

Washington Supreme Court strikes down mandatory car impounds on DUI arrests

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OLYMPIA – Automatically impounding a vehicle whenever someone is arrested for driving under the influence is unconstitutional, a unanimous state Supreme Court said Thursday.

The mandatory seizure law the Legislature passed in 2011 violates a person's constitutional right not to be "disturbed in his private affairs, or his home invaded, without authority of law," the court said. If the car is safely off the road, or someone else is available to drive the car away, police should get a warrant to impound the car.

"Our constitution cannot be amended by statute," Justice Steven González wrote. The Legislature can give more protections to constitutional rights, but it can't pass laws to take those protections away.

The court overturned the seizure of drugs and paraphernalia in a Grant County case that stemmed from a car impounded after the driver was stopped for speeding and arrested for DUI when he refused a field sobriety test.

The search of the car turned up small plastic bags, digital scales, \$340 in cash and other items the arresting officer believed were connected to drug dealing. He searched the driver, Joel Villela, and discovered cocaine. Villela was charged with DUI and possession with intent to deliver drugs.

Villela asked the trial court to suppress evidence of the items in the car because the only grounds for the search was the mandatory impound of the car. Other passengers could have driven it home, he argued, and the cost of retrieving the car from impound can be more than \$1,000, which sometimes results in a driver losing the vehicle.

The trial court agreed, and that ruling went straight to the state Supreme Court while the trial was put on hold. The Washington State Patrol weighed in on the side of the prosecutor while the American Civil Liberties Union and other groups sided with the defense.

The mandatory impound law passed both houses of the Legislature unanimously after people were seriously injured and the state was required to pay more than \$1 million in a lawsuit involving what González called a tragic accident. A woman who was arrested for DUI and taken home then took a cab back to her car while still intoxicated, drove it again and hit an oncoming car. The statute, sometimes called “Hailey’s Law” after the name of a victim of the crash, required the car to be towed from the scene and kept in a storage facility for at least 12 hours unless another registered owner comes to retrieve it.

That’s too broad, the court said Thursday.

Under the constitution an officer must consider alternatives, such as whether another person is available to drive or whether towing the car is necessary to protect the community. Without those exceptions the officer would need a warrant to impound the car.

There was no probable cause to seize the vehicle, González wrote. The trial can continue, but without the items found in the search of the vehicle.