

IN THE UTAH COURT OF APPEALS

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Provo City,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20050086-CA
v.)	
)	F I L E D
Miguel David Gedo,)	(August 10, 2006)
)	
Defendant and Appellant.)	2006 UT App 336

Fourth District, Provo Department, 031401047
The Honorable Samuel McVey

Attorneys: Laura H. Cabanilla, Provo, for Appellant
 Vernon F. Romney, Provo, for Appellee

Before Judges Bench, Billings, and McHugh.

PER CURIAM:

Miguel David Gedo appeals his convictions of disorderly conduct, reckless driving, and interference with a police officer. Gedo asserts that the trial court erred in denying his pretrial motion to dismiss the charges or suppress evidence.

Gedo first argues that the search for the vehicle identification number (VIN) and the seizure of the vehicle were unlawful under the Fourth Amendment. Evidence obtained through illegal means is typically excluded. See State v. Shoulderblade, 905 P.2d 289, 292 (Utah 1995). Even if the search for the VIN was unlawful, however, Gedo has not established any constitutional harm. The search did not result in any evidence admitted at trial on these charges, and Gedo acknowledges that there were no charges filed based on the VIN search. The VIN search is not related to the charges of which Gedo was convicted, and so any alleged violation did not affect this case.

Moreover, the seizure of the vehicle was not based on the VIN search. Indeed, the VIN search occurred only after the tow

truck had arrived to impound the vehicle on the independent basis of outstanding parking tickets. The vehicle was lawfully impounded under a Provo City ordinance based on four or more unpaid parking tickets on that vehicle. See Provo City Code § 9.17.080(4). Gedo has not established any constitutional violation regarding the impounding of the vehicle.

Gedo also asserts that his conduct was justified, and thus not subject to prosecution, based on Utah Code section 76-2-406. See Utah Code § 76-2-406 (2003). Section 76-2-406 provides that "[a] person is justified in using force, other than deadly force, against another when and to the extent that he reasonably believes that force is necessary to prevent or terminate criminal interference with . . . personal property." Id. By its plain language, the statute applies only when criminal interference with property is established. As noted, the vehicle was lawfully impounded pursuant to a city ordinance. There was no criminal interference with Gedo's property. Thus, the justification defense does not apply.

Finally, Gedo asserts that he was the target of selective prosecution. Although prosecutors have broad discretion to prosecute charges, "the decision to prosecute may not be deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification." State v. Geer, 765 P.2d 1, 3 (Utah Ct. App. 1988) (quotations and citation omitted). To establish a prima facie case of selective prosecution, "the defendant must demonstrate that a prosecutorial policy results in a discriminatory effect, based on an unlawful classification." Id. To show discriminatory effect, "the defendant must make a credible showing that 'similarly situated individuals of a different race were not prosecuted.'" United States v. Bass, 536 U.S. 862, 863 (2002) (quoting United States v. Armstrong, 517 U.S. 456, 465, 470 (1996)).

Gedo asserts that he is an Hispanic male and was selectively prosecuted based on race. However, he has not identified any policy that results in a discriminatory effect based on an improper classification. He has identified no similarly situated individuals who were not prosecuted. In fact, Gedo concedes in his brief that he has no information on this point. In sum, Gedo has not established a prima facie case of selective prosecution.

The trial court did not err in denying Gedo's motion to dismiss the charges or suppress evidence. Accordingly, Gedo's convictions are affirmed.

Russell W. Bench,
Presiding Judge

Judith M. Billings, Judge

Carolyn B. McHugh, Judge