

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-09-0641

Order Filed 2/28/11

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
NATHAN BARNES,)	No. 09CM171
Defendant-Appellant.)	
)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court. Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

Held: The trial court properly denied defendant's motion to suppress evidence of a handgun found during a search of his vehicle where the handgun was discovered by law enforcement officers during the course of a valid inventory search.

The trial court found defendant, Nathan Barnes, guilty of unlawful use of weapons (720 ILCS 5/24-1(a)(4) (West 2008)) and sentenced him to 18 months' conditional discharge. Defendant appeals, arguing the court erred by failing to suppress evidence obtained from an improper search of his motor vehicle. We affirm.

On February 10, 2009, the State charged defendant with unlawful use of weapons (720 ILCS 5/24-1(a)(4) (West 2008)), alleging he knowingly and improperly carried a firearm in a motor

vehicle. On May 5, 2009, defendant filed a motion to suppress, seeking to exclude from evidence all items found by police during a warrantless search of his vehicle and any statements he made to investigating officers.

On June 4, 2009, the trial court conducted a hearing on defendant's motion to suppress. Evidence showed Champaign County sheriff's deputy Billy Pryor observed defendant driving without a front license plate and executed a traffic stop. Pryor determined that defendant was driving with a suspended license and arrested him. He handcuffed defendant and placed him in the back of a squad car. Pryor testified the traffic stop occurred on a public street or highway and sheriff's department policy required that the vehicle be towed upon defendant's arrest. Department policy further required that an inventory search be conducted on vehicles subject to towing.

Pryor stated an officer has discretion to release the vehicle to a valid driver on the scene or whom the arrestee calls to the scene. He overheard defendant ask another officer for permission to call someone to pick up his vehicle. Pryor asserted, however, that no valid driver was present when the decision was made to tow defendant's vehicle.

According to Pryor, once defendant was secured in the squad car, sheriff's deputy Kale Wallace began an inventory search of the vehicle. While that search was being conducted,

Pryor completed a tow sheet with the assistance of his field training officer. At some point, he became aware that Wallace found a handgun in defendant's vehicle. Pryor acknowledged that the report he completed about the incident made no mention of an inventory search.

Wallace testified, when he arrived on the scene of defendant's traffic stop, defendant was already in handcuffs. He believed defendant was also in the squad car when the search of the vehicle began. Wallace stated he searched defendant's vehicle for contraband and discovered a handgun under the center console. Initially, Wallace testified he searched the vehicle because defendant was being arrested and that search was "incident upon arrest." However, he also stated an inventory search was necessary pursuant to department policy because the vehicle was on a public street and being towed. Wallace was aware that defendant's vehicle was being towed and there was no other licensed driver on the scene.

Upon examination by defendant's counsel, Wallace stated that the focus of his search was to locate contraband and his main reason for searching defendant's vehicle was incident to arrest. He further acknowledged that his written report made no mention of an inventory search. When questioned by the State, Wallace asserted that while he was technically searching defendant's vehicle because defendant had been arrested, his search

also constituted an inventory search. While he was at the scene of the traffic stop, no valid driver arrived to take possession of defendant's vehicle.

Defendant testified that, after he was arrested and placed in the back of the squad car he asked a deputy if he could make a phone call and have a friend pick up his vehicle. The deputy responded that defendant could make the call if he could reach his phone which was located in his left pocket. Defendant testified that, although his hands were handcuffed behind his back, he was able to maneuver his phone out of his pocket. He stated a deputy began searching his car before he began dialing his friend's phone number. Defendant stated he was able to get in touch with his friend and his friend agreed to pick up defendant's vehicle. As defendant was telling his friend to hurry, the gun was found and a deputy ended the phone call.

After hearing the evidence and the parties' arguments, the trial court found an objectively reasonable inventory search of defendant's vehicle had occurred. It denied his motion to suppress.

On July 10, 2009, following a stipulated bench trial, the trial court found defendant guilty of the charged offense. On July 13, 2009, defendant filed a motion for acquittal or in the alternative a motion for a new trial. He argued the court erred by denying his motion to suppress. On August 21, 2009, the

court denied defendant's posttrial motion and sentenced him to 18 months' conditional discharge.

This appeal followed.

On appeal, defendant argues the trial court erred by denying his motion to suppress evidence of the handgun found in his vehicle, arguing the warrantless search of his vehicle was neither a valid search incident to arrest nor a valid inventory search. The State agrees the search in this instance was not a valid search incident to arrest and contends only that it was a valid inventory search.

When reviewing a trial court's decision on a motion to suppress, we give deference to the court's factual findings and only reject those findings that are against the manifest weight of the evidence. *People v. Johnson*, 237 Ill. 2d 81, 88, 927 N.E.2d 1179, 1184 (2010). The court's ultimate ruling on a motion to suppress is subject to *de novo* review. *Johnson*, 237 Ill. 2d at 88-89, 927 N.E.2d at 1184.

The fourth amendment to the United States Constitution (U.S. Const., amend. IV) protects against unreasonable searches and seizures. *Johnson*, 237 Ill. 2d at 89, 927 N.E.2d at 1184. "Reasonableness under the fourth amendment generally requires a warrant supported by probable cause." *Johnson*, 237 Ill. 2d at 89, 927 N.E.2d at 1184-85. "An inventory search of a lawfully impounded vehicle is a judicially created exception to the

warrant requirement of the fourth amendment." *People v. Gipson*, 203 Ill. 2d 298, 304, 786 N.E.2d 540, 544 (2003).

"Three requirements must be satisfied for a valid warrantless inventory search of a vehicle: (1) the original impoundment of the vehicle must be lawful [citation]; (2) the purpose of the inventory search must be to protect the owner's property and to protect the police from claims of lost, stolen, or vandalized property and to guard the police from danger [citation]; and (3) the inventory search must be conducted in good faith pursuant to reasonable standardized police procedures and not as a pretext for an investigatory search [citation]." *People v. Hundley*, 156 Ill. 2d 135, 138, 619 N.E.2d 744, 745 (1993).

"Where the police impound a vehicle based on a cognizable reason, an inventory search pursuant to the tow is justified." *People v. Mason*, 403 Ill. App. 3d 1048, 1054, 935 N.E.2d 130, 136 (2010). Further, "[i]nventory searches can be upheld solely on an officer's unrebutted testimony that he was following standard procedures" and such procedures do not have to be in writing. *Gipson*, 203 Ill. 2d at 309, 786 N.E.2d at 546.

Here, we agree with the trial court's determination that an objectively reasonable inventory search of defendant's vehicle occurred. Following a routine traffic stop, defendant was lawfully arrested for driving on a suspended license. The traffic stop occurred on a public street or highway and no other valid driver was present on the scene to take possession of defendant's vehicle. Both Pryor and Wallace testified, under the circumstances presented, sheriff's department policies required defendant's vehicle to be towed. Policy further required an inventory search of vehicles subject to towing. While Wallace searched defendant's vehicle, Pryor filled out a tow sheet.

Defendant argues the search of his vehicle was not a valid inventory search because no evidence was presented that his vehicle was illegally parked or impeding traffic. To support his position, he cites *People v. Clark*, 394 Ill. App. 3d 344, 348-49, 914 N.E.2d 734, 738-39 (2009), where the First District determined police impoundment of the defendant's vehicle was improper and no valid inventory search had occurred. In that case, the State argued the defendant's car was properly impounded (1) pursuant to police policy, (2) because it was logical to find the vehicle would be a hazard if left on the street, and (3) to protect the vehicle from damage or theft. *Clark*, 394 Ill. App. 3d at 348, 914 N.E.2d at 738. In rejecting the State's arguments, the court noted a lack of evidence showing the car's

location "or that it was illegally parked, impeding traffic, or threatening public safety or convenience." *Clark*, 394 Ill. App. 3d at 349, 914 N.E.2d at 738. Also, no testimony was presented that police towed the vehicle to protect it against damage or theft. *Clark*, 394 Ill. App. 3d at 349, 914 N.E.2d at 738.

Importantly, however, the First District went on to find the record also failed to support the State's further contention that the vehicle was impounded pursuant to a standardized police procedure. *Clark*, 394 Ill. App. 3d at 349, 914 N.E.2d at 738. Specifically, it noted the arresting officer failed to testify to "a procedure requiring him to tow the vehicle" and only stated his *belief* that he could not leave the vehicle on the street. *Clark*, 394 Ill. App. 3d at 349, 914 N.E.2d at 738. As such, the officer's testimony "was insufficient to show that he was acting in accordance with a standardized police procedure regarding the decision to tow." *Clark*, 394 Ill. App. 3d at 349, 914 N.E.2d at 738. The court stated the lack of testimony about standardized procedures on towing and evidence regarding the location of the defendant's car, lead it "to conclude that no cognizable reason for the impoundment was shown to justify the subsequent search conducted pursuant to it." *Clark*, 394 Ill. App. 3d at 349, 914 N.E.2d at 739.

The present case is distinguishable from *Clark*. Both Pryor and Wallace testified that sheriff's department policies

required defendant's vehicle to be towed under the circumstances presented. Those circumstances showed defendant was arrested for driving with a suspended license, his vehicle was stopped on a public street or highway, and no valid driver was present to take possession of the vehicle. Deputies had a cognizable reason for towing defendant's vehicle and the impoundment in this case was lawful.

Defendant also argues the search was impermissible because no firm decision had been made to tow his vehicle. He points out that he was given permission to call a driver to pick up his car. Pryor testified an officer had discretion to allow a vehicle to be released to a valid driver on the scene or whom the arrestee called to the scene. Wallace testified such decisions were within the discretion of the arresting officer. The record reflects Pryor completed a tow sheet as Wallace searched defendant's vehicle, indicating a firm decision had been made by Pryor, the arresting officer, to tow defendant's vehicle. An officer other than Pryor gave defendant permission to call a friend *if* he could reach his phone. Additionally, although defendant testified he was able to reach a friend who agreed to come get his vehicle, no evidence showed defendant's friend, or any other valid driver, was ever present on the scene.

Finally, defendant argues evidence showed the performance of an inventory search was being used as a pretext for an

investigatory search. He notes Wallace's testimony that he was searching the vehicle incident to defendant's arrest. However, even in the context of an inventory search, "an otherwise lawful search cannot be rendered unlawful because of the motives of the police in conducting it." *People v. Flores*, 231 Ill. App. 3d 813, 823, 596 N.E.2d 1204, 1211 (1992); see also *People v. Ocon*, 221 Ill. App. 3d 311, 314, 581 N.E.2d 892, 894 (1991) (Second District disagreed with the defendant's assertion that an otherwise valid inventory search was rendered invalid by the presence of an officer's subjective improper motivation).

Again, both Pryor and Wallace testified that towing defendant's vehicle and conducting an inventory search were required by sheriff's department policies. The deputies were acting pursuant to standardized police procedures and, given the facts, their search was objectively reasonable. At most, Wallace's testimony showed he believed both an inventory search and a search incident to defendant's arrest were appropriate. Although he was partially incorrect, the record does not show Wallace acted in bad faith or used an inventory search as a pretext for an investigatory search.

The record reflects police officers conducted a valid inventory search on defendant's vehicle and their search falls within one of the exceptions to the warrant requirement of the fourth amendment. The trial court properly denied defendant's

motion to suppress evidence.

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal.

Affirmed.