COURT OF APPEALS
DECISION
DATED AND FILED

November 3, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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Appeal No. 2024AP2360-CR **Cir. Ct. No. 2023CF5112**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

ST. CLAIR RILEY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: PAUL R. VAN GRUNSVEN, Judge. *Reversed and cause remanded for further proceedings*.

Before Donald, C.J., Colón, P.J., and Geenen, J.

¶1 GEENEN, J. The State appeals from an order of the circuit court suppressing evidence gathered during a warrantless search of a rental car driven by St. Clair Riley before the car was towed. The circuit court concluded that the search

and seizure of Riley's car was unconstitutional because the officers that stopped Riley should have attempted to contact the rental car company before having the car towed, and because the police did not complete an inventory form when they conducted an inventory search of the car prior to it being towed.

¶2 We conclude that towing Riley's car was justified by the community caretaker exception to the Fourth Amendment's warrant requirement. We further conclude that the inventory search of Riley's car was not rendered unconstitutional by the officers' failure to complete an inventory form. Accordingly, we reverse the circuit court's order and remand the cause for further proceedings.

BACKGROUND

¶3 At around 5:00 p.m. on Thursday, November 2, 2023, Milwaukee County Sheriff's Deputy Samuel Mindel observed a car passing other cars while driving in the emergency lane and gore area of Interstate Highway 43.[1] The car pulled over in the emergency lane (colloquially, the "shoulder" of the highway).[2] The traffic on the highway was "heavy."

[1] While a "gore" can refer to any small, triangular piece of land, in the context of roadways, it is the triangular strip of land created when two roadways converge or diverge, bounded by the edges of those roadways. *Gore*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/gore (last visited October 30, 2026) (defining "gore" as "a small usually triangular piece of land"); 2 HANDLING MOTOR VEHICLE ACCIDENT CASES: TREATISES & FORMS § 11:27 (2d ed. 2025) (defining "gore" as "the area immediately behind the bifurcation of two roadways, bounded by the edges of those roadways; the angle between two roadways where one roadway divides into two").

[2] The State asserts in its brief-in-chief that Riley pulled the car over "on the gore area just in front of an exit ramp." However, the squad and officer body cameras plainly show that the car stopped in the emergency lane or shoulder of I-43, and this area was not a gore. In its oral ruling, the circuit court found that the car was parked "on the shoulder" of I-43 during rush hour traffic, and in any event, we are in as good a position as the circuit court to determine what is shown on a video. *See* ***State v. Jimmie R.R.***, 2000 WI App 5, ¶39, 232 Wis. 2d 138, 606 N.W.2d 196.

¶4 When Deputy Mindel approached, Riley, who was driving, said that he was rushing to his girlfriend who had been in a car accident. He told Deputy Mindel that his driver's license was suspended and gave him an identification card. Deputy Mindel returned to his squad car and confirmed that Riley's driver's license was suspended. He called for a tow truck, wrote citations, and then returned to Riley's car.

¶5 Deputy Mindel told Riley that because he could not legally drive the car and no one else was present, the car had to be towed. Riley said that someone was on the way and would be there in five minutes. He said that the car was a rental car that his girlfriend had rented. Deputy Mindel told Riley that no one could come to the scene and drive the car away due to safety concerns and because it is illegal for vehicles to stop, and for pedestrians to be, on the side of the freeway. Deputy Mindel told Riley that he was not arresting him, but he was detaining him, and after the car was towed off the highway, he would give Riley a ride and someone could pick him up. Riley sat in the back of the squad car while Deputy Mindel began an inventory search of the car for "valuables."

¶6 During his inventory search, Deputy Mindel found several cell phones and pill bottles, a digital scale, baggies of suspected marijuana, cocaine, and other controlled substances, a Glock magazine, and a wallet. Deputy Mindel called for a backup officer, and when they arrived, the officers continued the inventory search. Riley was arrested, and a tow truck arrived to tow away the car.

¶7 The State charged Riley with two counts of possession of a controlled substance with intent to deliver, one for methamphetamine and the other for cocaine. Riley moved to suppress evidence found in the car, asserting that the impoundment and inventory search of the car were improper. The circuit court held a hearing at

which Deputy Mindel testified and video camera footage of the stop and search was played. Deputy Mindel testified that the person Riley told him would be showing up within five minutes never showed up. He testified that even if the person had shown up, they would not have been allowed to drive the car away because vehicles cannot stop, and pedestrians cannot be, on the freeway under state law.

