

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
ALLEN COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 1-14-21

v.

JESSE A. O'NEILL,

OPINION

DEFENDANT-APPELLANT.

Appeal from Allen County Common Pleas Court
Trial Court No. CR 2013 0215

Judgment Affirmed

Date of Decision: March 9, 2015

APPEARANCES:

Kenneth J. Rexford for Appellant

Jana A. Emerick for Appellee

SHAW, J.

{¶1} Defendant-appellant, Jesse A. O’Neill (“O’Neill”) appeals the June 12, 2014 judgment of the Allen County Court of Common Pleas journalizing his conviction for possession of cocaine and sentencing him to four years in prison. O’Neill assigns as error the trial court decisions overruling his two motions to suppress.

{¶2} On August 15, 2013, the Allen County Grand Jury indicted O’Neill on one count of domestic violence in violation of R.C. 2919.25(A), (D)(3), a felony of the fourth degree, and one count of possession of cocaine in violation of R.C. 2925.11(A), (C)(4)(e), a felony of the first degree. The charges stemmed from O’Neill’s arrest for domestic violence, at which time a large quantity of cocaine was found in his vehicle pursuant to an impound inventory search conducted by the Lima Police Department. O’Neill entered a plea of not guilty to the charges.

{¶3} On September 23, 2013, O’Neill filed a motion to suppress the evidence arguing that the warrantless search of his vehicle, which resulted in the discovery of the cocaine, was unlawful. O’Neill also filed a motion to sever the counts, requesting that each charge be tried at separate trials.

{¶4} On October 15, 2013, the trial court held a hearing on O’Neill’s motion to suppress where the arresting officer and the officer who searched O’Neill’s vehicle during the impound inventory search each provided testimony.

{¶5} On October 23, 2013, the trial court issued a judgment entry overruling O’Neill’s motion to suppress. Specifically, the trial court found that under the circumstances the officers were warranted in impounding O’Neill’s vehicle and that the inventory search was conducted in accordance with the police department’s policy governing the procedure. Therefore, the trial court concluded that the warrantless search of O’Neill’s vehicle was indeed lawful. The trial court also granted O’Neill’s motion to sever the counts for trial.

{¶6} On December 9, 2013, O’Neill filed a notice of substitution of counsel on his behalf. On the same day, O’Neill’s new counsel filed a second motion to suppress the cocaine found in O’Neill’s vehicle. In this motion, O’Neill asserted that his arrest was unlawful because it violated the specific directives stated in R.C. 2935.03(B), which governs the authority of law enforcement to make warrantless arrests in domestic violence offenses. O’Neill also argued that the arresting officer failed to comply with R.C. 2935.07, which requires the officer to inform him in a timely manner of the cause of arrest and the authority to make the warrantless arrest. O’Neill claimed that these violations rendered his arrest unlawful under both the Ohio and Federal Constitutions.

{¶7} On January 13, 2014, the trial court conducted a hearing on O’Neill’s second motion to suppress where the arresting officer provided testimony pertinent

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to the issues raised regarding his authority to arrest O'Neill pursuant to the statutory scheme articulated in R.C. 2935.03.

{¶8} On January 21, 2014, the trial court issued a judgment entry overruling O'Neill's second motion to suppress. Specifically, the trial court found that the arresting officer complied with R.C. 2935.03 and concluded that O'Neill's warrantless arrest was constitutionally permissible.

{¶9} On January 28, 2014, O'Neill pled no contest to the possession of cocaine charge.

{¶10} On May 7, 2014, a jury acquitted O'Neill of the domestic violence charge.

{¶11} On June 12, 2014, the trial court sentenced O'Neill to four years in prison for his first degree felony possession of cocaine.

{¶12} O'Neill filed this appeal, asserting the following assignments of error.

ASSIGNMENT OF ERROR NO. I

THE TRIAL COURT ERRED IN NOT SUPPRESSING THE FRUITS OF THE WARRANTLESS ARREST OF MR. O'NEILL, INCLUDING THE COCAINE FOUND THEREBY.

ASSIGNMENT OF ERROR NO. II

THE TRIAL COURT ERRED IN NOT SUPPRESSING THE FRUITS OF THE ARREST OF MR. O'NEILL, INCLUDING THE COCAINE FOUND THEREBY, BECAUSE THERE WAS NO PROBABLE CAUSE TO SUPPORT THE ARREST.

The First Assignment of Error

{¶13} In his first assignment of error, O’Neill claims that the arresting officer was not authorized to arrest him without first obtaining a warrant. Specifically, O’Neill argues that Officer Boss was prohibited from making a warrantless arrest under R.C. 2935.03(B)(3)(g) because O’Neill was not present at the scene when law enforcement arrived. As a result, O’Neill asserts the trial court should have suppressed the cocaine found in his vehicle under the exclusionary rule.

{¶14} A review of the denial of a motion to suppress involves mixed questions of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. At a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to evaluate the evidence and the credibility of witnesses. *See State v. Carter*, 72 Ohio St.3d 545, 552 (1995). When reviewing a ruling on a motion to suppress, deference is given to the trial court’s findings of fact so long as they are supported by competent, credible evidence. *Burnside* at ¶ 8. With respect to the trial court’s conclusions of law, however, our standard of review is de novo; and, therefore, we must decide whether the facts satisfy the applicable legal standard. *State v. McNamara*, 124 Ohio App.3d 706, 710 (4th Dist.1997).

{¶15} The following evidence was admitted at the hearings held on O'Neill's motions to suppress.

{¶16} On June 23, 2013, at approximately 11:30 a.m., Officers Boss and Elchert of the Lima Police Department responded to a dispatch call regarding a domestic violence incident at 703 W. Wayne Street in Lima, Ohio. The officers were informed that the suspect had left or was getting ready to leave the home. Upon arriving at the scene, the victim, April Yoakum, told the officers that O'Neill, her live-in boyfriend, had assaulted her and left the house. The officers searched the residence and found that O'Neill was no longer present at the scene.

{¶17} The officers sat down with Yoakum to discuss what had transpired. Yoakum explained that she and O'Neill had been dating for two years and had been living together for approximately 30 days. Yoakum stated that she came home from work to find O'Neill drinking. She described an argument that ensued which culminated in O'Neill assaulting her. Specifically, Yoakum stated that O'Neill threw a beer can at her, shoved her to the ground and attempted to drag her around the home by her hair. Officer Boss testified that he observed physical evidence at the scene to corroborate Yoakum's statements. In particular, Officer Boss noticed that a beer can and other items had been thrown about the apartment. Officer Boss could not recall if Yoakum had any visible physical injuries, but the record indicates that she later sought medical attention for a fractured thumb.

Yoakum informed Officer Boss that O'Neill had left in a four-door blue Mazda Protege and gave him the license plate number of the vehicle.

{¶18} Officer Boss left the scene to look for O'Neill while Officer Elchert remained with Yoakum as she completed a written statement. When asked at the suppression hearing why he pursued O'Neill, Officer Boss stated that "we attempt to locate all suspects in every case." (Doc. No. 52 at 23). He testified that he visited O'Neill's last known address where O'Neill's mother and another family member resided, which was located in a neighboring jurisdiction. O'Neill's mother informed Officer Boss that she had not seen O'Neill and did not know of his whereabouts. Based upon the information given by Yoakum that O'Neill had been drinking, Officer Boss decided to check the parking lots of some of the local bars to see if he could locate O'Neill's vehicle.

{¶19} Approximately a half an hour to an hour after he began his investigation, Officer Boss located a vehicle matching the description of O'Neill's in the parking lot of Lombardo's bar in Lima. Officer Boss ran the license plate of the vehicle and verified that it was registered to O'Neill. At that time, he was also able to view the photograph of O'Neill associated with the information on his Operator's License. Officer Boss then waited in an adjacent parking lot for back-up to arrive before going into the bar to arrest O'Neill for domestic violence.

{¶20} Shortly thereafter, Officer Boss observed O’Neill leave the bar and get into his vehicle with an unknown female. Officer Boss followed O’Neill in his patrol cruiser. Once his back-up arrived, Officer Boss initiated a traffic stop with the intent to arrest O’Neill for domestic violence. O’Neill pulled his vehicle into the parking lot of a carry-out. Officer Boss testified that he asked O’Neill to step out of the vehicle and placed him under arrest for domestic violence. Officer Boss explained to O’Neill the reason for the stop—specifically that he was a suspect for domestic violence—and asked O’Neill what had transpired during the incident with Yoakum. O’Neill informed Officer Boss that he and Yoakum argued and then he left.

{¶21} During his interactions with O’Neill, Officer Boss observed O’Neill to be intoxicated, which lead to Officer Boss also placing O’Neill under arrest for OVI. Officer Boss explained that he made the decision to impound O’Neill’s vehicle because O’Neill was in custody and unable to move the vehicle. Specifically, Officer Boss testified that O’Neill would be in custody for another 24 hours due to his arrest for domestic violence and the location of the vehicle would have impeded the business traffic in the narrow parking lot of the carry-out if it were to remain parked in that location.

{¶22} Officer Ludeke conducted the inventory search of O’Neill’s impounded vehicle. Officer Ludeke testified that he performed the search in

accordance with the Lima Police Department's impound procedure, which states that "[t]he contents of any unlocked trunk, glove box, other vehicle compartment or container in the vehicle will be inventoried." (State's Ex. 2). Officer Ludeke explained that one of the purposes of this policy is to remove any valuables left in the vehicle for safekeeping until the owner can retrieve them. Officer Ludeke recalled locating a book bag on the back seat behind the driver's seat. Inside the bag, he found two plastic baggies filled with a white powdery substance and a scale. The substance later tested positive for cocaine.

{¶23} On appeal, O'Neill argues that Officer Boss had no legal authority to arrest him under the statutory scheme set forth in R.C. 2935.03, which generally governs a police officer's authority to make a warrantless arrest. Section 2935.03(B)(1) of the Ohio Revised Code specifically refers to "offenses of violence," including domestic violence, and states the following:

(B)(1) When there is reasonable ground to believe that an offense of violence * * * the offense of domestic violence as defined in section 2919.25 of the Revised Code * * * has been committed within the limits of the political subdivision * * * or within the limits of the territorial jurisdiction of the peace officer, a peace officer * * * may arrest and detain until a warrant can be obtained any person who the peace officer has reasonable cause to believe is guilty of the violation.

{¶24} Section 2935.03(B)(3) of the Ohio Revised Code specifically refers to domestic violence and defines "reasonable grounds" in the following manner:

[A] peace officer * * * has reasonable grounds to believe that the offense of domestic violence * * * has been committed and reasonable cause to believe that a particular person is guilty of committing the offense if any of the following occurs:

(i) A person executes a written statement alleging that the person in question has committed the offense of domestic violence * * * against the person who executes the statement or against a child of the person who executes the statement.

(ii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer, based upon the peace officer's own knowledge and observation of the facts and circumstances of the alleged incident of the offense of domestic violence * * * or based upon any other information, including, but not limited to, any reasonably trustworthy information given to the peace officer by the alleged victim of the alleged incident of the offense or any witness of the alleged incident of the offense, concludes that there are reasonable grounds to believe that the offense of domestic violence * * * has been committed and reasonable cause to believe that the person in question is guilty of committing the offense.

(iii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer witnessed the person in question commit the offense of domestic violence or the offense of violating a protection order.

R.C. 2935.03(B)(3)(a). Specifically, with regard to domestic violence offenses, the Ohio General Assembly has articulated a “preferred arrest policy.” *See City of Cleveland v. Morales*, 8th Dist. Cuyahoga No. 81083, 2002-Ohio-5862, ¶ 16.

Section 2935.03(B)(3)(b) of the Ohio Revised Code states:

If * * * a peace officer has reasonable grounds to believe that the offense of domestic violence * * * has been committed and reasonable cause to believe that a particular person is guilty of

committing the offense, it is the preferred course of action in this state that the officer arrest and detain that person * * * until a warrant can be obtained.

(Emphasis added). Notably, the Ohio Revised Code also requires that local police departments adopt procedures and policies relating to officer response to an alleged incident of domestic violence according to the provisions of R.C. 2935.03. *See* R.C. 2935.032(A). Thus, it is within these parameters that we review O'Neill's first assignment of error.

{¶25} O'Neill's contention that his arrest was constitutionally infirm rests upon the effect of R.C. 2935.03(B)(3)(g) on an officer's authority to make a warrantless arrest of a domestic violence suspect. Section 2935.03(B)(3)(g) of the Ohio Revised Code states as follows:

If a peace officer * * * intends pursuant to divisions (B)(3)(a) to (g) of this section to arrest a person pursuant to division (B)(1) of this section and if the officer is unable to do so because the person is not present, the officer promptly shall seek a warrant for the arrest of the person.

{¶26} O'Neill asserts on appeal that R.C. 2935.03(B)(3)(g) mandates a police officer obtain a warrant *prior* to arresting a domestic violence suspect when the suspect is not present at the scene. O'Neill contends that R.C. 2935.03(B)(3)(g) operates to automatically *revoke* the authority expressly conferred upon an officer in R.C. 2935.03(B)(1) to "arrest and detain" a domestic violence suspect "until a warrant can be obtained" simply because the suspect has

left the scene prior to law enforcement's arrival. Thus, regardless of how compelling the evidence at the scene may be to demonstrate that the suspect has committed a domestic violence offense, under O'Neill's interpretation, the officer is not authorized to take any further action except to promptly seek an arrest warrant for that suspect. Moreover, any apprehension or detention of a suspect prior to obtaining an arrest warrant would be invalid under the statute.

{¶27} Initially, we note that O'Neill's argument obviates the provisions of R.C. 2935.03(B)(3)(a)(i)-(iii), which permit an officer to formulate probable cause to make a warrantless arrest based upon certain defined "reasonable grounds." It is notable that the "reasonable grounds" enumerated in R.C. 2935.03(B)(3)(a)(i) and (ii), which are also the provisions implicated by the facts in this case, expressly permit an officer to find probable cause in circumstances where the officer may not have witnessed the suspect committing the domestic violence offense, even if only a misdemeanor, and therefore also provide for the specific scenario where the suspect is not present at the scene. Nowhere in this provision is the officer's ability to make a probable cause determination on these enumerated grounds qualified or otherwise limited by whether the suspect is present at the scene.

{¶28} O'Neill's position regarding R.C. 2935.03(B)(3)(g) further proves to be untenable when considering the preferred arrest policy with respect to domestic

violence offenses. Specifically, not only does R.C. 2935.03(B)(3)(b) state that a warrantless arrest is “the preferred course of action” in domestic violence offenses, but R.C. 2935.03(B)(3)(c) also *requires* an officer who does not comply with the preferred arrest policy to “articulate in the written report of the incident * * * a clear statement of the officer’s reasons *for not arresting and detaining that person* until a warrant can be obtained.” Again, in reviewing these provisions, there is no qualification that these arrest procedures are only applicable to instances in which the suspect is present at the scene.

{¶29} Even looking to other subsections of the statute, we do not find support for O’Neill’s position on appeal. Most notably, R.C. 2935.03(D) governs an officer’s authority to pursue a suspect who is clearly contemplated to no longer be present at the scene, and states as follows:

If a * * * municipal police officer * * * is authorized by division (A) or (B) of this section to arrest and detain, within the limits of the political subdivision * * * or within the limits of the territorial jurisdiction of the peace officer, a person until a warrant can be obtained, the peace officer, outside the limits of that territory, *may pursue, arrest, and detain that person until a warrant can be obtained* if all of the following apply:

- (1) The pursuit takes place without unreasonable delay after the offense is committed;**
- (2) The pursuit is initiated within the limits of the political subdivision * * * or within the limits of the territorial jurisdiction of the peace officer;**

(3) The offense involved is a felony, a misdemeanor of the first degree or a substantially equivalent municipal ordinance, a misdemeanor of the second degree or a substantially equivalent municipal ordinance, or any offense for which points are chargeable pursuant to section 4510.036 of the Revised Code.

(Emphasis added). This provision authorizing an officer's pursuit of a suspect can only be applicable to cases in which the suspect is not present at the scene because the suspect has fled or recently left the scene.¹ Moreover, R.C. 2935.03(D) expressly authorizes an officer to "pursue, arrest, and detain that person until a warrant can be obtained." O'Neill's argument that R.C. 2935.03(B)(3)(g) operates to automatically deprive an officer of the authority to make a warrantless arrest when the suspect is not present at the scene would have the effect of rendering R.C. 2935.03(D) inapplicable to domestic violence offenses. Clearly, this is contrary to the language in R.C. 2935.03(D) which explicitly incorporates the authority granted to an officer to arrest and detain a person whom the officer has reasonable cause to believe is guilty of an "offense of violence" referred to in R.C. 2935.03(B)(1), which includes domestic violence.

{¶30} In construing statutory provisions together, a court must give them "a reasonable construction as to give proper force and effect to each and all such statutes." *State v. Patterson*, 81 Ohio St.3d 524, 525-26 (1998). In addition, the

¹ O'Neill argues that R.C. 2935.03(D) is limited to circumstances in which the officer is in "hot pursuit" of the suspect and where the officer makes an extra-territorial arrest. However, we find no support for this restrictive application in the statutory language nor has O'Neill cited any authority establishing this position on appeal.

interpretation and application of statutes must be viewed in a manner to carry out the legislative intent of the sections. *Johnson's Markets, Inc. v. New Carlisle Dep't of Health*, 58 Ohio St. 3d 28, 35 (1991). O'Neill's position with respect to the operation of R.C. 2935.03(B)(3)(g) simply does not comport with these fundamental tenants of statutory construction.

{¶31} O'Neill also claims that it was unlawful for Officer Boss to make a warrantless arrest for a misdemeanor offense that he did not observe. "As a general rule, an officer may not make a warrantless arrest for a misdemeanor unless the offense is committed in the officer's presence." *State v. Henderson*, 51 Ohio St. 3d 54, 56 (1990), citing, *State v. Lewis*, 50 Ohio St. 179 (1893) syllabus (holding that "a police officer could not make a warrantless arrest for a misdemeanor which was not committed in his presence based on the statements of witnesses to the crime").

{¶32} However, as previously discussed, O'Neill's argument is undermined by the fact that R.C. 2935.03(B)(3)(a)(i) and (ii) specifically permit an officer to make a probable cause determination without the officer witnessing the person commit the offense. The "reasonable grounds" listed in R.C. 2935.03(B)(3)(a) apply to all domestic violence offenses, regardless of whether the offense constitutes a misdemeanor or a felony. Moreover, R.C. 2935.03(B) has been well recognized by courts to be an exception to the so-called officer "presence

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requirement” in misdemeanor offenses. *See e.g., State v. Benner*, 3d Dist. Seneca No. 13–05–14, 2005-Ohio-5374, ¶ 12; *State v. Miller*, 91 Ohio App. 3d 270, 275 (3d Dist.1993); *State v. Martin*, 12th Dist. Madison No. CA2004–07–026, 2005-Ohio-3511, ¶ 9; *State v. Norris*, 2d Dist. Montgomery No. 17689, at *2 (Nov. 5, 1999); *City of Cleveland v. Murad*, 84 Ohio App. 3d 317, 320 (8th Dist.1992); R.C. 2935.03(B)(3).

{¶33} In sum, we conclude that R.C. 2935.03(B)(3)(g) does not operate to revoke an officer’s legal authority to make a warrantless arrest in cases involving domestic violence. To the contrary, we find that when viewed in context with the related provisions in R.C. 2935.03(B) and (D), the language “promptly shall seek a warrant for the arrest of the person” is far more reasonably construed to compel an officer to *expediently continue* the investigation and *not postpone or delay* the pursuit, detention and arrest of a domestic violence suspect simply because the suspect has recently left the scene prior to law enforcement’s arrival. We conclude that this interpretation is more consistent with the overall statutory scheme articulated by the legislature in R.C. 2935.03 and decline to adopt O’Neill’s position on appeal.

{¶34} Turning to the facts in the instant case, the record establishes that Officer Boss had “reasonable grounds” to believe that O’Neill committed a domestic violence offense based upon his observations at the scene which

corroborated Yoakum's statements that O'Neill had thrown a beer can at her, shoved her to the floor and dragged her by her hair. *See* R.C. 2935.03(B)(3)(a)(ii). We also note that the record reflects that Yoakum completed a written statement alleging that O'Neill committed domestic violence against her.²

{¶35} Once Officer Boss acquired "reasonable grounds" to believe O'Neill had committed a domestic violence offense against Yoakum, he was then authorized by the statute to "pursue, arrest and detain [O'Neill] until a warrant can be obtained" because all three of the criteria under R.C. 2935.03(D) were met. Specifically, the record demonstrates that Officer Boss' pursuit of O'Neill took place without reasonable delay after the offense was committed, the pursuit was initiated within Officer Boss' jurisdiction, and at the time Officer Boss believed O'Neill to be guilty of a misdemeanor of the first degree.³ Based on these facts, we conclude that the trial court did not err in overruling O'Neill's motion to suppress on the basis that O'Neill's warrantless arrest complied with R.C. 2935.03(B) and did not violate his constitutional rights.⁴

² Although we do not rely upon this provision in the case before us, it is interesting to note that a written statement alone constitutes "reasonable grounds" under R.C. 2935.03(B)(3)(a)(i).

³ O'Neill had a prior domestic violence conviction which elevated the offense to a felony of the fourth degree. However, the record indicates that Officer Boss was unaware of this prior conviction at the time he initiated his pursuit of O'Neill.

⁴ We note that even assuming *arguendo* that O'Neill's arrest did not comply with R.C. 2935.03, O'Neill has failed to show that suppression is the appropriate remedy for a violation of the statute. It is well-established that statutory violations falling short of constitutional violations do not trigger the exclusionary rule, unless the legislation requires suppression. *State v. Wilmoth*, 22 Ohio St. 3d 251, 262 (1986)

{¶36} Finally, we also note that O’Neill contends that his arrest was deficient under R.C. 2935.07. Section 2935.07 of the Ohio Revised Code states: “When an arrest is made without a warrant by an officer, he shall inform the person arrested of such officer’s authority to make the arrest and the cause of the arrest.” Our review of the record reveals that Officer Boss informed O’Neill that he was being arrested for domestic violence at the time of his arrest and that there was no violation of this statute. Accordingly, the first assignment of error is overruled.

The Second Assignment of Error

{¶37} In his second assignment of error, O’Neill maintains that his arrest was not supported by probable cause and that the impoundment and search of his vehicle was unlawful. First, with respect to probable cause, R.C. 2935.03(B)(3)(a) articulates the standards of probable cause to make a warrantless arrest in domestic violence offenses and the record demonstrates that two of the enumerated grounds were established in this case.

{¶38} Notwithstanding this fact, the relevant case law establishes that a police officer has reasonable or probable cause to arrest when the events leading up to the arrest, “viewed from the standpoint of an objectively reasonable police officer, amount to” probable cause. *Ornelas v. United States*, 517 U.S. 690, 696 (1996). Moreover, probable cause exists when there are facts and circumstances

within the police officer's knowledge that are sufficient to warrant a reasonable belief that the suspect is committing or has committed an offense. *Beck v. Ohio*, 379 U.S. 89, 96 (1964). Based upon our previous discussion of the record, we find that the facts and circumstances within Officer Boss' knowledge were sufficient to warrant a reasonable belief that O'Neill had committed a domestic violence offense. Therefore, we find O'Neill's argument that his arrest was not supported by probable cause to be without merit.

{¶39} Next, O'Neill argues that Officer Boss' decision to impound his vehicle, which led to the discovery of the large quantity of cocaine during an inventory search by law enforcement, was improper due to the fact that the vehicle was "lawfully parked." (Appt. Brief at 21). Generally, a vehicle may be impounded when " 'it is evidence in a criminal case, used to commit a crime, obtained with funds derived from criminal activities, or unlawfully parked or obstructing traffic; or *if the occupant of the vehicle is arrested*; or when impoundment is otherwise authorized by statute or municipal ordinance.' " *State v. Taylor*, 114 Ohio App. 3d 416, 422 (1996), quoting *Katz, Ohio Arrest, Search and Seizure* 224-225 (1996) (emphasis added). Discretion as to impoundment is permissible "so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity." *Colorado v. Bertine*, 479 U.S. 367, 375-376 (1987).

{¶40} Moreover, an inventory search is a well-defined exception to the warrant requirement. *State v. Mesa*, 87 Ohio St.3d 105, 108, 1999-Ohio-253, citing *Bertine* at 367. An inventory search is conducted pursuant to administrative procedures to protect an individual's property while it is in police custody, protect police against claims of lost, stolen, or vandalized property, and protect police from dangerous instrumentalities. *Mesa* at 109, citing *South Dakota v. Opperman*, 428 U.S. at 369 (1976).

{¶41} Here, Officer Boss' testimony revealed that the decision to tow O'Neill's vehicle had no relation to a suspicion of criminal activity, but instead was based upon the fact that the vehicle would be left for a significant period of time due to O'Neill's arrest for domestic violence and OVI. Officer Boss also testified that the location of O'Neill's vehicle hindered the commercial traffic of the private business where the vehicle was parked. In addition, Officer Boss stated that O'Neill's passenger was also intoxicated and therefore was not available to move O'Neill's vehicle. Officer Boss further explained that the police department contracted with a company who would tow O'Neill's vehicle to their private lot and it was necessary to conduct an inventory search to itemize and secure any valuables left in the vehicle until O'Neill could retrieve them upon his release. Officer Ludeke also provided testimony that the inventory search was conducted in accordance with standard department procedure and a copy of the

policy was admitted as an exhibit at the suppression hearing. Notably, the trial court accepted each of these reasons as legitimate justification for the impoundment and inventory search. Moreover, the authority cited by O’Neill in support of his contention that the impoundment and subsequent search of his vehicle was unlawful is distinguishable from the facts in the instant case.⁵

{¶42} For all these reasons, we conclude that the trial court did not err in determining that O’Neill’s arrest was supported by probable cause and that his vehicle was properly impounded and subject to an inventory search. Accordingly, O’Neill’s second assignment of error is overruled and the judgment of the trial court is affirmed.

Judgment Affirmed

PRESTON, J., concurs.

ROGERS, P.J., concurs in Judgment Only.

/jlr

⁵ In his brief, O’Neill cites *Arizona v. Gant*, 556 U.S. 332 (2009) to support his position that the impoundment of any “legally parked” vehicle is unlawful. However, the Court in *Gant* only addressed the search incident to arrest exception and did not discuss the inventory search exception to the warrant requirement. See *Cleveland v. Cunningham*, 8th Dist. No. 95267, 2011-Ohio-2276, ¶ 20 (stating that the “inventory search” exception to the warrant requirement of the Fourth Amendment was left unaffected by *Gant*). O’Neill also cites *State v. Myrick*, 2d Dist. Montgomery No. 21287, 2006-Ohio-580, which again is distinguishable because the person arrested in *Myrick* was not an occupant of the vehicle towed and impounded. The record clearly establishes that O’Neill was an occupant of the vehicle at the time of his arrest.