STATE OF MINNESOTA
IN COURT OF APPEALS
A10-719

State of Minnesota,
Respondent,

vs.

Donald Cody Tarbell,
Appellant.

Filed March 15, 2011
Affirmed in part and remanded
Toussaint, Judge

Isanti County District Court
File No. 30-CR-09-523

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

Jeffrey R. Edblad, Isanti County Attorney, Amy J. Reed-Hall, Chief Deputy County Attorney, Cambridge, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

TOUSSAINT, Judge

Appellant Donald Cody Tarbell challenges the district court's ruling admitting evidence obtained during an inventory search of his automobile pursuant to his arrest and

the vehicle's impoundment, arguing that impoundment was improper. Appellant also challenges three of his convictions and sentences, arguing that the district court did not find him guilty of those charges. Because impoundment of appellant's vehicle was proper and the inventory search was reasonable, the district court's ruling on appellant's suppression motion was not in error, and we affirm in part. Because the record does not clearly reflect whether the district court found appellant guilty of all charges, we remand to the district court for a determination of guilt.

D E C I S I O N

I.

Appellant argues that the district court erred in concluding that the inventory-search exception to the Fourth Amendment permitted the warrantless search of his automobile. We review de novo a district court's pretrial order on a motion to suppress evidence based on the undisputed facts and the district court's factual findings that are not clearly erroneous. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Although warrantless searches are generally unreasonable, inventory searches are an exception to the warrant requirement. *Gauster*, 752 N.W.2d at 502. This exception permits the police to conduct an inventory search pursuant to standard police procedure when lawfully impounding an automobile. *Id.* Inventory searches are considered reasonable because of their administrative and caretaking functions, which protect an owner's property while it is in police custody and protect the police from claims of lost or damaged property. *Id.*

The propriety of the impoundment is a threshold inquiry when determining the reasonableness of an inventory search; if impoundment is not necessary, then the search is unreasonable. *Id.* If the vehicle's location creates a safety hazard, the police may impound it immediately. Minn. Stat. § 168B.04, subd. 2(b)(1)(ii) (2008); *Gauster*, 752 N.W.2d at 504. Additionally, impoundment may be justified by the police caretaking role of protecting the defendant's property. *Id.* at 505.

This case involves two stops, the first of which occurred in a McDonald's parking lot. At the contested omnibus hearing, Isanti County Deputy Sheriff Sean Connolly testified that he ran the license-plate number of the vehicle in front of him in the drive-through lane and discovered that an arrest warrant was out for appellant, the registered owner. Another officer in a different police car, Isanti County Deputy Wade Book, confirmed that the driver matched appellant's driver's license picture. After appellant received his food and began to drive away, Deputy Connolly made a stop in the parking lot. Deputy Connolly told appellant that he could follow him to the sheriff's office, pay bail, and go home. They left with Deputy Book in one car, appellant following in the next, and Deputy Connolly following in the one after that.

Appellant testified that he called his wife when he saw Deputy Connolly in line at McDonald's because he knew there was a warrant out for his arrest and he wanted to have his wife pick up the vehicle so it would not be impounded while he was in jail. Appellant testified that he told Deputy Book that he was aware of the warrant and was talking to his wife so she could pick up the car. Then Deputy Connolly came from inside McDonald's and told appellant to follow Deputy Book to the sheriff's office to discuss

his warrant.

The second stop occurred on the side of the road. Deputy Connolly testified that after they left the parking lot, he "could see the silhouette of [appellant] reaching over into the passenger seat," and he saw that appellant had lost a lot of weight compared to his driver's license and had "a bad complexion on his face." Deputy Connolly "started [to put] two and two together," and because appellant was making "sudden movements," Deputy Connolly became concerned that appellant might have a weapon. He explained, "I just had a gut feeling I shouldn't be following him in so that's why I stopped the vehicle." He testified that appellant appeared agitated, "was sweating a lot more profusely," had blackened fingertips consistent with smoking a pipe, and "was fidgety." Deputy Connolly told appellant that he was being arrested because of the warrant and because he did not have proof of insurance. Deputy Connolly testified that it is standard practice to tow a vehicle and to perform an inventory search before towing it when the vehicle is uninsured or when the driver is arrested.

According to appellant, he was not comfortable with how fast Deputy Book was driving. Appellant testified, "I leaned out the driver's side window, I looked back at Officer Connolly and was just like, yeah, right, like I'm supposed to follow him like that, and so I was like, all right, so I just proceeded to pull forward." Then Deputy Connolly turned on his lights and pulled appellant over. Appellant was placed in handcuffs and the officers searched the vehicle. Appellant testified that he did not have valid insurance.

Appellant bases his claim for suppression on the fact that he "had spoken to his wife about picking up the car to avoid impoundment"; therefore, he contends, the

arresting officers were required to offer "an alternative option to remove the vehicle from the location of the stop." Two cases are particularly relevant to this argument.

In *State v. Goodrich*, the supreme court held that impoundment was not a reasonable means of furthering a reasonable state purpose when the defendant had arranged for a family member to drive his car home. 256 N.W.2d 506, 511 (Minn. 1977). The *Goodrich* court acknowledged that "the necessity of protecting the arrested individual's property from theft and the police from claims arising therefrom" could justify impoundment. *Id.* But in that case, the police had allowed the defendant to make a phone call at a nearby gas station, and the defendant's mother and brother had arrived on the scene and asked the officer if they could take the car before it was towed. *Id.* at 508. Because the defendant had assumed responsibility for and in fact arranged alternative, reasonable means of safeguarding the property and removing it from the side of the street, impoundment was unnecessary and unreasonable. *Id.* at 511.

