STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1662

State of Minnesota,
Respondent,

vs.

Thomas Matthew Bredemus,
Appellant.

Filed November 2, 2010
Affirmed
Ross, Judge

Becker County District Court
File No. 03-CR-07-1675

Lori Swanson, Attorney General, Tibor M. Gallo, Assistant Attorney General, St. Paul, Minnesota; and

Michael D. Fritz, Becker County Attorney, Detroit Lakes, 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 Worke, Presiding Judge; Kalitowski, Judge; and Ross, Judge.

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

ROSS, Judge

Thomas Bredemus and his friend brought themselves to police attention when they drove up to a house being searched by a host of federal and state drug-investigating law

enforcement officers and asked an officer for directions to an apparently fictional residence. Bredemus had been driving without a license and neither he nor his acquaintance could produce proof of insurance. Bredemus now appeals his conviction of first-degree controlled substance crime after the district court denied his motion to suppress drug evidence that he argues police found during a vehicle search prohibited by the federal and state constitutions. Bredemus challenges the district court's holding that the vehicle search was lawful under the automobile and inventory-search exceptions to the warrant requirement. Because the district court properly determined that police discovered the evidence during a valid inventory search, we affirm.

FACTS

Federal and state police investigators noticed a vehicle being operated suspiciously while they were executing a search warrant at a Detroit Lakes house suspected of hosting drug activity. Deputy Sheriff Pat Johnston observed a pickup truck approach the house, slow down, and accelerate up the road after the pickup's two occupants noticed the collection of police officers. The house was located on a dead-end street, and the pickup headed further toward the dead end. But before long, Deputy Johnston watched the truck come in reverse, back all the way down the road and then stop in front of him at the residence being searched for drugs. The deputy noticed that the driver and passenger had switched positions since their slow pass.

Deputy Johnston walked to the stopped pickup, and the driver, Carl Pieper, asked him for directions to the home of "Walter Johnson," where he claimed to have a roofing job. The deputy noticed that the pickup seemed to lack any tools, equipment, or materials

commonly used by roofers. He told the two men that he had noticed that the driver had switched to become the passenger. He asked the passenger, appellant Thomas Bredemus, if he had a valid driver's license. Bredemus disclosed that his license was revoked. Pieper and Bredemus claimed that they had borrowed the truck, and when Deputy Johnston asked the men to produce insurance verification, they could not. They acknowledged that they were unaware of whether the truck was insured.

Deputy Johnston decided to impound the truck because it was not registered to either occupant and neither one could provide proof of insurance. He ordered the men from the truck. Pieper asked the deputy if he could keep a grocery bag that he said contained two sodas. Deputy Johnston removed the bag, looked inside, and found a glass pipe commonly used to smoke drugs. Deputy Johnston searched the pickup's passenger compartment and found a digital scale, another glass pipe, and approximately four ounces of cocaine. Police arrested Bredemus and Pieper and the state charged Bredemus with one count of first-degree controlled substance crime.

Bredemus moved the district court to suppress the drug evidence, challenging the warrantless vehicle search as violating his federal and state constitutional rights. After an omnibus hearing, the district court held that the vehicle search was lawfully conducted under the automobile and inventory-search exceptions to the warrant requirement. The district court conducted a bench trial, found Bredemus guilty of first-degree controlled substance crime, and sentenced him to 75 months' imprisonment. Bredemus appeals his convictions, challenging the district court's denial of his pretrial suppression motion.

D E C I S I O N

Bredemus argues that the drug evidence must be suppressed because it was discovered during an illegal warrantless search under the federal and state constitutions. Both constitutions guarantee the right of persons not to be subjected to "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Evidence seized unconstitutionally generally must be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177−78 (Minn. 2007). We review pretrial suppression rulings de novo, considering whether the uncontested facts found by the district court support the decision as a matter of law. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We will rely on the district court's fact findings unless they are clearly erroneous. *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007).

Bredemus argues that the district court erred by finding that the search was a valid inventory search. 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); *see also City of St. Paul v. Myles*, 298 Minn. 298, 300, 218 N.W.2d 697, 699 (1974). The inventory-search exception allows police to search a lawfully impounded vehicle 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). The state has the burden of demonstrating that the inventory-search exception applies. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

Bredemus raises two objections to the search. He argues that the state failed to establish that the decision to impound the car was reasonable and that the inventory search complied with standard police procedure.

