

FILED
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Court of Appeals
Division I
State of Washington

NO. 73222-6-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MARK D. SHILLING,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

Police officers seized a car after they saw drug paraphernalia inside and a K-9 alerted on it, indicating the presence of narcotics. They obtained and served a search warrant five and a half days later. Did the delay in obtaining the warrant unlawfully impact the defendant's possessory rights when the officer obtained the warrant as soon as reasonably possible and when the warrant was served within five and a half days of the initial seizure?

II. STATEMENT OF THE CASE

On March 11, 2015, having waived his right to trial by jury, a trial court found the defendant guilty of Possession of a Controlled Substance, heroin. CP 23. The evidence consisted of stipulated-to documents including police reports that documented the defendant's encounter with Arlington Police on January 7, 2015, that led to the discovery of over 50 grams of heroin in his car. CP 28.

The defendant moved to suppress evidence of the heroin found in his car, claiming his possessory rights were violated because of the time between the seizure and the search. CP 4. Arlington Officer Rory Bolter was the sole witness at the CrR 3.6 hearing. CP 1RP.

Officer Bolter testified that he and his partner worked together in one car as a hybrid patrol/proactive unit. 1RP 5. In one car, they patrolled the highest crime areas in Arlington and responded to 911 calls. Id. They also worked on assigned tasks as well as on tips received from the public and sometimes the drug task force regarding drug activity in the area. 1RP 5-6.

On Wednesday, January 7, Officer Bolter and his partner were working their usual 1 pm to 11 pm shift. 1RP 6. A member of the Snohomish County Regional Drug Task Force told him there was probable cause to arrest the defendant on a drug possession charge and on an outstanding warrant. 1RP 7.

Based on that information, Officer Bolter set up in an area where he believed he would find the defendant and initiated a traffic stop. 1RP 7. The defendant finally stopped in his driveway. 1RP 8.

Once the defendant was in custody, Officer Bolter saw on the defendant's center console a pen tube with a melted tip which he recognized as drug paraphernalia, a device used to smoke heroin. 1RP 9, 14. He sealed the car with evidence tape and impounded it for a warrant for drug paraphernalia. 1RP 10. The defendant was in custody by 9:30 or 10:00 pm. 1RP 18. Officer

Bolter did not seek a warrant that night because he had been instructed not to awaken judges for warrants for impounded cars. 1RP 17-18.

Officer Bolter knew that the defendant was a heroin and meth user and that drugs were bought and sold out of his house. 1RP 13. He was concerned that there were other drugs in the car. Id.

On Thursday, January 8, a Marysville Police Department officer was available in the later afternoon to apply his K-9 partner to the defendant's car. 1RP 11, 19. The dog alerted, indicating the presence of narcotics in the car. 1RP 11.

The rest of that day and on Friday, January 9, Officer Bolter and his partner were working on 911 calls or other cases they had in progress. 1RP 12. Officer Bolter was not questioned about what he did on those days specifically. However, he explained that he and his partner were often assigned detective-type cases involving sex crimes and top-offenders and that those types of cases took priority over getting a warrant for an impounded car. 1RP 13.

Officer Bolter also explained that the City of Arlington had a total of only four officers on any given shift. 1RP 12. Writing and serving a warrant would have taken Officer Bolter's team away from

their caseload and left only two officers responding to all of Arlington's 911 calls. Id.

Officer Bolter was off duty Saturday through Monday, January 10, 11, and 12. 1RP 11. When he returned to work on Tuesday, January 13, Officer Bolter sought and was granted a warrant to search the defendant's car for drugs and drug paraphernalia. 1RP 11; Exhibit 2. The court gave Officer Bolter up to 10 days to serve the warrant. Exhibit 2.

Officer Bolter served the warrant the same day, just 2 ½ work days and 5½ days calendar days after the car was first impounded. 1RP 16, 24.

At the close of testimony, the defendant moved to suppress the fruits of the search, arguing that the delay between the seizure and the warrant was excessive. 1RP 25-28. The State argued that the delay was reasonable considering the circumstances described and Arlington's jurisdictional needs. 1RP 26.

The court found no guidance in case law regarding what length of time was reasonable. CP 3. The court found 5 ½ days from impound to warrant reasonable. Id. (conclusions of law 3 and 5). The law did not require police officers to put aside other work to

apply for a warrant on an impounded vehicle. Id. (conclusion of law 4). The court denied the motion to suppress. Id. (conclusion of law 7).

