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OPINION OF THE MINNESOTA COURT OF APPEALS

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0733

State of Minnesota,
Respondent,

vs.

Kristopher Lee Roybal,
Appellant.

Filed March 2, 2020
Affirmed
Larkin, Judge

Cass County District Court
File No. 11-CR-18-1104

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Benjamin T. Lindstrom, Cass County Attorney, Walker, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Florey, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

On appeal from his conviction of second-degree controlled-substance crime, appellant challenges the district court's denial of his motion to suppress evidence found during an inventory search of his vehicle, arguing that the search was unconstitutional. We affirm.

FACTS

Respondent State of Minnesota charged appellant Kristopher Lee Roybal with first-, third-, and fifth-degree controlled-substance crimes and driving after cancellation after the police found controlled substances in his vehicle following a traffic stop. Roybal moved to suppress the drug evidence, arguing that it was obtained during an unlawful search and seizure. Deputy Ryan Huston of the Cass County Sheriff's Office testified at a hearing on Roybal's motion, and the district court received the following evidence: a squad video, a body-camera video, the Cass County Sheriff's Office's towing policy, and an inventory receipt regarding Roybal's vehicle. The district court found the relevant facts to be as follows.

On June 13, 2018, at approximately 1:25 a.m., Deputy Huston was parked at a casino in Cass County when he observed Roybal driving a vehicle with an unilluminated rear license plate. Roybal pulled into a nearby neighborhood and remained there for approximately five minutes. After leaving the neighborhood, Roybal drove on State Highway 200/371. Deputy Huston followed Roybal's vehicle and observed it traveling at speeds ranging from 38 miles per hour to 53 miles per hour in a 55 mile-per-hour zone.

Deputy Huston activated his squad car's emergency lights, and Roybal pulled onto the shoulder of Highway 200/371 near guardrails that separated the highway from Shingobee Bay. Deputy Huston approached the vehicle and told Roybal that he had stopped him based on his driving conduct and because his rear license plate light was not working. Roybal asked Deputy Huston if he could have someone from Breezy Point come get his vehicle. Deputy Huston responded, "[L]et's just see what we are going to do first." Deputy Huston asked Roybal where he was going and Roybal answered that he was going to Cass Lake.

Deputy Huston learned that Roybal's driver's license had been cancelled and that the two passengers in his vehicle had outstanding warrants for their arrests. Roybal and his passengers were placed under arrest. Deputy Huston asked Roybal if he could arrange for someone to retrieve his vehicle. Roybal responded that someone from Cass Lake could get the vehicle. Deputy Huston asked Roybal how long it would take for that person to arrive, and Roybal stated "probably about an hour." Deputy Huston said that he could not let the vehicle sit there for an hour. Deputy Huston testified that because Roybal's vehicle was a "traffic hazard," he decided to tow the vehicle.

Roybal asked Deputy Huston if someone from Breezy Point could pick up the vehicle. At the same time, Deputy Huston asked Roybal whether a towing company would work for him. Roybal and Deputy Huston talked over each other regarding these points. Deputy Huston testified that he did not recall Roybal asking him about the Breezy Point option. In response to Deputy Huston's inquiry regarding the towing company, Roybal stated, "[T]hat's fine." The police impounded Roybal's vehicle, performed an inventory

search, and discovered controlled substances. The police prepared a towing report that listed property in the vehicle.

In support of his motion to suppress, Roybal argued that Deputy Huston "did not have a legal basis to stop [his] vehicle," that "the search of [his] vehicle was not a proper inventory search," and that "the vehicle was improperly impounded." The district court denied Roybal's motion to suppress, reasoning that "the license plate violation gave Deputy Huston a valid ground for an investigative stop" and that because "Deputy Huston had substantial evidence justifying his conclusion that [Roybal's] vehicle constituted a traffic hazard," it was reasonable for police to impound his vehicle and perform an inventory search. Roybal moved for reconsideration of the district court's suppression ruling. At a hearing on that motion, Roybal waived his right to counsel and proceeded pro se. The district court denied Roybal's motion to reconsider.

