IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28663-1-III**
	)	
Respondent,	)	
	)	
v.	)	**Division Three**
	)	
BEAU WILLIAM MEYERS,	)	
	)	
Appellant.	)	**UNPUBLISHED OPINION**

Korsmo, A.C.J. — An inventory search of an abandoned truck uncovered marijuana. Beau Meyers was convicted during a stipulated facts trial after his motion to suppress was denied. He now appeals, arguing that the impound was improper and that the warrantless search was unreasonable. We disagree and affirm.

FACTS

In the early morning hours of December 30, 2007, Mr. Meyers ran out of gas in front of a private home owned by off-duty Stevens County Corrections Officer Jerad McLegan. His truck came to a stop in a position that partially blocked McLegan's

driveway, making it dangerous for anyone to try and drive around it. The truck was parked substantially within the northbound lane of travel because eight-to-ten inch snow berms on the side of the road prevented access to the shoulders. Mr. Meyers turned on his emergency flashers and left to go get gas. He did not lock the truck.

Four to six inches of snow had fallen over night; consequently, Mr. McLegan first noticed the truck at 6:30 a.m. when he was preparing to clear his driveway of snow. Sometime between 8:00 and 8:20 a.m., Deputy Jeremy Wakeman, who was on routine patrol, stopped behind the truck.

Deputy Wakeman talked to Mr. McLegan and learned that the vehicle had been sitting there since at least 6:30 a.m. He also learned that the McLegan family intended to go out for breakfast as soon as the driveway was cleared of snow. The deputy then decided to impound the pickup because it was parked within the traveled portion of the road and was partially blocking the driveway. The deputy did not wait any longer because he knew that it would take some time before a tow truck could arrive on the scene. The decision was communicated to dispatch at 8:30 a.m.

After requesting a tow truck for the impoundment, the deputy began an inventory search of the unlocked truck. Inside the unlocked console he found two sandwich bags containing marijuana. After this discovery, but before the tow truck arrived, Mr. Meyers

came back. Following a brief discussion, the deputy arrested him for possession of marijuana.

Mr. Meyers was charged with possession of marijuana over 40 grams and use of drug paraphernalia. He moved to suppress the evidence, alleging that the impound and subsequent search were unlawful. The trial court denied the motion. Mr. Meyers was convicted of both charges following a stipulated facts trial. He then timely appealed to this court.

ANALYSIS

Appellate courts review a suppression ruling to determine whether substantial evidence supports the challenged findings of fact, and whether the findings of fact support the conclusions of law, which are reviewed *de novo*. *State v. Armenta*, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997). Unchallenged findings are verities on appeal. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

Warrantless searches and seizures are generally *per se* unreasonable under both the federal and state constitutions. U.S. Const. amend. IV; Wash Const. art. I, § 7; *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984). However, there are a few "jealously and carefully drawn" exceptions to the warrant requirement, one of which is the inventory search. *Williams*, 102 Wn.2d at 736. The State bears the burden of

demonstrating that a particular search or seizure falls within an exception. *Id*.

It is well-settled that a police officer may conduct a good faith warrantless inventory search subsequent to the lawful impound of a vehicle. *State v. Montague*, 73 Wn.2d 381, 385, 438 P.2d 571 (1968); *State v. Bales*, 15 Wn. App. 834, 835, 552 P.2d 688 (1976) (citations omitted), *review denied*, 89 Wn.2d 1003 (1977). Moreover, it is generally recognized that this ability stems from the "community caretaking" function of the police, and is wholly separate from criminal investigation. *South Dakota v. Opperman*, 428 U.S. 364, 368-370, 49 L. Ed. 2d 1000, 96 S. Ct. 3092 (1976); *State v. Lund*, 10 Wn. App. 709, 711-712, 519 P.2d 1325 (1974). An inventory search is not permitted merely for the purposes of conducting a general exploratory search of a vehicle—such a search requires a warrant. *Montague*, 73 Wn.2d at 385.

The authority for an impoundment must come from a statute or ordinance, or there must be reasonable cause. *State v. Singleton*, 9 Wn. App. 327, 331, 511 P.2d 1396 (1973) (citations omitted). The Legislature has provided that an officer may, at his or her discretion, impound a vehicle if the vehicle is found unattended upon a highway and constitutes an obstruction to traffic or jeopardizes public safety. RCW 46.55.113(2)(b). Here, Mr. Meyers challenges the impound and subsequent search of his vehicle under that statute. He argues that RCW 46.55.085 is the applicable statute and that it was not

complied with. It states:

> (1) A law enforcement officer discovering an unauthorized vehicle left within a highway right-of-way shall attach to the vehicle a readily visible notification sticker. The sticker shall contain the following information:
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> (a) The date and time the sticker was attached;
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> (b) The identity of the officer;
>
> (c) A statement that if the vehicle is not removed within twenty-four hours from the time the sticker is attached, the vehicle may be taken into custody and stored at the owner's expense;
>
> (d) A statement that if the vehicle is not redeemed as provided in RCW 46.55.120, the registered owner will have committed the traffic infraction of littering–abandoned vehicle; and
>
> (e) The address and telephone number where additional information may be obtained.
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> (2) If the vehicle has current Washington registration plates, the officer shall check the records to learn the identity of the last owner of record. The officer or his or her department shall make a reasonable effort to contact the owner by telephone in order to give the owner the information on the notification sticker.
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> (3) If the vehicle is not removed within twenty-four hours from the time the notification sticker is attached, the law enforcement officer may take custody of the vehicle and provide for the vehicle's removal to a place of safety. A vehicle that does not pose a safety hazard may remain on the roadside for more than twenty-four hours if the owner or operator is unable to remove it from the place where it is located and so notifies law enforcement officials and requests assistance.
>
> (4) For the purposes of this section a place of safety includes the business location of a registered tow truck operator.

RCW 46.55.085.

Mr. Meyers notes that the deputy did not attach a sticker to his truck and made no attempt to contact him as required by the statute. He also was not given the statutorily

prescribed 24-hour period to remove his car. *Id.*

However, an important premise of RCW 46.55.085 is that the abandoned vehicles do not constitute a traffic hazard, or jeopardize public safety. *See* RCW 46.55.085; RCW 46.55.010(14). RCW 46.55.113(2)(b) provides that where a vehicle is left on the highway *and* constitutes a traffic hazard or jeopardizes public safety, an officer has the discretion to immediately remove the vehicle to a safe place. *See also* RCW 46.55.010(14). Thus, RCW 46.55.085 applies generally where abandoned vehicles do not constitute either a traffic hazard or a jeopardy to public safety; RCW 46.55.113(2)(b) applies specifically where an abandoned vehicle constitutes either a traffic hazard or a public safety risk.

Here, the court found that it was a snowy morning with little, if any, light. Berms took up almost the entirety of the shoulders of the road, resulting in Mr. Meyers' truck parking substantially in the path of traffic. The truck also was partially blocking Mr. McLegan's driveway, making it dangerous to attempt to leave it. The truck had been abandoned for quite some time, and the McLegans needed to leave shortly. Accordingly, the trial court did not err in concluding that the officer lawfully impounded the vehicle pursuant to RCW 46.55.113(2)(b) since it was both an immediate traffic hazard and a jeopardy to public safety. Since the initial impound of the truck was lawful, the court

correctly concluded that the officer legitimately conducted a good-faith inventory search. *Montague*, 73 Wn.2d at 385; *Bales*, 15 Wn. App. at 835. The trial court did not err in denying Mr. Meyer's CrR 3.6 motion.

Affirmed.

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

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Korsmo, A.C.J.

WE CONCUR:

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Brown, J.

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Siddoway, J.