

**NOTICE**

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2015 IL App (4th) 140979-U

NO. 4-14-0979

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

September 28, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Champaign County
SHANNEN L. CAMPBELL,	)	No. 14CF402
Defendant-Appellee.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

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PRESIDING JUSTICE POPE delivered the judgment of the court.  
Justices Harris and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in granting defendant's motion to suppress evidence where the tow of the vehicle containing the evidence was unauthorized and the inventory search uncovering that evidence was incident to the tow.

¶ 2 In March 2014, the State charged defendant, Shannen L. Campbell, with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)) and being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)).

¶ 3 In July 2014, defendant filed a motion to suppress evidence, arguing the handgun found by police in a vehicle driven by him was obtained during an unlawful inventory search where the vehicle could not be legally removed from private property under the Champaign police department's (CPD's) own policies and procedures.

¶ 4 Following an August 2014 hearing, the trial court granted defendant's motion to suppress.

¶ 5 The State appeals, arguing the trial court erred in granting defendant's motion to suppress. The State maintains the police officer could have had the vehicle impounded because defendant was driving on a revoked license and the inventory search prior to towing the vehicle was proper. We affirm.

¶ 6 I. BACKGROUND

¶ 7 On March 27, 2014, Champaign police officer Brian Ahsell was patrolling the area near 722 Town Center Boulevard in Champaign when he observed a blue Chevy conversion van with only one operational headlight. Ahsell turned on his overhead lights and initiated a traffic stop of the van. The van, which had a valid temporary license plate, pulled into a marked parking spot in a parking lot near a Jo-Ann Fabric store. Defendant then exited the vehicle and ran away, ignoring Ahsell's commands to stop. Ahsell chased defendant to the adjacent property. After he was apprehended, defendant was handcuffed and transported back to where the van was parked. Defendant was cited for driving with a revoked license and for having only one functioning headlight.

¶ 8 Alfred Fly, a passenger in the vehicle at the time of the stop as well as the registered owner of the van, provided police with proof of valid registration and insurance for the van. Fly was not issued any citations or arrested for any criminal offense. Nothing indicated Fly was intoxicated or otherwise unable to legally operate the vehicle. Nevertheless, 10 minutes later, Ahsell began the process of impounding the van. Ahsell opened the driver's side door to conduct an inventory sweep of the van prior to having it towed as part of the impoundment

procedure. When Ahsell opened the door, he observed a handgun on the floorboard between the driver's seat and the front passenger seat. Thereafter, the State charged defendant with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)) and being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)).

¶ 9 On July 2, 2014, defendant filed a motion to suppress evidence, seeking the suppression of the handgun seized at the time of his arrest on the basis the inventory search violated his rights under the fourth and fourteenth amendments of the United States Constitution and article I, sections 2 and 6, of the Illinois Constitution. U.S. Const., amend. IV, XIV; Ill. Const. 1970, art. I, §§ 2, 6.

¶ 10 During the August 22, 2014, hearing on defendant's motion, Ahsell, the only testifying witness, explained he began the process of impounding the van after he learned defendant's license was revoked. At the time of the stop, the van was "more or less" parked within the lines of a parking stall in a strip mall parking lot. Ahsell testified it was a private parking lot, *i.e.*, not owned by the city. Ahsell testified he was familiar with the CPD's policies and procedures regarding towing a vehicle off private property. A copy of CPD's policies and procedures, entitled, "Removal and Towing of Vehicles," was introduced into evidence. Ahsell also testified he was aware at the time he conducted the inventory sweep police could only tow vehicles off private property where the driver's license was suspended or revoked and the vehicle was uninsured. When asked what efforts he made to ascertain whether the van was insured, Ahsell testified the owner of the vehicle "ended up being on scene and \*\*\* was able to direct us to an insurance card \*\*\* located in the van, which appeared to be valid. So, therefore, the van was insured on that night." Ahsell admitted at the time he opened the driver's side door to

conduct the inventory sweep of the van, he already knew the registered owner was present and the van was insured. Ahsell testified he first observed the handgun after opening the door of the vehicle.

¶ 11 The City of Champaign "Vehicle Tow-In Report" was introduced into evidence. We note it appears the "No Insurance" check box in the "Impoundment" section on the report was initially marked and then scratched out. The section providing the requirements for release of the vehicle also had the "Insurance" check box marked and then lined out. Next to the lined out check box was Ahsell's badge number. However, Ahsell testified another officer filled out the report.

¶ 12 During argument, defendant contended the evidence should be suppressed where testimony established Ahsell knew, at the time he made the decision to begin the impoundment and inventory search procedure, the vehicle had valid insurance and registration. According to defendant, the CPD's own policies regarding towing from private property when the owner is present and the vehicle is insured operate to prevent the police from towing the vehicle. Defendant maintained, without the need or ability to tow the vehicle, no inventory search was necessary. Defendant argued, had the officer not opened the door to conduct the search, he would not have discovered the gun, which in turn, the State would not have been able to use as evidence against him.

