IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. EDWIN L. JORDAN, Appellant.	No. 40774-4-II UNPUBLISHED OPINION

Hunt, J.—Edwin Jordan appeals his stipulated bench-trial convictions for two counts of controlled substance possession. He argues that the trial court should have suppressed the evidence as the fruit of an illegal seizure. We affirm.

FACTS

On February 11, 2010, Edwin Jordan was a passenger in a car driven by his brother that Washington State Patrol trooper Terry L. Brunstad stopped for speeding. After Brunstad arrested Jordan's brother for driving with a suspended license, Brunstad asked Jordan if he had a license, explaining that if someone else could drive the car away, he would not have to impound it. Jordan told Brunstad that he thought he had a license, but produced an ID card. Trooper Brunstad asked if he could check on Jordan's driving status, and Jordan said, "Yes." Report of Proceedings (RP) at 7.

The records check showed that Jordan's Oregon driver's license was suspended, that he

had no Washington license, and that he had an outstanding arrest warrant from Clark County. Brunstad arrested Jordan on the warrant and searched him incident to the arrest. During the search, Brunstad found a packet of marijuana in Jordan's right front jeans pocket and a packet of cocaine in his right front coin pocket.

The State charged Jordan with two counts of possession of a controlled substance, one count for each drug. Jordan moved to suppress the evidence. At the Cr R 3.6 hearing, Brunstad testified that (1) it is possible to have both an ID card and a driver's license; (2) he had encountered such people; and (3) if the records check had shown that Jordan was properly licensed, he (Brunstad) would have let Jordan drive away his brother's car, even without the license on his person.

Jordan testified that Trooper Brunstad initially had just asked his name. Jordan produced his ID card because the trooper had asked him why his brother called him "Troy" if his name was "Edwin." RP at 17-18. According to Jordan, although the trooper had not mentioned impounding the car, he did ask if Jordan could drive the car away. According to Jordan, he initially told the trooper, "Well, I don't have a driver's license, and I might be suspended out in Oregon, but not Washington." RP at 16. Later, in response to the court's questions, Jordan said he had told Brundstad that "I didn't have a license, but I might be able to drive in Washington but not Oregon, but I did not have a license card." RP at 23. The court asked, "On you?' RP at 23. And Jordan replied, "Yes." RP at 23.

The court found that Trooper Brunstad had a legitimate reason for asking if Jordan had a license, Jordan's response was equivocal, and the trooper properly checked records to determine Jordan's driving status. The trial court denied Jordan's motion to suppress.

Jordan went to trial on stipulated facts before the court, which convicted him as charged. Jordan appeals.

ANALYSIS

Jordan argues that the trial court erred in denying his motion to suppress the evidence, which, he claims, resulted from the trooper's unlawful seizure of Jordan without a warrant when the trooper approached, asked for identification, and checked Jordan's driving status without his consent. Concluding that the record supports the trial court's contrary findings of fact and conclusions of law, we disagree.

A "mere request for identification from a [vehicle] passenger for investigatory purposes constitutes a seizure unless there is a reasonable basis for the inquiry." *State v. Rankin,* 151 Wn.2d 689, 697, 92 P.3d 202 (2004). One such reasonable basis is the need to consider alternatives to impounding the vehicle. Impoundment is a seizure, which must be reasonable under our state and federal constitutions. *In re 1992 Honda Accord,* 117 Wn. App. 510, 517, 71 P.3d 226 (2003); *In re Impoundment of Chevrolet Truck,* 148 Wn.2d 145, 151, 156 n.10, 60 P.3d 53 (2002); *State v. Coss,* 87 Wn. App. 891, 898, 943 P.2d 1126 (1997). If a validly licensed driver is available to remove the vehicle, impoundment may not be constitutionally reasonable. *See Coss,* 87 Wn. App. at 899-900; *State v. Reynoso,* 41 Wn. App. 113, 118-19, 702 P.2d 1222 (1985); *State v. Hardman,* 17 Wn. App. 910, 912-13, 567 P.2d 238 (1977).

After Trooper Brunstad arrested Jordan's brother for driving the vehicle with a suspended license, he needed to determine whether there was a validly licensed driver available to remove the vehicle. *Coss*, 87 Wn. App. at 898. Therefore, Brunstad was justified in asking if the passenger, Jordan, whether he had a valid driver's license. If Jordan had said he did not have a license, the

inquiry would have ended. But Jordan's response was equivocal: He replied that he thought he had a license and then produced only an ID card. This ambiguous information prompted Brunstad to asked Jordan's permission to check on his driving status, which permission Jordan granted.[1]

The records check revealed that Jordan had not only a suspended driver's license in Oregon and no driver's license in Washington, but also an outstanding arrest warrant. Jordan does not challenge the legality of the arrest warrant. Therefore, Trooper Brunstad properly acted on the warrant, lawfully searched Jordan incident to his arrest, and, therefore, lawfully seized the evidence that he (Brunstad) discovered during this lawful search. We hold that the trial court did not err in denying Jordan's motion to suppress this evidence.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Penoyar, C.J.

Johanson, J.

[1] Jordan disputes this testimony, but the trial court believed the trooper. We will not review that credibility determination. *See State v. Camarillo,* 115 Wn.2d 60, 71, 794 P.2d 850 (1990).