IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACOB AARON WOOD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85047-COA

ORDER AFFIRMING IN PART, VACATING JUDGMENT IN PART AND REMANDING

Jacob Aaron Wood appeals from a judgment of conviction entered pursuant to a jury verdict of felon in possession of a firearm and possession of a schedule I or II controlled substance of less than 14 grams, first or second offense. Second Judicial District Court, Washoe County; Lynne K. Simons, Chief Judge.[1]

In November 2021, the Sparks Police Department received a call about a suspicious vehicle located in an empty lot. When officers arrived on the scene and checked the vehicle's license plate and VIN, they learned it had been reported stolen. Officers began surveillance and watched Wood enter the vehicle and drive it to a nearby carwash. After Wood stopped the vehicle in a carwash bay, officers approached, removed Wood from the driver's seat, and arrested him for possession of a stolen vehicle.

[1]The Hon. Kathleen A. Sigurdson, District Judge, considered and denied Wood's motion to suppress evidence.

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When lead Detective Brandon Sheffield removed Wood from the driver's seat, a key ring with four or five keys fell out of Wood's lap and onto the ground. Detective Sheffield took possession of the keys. Then, while conducting a search incident to Wood's arrest, Detective Sheffield found a cigarette pack on Wood's person that contained a crystal-like substance that appeared to be methamphetamine.[2] In Wood's wallet, Detective Sheffield located a receipt, purportedly from the Sportsman's Warehouse, for the purchase of a Hornady lockbox, dated November 1, 2021.

Meanwhile, Sparks police contacted the vehicle's reported owner and learned that he was unable to pick up the vehicle. As a result, and in preparation for having the vehicle towed and impounded, officers began an inventory search of the vehicle. Multiple officers were involved in the vehicle search in this case. Detective Jason Kimball assisted with the inventory search and testified that there were "quite a few items in the vehicle" including "luggage and clothes and stuff like that in the rear." Photographs taken of the interior of the vehicle revealed a fanny pack, duffle bags, a backpack, and medications.

When Detective Kimball opened the rear passenger side door, he found a locked Hornady lockbox on the floor, tethered to the base of the front seat. Detective Kimball opened the lockbox using one of the keys that had fallen off Wood's lap as he exited the vehicle. Inside the lockbox, Detective Kimball found an SCCY .9 millimeter handgun, along with a magazine containing .9 millimeter bullets. Sparks police subsequently performed a criminal history check and learned that Wood had prior felony convictions.

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[2]Subsequent testing confirmed that the substance was 1.237 grams of methamphetamine.

Following the inventory search, officers prepared an inventory report listing the following items only: "Misc trash, sex toys, misc clothing, hygiene products, shoes, folding chair, inflat[ ]able mattress, speaker, headphones." The lockbox and firearm were not listed on the report, nor were the luggage, fanny pack, dufflebags, or medications.

After Wood's arrest, Detective Sheffield questioned Wood about how he had come into possession of the vehicle. Wood stated that he had purchased the vehicle from a white female and had given her $200 and his used Audi in exchange for it. Wood told Detective Sheffield that the vehicle had someone else's belongings in it when he purchased it and that the lockbox must have been in the vehicle when he purchased it. Wood also told Detective Sheffield that, earlier that day, he checked the VIN number on a website to see if the vehicle was stolen because a friend told him he should get rid of the vehicle. Wood estimated that he purchased the vehicle sometime between October 24 and October 31—prior to the date listed on the receipt for the Hornady lockbox.

The State filed a criminal complaint in the Justice Court of Sparks Township charging Wood with one count of felon in possession of a firearm, one count of possession of a stolen vehicle, and one count of possession of a schedule I or II controlled substance of less than 14 grams. At the preliminary hearing, the State presented only two witnesses: Detective Sheffield and Detective Kimball, who testified about the circumstances leading up to Wood's arrest and the discovery of the handgun and the methamphetamine. However, the State did not call the reportedly stolen vehicle's owner to testify. As a result, although the justice court found probable cause to bind Wood over on the firearm and drug possession

charges, the court could not bind Wood over on the possession of a stolen vehicle charge.

Prior to trial, Wood moved to suppress evidence of the firearm on grounds that the warrantless inventory search was invalid because it did not produce a true inventory of the vehicle's contents as required by department policy.[3] The State opposed Wood's suppression motion, arguing that (1) Wood lacked standing to object to the vehicle search because the vehicle was stolen, (2) the inventory search was lawful, and (3) the State had probable cause to search the vehicle under the automobile exception to the warrant requirement. In its opposition, the State cited Detective Sheffield's preliminary hearing testimony which contained Wood's admission that he traded his Audi and $200 to a white female for the vehicle. The State also relied on the Sparks Police Department Vehicle Inventory Report which listed "Glenda Lafaye Jones-Prewitt" as the registered owner of the vehicle. Although the State conceded that Wood did not steal the vehicle from its registered owner, the State argued that Wood lacked standing to challenge the search because he "knew it was stolen" and therefore had no expectation of privacy in the vehicle. On the issue of standing, Wood responded by pointing out that he had given value in exchange for the vehicle, received keys to the vehicle, could exclude others from the vehicle, and stored personal items in the vehicle.

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[3]When conducting an inventory search pursuant to Sparks Police Department policy, officers must search "all areas within the vehicle where personal property is ordinarily stored," including glove boxes, trunks, passenger areas, storage compartments, and other containers in those areas, whether locked or unlocked. Department policy further requires that *"[a]ll inventoried items must be recorded on the 'Vehicle Inventory Report' form. If additional space is needed, the Supplement Report form shall be used."* (Emphasis added.)

The district court held an evidentiary hearing and took testimony from Officer Carlos Sandoval, who initiated the vehicle inventory search, and Detective Kimball, who located the firearm. Because Detective Sheffield was unavailable to testify that day, the State relied on his preliminary hearing testimony regarding his involvement as lead detective on the case. The State did not call any other witnesses, nor did it present any testimony from the individual who had reported the vehicle stolen or the vehicle's registered owner.

At the evidentiary hearing, Officer Sandoval testified that he started filling out the vehicle inventory report, he had to leave so he handed it off to one of his partners to complete, and he wasn't sure who completed it. On cross-examination, Officer Sandoval acknowledged that under his department's written inventory search policy, "all inventoried items" must be recorded; however, in practice, they would only include "items of value" on such reports. Detective Sandoval agreed that the policy did not expressly allow him to consider the value of an item when determining whether or not it should be recorded on the inventory report. Detective Sandoval agreed that "all inventoried items" were supposed to be recorded and that, if there were "a ton of inventoried items," he had the ability to enter them on the Supplement Report form. Nevertheless, Detective Sandoval testified that in the five years he's been with the Sparks Police Department, he's "never used a supplemental form, and [was] not aware of anybody in the department using a supplemental form."

Detective Kimball testified that he did not fill out the inventory report in this case. He explained that, in cases like this one, when multiple officers are searching a vehicle, they would call out to the officer in charge of filling out the form to let them know when they found something of value.

Detective Kimball testified that the official purpose of the inventory search policy was to "protect the property of the owner, protect the Sparks Police Department over property disputes, [and] to protect the officer and/or police assistant completing the inventory from any potential danger." Although it wasn't "specifically spelled out in the policy," Detective Kimball testified that the policy was designed "to ensure that you're not getting a vehicle back to the owner that has contraband or anything potentially dangerous in it."

The district court ultimately denied Wood's suppression motion. Initially, the court determined that Wood had a "reasonable expectation of privacy in the vehicle as the vehicle's driver and owner," and therefore had standing to challenge the search. Nevertheless, the court concluded that the search was valid under the inventory search exception to the warrant requirement. Specifically, the court found,

> Officers properly conducted an inventory search in preparation for having the vehicle towed. The State provided compelling evidence at the time of the hearing that the officers conducted the inventory search pursuant to the standardized policies of the Sparks Police Department. Although officers did not list every item found in the vehicle, the Court is persuaded that any omissions were due to the good faith belief that such items (e.g. garbage) were valueless and not subject to inventory. Officers' failure to inventory items in the vehicle is not compelling evidence that police failed to conduct the inventory pursuant to operative department policy.

The district court did not address the State's alternative argument regarding the automobile exception to the warrant requirement.

A bifurcated jury trial was held over two days, such that the jury heard evidence regarding the drug possession count (Count II) on the first day of trial, and evidence regarding the firearm possession count

(Count I) on the second day of trial. The jury convicted Wood of both counts. Wood appealed, challenging only his conviction of Count I—felon in possession of a firearm.

On appeal, Wood argues that the district court erred by denying his motion to suppress evidence discovered during an invalid inventory search. Specifically, Wood contends that the inventory search was not conducted pursuant to the Sparks Police Department inventory search policy because the inventory form did not list all of the items that the police officers discovered during the search, particularly the lockbox and firearm. In response, the State raises the same arguments it made in the district court as to why suppression was improper. First, the State contends that Wood lacked standing to challenge the vehicle search because the vehicle was stolen. Second, the State argues that the inventory search was valid despite the officers' failure to prepare a complete inventory as required by policy. Third, the State argues that the search was permissible under the automobile exception to the warrant requirement.

Whether or not the district court erred in denying Wood's suppression motion presents us with mixed questions of law and fact. *See State v. Lisenbee*, 116 Nev. 1124, 1127, 13 P.3d 947, 949 (2000). We review the district court's legal conclusions de novo, but we review the district court's related findings of fact for clear error. *See id.*; *see also Jim v. State*, 137 Nev. 557, 559, 495 P.3d 478, 480 (2021) (reviewing "de novo whether a valid exception to the warrant requirement applies"); *United States v. Zermeno*, 66 F.3d 1058, 1061 (9th Cir. 1995) ("Whether a defendant has standing to contest the legality of a search presents a mixed question of law and fact.").

Standing to challenge the search under the Fourth Amendment

"The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." *Rakas v. Illinois*, 439 U.S. 128, 130 n.1 (1978). This concept is known as "Fourth Amendment standing," and it requires a showing that the defendant has "a cognizable Fourth Amendment interest in the place searched." *Byrd v. United States*, 584 U.S. ___, ___, 138 S. Ct. 1518, 1530 (2018) (explaining that Fourth Amendment standing is a substantive doctrine not to be confused with Article III standing, which is jurisdictional).

Generally, to have standing to challenge a search, a defendant must have a reasonable expectation of privacy in the place that was searched. *See, e.g., Scott v. State*, 110 Nev. 622, 627, 877 P.2d 503, 507 (1994); *Rawlings v. Kentucky*, 488 U.S. 98, 104-06 (1980); *Rakas v. Illinois*, 439 U.S. 128, 142-43 (1978). Non-owners of a vehicle generally do not have standing to challenge the search of a vehicle unless the non-owner has some sort of possessory interest in that vehicle. *Scott*, 110 Nev. at 627-28, 877 P.2d at 507-08. In such cases, "courts have found standing . . . where the non-owner driver or passenger can show lawful possession of the car." *Id.* at 628, 877 P.2d at 507. For instance, "[t]he person may have rented the vehicle, borrowed it, or been given permission to use it on either a short or long term basis." *Id.* However, "a thief has no standing to object to a search of stolen property." *Wright v.* State, 88 Nev. 460, 469 n.7, 499 P.2d 1216, n.7 (1972).

In *Byrd v. United States*, the United States Supreme Court addressed the contours of the Fourth Amendment standing doctrine as applied to the search of a rented automobile where the driver who

challenged the search was not listed as an authorized driver on the vehicle's rental agreement. 584 U.S. at ___, 138 S. Ct. at 1526. The Supreme Court recognized that there was no "single metric or exhaustive list of considerations" that would confer standing in that circumstance but noted that reasonable expectations of privacy "must have a source outside the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." *Id.* at ___, 138 S. Ct. at 1527 (quoting *Rakas*, 439 U.S. at 144 n.12).

The Supreme Court began with the premise that "[o]ne who owns and possesses a car, like one who owns and possesses a house, almost always has a reasonable expectation of privacy in it." *Id.* Because "[o]ne of the main rights attaching to property is the right to exclude others," the Supreme Court noted that one who "owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of [the] right to exclude." *Id.* at ___, 138 S. Ct. at 1528 (quoting *Rakas*, 439 U.S. at 144 n.12).

Importantly, Byrd was not a vehicle owner. Instead, he was an unauthorized driver in possession of a rental vehicle. Therefore, the issue in *Byrd* was whether Byrd had "lawful possession and control" of the vehicle in question, even though his name was not listed on the rental agreement. *Id.* Ultimately, the Supreme Court held that "the mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat his or her otherwise reasonable expectations of privacy." *Id.* at ___, 138 S. Ct. at 1530. However, the Court remanded the case to the Third Circuit Court of Appeals to determine, in the first instance, whether Byrd was "no better situated than a car thief" in light of the

government's allegation that he intentionally used a third party to procure the rental car to transport heroin. *Id.* at ___, 138 S. Ct. at 1531.

We requested supplemental briefing on the applicability of *Byrd* to the instant case, and whether Wood had "lawful possession or control" of the vehicle at the time of the search. Wood argues that he had "lawful possession or control" of the vehicle because he was the sole occupant of the vehicle, he possessed and utilized unaltered keys to the vehicle, and he could exclude third parties from the vehicle. Wood further argues that, although the vehicle had been *reported* stolen, because he subsequently purchased and exercised control over the vehicle, he had both a subjective and objective expectation of privacy that afforded him standing to challenge the inventory search.

By contrast, the State argues that because the vehicle was *in fact* stolen, Wood could not possibly have had standing to challenge the search. To make this argument, the State relies on dicta from *Byrd* which stated that "a person present in a stolen automobile at the time of the search may not object to the lawfulness of the search of the automobile." *Id.* at ___, 138 S. Ct. at 1529 (quoting *Rakas*, 439 U.S. at 141, n.9). However, this language in *Byrd* was describing a situation in which a person's mere presence in a vehicle would be insufficient to confer standing. Wood was not simply a passenger riding in a stolen vehicle. Rather, the district court found based on the preliminary hearing testimony that Wood "had a reasonable expectation of privacy in the vehicle as the vehicle's *driver and owner*." And while evidence indicated that the vehicle had been *reported* stolen, the State did not present any non-hearsay evidence from the vehicle's putative owner to counter Wood's assertion of ownership, which

the district court credited. Thus, the record does not support the State's assertion that the vehicle was *in fact* stolen.

The court's determination that Wood was the vehicle's "driver and owner" was supported by substantial evidence in the record and not clearly erroneous. *Lisenbee*, 116 Nev. at 1127, 13 P.3d at 949. The preliminary hearing transcript contained Wood's admission that he had purchased the vehicle from a white female and had given her $200 and his used Audi in exchange for it. Furthermore, evidence showed that Wood had unaltered keys to the vehicle, stored personal items in the vehicle, and was at a car wash ostensibly to clean the vehicle. The State conceded that Wood did not steal the vehicle in question. Although Sparks Police testified based on out-of-court statements that the vehicle had been *reported* stolen, the State did not present any testimony from the vehicle's registered owner or the individual who reported the vehicle stolen to establish that the vehicle was, in fact, stolen. Thus, the Sparks Justice Court determined that probable cause did not exist for Wood to stand trial on the charge of possession of a stolen vehicle. On this record, we cannot say that the district court clearly erred in finding that Wood was the vehicle's "driver and owner" who possessed a reasonable expectation of privacy in the vehicle. *See Lisenbee*, 116 Nev. at 1127, 13 P.3d at 949; *Byrd*, 584 U.S. at ___, 138 S. Ct. at 1527 ("One who owns and possesses a car . . . almost always has a reasonable expectation of privacy in it." (quoting *Rakas*, 439 U.S. at 144 n.12)).

Validity of the Inventory Search

We next turn to Wood's assertion that the inventory search was invalid. "[A]n inventory search carried out in good-faith compliance with 'standardized official department procedures' is a well-established exception to the Fourth Amendment's warrant requirement." *Jim*, 137 Nev.

at 560, 495 P.3d at 481 (quoting *Weintraub v. State*, 110 Nev. 287, 288, 871 P.2d 339, 340 (1994)). "To be valid, however, the officers conducting the search must produce 'a true inventory of' personal items found during the search." *State v. Nye*, 136 Nev. 421, 423, 468 P.3d 369, 371 (2020). An inventory search must "yield an actual inventory," and the State has to establish that the inventory search was conducted pursuant to a police department's inventory search policy. *Id.* at 424, 468 P.3d at 371-72. "The individual officer must not be allowed so much latitude that inventory searches are turned into a purposeful and general means of discovering evidence of a crime." *State v. Greenwald*, 109 Nev. 808, 810, 858 P.2d 36, 37 (1993) (quotation marks and brackets omitted).

The requirement that officers comply with standard procedures "ensures that an inventory search is truly 'designed to produce an inventory' and is not just 'a ruse for a general rummaging . . . to discover incriminating evidence." *Jim*, 137 Nev. at 560, 495 P.3d at 481 (quoting *Florida v. Wells*, 495 U.S. 1, 4 (1990)). As a result, the Nevada Supreme Court has found the inventory warrant exception inapplicable in cases where police "failed to comply with the applicable department inventory procedures" and did not provide "a sufficiently complete inventory of the subject vehicle or item searched." *Id.* For example, in *Greenwald*, 109 Nev. at 809-811, 858 P.2d at 37-39, the supreme court ruled that the inventory exception was inapplicable where the officer who searched a motorcycle "did not list or inventory on either form most of the items of personal property found during the search." Likewise, in *Weintraub*, 110 Nev. at 289, 871 P.2d at 340, the supreme court held that the state could not rely on the inventory search exception where the officer did not prepare a "true inventory" of the contents of defendant's vehicle; rather, the "inventory" listed only eight items while

the vehicle contained "approximately one hundred items including valuable items that one would expect to appear on any reasonable inventory list." As a result, the "'purposes of an inventory'—protecting the car owner's property, protecting the police against charges of theft, and protecting the police from possible danger—were not met by the instant search." *Id.*

In this case, although the district court found that "the officers conducted the inventory search pursuant to the standardized policies of the Sparks Police Department," the record does not support the court's finding. Sparks Police Department policy requires officers to search "all areas" within a vehicle "where personal property is ordinarily stored" and to record "[a]ll inventoried items . . . on the 'Vehicle Inventory Report' form." Then, "[i]f additional space is needed, the Supplement Report form shall be used." The written policy does not limit the inventory requirement to "items of value." However, testimony indicated that officers would only include items of value on inventory reports and that supplemental report forms were never used. Thus, it does not appear that the officers adhered to the standardized policies in this case. Indeed, the State concedes in its Answering Brief that "the list did not satisfy every letter of department policy . . . ."

Further, as in *Greenwald* and *Weintraub*, the officers did not prepare a "true inventory" of Wood's vehicle. Although Wood's vehicle was filled with personal property, officers prepared an inventory report listing only 9 items: "Misc trash, sex toys, misc clothing, hygiene products, shoes, folding chair, inflat[ ]able mattress, speaker, headphones." While the lockbox and firearm were certainly "items of value," they were not listed on the report, nor were the luggage, fanny pack, duffle bags, or medications found throughout the vehicle. And curiously, the officers included "trash"

on the report, despite the testimony indicating that only "items of value" needed to be included on inventory reports. Therefore, to the extent the court found that "any omissions were due to the good faith belief that such items (e.g., garbage) were valueless and not subject to inventory," the court's finding is not supported by substantial evidence. Accordingly, we conclude that the inventory search was not lawfully conducted and, therefore, that the district court erred by denying Wood's motion on the ground that the inventory search was conducted in a lawful manner.

