COURT OF APPEALS
DECISION
DATED AND FILED

September 29, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2052-CR **Cir. Ct. No. 2012CF384**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KENNETH M. ASBOTH, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dodge County: JOHN R. STORCK, Judge. *Affirmed.*

Before Lundsten, Sherman, and Blanchard, JJ.

¶1 BLANCHARD, J. Kenneth Asboth appeals a judgment of conviction for armed robbery, challenging the circuit court's denial of his motion to suppress evidence. Police lawfully took Asboth into custody at a private storage unit facility, then had a car associated with Asboth towed to a police

facility, where police conducted an inventory search of the car. The inventory search revealed evidence that Asboth seeks to suppress, but no aspect of the inventory search itself is at issue in this appeal. Instead, Asboth argues exclusively that police violated the Fourth Amendment in initially seizing the car. The seizure was unconstitutional, Asboth contends, for two reasons: it was not conducted pursuant to a law enforcement vehicle seizure policy with standardized, sufficiently detailed criteria, and it was not justified as an exception to the Fourth Amendment warrant requirement under the bona fide community caretaker doctrine. We disagree and accordingly affirm.

BACKGROUND

¶2 Following evidentiary hearings, the circuit court made findings of fact that include the following, none of which are disputed by either party on appeal.

¶3 A Dodge County Sheriff's Department deputy lawfully arrested Asboth on a probation warrant while he was by himself at a private facility that maintains storage units. At the time of his arrest, Asboth was a suspect in a recent armed robbery in Beaver Dam.

¶4 Shortly before the arrest, police observed Asboth reaching into a car parked at the storage facility. The officers involved in the arrest learned that the car was registered to a person with a Madison address. At the time of the arrest, the car blocked access to multiple storage units and impeded potential vehicle travel through at least one area of the facility.

¶5 The storage facility was located within the jurisdiction of the Dodge County Sheriff's Department and outside the jurisdiction of the Beaver Dam

Police Department. The sheriff's deputy who arrested Asboth made a mutual aid request to city police for assistance in connection with Asboth's arrest, apparently because the deputy thought that he needed immediate backup not available from his own department. Because the sheriff's department lacked storage space to hold the car, the car was towed to a city police impound lot, as opposed to a sheriff's department facility. The car was held at the police department lot and subsequently searched.[1] During the course of the inventory search, police removed and held for safekeeping all items of apparent value, whether or not the items appeared to be related to the armed robbery.[2]

¶6 Asboth moved to suppress evidence obtained in the search, alleging, as pertinent to this appeal, that the initial seizure of the car violated the Fourth Amendment. The circuit court denied Asboth's motion to suppress and his subsequent motion for reconsideration. As pertinent to this appeal, the court concluded that the State carried its burden of showing that the warrantless seizure

[1] Briefly explaining our use of terminology, it appears that there is a lack of uniformity in what various legal authorities mean in referring to the "impoundment" of a vehicle. For this reason, we generally do not use the term "impoundment," but instead use the following Fourth Amendment terms:

- "seizure," to refer to police initially taking temporary possession of a vehicle and having the vehicle moved to a place used to temporarily hold seized vehicles, and
- "search," or "inventory search," to refer to a police search of a seized car after it has been moved to temporary police storage.

We quote authorities using the term "impoundment" when we believe that its meaning is sufficiently clear for current purposes.

[2] It is not important to any argument raised on appeal to know what particular items were recovered in the inventory search. However, for context we note that police found a gun that they suspected had been used in the recent Beaver Dam armed robbery in which Asboth was a suspect. This is the evidence that Asboth seeks to have suppressed.

of the car did not violate the Fourth Amendment. We supply additional facts as necessary to discussion below.

DISCUSSION

¶7 This court reviews the denial of a motion to suppress under a two-part standard of review. ***State v. Popp***, 2014 WI App 100, ¶13, 357 Wis. 2d 696, 855 N.W.2d 471. We uphold a circuit court's findings of fact unless they are clearly erroneous, but determine whether those facts warrant suppression under a de novo review. ***Id.***

¶8 As noted above, Asboth exclusively challenges the seizure of the car as a Fourth Amendment violation. On this ground, Asboth argues that evidence obtained during the inventory search must be suppressed. More specifically, Asboth argues that seizure of the car was unreasonable under the Fourth Amendment for two reasons: (1) it was not conducted pursuant to a law enforcement policy setting forth standardized, sufficiently detailed guidelines limiting officer discretion in seizing vehicles; and (2) even if conducted pursuant to a standardized, sufficiently detailed policy, the seizure was not justified as an exception to the Fourth Amendment warrant requirement under the bona fide community caretaker doctrine.[3]

