STATE OF MINNESOTA
IN COURT OF APPEALS
A10-923

State of Minnesota,
Respondent,

vs.

Rashad Darnell Norwood,
Appellant.

Filed February 8, 2011
Affirmed
Bjorkman, Judge

Dodge County District Court
File No. 20-CR-09-877

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

Paul Kiltinen, Dodge County Attorney, Mantorville, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jodie L. Carlson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Wright, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant Rashad Darnell Norwood challenges his conviction of second-degree possession of a controlled substance, arguing that the district court improperly admitted

drug evidence obtained through an invalid vehicle impoundment, dog sniff, and search warrant. We affirm.

FACTS

At approximately 3:30 a.m. on August 1, 2009, Dodge County Sheriff's Deputy Scott Prins stopped and arrested Norwood on U.S. Highway 14 for suspicion of driving while impaired (DWI). Deputy Prins determined that the vehicle Norwood was driving was not registered to him and, instead, was registered to M.M. Because Norwood did not have a passenger and the registered owner was not present, Deputy Prins towed and impounded the vehicle pursuant to department policy. No evidence or contraband was discovered during an initial inventory of the vehicle. A search of Norwood's person following his arrest revealed that he was carrying $1,442 in cash.

In the hours following Norwood's arrest, the sheriff's office received "several phone calls" inquiring about the release of the vehicle.[1] Due to the calls and the amount of cash Norwood was carrying, Deputy Prins arranged for a dog sniff of the impounded vehicle. The dog detected an odor of narcotics, and Deputy Prins obtained a search warrant. While executing the search warrant, officers discovered a cell phone box in the trunk with eight small baggies containing a white powder, later determined to be 18.7 grams of cocaine.

Norwood challenged the validity of the vehicle impoundment, the dog sniff, and the basis for the search warrant. The district court denied Norwood's motion to suppress

[1] Deputy Prins's affidavit supporting the search-warrant application states that dispatch received "several phone calls." Deputy Jeff Brumfield testified that he only received one call.

the drug evidence, determining that both the impoundment and the dog sniff were justified. Norwood pleaded guilty to fourth-degree DWI, and after a stipulated-facts trial pursuant to Minn. R. Crim. P. 26.01, subd. 4, the district court convicted Norwood of second-degree possession of a controlled substance, in violation of Minn. Stat. § 152.022, subd. 2 (2008). This appeal follows.

D E C I S I O N

"When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We will rely on the district court's factual findings unless they are clearly erroneous. *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007). In arguing that the district court should have suppressed drug evidence, Norwood raises issues relating to the vehicle impoundment, dog sniff, and search warrant in his principal brief and a pro se supplemental brief.

Impoundment

"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." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). Officers may impound a vehicle to protect the vehicle owner's property or for public safety reasons. *Id.* at 503. Impoundment of a motor vehicle must be conducted pursuant to standardized criteria. *Id.* But if impoundment is not necessary, then any "concomitant search is unreasonable." *State v. Goodrich*, 256 N.W.2d 506, 510 (Minn. 1977).

Norwood first contends that the impoundment was not necessary to further a legitimate state interest. We disagree. The record establishes that Norwood was arrested and taken into custody, leaving a vehicle registered to a third party on the shoulder of the highway servicing "the county's highest traffic volume" at 3:30 in the morning. Norwood did not make his own arrangements to transport the vehicle to another location, and there was no passenger who could take responsibility for the vehicle. *See City of St. Paul v. Myles*, 298 Minn. 298, 304, 218 N.W.2d 697, 701 (1974) ("The police will generally be able to justify an inventory when it becomes essential for them to take custody of and responsibility for a vehicle due to the incapacity or absence of the owner, driver, or any responsible passenger."); *cf. State v. Robb*, 605 N.W.2d 96, 104 (Minn. 2000) (impoundment unreasonable where passenger was present and able to take responsibility for the vehicle); *Goodrich*, 256 N.W.2d at 511 (impoundment unreasonable where defendant had already made arrangements for the vehicle). Although there was no specific evidence that the vehicle impeded traffic or presented a safety hazard, the record establishes that Deputy Prins had a legitimate public-safety and caretaking interest to tow and impound the vehicle.

Norwood next argues that the deputies were required to wait four hours before having the vehicle towed pursuant to Minn. Stat. § 168B.04, subd. 2(a) (2008). We disagree. The four-hour requirement of section 168B.04 does not apply when "the driver, operator, or person in physical control of the vehicle is taken into custody and the vehicle is impounded for safekeeping." Minn. Stat. § 169.041, subd. 4(12) (2008). Here, Norwood was arrested and the vehicle was registered to a person other than Norwood,

justifying impoundment for safekeeping purposes. Further, where a vehicle is "located so as to constitute an accident or traffic hazard to the traveling public" the vehicle may be "immediately" towed and impounded. Minn. Stat. § 168B.04, subd. 2(b)(ii) (2008). On this record, we conclude that the four-hour waiting period does not apply.

Dog sniff and search warrant

Norwood's pro se arguments challenge the validity of the dog sniff and search warrant. "[A] dog sniff around the exterior of a legitimately stopped motor vehicle is not a search requiring probable cause on the basis of either the Fourth Amendment or the Minnesota Constitution." *State v. Wiegand*, 645 N.W.2d 125, 133 (Minn. 2002) (footnote omitted). Moreover, "once a vehicle is lawfully impounded, police need not have reasonable, articulable suspicion of criminal activity in order to conduct a dog sniff of the exterior of the vehicle." *State v. Kolb*, 674 N.W.2d 238, 242 (Minn. App. 2004), *review denied* (Minn. Apr. 20, 2004).

Norwood argues that the dog sniff was improper because evidence in the record contradicts the stated reasons for the dog sniff. We are not persuaded. The district court properly determined that the reasons posited for the dog sniff have no bearing on the legal analysis. Because the vehicle Norwood operated was lawfully impounded after his arrest, no reasonable, articulable suspicion was required to justify the dog sniff. Accordingly, the dog sniff was valid.

Finally, Norwood argues that the search warrant was invalid because it "included information that is not supported by the evidence." We disagree. A court determines whether probable cause for a search warrant exists by examining the totality of the

circumstances. *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). Our task on appeal is "to ensure that the issuing judge had a substantial basis for concluding that probable cause existed." *Id.* (quotation omitted). While other facts are included, the search warrant application relies heavily on the "K-9 indication of narcotics." *See Kolb*, 674 N.W.2d at 242 (stating that probable cause for a search warrant was sufficiently based on a lawfully conducted dog sniff). On this record, we conclude that the dog sniff indicating the presence of narcotics provided a substantial basis for concluding that probable cause existed for the search warrant.

Affirmed.