

Circuit Court for Prince George's County
Case No: C-16-CR-23-002903

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 366

September Term, 2024

MARCUS SMALLWOOD

v.

STATE OF MARYLAND

Ripken,
Kehoe, S.,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: April 9, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

After pleading not guilty by an agreed statement of facts, the Circuit Court for Prince George’s County found appellant Marcus Smallwood guilty on the charge of transporting a loaded handgun in a vehicle and sentenced him to three years’ incarceration with all but 208 days suspended. He now appeals the circuit court’s denial of his motion to suppress, arguing that the police did not have reasonable suspicion to stop him, and the police unconstitutionally searched the vehicle under the guise of an inventory search. As explained below, we hold that the circuit court erred in denying his motion to suppress, and shall reverse the judgment of the circuit court.

At the suppression hearing, the State called Prince George’s County Police Corporal Christopher Carvalho, who testified that, on September 20, 2023, he was canvassing the area of an apartment complex in a high crime area in reference to an armed robbery earlier that evening when he observed a white vehicle, with the engine running, parked between two parking spaces in a dimly lit area. Corporal Carvalho and Sergeant Kory Maxwell approached the driver of the white vehicle, later identified as appellant, and asked for his driver’s license. Appellant was unable to produce his driver’s license, and Corporal Carvalho observed that appellant was visibly nervous and shaking. The corporal asked appellant to exit the vehicle, and appellant complied. Appellant told the officers that the vehicle belonged to his girlfriend, and that he had been visiting his son’s home.

According to Corporal Carvalho, appellant “would not walk away from the driver side door jam[,]” which led the corporal to believe “[t]hat he was either concealing something or attempting to keep us from noticing what was in the vehicle at that time.” After appellant showed the officers a photo of his ID on his phone, further investigation

revealed that appellant’s driver’s license was suspended. At that point, Corporal Carvalho decided to request a tow truck to impound the vehicle because “[t]he vehicle wasn’t his, and he had no license[.]” Before the tow truck arrived, Sergeant Maxwell conducted an inventory search of the vehicle, and discovered a firearm located between the driver seat and center console.

The suppression court took the matter under advisement. In an order dated March 3, 2024, the court denied the motion to suppress. On appeal, appellant argues that the police searching the vehicle under the guise of an inventory search was unconstitutional because the police did not have reasonable suspicion to stop him.

The State agrees that the trial court erred in denying appellant’s motion to suppress. The State further asserts that even if appellant was lawfully stopped, the inventory search was illegal because the vehicle was not lawfully in police custody at the time of the search. We agree that the inventory search was unconstitutional, and therefore we need not address whether police had reasonable suspicion to stop appellant.

A valid inventory search is a “well-defined exception to the warrant requirement [of the Fourth Amendment].” *Illinois v. Lafayette*, 462 U.S. 640, 643 (1983). *See also South Dakota v. Opperman*, 428 U.S. 364, 367 (1976); *Briscoe v. State*, 422 Md. 384, 397 (2011). It is part of the community caretaking function of police officers that is referred to by the Supreme Court of Maryland as the “automobile impoundment/inventory doctrine[.]” *Wilson v. State*, 409 Md. 415, 431 (2009). The inventory search exception is premised on “a duty to the owner of the car as well as a way to protect the police from dangerous items and from claims for damaged or lost property.” *Id.* at 430 n.5.

In assessing the validity of an inventory search, the key question is whether the impoundment of the vehicle was lawful. Inventory searches are constitutional only when a vehicle is “lawfully in police custody” and the search is “carried out pursuant to a standardized police policy.” *State v. Paynter*, 234 Md. App. 252, 269, 277 (2017); *see also White v. State*, 248 Md. App. 67, 111 (2020) (“The purpose of the inventory search of an impounded automobile, of course, is not to recover evidence of a crime, but only to list any items of value in the car and to serve a copy of said inventory list on the owner or rightful possessor of the vehicle.”). Accordingly, “the State must ensure that the record of the suppression hearing reflects both that the vehicle was in lawful police custody at the time of the search *and* that the search was conducted in accordance with a sufficiently standardized departmental policy or routine.” *Briscoe*, 422 Md. at 397 (emphasis in original) (citing *Florida v. Wells*, 495 U.S. 1, 4 (1990)). An inventory search must not be a ruse for rummaging for contraband. *Whren v. United States*, 517 U.S. 806, 811 (1996).

At the suppression hearing, the State argued that the towing and impoundment of the vehicle was lawful pursuant to Subtitle 26 of the Prince George’s County Code of Ordinances, which provides that a vehicle may be impounded without prior notice.¹ As the State points out in its brief, however, the regulations cited by the prosecutor at the

¹ Section 26-166, the specific ordinance cited by the prosecutor, is available at https://library.municode.com/md/prince_george's_county/codes/code_of_ordinances?nodeId=PTIITI17PULOLAPRGECOMA_SUBTITLE_26VETR_DIV18IM_S26-166IMWIPRNO.

suppression hearing do not apply in this case.² Specifically, Section 26-166(a)(8) of the Prince George’s County Code of Ordinances³ provides that a vehicle may only be impounded from private property without prior notice when the vehicle is parked in violation of Section 26-142.01.⁴ Section 26-142.01 prohibits persons from parking on private property which has been posted against parking without consent of the property owner and authorizes the property owner to arrange for the towing of unauthorized vehicles from the property.

In this case, there was no evidence at the suppression hearing that the vehicle was parked without the consent of the parking lot owner or that the owner had requested that the vehicle be towed from the property. Rather, the evidence showed that Corporal Carvalho made the decision to have the vehicle towed because “[appellant] had no license[.]” Under the facts presented here, the State failed to establish that the vehicle was

² The parties point out that appellant’s parking of the vehicle “between two parking spaces” did not violate the Transportation Article of the Maryland Code. Though the State asserts in its brief that parking of the vehicle “[n]ot wholly within a designated parking space” may have violated Section 26-127.04(c)(12) of the Prince George’s County Code, we note that Sections 26-127.04(f)-(g) provide that the penalties for violations of that ordinance shall be a fine, not impoundment. The State acknowledges that it did argue Section 26-127.04(c)(12) as a basis for impoundment at the suppression hearing.

³ Section 26-166(a)(8) is available at https://library.municode.com/md/prince_george's_county/codes/code_of_ordinances?nodeId=PTIITI17PULOLAPRGECOMA_SUBTITLE_26VETR_DIV18IM.

⁴ Section 26-142.01 is available at https://library.municode.com/md/prince_george's_county/codes/code_of_ordinances?nodeId=PTIITI17PULOLAPRGECOMA_SUBTITLE_26VETR_DIV10TOIMMOVEPRPR.

properly impounded pursuant to Section 26-166(a)(8) of the Prince George’s County Code of Ordinances.

The State also argued at the suppression hearing that the vehicle was lawfully impounded under Section 26-166(a)(6) of the Prince George’s County Code of Ordinances, which provides that a vehicle may be impounded “[w]hen the operator of the vehicle has been taken into custody and impoundment of the vehicle is reasonably necessary to provide for the safekeeping of the vehicle[.]”⁵ As the State concedes, however, even assuming *arguendo* that appellant was in police custody for driving on a suspended license, there was no evidence that it was “reasonably necessary” to impound the vehicle for “safekeeping.” See *Manalansan v. State*, 45 Md. App. 667, 672 (1980) (invalidating inventory search where “there was no showing of why . . . one of the officers could not have moved the automobile, within a few feet and within a few seconds, into a parking space, locked it and left it” and “[t]he necessity for impounding the car was not remotely demonstrated”).

The fact that appellant was not permitted to operate the vehicle because his license was suspended does not make the impoundment of the vehicle “reasonably necessary” for “safekeeping.” The vehicle was located in a private parking lot of an apartment complex, and the State presented no evidence that the vehicle was at risk of damage or theft, or that it posed a potential hazard. Corporal Carvalho obtained the name of the owner of the

⁵ Section 26-166(a)(6) is available at https://library.municode.com/md/prince_george's_county/codes/code_of_ordinances?nodeId=PTIITI17PULOLAPRGECOMA_SUBTITLE_26VETR_DIV18IM.

vehicle from dispatch, but he made no effort to contact the owner before impounding the vehicle.

Because the State failed to demonstrate a valid, lawful basis for the immediate impoundment of the vehicle from private property, we need not address whether impoundment of the vehicle was “carried out pursuant to a standardized police policy.” *See Paynter*, 234 Md. App. at 277. The impoundment and the resulting inventory search of the vehicle were unlawful, and the evidence of the handgun seized from the vehicle should have been suppressed.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
REVERSED. COSTS TO BE PAID BY
PRINCE GEORGE’S COUNTY.**