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**IN THE
COURT OF APPEALS OF INDIANA**

HOWARD HARRIS,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A02-0612-CR-1158
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jane Magnus-Stinson, Judge
Cause No. 49G06-0601-FC-14082

August 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Following a bench trial, Howard Harris was convicted of possession of a firearm without a license after having been convicted of a felony within the previous fifteen years,¹ a Class C felony. Harris raises only one issue on appeal: whether the trial court erred by admitting into evidence the handgun found during an inventory search of Harris's car.

We affirm.

FACTS AND PROCEDURAL HISTORY

Around 11:00 p.m. on December 27, 2005, Indianapolis Police Officer Adam Franklin was on patrol on East 38th Street, traveling behind a 1986 Ford Crown Victoria driven by a man later identified as Harris. Officer Franklin performed a random license plate check on the Ford, discovered the plates were registered to a Chevrolet, and initiated a traffic stop. Checking Harris's record, Officer Franklin discovered that Harris had never been issued a driver's license. Harris's passenger, likewise, did not have a valid driver's license. Officer Franklin ordered both men to step out of the car so he could prepare "a summons for Mr. Harris for not having a driver's license." *Tr.* at 11.

Although the Ford was legally parked, Officer Franklin testified that it would have been a "violation of the law" for anyone to drive the improperly registered vehicle away from the scene. *Id.* at 33. He further testified, "the law requires that an improperly registered car be towed." *Id.* In preparation for the towing and subsequent impounding of the vehicle, Officer Franklin searched the car and found a loaded nine-millimeter handgun in the glove box. Harris initially claimed that the handgun was not his, but later admitted that his

¹ See IC 35-47-2-1; IC 35-47-2-23(c)(2)(B).

fingerprints might be found on the handgun. Finally, Harris admitted that the handgun did, in fact, belong to him. *Id.* at 42.

The State charged Harris with carrying a handgun without a license and with carrying a handgun without a license while having a previous felony conviction. On March 6, 2006, Harris filed a motion to suppress the admissibility of the handgun on the basis that it was obtained in violation of the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution.

On August 25, 2006, the trial court held a hearing on the motion to suppress. During the hearing, the testimony from both parties was contradictory as to whether the search was deemed to be an inventory search or a search incident to Harris's arrest. However, at the close of the hearing, the State argued:

Your Honor, the more I thought about it as we've done this hearing, the more I'm convinced that Officer Franklin conducted a valid inventory search. First of all, he indicated that the car was going to be towed, it had to be towed. As the impoundment guidelines indicate, it had to be towed because it was improperly plated. So it's [sic] impoundment is proper pursuant not only to the guidelines that the court has before it in State's Exhibit 1,² but also according to the law. Indiana law requires an officer to tow or to impound a vehicle whose plates are improper. This officer indicated then that the only thing of value he found in the car was the gun that he filled out a property room voucher for that gun and put that gun in the property room. He also indicated that had he found anything else of value, stereo equipment, whatever, he would have done similarly but there was nothing else of value in that car. Based on that, Your Honor, I believe that we have a valid inventory search of the car, notwithstanding what it was termed in the probable cause [sic] or by the officer. I think that the Court can find that there was a valid inventory search.

² State's Exhibit 1 of the motion to suppress hearing is the Indianapolis Police Department's General Order on Towing/Impounding Vehicles. This document in part provided: "A vehicle inventory search is defined as conducting an administrative, routine and warrantless search of the passenger area (including the glove compartment), trunk, and closed containers. *An inventory search should not be motivated by an officer's desire to investigate and seize evidence of a criminal act.*" *State's Ex. 1* at 23 (emphasis in original).

Id. at S-19 - S-20.³

In response, the trial court noted:

I think there's one other basis for an inventory search and that's to make sure we don't send cars with weapons to impound lots or anything else. I think that's another function. I find the—first of all, looking at State's Exhibit 1 and this is what was in my memory and why having seen it on a number of occasions, my recollection was he was required to go through that vehicle pursuant to this order. . . . [U]nder the Indiana Constitution, were his actions reasonable? Yes, I think they were in fact required. He was required to go through that vehicle. He took the only piece of property he found valuable and documented it. There is no evidence in the record that there was anything else in the vehicle that wasn't recorded or reported that is somehow missing. . . . I think that the additional fact of the illegality of the vehicle distinguishes this case from [*State v.*] *Moore*[, 796 N.E.2d 764 (Ind. Ct. App. 2003)]. Because of that, I think he was required to go through the vehicle for all of the reasons, for the protection of the Defendant, for the protection of law enforcement and for the protection of the tow lot.

