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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

EDUBINA VICTORIA CARBALLO,

Defendant and Appellant.

F064433

(Super. Ct. No. BF138830A)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Kern County. Raymonda Burnham-Marquez, Judge.

Tutti Hacking, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Kane, J. and Franson, J.

Edubina Victoria Carballo pled guilty to six felonies and two misdemeanors after the trial court denied her Penal Code section 1538.5 motion to suppress evidence found in the vehicle she was driving just prior to her arrest. Most of the charges resulted from possession of the vehicle or from items discovered after the officers decided to impound the vehicle and were conducting an inventory of its contents. As a result of the plea, Carballo received a nine-year suspended sentence conditioned on her spending one year in jail and successfully completing felony probation.

The only contested issue on appeal is whether Carballo's motion to suppress should have been granted. We affirm the judgment, finding no merit to the motion, but remand the matter to the trial court to permit it to correct the amended information to designate correctly the counts to which Carballo pled guilty.

#### **FACTUAL AND PROCEDURAL SUMMARY**

Since the only contested issue is whether Carballo's motion to suppress should have been granted, we focus on the testimony from the hearing on this motion.

Kelly Joseph Day is a police officer with the Bakersfield Police Department. On the date in question, Day was on patrol with Officer John Buoni in a marked police vehicle when a burgundy sedan caught his attention because the center brake light was inoperable. Day discovered the registration on the vehicle had expired, even though the vehicle license plate sticker indicated the vehicle currently was registered. Day initiated a traffic stop based on these two Vehicle Code violations. The stop occurred in a high-crime area in which vehicle thefts were common.

Carballo was the driver of the vehicle and did not have a driver's license with her. When she stopped the vehicle, she parked it on the street, near the curb, in a partially residential area.

All three individuals in the vehicle were requested to exit the vehicle and sit at the curb. Buoni observed the occupants while Day performed a records check on the individuals in the vehicle. The occupants were detained pending further investigation.

The records of the Department of Motor Vehicles revealed that Carballo's driver's license was suspended or revoked. Day also discovered that both passengers in the vehicle had active arrest warrants pending.

Carballo was arrested for violation of Vehicle Code section 14601.1, driving with a suspended or revoked driver's license. At that time she was sitting approximately six feet from the vehicle and the doors of the vehicle were closed. Day searched Carballo incident to her arrest and searched her vehicle prior to the vehicle being impounded.

Day located a purse on the floor of the driver's side of the vehicle. Inside the purse he located a folding glass case, and inside the case he located a glass tubular device. He also located a box of ammunition in the purse.

Buoni testified that Bakersfield Police Department impound procedures require that when a vehicle is impounded, all personal items be inventoried to secure that property for the owner as well as for officer safety. Bakersfield Police Department policy also requires that all individuals driving on a suspended or revoked license are to be arrested. Vehicle Code section 14602.6 permits an officer to impound a vehicle that is being driven by someone who has a suspended or revoked driver's license, although it is not mandatory.

After Day discovered that Carballo's driver's license had been suspended, Buoni and Day decided to arrest her and impound the vehicle. The officers noted that Carballo was driving on a suspended license, the vehicle was located in a high-crime area where it could be broken into or stolen, and the registration on the vehicle had expired so that if anyone else drove the vehicle it would constitute a Vehicle Code violation. The officers reached this conclusion even though Carballo told the officers that the vehicle was parked in front of her residence.

Buoni conducted an inventory search of the vehicle. In the trunk of the vehicle he located a license plate.

The information charged Carballo with eight counts and alleged numerous enhancements. Prior to trial the trial court granted the prosecution's motion to dismiss count 1 and add count 9. After the amendment, Carballo was charged with unlawfully receiving a vehicle, in violation of Penal Code section 496d, transportation of methamphetamine, in violation of Health and Safety Code section 11379, subdivision (a), possession of methamphetamine, in violation of Health and Safety Code section 11377, subdivision (a), being a felon in possession of ammunition, in violation of Penal Code section 12316, subdivision (b)(1), concealing stolen property, in violation of Penal Code section 496, subdivision (a), possession of paraphernalia used to smoke a controlled substance, in violation of Health and Safety Code section 11364, driving with a suspended license, in violation of Vehicle Code section 14601.5, subdivision (a),<sup>1</sup> and unlawful taking of a vehicle, in violation of Vehicle Code section 10851, subdivision (a).

