionate weight of the pillow, "[he] put [his] hand on top of the pillow . . . and [felt a] handgun inside." The officer then placed McCutchison under arrest, did a property inventory search, and impounded the van.

Following the omnibus hearing, the district court denied McCutchison's motion to suppress the firearm. It held that the search "was constitutionally permissible" and that, even if the search were unconstitutional, the firearm would be admissible under the

inevitable-discovery doctrine. McCutchison waived a jury trial and submitted the case on stipulated facts. The district court found him guilty on both charges. McCutchison appeals, arguing that the district court erred in refusing to suppress the firearm.

**D E C I S I O N**

When the material facts are undisputed, we review a district court's ruling on a suppression motion or a pretrial dismissal as an issue of law. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). We review the facts independently to determine whether, as a matter of law, "the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). The independent review extends to the determination, on undisputed facts, of whether evidence is admissible under the inevitable-discovery doctrine. *Id.* at 105.

Both the Minnesota and United States Constitutions protect against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches are presumptively unreasonable unless one of "a few specifically established and well-delineated exceptions" applies. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967); *see also State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007) (stating that warrantless search is generally unreasonable). But, even if an officer discovers evidence during an unreasonable search, the unlawfully discovered evidence is admissible if the state can demonstrate by a preponderance of the evidence that the police would have inevitably discovered the evidence if the officer had acted lawfully. *Nix v. Williams*, 467 U.S. 431, 444, 104 S. Ct. 2501, 2509 (1984); *Harris*, 590 N.W.2d at 105 (holding that evidence was admissible because it would have inevitably been discovered).

The district court reasoned that the inevitable-discovery doctrine applied to the firearm in McCutchison's van because, even if the officer had not searched the van shortly after stopping McCutchison, the police would have impounded the van and discovered the firearm during an inventory search. Police may conduct a reasonable inventory search of a lawfully impounded vehicle without violating a person's rights against unreasonable searches and seizures. *South Dakota v. Opperman*, 428 U.S. 364, 372-76, 96 S. Ct. 3092, 3098-3100 (1976); *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

Whether a vehicle is lawfully impounded depends on whether the police procedure was conducted according to standardized criteria designed to promote a legitimate interest. *Gauster*, 752 N.W.2d at 503. Legitimate interests include protecting the public from vehicles that impede traffic or threaten public safety, protecting a person's property from theft, and protecting the police from claims arising from the theft of property. *Id.* at 503. Thus the question presented for determination is, if the firearm in the pillow had not been seized in the initial, abbreviated search, whether the officer would have discovered the firearm in applying standardized impoundment and inventory procedures that are designed to promote legitimate interests.

The officer testified at the omnibus hearing that, if he had not discovered the firearm in McCutchison's van, he would have verified McCutchison's identity, issued him a citation, conducted an inventory search, and impounded the vehicle. The officer stated that he would have impounded the van under these circumstances in order to "secure it for the rightful owner," because McCutchison's license was suspended and he

admitted he did not own the van. The officer also indicated that the van would have been impounded because it was parked in a traffic lane.

The Minneapolis Police Department policy manual supports the officer's testimony. It instructs officers to issue a citation—but not to arrest—a driver who has committed the offenses of driving after license revocation, suspension, or cancellation, if "the driver's identity can be verified and there are no associated warrants." Minneapolis Police Dep't, *Policy & Procedure Manual* § 7-610; *see also* Minn. R. Crim. P. 6.01, subd. 1(1)(a) (stating that officers should generally issue citations to persons arrested for misdemeanors). It further states that, "[i]f the driver is issued a citation and there is no licensed driver present whom the vehicle can be released to, the vehicle shall be towed." *Policy Manual*, *supra*, § 7-610. Similarly, the manual's general vehicle-impoundment procedures authorize impoundment when vehicles "cannot be safeguarded" and authorize immediate towing "when it is necessary to immediately remove a vehicle to safeguard the vehicle and its contents, (i.e. when the vehicle is needed for evidence or when the vehicle is creating a traffic hazard)." *Policy Manual*, *supra*, §§ 7-701, -702. In following these procedures, the officer would have cited McCutchison for the license violation and impounded the van.

The policy manual also supports the district court's determination that the firearm would have been discovered during a reasonable inventory search of the van. The manual states that, when an officer has a vehicle towed and conducts an inventory search, the inventory "shall be for the entire vehicle, including the glove compartment and trunk, if they can be accessed without damage to the vehicle." *Policy Manual*, *supra*, § 9-

206(6). The officer shall also search "[a]ll containers . . . if they can be opened without damage," list "items of value . . . on the tow sheet," and remove "items of significant value for safekeeping." *Id.* If the officer followed these procedures after citing McCutchison for the license violation, the officer would have found the firearm in the pillow on the van's floorboard because it was necessary to move the pillow to search the van thoroughly, and the disproportionate weight of the pillow would have caused him to look inside the pillow to determine whether there was an item of value inside.

