

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

KENNETH CHARLES SALKOSKI,
Defendant-Appellant.

Washington County Circuit Court
17CR54389; A166743

D. Charles Bailey, Jr., Judge.

Submitted July 12, 2019.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Sarah De La Cruz, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Greg Rios, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Powers, Judge, and Landau, Senior Judge.

LANDAU, S. J.

Affirmed.

LANDAU, S. J.

Defendant appeals a judgment of conviction for unlawful possession of methamphetamine. ORS 475.894. He assigns error to the trial court's denial of his motion to suppress evidence obtained during an inventory of his possessions and to the imposition of special conditions of probation. We reject his assignment concerning the conditions of probation without discussion and write only to address the trial court's denial of the motion to suppress. For the following reasons, we affirm.

The relevant facts are not in dispute. Defendant's mother called police to report that her son was "high on meth" and hiding underneath her car in an agitated state. City of Tualatin Police Officer Neumeister responded. When he arrived, defendant's erratic behavior led Neumeister to believe that he had probable cause to detain defendant on "a police officer hold to take him to a detox facility."

Defendant had a backpack in his possession at the time. Neumeister described it as a "black backpack, normal type, size," a "normal, standard backpack" that had an outer pocket. He said that it was not a "backpacking backpack." Neumeister inventoried the contents of the backpack, which contained a clear plastic baggie containing methamphetamine and other evidence of methamphetamine possession.

Neumeister inventoried the backpack pursuant to a City of Tualatin policy that requires police officers to "inventory the personal property of a person taken into police custody," including when a person is transferred to a treatment facility. The policy further provides that certain types of closed containers "shall be opened for inventory," including "wallets, purses, coin purses, fanny packs, personal organizers, briefcases or other closed containers designed for or likely to contain money or small valuables."

The state charged defendant with unlawful possession of methamphetamine. He moved to suppress the evidence that Neumeister found in his backpack, arguing that the City of Tualatin inventory policy did not authorize the officer to open the backpack because backpacks were not listed as a type of closed container that officers

are authorized to open when taking a person into custody. According to defendant, the state was required to produce evidence “about what makes this particular backpack interesting or unique” so that it was likely that it would contain valuables. The trial court rejected the argument and denied the motion to suppress. The court explained that:

“The policy allows for search of fanny packs—I’m not going to go through all of them—personal organizers or briefcases or here, which I think the State is relying on, other closed containers designed for or likely to contain money or small valuables.

“I think there’s a fair argument that, quite frankly, all those—is a backpack a fanny pack? Certainly, purposes are similar, certainly within the spirit and it’s—or it could be a personal organizer. Arguably, it could be a briefcase.

“But in any respect, the spirit of what the code was trying to *** prevent any issues regarding liability for the Police Department of people accusing them of stealing their valuables.

“This backpack would be—certainly fit into that category. It’s really, quite frankly, any of those. And certainly would fall within the category of some—an item to contain valuables ***.

“And, therefore, likely to contain kind of his worldly possessions and certainly any items he would need to get along on his own. And that would likely include any valuables like a wallet. A search was conducted pursuant to that policy.”

On appeal, defendant argues that the trial court erred in denying his motion to suppress. He argues that, “[t]o open a closed container, it must be designed to hold valuables and the inventory policy must specifically direct the opening of such a container.” According to defendant, in this case, the state elicited no testimony that his backpack was specifically designed to carry valuables.

The state responds that the policy is not limited to closed containers that are specifically designed to carry valuables but also includes those containers in which such valuables are likely to be stored. Here, the state argued, the trial court correctly concluded that—much like a purse, a

fanny pack, or a briefcase—an ordinary backpack is likely to include valuables like a wallet.

Under Article I, section 9, of the Oregon Constitution, a warrantless search is unreasonable unless it falls within a recognized exception to the warrant requirement. *State v. Davis*, 295 Or 227, 237, 666 P2d 802 (1983). One such exception is an inventory of property in a person's possession. *State v. Atkinson*, 298 Or 1, 7, 688 P2d 832 (1984). Police may inventory property pursuant to that exception if (1) the property is lawfully impounded; (2) the inventory is conducted pursuant to a properly authorized administrative program or policy; and (3) that program or policy precludes the exercise of discretion by law enforcement officers conducting the inventory. *Id.* at 10.

