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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-525**

Donta Darnell Holley, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 2, 2010
Affirmed
Ross, Judge**

Dakota County District Court
File No. 19-K6-05-002707

Marie L. Wolf, Interim Chief Public Defender, G. Tony Atwal, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

James C. Backstrom, Dakota County Attorney, Scott A. Hersey Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Police stopped appellant Donta Darnell Holley for driving without valid license plates and arranged to have his car towed. A pre-tow inventory search of Holley's

vehicle uncovered a gun in the trunk. Holley was charged with being a felon in possession of a firearm, unsuccessfully moved to suppress evidence of the gun, and was convicted. He sought postconviction relief, arguing that his motion to suppress should have been granted because the inventory search's real purpose was to investigate his suspicious conduct during the traffic stop. The district court denied postconviction relief, and Holley appeals. Because the evidence supports the district court's finding that the challenged search was not solely investigatory, we affirm.

FACTS

Officer Christopher Wicklund was patrolling Burnsville in the early-morning hours when he observed a Geo Prizm in a SuperAmerica parking lot and a man, whom he later recognized as Donta Holley, standing next to the open driver's door. Wicklund checked and discovered that the car's tabs were expired and its plates were revoked for lack of insurance. The officer parked out of sight and stopped the Prizm after it left the parking lot.

Officer Wicklund approached and asked the driver for identification. The driver did not present a license but identified himself as Donta Holley. Wicklund checked the records and discovered that Holley had only an instructional driver's permit. It was therefore illegal for Holley, who was alone in the car, to drive unaccompanied by a licensed driver. The officer decided to seize the revoked plates and impound the car.

Officer Wicklund directed Holley out of the car while he wrote citations for the various infractions. He handed Holley his citations and told him he was free to go.

But Holley wanted some belongings from the car. Before letting Holley back into it, Officer Wicklund conducted a cursory search of the passenger compartment and removed a knife and two butane lighters shaped like handguns. Holley then retrieved several items, including the stereo and some CDs.

Holley also wanted access to the trunk. Officer Wicklund briefly scanned the cluttered trunk visually for dangerous items. He then stood behind Holley as Holley removed items from the trunk. Holley was digging around underneath a detached glove compartment when he stopped abruptly, shot a nervous glance back at the officer, replaced the compartment, and closed the trunk. This aroused Officer Wicklund's suspicion that there was something illegal in the trunk. Holley said he was done, gathered his belongings, and walked toward home.

The Burnsville Police Department's vehicle impound policy requires officers to inventory vehicles' contents before having them towed. Officer Wicklund immediately began searching Holley's car. He started with the trunk. He quickly found a handgun in the area where Holley had been rummaging when he revealed his apparent dread. After securing the gun in his squad car, Officer Wicklund arrested Holley, who had walked only 30 yards away. Officer Wicklund finished inventorying the vehicle before it was towed.

The state charged Holley with being a felon in possession of a firearm, and Holley moved to suppress evidence of the gun as the product of an illegal search. The district court conducted a hearing and then denied Holley's motion. It concluded that Officer Wicklund's cursory search of the passenger compartment and trunk before he let Holley

retrieve his belongings had been a valid protective search, not an inventory search. Because that cursory search would not have satisfied the department's inventory policy, Officer Wicklund's second search of the trunk constituted the inventory search, which was therefore valid. The parties submitted the case on stipulated facts for a verdict by the district court, which found Holley guilty.

Holley sought postconviction relief, arguing that Officer Wicklund's second search of the trunk was an unjustified investigatory search and not a valid inventory search. The district court denied Holley's petition. It echoed the previous holding that the second search was a lawful inventory search because it found that Officer Wicklund had not undertaken the search solely for the purpose of investigating Holley's suspicious behavior.

Holley appeals.

DECISION

Holley challenges the postconviction decision. We "review a postconviction court's findings to determine whether there is sufficient evidentiary support in the record." *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). Holley specifically contests the district court's finding that Officer Wicklund's second search of his trunk was a valid inventory search. We defer to the district court's factual findings and will disregard the findings only if they are clearly erroneous. *Id.* Because the district court reviewing the postconviction claim relied on the record made and facts found in the omnibus proceeding, we will also consider that record and those findings.

The United States and Minnesota constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Searches conducted without a warrant are presumptively unreasonable. *State v. Ross*, 676 N.W.2d 301, 303 (Minn. App. 2004). When police obtain evidence in violation of the Fourth Amendment, the remedy is generally exclusion of that evidence at trial. *State v. Jackson*, 742 N.W.2d 163, 177–78 (Minn. 2007). The challenged search here occurred without a warrant, and its fruits should therefore have been suppressed unless the search fell within an exception to the warrant requirement.