[3] The State does not suggest on appeal that, at the time police seized the car, police had: obtained a warrant authorizing seizure of the car; obtained consent from anyone with apparent authority to allow the car to be moved; possessed facts supporting probable cause justifying seizure of the car; or observed contraband or a dangerous weapon in "plain view" in the car at the time of the arrest. Also, the State does not argue that Asboth lacks standing to make a Fourth Amendment claim regarding seizure of the car.

¶9 Before discussing Asboth's arguments in turn, we summarize basic legal principles in this area. Police do not violate the Fourth Amendment if they seize a vehicle pursuant to the community caretaker doctrine, that is, if the seizure is consistent with the role of police as "caretakers" of the streets. *See* ***South Dakota v. Opperman***, 428 U.S. 364, 370 (1976); ***State v. Clark***, 2003 WI App 121, ¶20, 265 Wis. 2d 557, 666 N.W.2d 112. More specifically, ***Opperman*** describes common situations in which police may reasonably seize vehicles in the role of community caretakers, consistent with the commands of the Fourth Amendment:

> In the interests of public safety and as part of what the Court has called "community caretaking functions," automobiles are frequently taken into police custody. Vehicle accidents present one such occasion. To permit the uninterrupted flow of traffic and in some circumstances to preserve evidence, disabled or damaged vehicles will often be removed from the highways or streets at the behest of police engaged solely in caretaking and traffic-control activities. Police will also frequently remove and impound automobiles which violate parking ordinances and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic. *The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.*

Opperman, 428 U.S. at 368-69 (emphasis added) (footnote and quoted source omitted). This approach derives in part from the traditional "distinction between automobiles and homes or offices in relation to the Fourth Amendment." ***Id.*** at 367. While automobiles are protected by the Fourth Amendment, "warrantless examinations of automobiles have been upheld in circumstances in which a search of a home or office would not." ***Id.*** (citing authority that includes the seminal community caretaking case, ***Cady v. Dombrowski***, 413 U.S. 433, 442 (1973), which discusses the "ambulatory character" of vehicles).

¶10 These concepts were later refined in ***Colorado v. Bertine***, 479 U.S. 367, 375-76 (1987). In ***Bertine***, the Court concluded that seizure and an inventory search of Bertine's van, after he was arrested and taken into custody, qualified as community caretaking activity because police followed "standardized procedures" and because there was no showing that police "acted in bad faith" or "for the sole purpose of investigation." ***Bertine***, 479 U.S. at 367, 372.

¶11 While on the subject of ***Bertine***, we now briefly introduce a topic that we will discuss more fully below, namely, a potential complication regarding application of the community caretaker doctrine in the context of vehicle seizures. There is no dispute under U.S. Supreme Court and Wisconsin appellate court precedent that police act unreasonably in seizing a vehicle without a recognized Fourth Amendment justification, such as community caretaking activity. However, the federal circuit courts of appeal are in conflict as to whether ***Bertine*** establishes a specific requirement that police must follow a standardized policy in seizing a vehicle when acting as community caretakers, and as discussed below Wisconsin appellate precedent does not appear to impose such a requirement. That is, ***Bertine*** can be read, but is not universally read, to describe a requirement that police exercise their discretion "in light of standardized criteria" set forth in a police policy. ***Bertine***, 479 U.S. at 375-76.[4] We need not resolve whether ***Bertine***

[4] Asboth's arguments in this regard are tied to the following language from ***Colorado v. Bertine***, 479 U.S. 367, 375-76 (1987), in particular the phrases we now emphasize:

> Bertine … argues that the inventory search of his van was unconstitutional because departmental regulations gave the police officers discretion to choose between impounding his van and parking and locking it [and leaving it] in a public parking place…. [W]e reject [this argument]. Nothing in ***Opperman*** or [***Illinois v. Lafayette***, 462 U.S. 640 (1983)] prohibits the exercise of police discretion *so long as that discretion is exercised according to standard criteria* and on the basis of something

(continued)

imposes a standardized criteria requirement. Rather, as explained further below, we will assume without deciding that there is a requirement that police must follow standardized criteria. Acting on this assumption, we first address whether the car was seized pursuant to a standardized policy and later turn to other aspects of the community caretaker doctrine.

1. Vehicle Seizure Pursuant to a Police Policy

¶12 Operating from the position that police had to follow a standardized policy in seizing the car here, Asboth makes arguments related to the specific policies of the sheriff's department (the "county's policy") and the police department (the "city's policy") related to vehicle seizures. Asboth argues that the specific law enforcement policy that was applied in seizing the car was the city's policy, not the county's policy. He further argues that, whichever policy applied here, neither the county's policy nor the city's policy contained standardized criteria that provided sufficient guidance to justify seizure under the community caretaker doctrine. Some additional factual background regarding the policies themselves is necessary before we return to these specific arguments and pertinent legal standards.

> other than suspicion [that the vehicle contains] evidence of criminal activity. Here, the discretion afforded the … police *was exercised in light of standardized criteria*, related to the feasibility and appropriateness of parking and locking a vehicle rather than impounding it. There was no showing that the police chose to impound Bertine's van in order to investigate suspected criminal activity.

(Emphasis added.)

¶13 The county's policy authorized deputies to seize vehicles in various scenarios. As pertinent here, this included the following scenario: (1) the driver of a vehicle is taken into police custody; and (2) as a result, that vehicle would be left unattended. The city's policy articulated a different standard on this topic. However, for reasons we now explain, the content of the city's policy does not matter to any issue raised on appeal, because we conclude that the seizure was conducted pursuant to the county's policy.

¶14 In support of his argument that law enforcement followed the city's policy, rather than the county's policy, Asboth points to the undisputed facts that the car was towed to the city police department and that city officers conducted the inventory search. Based on these facts, Asboth asserts that "it was the [city's] police [who] took the car." However, Asboth does not challenge factual findings of the circuit court, summarized above, regarding the seizure, which we conclude are more pertinent. To repeat, the court found that a sheriff's deputy arrested Asboth, that the storage facility where Asboth was arrested was outside of the jurisdiction of the city police department, and that, after making the mutual aid request, the sheriff's department asked the police department to temporarily house the car only because the sheriff's department lacked storage space for the car. Under these circumstances, we conclude that this was a seizure generated, and primarily directed, by the sheriff's department and therefore the county's policy is the applicable policy.

¶15 Asboth argues that, even if the seizure was conducted pursuant to the county's policy, that policy was insufficient to justify seizure under the community caretaker doctrine. As referenced above, Asboth's argument is based on a passage from ***Bertine***, quoted above, which could be read to require that a

police seizure under the community caretaker doctrine must be conducted pursuant to "standardized criteria." ***Bertine***, 479 U.S. at 376.

¶16 This brings us back to the potential complication, referenced above, regarding the meaning of ***Bertine*** and standardized criteria. As the State points out, federal courts of appeals are divided as to whether ***Bertine*** requires that seizure of a vehicle must be conducted in accordance with a standardized policy, regardless of other facts that might justify a seizure under the community caretaker doctrine.[5] In addition, the State points to the fact that this court, in an opinion that postdates ***Bertine***, expressly elected to analyze whether a seizure qualified as community caretaking even after concluding that police in that case had *not* followed a department policy with standardized criteria. *See* ***Clark***, 265 Wis. 2d 557, ¶¶18-20 (having determined that a pertinent police policy was not followed, the court nevertheless proceeded to determine whether seizure of vehicle satisfied the community caretaker doctrine; "we must only determine, absent any police department policies, whether the seizure satisfied the reasonableness standard of the Fourth Amendment ....").

¶17 We conclude that we do not need to resolve here any conflict that there might be between ***Bertine*** and ***Clark*** on the issue of whether a vehicle seizure can satisfy the community caretaker doctrine when police do not follow a department policy with standardized criteria. This is because we conclude that, even applying the requirement that a standardized policy must be followed, the

[5] *Compare, e.g.*, ***United States v. Petty***, 367 F.3d 1009, 1012 (8th Cir. 2004) (vehicle "impoundments" must be regulated by "[s]ome degree of 'standardized criteria' or 'established routine'") (quoted source omitted), *with* ***United States v. McKinnon***, 681 F.3d 203, 208 (5th Cir. 2012) ("[W]e have focused our inquiry on the reasonableness of the vehicle impoundment for a community caretaking purpose without reference to any standardized criteria.").

seizure here met that requirement. The county's policy was a written document that reflected standards governing seizure, and law enforcement followed those standards in seizing the car here.

