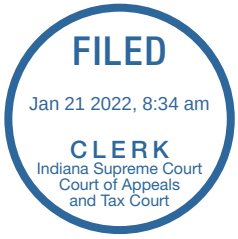
MEMORANDUM DECISION



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IN THE COURT OF APPEALS OF INDIANA

Justin A. Tyson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 21, 2022

Court of Appeals Case No. 21A-CR-983

Appeal from the Tippecanoe Superior Court

The Honorable Randy J. Williams, Judge

Trial Court Cause No. 79D01-1907-F3-28

Tavitas, Judge.

Case Summary

[1] Justin Tyson appeals his convictions for possession of a narcotic drug, a Level 5 felony; possession of methamphetamine, a Level 5 felony; possession of a controlled substance, a Level 6 felony; and carrying a handgun without a license, a Class A misdemeanor. Tyson argues that the trial court abused its discretion by admitting evidence found as a result of the impoundment and inventory search of his rental vehicle. Concluding that the vehicle's impoundment was proper and that the trial court properly admitted the evidence found during the inventory search, we affirm.

Issue

[2] Tyson raises one issue, which we restate as whether the trial court abused its discretion by admitting evidence discovered during an inventory search after Tyson's rental vehicle was impounded.

Facts

[3] On June 30, 2019, at approximately 2:00 a.m., an employee of a Speedway gas station near Lafayette called 911 to report that a man, later identified as Tyson, was parked at a gas pump with his vehicle running and that the man was "passed out." Tr. Vol. II p. 3. The employee was concerned because "those pumps are always busy" and because she was afraid Tyson would hit the gas pedal and "run through the doors or hit somebody." *Id.* at 4.

[4] When Deputy Austin Burris of the Tippecanoe County Sheriff's Department arrived, Tyson was asleep in the vehicle with the driver's door wide open. The

vehicle was parked "abnormally. It was parked further forward than it should have been parked. Sort of off set [sic] from the gas pumps." *Id.* at 62. Deputy Burris knocked on the vehicle and awakened Tyson. Tyson reported that he was driving a rental vehicle. Deputy Burris was concerned with Tyson's behavior, slurred speech, and glossy, red eyes. Tyson passed the standard field sobriety tests and a portable breath test. Tyson denied Deputy Burris's request to search the rental vehicle. At that point, Deputy Burris learned that Tyson's driver's license status was "suspended infraction." *Id.* at 20. Deputy Burris then requested a tow truck for Tyson's rental vehicle and performed an inventory search of the vehicle pursuant to the Tippecanoe County Sheriff's Department's policy, which provided:

> A motor vehicle shall be impounded when:
>
> 1. A vehicle is deemed an abandoned vehicle when left parked on or partially blocking the roadway and constituting a hazard, as a recovered stolen vehicle, as evidence pursuant to a criminal investigation, when probable cause exists to believe the vehicle is subject to forfeiture, and *when the driver is found to be in violation of driving while suspended/revoked, operating without driving privileges, driving while under the influence or driving while uninsured*.
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> 2. The owner or driver of the motor vehicle is arrested for a criminal act, including traffic-related offenses (non-infraction) which constitutes a Felony or Misdemeanor in the State of Indiana;
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> 3. The condition of the motor vehicle fails to meet the licensing requirements set forth in the Indiana Code or for operating said motor vehicle upon public roadways;

> 4. Impoundment is authorized by Indiana Code, or Tippecanoe County Ordinance; or
>
> 5. The motor vehicle is unsafe to be or cannot be driven from the scene of a motor vehicle collision, and the owner/driver is unable or unwilling to have the vehicle towed privately.

Ex. p. 12 (emphasis added). During the inventory search, Deputy Burris discovered heroin, methamphetamine, Triazolam pills, glass pipes, and eight guns.

[5] The State charged Tyson with dealing in a narcotic drug, a Level 3 felony; possession of a narcotic drug, a Level 5 felony; possession of methamphetamine, a Level 5 felony; possession of a controlled substance, a Level 6 felony; and carrying a handgun without a license, a Class A misdemeanor.

