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Jim v. State, 137 Nev. Adv. Op. 57 (Sep. 23, 2021).

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Motion to Suppress: Evidence Obtained During Vehicle Inventory Search

Summary:

The Nevada Supreme Court considered whether evidence found during a routine, warrantless vehicle inventory search is validly obtained under the United States and Nevada Constitutions when the inventory is not completed.² The United States and Nevada Constitutions protect against unreasonable searches and seizures,³ but some exceptions such as the “plain view” exception exist.⁴ Here, the Court found that the officers met the elements of the “plain view” doctrine, making the search reasonable and the evidence properly obtained.

Facts & Procedural History:

Following a lawful stop and arrest, officers found contraband in the car appellant Jay Jim was driving. This contraband included a stolen handgun, controlled substances, and other drug paraphernalia found during an inventory search that produced no formal inventory. The State brought criminal charges. Appellant subsequently filed a motion to suppress the contraband evidence arguing it was the “fruit of a poisonous tree” because it was obtained during a warrantless search in violation of his constitutional rights. The district court denied the motion on the grounds that the search and seizure was valid under the “plain view” exception to the warrant requirement. Appellant appeals arguing the “plain view” exception did not apply.

I.

Elko police pulled over and arrested appellant Jay Jim for multiple traffic violations. Police investigation showed Jim was not the registered owner of the vehicle he was driving.

According to Elko Police Department Policy, if a vehicle’s driver is arrested, and the driver is not the vehicle’s registered owner, then police will inventory the vehicle and have it impounded. If, however, the vehicle has evidentiary value, police will secure the vehicle with evidence tape and follow the vehicle as it is towed to the police yard where it will be processed.

Initially believing appellant’s vehicle did not have evidentiary value, police officers began to conduct their inventory procedures. However, during this process, one of the officers saw, in plain view, the butt of a Glock handgun and two baggies containing white powder. They then began following department policies for vehicles with evidentiary value and followed the vehicle as it was towed to the police station. Upon further investigation, police discovered the handgun was stolen and that the white powder was methamphetamine. With this evidence as probable cause, officers received a search warrant for the rest of the vehicle where they found scales and other contraband indicative of drug distribution. Officers listed these items on the

¹ By Courtney Sinagra.

² U.S. CONST. amend. IV; Nev. Const. art. I, § 18.

³ *Id.*

⁴ *Horton v. California*, 496 U.S. 128, 136 (1990); *State v. Conners*, 116 Nev. 184, 187 n.3 (2000).

warrant log, but at no time did they complete an inventory of personal items in the car. Jim was charged with one count of trafficking a controlled substance⁵ and one count of possession of a firearm by a prohibited person.⁶

II.

The Court explained that the “plain view” exception to the warrant requirement⁷ applies when an officer is lawfully present in a place where evidence can be viewed, the item is in plain view, and the item’s incriminating nature is immediately apparent.⁸ Jim did not contest the second two elements, making the narrow issue before the Court whether the officer was lawfully present in the car when he entered to conduct the standard inventory search. Appellant contended the officer was not lawfully present while conducting the inventory search because he never completed the inventory.

To be “lawfully present” during a warrantless search, an officer must have a warrant exception in the first instance.⁹ An inventory search in good-faith compliance with standard procedures is a well-established exception to the Fourth Amendment’s warrant requirement.¹⁰ While an officer’s failure to complete an inventory may foreclose the inventory warrant exception,¹¹ the failure does not establish the officer’s motive for *beginning* the inventory was subterfuge.

Here, the Court found that the officers followed department policy when they began an inventory search. Immediately upon recognizing the contraband, the officers changed course and began following the applicable department policy for vehicles with evidentiary value. This included halting the search, following the vehicle to the police garage, securing the vehicle with police tape, and obtaining a search warrant before proceeding.

III.

The Court held that the police officer’s close adherence to department policies show their motivations were administrative, not an investigatory ruse, and that the officer was lawfully present in the vehicle at the time they saw the contraband. Thus, the elements of the “plain view” warrant-exception were met, the search was reasonable, and the evidence was properly admitted.

⁵ NEV. REV. STAT. 453.3385(1)(b).

⁶ NEV. REV. STAT. 202.360(1).

⁷ U.S. CONST. amend. IV; Nev. Const. art. I, § 18.

⁸ *Horton*, 496 U.S. at 136; *Conners*, 116 Nev. at 187 n.3.

⁹ *See Horton*, 496 U.S. at 136.

¹⁰ *Weintraub v. State*, 110 Nev. 287, 288 (1994) (citing *South Dakota v. Opperman*, 428 U.S. 364 (1976)).

¹¹ *State v. Nye*, 136 Nev. 421, 423-24 (1993).