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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. BERNABE ESTRADA, Defendant and Appellant.	B250047 (Los Angeles County Super. Ct. No. VA128133)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael L. Schuur, Judge; Brian Gasdia, Judge. Reversed.

Michael Ian Garey, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

Bernabe Estrada appeals from his conviction of one count of cocaine possession. We conclude that the decision to impound his car, which led to the discovery of the cocaine during an inventory search, was improper and that the evidence should have been suppressed. We therefore reverse the judgment.

FACTS AND PROCEDURAL HISTORY

At around 3:30 a.m. on December 31, 2012, Los Angeles County sheriff's deputies on patrol in Huntington Park pulled over a truck driven by Bernabe Estrada in order to cite him for traffic violations after seeing him make a right turn without signaling and then weaving and straddling traffic lanes. After the deputies turned on their red lights to signal the traffic stop, they saw Estrada lean toward the center console. Deputy Robert Clarke approached the truck and noticed that Estrada seemed nervous and kept glancing at the center console. Clarke asked to see Estrada's driver's license. When Estrada said he had no license, Clarke had Estrada sit in the back seat of the squad car and ran a check with the DMV, which confirmed that Estrada had no license.

Clarke decided to arrest Estrada for having no driver's license and also decided to impound the truck. The deputies conducted an inventory search of the truck in order to account for any valuables in the vehicle. Clarke found a plastic bindle containing a white powder that was later determined to contain .13 grams of cocaine.

Clarke asked Estrada if he knew what was in the package. Estrada said no, then added that he got it from some guy at a party. The deputies arrested Estrada on suspicion of cocaine possession. After arriving at the jail, Deputy Edna Amezquita advised Estrada of his *Miranda*[1] rights in Spanish. Estrada agreed to waive his rights and told the deputies that someone at a party gave him the powder and he did not know what it was. Amezquita then had Estrada fill out a *Miranda* waiver form and write out the statement he had just given.

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1 *Miranda v. Arizona* (1966) 384 U.S. 436.

Estrada brought a pretrial motion to suppress the cocaine evidence, contending that the traffic stop and impound search were unlawful. The trial court denied that motion, finding that the deputies did not impound the truck as a ruse to search for contraband. Estrada also brought a motion to bar evidence of any statements he made to the police, contending that they were obtained in violation of his *Miranda* rights. As to Estrada's statement at the scene of his arrest, the trial court allowed in only his answer "no" to the question whether he knew what was in the bindle. The trial court found that Estrada's oral and written statements at the jailhouse were not obtained in violation of *Miranda* and allowed them in evidence.

Estrada contends that the trial court erred by denying his motions to suppress the cocaine evidence and his statements to the deputies. He also contends there was insufficient evidence that he knew the substance was cocaine.[2]

DISCUSSION

1. *The Motion to Suppress*

A. Evidence From the Suppression Hearing

Clarke testified that he decided to stop Estrada after seeing him make a right turn onto Pacific Boulevard without signaling, and then weave a bit and straddle the traffic lanes. As Clarke pulled over Estrada, the deputy saw Estrada lean forward toward the center console area. When Clarke asked for Estrada's license, he said he had none. Clarke had Estrada sit in the back seat of the squad car while he ran a check with the DMV, which confirmed that Estrada did not have a driver's license. Estrada was not handcuffed during that period.

Clarke decided to arrest Estrada for driving without a license. Clarke testified that he "impounded the vehicle for the driving without a license [under Vehicle Code section

[2] Because we conclude that the impound search was unlawful and the cocaine evidence should have been suppressed, we need not reach Estrada's contentions that the traffic stop was unlawful, that his *Miranda* rights were violated, or that there was insufficient evidence he knew the substance in his possession was cocaine.

14602.6, subdivision (a)(1)], which is a 30-day hold, and I conducted an inventory search of the vehicle." Asked why he searched the truck, Clarke replied, "It's required. It's part of the – when we fill out the CHP 180, we have to fill out an inventory of it, as well as, it's also a requirement on us by department policy to do an inventory search."

Clarke testified on cross-examination that he does not automatically arrest every driver he determines does not have a valid license and that he has discretion whether to impound an arrestee's car. Clarke admitted that seeing Estrada lean toward the center console piqued his curiosity about whether there were drugs in the car, but denied that he decided to impound the car so he could search for drugs.

Estrada testified that he told Clarke he had a Mexican driver's license but that Clarke never asked to see that license, a claim that Clarke denied. On cross-examination, the prosecutor looked at a photocopy of Estrada's Mexican driver's license, observed that it had expired by the time of the arrest, and asked Estrada whether at the time of the arrest he had a valid driver's license from anywhere in the world. Estrada replied, "I didn't know about the expiration."

B. Applicable Law

When a police officer determines that a motorist was driving without a license, he may arrest that person and impound his vehicle for 30 days. (Veh. Code, § 14602.6, subd. (a)(1).) However, such statutory authority standing alone does not determine whether the decision to impound and then search a vehicle is constitutionally permissible. (*People v. Williams* (2006) 145 Cal.App.4th 756, 762 (*Williams*).)[3] Instead, under 4th Amendment principles, police officers may impound vehicles that jeopardize public safety or impede the flow of traffic as part of their community caretaking functions. (*Id.* at p. 761, quoting *South Dakota v. Opperman* (1976) 428 U.S. 364, 368, 373.)

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[3] Impounding of a vehicle is analytically distinct from inventorying it. The former is a "seizure," the latter a "search." (*U.S. v. Duguay* (7th Cir. 1996) 93 F.3d 346, 352.) Estrada does not contend on appeal that the nature of the inventory search itself was unlawful, only that it followed an illegal impound/seizure.

Whether impoundment is warranted under this doctrine depends on the location of the vehicle and the police officer's duty to prevent it from creating a hazard to other drivers or becoming a target for vandalism or theft. (*Williams, supra,* 145 Cal.App.4th at p. 761.) If the impound was warranted, an inventory search that follows is constitutionally permissible. (*Ibid.*) However, an inventory search conducted pursuant to an unreasonable impound is also unreasonable. (*People v. Torres* (2010) 188 Cal.App.4th 775, 786 (*Torres*).) The decision to impound must be based on something other than suspicion of evidence of criminal activity and may not be a ruse to conduct a search in order to find incriminating evidence. (*Id.* at pp. 787-788.) Therefore the motive behind the decision to impound is crucial. (*Id.* at p. 787.)

Police officers may exercise discretion in determining whether impounding a vehicle serves a community caretaking function so long as their discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity. (*Torres, supra,* 188 Cal.App.4th at p. 787, citing *Colorado v. Bertine* (1987) 479 U.S. 367, 375.) Although a standardized impound policy makes it more likely that an impound decision will be upheld, an impound decision made in the absence of such a policy will be found valid so long as the officer's decision was reasonable under all the circumstances pursuant to the community caretaking function. (*People v. Shafrir* (2010) 183 Cal.App.4th 1238, 1246 (*Shafrir*).)

When a trial court rules on a motion to suppress evidence, it finds the facts, selects the rule of law, and applies that rule to determine whether the law has been violated. (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145.) We review the trial court's factual findings under the substantial evidence standard. Whether the applicable law was correctly applied to those facts presents a mixed question of law and fact that is subject to independent review. (*Ibid.*) We review the ruling itself, not the trial court's reasoning, and will affirm if the ruling is correct on any applicable legal theory. (*Ibid.*)

C. There Was Insufficient Evidence that the Impound Was Lawful

Estrada contends that the trial court erred by denying his motion to suppress because there was insufficient evidence that the deputies impounded the truck pursuant to standardized criteria or for any legitimate community caretaking function, such as the need to protect other motorists or safeguard the truck from vandalism or theft. We agree.

