OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

June 5, 2019

To:

Hon. Thomas J. McAdams
Milwaukee County Circuit Court
901 N. 9th St.
Milwaukee, WI 53233

Karen A. Loebel
Deputy District Attorney
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
821 W. State Street, Room 114
Milwaukee, WI 53233

Abigail Potts
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Brian C. Hagner
Magner, Hueneke, LLP
4377 W. Loomis Rd.
Greenfield, WI 53220

You are hereby notified that the Court has entered the following opinion and order:

2018AP1549-CR State of Wisconsin v. Raymond T. Golden (L.C. # 2014CF5420)

Before Brash, P.J., Brennan and Dugan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Raymond T. Golden appeals from a judgment of conviction, entered on his guilty plea, for possession of a firearm by a felon, contrary to WIS. STAT. § 941.29(2)(a) (2013-14).[1] He also appeals from the denial of his postconviction motion. Golden argues that the trial court erroneously denied his motion to suppress evidence that was seized from his vehicle pursuant to

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

an inventory search after a traffic stop. Specifically, he argues that the scope of the inventory search was unreasonable.[2] Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

After Golden was charged with being a felon in possession of a firearm, he filed a suppression motion. The trial court conducted an evidentiary hearing where the trial court heard testimony from Golden and from Milwaukee County Sheriff's Department deputies Jaime Arnold and Joel Streicher.[3] The trial court also reviewed a dashcam video of the traffic stop. The trial court made findings consistent with the deputies' testimony, and those facts are unchallenged on appeal.

The pertinent facts include the following. Arnold stopped Golden's vehicle after observing that he was not wearing a seat belt. In the course of checking Golden's driver's license, Arnold ascertained that Golden was on supervision with the Department of Corrections. Arnold asked Golden if he had insurance for the vehicle and Golden replied that he did not. Arnold told Golden that his vehicle would have to be towed. Arnold and Streicher then conducted an inventory search of the vehicle in preparation for it to be towed. About eight minutes after beginning the inventory search, Arnold found a firearm in the trunk of the vehicle "underneath a rag or a T-shirt." Golden was arrested for being a felon in possession of a firearm.

[2] Golden's motion to suppress also challenged the basis for the stop, the search of his person, and his arrest. Those issues are not being pursued on appeal and will not be discussed. *See* ***Reiman Assocs., Inc. v. R/A Advert., Inc.***, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981) (holding that issues not briefed are deemed abandoned).

[3] Both Arnold and Streicher became detectives after the commencement of this case. In this (continued)

At the suppression hearing, Arnold said that Golden's vehicle was towed because he did not have insurance. Arnold referred to the Sheriff's Department's written policy, which states that if a vehicle is operated without insurance contrary to WIS. STAT. § 344.62(1), "the officer shall tow the vehicle the uninsured driver was operating unless an insured, licensed driver is already on scene and able to remove the vehicle." Arnold further explained that when a vehicle is going to be towed, the Sheriff's Department's written policy requires deputies to conduct an inventory search of the vehicle before it is towed. Arnold read aloud from the written policy:[4]

> In order to protect the agency, Milwaukee County, and its agents from claims of theft or misconduct and ensure employee safety, the following procedure will be followed. All vehicles being towed will be searched to identify items of apparent value or potentially hazardous instruments. The search will include the entire passenger compartment, glove box, and vehicle trunk or tool box if a pickup truck. Any area or item, whether locked or unlocked, will be opened and examined if accessible by key or other means without causing damage. The search will be conducted at the scene before the vehicle is towed.

(Omitting language from the prosecutor directing Arnold to read aloud particular sections of the policy and Arnold's clarification of which sections to read.)

Arnold testified that he and Streicher conducted an inventory search consistent with that written policy. Streicher began searching the vehicle first, including the trunk. Arnold then joined in the search. It is undisputed that as they conducted the inventory search, the deputies did not write down particular items they observed.

---

decision, we will refer to them as deputies, the position they held at the time of the traffic stop.