¶18 Asboth argues that reliance on the county's policy would not have been reasonable, because the policy was not "sufficiently standardized," as Asboth submits is required by ***Bertine***, in that it provided "no 'conditions circumscrib[ing] the discretion of individual officers.'" In particular, Asboth notes that, under the county's policy, deputies were permitted to tow a vehicle when the driver had been arrested and as a result the vehicle would be left unattended at least for a time, while at the same time the policy separately provided that "unless otherwise indicated" deputies "always [had] discretion to leave the vehicle at the scene and advise the owner to make proper arrangements for removal." However, as quoted above, ***Bertine*** suggests that a policy may give police broad discretion, explaining that "[n]othing ... prohibits the exercise of police discretion," as long as it is exercised according to some set of standardized criteria and is not exercised solely for an investigative purpose. ***Bertine***, 479 U.S. at 375. Put differently, Asboth fails to persuade us that the county's policy was so vague or loose that it could not be considered a standardized policy under ***Bertine***. *See also,* ***United States v. Cartwright***, 630 F.3d 610, 614-15 (7th Cir. 2010) (holding that a "towing and impoundment policy" permitting the seizure of vehicles "'operated by a non-licensed or suspended driver' or 'by [a] person under custodial arrest for any charge'" is "sufficiently standardized") (quoted source omitted).

¶19 In fact, if anything, the policy viewed with favor by the Court in ***Bertine*** appears to have provided *fewer* restrictions on police seizures of vehicles than the county's policy here. The county's policy, like that under review in ***Bertine***, provided that seizure of a vehicle would be appropriate not merely when

the driver has been taken into custody, but the county's policy provided the additional restriction that such a seizure is appropriate only when the vehicle would also be left unattended as a result of the arrest. *See* ***Bertine***, 479 U.S. at 368 n.1.

¶20 In sum, based on the undisputed facts, assuming without deciding that it is necessary to evaluate whether the seizure was conducted pursuant to a policy with standardized criteria, we conclude that the county's policy applies and that the seizure of the car here was authorized under that policy.

2. Community Caretaker Generally

¶21 Asboth correctly observes, consistent with our summary of the legal standards above, that even if police seize a vehicle pursuant to a policy with standardized criteria, the State is obligated to show that the seizure was reasonable under the community caretaker doctrine. *See* ***Opperman***, 428 U.S. at 368-69; ***Clark***, 265 Wis. 2d 557, ¶14 ("compliance with an internal police department policy does not, in and of itself, guarantee the reasonableness of a search or seizure"; "the constitutionality of each search or seizure will, generally, depend upon its own individual facts.")

¶22 We use a three-step test to determine whether police conduct, including seizure of a vehicle, was a valid exercise of the community caretaker authority: (1) whether "'a seizure within the meaning of the Fourth Amendment has occurred; (2) if so, whether the police conduct was bona fide community caretaker activity; and (3) if so, whether the public need and interest outweigh the intrusion upon the privacy of the individual.'" ***Clark***, 265 Wis. 2d 557, ¶21 (quoting ***State v. Anderson***, 142 Wis. 2d 162, 169, 417 N.W.2d 411 (Ct. App. 1987)).

¶23 Regarding the first step, the parties agree that police seized the car here within the meaning of the Fourth Amendment when they moved it from the storage facility to the police facility. *See* ***Anderson***, 142 Wis. 2d at 169.

Bona fide community caretaker activity

¶24 Turning to the second step, Asboth makes no serious argument that seizure of the car pursuant to the county's policy was not bona fide community caretaker activity—if one removes from the equation a police motive to search the car for evidence. Asboth's single argument is that the seizure was not community caretaker activity because police had a subjective investigatory motive to search the car, namely, the suspicion that a search of the car might reveal evidence that Asboth had committed an armed robbery. We reject this argument because it rests on an incorrect proposition of law.

¶25 Asboth acknowledges that our supreme court has held that "when under the totality of the circumstances an objectively reasonable basis for the community caretaker function is shown, that determination *is not negated by* the officer's subjective law enforcement concerns." *See* ***State v. Kramer***, 2009 WI 14, ¶30, 315 Wis. 2d 414, 759 N.W.2d 598 (emphasis added). However, Asboth asserts that "the analysis is different in the case of impoundment," under U.S. Supreme Court precedent. We disagree.

¶26 First, we note that Asboth does little to attempt to develop an argument in this regard, merely citing two opinions without explanation, and we could reject this argument on that basis.

¶27 Second, the two Supreme Court cases that Asboth cites as purported support for his argument do not support it. *See* ***Opperman***, 428 U.S. 364; ***Whren***

v. United States, 517 U.S. 806 (1996). To the contrary, as we now briefly explain, United States Supreme Court precedent matches the "not negated by" formulation of the Wisconsin Supreme Court in ***Kramer***.

¶28 Asboth's argument is apparently based on the statement in ***Opperman*** that "there is no suggestion whatever" that in following a "standard procedure, essentially like that followed throughout the country," police in that case conducted an inventory search of a seized vehicle as "a pretext," in order to "conceal[] an investigatory police motive." ***Opperman***, 428 U.S. at 376. Asboth suggests that this "no suggestion whatever" language from ***Opperman***, and similar language in ***Whren***, means that seizures such as the one here are invalid when police have any investigatory motive.

¶29 However, the Court in ***Bertine*** removed any potential ambiguity on this point, upholding a vehicle seizure and inventory search because "as in ***Opperman*** ..., there was no showing that the police, who were following standardized procedures, acted in bad faith or *for the sole purpose of* investigation." ***Bertine***, 479 U.S. at 372 (emphasis added); *see* ***id.*** at 375 ("Nothing in ***Opperman*** or [***Illinois v. Lafayette***, 462 U.S. 640 (1983)] prohibits the exercise of police discretion so long as that discretion is exercised ... on the basis of something other than suspicion [that the vehicle contains] evidence of criminal activity."); ***Whren***, 517 U.S. at 811 ("in ***Colorado v. Bertine***, ... in approving an inventory search, we apparently thought it significant that there had been 'no showing that the police, who were following standardized procedures, acted in bad faith or for the sole purpose of investigation.'") (quoted source omitted). Thus, an otherwise valid seizure of a vehicle under the justification of the community caretaker doctrine is not rendered invalid by the fact that police

appear to have an investigatory motive—even a strong investigatory motive—in seizing the vehicle.

¶30 As for the facts here, Asboth gives us no reason to upset the implicit factual finding of the circuit court that the police did not seize the car, in the terms used in ***Bertine***, "'for the sole purpose of investigation.'"[6] Asboth notes that the inventory form prepared by the officers who conducted the search "indicates that the car was impounded as 'evidence.'" However, in testimony apparently credited by the circuit court, the officer who completed the form testified that he indicated on the form that recovered items were "evidence" because an officer who assisted with the inventory search told the first officer that the gun they found in the car was probably used in the armed robbery. The officers' recognition that an item found during the inventory search appeared to have evidentiary value does not mean that the car was initially seized in bad faith or for the sole purpose of investigation.

¶31 On this basis, we reject the only argument Asboth makes that the seizure here does not satisfy the second step of the test under the community caretaker doctrine.

[6] Asboth points out that the circuit court did not explicitly find that in seizing the car, as opposed to conducting the inventory search, police did not act for the sole purpose of investigation. However, it appears that the court strongly implied a finding to this effect in the course of addressing Asboth's exclusive challenge to the seizure, and Asboth gives us no reason to conclude otherwise.

Public need and interest weighed against privacy intrusion

¶32 In the third step of the test, as applied in Wisconsin, balancing the public need and interest in seizure against the intrusion on individual privacy, we weigh four factors:

> (1) the degree of the public interest and the exigency of the situation; (2) the attendant circumstances surrounding the seizure, including time, location, the degree of overt authority[,] and force displayed; (3) whether an automobile is involved; and (4) the availability, feasibility[,] and effectiveness of alternatives to the type of intrusion actually accomplished.

Clark, 265 Wis. 2d 557, ¶21 (citing ***Anderson***, 142 Wis. 2d at 169-70 (footnotes omitted)). The third factor obviously favors the State. Asboth argues that the first and fourth factors weigh in his favor, without advancing any argument regarding the second factor.

¶33 The State argues that the public need and interest in removing the car from the storage facility, where it was blocking storage units and potentially impeding vehicle movement, outweighs any intrusion on Asboth's privacy interest in the car. Asboth does not challenge the factual findings of the circuit court on these points.

¶34 Asboth concedes that there may have been "*some* 'public need and interest'" in moving the car to permit access to storage units. However, Asboth makes two related arguments about what the police needed to do in order to effectuate a reasonable seizure. First, Asboth argues that the police need to remove the car from the facility was not driven by any degree of exigency, and, second, he argues that even if police did need to move the car, there was no legitimate need to tow it to a police facility.

¶35 Addressing the degree of exigency, it appears to us that Asboth may confuse the exigency factor under the balancing test with the need for police to be presented with an emergency. Our supreme court has explained that the "community caretaker exception does not require the circumstances to rise to the level of an emergency to qualify as an exception to the Fourth Amendment's warrant requirement." ***State v. Pinkard***, 2010 WI 81, ¶26 n.8, 327 Wis. 2d 346, 785 N.W.2d 592 (citation omitted). In any case, we conclude that there was an appreciable degree of exigency here, in the sense of necessity.

¶36 Turning to the topic of potential alternatives to the seizure as conducted by the police here, Asboth relies on the explanation in ***Clark*** that, in balancing the public interest in a seizure against the privacy of an individual in community caretaker analysis, "we must compare the availability and effectiveness of alternatives with the type of intrusion actually accomplished." *See* ***Clark***, 265 Wis. 2d 557, ¶25; *see also* ***Kramer***, 315 Wis. 2d 414, ¶45 (rejecting alternatives to seizure suggested by Kramer, and concluding "that the manner in which [the law enforcement officer] performed his community caretaker function was more reasonable than any suggested by Kramer.").[7] As we now explain, we conclude that the police conduct here passes muster under ***Clark***

[7] As the State correctly observes, ***Bertine*** states that the Fourth Amendment does not require that police consider whether less intrusive alternatives existed at the time of a seizure otherwise justified under the community caretaker doctrine. Rather, the Court explained, the Fourth Amendment inquiry hinges on whether the activity of the police was reasonable under the circumstances: "The reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative 'less intrusive' means." ***Bertine***, 479 U.S. at 373-74 (quoting ***Illinois v. Lafayette***, 462 U.S. 640, 647 (1983)). Nonetheless, following ***State v. Kramer***, 2009 WI 14, ¶30, 315 Wis. 2d 414, 759 N.W.2d 598, and ***State v. Clark***, 2003 WI App 121, ¶25, 265 Wis. 2d 557, 666 N.W.2d 112, we address Asboth's contention that there existed more reasonable alternatives than the one chosen by law enforcement.

and ***Kramer***, consistent with ***State v. Callaway***, 106 Wis. 2d 503, 317 N.W.2d 428 (1982).

¶37 We begin the potential alternatives topic with a clarification regarding potentially pertinent facts. The record does not reflect evidence that Asboth volunteered to law enforcement officers at the time of his arrest that he could, or wanted to try to, make alternative arrangements with a responsible third party for safekeeping of the car that would obviate the need for seizure, nor evidence that officers asked Asboth about the possibility of any potential alternative arrangements.

¶38 With that clarification, we now summarize ***Clark***. Like ***Bertine*** and the instant case, ***Clark*** involved a Fourth Amendment challenge to the seizure of a vehicle that the defendant had driven. ***Clark***, 265 Wis. 2d 557, ¶1. However, in ***Clark***, police discovered the vehicle at issue undamaged and legally parked on the street, although it was unlocked. ***Id.***, ¶4. Instead of simply locking the vehicle and leaving it where it was, police had the vehicle towed to a police impound lot for safekeeping. ***Id.*** The police department had two separate policies addressing vehicle seizures that could have been applied. ***Id.***, ¶12. On appeal, the court examined each of the police policies and concluded that, even assuming the reasonableness of the policies, police failed to comply with either one in having the vehicle towed. ***Id.***, ¶¶15-17. Despite our conclusion in ***Clark*** that police conducted the seizure without following either of the potentially applicable policies, we proceeded to analyze whether the seizure was reasonable in accordance with the community caretaker doctrine, ultimately concluding that the seizure was unreasonable because it did not satisfy the community caretaker doctrine. ***Id.***, ¶¶ 18-20, 27. To repeat, then, in ***Clark*** the police seized the car at issue after finding it legally parked on a public street, whereas in this case, the car

associated with Asboth blocked several storage units and movement of vehicles on the property of a private third party. *See* ***id.***, ¶7.

¶39 Granted, the car associated with Asboth may or may not have been parked illegally, given the practical realities of allowing customers to have routine access to units at the storage facility. Asboth emphasizes testimony that there were not any "no parking" signs at the storage facility. Whatever the significance might be of a lack of such signage, it would have been objectively reasonable for law enforcement to see the car as likely creating problems for managers of the storage facility and visitors to the facility if left unattended for any length of time.

¶40 Moreover, Asboth fails to establish that the seizure decision here was not "more reasonable" than any alternative he now suggests. *See* ***Kramer***, 315 Wis. 2d 414, ¶45. To state the obvious, Asboth's arrest prevented Asboth himself from moving the car from a location in which it appeared to interfere with private property rights and to represent a risk of loss or damage, and prevented him from doing so for an indeterminate length of time. *See generally* ***id.***, ¶¶4, 43, 45 (seizure was more reasonable than suggested alternatives where driver had pulled over and parked on the side of the road on the crest of a hill, a potentially dangerous location).

¶41 It does not help Asboth that, as noted above, police knew that the car was not registered to Asboth, but instead to a person with a Madison address.[8] We

[8] Asboth points out that, roughly two months after the seizure of the car, police learned that title to the car apparently had not been appropriately transferred to Asboth by the time of his arrest, but that Asboth had actually owned the car at the time of his arrest. However, Asboth fails to explain why this later-discovered information should matter to the analysis of potential alternatives to seizure that officers on the scene of the arrest had, and we see no reason why it should matter.

take judicial notice of the fact that the Madison area is a somewhat long drive from the Beaver Dam area. Asboth does not dispute that there was no other responsible person at the scene of his arrest and that the registered owner was likely a somewhat long drive away. Based on these facts, Asboth's suggested alternative that the officers could have asked Asboth to see if some reasonable third party could pick up the car does not carry much weight, because it would have been reasonable for police at the pertinent time to anticipate that officers would have been waiting for some indeterminate period for the owner or another responsible party to arrive, assuming that police could track down the owner or another responsible party in a timely fashion. *Cf.* ***Clark***, 265 Wis. 2d 557, ¶¶4, 26 (suggesting that when a vehicle is registered to someone with an address in close proximity to the vehicle's location it may be reasonable to attempt to contact vehicle owner seeking consent to tow).

¶42 We are also not persuaded by Asboth's suggestion that police were obligated under these circumstances to move the car either to another spot at the storage facility or to a spot on a nearby street. Regarding the first suggestion, the circuit court made the reasonable observation that "when the police arrest a person who has driven a vehicle onto private property other than their own, leaving that vehicle behind and making its removal the property owner's problem is unreasonable." Asboth fails to explain why police were required to move the car to a different location within the storage facility complex—a private facility owned by someone other than Asboth and thus over which Asboth could exercise no control—requiring the facility's owner to track down the vehicle's owner or arrange for the car to be moved.

¶43 As for the proposition that police were obligated under these circumstances to move the car to a street parking spot, the record is silent as to

whether there were available, long-term, legal parking spots nearby. Moreover, even if we assume the existence of a legal parking spot on a street near the storage facility, our supreme court has suggested that it is ordinarily objectively reasonable for police to consider it "necessary and reasonable" to move to a police facility any vehicle that would otherwise be left unattended on a public street for an indeterminate amount of time, in order to avoid vandalism, theft, or damage to the vehicle. *See* ***Callaway***, 106 Wis. 2d 503, 513-14 (concluding that the seizure and subsequent inventory search of a vehicle was reasonable under the Fourth Amendment when driver was taken into police custody following his arrest on an outstanding warrant and his vehicle left unattended) (if police had left car "unattended on the street, there is more than a possibility that it could have been vandalized or struck by another vehicle in which case it is not unlikely that the owner would claim that the police department was negligent in some manner.... [W]e have concluded the impounding of the vehicle was necessary and reasonable because of the need to protect the vehicle from damage, theft or vandalism ....").

¶44 In sum, we conclude that the State has met its burden of showing that the decision to seize the car was reasonable under the circumstances here and that Asboth fails to convince us that any of the alternatives that he suggests would have been available and also more reasonable than the decision made here. Given the circumstances of the seizure and inventory search, and the factual findings of the circuit court as described above, we conclude that the seizure was valid under the community caretaker doctrine.

CONCLUSION

¶45 For the foregoing reasons, we conclude that the circuit court properly denied Asboth's motion to suppress evidence.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.