The state amended the complaint to add one count of second-degree controlled-substance crime. Utilizing the procedure set forth in Minn. R. Crim. P. 26.01, subd. 4, Roybal stipulated to the prosecution's case to obtain review of the district court's pretrial ruling on his motion to suppress. In exchange, the state agreed to dismiss all charges except second-degree controlled-substance crime and to recommend a term of imprisonment of 95 months if the district court found Roybal guilty. Roybal waived his trial rights on the record. He then asked the district court whether issues other than the inventory search would be reviewable on appeal, such as the basis for the stop and "some subpoenas and a motion for some additional discovery" that he had submitted. The district court and Roybal discussed Roybal's understanding regarding the issues that would be preserved for appeal

under Minn. R. Crim. P. 26.01, subd. 4. Their discussion culminated in the following exchange:

> DISTRICT COURT: [A]t this point . . . you need to make a clear acknowledgement that that issue that [the prosecutor] has outlined, basically which is the inventory search of the vehicle that has previously been found to be okay . . . is the dispositive issue. That's the dispositive issue of this case.
>
> If you win on appeal on that issue, basically the drugs get suppressed and the case is dismissed. . . . [B]ut if you are found guilty and you appeal that issue, then the only issue on appeal is . . . that issue of the inventory search . . . . Do you understand that?
> ROYBAL: I do.
> DISTRICT COURT: Okay. And you're acknowledging that that is the dispositive issue of this case?
> ROYBAL: I am.

The district court found Roybal guilty of second-degree controlled-substance crime, entered judgment of conviction, and sentenced him to serve 95 months in prison. Roybal appeals.

DECISION

I.

Roybal challenges the district court's denial of his motion to suppress, asserting that "impoundment of [his] vehicle was unreasonable, unnecessary, and a pretext for conducting a search for drugs."

When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). In doing so, this court defers to the district court's credibility determinations. *State v. Miller*, 659 N.W.2d 275, 279

(Minn. App. 2003), *review denied* (Minn. July 15, 2003). A finding is "clearly erroneous if, on the entire evidence, [an appellate court is] left with the definite and firm conviction that a mistake occurred." *State v. Andersen*, 784 N.W.2d 320, 334 (Minn. 2010). Constitutional determinations regarding the basis for a search are reviewed de novo. *State v. Anderson*, 733 N.W.2d 128, 136 (Minn. 2007).

The United States and Minnesota Constitutions guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects" against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "The touchstone of the Fourth Amendment is reasonableness." *State v. Johnson*, 813 N.W.2d 1, 5 (Minn. 2012) (quotation omitted). Generally, warrantless searches and seizures are per se unreasonable. *State v. Horst*, 880 N.W.2d 24, 33 (Minn. 2016). However, inventory searches are "a well-defined exception to the warrant requirement." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quoting *Colorado v. Bertine*, 479 U.S. 367, 371, 107 S. Ct. 738, 741 (1987)).

"[A]n inventory search conducted pursuant to a standard police procedure prior to lawfully impounding an automobile is not unconstitutional under the Fourth Amendment." *Id.* (quotation omitted). "Under the inventory exception, police need neither probable cause nor a warrant to search a vehicle." *State v. Holmes*, 569 N.W.2d 181, 186 (Minn. 1997). Instead, inventory searches are considered "reasonable because police are performing administrative or caretaking functions." *Id.* "An impoundment is reasonable if the state's interest in impounding outweighs the individual's Fourth Amendment right to be free of unreasonable searches and seizures." *State v. Rohde*, 852 N.W.2d 260, 264 (Minn. 2014) (quotation omitted).

"[T]he threshold inquiry when determining the reasonableness of an inventory search is whether the impoundment of the vehicle was proper." *Gauster*, 752 N.W.2d at 502. The police, in the interests of public safety, "have the authority to 'remove from the streets vehicles impeding traffic or threatening public safety and convenience.'" *Rohde*, 852 N.W.2d at 264 (quoting *South Dakota v. Opperman*, 428 U.S. 364, 369, 96 S. Ct. 3092, 3097 (1976)). The police may also impound a vehicle to protect "the arrested individual's property from theft and the police from claims arising therefrom." *State v. Goodrich*, 256 N.W.2d 506, 511 (Minn. 1977).

Basis for Impoundment

Roybal contends that "[t]owing [his] vehicle was unreasonable because it was not a 'traffic hazard'" and that impoundment was "unnecessary because [he] was able to make alternative arrangements for moving it."