Carballo made a motion to suppress the evidence seized from the vehicle, which the trial court denied. Thereafter, Carballo pled no contest to the charges and admitted three enhancements in exchange for the sentence recited in the introduction.

## **DISCUSSION**

### ***Suppression of Evidence***

As stated above, the sole contested issue is whether Carballo's motion to suppress the evidence obtained during the search of the vehicle should have been granted. The People offer several possible justifications for the search. We conclude the vehicle was properly searched when the vehicle was impounded and therefore affirm the judgment.

The issue here is very narrow. Carballo acknowledges that when a vehicle is properly impounded, police officers may inventory the vehicle pursuant to standardized procedures. (*Colorado v. Bertine* (1987) 479 U.S. 367, 371-372.) Carballo does not suggest the inventory was not completed pursuant to standardized procedures. She

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<sup>1</sup>All statutory references are to the Vehicle Code unless otherwise stated.

argues instead that the decision to impound the vehicle was not made pursuant to the officers' community caretaking function, but instead was made to further an investigatory police motive. According to Carballo, *People v. Torres* (2010) 188 Cal.App.4th 775 (*Torres*) and *People v. Williams* (2006) 145 Cal.App.4th 756 (*Williams*) establish that if the motive is investigatory, then the search violates the Fourth Amendment.

The factual basis for Carballo's argument rests on the fact that the police stopped her vehicle in front of her house, and the statutory basis for the impoundment grants the police officers discretion to impound the vehicle.

Day cited section 14602.6, subdivision (a)(1) as authority for his decision to impound the vehicle. This section states in relevant part that whenever an officer determines a person was driving a vehicle while his or her driving privileges were suspended, the police officer "may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without necessity of arresting the person ...." This section has been interpreted as providing a peace officer with discretion to impound a vehicle, even if the driver is arrested. (*California Highway Patrol v. Superior Court* (2008) 162 Cal.App.4th 1144, 1151-1155.)

Based on *Torres* and *Williams*, Carballo asserts that since Day and Buoni had discretion to impound the vehicle, the decision to do so must have been made solely for investigatory purposes, a reason unrelated to the officers' community caretaker function.

The community caretaker function concept arises from *Cady v. Dombrowski* (1973) 413 U.S. 433 to describe the increased police-citizen interactions that are primarily noncriminal in nature related to travel by automobile. "Because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office. Some such contacts will occur because the

officer may believe the operator has violated a criminal statute, but many more will not be of that nature. Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.” (*Id.* at p. 441.)

This function was further discussed in *South Dakota v. Opperman* (1976) 428 U.S. 364 (*Opperman*).

“This Court has traditionally drawn a distinction between automobiles and homes or offices in relation to the Fourth Amendment. Although automobiles are ‘effects’ and thus within the reach of the Fourth Amendment, [citation], warrantless examinations of automobiles have been upheld in circumstances in which a search of a home or office would not. [Citations.]

“The reason for this well-settled distinction is twofold. First, the inherent mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible. [Citations.] But the Court has also upheld warrantless searches where no immediate danger was presented that the car would be removed from the jurisdiction. [Citations.] Besides the element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one’s automobile is significantly less than that relating to one’s home or office. In discharging their varied responsibilities for ensuring the public safety, law enforcement officials are necessarily brought into frequent contact with automobiles. Most of this contact is distinctly noncriminal in nature. [Citation.] Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order.

“The expectation of privacy as to automobiles is further diminished by the obviously public nature of automobile travel. Only two Terms ago, the Court noted:

“One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one’s residence or as the repository of personal effects.... It travels public thoroughfares where both its occupants and its contents are in plain view.’ [Citation.]

“In the interests of public safety and as part of what the Court has called ‘community caretaking functions,’ [citation], automobiles are frequently taken into police custody. Vehicle accidents present one such occasion. To permit the uninterrupted flow of traffic and in some circumstances to preserve evidence, disabled or damaged vehicles will often be removed from the highways or streets at the behest of police engaged solely in caretaking and traffic-control activities. Police will also frequently remove and impound automobiles which violate parking ordinances and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic. The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.” (*Opperman, supra*, 428 U.S. at pp. 367-369, fn. omitted.)

*Torres* and *Williams* relied on this community caretaker function to examine the validity of the decision to impound vehicles. *Torres* did not have a valid driver’s license when he was stopped for making an unsafe lane change and failing to signal a turn. *Torres* consented to a search of his person whereupon the officer found four cellular phones and \$965 in cash. The officer decided to impound the vehicle, placed *Torres* in the back of the patrol vehicle, and conducted an inventory search that discovered methamphetamine and evidence of illegal drug sales. (*Torres, supra*, 188 Cal.App.4th at p. 780.)

