

FILED
DEC 29 2010
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 28663-1-III

IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON

Respondent

v.

BEAU MEYERS

Appellant

BRIEF OF RESPONDENT

Mr. Tim Rasmussen
Prosecuting Attorney
Stevens County

Shadan Kapri
Deputy Prosecuting Attorney
Attorneys for Respondent

Stevens County Prosecutors Office
215 S. Oak Street
Colville, WA
(509) 684-7500

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I.

APPELLANT'S ASSIGNMENT OF ERROR

1. The trial court erred in the Rule 3.6 motion to suppress evidence when it held that the warrantless search of Mr. Beau Meyers' vehicle was reasonable.

II.

ISSUES PRESENTED

- A. WHETHER THE TRIAL COURT ERRED IN RULING THAT THE SEARCH OF BEAU MEYERS' VEHICLE WAS REASONABLE AS A MATTER OF LAW.

III.

STATEMENT OF THE CASE

For the purposes of this appeal the State does not adopt the Appellant's Statement of the Case. The State instead refers to the Findings of Fact in the record as the Statement of the Case. (Clerk's Papers 29 - 34)

IV.

ARGUMENT

A. THE TRIAL COURT DID NOT ERR IN HOLDING THAT THE SEARCH OF BEAU MEYERS' VEHICLE WAS REASONABLE AS A MATTER OF LAW.

The Appellant assigns error to the trial court's ruling as a matter of law that the search of Mr. Meyers' car was appropriate. Appellate review of conclusions of law is limited to whether the findings of fact support those conclusions of law. *State v. Graffius*, 74 Wn. App. 23, 29, 871 P.2d 114 (1994). Findings unchallenged on appeal are verities for purposes of the appeal. *Graffius*, 74 Wn. App. at 29. The label applied to a finding or conclusion is not determinative; the court will treat it for what it actually is. *Para-Medical Leasing v. Hangen*, 48 Wn. App. 389, 397, 739 P.2d 717 (1987).

The analysis of Article I, Section 7 of the Washington Constitution begins with the proposition that warrantless searches are unreasonable per se. Art. 1, S. 7. In *State v. Houser*, 95 Wash.2d 143, 149, 622 P.2d 1218 (1980), the Washington Supreme Court stated that as a general rule, warrantless searches and seizures are per se unreasonable, however, there are a few "jealously and carefully drawn exception" to the warrant requirement. *State*

v. *Houser*, 95 Wash.2d 143, 149, 622 P.2d 1218 (1980); *State v. Hendrickson* 129 Wash.2d 61, 70, 917 P.2d 563 (1996).

“The exceptions to the requirement of a warrant have fallen into several broad categories: consent, exigent circumstances, searches incident to a valid arrest, inventory searches, plain view, and *Terry* investigative stops.” *Hendrickson*, 129 Wash.2d at 71. The burden is on the State to show one of these narrow exceptions apply. *Hendrickson*, 129 Wash.2d at 71.

The community caretaking function is a recognized exception to the warrant requirement. “Subsequent Washington cases have expanded the community caretaking function exception to encompass not only the ‘search and seizure’ of automobiles, but also situations involving either emergency aid or routine checks on health and safety.” *State v. Kinzy*, 141 Wash.2d 373, 385, 5 P.3d 668 (2000). It is totally divorced from a criminal investigation. *Kinzy*, 141 Wash.2d at 385 (citing *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973)). “Because the officer's purpose is not criminal investigation, courts do not use traditional warrant-based analysis to evaluate police conduct in the community caretaking scenario. Instead, courts use a balancing test that focuses on reasonableness.” *State v. Acrey*, 110 Wash. App. 769, 773, 45 P.3d 553 (2002).

Here, the search and seizure of the automobile was reasonable since it was jeopardizing public safety by obstructing traffic since it was left standing

in a traveled portion of the county road on a winter early morning in obscure light if not complete darkness. (Conclusion of Law 1; CP 34 -35)

Here, the findings of fact support the trial court's conclusion of law that Mr. Meyers' car was reasonably searched according to Washington State law under the community caretaking function. The findings of fact reveal that on December 30, 2007, an off-duty Stevens County Corrections Officer Jarad McLagan came outside of his residence when he noticed an unoccupied truck mostly blocking his driveway and standing partially in the northbound lane of travel of Williams Valley Road. (Finding of Fact 1; CP 30) This occurred approximately 6:30 a.m. (Finding of Fact 1; CP 30) Mr. McLagan began to snow-blow his long driveway (a job that takes approximately two hours). (Finding of Fact 1; CP 30) Mr. McLagan was still in the process of clearing his driveway when Deputy Jeremy Wakeman, who was on routine patrol, stopped behind the pickup truck at around 8:00 or 8:20 a.m. (Finding of Fact 2; CP 30)

There were 8 - 10 inches of snow on the side of Williams Valley Road due to the county plowing the snow off of the road and onto the shoulder. (Finding of Fact 3; CP 30) As the court stated, "[i]n other words, the shoulders alongside the county road were taken up almost entirely by the snow berms. Thus the pickup was parked substantially within the lane of travel into the northbound lane." (Finding of Fact 3; CP 30 - 31) (emphasis added)