The state contends that Bredemus's first argument—that impounding the car was unreasonable—should be rejected because Bredemus never raised it in the district court. The state's procedural argument is not convincing. Generally, an appellate court will not consider matters not argued to and considered by the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Bredemus's argument in the district court was that the inventory search was invalid because it was undertaken solely for investigatory purposes. He emphasized that the impound sheet described the property as "miscellaneous tools and clothes" and argued only that the lack of specificity proved that the search was not aimed at securing the car or protecting the property inside, as genuine inventory searches do, but was intended to investigate. But the district court did not limit its analysis to that argument. The district court found credible Deputy Johnston's testimony that he conducted the search according to department policy, and it found more broadly that "the impoundment of the vehicle was proper given the totality of the circumstances." Because reasonableness is a factor in the propriety of an impoundment and the district court addressed and decided propriety, the issue of reasonableness is sufficiently preserved; we will consider Bredemus's argument that the deputy did not have a reasonable basis to impound the truck.

Bredemus maintains that the state did not introduce any evidence that the impoundment search was reasonable. The search was reasonable only if the

impoundment was necessary. *State v. Goodrich*, 256 N.W.2d 506, 510 (Minn. 1977). Bredemus rests his unreasonableness argument on two assertions: that the deputy could not have followed standard impound procedure because the sheriff's office lacked any standard procedure and that the impound was unnecessary because the deputy lacked any legitimate interest to impound the truck. Neither assertion persuades us.

Deputy Johnston's testimony established his department's policy. He responded to defense counsel's question of whether it was his department's standard procedure to impound a vehicle that has no equipment violations, that is being driven by a validly licensed driver, and whose occupants cannot provide proof of insurance, by indicating that a deputy's impound decision is discretionary:

> I think I can't speak for everybody. Normally, if you can't provide proof of insurance on it, either they're going to issue them a citation for failure to provide proof of insurance or they impound the vehicle. I think it depends on the circumstances, and each stop like that would be probably treated a little different depending on the individual that is conducting the stop and the circumstances that the officer finds while talking to the occupants. I think there's a little leeway in there.

Bredemus contends that because the deputy's decision to impound was discretionary, the department had no standard impound procedure and reversal is required under *Goodrich*. But *Goodrich* does not support the argument. The supreme court in *Goodrich* similarly addressed an impound that was based on a police department's standard policy to vest officers with the discretion to decide whether to impound a vehicle. 256 N.W.2d at 509. It did not hold, or even suggest, that the inventory search was invalid simply because it arose from a discretion-conferring policy. Bredemus also

faults the state for not introducing evidence of the department's written policy, such as a policy manual. But the supreme court has concluded that "both the existence of standard inventory procedures, as well as compliance with those procedures, may be established through testimony and does not require admission of the policy itself into evidence." *Ture*, 632 N.W.2d at 628 (citing *State v. Rodewald*, 376 N.W.2d 416, 418 (Minn. 1985)). Deputy Johnston's testimony was sufficient to establish that the department had a standard procedure for inventory searches and that he complied with the procedure. The district court found "the testimony of [Deputy] Johnston credible in that he conducted the search of the vehicle in accordance with department policy." This finding is not clearly erroneous and we therefore rely on it.

We next address Bredemus's argument that impoundment was unreasonable because police had no legitimate interest to impound the pickup, such as protecting the public from vehicles that impede traffic or threaten public safety, protecting a person's property from theft, or protecting the police from claims of theft. "Inventory searches are considered reasonable because of their administrative and caretaking functions" and police may impound a vehicle to protect the vehicle owner's property. *Gauster*, 752 N.W.2d at 502–03. Police may also impound vehicles for public safety or when they are impeding traffic. *Id.* at 503.

Although nothing in the record indicates that the vehicle was impeding traffic or presenting a safety hazard, police had a legitimate basis to impound the pickup to safeguard it and its contents. Bredemus relies heavily on *Gauster* to contend that the impoundment was not justified under the police "caretaking role." He maintains that

"[u]nder these circumstances, reasonable arrangements could have been made." But unlike in *Gauster*, there is no evidence in the record here that either Bredemus or Pieper ever suggested to police that they could make other arrangements to secure or move the vehicle. And the Minnesota Supreme Court has interpreted the United States Supreme Court decision of *Bertine*, 479 U.S. at 373–74, 107 S. Ct. at 742, as apparently rejecting the proposition that police must give a driver the pre-impoundment opportunity to make alternative arrangements for the vehicle. *Gauster*, 752 N.W.2d at 507. Another key distinction between this case and *Gauster* is that the vehicle here did not belong to either occupant with whom police were interacting; they claimed to have borrowed it. The record does not establish that the police verified that the owner had given Bredemus or Pieper permission to drive the truck, let alone given police permission to leave it unprotected in front of the home police were investigating for drug dealing. Having properly required the occupants to leave the pickup, the deputy had a legitimate interest in impounding it based on the police caretaking role.

We hold that the cocaine evidence was lawfully discovered in a valid inventory search. We therefore do not address the district court's alternative automobile-search justification.

Affirmed.