Appellant relies heavily on *Gauster*, in which the supreme court also held that impoundment was improper. 752 N.W.2d at 508. The court reiterated the principle that "if the defendant assumes responsibility for his property, there is no need for the police to take on the responsibility to protect it." *Id.* at 505. Unlike *Goodrich*, in *Gauster* there were no passengers or other persons on the scene who could take responsibility for the defendant's vehicle. *Id.* at 506. But because the defendant was never arrested, he was available to make proper arrangements for removal of the vehicle from the side of the road, although he could not lawfully drive the vehicle because it was uninsured. *Id.* at 500, 506. Acknowledging that the police are not required to take the time to ask an

arrestee how he wishes to dispose of his vehicle, the *Gauster* court emphasized the importance of the defendant's specific request to make arrangements for his vehicle. *Id.* at 507-08. Thus, when a person is not placed under arrest and is able to make alternative arrangements for his vehicle, and when he specifically makes a request to do so, impoundment is not justified and an inventory search is unreasonable. *Id.* at 508.

Neither *Goodrich* nor *Gauster* goes as far as appellant suggests was required in this case. Here, appellant was arrested and was therefore unavailable to dispose of the vehicle himself. His wife, whom he apparently wished to take the vehicle, was not on site, and because the vehicle was uninsured, she could not have lawfully driven it. Further, appellant does not claim that he ever specifically asked the officers to allow him to make alternative arrangements for disposal of the vehicle; rather, he merely suggests that they were aware he wished to do so based on his conversation with his wife at the first stop. We also note that, although appellant attempts to characterize the facts of this case as largely contained in the parking lot, the record does not suggest that the second stop was pretextual or made in anything other than good faith, and it is at that point—on the side of the road—that the decision to impound the vehicle occurred.

On these facts, we conclude that impoundment was reasonable. *See City of St. Paul v. Myles*, 298 Minn. 298, 304-05, 218 N.W.2d 697, 701 (1974) (holding preimpoundment inventory search constitutionally permissible when driver and passengers were arrested because the police became responsible for the car at time of arrest and there was no one else at the scene with capacity and responsibility for the car). Because Deputy Connolly testified and appellant does not dispute that standard

procedures were followed, the inventory search was reasonable. Thus, the district court did not err in denying appellant's motion to suppress the evidence found in his vehicle.[1]

II.

The state charged appellant with (1) fifth-degree possession of methamphetamine, (2) operating a vehicle without proof of insurance, (3) possession of more than 1.4 grams of marijuana in a motor vehicle, and (4) possession of drug paraphernalia. Appellant argues that he was found guilty of only methamphetamine possession, and because he was not found guilty of the insurance, marijuana-possession, and drug-paraphernalia charges, he should not have received convictions or sentences for Counts 2, 3, and 4.

The state argues that this issue is not subject to appellate review because neither appellant nor defense counsel objected at the sentencing hearing when the court stated that appellant was convicted of and would receive a sentence for each count. Still, the state fails to explain why appellant has forfeited appellate review of an allegedly illegal sentence. *See State v. Maurstad*, 733 N.W.2d 141, 146-48 (Minn. 2007) (explaining that some sentencing issues, such as a sentencing error resulting in an illegal sentence, may not be waived or forfeited); *see also* Minn. Stat. §§ 609.02, subd. 5 (a conviction is a plea, verdict, or finding of guilty), .03 (authorizing punishment for conviction of a crime) (2008). We find it appropriate to review this issue. *See* Minn. R. Crim. P. 28.02, subd. 11 (authorizing appellate review of any issue "as the interests of justice may require").

[1] The state contends that this issue is not reviewable on appeal because appellant failed to raise it properly in district court. In light of our holding that the search did not violate appellant's constitutional rights, the state's waiver argument is moot. We note, however, that appellant argued that there were available alternatives other than impoundment, and he presented evidence relevant to this argument.

Appellant stipulated to the prosecution's case to obtain review of a dispositive pretrial ruling pursuant to Minn. R. Crim. P. 26.01, subd. 4. Counsel agreed that the district court's decision would be based on the complaint and the documents submitted at the omnibus hearing. These include Deputy Connolly's incident report, which states that when he arrested appellant, appellant stated that he did not have proof of insurance, and that the inventory search found, in relevant part, marijuana, a broken methamphetamine pipe, and methamphetamine.

The district court found that Deputy Connolly arrested appellant after he observed appellant making furtive movements and showing indicia of methamphetamine intoxication; at that time Deputy Connolly decided to have the vehicle towed and performed an inventory search. While performing the inventory search, he found a computer bag in the front passenger's seat, which contained, "among other things, .03 grams of methamphetamine." The court found "that the defendant did, in fact, possess." The court then stated: "Based on those findings of fact . . . I will find you guilty."

At the sentencing hearing, defense counsel stated that this was appellant's first felony offense and was based on "a small amount of methamphetamine." She requested that the district court "give the same sentence that they would give to another person who has their very first felony on a fifth-degree controlled substance [offense]." The court pronounced sentences on all counts. Neither appellant nor defense counsel objected when the court stated that it was imposing lesser, concurrent sentences on Counts 2 through 4.

While appellant is correct that the district court's specific findings mention methamphetamine but not marijuana or insurance, we do not agree that the court found him guilty of only methamphetamine possession. Appellant stipulated to the prosecution's case and uncontroverted evidence was produced regarding each charged offense. Nothing in the record suggests that the other charges were dismissed or that their dismissal was contemplated; indeed, the court and the parties acted in a manner consistent with findings of guilt on all charges. But, on this record, we also cannot say that the district court clearly found appellant guilty of all four charges. Simply put, the district court's finding of guilt is ambiguous in scope. We therefore remand the matter to the district court for a determination of guilt in regard to Counts 2, 3, and 4.

Affirmed in part and remanded.