

IN THE COURT OF APPEALS OF IOWA

No. 0-178 / 09-1142
Filed April 8, 2010

STATE OF IOWA,
Plaintiff-Appellant,

vs.

RACHAEL MARIE DANK,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Robert J. Blink,
Judge.

The State appeals from an order granting the defendant's motion to
suppress evidence. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, John P. Sarcone, County Attorney, Bob Diblassi and Stephanie Cox,
Assistant County Attorneys, for appellant.

Timothy McCarthy II of McCarthy & Hamrock, P.C., West Des Moines, for
appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Miller S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

EISENHAUER, J.

The State appeals from the grant of a motion to suppress evidence. The Iowa Supreme Court granted the State's application for discretionary review. Because we conclude the evidence Rachael Dank seeks to suppress was discovered during a legally valid inventory search of her vehicle, we reverse and remand.

I. BACKGROUND FACTS AND PROCEEDINGS.

On February 6, 2009, Polk County Deputy Sheriff Funaro observed a truck driven by Matthew Dicks with Dank in the passenger seat. Neither Dicks nor Dank was wearing a seatbelt. Additionally, Funaro was aware neither one had a valid driver's license. Funaro initiated a traffic stop and Dicks pulled the truck into a private driveway. When Dicks got out of the truck he was arrested and handcuffed. Dank had a dog with her and provided the officers with a phone number for them to call for assistance with the dog. After the officer's call someone came and took the dog.

Dank claimed to know the owner of the house where the truck was parked. Her friend Jessica Rose's mother owned the house; however, no one was home. Dank could not provide a phone number for the house nor could she provide the names of the homeowners. At the suppression hearing Rose testified she was available by phone on the day of the stop and would have consented to leaving the truck in the driveway.

After failing to raise anyone in the house despite three attempts, Funaro concluded the truck should be impounded. He began an inventory search of the

truck and found drug paraphernalia. He then called more officers to the scene and further searching found several baggies of methamphetamine, a digital scale, empty baggies, and loose crystal methamphetamine.

Dank was charged with conspiracy to deliver a controlled substance, possession of a controlled substance with intent to deliver, and failure to affix a drug tax stamp. Dank filed a motion to suppress the evidence seized from her vehicle. She claimed the stop of her vehicle, her detention, the search of her person, the inventory search of her vehicle, and her arrest were illegal. On July 9, 2009, the trial court granted her motion to suppress, concluding: “This ‘impound inventory’ was, in fact, an unreasonable warrantless search on an automobile based on suspicion, not probable cause.” This appeal followed.

II. SCOPE AND STANDARDS OF REVIEW.

Where the State is alleged to have violated Dank’s constitutional rights against unreasonable searches and seizures, our review of the district court’s ruling is de novo. *State v. Carter*, 696 N.W.2d 31, 36 (Iowa 2005). We independently evaluate the totality of the circumstances as shown by the record. *State v. Reinders*, 690 N.W.2d 78, 82 (Iowa 2004). We give deference to the district court’s fact findings because of its ability to assess the credibility of the witnesses, but we are not bound by those findings. *State v. Crawford*, 659 N.W.2d 537, 541 (Iowa 2003).

III. MERITS.

The State argues Deputy Funaro made a good faith effort to comply with the Polk County Sheriff Department’s impound policy and was not motivated

solely by an investigatory purpose. Both parties and the trial court rely on *State v. Huisman*, 544 N.W.2d 433 (Iowa 1996) as the controlling authority. We agree and conclude the proper analysis under *Huisman* requires reversal.

The Fourth Amendment of the United States Constitution protects against *unreasonable* searches and seizures. *Cady v. Dombrowski*, 413 U.S. 433, 439, 93 S. Ct. 2523, 2527, 37 L. Ed. 2d 706, 713 (1973) (emphasis added). One well-recognized exception to the warrant clause is a vehicle inventory search. *Colorado v. Bertine*, 479 U.S. 367, 371, 107 S. Ct. 738, 741, 93 L. Ed. 2d 739, 745 (1987); *Huisman*, 544 N.W.2d at 436. This exception responds to the practical problems arising when police remove a vehicle's operator and are then left to care for that vehicle. In such circumstances, police act in a caretaking capacity rather than as criminal investigators. *State v. Jackson*, 542 N.W.2d 842, 845 (Iowa 1996); see *South Dakota v. Opperman*, 428 U.S. 364, 368, 96 S. Ct. 3092, 3097, 49 L. Ed. 2d 1000, 1005 (1976).

"The legality of an inventory search depends on two overlapping inquiries: the validity of the impoundment and the scope of the inventory." *Huisman*, 544 N.W.2d at 436. If either is unreasonable, the search violates the Fourth Amendment and any evidence discovered in the search must be suppressed. *Jackson*, 542 N.W.2d at 845. Dank did not challenge the scope of the inventory. Rather, she challenged the validity of the decision to impound her truck. We look for the existence of reasonable standardized procedures and a purpose other than the investigation of criminal activity when examining the officer's decision to impound. *Huisman*, 544 N.W.2d at 437. This analysis is intended to prevent

courts from second-guessing professional judgments of busy police officers who are faced with the practical realities of limited time and expertise to make such judgments. *Id.* We utilize an objective test—“whether, when viewed objectively, an administrative reason for impoundment existed.” *Id.* at 439-40.

The Polk County Sheriff’s Department has a written inventory procedure. This procedure required impoundment when a deputy makes an arrest and the person arrested is the driver of the vehicle. The policy has a number of exceptions. One provides impoundment is not necessary if the owner of the vehicle is present and has a valid driver’s license. Another states impoundment is not necessary if the arrest is made on private property, the legal owner of the vehicle is present, and the vehicle can be left with the approval of the property owner. Neither Dicks, the driver, nor Dank, the vehicle owner, had a valid driver’s license. No one was present to consent to leaving the vehicle on the property.

“[A]n impoundment is unconstitutional if it is done to investigate suspected criminal activity.” *Id.* at 439. Where an administrative purpose exists to impound the vehicle, the impound is proper even if the officers are partially motivated by a belief the vehicle may contain contraband. *Id.* Dank alleges the impoundment of her vehicle was a mere pretext for an investigatory search for drugs. Our review finds otherwise. Although Funaro said he saw Dank crawl into the back seat and found this suspicious, this was after he had initiated the traffic stop. Funaro started the inventory search and discovered drug paraphernalia. He then called for assistance. The fact the inventory search took place at the scene rather than

after towing the vehicle is not significant. See *id.* at 440 (holding “[i]f police must first tow a vehicle to the station and then conduct an inventory, the police run the risk that the vehicle’s contents may disappear—the very risk inventories are intended to avoid”). The Polk County policy called for an impound inventory at the scene and *Huisman* recognizes the validity of such a search unless the policy states otherwise. See *id.* at 439-40 (noting “[i]f the officers could have had a caretaking reason to impound the car, then we assume they did not act solely to investigate criminal activity”). Polk County’s policy states: “Impound inventories should be made at the place of arrest” and further instructs the officer to call a supervisor if illegal substances are found during an inventory search. We conclude the deputy complied with the department policy and the search was not motivated solely by an investigatory purpose.

REVERSED AND REMANDED.