[4] The written policy was an exhibit at the suppression hearing. The appellate record contains two pages of the policy, but it appears that at least one page is missing. We have included the language that Arnold read aloud at the suppression hearing as it was transcribed.

Arnold said that at one point, the deputies saw "a small amount of marijuana in the center console area," so they began to "look in more areas, because at that time we believed some type of criminal activity was going on."[5] Arnold testified: "It became a hidden search at that point, but it was still an inventory search." Arnold said he pulled down the armrest in the second seat and was able to see into the trunk, where he "saw shiny pieces in the trunk" that led him to search the trunk. He testified: "I was checking the trunk for the shin[]y object that I saw from the backseat. I wanted to make sure it wasn't anything we needed to inventory. So I looked through the stuff and lifted up the rag or gray shirt, and the firearm was right underneath that."

Streicher also provided testimony about the point at which he and Arnold observed marijuana in the vehicle. He said that after seeing what he "believed was marijuana residue in the vehicle," he "continued to do what [he] perceived to be at that point a probable cause search of the car." Streicher acknowledged that he and Arnold "did a more extensive search after I observed the residue."

At the conclusion of the motion hearing, the State argued that the search of the vehicle that led to the discovery of the firearm was permissible as both an inventory search conducted prior to towing and as a probable cause search. The State explained: "[I]t's clearly an inventory search from start to finish, and that includes the gun…. Once during that inventory search they see the marijuana, that's prior to finding the gun, and then so it is also at this point a probable cause search." Trial counsel disagreed, arguing: "This definitely was not an inventory search. This was a fishing expedition by these two officers."

[5] The deputies did not attempt to collect or test the suspected marijuana residue.

After making findings consistent with the deputies' testimony, the trial court found that the inventory search was executed consistent with the Sheriff's Department's written policy and was reasonable. The trial court rejected the State's theory that the deputies also had probable cause to search the vehicle because they saw suspected marijuana "residue on the console," but it concluded that suppression was not required because the firearm was found during the valid inventory search of the vehicle. In making its rulings, the trial court noted that case law required it to apply an objective test rather than focus on the subjective motivations of the deputies. It cited ***State v. Baudhuin***, 141 Wis. 2d 642, 416 N.W.2d 60 (1987), a Fourth Amendment case that held:

> As long as there was a proper legal basis to justify the intrusion, the officer's subjective motivation does not require suppression of the evidence or dismissal. The officer's subjective intent does not alone render a search or seizure of an automobile or its occupants illegal, as long as there were objective facts that would have supported a correct legal theory to be applied and as long as there existed articulable facts fitting the traffic law violation.

See ***id.*** at 651.

After the trial court denied Golden's suppression motion, he pled guilty and was sentenced to eighteen months of initial confinement and eighteen months of extended supervision. After postconviction counsel was appointed, Golden filed a postconviction motion urging the trial court "to reconsider its denial of the defendant's motion to suppress, and vacate the Judgment of Conviction." The trial court denied the motion in a written order, stating:

> [This] court concluded that the officers' search of the defendant's vehicle which led to the location of the firearm was reasonable and fell within the scope of an inventory search. The court recognizes that the officers testified that their search changed from an inventory search to a probable cause search; however, the court was not bound by their testimony to make that legal conclusion

> and did not believe, based upon its review of the evidence, that the State met its burden to support that theory. Accordingly, the court stands by its ruling in this matter and denies the defendant's motion for reconsideration.

This appeal follows.

At issue on appeal is the reasonableness of the inventory search of Golden's vehicle. "[A] police inventory search is among the few exceptions to the warrant requirement of the [F]ourth [A]mendment." ***State v. Callaway***, 106 Wis. 2d 503, 510, 317 N.W.2d 428 (1982). An inventory search must be reasonable. *See* ***id.***; *see also* ***Colorado v. Bertine***, 479 U.S. 367, 372 (1987) (approving inventory search where "there was no showing that the police, who were following standardized procedures, acted in bad faith or for the sole purpose of investigation"). ***Callaway*** explained: "[T]here are essentially two aspects to the question of reasonableness. First, whether the intrusion was reasonable in the first instance, and second, whether the scope of the intrusion is reasonable." ***Id.***, 106 Wis. 2d at 510 (citation omitted).