[6] In January 2020, Tyson filed a motion to suppress and argued that the inventory search violated his rights under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. Tyson argued that the vehicle was parked on private property, the property owner did not request removal of the vehicle, and Tyson should have been given the opportunity to have someone pick up the vehicle. After a hearing, the trial court denied Tyson's motion.

[7] At the bench trial, Tyson objected to the admission of the evidence discovered during the inventory search, and the trial court overruled Tyson's objections.

The State moved to incorporate the evidence and testimony heard in the suppression hearing into the bench trial, which the trial court granted. The trial court found Tyson not guilty of dealing in a narcotic drug but guilty of the remaining charges. Tyson was sentenced to an aggregate sentence of five years in the Department of Correction with one year suspended to probation. Tyson now appeals.

Analysis

[8] Tyson challenges the admission of evidence discovered during the inventory search of his rental vehicle after the vehicle was impounded. Tyson challenges only the impoundment, not the scope of the inventory search. Although impoundments may be authorized under statutory authority or law enforcement's discretionary community caretaking functions, only the discretionary community caretaking functions are applicable here. In this context, the State was required to demonstrate that: (1) the vehicle posed a threat of harm to the community or that the vehicle was imperiled; and (2) the impoundment complied with established departmental routines or regulations. Tyson does not challenge whether the impoundment complied with established departmental routines or regulations; rather, Tyson contends that his rental vehicle did not pose a threat of harm to the community and that it was not imperiled. For the following reasons, we disagree.

[9] Although Tyson filed a motion to suppress the evidence, that motion was denied, and Tyson objected to the admission of the evidence during his bench trial. In such a circumstance, "the appeal is best framed as challenging the

admission of evidence at trial." *Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013). The trial court has broad discretion to rule on the admissibility of evidence. *Thomas v. State*, 81 N.E.3d 621, 624 (Ind. 2017). "Rulings on the admissibility of evidence are reviewed for an abuse of discretion and ordinarily reversed when admission is clearly against the logic and effect of the facts and circumstances." *Id.* When, however, "a challenge to such a ruling is predicated on the constitutionality of the search or seizure of evidence, it raises a question of law that we review de novo." *Id.*

[10] Tyson argues that the admission of the evidence discovered during the impoundment and resulting inventory search violated his rights under the Fourth Amendment to the United States Constitution.[1] The Fourth Amendment—incorporated against the states through the Fourteenth Amendment—protects people against unreasonable searches and seizures. U.S. Const. amend. IV; *Combs v. State*, 168 N.E.3d 985, 991 (Ind. 2021), *petition for cert. filed*. Because the Fourth Amendment "generally requires warrants for searches and seizures, a warrantless search or seizure is per se unreasonable, and the State bears the burden to show that one of the well-delineated exceptions to the warrant requirement applies." *Combs*, 168 N.E.3d at 991 (internal quotations and citations omitted). "When police seize and then search

[1] Although Tyson refers to Article 1, Section 11 of the Indiana Constitution in his brief and made a separate argument in his motion to suppress, on appeal, he fails to present a state constitutional analysis of his claim separate from that of the Fourth Amendment. Accordingly, Tyson has waived his claim based upon the Indiana Constitution, and we consider only the federal claim. *See, e.g., Membres v. State*, 889 N.E.2d 265, 275 n.1 (Ind. 2008), *reh'g denied*.

a vehicle, 'both measures must be reasonable—that is, executed under a valid warrant or a recognized exception to the warrant requirement.'" *Id.* (quoting *Wilford v. State*, 50 N.E.3d 371, 374 (Ind. 2016)).

[11] "The inventory search is one such exception since it serves an administrative, not investigatory, purpose—because when police lawfully impound a vehicle, they must also perform an administrative inventory search to document the vehicle's contents . . . ." *Wilford*, 50 N.E.3d at 374. The underlying rationale for the inventory exception is three-fold: (1) protection of private property in police custody; (2) protection of police against claims of lost or stolen property; and (3) protection of police from possible danger. *Taylor v. State*, 842 N.E.2d 327, 330-31 (Ind. 2006).

[12] "First, the propriety of the impoundment must be established because the need for the inventory arises from the impoundment." *Fair v. State*, 627 N.E.2d 427, 431 (Ind. 1993). "Second, the scope of the inventory must be evaluated." *Id.* "Where either is clearly unreasonable, the search will not be upheld." *Id.* Tyson makes no argument regarding the scope of the inventory search; rather, Tyson's only arguments pertain to whether the impoundment of the vehicle was proper. Accordingly, we address only the propriety of the impoundment.

Was the Impoundment Reasonable?

[13] "Impoundment is reasonable if it is authorized *either* by statute *or* the police's discretionary community-caretaking function." *Wilford*, 50 N.E.3d at 375 (emphasis added). In this case, the State does not allege that the impoundment

of Tyson's vehicle was justified by statute. Under the facts here, we must determine whether the seizure was permissible under law enforcement's community caretaking function.

Was Discretionary Impoundment Permissible?

[14] Discretionary impoundment "is an exercise of the police community-caretaking function in order to protect the car and community from hazards." *Id.* "Community safety often requires police to impound vehicles because they are abandoned and obstruct traffic, create a nuisance, or invite thieves and vandals." *Id.* (citing *Fair*, 627 N.E.2d at 431-33). "Indeed, besides enforcing criminal laws, police 'aid those in distress, combat actual hazards, prevent potential hazards . . . and provide an infinite variety of services to preserve and protect community safety.'" *Id.* (quoting *United States v. Rodriguez-Morales*, 929 F.2d 780, 784-85 (1st Cir. 1991), *cert. denied*, 502 U.S. 1030, 112 S. Ct. 868 (1992)).

[15] Our Supreme Court has set forth a strict two-prong standard for proving that the decision to discretionarily impound a person's vehicle without a warrant was reasonable:

> (1) Consistent with objective standards of sound policing, an officer must believe the vehicle poses a threat of harm to the community or is itself imperiled; and
>
> (2) The officer's decision to impound adhered to established departmental routine or regulation.

Id. at 375-76.

[16] Tyson makes no argument that the officer's decision to impound his vehicle failed to adhere to the established departmental policy. Rather, Tyson contends that the impoundment was improper under the first prong of the standard because the vehicle did not pose a threat of harm to the community and the vehicle was not imperiled.

Did the Vehicle Pose a Threat of Harm or Was It Imperiled?

[17] According to Tyson, the vehicle did not pose a threat of harm and was not imperiled because the gas station did not request removal of the vehicle and, although Tyson's vehicle was blocking a pump, other pumps were available.[2] Our Supreme Court has addressed the impoundment of vehicles parked on private property in several cases. In *Fair*, our Supreme Court noted that the "needs of the community have been held to be implicated where the arrest of the driver left his car unattended on a public highway; where the ownership of the vehicle cannot be established; and where the vehicle was on private property and the owner of the property requested removal." *Fair*, 627 N.E.2d at 433 (internal citations omitted). In *Fair*, the Court considered the impoundment of

[2] In his summary of his argument, Tyson states: "Tyson could and should have been afforded the opportunity to contact a nearby licensed friend or relative to retrieve his vehicle." Appellant's Br. p. 7. Tyson makes no further mention of this argument in his brief. Accordingly, the contention is waived. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring cogent reasoning supported by citations to authorities). We also note the State's argument that, because the vehicle was a rental and it was 2 a.m., the officer could not have reasonably determined whether someone was an authorized driver for purposes of retrieving the vehicle.

an "undamaged vehicle neatly parked in a relatively secure private parking facility." *Id.*

[18] Our Supreme Court identified two primary factors to consider "in determining whether the conclusion that vehicles such as Fair's constitute a hazard is reasonable in light of objective standards of sound policing." *Id.* at 434.

