

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

JOHN PINNOW
Special Assistant to the
State Public Defender
Greenwood, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DENNIS MEADOWS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)
)

No. 61A01-1009-CR-483

APPEAL FROM THE PARKE CIRCUIT COURT
The Honorable Samuel A. Swaim, Judge
Cause No. 61C01-0810-FB-236

April 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Dennis Meadows (“Meadows”) appeals, after a jury trial, from his conviction of two counts of burglary,¹ each as a Class B felony, and one count of burglary² as a Class C felony. Meadows presents the following issue for our review, which we restate as: Whether the trial court abused its discretion by admitting evidence seized from Meadows’s trailer that was discovered during an inventory search after a traffic stop.

We affirm.

FACTS AND PROCEDURAL HISTORY

Jeremy Hubble (“Hubble”) attended a classmate’s party at Raccoon Lake in Parke County. After attending the party, Hubble told his uncle, Meadows, that there was a golf cart at the house where the party was held. In the early morning hours of February 8, 2006, Meadows drove Hubble out to the house where the party had taken place. One of the two of them kicked in the door of Michael Fishero’s (“Fishero”) house once they arrived. They found a golf cart and a John Deere riding lawnmower in the garage.

The two then walked to the pole barn located next door and broke into that building, which belonged to Edward Helms (“Helms”). They took several tools from the barn including a floor jack, air compressor, a DeWalt tool pack, a pressure washer, socket set, extension cords, and gas cans, among other things. Hubble and Meadows loaded these items into the bed of Meadows’s truck and drove to Meadows’s home to hitch up his trailer. Once

¹ See Ind. Code § 35-43-2-1(1).

² See Ind. Code § 35-43-2-1.

at Meadows's home they hooked up a red, tandem-axle, box trailer to his truck and returned to Fishero's house. They passed Lana Bunting's ("Lana") house on their way to Fishero's house. Lana, who is Meadows's sister, called Detective Justin Cole ("Detective Cole") of the Parke County Sheriff's Department at approximately 7:30 a.m. and left a message for him that Meadows and her cousin, Hubble, had just driven past her house towing a red trailer.

When Meadows and Hubble arrived at Fishero's house, they loaded the golf cart and the lawnmower into the trailer. They walked to another neighbor's house, broke the window, and went inside, but found nothing that they wanted to steal. They returned to Meadows's house and unhooked the trailer. Hubble and Meadows then drove to Meadows's rental house near Shades State Park.

Detective Cole listened to the messages left on his voicemail at around 8:30 a.m. He spoke with Chief Deputy Bill Todd of the Parke County Sheriff's Department, who had investigated the burglaries earlier that day. Detective Cole and Chief Deputy Eddie McHargue, also of the Parke County Sheriff's Department, went to Meadows's house. Meadows's work truck and the red trailer were in the front of the house, but no one was at home. Detective Cole noticed Hubble's brother, Seth, watching them from around the corner of the house and talking on a cordless telephone. Detective Cole asked Seth if he would let Meadows know that they were looking for him and that Detective Cole wanted to speak to him.

Seth had been speaking with Meadows on the cordless telephone when the officers were looking for Meadows at his house. After Seth's telephone call, Meadows and Hubble

loaded all of the stolen tools in Meadows's truck and began driving around, trying to decide what to do with the stolen items. Detective Cole and Deputy McHargue drove to Richard Brown's house, because Meadows was known to spend time there. When they were about 200 yards from the house, they spotted Meadows's white pickup truck traveling southbound toward Waveland, Indiana. The officers attempted to catch up to the pickup, but Meadows had seen them and "floored it." *Tr.* at 64. Meadows was able to evade the officers and pulled his truck to the side of a road near a tree line. He and Hubble then threw the stolen items into the trees. While disposing of the stolen items, Hubble lost his cell phone and some cigars in a ditch. Meadows and Hubble then drove to Parkersburg, Indiana. Detective Cole subsequently located the abandoned, stolen items on the side of the road and called the Montgomery County Sheriff's Department to recover the evidence.

When Hubble and Meadows arrived in Parkersburg, Indiana, they called Ronald Ruffner ("Ruffner"). Meadows asked Ruffner to go to Meadows's house, retrieve the red box trailer, and take it somewhere out of his driveway. Hubble and Meadows left a ball hitch of the appropriate size behind a business in Parkersburg and told Ruffner where he could locate it. Meadows and Hubble then drove to Pittsboro, Indiana.