¶ 13 For its part, the State argued, this case only involved "an impound and inventory search" and Ahsell clearly complied with the relevant CPD policy. According to the State, it was "very disingenuous" for defendant "to point out different sections of the [CPD policy] that simply do not apply to this case." The State additionally maintained section 6-303 of the Illinois

Vehicle Code (Vehicle Code) (625 ILCS 5/6-303) (West 2012)) regarding driving on a revoked license also did not apply. As such, the State argued defendant's motion to suppress should be denied.

¶ 14 On November 3, 2014, the trial court issued a detailed written order granting defendant's motion to suppress. The court stated an inventory search is a recognized exception to the warrant requirement and could be conducted when the impoundment of the vehicle is lawful. The court found CPD's policies and procedures regarding impounding and towing contained conflicting provisions. While section 61.5.6(B) required the impoundment of the van because defendant was driving with a revoked license, section 61.5.7(A)(5) barred the tow of the van because it was parked on private property, the owner was present, and the van was properly insured. Because of this conflict, the court found the State had not established the van was subject to towing. As a result, the court concluded the inventory search was not valid and the evidence had to be suppressed.

¶ 15 This appeal followed.

## ¶ 16 II. ANALYSIS

¶ 17 On appeal, the State argues the trial court erred when it granted defendant's motion to suppress. Specifically, the State contends the inventory search, which was incident to the tow, was proper because Ahsell could have the vehicle impounded where defendant was driving on a revoked license. According to the State, "[t]he fact a different provision of the [CPD's] policy placed restrictions on when a car could be towed does not compel a different conclusion."

¶ 18 Defendant argues the trial court correctly granted the motion to suppress. Specifically, defendant maintains the inventory search was unlawful where CPD's own policies

and procedures did not permit the towing of the van off private property because, even though defendant was driving with a revoked license, Fly, the true owner, was present and the van was validly insured. Defendant contends because the tow was unauthorized and unnecessary, the inventory search was improper. For the reasons that follow, we agree with defendant.

¶ 19 At a hearing on a motion to suppress evidence, the burden of proof is on the defendant. 725 ILCS 5/114-12(b) (West 2014); *People v. Gipson*, 203 Ill. 2d 298, 306, 786 N.E.2d 540, 545 (2003). A defendant must make a *prima facie* case the evidence was obtained by an illegal search. *Gipson*, 203 Ill. 2d at 306-07, 786 N.E.2d at 545. If the defendant meets that burden, the State can counter with its own evidence. *Gipson*, 203 Ill. 2d at 306, 786 N.E.2d at 545.

¶ 20 We review the trial court's ruling on a motion to suppress evidence under a two-part test. *People v. Harris*, 228 Ill. 2d 222, 230, 886 N.E.2d 947, 954 (2008). The trial court's factual findings are entitled to deference and will be reversed only if they are against the manifest weight of the evidence. *Harris*, 228 Ill. 2d at 230, 886 N.E.2d at 954. The ultimate ruling of whether suppression is warranted is reviewed *de novo*. *Harris*, 228 Ill. 2d 222, 230, 886 N.E.2d 947, 954. On appeal, we "review the trial court's judgment, not its rationale," and we "can affirm for any reason the record supports." *People v. Reed*, 361 Ill. App. 3d 995, 1000, 838 N.E.2d 328, 332 (2005).

¶ 21 The fourth amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const., amend. IV. The fourth amendment prohibits searches conducted outside the judicial process, without prior approval by a judge or magistrate, subject to a few well-

delineated exceptions. *People v. Clark*, 394 Ill. App. 3d 344, 347, 914 N.E.2d 734, 737 (2009).

One such exception is an inventory search of a lawfully impounded vehicle. *Clark*, 394 Ill. App. 3d at 347, 914 N.E.2d at 737.

¶ 22 "An inventory search is a judicially created exception to the warrant requirement of the fourth amendment." *People v. Hundley*, 156 Ill. 2d 135, 138, 619 N.E.2d 744, 745 (1993).

The impoundment of a vehicle constitutes a seizure, and the inventory is a search. *People v. Nash*, 409 Ill. App. 3d 342, 347, 947 N.E.2d 350, 356 (2011). Three criteria must be met for a valid warrantless inventory search of a vehicle: (1) the impoundment of the vehicle must be lawful; (2) the purpose of the inventory search must be to protect the police from claims of lost, stolen, or vandalized property, and to guard the police from danger; 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. *Hundley*, 156 Ill. 2d at 138, 619 N.E.2d at 745; *Nash*, 409 Ill. App. 3d at 348, 947 N.E.2d at 357.

¶ 23 The threshold issue in considering whether police have conducted a valid inventory search incident to a tow is whether the impoundment of the vehicle was proper, as the justification for the inventory search arises from the impoundment. *People v. Spencer*, 408 Ill. App. 3d 1, 8, 948 N.E.2d 196, 203 (2011). To be valid, an impoundment must either be supported by probable cause or be for purposes of community caretaking. *Nash*, 409 Ill. App.3d at 347, 947 N.E.2d at 356. Pursuant to the community-caretaking justification, the police are authorized to seize and remove from the streets any vehicle that impedes traffic or threatens public safety and convenience. *Nash*, 409 Ill. App. 3d at 348, 947 N.E.2d at 357. A vehicle left

unattended but legally parked does not alone warrant impoundment. *Clark*, 394 Ill. App. 3d at 348, 914 N.E.2d at 738.

¶ 24 Here, it is undisputed defendant had a privacy interest in the van and the police did not have a warrant or permission to conduct the search. The State does not argue the impoundment was necessary as part of the police's community caretaking function. Indeed, the van was legally parked on private property. No evidence was presented to indicate it was impeding traffic in any way or otherwise creating a public safety hazard.

¶ 25 Further, the record provides no indication impoundment was supported by any probable cause to seize the vehicle. While true, defendant ran from the vehicle, it was discovered shortly thereafter he did not have a valid driver's license. Ahsell testified he had the van impounded solely because defendant's license was revoked. No additional evidence was presented to suggest any other reason to cause Ahsell to have the vehicle impounded. The State focuses its argument instead on the mandatory nature of CPD's impoundment policy.

¶ 26 While the State argues this case is only about impoundment and the inventory search and has nothing to do with towing restrictions, we cannot construe a statutory scheme in isolation. See *Carroll v. Paddock*, 199 Ill. 2d 16, 22-23, 764 N.E.2d 1118, 1122 (2002) (courts must give effect to the entire statutory scheme rather than look at words and phrases in isolation from other relevant portions of the statute); *Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 458-59, 781 N.E.2d 261, 267 (2002) ("statutes which relate to the same subject are to be read harmoniously so that no provisions are rendered inoperative"). "Even when an apparent conflict between statutes exists, they must be construed in harmony with one another if reasonably possible." *Knolls*, 202 Ill. 2d at 459, 781 N.E.2d at 267. To the extent possible, we will



therefore consider the relevant sections of CPD's policy and procedures together. See *People v. Scheib*, 76 Ill. 2d 244, 250, 390 N.E.2d 872, 875 (1979).

¶ 27 In this case, section 61.5.6(A)(7) of CPD's policy and procedures provides for vehicle impoundment where the driver has a revoked license. CPD Policy and Procedures, § 61.5.6(A)(7) (2012). Impoundment of a vehicle involves towing it to a secure location. CPD Policy and Procedures, § 61.5.6(B) (2012). Section 61.5.7(A)(5) serves to restrict the instances in which police may tow a vehicle where, as here, it is located on private property. CPD Policy and Procedures, § 61.5.7(A)(5) (2012). Where a statute contains both general and specific provisions, the specific provision controls to the extent applicable. *People v. Villarreal*, 152 Ill. 2d 368, 379, 604 N.E.2d 923, 928 (1992).

¶ 28 While section 61.5.6(B) provides for removal, *i.e.*, towing, of the subject vehicle to a secure location as part of the impoundment procedure, towing vehicles off private property is expressly limited by section 61.5.7(A)(5) to *only* situations where (1) the driver has been placed under arrest for driving with a suspended or revoked license, (2) the owner of the vehicle does not have valid insurance, and (3) a corresponding hold has been placed on the vehicle. We note impoundment under section 6-303(e) of the Vehicle Code also contains a similar insurance coverage limitation. See 625 ILCS 5/6-303(e) (West 2012) (a person who is driving with a suspended or revoked license *and* who is also in violation of the mandatory insurance requirements shall have his vehicle impounded).

¶ 29 Here, Ahsell stopped the van for a simple equipment violation. He testified the van was parked in a parking spot located on private property. The State did not argue the van was parked illegally. At the time Ahsell made the decision to have the vehicle impounded, Fly, the

owner of the vehicle who was present at the scene, had provided Ahsell with proof of valid insurance and registration for the van. No evidence was presented to show Fly was himself unlicensed or otherwise incapable of legally driving the van. We note section 61.5.6(B) states an officer may consult with a supervisor and obtain permission to deviate from the impoundment policy if the officer has reason to believe an impound is not appropriate under the circumstances. See CPD Policy and Procedures, § 61.5.6(B) (2012). This language indicates the impoundment provision immediately preceding it is not meant to be read in absolute terms, *i.e.*, impoundment is not mandatory in every instance without exception.

¶ 30 Under the circumstances presented in this case, there was no reasonable justification to have the van impounded. See *Nash*, 409 Ill. App. 3d at 354, 947 N.E.2d at 362 (adherence to an impoundment policy does not alone make an impoundment reasonable under the fourth amendment). We are not persuaded by the State's argument to the contrary. The trial court did not err in granting defendant's motion to suppress.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, we affirm the trial court's judgment.

¶ 33 Affirmed.