Inventory searches are a “well-defined exception to the warrant requirement of the Fourth Amendment.” *Colorado v. Bertine*, 479 U.S. 367, 371, 107 S. Ct. 738, 741 (1987). The inventory-search exception allows police to search a vehicle being impounded if they search according to standard procedures and at least in part for the purpose of obtaining an inventory of the vehicle’s contents. *State v. Ture*, 632 N.W.2d 621, 628 (Minn. 2001). By contrast, a search conducted “in bad faith or for the sole purpose of investigation” is not a valid inventory search. *State v. Holmes*, 569 N.W.2d 181, 188 (Minn. 1997) (quotation omitted). The state has the burden of establishing that the challenged search was a valid inventory search. *See Ture*, 632 N.W.2d at 627.

Ture is instructive. In that case, police arrested the defendant after learning that the car he was driving had been reported stolen. *Id.* at 625. Police had the car towed and, pursuant to departmental policy, conducted an inventory search of the vehicle at the impound facility, discovering evidence that implicated the defendant in a murder. *Id.* at 625, 629. The defendant argued that the inventory search had an investigatory motive.

Id. at 629. The court rejected this argument because, “given . . . that it was standard procedure to perform inventory searches of impounded cars, there [was] no basis for concluding that the purported investigatory motive was the sole purpose behind the inventory.” *Id.*

Similarly here, the officer’s actions consistent with the Burnsville Police Department’s policy of completing an inventory search of a vehicle before towing it prevents the conclusion that Officer Wicklund’s search was solely investigatory. Officer Wicklund testified without contradiction that his department’s policy required him to inventory both the passenger compartment and the trunk, including any containers, before having the car towed. He further testified that before the challenged search he had not completed an inventory search of Holley’s vehicle under his department’s policy. The district court’s finding that the trunk search was part of a lawful inventory is supported by the evidence and therefore not clearly erroneous.

Holley points to evidence that he asserts establishes an investigatory motive for the search: Officer Wicklund was responsible for criminal investigations; he began the inventory search immediately after observing Holley’s suspicious behavior; he individually listed only the gun and license plates on the inventory sheet, referring to everything else in the car as “miscellaneous junk”; and Holley had already removed multiple personal items from the vehicle before the search, leaving nothing to inventory. We recognize that Officer Wicklund had extra inspiration to search with particular interest in the area that Holley marked with yellow flags when he abruptly stopped rummaging in the trunk. And we observe that it is certainly possible, maybe even

plausible, that but for this inspired suspicion Officer Wicklund may have been less diligent in completing his inventory. But neither these facts nor the evidence that Holley highlights undercut the court's finding that, based on the inventory policy, the challenged search was *at least partially for the purpose* of inventorying Holley's vehicle.

Holley also asserts that Officer Wicklund had already completed an inventory search before he conducted the challenged search, rendering the challenged search a pretext for investigating Holley's suspicious behavior. *Cf. Holmes*, 569 N.W.2d at 188–89 (holding that an “inventory” search of a vehicle was a pretext for investigation when the real inventory search had already occurred before the challenged search happened). But Holley's theory falls on the district court's findings. The district court both at the omnibus hearing and on postconviction review found that Officer Wicklund began the inventory search immediately after Holley left the scene. Neither court found that any search, other than the officer's cursory search for weapons, occurred before the challenged search. And neither interpreted that cursory search to be a completed inventory search. That Officer Wicklund had not yet completed an inventory search when he conducted the search that uncovered Holley's gun materially distinguishes this case from *Holmes*.

We acknowledge that there is some support for Holley's theory that an earlier inventory search occurred; Holley points us to Officer Wicklund's incident report, which states that the officer “had already conducted a quick inventory search of the vehicle” before Holley asked to retrieve his personal effects from the car. The parties dispute whether the incident report is properly in the record on appeal. Although the report was

not presented during the omnibus hearing, Holley did bring it to the attention of the district court for the postconviction review.

The incident report does not help Holley even if it is part of the record. Although the report references a “quick inventory search,” apparently describing the weapons search that Officer Wicklund conducted before allowing Holley to access his car, the officer testified that he searched the trunk only twice: once before he allowed Holley into it and again after Holley left the scene. The district court was entitled to credit this testimony against the potentially conflicting language in the report and to ascribe the most fitting legal description to the two searches. Based on the record, the district court had ample support for its implied finding that an inventory search had not yet been completed when Officer Wicklund commenced the gun-revealing trunk search, and Holley’s challenge to the district court’s finding fails. The district court’s finding that Holley’s gun was discovered during a lawful inventory search is not clearly erroneous.

Affirmed.