Detective Cole then returned to Meadows's house and set up surveillance. At approximately 5:30 p.m., Ruffner pulled into Meadows's driveway, hooked up the box trailer, and drove away. Deputy Justin Salisbury, of the Parke County Sheriff's Department, had been alerted to watch for the trailer, and saw Ruffner pulling the trailer. Deputy Salisbury noted that the trailer did not have functioning taillights. Deputy Salisbury initiated

a traffic stop of Ruffner, who was unable to produce a registration certificate for the trailer. The license plate for the trailer was for a different trailer. More specifically, the license plate was registered to Meadows and his wife for a black 2005 trailer, and Ruffner was towing a red box trailer. Ruffner told Deputy Salisbury that the trailer belonged to Meadows. Deputy Salisbury asked Ruffner to call Meadows, and Ruffner placed the call. Deputy Salisbury asked for the telephone number so that he could telephone Meadows himself. Meadows never returned the telephone call.

The locks were cut off of the trailer and its contents were inventoried. The trailer contained the golf cart and lawnmower stolen from Fishero's residence. At trial, Meadows objected to the admission of the inventory form. Citing to the Fourth Amendment and the Indiana Constitution, Meadows claimed that the traffic stop was a pretext, and the search was not carried out in conformity with departmental procedure. Meadows was convicted as charged and now appeals.

DISCUSSION AND DECISION

Meadows challenges the admissibility of evidence discovered during the inventory search of his box trailer. More specifically, Meadows claims that the warrantless search of his trailer violated the protections provided by the Fourth Amendment to the U.S. Constitution and Article I, Section 11 of the Indiana Constitution.

The admission of evidence is within the sound discretion of the trial court, and we will reverse only on a showing of abuse of discretion. *McClendon v. State*, 910 N.E.2d 826, 832 (Ind. Ct. App. 2009), *trans. denied*; *Goldsberry v. State*, 821 N.E.2d 447, 453-54 (Ind. Ct.

App. 2005). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. *McClendon*, 910 N.E.2d at 832; *Goldsberry*, 821 N.E.2d at 454.

In general, the Fourth Amendment prohibits warrantless searches and seizures. *Cheatham v. State*, 819 N.E.2d 71, 74 (Ind. Ct. App. 2004). This protection has been extended to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). “When a search is conducted without a warrant, the State has the burden of proving that an exception to the warrant requirement existed at the time of the search.” *Cheatham*, 819 N.E.2d at 74 (quoting *Ratliff v. State*, 770 N.E.2d 807, 809 (Ind. 2002)). Under Article I, Section 11 of the Indiana Constitution, to be legal, a search must be “reasonable in light of the totality of the circumstances.” *Taylor v. State*, 842 N.E.2d 327, 334 (Ind. 2006); *Jones v. State*, 856 N.E.2d 758, 763 (Ind. Ct. App. 2006).

For a warrantless search to be reasonable under the Fourth Amendment and Article I, Section 11 of the Indiana Constitution, an exception to the warrant requirement must apply. *Taylor*, 842 N.E.2d at 330-34; *Jones*, 856 N.E.2d at 760. A valid inventory search is just such a recognized exception to the warrant requirement. *South Dakota v. Opperman*, 428 U.S. 364, 372 (1976) (inventory search is exception to warrant requirement under Fourth Amendment); *Jones*, 856 N.E.2d at 760 (inventory search is exception to warrant requirement under Article I, Section 11 of Indiana Constitution).

“The inventory exception allows police to conduct a warrantless search of a lawfully impounded automobile if the search is designed to produce an inventory of the vehicle’s

contents.”” *Combs v. State*, 851 N.E.2d 1053, 1060 n.6 (Ind. Ct. App. 2006) (quoting *Abran v. State*, 825 N.E.2d 384, 390 (Ind. Ct. App. 2005), *trans. denied*). To determine the propriety of an inventory search, the threshold question is whether the impoundment itself was proper. *Id.* If the court determines that the impoundment is lawful, the court then must consider whether the “search itself [is] conducted pursuant to standard police procedures.”” *Combs*, 851 N.E.2d at 1060 n.6 (quoting *Abran*, 825 N.E.2d at 390-91). An impoundment is warranted when it is part of routine administrative caretaking functions of the police or when it is authorized by statute. *Taylor*, 842 N.E.2d at 331.

Indiana Code section 9-18-2-43 provides in pertinent part as follows:

- (a) Notwithstanding any law to the contrary but except as provided in subsection (b), a law enforcement officer authorized to enforce motor vehicle laws who discovers a vehicle required to be registered under this article that does not have the proper certificate of registration or license plate:
 - (1) shall take the vehicle into the officer’s custody; and
 - (2) may cause the vehicle to be taken and stored in a suitable place until;
 - (A) the legal owner of the vehicle can be found; or
 - (B) the proper certificate of registration and license plates have been procured.