Ordinarily, an inventory policy may not authorize officers to open closed, opaque containers during the course of an inventory. *State v. Ridderbush*, 71 Or App 418, 426, 692 P2d 667 (1984). Certain containers, however, are not treated as closed and opaque because they typically contain valuables; inventory policies are permitted to authorize the opening of such items to protect the owner's property and prevent claims against the police. *State v. Mundt/Fincher*, 98 Or App 407, 412, 780 P2d 234, *rev den*, 308 Or 660 (1989). Whether an officer's inventory was conducted in accordance with a lawful administrative program or policy is a question of law. *State v. Swanson*, 187 Or App 477, 482, 68 P3d 265 (2003).

In this case, defendant contends that the state failed to demonstrate that Neumeister's inventory of the backpack was conducted pursuant to the applicable inventory policy. He acknowledges that the policy authorizes officers to inventory the contents of items "designed for or likely to contain money or small valuables." He argues that "there was no evidence that this particular backpack was objectively designed to contain valuables." We reject defendant's contention for two reasons.

First, it rests on a false premise, namely, that only containers that are *designed* to hold valuables may be opened during an otherwise lawful inventory. This court has plainly and repeatedly held that an inventory policy may

lawfully authorize police officers to open closed containers that are *either* designed to hold valuables *or* are likely to contain them. *See, e.g., State v. Hite*, 266 Or App 710, 720, 338 P3d 803 (2014) (“An inventory policy may authorize officers to open closed containers that are ‘designed to or likely to contain’ valuable items.” (Quoting *State v. Williams*, 227 Or App 453, 457, 206 P3d 269 (2009).)); *State v. Taylor*, 250 Or App 90, 96-97, 279 P3d 254 (2012) (A policy that requires officers to open containers “that are uniquely designed to or objectively likely to hold valuables *** is constitutional.”).

Defendant relies on *Swanson* and *State v. Cruz-Renteria*, 250 Or App 585, 280 P3d 1065 (2012), in which this court emphasized the significance of whether a closed container was designed to contain valuables. But such cases involved inventory policies that expressly limited police authority to open only containers “designed to” contain valuables. *Swanson*, 187 Or App at 480-81; *Cruz-Renteria*, 250 Or App at 587. In this case, the relevant policy authorizes police officers to open containers “designed for or likely to contain money or small valuables.”

Second, defendant is incorrect that there must be evidence of something “interesting or unique” about the particular backpack in his possession to justify opening it. Some containers, by their nature, are likely to contain valuables—for example, a wallet or purse, *Mundt/Fincher*, 98 Or App at 412 (“[W]allets or purses are primarily intended to be used to store valuables.”); a fanny pack, *State v. Bean*, 150 Or App 223, 229, 946 P2d 292 (1997), *rev den*, 327 Or 448 (1998) (“Like a wallet or a purse, a fanny pack is intended primarily to store valuables.”); a briefcase, *State v. Johnson*, 153 Or App 535, 540, 958 P2d 887, *rev den*, 327 Or 554 (1998) (“[T]he briefcase and the coin purse in this case *** are typically used to store valuables in the same way as a purse or a wallet.”); and a “shoulder bag,” *State v. Komas*, 170 Or App 468, 475, 13 P3d 157 (2000) (shoulder bag is “akin to either a purse or a fanny pack”).

As the trial court in this case found, a “normal, standard backpack” is akin to a fanny pack, as well as a wallet, purse, briefcase, and shoulder bag. All, by their nature, typically are used to store valuables. In that regard, it bears

noting that backpacks are commonly listed in municipal inventory policies as containers either designed to or likely to contain valuables. *See, e.g., State v. Towai*, 284 Or App 868, 872 n 3, 395 P3d 638, *rev den*, 361 Or 671 (2017) (quoting Tigard Municipal Code 2.30.060.B.3 that officers shall inventory contents of “[a]ll containers designed for carrying valuables, including, but not limited to, wallets, purses, coin purses, fannypacks, and backpacks”); *State v. Keady*, 236 Or App 530, 532, 237 P3d 885 (2010) (quoting City of Salem Directive 8.09 that “[t]he inventory will include opening of closed containers in the vehicle that are designed to hold valuables, including backpacks, fanny packs, briefcases, purses, consoles, glove box, trunk, and checking under seats”). The fact that the policy at issue in this case did not expressly mention backpacks does not mean that they are any less containers that are “designed for or likely to contain money or small valuables,” which the policy does include. The trial court did not err in concluding that the search of defendant’s backpack was authorized by the applicable inventory policy.

Affirmed.