In *Williams, supra*, 145 Cal.App.4th 756, we reversed the defendant's conviction for carrying a loaded firearm that was found in his car during an impound search after a Santa Monica police officer cited him for driving without a seatbelt and then arrested him on an outstanding warrant from a previous traffic citation. The police officer impounded the car pursuant to Vehicle Code section 22651, subdivision (h)(1), which authorizes the impound of a car that was driven by an arrestee. The traffic stop occurred right by the defendant's home and he legally parked the car in front of his house, albeit some distance from the curb. The officer testified that the car was not a traffic hazard, that he had no reason to believe the car had been stolen or was not properly in the defendant's possession, and that the car could have been locked and left right where the defendant left it. The City of Santa Monica did not have a written impound policy.

We held that the trial court erred by denying the defendant's motion to suppress the evidence because "[t]he prosecution, which had the burden of establishing that impounding appellant's car was constitutionally reasonable under the circumstances, made no showing that removal of the car from the street furthered a community caretaking function." (*Williams, supra,* 145 Cal.App.4th at p. 762.) The statutory impound authority of Vehicle Code section 22651 was not enough, we held, absent a showing that the impound was part of the community caretaking function. (*Id.* at p. 763.)

In *Torres, supra*, 188 Cal.App.4th 775, the court reversed a judgment for drug possession on circumstances similar to those here. The defendant was stopped for a routine traffic violation and stopped his car in a stall in a public parking lot. The defendant had no driver's license, so the deputy sheriff decided to arrest him and impound the vehicle. The subsequent inventory search turned up evidence of drug sales,

along with a firearm. Summarizing several California and federal decisions, the *Torres* court held that impounding a car driven by an unlicensed driver is not permitted unless it serves some community caretaking function. (*Id.* at pp. 788-791.) "The decision to impound the vehicle must be justified by a community caretaking function 'other than suspicion of evidence of criminal activity.' " (*Id.* at p. 787, citing *Colorado v. Bertine, supra,* 479 U.S. 367.) Because the deputy testified that he impounded the truck in order to search for narcotics and offered no evidence that he acted to carry out a community caretaking function, the impound and subsequent search were unlawful. (*Torres* at p. 792.)

The evidence here is equally lacking. Clarke's only reason for impounding the truck was Estrada's lack of a driver's license under Vehicle Code section 14602.6, subdivision (a). Although Clarke testified that he *searched* the truck pursuant to department policy, there was no evidence concerning a policy regarding the decision to *impound*. In short, there was no evidence of a standardized impound policy.

Although the absence of a formal written policy is not itself fatal to an impound search, so long as the officer's decision was reasonable pursuant to the community caretaking function (*Shafir*, *supra,* 183 Cal.App.4th at p. 1246), Clarke was not asked, and no evidence was offered, concerning the existence of a community caretaking function as the basis for the decision to impound. Despite its burden of proof on this issue, the prosecution did not attempt to elicit information concerning the traffic or road conditions or other factors that might have been part of a proper community caretaking analysis. Therefore, even though the trial court found that Clarke did not impound as a pretext to search, there was still a complete absence of evidence on this critical issue. (Cf. *U.S. v. Cervantes* (9th Cir. 2012) 703 F.3d 1135, 1141-1142 [impound based on lack of driver's license not warranted where prosecution produced no evidence to show that the decision was part of the community caretaking function]; and *Williams*, *supra,* 145 Cal.App.4th at p. 763 [impound solely pursuant to Vehicle Code without concomitant evidence of community caretaking function is unlawful] with *Shafrir* at p. 1248 [impound proper because officers' reliance on Vehicle Code section governing

impound of cars driven by arrestees was coupled with testimony that they impounded the car to protect it from theft].) We therefore conclude that the motion to suppress should have been granted, and as a result the judgment must be reversed.

DISPOSITION

The judgment is reversed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.