Id. at S-25 - S-26. The trial court denied Harris's motion to suppress. On September 11, 2006, Harris filed a petition to certify an order for interlocutory appeal on this issue, which the trial court denied.

During his November 20, 2006 bench trial, Harris unsuccessfully objected to the admission of the handgun on the basis that it was obtained during an unconstitutional search. At the close of the State's evidence, the State incorporated the testimony and the argument from the prior suppression hearing. *Id.* at 43.

After Harris stipulated to a previous felony conviction, the trial court found him guilty of carrying a handgun without a license as a Class C felony, and sentenced him to six years in the Department of Correction. *Id.* at 47-48. Harris now appeals.

³ The "S" in the page numbering indicates the suppression hearing portion of the trial.

DISCUSSION AND DECISION

On appeal, Harris argues that the trial court erred in admitting into evidence, over his objection, a handgun that was found during what he claims was an illegal search of his car. The Fourth Amendment to the United States Constitution protects persons from unreasonable search and seizure and this protection has been extended to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691, 6 L. Ed. 2d 1081 (1961). Under Article 1, 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), *trans. denied* (2007).

“Rulings on the admission of evidence are subject to appellate review for abuse of discretion.” *Jones*, 856 N.E.2d at 760 (quoting *McHenry v. State*, 820 N.E.2d 124, 128 (Ind. 2005)). An abuse of discretion may occur if a decision is clearly against the logic and effect of the facts and circumstances before the court. *Baird v. State*, 854 N.E.2d 398, 403 (Ind. Ct. App. 2006), *trans. denied*. Regarding the “abuse of discretion” standard generally, our Supreme Court has observed, “to the extent a ruling is based on an error of law or is not supported by the evidence it is reversible, and the trial court has no discretion to reach the wrong result.” *Pruitt v. State*, 834 N.E.2d 90, 104 (Ind. 2005), *cert. denied*, 126 S. Ct. 2936 (2006).

For a warrantless search to be reasonable under the Fourth Amendment and Article 1, 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, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (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 1, Section 11 of the 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), *trans. denied* (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. IC 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.

Officer Franklin was required by this statute to take the vehicle into his custody and was authorized to tow and impound the car. The impoundment was lawful.

Similarly, the search itself was conducted pursuant to standard police procedures. Indianapolis Police Department General Order No. 9 sets forth “guidelines for the towing or impoundment of vehicles . . . [w]ith no or improper certificate of registration or license plate.” *State’s Ex. 1* at 23. Under this procedure, “[w]henver an officer takes a vehicle into custody, an inventory search will be conducted prior to impoundment and a detailed listing of any property found in the vehicle will be made.” *State’s Ex. 1* at 26. Officer Franklin knew that the car would have to be impounded and knew that part of that procedure involved a search for valuables. Officer Franklin testified that he looked in the passenger compartment and in the trunk but did not see “any valuables to note.” *Tr.* at S-13. When asked what he would have done had he found valuables, Officer Franklin stated,

I would have written it down on my tow slip. I mean if I had saw (sic) you know stereo equipment or things like that or expensive gym shoes or whatever could have been in the vehicle [I would have l]eft them in the car, just written them on the property slip . . . pursuant to I.P.D. guidelines.

Id. at S-13 - S-14. An inventory search does not become less valid because the search turns up little or nothing of value.⁴

⁴ At the suppression hearing, the State asked Officer Franklin, “You indicated that you did not make any kind of detailed listing of anything found in the car, because you didn’t – you did not believe that anything you had found in the car was valuable,” to which Officer Franklin answered, “Correct.” *Tr.* at S-12. While we conclude that the evidence in the record before us supports the State’s contention that Officer Franklin engaged in a valid inventory search, our analysis would have been more straight-forward had Officer Franklin completed a *written* inventory report setting forth any items of value found in the car or a statement confirming that nothing of value was found in the car.

The United States Supreme Court has held, “reasonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment.” *Colorado v. Bertine*, 479 U.S. 367, 374, 107 S. Ct. 738, 742 (1987). Noting that the police regulations were reasonable under these circumstances and that Harris makes no claim that Officer Franklin acted in bad faith, we conclude that Officer Franklin’s search did not violate the Fourth Amendment. Furthermore, we agree with the trial court’s conclusion that Officer Franklin’s actions were not only reasonable under the Indiana Constitution, they were required. *Tr.* at S-25. Officer Franklin was required to search the Ford, find any valuable property, and document it. *Id.* at S-26; *State’s Ex. 1* at 26. He took the only piece of property he found valuable—the handgun—and documented it.

The handgun was discovered in a search that did not violate the State or Federal Constitutions. The handgun obtained during an inventory search of Harris’s car was properly admitted into evidence.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.