The district court determined that the impoundment was proper because Roybal's vehicle was a traffic hazard. Specifically, the district court found that the vehicle was "parked along the side of the road with guardrails on both sides"; that the vehicle was "parked on the shoulder of an earthen bridge, during the middle of the night, on a busy roadway where two major Northern Minnesota Highways, Highways 371 and 200, join together"; and the vehicle was "about two feet away from the traffic lane, so close that as vehicles pass by the noise from the vehicles drowns out the parties' speech."

Roybal argues that the district court erred because "Deputy Huston's squad video shows that there were no problems with passing vehicles and that traffic was flowing normally." Given the unchallenged findings that Roybal's vehicle was parked in the

middle of the night on the shoulder of a bridge near a location where two highways merge, the district court did not clearly err by finding that Roybal's vehicle posed a traffic hazard.

Moreover, caselaw supports the district court's determination that impoundment was proper. For example, caselaw indicates that impoundment is proper when police stop a vehicle late at night, arrest the driver and passengers of the vehicle, and reasonable alternative arrangements for disposition of the vehicle are not available. *See City of St. Paul v. Myles*, 218 N.W.2d 697, 698-99 (Minn. 1974) (holding that impoundment was proper where stop occurred at approximately 1:35 a.m., driver and passengers were placed under arrest, and vehicle owner was not present).

> The police will generally be able to justify an inventory [search] when it becomes essential for them to take custody of and responsibility for a vehicle due to the incapacity or absence of the owner, driver, or any responsible passenger. In the case of an arrest, it must be shown that the arrest or arrests themselves were proper.

Id. at 701.

Conversely, caselaw indicates that impoundment is improper when a vehicle is stopped in the middle of the day, the vehicle is parked on the shoulder of a rural road or in a residential street, the driver is not arrested, and reasonable alternative arrangements for disposition of the vehicle are available. *See, e.g.*, *Rohde*, 852 N.W.2d at 261-62, 265-66 (holding that impoundment was improper where vehicle was legally parked in a residential street in the middle of the afternoon and driver was not arrested); *Gauster*, 752 N.W.2d at 498, 504, 507 (holding that impoundment was improper where vehicle was on shoulder of a rural road in the middle of the afternoon, driver was not arrested, and driver "had

requested permission to make reasonable alternative arrangements for the disposition of the vehicle"); *Goodrich*, 256 N.W.2d at 507-08 (holding that impoundment was improper where defendant's brother and mother arrived on scene and defendant's brother asked if he could take the vehicle).

Those are not the circumstances here. Deputy Huston stopped Roybal at approximately 1:30 a.m. on a bridge near the intersection of two highways. The police arrested Roybal and his passengers, and there was no one present at the scene who could move the vehicle on Roybal's behalf. Under *Myles*, impoundment was proper. *See* 218 N.W.2d at 698-99.

Roybal argues that "it was unnecessary for Deputy Huston to tow [his vehicle] because [he] had already contacted a friend in Cass Lake, who could pick it up" and that he "had a second alternative person at Breezy Point Circle, who was only a couple miles away." The police may be obligated to "permit a driver to make *reasonable* alternative arrangements when the driver is able to do so and specifically makes a request to do so." *Gauster*, 752 N.W.2d at 508 (emphasis added). Given the circumstances that rendered Roybal's vehicle a traffic hazard and the timing, we cannot say that Deputy Huston's rejection of the Cass Lake alternative was unreasonable. Moreover, it is unclear whether Deputy Huston heard Roybal's request regarding the Breezy Point alternative. And as the district court pointed out, Roybal did not "further raise the issue of having someone from Breezy Point come get the vehicle," "never state[d] who would be coming from Breezy Point and under what time frame," and ultimately agreed to have his car towed.

On this record, the impoundment of Roybal's vehicle was proper.

Pretext

Roybal contends that "[i]mpoundment of [his] vehicle was unlawful because [Deputy Huston's] sole motivation was to investigate potential criminal activity."

If "a police officer's sole motivation in conducting an inventory search of an automobile is to discover evidence of a crime," that search is invalid. *Holmes*, 569 N.W.2d at 182. In determining whether the discovery of evidence was an officer's sole motivation in conducting an inventory search, courts analyze whether "the search would not have occurred but for the investigatory motive." *State v. Ture*, 632 N.W.2d 621, 629 (Minn. 2001). "[A]n inventory search need only be conducted *in part* for the purpose of obtaining an inventory." *Id.*

We review the district court's determination regarding the reasonableness of the inventory search in this case de novo. *See Anderson*, 733 N.W.2d at 136. We nonetheless note that the district court misstated the law when reasoning that "courts do not look into whether [an] officer had an improper or ulterior motive" in determining whether an inventory search was reasonable. As explained above, Deputy Huston's motive is relevant in determining whether the inventory search was reasonable because such a search is invalid if an officer's *sole* motivation was to discover evidence of a crime. *Holmes*, 569 N.W.2d at 182.