Here, Golden indicates that he is not challenging the trial court's conclusion that it was reasonable to conduct an inventory search of his vehicle as the deputies prepared it to be towed. Instead, he focuses on the second aspect of reasonableness, asserting that the scope of the inventory search was not reasonable. In considering this issue, we will uphold the trial court's findings of historical fact unless they are clearly erroneous, but we will "independently apply constitutional principles to those facts." *See* ***State v. Asboth***, 2017 WI 76, ¶10, 376 Wis. 2d 644, 898 N.W.2d 541 (citations omitted).

It is undisputed that the firearm was found in Golden's trunk. "[A]n automobile trunk [is] within the permissible scope of an inventory search." ***Callaway***, 106 Wis. 2d at 515-16.

Therefore, the State argues, "the trial court correctly concluded that the gun was discovered pursuant to a constitutional search." We agree.

Golden does not dispute that the firearm was found in his trunk, but he raises other concerns that, he suggests, render the scope of the search unreasonable. We begin with Golden's complaint that the deputies did not use a form to inventory items. The written Sheriff's Department policy introduced at the hearing did not require the use of a particular form, and Golden does not offer any authority for his suggestion that the deputies had to use a specific form or take notes as they conducted the search, especially if they did not find items of value that had to be inventoried. Golden has not persuaded this court that the scope of the deputies' search of the vehicle on the side of the roadway was unreasonable based on the lack of use of an inventory form.

Next, Golden raises concerns about the deputies' testimony that they subjectively believed they had probable cause to search the vehicle after finding marijuana during the inventory search. Golden argues: "[B]oth deputies subjectively believed that they were conducting a probable cause based search when the gun was located in the trunk. That they were taking items out of the trunk to search any places in which illegal drugs might have been concealed." Golden acknowledges that "the deputies' subjective intent is not controlling," but he argues that their intent "is certainly a factor to be considered, along with the objective facts that support the court's findings."

We are not persuaded that the trial court erred in its analysis. It is clear from the transcript that the trial court considered each deputy's subjective belief that he had probable cause to search the vehicle. The fact that the deputies believed—erroneously, according to the

trial court—that their discovery of marijuana provided probable cause to search the vehicle did not automatically terminate the inventory search or render the scope of the inventory search unreasonable. *See* ***Asboth***, 376 Wis. 2d 644, ¶21 (concluding that even if officers who conducted an inventory search "had an additional investigatory interest in conducting" that search, "the officers' subjective interests do not render the warrantless seizure of the car unconstitutional" where there were "objective justifications for the impoundment"). The trial court found that the deputies made the decision to tow Golden's uninsured vehicle, as required by the written Sheriff's Department policy, and then conducted an inventory search prior to towing the vehicle, as required by that same policy. These findings are not clearly erroneous. Because the deputies were not acting "for the sole purpose of investigation," the inventory search did not violate the Fourth Amendment. *See* ***Bertine***, 479 U.S. at 372.

Golden appears to suggest that the scope of the search became unreasonable because the deputies "began conducting a more thorough search of the vehicle." However, Golden does not adequately explain how looking in the back seat, looking through an armrest to the trunk and seeing shiny metal, then looking in the trunk for a second time renders the scope of the search unreasonable. The deputies were entitled to search the trunk as part of the inventory search. *See* ***Callaway***, 106 Wis. 2d at 515-16. Moreover, the entire search took less than eight minutes, and Golden does not argue that inventory searches must be less than eight minutes long. Finally, as we have noted, the fact that the deputies may have decided to investigate while conducting the inventory search does not make the inventory search unreasonable. *See* ***Bertine***, 479 U.S. at 372; ***Asboth***, 376 Wis. 2d 644, ¶21.

In conclusion, we agree with the trial court that the scope of the inventory search was reasonable. Accordingly, Golden's suppression motion was properly denied. We summarily affirm the judgment and the order denying Golden's postconviction motion.

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals