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United States Court of Appeals
Tenth Circuit

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PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

AARON MICHAEL KENDALL,

Defendant - Appellant.

No. 19-1465

Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:17-CR-00236-WJM-1)

Michael J. Sheehan, Law Office of Michael J. Sheehan, Centennial, Colorado, for Defendant-Appellant.

Elizabeth S. Ford Milani, Assistant United States Attorney (Jason R. Dunn, United States Attorney, with her on the brief), United State Department of Justice, Denver, Colorado, for Plaintiff-Appellee.

Before **PHILLIPS**, **EBEL**, and **CARSON**, Circuit Judges.

EBEL, Circuit Judge.

During a traffic stop, police officers arrested Defendant-Appellant Aaron Michael Kendall and decided to impound his vehicle. Prior to impoundment, the officers conducted an inventory search of the vehicle, locating methamphetamine and heroin

underneath the center console and a stolen handgun tucked within a loose panel below the glove compartment. The government charged Kendall with drug and gun crimes, and Kendall moved to suppress the physical evidence found in the vehicle, arguing that it was seized in violation of the Fourth Amendment. The district court denied Kendall's motion to suppress, and Kendall appeals that decision. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court's denial of Kendall's motion to suppress.

I. BACKGROUND

A. Factual History

While on evening patrol duties, Wheat Ridge Police Officer Kendal Rezac spotted a Honda with only one working taillight. Officer Rezac switched on his emergency lights and attempted to pull over the Honda. But instead of pulling over, the Honda's driver, later identified as Kendall, slowed to approximately ten miles per hour and continued to drive another eight blocks, passing several parking lots and other pull-off areas.

During this slow-motion pursuit, Officer Rezac saw Kendall "moving around a lot" inside the Honda, in a "very erratic and concerning" way. (R., vol. II at 30–31.) Another officer, arriving to provide backup, saw Kendall "moving objects around on the passenger seat, kind of in a frantic motion." (Id. at 127.) Also during the chase, police dispatch informed Officer Rezac that the Honda's license plates were registered to a different vehicle (an Acura), leading Officer Rezac to believe the Honda might have been stolen.

Eventually, Kendall stopped the Honda on the side of a public road. Officer Rezac, now joined by Officer Mitchell Cotton and Officer Nathan Lovan, ordered

Kendall out of the Honda, handcuffed him, and secured him in the backseat of Officer Rezac's patrol car. Officer Rezac read Kendall his Miranda rights, and Kendall waived them.

The officers then began their traffic-stop investigation, learning that Kendall did not have a valid driver's license or proof of insurance. The Honda was not reported stolen, but it was registered to someone other than Kendall. Kendall told the officers that he was in the process of buying the Honda from the registered owner. Kendall also told officers that he did not have insurance on the car, but later claimed that his wife had it. Officers called the registered owner twice, once from Officer Rezac's phone and once from Kendall's phone (with his consent), but there was no answer. Officers also called Kendall's wife to confirm whether the vehicle was insured, but she did not answer either.

Officer Rezac decided to (1) issue Kendall a non-custodial summons for the motor vehicle violations; and (2) tow the Honda because Kendall could not drive it, it was apparently uninsured, and officers could not reach the registered owner. Pursuant to Wheat Ridge Police Department policy, Officer Rezac obtained supervisor permission to tow the vehicle. Subsequently, and also pursuant to department policy, Officer Cotten started an inventory search of the vehicle.

Officer Cotten soon found a counterfeit $20 bill in the car's visor and an empty, concealed-carry handgun holster on the front passenger seat. Officer Rezac then placed Kendall under custodial arrest for felony forgery (for the counterfeit bill), and transported him to the police station.

Meanwhile, the inventory search continued. As part of that search, Officer Cotten opened the Honda's center console and removed various sundries. After doing so, Officer Cotten noticed that the bottom of the console was "ajar" and "not flush," such that it "clearly looked as if it . . . was not the, in fact, bottom of the center console." (R., vol. II at 89–90.) Officer Cotten also saw a "small plastic bag" sticking out from beneath the panel at the bottom of the console. (Id. at 74.) Using "no force at all," Officer Cotten lifted up the bottom panel and discovered an additional compartment containing one small plastic bag of methamphetamine and two bags of heroin. (Id. at 147.)

After finding the drugs, Officer Cotten continued the search. In light of the empty handgun holster he had already found, he believed there was a firearm stowed somewhere in the vehicle, and so he searched places where a firearm could be stored. While searching the area of the front passenger seat, where he had found the handgun holster, Officer Cotten noticed that "the panel below the glove compartment was not flush with the other paneling, was hanging down slightly, and appeared to have been tampered with." (R., vol. I at 145 (district court finding).) "Lightly pulling" with "barely any force at all," Officer Cotten "tug[ged] on" the bottom of the loose portion of the panel, revealing the butt of a handgun. (R., vol. II at 79, 146.) Officer Cotten removed the rest of the panel and retrieved the gun, a Sig Sauer P226 9mm handgun with an extended magazine clip. Officers later determined that the firearm had been reported stolen.

After Officer Cotten completed the inventory search, the officers called for a tow truck to impound the vehicle. While the vehicle was being loaded onto the tow truck, the registered owner returned the officers' calls. She confirmed that the vehicle was not

stolen and that Kendall was in the process of buying it from her. Officer Cotten told the registered owner that the vehicle was being towed, and the registered owner did not attempt to stop the towing or offer to come to the scene to retrieve the vehicle. The vehicle was ultimately towed to a local tow shop and impound yard.

B. Procedural History

Based on the drugs and gun found in the Honda, the United States charged Kendall with three offenses: (1) possession of a controlled substance with the intent to distribute, (2) unlawful possession of a firearm by a previously convicted felon, and (3) possession of a firearm during and in furtherance of drug trafficking. Kendall moved to suppress the physical evidence found during the inventory search, but the district court denied the motion to suppress. Kendall then pled guilty to possessing heroin with the intent to distribute and possessing a firearm as a felon; the third charge was dismissed. The district court sentenced Kendall to ninety-five months in prison on each conviction, to run concurrently. Kendall's guilty plea permitted him to pursue a direct appeal challenging the denial of his motion to suppress, and Kendall timely appealed. See Fed. R. Crim. P. 11(a)(2).

II. STANDARD OF REVIEW

When reviewing a district court's denial of a motion to suppress, we review findings of fact for clear error, and we view the evidence in the light most favorable to the government. United States v. Venezia, 995 F.3d 1170, 1175 (10th Cir. 2021). We review de novo the determination of whether a search or seizure was reasonable under the Fourth Amendment. Id.

III. DISCUSSION

The Fourth Amendment's prohibition of "unreasonable searches and seizures," U.S. Const. amend. IV, means that police generally cannot conduct a search or make a seizure absent a warrant.[1] Venezia, 995 F.3d at 1174. A warrantless search or seizure is reasonable only "if it falls within a specific exception to the warrant requirement." Id. (quoting Riley v. California, 573 U.S. 373, 382 (2014)). The Government bears the burden of justifying warrantless police actions under the Fourth Amendment. Goebel, 959 F.3d at 1265.

There are two questions presented in this appeal: (A) whether it was reasonable for the police to impound Kendall's vehicle and, if so, (B) whether the scope of the inventory search was reasonable. "[T]hough impoundments and inventory searches often occur sequentially, they are subject to different legal standards." United States v. Sanders, 796 F.3d 1241, 1244 n.1 (10th Cir. 2015). Ultimately, we conclude that both the impoundment and the subsequent search of Kendall's vehicle were reasonable.

A. Impoundment of Kendall's vehicle was reasonable.

Kendall first challenges the officers' decision to impound his vehicle, arguing that it was an unreasonable seizure with no legitimate basis. We reject this argument, holding

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[1] In moving to suppress the evidence, Kendall had the initial burden of "showing the Fourth Amendment was implicated," United States v. Goebel, 959 F.3d 1259, 1265 (10th Cir. 2020), and that he has Fourth Amendment standing to challenge the impoundment and search, United States v. Carhee, 27 F.3d 1493, 1496 & n.1 (10th Cir. 1994). The district court held that Kendall had met his initial burden, and the Government does not challenge that determination on appeal.

that the impoundment was a legitimate exercise of the police community-caretaking function.

We have recently been afforded multiple opportunities to address the scope of police authority to impound vehicles, so we need not exhaustively recite the history of the community-caretaking doctrine as a justification for impoundment. See United States v. Woodard, 5 F.4th 1148 (10th Cir. 2021); Venezia, 995 F.3d 1170; United States v. Trujillo, 993 F.3d 859 (10th Cir. 2021); see also United States v. Thibeault, -- F. App'x --, 2021 WL 2209050 (10th Cir. June 1, 2021) (unpublished). Instead, we simply apply the well-established legal framework described in those cases.

That framework stems from United States v. Sanders, 796 F.3d 1241 (10th Cir. 2015). Sanders established a two-part inquiry for assessing police-ordered impoundment of a vehicle "not impeding traffic or impairing public safety": (1) whether impoundment is guided by "standardized criteria," and (2) whether impoundment is justified by a "legitimate community-caretaking rationale." Id. at 1243. Here, both the district court and the parties agreed that this two-part inquiry guides our analysis.

In one of our recent cases, however, we clarified that the first Sanders prong is "specific to private property impoundments." Venezia, 995 F.3d at 1178. Here, it is undisputed that Kendall's vehicle was on a public highway when the officers ordered impoundment. Accordingly, the first Sanders prong (the existence of standardized criteria to guide the impoundment decision) is inapplicable, and we need not consider it.[2]

[2] In any event, the first Sanders prong is clearly satisfied here. Kendall does not dispute that the Wheat Ridge municipal towing ordinance provides standard

Instead, we turn to the second Sanders prong—whether impoundment was justified by a "reasonable, non-pretextual community-caretaking rationale." Sanders, 796 F.3d at 1248. This factor applies to "'all community-caretaking impoundments' . . . whether on private or public property, because 'protection against unreasonable impoundments, even those conducted pursuant to a standardized policy, is part and parcel of the Fourth Amendment's guarantee against unreasonable searches and seizures.'" Venezia, 995 F.3d at 1178 (quoting Sanders, 796 F.3d at 1249–50). This requirement "guards against arbitrary impoundments" and "ensures that even if the police were to adopt a standardized policy of impounding all vehicles whose owners receive traffic citations, such impoundments could be invalidated as unreasonable." Sanders, 796 F.3d at 1249–50.

Here, Kendall does not expressly suggest that the police decision to impound the car was a pretext for searching for evidence of criminal activity. Instead, he argues only that impounding the car "was not a legitimate exercise of the police community caretaking function." (Aplt. Br. 18.) Courts use five non-exclusive

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criteria to guide an officer's decision on whether to impound a vehicle. See Wheat Ridge Mun. Ord. § 9.45.03 (2010). The district court found that the ordinance authorized impoundment for three reasons: first, Kendall's vehicle was uninsured, see id. § 9.45.03(A)(6); second, Kendall was an "incapacitated" driver because he did not have a valid driver's license, see id. § 9.45.03(A)(1); and third, Kendall's vehicle was inoperable (because it did not have adequate taillights and was not insured) and the vehicle owner could not be contacted, see id. § 9.45.03(A)(4). Kendall does not challenge any of these three grounds for impoundment. He does argue that impoundment was not justified based on abandonment of the vehicle, see id. § 9.45.03(A)(3), but the district court did not rely on abandonment to justify impoundment.

factors to determine whether a reasonable, non-pretextual community-caretaking rationale justifies impoundment:

> (1) whether the vehicle is on public or private property; (2) if on private property, whether the property owner has been consulted; (3) whether an alternative to impoundment exists (especially another person capable of driving the vehicle); (4) whether the vehicle is implicated in a crime; and (5) whether the vehicle's owner and/or driver have consented to the impoundment.

Sanders, 796 F.3d at 1250. We weigh the balance of these factors de novo. Venezia, 995 F.3d at 1178.

Here, that balance clearly weighs in favor of the reasonableness of impoundment, partly because there were no good alternatives. To start, Kendall lacked a valid driver's license, and the police were initially unable to contact the registered owner and thus unable to confirm whether Kendall had any legitimate connection to the vehicle. And even if Kendall proved ownership and some licensed driver had been available, he or she still would not have been able to drive the car away because the vehicle lacked adequate taillights and was not insured.[3] That means that no one could have legally operated the vehicle that night.

[3] It is unclear to the Court whether the vehicle also had the wrong license plates on it, as police dispatch had informed the officers when they were attempting to pull over Kendall's vehicle. At oral argument, Kendall's counsel suggested that this "confusion" was "cleared up" during the officers' investigation, (Oral Arg. 11:38–11:57), but the government disputed this assertion, (id. at 17:06–17:40). In any event, we need not rely on this point because the lack of insurance and adequate taillights are undisputed.

Nor was it a reasonable option for officers to leave the vehicle where it was. As the district court noted, the "vehicle was stopped on a public street, and subject to public traffic laws," and "[b]ecause of its location, there was no person whom the police could consult about watching over the car." (R., vol. I at 153.) And at the time the officers made the impoundment decision they had also decided not to take Kendall into custody—meaning that had they not impounded the vehicle, he again would have been able to drive (unlawfully) the uninsured vehicle, threatening public safety. See United States v. Alvarez, 68 F.3d 1242, 1244 (10th Cir. 1995) ("Courts are to view the officer's conduct through a filter of common sense and ordinary human experience." (quotation omitted)). For the same reasons, and because it was unclear whether Kendall had any legitimate connection to the vehicle, allowing Kendall to arrange a private tow was not a reasonable alternative. Moreover, when the officers did finally get in touch with the registered owner—when the officers had already decided to impound the vehicle and it was being loaded onto the tow truck—the registered owner did not object to the towing and impoundment.

These considerations outweigh any of the Sanders factors that favor Kendall, such as that the vehicle was not implicated in any crime other than traffic offenses, or that Kendall did not consent to impoundment. See, e.g., United States v. Hunnicutt, 135 F.3d 1345, 1347, 1351 (10th Cir. 1998) (upholding impoundment, after driver was arrested, where there was no evidence driver had authority to permit one of his licensed passengers to drive the car and no evidence the vehicle was insured); United States v. Haro-Salcedo, 107 F.3d 769, 770–72 (10th Cir. 1997) (upholding impoundment from public street after

occupants were arrested, they were unable to provide any ownership documents, and the license plates on the vehicle were issued for a different vehicle); see also 3 Wayne R. LaFave, Search & Seizure: A Treatise on the Fourth Amendment § 7.3(c) (6th ed. Sept. 2020) (noting that "if the driver is only ticketed but cannot himself operate the car because of an expired license, impoundment of the vehicle is improper unless the driver is unable to provide for its custody or removal," but "impoundment is permitted when the vehicle cannot lawfully be operated because of its lack of current registration" (quotation omitted)).

For these reasons, we conclude that the officers had a reasonable, non-pretextual, community-caretaker rationale for impoundment: securing an uninsured vehicle on the side of a public road with inadequate taillights until a licensed driver with a legitimate connection to the vehicle could rectify those issues and drive the vehicle without endangering public safety. Accordingly, the impoundment was reasonable under the Fourth Amendment and we affirm the district court on this issue. We next turn to Kendall's challenge to the scope of the inventory search that followed the impoundment decision.

B. The search of Kendall's vehicle was reasonable.

Kendall's second claim is that even if impoundment was lawful and thus an inventory search was permissible, officers conducted an unreasonable search untethered in scope to the justification for such a search. Like the district court, we reject this argument, concluding that the scope of the officers' search was reasonable under the circumstances.

"[I]nventory searches are . . . a well-defined exception to the warrant requirement of the Fourth Amendment." Colorado v. Bertine, 479 U.S. 367, 371 (1987). Such searches serve several administrative purposes, including "to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." Id. at 372. An inventory search "does not offend Fourth Amendment principles so long as the search is made pursuant to 'standard police procedures' and for the purpose of 'protecting the car and its contents.'" United States v. Lugo, 978 F.2d 631, 636 (10th Cir. 1992) (quoting South Dakota v. Opperman, 428 U.S. 364, 372–73 (1976)).

Officers may also search a to-be-impounded vehicle pursuant to their community-caretaking function. Cady v. Dombrowski, 413 U.S. 433, 447–48 (1973). This sort of search is permissible if "justified by 'concern for the safety of the general public.'" Lugo, 978 F.2d at 635 (quoting Cady, 413 U.S. at 447–48). A search pursuant to the community-caretaking function serves to protect "the public from vandals who might find a firearm . . . or . . . contraband drugs" in an impounded vehicle. Opperman, 428 U.S. at 376 n.10; accord Lugo, 978 F.2d at 636 (recognizing this protection as part of a community-caretaker function separate from an inventory search).

In either case, inventory search or community-caretaking search, the officers' actions in undertaking the search "must be 'reasonably related in scope' to the underlying justification." United States v. Neugin, 958 F.3d 924, 931 (10th Cir. 2020) (quoting Lundstrom v. Romero, 616 F.3d 1108, 1123 (10th Cir. 2010)).

Here, Kendall initially argued on appeal that the officers' inventory search was not made pursuant to standard police procedures. At oral argument, however, Kendall's counsel conceded this argument. (Oral Arg. 2:18–3:22.) Instead, Kendall asserts only that the scope of the officers' search was so broad that it was not justified by any administrative purpose and was instead a ruse to search for evidence of criminal activity. Specifically, Kendall argues that the inventory search was unreasonable as to (1) the search of the area underneath the center console, where Officer Cotten discovered the illegal drugs; and (2) the removal of the interior panel underneath the glove box, where Officer Cotten discovered the handgun.[4] Although Kendall lumps these two searches together, we consider them individually, because the justification for each depends upon the particular circumstances underlying each search.

(1) Center-Console Search

Officer Cotten's search of the area underneath the center console was justified because, in light of the undisputed facts, it was obvious that that area was being used as a storage compartment.

As we describe above in the background section, Officer Cotten's inventory search included a search of the center console, a common place for people to store things,

[4] Kendall claims that Officer Cotten "disassembled parts of the interior of Kendall's vehicle," (Aplt. Br. 16), and that the officers wanted to "take apart the car" to look for evidence of a crime, (Oral Arg. 9:05–9:21). Those claims are inconsistent with the district court's supportable factual findings as to the officers' actions and thus not a fair representation of the facts of this case.

including things of value. As Officer Cotten went through the contents of the center console, he noticed the bottom panel of the center console was loose. The district court found that the console bottom had obviously been modified so that items could be stored underneath the center console, the console's bottom was "slightly raised" and "not affixed," and the officer "could see a small plastic baggie sticking out of one side." (R., vol. I at 160–61.) Kendall does not challenge these factual findings.

In light of these undisputed facts, it was reasonable for Officer Cotten to believe that the area underneath the center console was also being used as a storage compartment and that a search of that area was necessary as part of his inventory search. This was consistent with the Wheat Ridge impoundment ordinance, which requires officers to inventory an impounded vehicle's contents, and to remove for safekeeping "money, valuables, and expensive jewelry." Wheat Ridge Mun. Ord. § 9.45.05(C)(1)(a). This serves the administrative purposes of protecting the owner's property in a vehicle to be impounded and protecting police from claims that property in the vehicle was lost or stolen during impoundment. Accordingly, the district court correctly determined that lifting the center console bottom, which took "no real effort," was part of a reasonable inventory search. R., vol. 1, at 160. See United States v. Martinez, 512 F.3d 1268, 1274 (10th Cir. 2008) (holding a valid inventory search would have included looking into "a compartment" in the rear of the vehicle "that had a crack with some duct tape coming out of" it).

Kendall's argument to the contrary is primarily based on United States v. Lugo, 978 F.2d 631 (10th Cir. 1992). There, the police arrested Defendant Lugo

during a traffic stop and decided to impound his vehicle. Id. at 633, 636 n.3. Lugo told police he had a firearm in the car, and the police immediately found the gun behind the driver's seat. Id. at 633. As the police continued their inventory search, an officer "noticed that [a] door panel had been ajar, pulled away from the door, and there was a crease on the bottom rear corner of the door panel." Id. The officer also saw a small opening in the lower part of the door panel—a hole where a speaker typically would go. Id. The hole had a cover over it, but no speaker inside. Id. at 634. Deciding to investigate further, the officer bent the edge of the cover down and peered inside the hole with a flashlight. Id. After spotting a brown paper bag inside the door panel, the officer bent back the panel and removed the bag, which contained two bricks of cocaine. Id.

On appeal, this Court held that searching inside the door panel was not part of a valid inventory search. Id. at 636–37. The Court credited the officers' testimony that removing a speaker cover to look inside a door panel was not part of a regular inventory search, such that the officers' search was not pursuant to "standard police procedure" and did "not serve the purpose of 'protecting the car and its contents' under any normal construction of those terms." Id. at 637 & n.4 (quoting Opperman, 428 U.S. at 372). The Court also held that the door-panel search was not justified by the community-caretaking function, because the officers had already located the firearm they believed to be in the vehicle and "expressed no suspicion, and testified to no fact which would support a reasonable belief that a further search for weapons

was necessary." Id. at 636. The Court thus concluded that the door-panel search was unreasonable. Id. at 637.

The situation before us is distinguishable from that in Lugo. Here, Officer Cotten was searching the center console, a common place to store things, when he noticed the loose bottom panel. From what he observed—the loose panel and a plastic bag sticking out from under the panel—it was obvious that the area underneath the loose bottom panel was also being used to store things. In light of that, it was reasonable for Officer Cotton to look under the panel to inventory what was stored there. In Lugo, on the other hand, the officer noticed a door panel was loose—an area where things are not commonly stored. Nor was there any indication that things were being stored inside that particular door until the officer removed the speaker-vent cover and looked inside.

Lugo does not require an officer to ignore an obvious, if atypical, storage compartment, at least where it is readily apparent that items are being stored inside. See Martinez, 512 F.3d at 1274 ("We need not belabor the point that opening a visible storage compartment is different from prying open car door panels not meant to be opened."). Accordingly, Officer Cotten's search of the area underneath the center console was a reasonable part of his inventory search, serving the administrative purpose of inventorying the contents of the vehicle.

(2) Interior-Panel Search

Unlike the center-console search, Officer Cotten's search of the interior panel beneath the glove box cannot be justified as an inventory search. Nonetheless, we uphold

the search as reasonable because it was justified as an exercise of the officers' community-caretaking function.

Below, the district court relied on two grounds for deeming the interior-panel search constitutionally reasonable: First, that Officer Cotten "had reasonable grounds to suspect that there remained a firearm in the vehicle." (R., vol. I at 162.) Second, that because the bottom portion of the interior panel "was not fully connected to the center console," it created a "non-traditional storage area" where items could be stored. Id. at 163. We address the latter rationale first, rejecting it as a basis for upholding the search.

Unlike the area beneath the center console, which had the corner of a plastic bag sticking out from within—clearly indicating that items were stored in that area—nothing that Officer Cotten observed as to the interior panel below the glove box indicated that it was being used as a storage compartment. Instead, Officer Cotten merely testified that the panel was "slightly hanging down" from the dashboard and that it "wasn't flush with the other components of the car," such that "it appeared that it had been tampered with." (R., vol. II at 78, 149.)

We disagree with the district court that these observations were sufficient to justify an inventory search of the "non-traditional storage area" created by the loose panel. (R., vol. I at 163.) That conclusion is foreclosed by Lugo, because we see no meaningful distinction between the loose door panel there and the loose interior panel beneath the glove box in this case. Removing interior panels of the car simply because something might be hidden within smacks of a police search for contraband rather than an administrative search for the purpose of "protecting the car and its contents." Opperman,

428 U.S. at 373. After all, an individual who chooses to secure his valuables inside the interior panels of his vehicle could hardly fault the police for not finding and securing those items during an inventory search. Because the police would bear no responsibility for such items, an inventory search is unjustifiable. See Lugo, 978 F.2d at 636–37.

Nonetheless, we uphold the search within the interior panel as reasonable, relying upon the district court's other rationale: "protecting officer and public safety by securing firearms stored in accessible places of an impounded vehicle." (R., vol. I at 162.) This well-established aspect of the police community-caretaking function—allowing the police to search a vehicle for a weapon—is "justified by 'concern for the safety of the general public who might be endangered if an intruder removed' a weapon which police reasonably believed was present and located in a part of the vehicle vulnerable to vandals." Lugo, 978 F.2d at 635 (quoting Cady, 413 U.S. at 447–48). Under the circumstances presented here, Officer Cotten had such a reasonable belief.

Specifically, Officer Cotten had previously found an empty, concealed-carry handgun holster on the front passenger seat. This suggests the presence of a handgun in the vehicle. See United States v. Johnson, 734 F.2d 503, 505 (10th Cir. 1984) ("Appellant's revolver in plain view clearly justified a search of the rest of the automobile for other weapons."). Moreover, during the initial pursuit—when Kendall drove approximately eight blocks at ten miles per hour before pulling over—officers had seen him "moving around a lot" in a "very erratic and concerning" way and "moving objects around on the passenger seat, kind of in a frantic motion." (R., vol. II at 30–31, 127.) This, in combination with the empty gun holster on the front passenger seat, gave

rise to a reasonable belief that there was a firearm somewhere in that vicinity. And pursuant to the police department's standard procedures, the officers were required to inventory any guns in the impounded vehicle and remove them for safekeeping. Wheat Ridge Mun. Ord. § 9.45.05(C)(1)(b). It was thus objectively reasonable for the officers to search for a hidden firearm in the front-passenger-seat area.

That objectively reasonable belief coincides with evidence that the officers were subjectively motivated to locate and secure the firearm pursuant to their community-caretaking function. See, e.g., Opperman, 428 U.S. at 376 (approving an inventory search where "there [was] no suggestion whatever that this standard procedure . . . was a pretext concealing an investigatory police motive"). Officer Cotten testified that he "had a general understanding that there was probably going to be a gun somewhere in this vicinity." (R., vol. II at 78.) The district court expressly found that the empty holster "le[d] the officers to suspect that a firearm was stowed somewhere in the vehicle and prompt[ed] them to search places where a firearm could be stored" because they were "concerned for public and officer safety to have a weapon stowed somewhere in an unattended vehicle slated to be towed."[5] (R., vol. I at 145.)

The only evidence of pretext that Kendall can point to is Officer Cotten's testimony that he searched the interior panel because it "didn't look right" to him. (Aplt. Br. 20 (quoting R., vol. II at 90).) But that testimony is consistent with a subjective

[5] Here, the record reflects that the vehicle was to be towed to a private impound lot, with no information as to how secure that lot might be. Kendall does not argue that the private impound lot would be so secure as to alleviate any fear of unauthorized intrusion into the vehicle.

motivation of finding and securing a firearm for community-safety purposes. Cf. United States v. Edwards, 632 F.3d 633, 644 (10th Cir. 2001) (holding that an inventory search "was conducted for investigatory, rather than administrative, purposes," where the inventorying officer admitted that he was "searching for evidence of the crime"). Kendall can point to nothing persuasive to establish that the officers' search for a firearm was subjectively improper.

These circumstances again distinguish this case from Lugo, where we concluded that the community-caretaking function was not implicated when officers searched within the loose door panel. 978 F.2d at 636. We reached that conclusion because the officers had already found the defendant's firearm at that time, and had "expressed no suspicion, and testified to no fact which would support a reasonable belief that a further search for weapons was necessary." Id. Here, in contrast, officers had that reasonable belief. See Cady, 413 U.S. at 448 ("Where, as here, the trunk of an automobile, which the officer reasonably believed to contain a gun, was vulnerable to intrusion by vandals, we hold that the search was not 'unreasonable' . . . ."); Trujillo, 993 F.3d at 873 (upholding a search before impoundment because the police were "entitled to remove the firearms visible from outside the car and to search for others, lest they 'fall into untrained or perhaps malicious hands'" (quoting Cady, 413 U.S. at 443)).

* * *

In sum, the officers' search of Kendall's vehicle was reasonable under the Fourth Amendment because it was made pursuant to standard police procedures and for the

purposes of protecting the car and its contents and the safety of the officers and the general public.[6]

IV. CONCLUSION

For the reasons stated above, we affirm the district court's denial of Kendall's motion to suppress.

[6] Further, the officers' initial discovery of methamphetamine and heroin might have provided probable cause to conduct a warrantless search of the vehicle for other drugs, separate and apart from inventorying the car's contents. See Michigan v. Thomas, 458 U.S. 259, 261–62 (1982) (per curiam). That might have also justified looking behind the loose panel under the glove box. The Government, however, does not make this argument and so we do not consider it. See United States v. Gaines, 918 F.3d 793, 800–01 (10th Cir. 2019).