Roybal argues that the impoundment of his vehicle was "a pretextual means to search [his] vehicle for evidence of a crime that Huston was certain [he] was committing," namely, the distribution or possession of narcotics. Roybal notes that Deputy Huston testified that he observed Roybal's vehicle near a casino that had a "narcotics problem"

and that Deputy Huston questioned Roybal "about what he had been doing and who he had been visiting at Breezy Point Circle." Roybal also notes that Deputy Huston testified that he was concerned after he found a large amount of cash on Roybal because "it kind of went with the whole persona . . . of narcotics, that time of night, that much in cash, short stops." Lastly, Roybal points out that police checked the "arrest" box in the tow report as the reason for towing Roybal's vehicle, rather than the "hazard" box, and that officers began the inventory search in his vehicle's trunk.

Roybal's pretext argument is unavailing because even if the record suggests that Deputy Huston's motive was partly investigatory, that was not his sole motive. The record establishes that Deputy Huston was also motivated by a desire to move Roybal's vehicle because it was a traffic hazard.

Roybal also argues that Deputy Huston's "claim six weeks later that the car needed to be towed because it was a traffic hazard was a fabrication, as his body cam, dash cam, police report, and tow report all show otherwise." Roybal's argument goes to Deputy Huston's credibility. The district court found that "Deputy Huston had substantial evidence justifying his conclusion that [Roybal's] vehicle constituted a traffic hazard," suggesting that the district court credited Deputy Huston's testimony that he impounded Roybal's vehicle because he thought it was a traffic hazard. This court defers to that credibility determination, *see Miller*, 659 N.W.2d at 279, which is supported by record evidence showing that Roybal's vehicle was a traffic hazard.

In sum, because Deputy Huston's impoundment of Roybal's vehicle was proper and he was not motivated solely by a desire to discover evidence of a crime, the inventory search of Roybal's vehicle was reasonable.

II.

Roybal makes several arguments in a supplemental pro se brief. For example, he argues that the traffic stop was invalid; that the state violated *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963); that he did not validly consent to the search of his vehicle; that the police violated Minn. Stat. § 168B.035, subd. 2(a) (2018), by not adequately describing their reasons for towing the vehicle on the towing report; that the police failed to include every item in Roybal's vehicle on the inventory sheet; and that this court should "adopt a new rule" regarding inventory searches.

Roybal stipulated to the prosecution's evidence in a trial to the district court under Minn. R. Crim. P. 26.01, subd. 4, to obtain appellate review of the district court's dispositive pretrial ruling. Appellate review under this rule is "of the pretrial issue, but not of the defendant's guilt, or of other issues that could arise at a contested trial." *See* Minn. R. Crim. P. 26.01, subd. 4(f) (providing that the defendant must acknowledge the limited scope of appellate review of a court trial under Minn. R. Crim. P. 26.01, subd. 4). The parties must "agree that the court's ruling on a *specified* pretrial issue is dispositive of the case, or that the ruling makes a contested trial unnecessary." *Id.*, subd. 4(a) (emphasis added).

When Roybal agreed to proceed under Minn. R. Crim. P. 26.01, subd. 4, he acknowledged that the dispositive pretrial issue that would be preserved for appeal was the

district court's ruling on the validity of the inventory search. Given the procedural posture of this case, Roybal's arguments that the traffic stop was invalid and that the state violated *Brady* by failing to make a discovery disclosure are beyond the agreed-upon scope of this appeal. The remainder of Roybal's pro se arguments either repeat arguments in his primary brief or are raised for the first time on appeal. We therefore do not address them. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that appellate courts "generally will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure").

Affirmed.

C

MINNESOTA SUPREME COURT DENYING REVIEW

STATE OF MINNESOTA

IN SUPREME COURT

A19-0733

State of Minnesota,

Respondent,

vs.

Kristopher Lee Roybal,

Petitioner.

ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Kristopher Lee Roybal for further review be, and the same is, denied.

Dated: May 27, 2020

BY THE COURT:

Lorie S. Gildea
Chief Justice