III. ARGUMENT

THE TRIAL COURT CORRECTLY FOUND THAT SEIZING A CAR BASED ON PROBABLE CAUSE FOR FIVE AND A HALF DAYS WAS REASONABLE UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE.

Police officers may seize or secure a residence when there is reasonable cause to believe it contains evidence of a crime. State v. Reynoso, 41 Wn. App. 113, 116, 702 P.2d 1222 (1985). The same applies to cars. State v. Huff, 64 Wn. App. 641, 650, 826 P.2d 698, review denied, 119 Wn.2d 1007 (1992). Once a car is seized on probable cause, law enforcement may hold on to it for whatever period is reasonably necessary to obtain a search warrant. Huff, 64 Wn. App. at 650, (quoting Chambers v. Maroney, 399 U.S. 42, 51, S.Ct. 1975, 26 L.Ed.2d 419 (1970)).

A warrantless seizure may last no longer than the time reasonably needed to obtain a warrant. Id. at 650. A reasonable length of time is “a slightly longer infringement on possessory rights in order to encourage the heightened protection of privacy rights that results from obtaining a warrant.” Id. at 651.

[W]hen an officer has probable cause to believe that a car contains contraband or evidence of a crime, he or she may seize and hold the car for the time reasonably needed to obtain a search warrant and conduct the subsequent search.

Huff at 653. There is no bright-line rule that defines any particular time limit as reasonably needed.

In the present case, the facts and circumstances show that the car was seized only for the time Officer Bolter reasonably needed to obtain a warrant. Officer Bolter was off duty for three of the five and a half days. He had a satisfactory explanation for what occurred that made it reasonable necessary for him to wait until January 13 to obtain the warrant.

Officer Bolter seized the car at approximately 10 pm on January 7. He explained that he has been trained not to awaken judges to authorize search warrants for cars in impound.

He worked the next day, January 8, from 1 pm to 11 pm. In addition to his regular duties, Officer Bolter contacted an officer from another jurisdiction to conduct a dog sniff on the car. That was accomplished in the late afternoon.

For the rest of January 8 and all of January 9, Officer Bolter was on duty as a patrol/proactive officer. As a patrol officer, he was one of only four officers in the entire City of Arlington, responding to

every 911 call within city limits. Moreover, because he shared his car with a partner, there were only three cars available to respond to calls. Removing himself would have reduced the number of cars available to respond to 911 calls by a third.

While Officer Bolter did not specify exactly what he did during that time, he did testify about what he typically does and likely was doing that would have prevented him from seeking a search warrant: responding to 911 calls, following up on tips from citizens and other law enforcement, handling more complicated detective-type cases that required more investigation.

On his very next workday, Officer Bolter not only sought but also served the warrant on the defendant's car. The seizure and search lasted two and a half work days, five and a half calendar days in total.

When the court issued the warrant, it gave Officer Bolter a period of ten days to serve the warrant. Officer Bolter did not wait; he served the warrant immediately. This suggests that once he was reasonably available to obtain and serve the warrant, he did so expeditiously.

A reasonable length of time is that which creates a slightly longer deprivation of possessory rights than would have occurred

were no warrant sought. Huff, 64 Wn. App. at 651. That is what occurred in the present case.

Had Officer Bolter obtained a search warrant on January 7, he would have had until January 17 to serve it. Instead, he sought the warrant when his work schedule allowed, on January 13, and still served it before January 17.

The defendant was not denied his possessory rights for longer than reasonably necessary for police to obtain and serve the warrant. The seizure was reasonable.


IV. CONCLUSION

Based on the foregoing, the court should affirm the conviction.

Respectfully submitted on September 28, 2015

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THE STATE OF WASHINGTON,

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DECLARATION OF DOCUMENT
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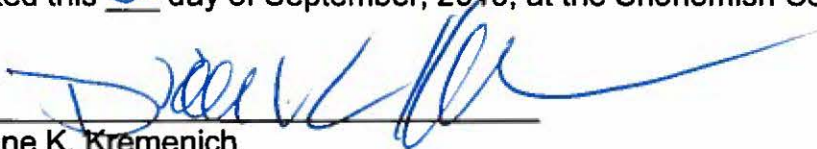
The undersigned certifies that on the 20th day of September, 2015, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

BRIEF OF RESPONDENT

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and Kevin A. March, Nielsen, Broman & Koch, kochd@nwattorney.net and Sloanej@nwattorney.net.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 20th day of September, 2015, at the Snohomish County Office.



Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office