¶8 After the hearing, the circuit court concluded that it would be "impossible" to secure the car and leave it at the scene because it was parked on the shoulder of I-43 during rush hour traffic. It found that while Riley told the officers that someone was on the way to move the car, no one showed up at the scene. However, the court believed that Deputy Mindel should have tried to contact the rental car company "to find out if this individual in route would be permitted to remove the vehicle," or if it "wanted to send someone to pick up the vehicle." The court further found that the officers failed to complete an inventory form listing items left in the car when it was towed. For these reasons, the circuit court concluded that the State failed to show that Riley's constitutional rights were not violated.

¶9 The circuit court granted Riley's motion to suppress evidence found in the car, and the State now appeals from that order.

DISCUSSION

¶10 The Fourth Amendment to the United States Constitution protects the right of the people to be free from unreasonable searches and seizures. Warrantless searches "are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." ***Katz v. United States***, 389 U.S. 347, 357 (1967) (footnote omitted). The State bears the burden of proving "a warrantless search falls within one of the narrowly drawn exceptions" to the

warrant requirement of the Fourth Amendment. ***State v. Payano-Roman***, 2006 WI 47, ¶30, 290 Wis. 2d 380, 714 N.W.2d 548.

¶11 Whether law enforcement officers' conduct violated the Fourth Amendment's protections against unreasonable searches and seizures presents questions of constitutional fact. ***State v. Brereton***, 2013 WI 17, ¶17, 345 Wis. 2d 563, 826 N.W.2d 369. A reviewing court will "uphold the circuit court's findings of historical fact unless those findings are clearly erroneous; however, the application of Fourth Amendment principles to the facts found presents a question of law" reviewed independently. ***Id.***

I. Towing the car was a proper exercise of the officers' community caretaker function.

¶12 The State argues that the community caretaker exception to the Fourth Amendment's warrant requirement applies in this case. Specifically, the State asserts that police often seize automobiles in the exercise of their community caretaker function, and in this case, the public interest of towing the rental car from the emergency lane of I-43 during rush hour outweighs the intrusion upon Riley's privacy. Riley argues that the rental car did not pose a threat to public safety or the efficient flow of traffic, and as a consequence, towing the car was not a legitimate community caretaker function.

¶13 Both the United States Supreme Court and the Wisconsin Supreme Court recognize an exception to the Fourth Amendment's warrant requirement "where a law enforcement officer is 'serving as a community caretaker to protect persons and property.'" ***State v. Asboth***, 2017 WI 76, ¶12, 376 Wis. 2d 644, 898 N.W.2d 541 (citation omitted). "[L]aw enforcement officers may conduct a warrantless seizure without violating the Fourth Amendment when performing

community caretaker functions—those actions 'totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'" ***Id.***, ¶13 (citation omitted).

¶14 When evaluating a claimed community caretaker justification for a warrantless search or seizure, Wisconsin courts apply a three-part test. ***Id.*** The first part asks "whether a search or seizure within the meaning of the Fourth Amendment has occurred." ***Id.*** (citation modified). If so, the court then determines "whether the police were exercising a bona fide community caretaker function." ***Id.*** (citation modified). If they were, the court evaluates "whether the public interest outweighs the intrusion upon the privacy of the individual such that the community caretaker function was reasonably exercised." ***Id.*** (citation modified).

¶15 The State concedes that the first part of the three-part community caretaker test is satisfied. We agree with the parties that when the officers had the car towed, they seized it.

¶16 The second and third parts of the test are related in this case, so we discuss them together. The State highlights that vehicles are frequently seized by officers engaging in community caretaker functions, for example, when the vehicles violate parking ordinances and thereby jeopardize both the public safety and the efficient movement of vehicular traffic. Here, the rental car was illegally parked in the emergency lane of I-43 during rush hour posing both a safety hazard and an impediment to emergency vehicles, and these public interests outweighed any intrusion on Riley's privacy rights.

¶17 Relying on ***State v. Brooks***, 2020 WI 60, 392 Wis. 2d 402, 944 N.W.2d 832, Riley asserts that the rental car, temporarily parked along the highway for a traffic stop, did not impede traffic or threaten public safety. Because there was

no established public interest to weigh against the intrusion upon Riley's privacy, towing the car was not a bona fide exercise of the officers' community caretaker functions.

¶18 We agree with the State. "[A]utomobiles are frequently taken into police custody" by officers engaging in community caretaker functions, for example, in situations where the vehicles "violate parking ordinances," and "thereby jeopardize both the public safety and the efficient movement of vehicular traffic." ***South Dakota v. Opperman***, 428 U.S. 364, 368-69 (1976). "The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge" in the community caretaker context. ***Id.*** at 369.

