IN THE COURT OF APPEALS OF IOWA

No. 6-574 / 95-831

FILED
DEC 20 1996
CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

DANIEL PATRICK DEAN,
Appellant.

Appeal from the Iowa District Court for Buchanan County, James C. Bauch, James L. Beeghly, and William G. Klotzbach, Judges.

Defendant appeals his conviction for transportation and control of a firearm by a felon in violation of Iowa Code section 724.26 (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Ahmet S. Gonlubol, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Susan M. Crawford, Assistant Attorney General, Allan W. Vanderhart, County Attorney, and Andrea Dryer, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Streit and Vogel, JJ.

VOGEL, J.

Defendant was convicted of transportation and control of a firearm by a felon in violation of Iowa Code section 724.26 (1993). He argues the trial court erred in overruling his motion to suppress as the inventory search of his motorcycle saddlebags did not occur for seventeen hours after the impoundment of the cycle. Our review of this constitutional issue is de novo. *State v. Howard*, 509 N.W.2d 764, 767 (Iowa 1993).

Dean was in an accident while driving his motorcycle in the early hours on October 23, 1993. There were others involved in the accident who are not critical to this discussion. Dean was transported to a hospital while Deputy Sheriff Jeffrey Coleman investigated the accident. Coleman called J & D Body Shop to tow and store the motorcycle. J & D Body Shop is a towing and impounding business the Buchanan County Sheriff's Department regularly used and trusted.

Coleman's shift ended at 3:30 a.m., but time had not permitted him to inventory all the vehicles involved in the accident, including Dean's motorcycle and saddlebags, before his shift ended. At 3:20 a.m., Coleman needed to decide whether to request to continue working, into overtime pay status, or go off duty at his usual time and go to J & D Body Shop the following day to do the inventory search. For Coleman to be able to work overtime, he needed permission from his boss, the sheriff. Coleman testified that he did not think the situation warranted waking the sheriff in the middle of the night for such a request. He also testified he did not feel another

officer should do the inventory as this was his case and his responsibility. Furthermore, it was Coleman's testimony that J & D Body Shop had a secure facility. A locked building in which to keep impounded vehicles was surrounded by an eight-foot-high fence with a motion light and guard dog. It was the department's policy to use J & D Body Shop's service until an inventory search could be conducted.

Later that day, Coleman's shift began at 7:00 p.m. About 8:30 p.m., after further investigation at the accident site, he went to J & D Body Shop and inventoried the motorcycle and the saddlebags. Coleman found a .25 caliber handgun in one of the saddlebags.

For a valid warrantless search, there must be an exception to the fourth amendment. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576, 585 (1967). Inventory searches fall within such an exception. *Colorado v. Bertine*, 479 U.S. 367, 371, 107 S. Ct. 738, 741, 93 L. Ed. 2d 739, 745 (1987); *South Dakota v. Opperman*, 428 U.S. 364, 367-76, 96 S. Ct. 3092, 3096-3100, 49 L. Ed. 2d 1000, 1004-09 (1976). The validity of an inventory search will not be upheld if the search was a guise for a warrantless search. *Florida v. Wells*, 495 U.S. 1, 4, 110 S. Ct. 1632, 1635, 109 L. Ed. 2d 1, 6 (1990); *State v. Huisman*, 544 N.W.2d 433, 439 (Iowa 1996); *see Bertine*, 479 U.S. at 371-74, 107 S. Ct. at 741-42, 93 L. Ed. 2d at 745-47; *Opperman*, 428 U.S. at 372-76, 96 S. Ct. at 3099-3101, 96 L. Ed. 2d at 1007-09; *State v. Jackson*, 542 N.W.2d 842, 846 (Iowa 1996). The function of an inventory search is: (1) the protection of the owner's property while in police custody; (2) to

insure against claims of lost, stolen, or vandalized property; and (3) to guard the officers from potential dangers. *Bertine*, 479 U.S. 372, 107 S. Ct. at 741, 93 L. Ed. 2d at 745-46.

Defendant is not challenging the justification for impounding nor the procedure for the inventory search other than the time lapse before the search was conducted. Hence, no "inventory policy" of the sheriff's department, other than timing, is in issue. To that end, Deputy Coleman testified the departmental policy dictated vehicles were to be inventoried as soon as possible as long as it was reasonable to be able to inventory them.

Dean argues that *Boyd* and *Rabadi* control. However, the critical factor in *Boyd* and *Rabadi* was the inventory search was conducted as part of a later criminal investigation and not simply as an inventory of property. In *Boyd* the officers inventoried a car four days after the defendant was arrested and his car impounded. This criminal investigation was conducted pursuant to the request of the detective bureau. *Ex parte Boyd*, 542 So.2d 1276 (Ala.), *cert. denied*, 493 U.S. 883, 110 S. Ct. 219, 107 L. Ed. 2d 172 (1989). Thus, the officers did not treat the inventory as a routine caretaking procedure. In *Rabadi*, the defendant's car was impounded after he was arrested for an attempted murder. Three days later the Delaware County Police Department directed a Chicago detective to search the car. *Rabadi v. State*, 541 N.E.2d 271, 274-75 (Ind. 1989). Similarly, this court held that the search was not merely an inventory.

Although both cases the defendant cites as controlling authority involve delays in conducting inventory searches, those delays were due to the officers' investigatory motives. The delays did not stem from any routine caretaking procedure nor were they attributable to the time constraints of an officer's work schedule. Furthermore, there need not be an absolute or mechanical way to conduct an inventory search provided that the police discretion (1) is exercised according to standard criteria or established routine, and (2) is based on something other than suspicion of evidence of criminal activity. *Florida v. Wells*, 495 U.S. 1, 3-4, 110 S. Ct. 1632, 1634-35, 109 L.Ed.2d 1, 6 (1990). Nothing in the record before us indicates Deputy Coleman's delay in conducting the inventory search was either contrary to the department's policy or for any other purpose than as a caretaking function. Deputy Coleman's discretion was exercised as consonant with the sheriff's department's standardized criteria and was based on something other than suspicion of a criminal activity. *Bertine*, 479 U.S. at 375-76, 107 S. Ct. at 743, 93 L.Ed.2d at 748. Thus, the inventory search was not a guise for a warrantless search as part of a criminal investigation. *See State v. Kuster*, 353 N.W.2d 428, 431 (Iowa 1984).

We affirm the district court in overruling the motion to suppress.

AFFIRMED.