The driver of the pick had left his emergency flashers on, showing that he, too, was also worried about the vehicle being left unattended in the lane of travel on the road. (Finding of Fact 4, CP 31) The officer spoke with Mr. McLagan and learned that the pickup had been in that location “for quite some time without the driver returning to deal with it.” (Finding of Fact 5; CP 31) The officer “decided to impound the pickup because it was parked within the traveled portion of the northbound lane of Williams Valley Road, a county road, and because the pickup was partially blocking the McLagan driveway” making it unsafe for both reasons. (Finding of Fact 5 - 6; CP 31)

Once the police officer had requested a tow truck for impoundment, he began an inventory search of the car. (Finding of Fact 8; CP 32) The truck was unlocked, but there were no keys inside the car. (Finding of Fact 8; CP 32) Following his usual procedure, the officer first searched the driver’s side, then the passenger’s side, and finally the other parts of the interior including the glove box and console. (Finding of Fact 8; CP 32 - 33) In the console, he found two bags of a substance he suspected to be marijuana, which he seized. (Finding of Fact 8; CP 32) “He ended the search there and immediately contacted his supervisor for further instructions. Because he was at the end of his inventory search pursuant to the impoundment of the vehicle, the decision was made simply to complete

the impoundment and have the vehicle toward” as the officer had already planned. (Finding of Fact 8; CP 33)

Before the tow truck arrived, Mr. Meyers arrived back at this car. (Finding of Fact 9; CP 33) At this time, it was after 9:00 a.m. (Finding of Fact 8; CP 33) The car was initially discovered around 6:30 a.m. (Finding of Fact 1; CP 30)

As the trial court noted, under RCW 46.55.113(2)(b) “*a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstance... (b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety.*” RCW 46.55.113(2)(b). Under RCW 46.55.010(14) the officer also had the authority to impound the vehicle. In RCW 46.55.010(14) “unauthorized vehicle” means a car that is subject to impoundment after being left unattended in a *public location* that can constitute a traffic hazard. RCW 46.55.010(14) (emphasis added).

Here, based upon the facts of the case, the officer was authorized to impound the car because it was an unattended car in a public location that was a traffic hazard since it was “an obstruction to traffic” by partially blocking the McLagan driveway and was “jeopardiz[ing] public safety” by leaving the truck standing in the traveled portion of a county road “on a wintery early December morning in obscure light if not complete darkness.”

(Finding of Fact 1, 3, 4; Conclusion of Law 2: CP 30 - 35; RCW

46.55.113(2)(b))

The trial court concluded as a matter of law that the officer's decision to impound the car was appropriate given the facts and law of the case.

(Conclusion of Law 2) The court also concluded that an inventory search pursuant to a lawful impoundment of a car is an exception to the requirement for a search warrant. (Conclusion of Law 5) Therefore, the trial judge ruled that the impoundment and subsequent inventory search were appropriate as a matter of law since the car was "abandoned, impeded traffic, and posed a threat to public safety and convenience." (Conclusion of Law 5; CP 37)

And "finally, neither the defendant nor his spouse or friend was available to move the vehicle at any time between when Deputy Wakeman arrived on the scene - or indeed from well prior to that time when McLagan noticed the vehicle - and when Wakeman called for the tow truck - or indeed for some 28 minutes thereafter when the defendant returned." (Conclusion of Law 5; CP 37)

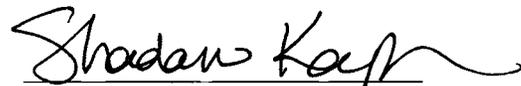
The trial court did not err in ruling that the search of Mr. Meyers' car was appropriate as a matter of law given the facts of this case, statutory, and case law precedent. *State v. Kinzy*, 141 Wash.2d 373, 386, 5 P.3d 668 (2000); RCW 46.55.113(2)(b); RCW 46.55.010(14)

V.

CONCLUSION

For the reasons stated, the conviction of the Appellant should be affirmed. Dated this 27th day of December, 2010.

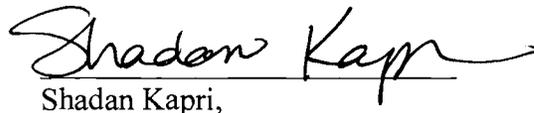
Mr. Tim Rasmussen
Stevens County Prosecuting Attorney



Shadan Kapri, WSBA #39962
Stevens County Deputy Prosecuting
Attorney, Attorney for Respondent

Affidavit of Certification

I certify under penalty of perjury under the laws of the State of Washington, that I mailed a true and correct copy of the foregoing Brief of Respondent to the Court of Appeals, Division III, 500 N. Cedar Street, Spokane, WA 99201, and to Mr. Mark D. Hodgson, Hodgson Law Office, 902 N. Monroe Street, Spokane, WA 99201 and to Mr. Beau Meyers, 4421 Williams Valley Road, Clayton, WA 99110 on December 27, 2010.

A handwritten signature in black ink that reads "Shadan Kapri". The signature is written in a cursive style with a long horizontal stroke at the end.

Shadan Kapri,
Deputy Prosecuting Attorney