¶19 Here, the car Riley was driving stopped in the emergency lane of I-43 during rush hour. It was not legally parked, and it posed a threat to public safety and an impediment to traffic.[3] *See* WIS. STAT. § 346.52(1)(h) (2023-24).[4] Riley asserts that because the officers who searched the car approached from the driver's side, "the State cannot credibly claim that the vehicle, temporarily parked along the highway for a traffic stop, impeded traffic or threatened public safety such that the police needed to have the vehicle towed as a function of their community caretaker role." However, when the officers searched the car, a squad car with its emergency lights activated was parked behind the car. Any driver approaching the two cars

[3] Although Riley asserts that the rental car did not pose a threat to public safety or an impediment to traffic, he does not dispute that the rental car was illegally parked. "Unrefuted arguments are deemed conceded." ***State v. Verhagen***, 2013 WI App 16, ¶38, 346 Wis. 2d 196, 827 N.W.2d 891; *see also* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) ("This court has held that respondents cannot complain if propositions of appellants are taken as confessed which respondents do not undertake to refute.").

[4] All references to the Wisconsin Statutes are to the 2023-24 version.

was required to either move their vehicle "into a lane that is not the lane nearest" the cars or slow their vehicle until they completely pass the two cars. WIS. STAT. § 346.072(1m)(a)-(b). If the officers had left the scene without towing the car, no emergency lights would have warned oncoming drivers of the car located just off the highway in the emergency lane. As the circuit court found, leaving it there "was not a legitimate alternative" because it would be "impossible" to secure the car and leave it at the scene.

¶20 Riley relies on ***Brooks*** for the proposition that the officers had alternatives to having the car towed and were required to contact the car's owner (here, the rental car company) before having it towed. However, ***Brooks*** is materially distinguishable from the facts presented here.

¶21 In ***Brooks***, police stopped a car for speeding. ***Id.***, 392 Wis. 2d 402, ¶2. The driver exited the freeway and legally parked in a mixed commercial and residential neighborhood. ***Id.***, ¶¶2, 20. The driver had a suspended license and was a convicted felon. ***Id.***, ¶2. Because no licensed driver was present, the police told the Brooks they were going to have the car towed. ***Id.***, ¶3. Before the tow, police searched the car, found a firearm, and arrested the driver for possession of a firearm by a felon. ***Id.***, ¶4. The Wisconsin Supreme Court concluded that the officers were not justified in having the car towed. The court noted that the car was legally parked and was not impeding traffic. ***Id.***, ¶20. It further noted that prior to the search of the vehicle, the driver was not under arrest, and he could have remained with the car until a licensed driver arrived to drive it away. ***Id.***, ¶18.

¶22 In contrast to the legally parked car in ***Brooks***, the car Riley was driving was illegally parked in an area that would have impeded emergency vehicles and posed a safety hazard. Also in contrast to ***Brooks***, Riley could not have waited

with the car for someone else to arrive and drive it away, from the rental car company or otherwise, because it would not have been legal for the other vehicle to stop on the freeway and let someone out.[5] *See* WIS. STAT. §§ 346.16(2)(a), 346.52(1)(h).

¶23 The circuit court referenced the Milwaukee County Sheriff's Department towing and impounding policy, concluding that the officers were required under the policy to contact the rental car company as the owner of the vehicle. The Wisconsin Supreme Court has recognized that law enforcement officers' failure to adhere to standard criteria does not necessarily render impoundment unreasonable, ***Asboth***, 376 Wis. 2d 644, ¶27, but in any event, the policy at issue does not require that officers contact a car's owner before having the car towed.

¶24 The policy says that when a car is not needed for law enforcement purposes, there are four alternatives to towing and impounding that an officer *may* consider. First, officers may leave the car at the scene, legally parked and secured. Second, officers may release the car to the owner. Third, officers may have the car privately towed at the owner's expense. Fourth, officers may release the car to a licensed driver with the consent of the owner. None of these options were viable alternatives because the rental car was not legally parked, and nobody else, from the rental car company or otherwise, could have come to the scene to drive the car away.

¶25 Having the rental car towed was reasonable under the circumstances. *See* ***id.*** ("[I]n cases involving warrantless community caretaker impoundments[,] the

[5] On appeal, Riley does not dispute the State's assertion that it would have been illegal for another vehicle to stop on the shoulder of the highway, nor does he dispute the State's assertion that it would have been illegal for another vehicle to let a pedestrian out on the shoulder of the highway. We deem these assertions conceded. ***Verhagen***, 346 Wis. 2d 196, ¶38.

fundamental question is the reasonableness of the seizure."). The officers were exercising a bona fide community caretaker function, and the public interest in towing the rental car outweighed the intrusion on Riley's privacy. *See* ***id.***, ¶13. Accordingly, we conclude that towing the rental car was a proper exercise of the officers' community caretaker function.

II. The officers were justified in performing an inventory search before the car was towed, and the failure to complete an inventory form did not render the search of the car unconstitutional.

¶26 The State argues that the inventory search of the rental car was justified because towing the vehicle was justified, and Riley has never challenged the scope of the inventory search. Riley argues that towing the vehicle was unjustified, rendering the subsequent inventory search likewise unjustified. Riley further argues that the inventory search was not reasonable because the officers failed to follow their own standard operating procedures which required them to complete an inventory form which they did not complete.

¶27 "When law enforcement officers have a constitutionally-legitimate reason for impounding a vehicle, they may inventory its contents without a warrant and without violating the constitution." ***Brooks***, 392 Wis. 2d 402, ¶24. The purpose of an inventory search is "the protection of the owner's property while it remains in police custody; the protection of the police against claims or disputes over lost or stolen property; and the protection of the police from potential danger." ***Id.*** (quoting ***Opperman***, 428 U.S. at 369).

¶28 "[T]here are two aspects of the question of reasonableness to be considered in determining the constitutionality of an inventory search." ***State v. Callaway***, 106 Wis. 2d 503, 510, 317 N.W.2d 428 (1982). "'First, whether the intrusion was reasonable in the first instance, and second, whether the scope of the

intrusion is reasonable.'" ***Id.*** (citation omitted). "Whether a search and seizure is unreasonable and, therefore, constitutionally invalid depends upon the facts and circumstances of the particular case." ***Id.*** at 511.

¶29 Having already concluded that towing the rental car was justified, we focus on whether the scope of the search was reasonable. Neither Riley nor the circuit court directly challenged the scope of the search as identified by Deputy Mindel, namely, to locate "any valuables inside of the vehicle." There is no claim or evidence that the officers unreasonably broadened the scope of the search by, for example, searching parts of the car that were unlikely to contain the "valuables" they were seeking to inventory.

¶30 Instead, Riley and the circuit court relied on the fact that the officers did not complete an inventory form when department policy required them to do so. In particular, under the Sheriff's Department towing and impoundment policy, "all property in a stored or impounded vehicle shall be inventoried and listed on the vehicle storage form," but the officers did not complete such a form. Citing ***State v. Clark***, 2003 WI App 121, 265 Wis. 2d 557, 666 N.W.2d 112, Riley contends that the inventory search was unreasonable because it was not "made pursuant to standard police operating procedures[.]" ***Id.***, ¶12.

¶31 Riley misreads ***Clark***. The defendant in ***Clark*** did not argue that the scope of the inventory search was unreasonable. Instead, he argued that the initial seizure of his vehicle was unreasonable because "the police had no right to tow the vehicle." ***Id.***, ¶11. In response, however, the State cited cases dealing with standard operating procedures that applied to inventory searches. ***Id.*** We highlighted the State's mistake: "The State, however, has applied the reasoning of [the cited cases] to the wrong step of the inventory search analysis—both [of the cases] deal with the

reasonableness of the inventory search; i.e., was the decision to conduct an inventory search made pursuant to standard police operating procedures?" ***Id.***, ¶12. Contrary to Riley's assertions, the language he quotes from ***Clark*** does not stand for the proposition that an inventory search is automatically unconstitutional if not conducted in strict adherence to a standard police policy, assuming one exists.

¶32 Furthermore, in ***Asboth***, our supreme court explained that lack of adherence to standard police operating procedures does not automatically render impoundments unconstitutional. It held that "the absence of standard criteria does not by default render a warrantless community caretaker impoundment unconstitutional under the Fourth Amendment reasonableness standard. Nor does law enforcement officers' lack of adherence to standard criteria, if they exist, automatically render such impoundments unconstitutional." ***Id.***, 376 Wis. 2d 644, ¶27. Although this language speaks of policies related to community caretaker impoundments, it would make little sense for the rule not to apply with equal force to subsequent inventory searches that are attendant to such community caretaker impoundments. It would be especially inappropriate to create an automatic "failure to adhere to standard criteria" rule here, where the criteria to which the officers did not adhere had no effect on the reasonableness of the decision to conduct an inventory search or its scope.

¶33 Accordingly, we conclude that the officers were justified in performing an inventory search before the rental car was towed, it was reasonable in scope, and the failure to complete an inventory form did not render the search unconstitutional.

CONCLUSION

¶34 For the foregoing reasons, we conclude that the circuit court erroneously granted Riley's motion to suppress evidence found in the rental car. We reverse the circuit court's order and remand the cause for further proceedings.

By the Court.—Order reversed and cause remanded for further proceedings.

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