During the hearing on the motion to suppress, the officer asserted he impounded the vehicle because *Torres* was driving without a valid driver’s license, but admitted that a narcotics officer had asked him to find a reason to stop *Torres*. The officer knew he had to impound the vehicle in order to search it. The officer admitted “he was ‘basically using the inventory search as the means to go look for whatever narcotics-related evidence might be in the [vehicle].’” (*Torres, supra*, 188 Cal.App.4th at p. 781.)

Torres argued the inventory search was a ruse to search for narcotics-related evidence. The appellate court described the issue as whether it was reasonable for the officer to impound the vehicle, noting that “[A]n inventory search conducted pursuant to an unreasonable impound is itself unreasonable.” [Citation.]” (*Torres, supra*, 188 Cal.App.4th at p. 786.) According to the appellate court, “The purpose behind the decision to impound is crucial because of the reason for condoning inventory searches of impounded cars,” which was to secure or protect the car and its contents. (*Id.* at pp. 786-787.) Accordingly, “The decision to impound the vehicle must be justified by a community caretaking function ‘other than suspicion of evidence of criminal activity’ [citation] because inventory searches are ‘conducted in the absence of probable cause’ [citation].” (*Id.* at p. 787.) “Statutes authorizing impounding under various circumstances ‘may constitute a standardized policy guiding officers’ discretion’ [citation], though ‘statutory authorization does not, in and of itself, determine the constitutional reasonableness of the seizure’ [citation].” (*Ibid.*)

In applying these concepts, the appellate court described the relevant inquiry as the officer’s motive for impounding the vehicle. (*Torres, supra*, 188 Cal.App.4th at p. 789.) It concluded the record “shows an investigatory motive. The deputy testified he decided to impound the [vehicle] ‘in order to facilitate an inventory search’ because narcotics officers had asked him to ‘develop some basis for stopping’ defendant. The deputy agreed he ‘basically us[ed] the inventory search as the means to go look for whatever narcotics-related evidence might be in the [vehicle].’ [Citations.]” (*Id.* at pp. 789-790.)

The appellate court also rejected the officer’s testimony suggesting the vehicle was impounded because Torres was an unlicensed driver. “The deputy testified he told defendant he would impound the [vehicle] pursuant to Vehicle Code section 14602.6, which authorizes the impounding of vehicles driven by unlicensed drivers. But ‘statutory authorization [to impound a vehicle] does not, in and of itself, determine the

constitutional reasonableness' of an inventory search. [Citation.] The deputy did not claim defendant's lack of a license was the sole motivation for the impounding. [Citation.] He did not offer at the preliminary hearing any standardized policy to impound all vehicles of unlicensed drivers. [Citation.] And he did not offer any community caretaking function served by impounding defendant's [vehicle]. The prosecution failed to show the [vehicle] was illegally parked, at an enhanced risk of vandalism, impeding traffic or pedestrians, or could not be driven away by someone other than defendant. [Citation.] Nor did the prosecution offer any justification for the search other than an inventory search subsequent to impounding." (*Torres, supra*, 188 Cal.App.4th at p. 790.)

Williams was stopped for failing to wear a seatbelt while driving a vehicle. He stopped the vehicle at the curb in front of his residence. Williams had a valid driver's license, but did not have the registration or proof of insurance for the vehicle since it was a rental. The vehicle was validly registered to the rental car company and had not been reported stolen. The officer discovered there was an active arrest warrant for Williams, so he arrested him and impounded the vehicle. A loaded gun was found in the backseat during the inventory search that Williams sought to suppress.

At the suppression hearing, the officer explained that he impounded the vehicle pursuant to section 22651, subdivision (h)(1) because Williams was being arrested. The officer admitted the vehicle was legally parked and that it could have been locked and left where it was instead of being impounded. The officer also admitted his department did not have a written policy about when a vehicle should be impounded, the decision being left to the individual officer.

The appellate court first explained the applicable law.