Applicability of the automobile exception to the warrant requirement

The State briefly argues on appeal that the search was justified based on the automobile exception to the warrant requirement. The record demonstrates that the State raised that issue before the district court and referred to testimony presented at the preliminary hearing as support for its assertion that the automobile exception applied to the vehicle search at issue in this matter. However, the district court failed to make findings of fact or conclusions of law regarding the applicability of the automobile exception, and we decline to review the applicability of that exception in the first instance on appeal.

Because the firearm obtained from the vehicle search under the inventory exception was the primary evidence against Wood for the charge of felon in possession of a firearm, we cannot conclude that admitting the evidence was harmless beyond a reasonable doubt. *See Alward v. State*, 112 Nev. 141, 152-53, 912 P.2d 243, 251 (1996) ("Where error of constitutional proportions has been committed, a conviction of guilty may be allowed to stand if the error is determined to be harmless beyond a reasonable doubt."), *overruled on other grounds by Rosky v. State*, 121 Nev. 184, 190-91 & n.10, 111 P.3d 690, 694 & n.10 (2005). Nevertheless, because the district court

did not address whether the officers had probable cause to conduct a warrantless automobile search, it is possible that the firearm could still be admissible under the automobile exception to the warrant requirement. *See State v. Lloyd*, 129 Nev. 739, 750, 312 P.3d 467, 474 (2013) ("[A] police officer who has probable cause to believe the car contains contraband or evidence of a crime must either seize the vehicle while a warrant is sought or search the vehicle without a warrant. Given probable cause, either course is constitutionally reasonable."). Accordingly, we vacate Wood's conviction for the charge of felon in possession of a firearm and remand for the district court to determine the applicability of the automobile exception.

Admissibility of the Hornady lockbox receipt

Wood also argues on appeal that the district court erred by admitting into evidence the Hornady lockbox receipt that Detective Sheffield had found in Wood's wallet, because the statements contained on that receipt constituted hearsay. "The trial court is vested with broad discretion in determining the admissibility of evidence, and a decision to admit or exclude particular evidence will not be reversed absent a clear abuse of discretion." *Gonzales v. State*, 131 Nev. 481, 495, 354 P.3d 654, 663 (Ct. App. 2015). "Hearsay is defined as an out-of-court statement offered to prove the truth of the matter asserted." *Id.* (citing NRS 51.035).

Although Wood claims that "this receipt is precisely the type of out-of-court statement contemplated by the hearsay rule," he does not argue what the receipt purportedly asserted or demonstrate that it was offered for the truth of that assertion. Accordingly, we conclude Wood has not demonstrated that the receipt constituted hearsay and, thus, that the district court abused its discretion by admitting the receipt into evidence.

Having concluded that Wood's conviction for the charge of felon in possession of a firearm must be vacated, we remand for the district court

to determine, in the first instance and based on the existing district court record, whether the automobile exception justified the warrantless search in this case.[4] If the district court determines that the automobile exception applies, then the firearm need not have been suppressed and Wood's conviction for the charge of felon in possession of a firearm shall be reinstated in a new judgment of conviction. If the district court determines that the automobile exception does not apply, the district court shall issue a new judgment of conviction that does not include a conviction for the charge of felon in possession of a firearm. *See, e.g., Padilla v. State*, No. 73353, 2019 WL 6840114 (Nev. Dec. 13, 2019) (Order of Reversal) (stating "because possession of the firearm is central to a conviction under NRS 202.360, [appellant's] conviction cannot stand" when the firearm should have been suppressed). Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

[4]We note Wood specifically stated in his opening brief that he did not challenge his conviction for possession of a schedule I or II controlled substance of less than 14 grams, first or second offense.

cc: Hon. Lynne K. Simons, Chief Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk