

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 64899-3-1
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
DANIEL SOTO-BOJORQUEZ,)	
)	FILED: November 7, 2011
Appellant.)	
_____)	

BECKER, J. — Where a car is stopped for a traffic violation, the driver is unlicensed, the car is a traffic hazard, and the officer tries without success to identify someone else who can move the car, it is not unreasonable for the officer to impound the car. We conclude the officer here made reasonable efforts before impounding the car. Accordingly, the trial court did not err in denying suppression of cocaine found during the inventory search conducted as a preliminary to impoundment.

According to facts found at the suppression hearing, the events leading to impoundment began around 12:45 a.m. on November 28, 2009. Whatcom County Sheriff's Deputy Stanley Streubel was parked in a gas station parking lot

near the intersection of Guide Meridian and Smith Road, approximately 10 miles north of Bellingham. He saw a Lincoln Town Car pull into the station. The windows appeared to be tinted to an illegal degree. Deputy Streubel ascertained that the license tabs were expired.

Deputy Streubel allowed the Lincoln to leave the gas station going west. He followed it to the intersection and signaled it to stop. Appellant Daniel Soto-Bojorquez, the sole occupant, pulled over onto the shoulder of Smith Road next to a pub on the corner. Traffic speeds on Guide Meridian and Smith Road exceed 40 to 50 miles per hour. The shoulder is narrow. The car was very close to the roadway, with its mirrors and chassis likely extending into the lane of travel. As parked, it partially blocked the driveway to the pub's parking lot.

When Deputy Streubel asked for identification, Soto-Bojorquez produced an identification card issued in Mexico. Deputy Streubel testified that Soto-Bojorquez spoke little English if any, he himself spoke very little Spanish, and as a result they had "a very hard time communicating." The deputy ascertained that although Soto-Bojorquez did not have a Washington driver's license, the Department of Licensing had developed a "built record" for him based on prior traffic infractions he had been cited for. Records showed that the Lincoln was registered to a woman with the same last name who lived in Everett, approximately 70 miles south of where Soto-Bojorquez was stopped.

According to the findings of fact, Deputy Streubel called the border patrol for assistance because of the Mexico identification card and "defendant's

difficulty in misunderstanding English.” After 40 minutes, border patrol officers arrived and interviewed Soto-Bojorquez. They told Deputy Streubel Soto-Bojorquez was in the country illegally but had started paperwork to obtain legal status. They declined to arrest him and left.

Meanwhile, using variations of the name, Deputy Streubel had searched several databases to find “some local information or contacts” for Soto-Bojorquez. He could find only the registered owner in Everett. He testified that he tried to find out from Soto-Bojorquez if he knew anyone nearby who could come and move the car, but he did not think Soto-Bojorquez understood the question. Soto-Bojorquez offered no insurance card or other paperwork that might provide a local address.

Deputy Streubel cited Soto-Bojorquez for traffic infractions and then released him. He decided to have the car impounded because the car was a traffic hazard as parked, needed to be moved, and there were no available drivers. He was also concerned that Soto-Bojorquez, who appeared to have no other way home, would return and drive the car away with no license and no insurance.

Deputy Streubel performed an inventory search of the car before impounding it. He found cocaine in the car. More suspected cocaine was later found in Soto-Bojorquez’s possession. The State charged him with possession of cocaine and possession with intent to deliver.

Before trial, Soto-Bojorquez moved unsuccessfully to suppress the

cocaine found in the inventory search and on his person. He waived his right to a jury trial and agreed to a bench trial based on police reports of the incident. The court found him guilty of possession only and imposed a three-month jail sentence.

Soto-Bojorquez appeals, arguing that the motion to suppress should have been granted. This court reviews challenged findings of fact in a suppression hearing for substantial evidence but does not review unchallenged findings. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). We review legal conclusions de novo. State v. Baker, No. 65545-1-I, 2011 WL 3802773 (Wash. Ct. App. Aug. 29, 2011).

Impoundment is a seizure. Under the Fourth Amendment to the United States Constitution and article 1, section 7 of the Washington State Constitution, all seizures must be reasonable. State v. White, 97 Wn.2d 92, 109-10, 640 P.2d 1061 (1982). Impoundment is a seizure because it involves the governmental taking of a vehicle into its exclusive custody. State v. Reynoso, 41 Wn. App. 113, 116, 702 P.2d 1222 (1985). The reasonableness of a particular impoundment must be determined from the facts of each case. State v. Greenway, 15 Wn. App. 216, 219, 547 P.2d 1231, review denied, 87 Wn.2d 1009 (1976).

It is undisputed that removal of the vehicle was necessary because it was a traffic hazard and to prevent Soto-Bojorquez from driving it away. Also, impoundment is authorized by statute when the driver does not possess a valid

driver's license. RCW 46.55.113(2)(g). But even when authorized by statute, impoundment must be reasonable under the circumstances to comport with constitutional guaranties. State v. Hill, 68 Wn. App. 300, 305, 842 P.2d 996, review denied, 121 Wn.2d 1020 (1993). In Washington, impoundment is inappropriate when reasonable alternatives exist. Greenway, 15 Wn. App. at 219. Although an officer is not required to exhaust all possible alternatives before deciding to impound, the officer must show he "at least thought about alternatives; attempted, if feasible, to get from the driver the name of someone in the vicinity who could move the vehicle; and then reasonably concluded from his deliberation that impoundment was in order." State v. Hardman, 17 Wn. App. 910, 914, 567 P.2d 238 (1977), review denied, 89 Wn.2d 1020 (1978), quoted in Hill, 68 Wn. App. at 306-07. The State has the burden of showing that an impoundment is reasonable. Hardman, 17 Wn. App. at 912.

Disputing the reasonableness of the decision to impound, Soto-Bojorquez assigns error to finding of fact 7, entered in support of the order denying suppression:

Deputy Streubel could not have expected someone to arrive from Everett to take charge of the vehicle for at least another hour and a half, even if he was lucky enough to contact someone immediately and they could leave momentarily for that entire section of the county. To tie them to this scene watching the car for additional period of time when they had already been there for over an hour is unreasonable.

Soto-Bojorquez contends Deputy Streubel did not consider reasonable alternatives to impoundment because he did not attempt to use an interpreter to

ask whether there was someone in the vicinity who could come to his assistance.

In Hill, this court concluded impoundment was done without consideration of reasonable alternatives where a field breathalyzer test showed the driver was not legally intoxicated, the driver owned the vehicle, he had not been asked about alternate drivers or if he wanted his car parked in a nearby parking lot, and he had twice refused permission for the officer to search his vehicle. Hill, 68 Wn. App. at 307-08. Soto-Bojorquez contends the facts of Hill are “compellingly analogous.” We disagree; the facts are not similar. Unlike the officer in Hill, Deputy Streubel did not act hastily. He did make an effort to identify an alternate driver. And unlike in Hill, here there is no indication that the decision to impound was a pretext to undertake a search for incriminating evidence.

Soto-Bojorquez contends the deputy should have tried harder to overcome the language barrier. At the suppression hearing, defense counsel elicited the deputy’s acknowledgement that he was familiar with a translation service known as the Language Line that is provided for law enforcement, and that he did not use it. Soto-Bojorquez argues, as he did below, that Deputy Streubel should have either used the Language Line or taken advantage of the Spanish-speaking border patrol agent to explore with Soto-Bojorquez the possibility of finding someone locally who could come and move the car. He contends the State had the burden to demonstrate that these alternatives were unreasonable.

The State has the burden of showing that an impoundment is reasonable, but this burden does not include the necessity of exhausting all possibilities that a defendant might suggest in hindsight. Application of the standard of review leads us to conclude the trial court did not err in finding that the deputy acted reasonably despite his failure to use an interpreter. Even if the deputy could have obtained greater assistance with translation from the border patrol agent or from the Language Line (assuming it was available), there was no reason to suppose that someone would be found who was readily available to come to the scene at such a late hour. The deputy tried to find local addresses or contacts for Soto-Bojorquez. Except for the name of the registered owner, he did not find the name, or any variation of it, in any of his databases. During this time he observed Soto-Bojorquez using his cell phone, yet no one came to his assistance. Assuming the owner could have been contacted and would have agreed to leave immediately for Bellingham, it would not have been reasonable for officers to continue waiting for the hour or more it would take someone to drive from Everett.

We conclude substantial evidence supports finding of fact 7. The findings support the conclusion that impoundment was reasonable under the circumstances. The trial court did not err by denying the motion to suppress.

Affirmed.

Becker, J.

WE CONCUR:

Leach, A.C.J.

Schiveller, J.