"As part of their "community caretaking functions," police officers may constitutionally impound vehicles that 'jeopardize ... public safety and the efficient movement of vehicular traffic.' [Citation.] Whether 'impoundment is warranted under this community caretaking doctrine

depends on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft.' [Citation.] If officers are warranted in impounding a vehicle, a warrantless inventory search of the vehicle pursuant to a standardized procedure is constitutionally reasonable. [Citation.] When an inventory search is conducted based on a decision to impound a vehicle, we 'focus on the purpose of the impound rather than the purpose of the inventory,' since an inventory search conducted pursuant to an unreasonable impound is itself unreasonable. [Citation.] Although a police officer is not required to adopt the least intrusive course of action in deciding whether to impound and search a car [citation], the action taken must nonetheless be reasonable in light of the justification for the impound and inventory exception to the search warrant requirement. Reasonableness is '[t]he touchstone of the Fourth Amendment.' [Citation.]" (*Williams, supra*, 145 Cal.App.4th at pp. 761-762.)

The appellate court then explained its conclusion that the impoundment in this case was unreasonable.

"No community caretaking function was served by impounding appellant's car. The car was legally parked at the curb in front of appellant's home. The possibility that the vehicle would be stolen, broken into, or vandalized was no greater than if [the officer] had not stopped and arrested appellant as he returned home. In this regard, it is significant that other cars were parked on the street and that it was a residential area. The prosecution made no showing that the car was blocking a driveway or crosswalk, or that it posed a hazard or impediment to other traffic. Because appellant had a valid driver's license and the car was properly registered, it was not necessary to impound it to prevent immediate and continued unlawful operation. [Citations.] No other justification that would further a community caretaking function was offered or supported by evidence. Indeed, [the officer] admitted he decided to impound the car simply because he was arresting appellant and almost always impounded the cars of drivers he arrested. The prosecution simply did not establish that impounding appellant's car served any community caretaking function. It therefore failed to establish the constitutional reasonableness of the seizure and subsequent inventory search." (*Williams, supra*, 145 Cal.App.4th at pp. 762-763.)

Carballo cites *Torres* and *Williams* and then focuses on the fact that the vehicle was legally parked in front of her claimed residence in a residential area to argue the

decision to impound the vehicle was unreasonable. We disagree because Carballo ignores the facts that distinguish these two cases.

First, unlike *Torres*, there was no evidence the police officers had any investigatory motive when they impounded the vehicle Carballo was driving. Second, unlike *Williams*, Carballo did not have a valid driver's license, *and* the vehicle did not have a valid registration. Therefore, if anyone attempted to move the vehicle, which was likely since Carballo was not the registered owner, another violation would occur. Third, unlike both *Torres* and *Williams*, Day and Buoni both testified that the vehicle was located in a high-crime area with frequent vehicle thefts. Even though the vehicle was parked in front of Carballo's claimed residence, the risk of theft or vandalism likely was higher for a vehicle parked on the street instead of in a driveway or in a garage.

Two separate statutes authorized Day and Buoni to impound the vehicle. Section 14602.6, subdivision (a) authorized the impoundment of the vehicle because Carballo was driving it with a revoked or suspended license. Section 22651, subdivision (o)(1)(A) authorized the impoundment of the vehicle because Carballo was driving it on public streets and the vehicle registration had expired more than six months prior to the impoundment. This section requires the owner of the vehicle to pay all registration fees before recovering the vehicle. This case, therefore, is virtually identical to *People v. Burch* (1986) 188 Cal.App.3d 172, 180, in which this court found proper the impoundment of a vehicle where it was being driven by an unlicensed driver and did not have a current registration.

Because the impoundment of the vehicle was reasonable, the Fourth Amendment was not violated when Day and Buoni conducted an inventory of the contents of the vehicle. All of the items Carballo sought to suppress were located inside the vehicle. Accordingly, the trial court properly denied Carballo's motion to suppress evidence.

***The Amended Information***

Count 1 of the information charged Carballo with unlawful taking of a vehicle, in violation of Penal Code section 666.5, subdivision (a). The trial court granted the People's motion to dismiss count 1 in exchange for adding count 9, which charged Carballo with violation of Penal Code section 10851, subdivision (a).

When the People filed the amended information, it erroneously charged the violation of section 10851, subdivision (a) as count 1 instead of count 9. The amended information did not contain a count 9. Apparently, all of the other proceedings correctly identified the section 10851, subdivision (a) violation as count 9.

The People concede the error. We will therefore remand the matter to the trial court to permit it to amend by interlineation the first amended information to renumber count 1 as count 9.

**DISPOSITION**

The judgment is affirmed. The matter is remanded to the trial court to permit it to amend by interlineation the first amended information to renumber count 1 as count 9.