> The first is the degree to which the property upon which the vehicle is situated was under the control of the defendant. Clearly, for example, there is a difference between a vehicle left in the driveway of a defendant's parent's home and one left in a small lot intended for unloading air cargo. Second, the length of time the impounding officer perceived the car would be unattended is important. It helps assess the reasonableness of the officer's conclusion that the vehicle, if left alone, would be exposed to an unacceptable risk of theft or vandalism.

Id. (footnote and internal citations omitted).

[19] In support of his argument, Tyson cites our Supreme Court's decision in *Taylor*, 842 N.E.2d 327, which also considered the impoundment of a vehicle on private property. In *Taylor*, the vehicle at issue was parked diagonally against a curb at an apartment complex. Although vehicles typically parked perpendicular to the curb, the parking lines were faded. The defendant did not reside at the apartment complex, but the vehicle was parked in "a permissible parking area for non-residents." *Taylor*, 842 N.E.2d at 332. The record was silent on whether the defendant was a guest of a resident and whether the apartment complex's owner would seek to have a guest's vehicle towed from the location. Ultimately, our Supreme Court concluded that the impoundment

of the defendant's vehicle was not warranted as a part of routine police administrative caretaking functions. Thus, the Court held that "the State has failed in its burden of demonstrating that the officers' belief that Taylor's vehicle posed some threat or harm to the community or was itself imperiled was consistent with objective standards of sound policing." *Id.* at 333.

[20] We find *Berry v. State*, 967 N.E.2d 87 (Ind. Ct. App. 2012), more comparable here. In *Berry*, the defendant's driver's license was suspended, and his vehicle was parked in a car wash's self-service vacuum bay. This Court's opinion does not specify that the car wash facility requested removal of the vehicle. This Court held that the impoundment was proper because: "Parked in the car wash vacuum bays, Berry's vehicle was on private, commercial property and prevented customers from using the vacuum bays. Thus, Berry's vehicle, left as it was in a vacuum bay that customers could have used, arguably represented a hazard or threat to a community interest." *Berry*, 967 N.E.2d at 91.

[21] Here, Tyson's rental vehicle was parked blocking the middle gas station pump at a busy gas station. The employee testified that, if the officers did not tow the vehicle, she would have contacted her employer to determine whether her employer wanted it towed. Tyson had no control over the private, commercial property where the vehicle was located, and the vehicle was blocking a gas pump, preventing the other customers from using the pump and impeding the flow of traffic around Tyson's vehicle. The fact that the vehicle was a rental

and was being driven by a driver with a suspended license further complicated the situation.[3]

[22] Under these circumstances, as in *Berry*, we conclude that the vehicle posed a threat of harm to the community and to the vehicle itself and impoundment was proper. Accordingly, Tyson's Fourth Amendment rights were not violated by the impoundment of his rental vehicle, and the trial court properly admitted the evidence found during the inventory search.

Conclusion

[23] The trial court properly admitted evidence found during the inventory search of Tyson's rental vehicle. Accordingly, we affirm.

[24] Affirmed.

Bradford, C.J., and Crone, J., concur.

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[3] Tyson also contends that his suspended infraction driving status would not have prevented him from moving his vehicle from the gas pump to a regular parking spot at the gas station because he would have been driving on private property, not a highway. In support of this assertion, Tyson relies upon Indiana Code Section 9-24-19-1, which provides: "Except as provided in sections 2 and 3 of this chapter, an individual who operates a motor vehicle *upon a highway* while the individual's driving privileges, driver's license, or permit is suspended or revoked commits a Class A infraction." (emphasis added). In *Taylor*, our Supreme Court determined that driving with a suspended license is also prohibited in a parking lot. The defendant in *Taylor* also had a suspended infraction driving status and was parked in an apartment complex parking lot, and our Supreme Court noted: "It is certainly the case that Taylor could not be permitted to move his car." *Taylor*, 842 N.E.2d at 333. Accordingly, we do not find Tyson's argument to be persuasive.