McCutchison challenges the district court's inevitable-discovery determination on the basis that neither of the justifications the officer gave for why he would have impounded the van is legitimate. *See Gauster*, 752 N.W.2d at 504-08 (examining several possible justifications and indicating that one legitimate justification would be sufficient). We therefore examine the legitimacy of the officer's two stated justifications—to remove the van because it was violating traffic laws and to secure the van for the rightful owner.

In challenging the traffic-violation justification, McCutchison asserts that the van was parked in a no-parking zone, and the owner would have been able to remove the van because the officer was required to wait four hours before impounding it. *See* Minn. Stat. § 169.041, subd. 3 (2006) (stating general rule that towing authority generally must wait four hours before "enforcing state and local parking and traffic laws"); *Policy Manual, supra*, § 7-702 (requiring four-hour delay before towing vehicle in location posted as "no parking"). The record, however, does not support McCutchison's contention that the location of the vehicle would necessitate a four-hour wait. When the officer described the location of the vehicle, he first said that it was in a "no-parking zone," but he

immediately clarified that McCutchison "was stopped in a traffic lane." Both the policy manual and state law authorize immediate towing of vehicles stopped in traffic lanes. Minn. Stat. § 169.041, subd. 4(8) (2006); *Policy Manual, supra*, § 7-702. The district court's reference to the van's location in a "no-parking area" does not change the uncontradicted testimony that the reason that parking was not allowed is that it was a traffic lane.

McCutchison also challenges the officer's caretaking justification for impounding the vehicle. McCutchison argues that securing the van for the owner was unnecessary because McCutchison himself was present and willing to take responsibility for it, even though his suspended license would prevent him from driving. He cites *Gauster* for its holding that the caretaking function does not justify the impoundment of the driver's vehicle after an officer has cited the driver for driving with a suspended license and failure to provide proof of insurance. 752 N.W.2d at 504, 506. *Gauster* held that the driver "was available to take custody of the vehicle and make proper arrangements." *Id.* at 506. *Gauster*, however, is distinguishable from McCutchison's circumstances because the police in *Gauster* had no reason to question the driver's authority to possess the vehicle. The driver told the police, and the police believed, that he owned the vehicle. *Id.* at 499.

The *Gauster* court indicated that impoundment may be justified for caretaking when there is "reason to believe that [the driver is] wrongfully in possession" of the vehicle. *See id.* at 505 (citing *State v. Goodrich*, 256 N.W.2d 506, 511 (Minn. 1977)). It noted the similar circumstances of *Goodrich*, in which the supreme court held that

impoundment was unreasonable because the officer did not believe the vehicle was stolen and his actions were not motivated by a question of ownership. *Goodrich*, 256 N.W.2d at 511.

McCutchison's circumstances, however, gave rise to a question about whether McCutchison was authorized to drive the vehicle. He told the officer his license had been suspended and that he did not own the vehicle he was driving. And the officer's testimony indicates some doubt about whether McCutchison had the authority to take responsibility for the van. Because it was reasonable to question whether the van's owner would authorize a person with a suspended license to drive the van, we conclude that the officer had reason to suspect that McCutchison was wrongfully in possession of the van and that impoundment would have been justified to secure the van for the rightful owner. *Cf. City of St. Paul v. Myles*, 298 Minn. 298, 300, 218 N.W.2d 697, 698-99 (1974) (holding that impoundment was necessary to secure vehicle when police arrested driver and passenger at 1:35 a.m. and owner of car was not present).

McCutchison suggests that an officer should be required to do more to determine whether a driver has authority to take responsibility for a vehicle—or at least wait for the driver to call the owner—before resorting to impoundment. But the officer indicated that he was not obligated to "wait and have people call." He added that, if the owner is "not on scene at the time[,] we impound the vehicle." And, so long as police follow reasonable standard procedures, they are not constitutionally required to act in the least intrusive manner. *Colorado v. Bertine*, 479 U.S. 367, 374-75, 107 S. Ct. 738, 742 (1987); *Myles*, 298 Minn. at 302-03, 218 N.W.2d at 700.

Applying the caselaw to McCutchison's circumstances, we conclude that impoundment would have been justified on the basis of the van's location in a traffic lane and the police's caretaking role. Therefore, the firearm was admissible under the inevitable-discovery rule.

**Affirmed.**