In the
Indiana Supreme Court

Roger Oswaldo Mendez-Vasquez,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
23A-CR-00226

Trial Court Case No.
29D07-2202-F6-1187

Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 4/1/2024.

FOR THE COURT

Loretta H. Rush
Chief Justice of Indiana

Massa, Slaughter, and Goff, JJ., concur.
Rush, C.J., dissents from the denial of transfer with separate opinion in which Molter, J., joins.

Rush, Chief Justice, dissenting.

Law enforcement, as part of their discretionary community-caretaking function, can impound a vehicle and conduct a warrantless inventory search without violating the Fourth Amendment. *See, e.g.*, *Wilford v. State*, 50 N.E.3d 371, 375 (Ind. 2016). But as with any exception to the warrant requirement, the State must prove the search was reasonable. *Id.* at 374. When the State fails to establish an inventory search complied with established procedures that sufficiently limit officer discretion, our courts have consistently held the search violated a defendant's Fourth Amendment rights. *See, e.g.*, *id.* at 377–78; *Fair v. State*, 627 N.E.2d 427, 435–36 (Ind. 1993); *Smith v. State*, 130 N.E.3d 1181, 1184 (Ind. Ct. App. 2019); *Sams v. State*, 71 N.E.3d 372, 378–80 (Ind. Ct. App. 2017). Because the Court of Appeals' majority opinion conflicts with these decisions, transfer should be granted. Ind. Appellate Rule 57(H)(1), (2).

Here, an officer pulled over Roger Mendez-Vasquez's truck for both failing to signal "for at least 200 feet" before turning and driving with a license plate that had been expired for about "one month." During the stop, the officer learned Mendez-Vasquez had an active warrant for operating a vehicle without a license, arrested him, and decided to impound the vehicle and conduct an inventory search on scene. Mendez-Vasquez was charged with crimes stemming from contraband the officer recovered during that search. At trial, the officer testified that departmental policy required him to log "property of value" from the vehicle on an "inventory log sheet." He stated he followed that policy but noted a different officer volunteered to complete the paperwork. Mendez-Vasquez objected to the search on Fourth Amendment grounds, but the trial court overruled his objection and found him guilty.[1]

A divided Court of Appeals' panel affirmed, with the majority concluding "that the inventory-search policy here . . . sufficiently

[1] Unfortunately, Mendez-Vasquez waived his state constitutional claim by raising it for the first time on appeal. *See Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018).

constrains the exercise of officer discretion and is therefore constitutional." *Mendez-Vasquez v. State*, 217 N.E.3d 591, 595–96 (Ind. Ct. App. 2023). Judge Weissmann dissented, stating, "Based on this scant record, I cannot conclude that this search passes constitutional muster." *Id.* at 597 (Weissmann, J., dissenting). I agree.

An inventory search cannot be "a ruse for a general rummaging in order to discover incriminating evidence." *Florida v. Wells*, 495 U.S. 1, 4 (1990). When an officer executes such a search under law enforcement's discretionary community-caretaking function, "the risk increases that" the officer's decisions "will be motivated solely by the desire to conduct an investigatory search." *Fair*, 627 N.E.2d at 433. And this risk amplifies when the search is conducted at the scene of the arrest—where the incentive to search for incriminating evidence intensifies—rather than at an impoundment lot. *See id.* at 436; *State v. Lucas*, 859 N.E.2d 1244, 1250 (Ind. Ct. App. 2007), *trans. denied*. Because of these concerns, the State must establish that an inventory search was "conducted pursuant to standard police procedures." *Fair*, 627 N.E.2d at 435.

Though we do not require evidence of a department's written regulations, we do require more than an officer's conclusory testimony. *Wilford*, 50 N.E.3d at 376; *see also Smith*, 130 N.E.3d at 1184. The officer must specifically outline departmental policy or procedure that is both "rationally designed to meet the objectives that justify the search in the first place" and "sufficiently limit[s]" law enforcement's discretion. *Fair*, 627 N.E.2d at 435. And the officer must specifically describe how their conduct adhered to those policies or procedures. *Wilford*, 50 N.E.3d at 377.

The testimony here did neither. Only the arresting, searching officer testified, stating he complied with the following procedure: "[W]e are to log the property of value that is located within the vehicle and put it into the inventory log sheet. I had another officer come and assist me . . . he stated that he would do the paperwork for the logging of the vehicle." Later, when asked if his department's policy described how to handle locked or shut containers, the officer responded, "All items of value could be logged [whether] they are in containers or not. . . as long as it could contain something that would be of value it may be opened."

These sparse and generalized statements fail to specifically outline departmental procedure and are indistinguishable from those we have found inadequate. *See Fair*, 627 N.E.2d at 436. It is also unclear whether the procedure was even followed, as the second officer did not testify about the "paperwork" and the State did not offer any inventory sheets into evidence. On this scant record, the same pretextual concerns we highlighted in *Fair* and *Wilford* are present here: the search took place at the scene of an arrest rather than at an impoundment lot; the investigating officer conducted the search; and the State did not submit a completed inventory sheet into evidence. *Id.*; *Wilford*, 50 N.E.3d at 377–78. For these reasons alone transfer is warranted. App. R. 57(H)(2).

But transfer is also warranted because a different panel of our Court of Appeals struck down an identical policy that failed to sufficiently limit officer discretion. *Sams*, 71 N.E.3d at 379. In *Sams*, written regulations required law enforcement to inventory "all personal property and all vehicle accessories," but testimony revealed officers adhered to an unwritten policy by inventorying "anything that would be valuable." *Id*. The court held this policy was "standardless," permitting "completely unconstrained" officer discretion. *Id.* at 380. The same is true here. The described policy provides law enforcement with unbridled discretion to search a vehicle for "items of value" even if they are in locked containers. Just as in *Sams*, this standardless policy gives law enforcement "unconstitutionally broad discretion." *Id.* And thus, by denying transfer, we dodge an important opportunity to rectify a conflict in Court of Appeals' decisions. App. R. 57(H)(1).

Overall, the State failed to carry its burden to establish that the inventory search conformed with established departmental procedures, that the described policy sufficiently restrained officer discretion, or that the officer adhered to that policy. Because the majority held otherwise, denying transfer tacitly agrees with a decision that directly conflicts with precedent. I therefore dissent from the Court's decision to deny transfer.

Molter, J., joins.