When examining the reasonableness of a vehicle inventory, we conduct a two-step inquiry. The propriety of the impoundment must be established because the need for the inventory arises from the impoundment of the vehicle. *Fair v. State*, 627 N.E.2d 427, 431 (Ind. 1993). Second, the scope of the inventory must be evaluated. *Id.* A search must be clearly reasonable in both steps of the examination for this court to uphold a warrantless search. *Id.* “In borderline cases, however, the ultimate character of the search is often most

clearly revealed when both the necessitousness of the impoundment and the scrupulousness of the inventorying are viewed together.” *Id.*

Here, the record reflects that Ruffner was towing a red, box trailer when he was pulled over for a traffic infraction. The license plate on the trailer did not correspond to any known vehicle registration. The plate did correspond to a trailer that listed Meadows and his wife as the owners. Ruffner could not provide a registration for the trailer. Pursuant to Indiana Code section 9-18-2-43, Deputy Salisbury was required to take the trailer into custody.

Because Ruffner claimed that Meadows owned the trailer, Deputy Salisbury asked Ruffner to call Meadows, Ruffner placed the call, and spoke to Meadows. Deputy Salisbury then attempted to call that telephone number, but the call was directed to an unspecified voicemail inbox. Meadows never attempted to return Deputy Salisbury’s call. Being unable to reach the owner, the deputy was authorized by statute to impound the trailer. Ind. Code § 9-18-2-43(a). Leaving the trailer by the side of the road would have presented a driving hazard to other motorists and would have exposed the trailer to potential vandalism or potential theft by any other person possessing a ball hitch of the appropriate size. Deputy Salisbury was authorized by Indiana Code section 9-18-2-43(a)(2) to tow the vehicle to the impound yard at the sheriff’s department until the owner of the vehicle claimed it.

A trailer, such as the one in the present case, is a vehicle as established by Indiana Code section 9-13-2-196. The license plate on the rear of the trailer that Ruffner was towing corresponded to a black 2005 trailer. Deputy Salisbury was required to take the trailer into his

custody as Ruffner was unable to provide a proper certificate of registration or license plate. I.C. § 9-18-2-43(a)(1).

Next, we examine the scope of the inventory search. “[T]o pass constitutional muster, the search itself must be conducted pursuant to police procedures.” *Fair*, 627 N.E.2d at 435 (citing *Colorado v. Bertine*, 479 U.S. 367, 375 (1987)). “The rule that standardized criteria or established routine must exist as a precondition to a valid inventory search is designed to ensure that the inventory is not a pretext ‘for general rummaging in order to discover incriminating evidence.’” *Id.*

The Rules and Regulations of the Parke County Sheriff’s Department specify:

It will be the policy of this department for all officers who impound a vehicle for any reason to take the following action:

A. Inventory of all items of value in the vehicle, which are not regular parts or accessories of the car. This inventory will be kept on a form provided by the department. Such action is necessary for the protection of the department from any claims which may later be made.

State’s Ex. 71, section 3.60. The Parke County Sheriff’s Department had a standard operating procedure (“SOP”) concerning inventory searches at the time of the impoundment at issue. *State’s Ex. 71(A)*). The SOP identified the purpose of an inventory search as follows: “The purpose of an inventory is to record the contents of a vehicle in order to protect the vehicle and property in it and to safeguard officers from claims of lost possessions and any danger that might be presented from the property.” *State’s Ex. 71(A)*, ¶ IV(E)(2)). “While completing an inventory, a police employee may open any container that may have contents the police employee determines can not be readily ascertained following the examination of the container’s exterior.” *Id.* at ¶ IV(E)(3). The SOP further requires that a

form 322B be completed and submitted to the Bureau of Motor Vehicles within three days of the inventory. *Id.* at ¶ IV(C) & (E)(1).

Here, the impounded trailer was a box trailer whose contents could not be seen and inventoried without opening the trailer. It was necessary to remove the locks for the purpose of officer safety in addition to safeguarding the property contained therein. A search warrant is not required to conduct an inventory of an impounded vehicle. *Opperman*, 428 U.S. at 372.

As for the protections afforded by the Indiana Constitution, Ruffner admitted that he had committed a traffic violation for pulling a trailer without working taillights. *Tr.* at 139. Further, the trailer was unregistered and was displaying a license plate belonging to another trailer. Impoundment was necessary by statute. Ind. Code § 9-18-2-43. Moreover, the intrusion upon Ruffner and Meadows was minimal. Ruffner was given a warning for the traffic violation and was released and the trailer was towed to the Sheriff's Department. Meadows was given the opportunity to call Deputy Salisbury and claim the trailer, but Meadows did not exercise that option. The items contained in the trailer were inventoried in order to safeguard the items from theft.

Even if the evidence had been erroneously admitted, Hubble testified to the events in question and the evidence found in the trailer was cumulative and corroborative of that testimony. Meadows has failed to establish reversible error here.

Affirmed.

CRONE, J., and BRADFORD, J., concur.