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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHANIE MARIE STAFFORD,

Defendant and Appellant.

H036350

(Santa Cruz County  
Super. Ct. No. F19733)

After the trial court denied her motion to suppress evidence (Pen. Code, § 1538.5),<sup>1</sup> defendant Stephanie Marie Stafford pleaded no contest to misdemeanor receiving stolen property (§ 496, subd. (a)), and misdemeanor driving with a suspended license (Veh. Code, § 14601.1, subd. (a)). The court suspended imposition of sentence and placed her on probation for two years. On appeal, defendant contends that the court erred in denying her motion to suppress because the impoundment and search of her vehicle violated the Fourth Amendment. We disagree with defendant's contention and, therefore, we will affirm the judgment.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

## **BACKGROUND**

Defendant was charged by complaint with felony receiving stolen property (§ 496, subd. (a); count 1), and misdemeanor driving with a suspended license (Veh. Code, § 14601.1, subd. (a); count 2). The complaint further alleged that defendant had served seven prior prison terms. (§ 667.5, subd. (b).)

### ***The Motion to Suppress***

On November 15, 2010, the date set for the preliminary examination, defendant filed a motion to suppress evidence (§ 1538.5), seeking suppression of evidence “seized from a red woman’s bag in the backseat along with certain checks and checkbooks and driver’s license and other items listed in WVPD property report, including two alleged meth pipes and a small amount of marijuana . . . .” Defendant contended in part that her vehicle was unlawfully impounded and searched. Attached to the motion was a copy of the “Vehicle Towing Policy” from the Watsonville Police Department’s policy manual. The testimony at the preliminary examination was as follows.

Watsonville Chief of Police Manuel Joseph Solano testified that he was on duty around 1:04 p.m. on June 22, 2010, when he saw an SUV travelling at “a very fast pace,” “an unsafe speed,” on East Beach Street. The high school was just a block away, and high school students were on the sidewalk and in the street returning from their lunch break. Chief Solano followed the SUV and determined that it was travelling approximately 45 miles per hour in an area with a 25-mile-per-hour speed limit. He used his siren and lights to pull the SUV over in front on the Buddhist Temple on Bridge Street. The SUV almost struck a parked car on the right side of the street before pulling over. Because the street was very narrow, and there was no place in the area where the SUV could be safely parked on the street, Chief Solano instructed the driver of the SUV to pull into the parking lot of the temple, and the driver complied.

Defendant was the driver of the SUV. Chief Solano knew her from previous contacts, “but it’s been quite a few years.” He asked defendant for her driver’s license

and the SUV's registration. Defendant gave Chief Solano a California ID card and a valid registration. The car was registered to Theresa Ketchum in Gilroy, whom defendant said she knew. Defendant said that her license was suspended but it should not have been, and that she was in the process of working things out with the DMV. Chief Solano "told her I stopped her for speeding. She admitted to it. Said she had a lot on her mind. She appeared very frazzled, very nervous, very agitated and she was fidgeting a lot in the car." Chief Solano called dispatch to verify defendant's driver's license status, and to check for warrants and search and seizure terms. When he was told that defendant's driver's license was suspended, he radioed for back-up assistance. "My intent was to issue a citation for speeding, but then it rolled into a possible suspended driver at which point I'm not equipped to take a person into custody, issue citation, deal with that." He was then told by dispatch that defendant did not have search and seizure terms.

Chief Solano testified that Officer Alex Rodriguez arrived within a few minutes and Chief Solano "handed over the investigation" to him. However, before Officer Rodriguez arrived, and while Chief Solano was standing at the door of the SUV with defendant still seated inside, Porfirio Melgoza, "a person known to Watsonville Police," "ran up," with his gang-associated tattoos clearly visible. "He ran up to us, kind of scared us. Turned into kind of a volatile domestic situation with exchange of words between [defendant] and Mr. Melgoza at which point I yelled at Mr. Melgoza to stay away. That was just when Officer Rodriguez was arriving. So kind of by myself, it became a little tense." Melgoza "was basically swearing at [defendant], calling her names for what she was doing, why she got stopped. And she was also kind of giving him some vulgarity back. It just appeared to me that there was something that took place before the stop. My understanding was it might have been she left a location where he was and that for some reason it was continuing at this location at the stop." Defendant and Melgoza were speaking in "very raised tone[s] of voice. Again, it just presented a volatile, unsafe situation for me. I know him to be involved in gangs. I worried for my

safety at that point and my main concern at that point was to separate the two and not let them talk.” Chief Solano told dispatch that he needed additional assistance because he had a gang member on the scene.

Chief Solano ordered Melgoza to stay at the sidewalk and told Officer Rodriguez to handle him while Chief Solano stayed with defendant. Melgoza “didn’t really obey my commands. He kept pushing the envelope, coming closer and closer. We kept telling him to stay away until an actual officer arrived to separate the two.” The other officer had Melgoza stand by a patrol car about 30 feet away, and stayed with him. Defendant kept “fidgeting” in the SUV, so Chief Solano had her removed from the car. She continued “moving around and fidgeting” with her phone. Defendant said that she was talking to her attorney, and she did not pay attention to the officers’ directions or answer their questions. They had to repeatedly tell her to calm down, to quit moving around, and to sit on the curb.

Chief Solano testified that Officer Rodriguez checked and verified defendant’s driver’s license status. Officer Rodriguez prepared defendant’s ticket (citation to appear), and Chief Solano signed it as the issuing officer. By this time, five officers, including a gang analyst, were on the scene. “Our Watsonville officers frequently know players in Watsonville and that appeared to be what was happening at this particular time.” The officers discussed the possibility of there being incriminating evidence inside the SUV based on defendant’s “association and intelligence that I do not have particulars of.” Defendant did not give them consent to search the SUV, so the officers discussed what they could do. Defendant asked that the SUV be released to Melgoza. Melgoza’s license was run and it came back valid. Chief Solano did not want to release to SUV to Melgoza because “I believed him to be – first of all, his state of mind and his body language, posture appeared to be very agitated, dangerous. He’s a known criminal. The information I was getting from the other officers. And again the fact that I did not want

to release a vehicle to a known criminal with the possibility of that car being stolen and us being responsible for giving that vehicle away.”

Chief Solano further testified that Officer Rodriguez requested a tow vehicle because the SUV “was on private property. Again, there was no safe parking close to where we were stopped at that that vehicle would be safe. There’s a lot of items inside the car; that was a concern of mine” even though he did not consider the area to be a high crime area. In addition, neither defendant nor Melgoza were the registered owner of the SUV, and the officers did not even know whether defendant had permission to drive the car. “We did not know [Melgoza’s] connection to that vehicle. I could very well be releasing the vehicle to someone that was going to steal it. And then we would be on the responsible side for that vehicle. That is a concern whenever we release the vehicle.” “We try to see what the person’s association is. Again, we had a volatile situation. This situation was unique in that he was confrontational, very agitated for some reason and that played into our decision of not releasing the vehicle to him.” Chief Solano did not try to call Ketchum, the registered owner of the SUV. The officers decided to do an inventory search of the SUV, and Officer Rodriguez and another officer conducted the search.

Officer Rodriguez testified that he assisted Chief Solano during the car stop of defendant on June 22, 2010. When Officer Rodriguez arrived on the scene, Chief Solano already had defendant’s ID and car registration, and Melgoza was already at the scene speaking to another officer. Melgoza appeared to be upset. Officer Rodriguez knew who defendant was and he knew that Melgoza was her boyfriend.

Officer Rodriguez testified that he was in charge of the investigation. He prepared the citation and gave it to defendant. Defendant said that her license was not suspended, that it was in good standing. He told her that their records showed that it was suspended and that she needed to contact the DMV. He also asked her for permission to search her car. She appeared nervous and she declined to give her permission. The other officers on

the scene discussed the possibility that defendant and Melgoza were involved in other criminal behavior, but Officer Rodriguez did not take part in the discussion.

Officer Rodriguez did not ask dispatch whether Melgoza had a valid driver's license, and he did not otherwise know whether Melgoza had a valid license. Officer Rodriguez made the decision to impound defendant's vehicle. He has the discretion to have a vehicle towed even when a licensed driver is on the scene. "It's discretion. It's not policy. It's discretion of the officer may or may not tow it." The department's policy explains that there are circumstances where it might be better to tow a car, such as when the car cannot be left safely. "I would have to say that there's issues in that neighborhood," even though Chief Solano thought that it was not a high crime area.

Before the car was impounded, Officer Rodriguez did an inventory search of it with another officer. On the rear seat in a red purse they found two checkbooks, a bank card, and an ID card. Richard Carbahall's name was on one checkbook, the bank card, and the ID card, and Janet Barney's name was on the other checkbook. On the floorboard of the rear passenger seat in a black slipper were methamphetamine pipes. Also on the floorboard was a black purse containing a small amount of marijuana. Officer Rodriguez asked defendant who the purses belonged to and she said that they were hers. Officer Rodriguez called Carbahall and Barney. Carbahall said that he had filed a police report in Santa Cruz County a week earlier because his vehicle had been broken into and his wallet stolen. Carbahall said that he did not know defendant. Barney said that her bank had sent her the checks through the mail but she had never received them. Barney also said that she did not know defendant.

Following the testimony, the prosecutor argued to the court that Chief Solano articulated the reasons why the officers did not want to release the car to Melgoza, and why it was proper to impound the car and do an inventory search. Defense counsel argued that the impoundment of the vehicle was a pretext for the search. The court ruled

in relevant part as follows: “The *Torres* case<sup>2</sup>] cites a number of cases and whether by accident or design [a] number of conflicting factors happened here. The first is of course where Chief Solano had the car pulled over which ended up being into private property instead of on the street. That’s a factor we have to look at.”

“The issue then becomes whether there was somebody to take the car away and whether there was somebody to do that. This is different than *Torres* where the deputy candidly stated he impounded the truck as a pretext for searching for narcotics evidence. Unfortunately, sometimes people you associate with are the ones that cause you the most trouble. And in this case Mr. Melgoza’s attitude was everything. I don’t know what Mr. Melgoza thought when he first came upon the unmarked car, the Chief Solano, but Mr. Melgoza rolled the dice and he rolled them wrong. And his behavior, his attitude is probably what set this in motion in a bad way for [defendant] because they were not going to entrust him with the vehicle.”

“Well, we have two – there was no other licensed driver. I don’t know they had significant issues with Mr. Melgoza. Was the car blocking a driveway? No. Was defendant – and the defendant was not the registered owner of this vehicle. But the difficulty becomes how this was all put together. And this is one where the Court on an overall basis it’s very close but the Court finds by a preponderance of the evidence . . . that there was a basis to impound the vehicle based on the location and conduct the inventory search and based on the behavior of Mr. Melgoza.”

“When I read *Torres* and I’ve read it carefully[, t]hese are the areas that came out. [¶] One, when Mr. Melgoza appeared on the scene, Mr. Melgoza was kept 30 feet away only because the Chief kept him away. He appeared on the scene agitated in a louder than normal voice. Not appearing as someone who was going to be there to be of any

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<sup>2</sup> *People v. Torres* (2010) 188 Cal.App.4th 775 (*Torres*).

assistance. But in fact the defendant and Mr. Melgoza were now arguing with each other and I think that's putting it mildly. [¶] The Chief explained it as a domestic situation but did not appear to be a friendly situation. And Mr. Melgoza had to be separated from the defendant.

“This is not a situation where a car is pulled over, there's another passenger who happens to be there that's licensed and said, gee, I'll take it away. Doesn't sound like that. If that was the benefit or the munificence [*sic*] of Mr. Melgoza, it sure didn't come across that way to the Chief. So the Chief also explained that this occurred in an area near the high school where there were a lot of children involved. [Defense counsel] made a very good point about why didn't he have the car pull over on the street. But he also did indicate that one of his concerns probably why he did get active is this happened in front of a school. And as Chief of Police I'm sure he probably was very concerned about that. He did mention that.

“What is disconcerting to the Court is when you have a statement that we heard over and over, ‘I just had a second party just run up on me.’ That is an officer safety issue. And so the issue was not the registered owner of the vehicle. Mr. Melgoza certainly did not behave in any such manner that – the last thing the Chief said in the answer/question cross-examination was that he was concerned about the vehicle being stolen. He clarified that. He did not feel that it would be prudent to expose his agency to liability by turning the car over to somebody that it might be stolen. There were a number of things that went on there.

“It is a close case. It is a very close situation, but the testimony of Chief Solano and listening to Defendant's B [the dispatch CD] and looking at Defendant's A [the dispatch log], convinces the Court this was a proper impound search on all the circumstances. [¶] The Court will deny the motion to suppress.”<sup>3</sup>

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<sup>3</sup> The Vehicle Towing Policy was Defendant's Exhibit C.

### ***The Pleas and Sentencing***

The court held defendant to answer on counts 1 (receiving stolen property, § 496, subd. (a)) and 2 (driving with a suspended license (Veh. Code, § 14601.1, subd. (a)), but reduced count 1 to a misdemeanor pursuant to section 17, subdivision (b)(5) sua sponte. Defendant signed an advisement of rights, waiver, and plea form, and pleaded no contest to both counts on condition that she receive “90 days on work release.” The court suspended imposition of sentence and placed defendant on probation for two years with various terms and conditions, including that she “[s]erve 90 days in the county jail with zero credits; balance maybe done on work release.”

### **DISCUSSION**

Defendant contends that the court erred in denying her motion to suppress, as the impoundment and search of her vehicle violated the Fourth Amendment. She argues that the decision to impound the vehicle was not made pursuant to the written or established policies of the Watsonville Police Department, that the impoundment did not advance any community caretaking policy, and that the impoundment was a pretext to allow the officers to conduct a search for incriminating evidence.

The Attorney General contends that the court properly denied the motion to suppress because the inventory search of defendant’s vehicle did not violate the Fourth Amendment. The Attorney General argues that the decision to impound defendant’s vehicle under the officers’ community caretaking function was reasonable based on all the facts and circumstances, and that the officers did not use the decision to impound the vehicle as a pretext to engage in a search for criminal activity.

“When, as here, a magistrate rules on a motion to suppress under Penal Code section 1538.5 raised at the preliminary examination, he or she sits as the finder of fact with the power to judge credibility, resolve conflicts, weigh evidence, and draw inferences.” (*People v. Shafrir* (2010) 183 Cal.App.4th 1238, 1244 (*Shafrir*)). “ “ “An appellate court’s review of a trial court’s ruling on a motion to suppress is governed by

well-settled principles. [Citations.] [¶] In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.]” ’ ” (*People v. Ayala* (2000) 23 Cal.4th 225, 255.) “Accordingly, ‘we review the trial court’s findings of historical fact under the deferential substantial evidence standard, but decide the ultimate constitutional question independently. [Citations.]’ [Citation.] We must accept factual inferences in favor of the trial court’s ruling. [Citation.] If there is conflicting testimony, we must accept the trial court’s resolution of disputed facts and inferences, its evaluations of credibility, and the version of events most favorable to the People, to the extent the record supports them. [Citations.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 342.) “In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]” (*People v. Glaser* (1995) 11 Cal.4th 354, 362; see also *Shafir*, *supra*, at p. 1245.)

The Fourth Amendment guarantees the right to be free of unreasonable searches and seizures by law enforcement personnel. A warrantless search or seizure is presumed to be unlawful. (U.S. Const., 4th Amend.; *Mincey v. Arizona* (1978) 437 U.S. 385, 390.) “The prosecution always has the burden of justifying the search by proving the search fell within a recognized exception to the warrant requirement.” (*People v. Williams* (2006) 145 Cal.App.4th 756, 761 (*Williams*).

“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.]” (*Williams, supra*, 145 Cal.App.4th at p. 761.)

“Nothing . . . prohibits the exercise of police discretion [in deciding to impound a

vehicle] so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.” (*Colorado v. Bertine* (1987) 479 U.S. 367, 375 (*Bertine*); see also *South Dakota v. Opperman* (1976) 428 U.S. 364, 375-376.) “While written criteria may be evidence of standardization, the absence of written criteria would not mean that the procedures were not standard. By the same token, unreasonable procedures do not ipso facto become standard, and therefore legal, merely because they are contained in a written directive.” (*People v. Steeley* (1989) 210 Cal.App.3d 887, 891.)

“ ‘The fact that there may be less intrusive means of protecting a vehicle and its contents does not render the decision to impound unreasonable. [Citation.]’ [Citation.]” (*People v. Benites* (1992) 9 Cal.App.4th 309, 325 (*Benites*)). “[A]n impoundment decision made pursuant to standardized criteria is more likely to satisfy the Fourth Amendment than one not made pursuant to standardized criteria. [Citation.] However, the ultimate determination is properly whether a decision to impound or remove a vehicle, pursuant to the community caretaking function, was reasonable under all the circumstances. [Citation.]” (*Shafir, supra*, 183 Cal.App.4th at p. 1247.) “ ‘ “[P]olice cannot sensibly be expected to have developed, in advance, standard protocols running the entire gamut of possible eventualities” ’ but ‘ “must be free . . . to choose freely among the available options, so long as the option chosen is within the universe of reasonable choices.” ’ [Citations.]” (*Id.* at p. 1246.)

If an officer properly decides to impound the vehicle, a subsequent “inventory search may be ‘reasonable’ under the Fourth Amendment even though it is not conducted pursuant to a warrant based upon probable cause.” (*Bertine, supra*, 479 U.S. at p. 371.) An officer has “authority to conduct an inventory of the vehicle’s contents ‘aimed at securing or protecting the car and its contents.’ [Citation.]” (*People v. Redd* (2010) 48 Cal.4th 691, 721, fn. omitted.) “ ‘ “When vehicles are impounded, local police departments generally follow a routine practice of securing and inventorying the

automobiles' contents. These procedures developed in response to three distinct needs: the protection of the owner's property while it remains in police custody [citation]; the protection of the police against claims or disputes over lost or stolen property [citation]; and the protection of the police from potential danger [citation]. The practice has been viewed as essential to respond to incidents of theft or vandalism. [Citations.]” ’ [Citations.]” (*Benites, supra*, 9 Cal.App.4th at p. 322; see also *Bertine, supra*, at p. 373; *Shafir, supra*, 183 Cal.App.4th at p. 1245; *Torres, supra*, 188 Cal.App.4th at p. 787.)

“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; see also *Torres, supra*, 188 Cal.App.4th at p. 786.)

“Just as inventory searches are exceptions to the probable cause requirement, they are also exceptions to the usual rule that the police officers’ ‘[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.’ [Citation.] We have ‘never held, *outside the context of inventory search* . . . that an officer’s motive invalidates objectively justifiable behavior under the Fourth Amendment.’ [Citation.] Instead, courts will explore police officers’ subjective motivations for impounding vehicles in inventory search cases, even when some objectively reasonable basis exists for the impounding.” (*Torres, supra*, 188 Cal.App.4th at pp. 787-788.)

“Inventory search jurisprudence *presumes* some objectively reasonable basis supports the impounding. The relevant question is whether the impounding was subjectively motivated by an improper investigatory purpose.” (*Torres, supra*,

188 Cal.App.4th at p. 791.) “Thus, as the United States Supreme Court has explained, inventory search cases apply ‘the principle that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. The individual police officer must not be allowed so much latitude that inventory searches are turned into “a purposeful and general means of discovering evidence of crime.” ’ [Citation.] [¶] And so courts invalidate inventory searches when the police impound vehicles without serving a community caretaking function, suggesting the impounds were pretexts for conducting investigatory searches without probable cause.” (*Id.* at p. 788; citing *Florida v. Wells* (1990) 495 U.S. 1, 4, and *Williams, supra*, 145 Cal.App.4th at p. 763.)

“Federal cases underscore the impounding of a vehicle driven by an unlicensed driver must be supported by some community caretaking function other than temporarily depriving the driver of the use of the vehicle. In *U.S. v. Caseres* (9th Cir. 2008) 533 F.3d 1064, the court doubted ‘that *Benites* stands for [the] proposition’ ‘that impounding an unlicensed driver’s car to prevent its continued unlawful operation is itself a sufficient community caretaking function.’ (*Id.* at p. 1075.) And in *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, the court cautioned that if the community caretaking function extended so broadly as to include the deterrence of future illegal activity, it ‘would expand the authority of the police to impound regardless of the violation, instead of limiting officers’ discretion to ensure that they act consistently with their role of “caretaker of the streets.” ’ (*Id.* at p. 866.)” (*Torres, supra*, 188 Cal.App.4th at p. 792.)

In this case, the trial court found that the car’s location and Melgoza’s behavior were the reasons the car that defendant was driving was impounded, and the record supports the trial court’s factual findings. Chief Solano stopped defendant for speeding near a high school when students were in the street and on the sidewalk returning to the school after their lunch break. The street was very narrow, and there was no place in the

area where the car could be safely parked on the street. Thus, Chief Solano had defendant pull over and park on private property rather than on the street. Defendant “admitted” that she had been speeding. She was not the registered owner of the car, she did not have a valid driver’s license, and there were no other licensed drivers in the car with her. Melgoza ran up to the scene, agitated, and acted in such a way that Chief Solano feared for his safety. Melgoza argued with defendant in a voice that was louder than normal, and it appeared to Chief Solano that it was not a friendly situation. He had to have another officer separate defendant and Melgoza.

The officers were concerned that if the car defendant had been driving was not impounded, it could be stolen. The car was parked on private property. There were a number of high school students in the area at the time and, although it may not have been a high crime area, the area had “issues.” The officers did not know whether defendant had permission to be driving the car or the authority to grant Melgoza permission to drive the car. And, because of Melgoza’s behavior and attitude at the scene, the officers did not want to entrust the car to him. Accordingly, the decision to impound the car was supported by the police community caretaking function, was reasonable under all the circumstances, and was not done simply to keep defendant from continuing to drive the car. (*Williams, supra*, 145 Cal.App.4th at pp. 761-762; *Shafir, supra*, 183 Cal.App.4th at p. 1247; *Torres, supra*, 188 Cal.App.4th at pp. 786, 792.)

That Chief Solano asked dispatch whether defendant had search and seizure terms and that Officer Rodriguez asked her whether she would consent to a search of the car does not change our analysis. Neither does the fact that some of the officers at the scene discussed whether defendant and Melgoza were involved in illegal activity. Because the decision to impound the vehicle served a valid community caretaking function and, as the court determined, was reasonable under all the circumstances, the fact that some officers voiced a desire to search the vehicle before it was impounded does not invalidate the impoundment and inventory search in this case. (*Torres, supra*, 188 Cal.App.4th at

p. 788.) The officers acted consistently with their role of “caretaker of the streets.” (*Id.* at p. 792.)

Defendant also contends that the officers departed from the Watsonville Police Department’s vehicle towing policy, and that this shows that they did not have a proper motive to impound the car. We agree with defendant that nothing in the department’s vehicle towing policy *requires* the towing or impounding of a vehicle.<sup>4</sup> We also agree with defendant that the policy provides that, when circumstances permit, an officer should make a good faith effort to notify the owner of a vehicle that it is subject to removal prior to having the vehicle towed for parking or registration violations.<sup>5</sup> However, the policy also provides that a vehicle “shall be stored whenever . . . the community caretaker doctrine would reasonably suggest that the vehicle should be stored (e.g., traffic hazard, high crime area).” (Policy, § 510.2.3.)

In our view, the officers did not depart from the department’s vehicle towing policy. The policy does not require towing but gives officers discretion to determine if and when a vehicle should be towed. (Policy, § 510.1.) The policy gives examples of when vehicles should be towed, such as for parking or registration violations. (Policy, § 510.2.) The policy also gives examples of “situations where consideration should be given to leaving a vehicle at the scene in lieu of storing, provided the vehicle can be lawfully parked and left in a reasonably secured and safe condition,” such as “[w]henver

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<sup>4</sup> “Nothing in this policy shall require the Department to tow a vehicle.” (Watsonville Police Department Policy Manual, Vehicle Towing Policy, § 510.1.) All further policy references are to the Vehicle Towing Policy.

<sup>5</sup> “When circumstances permit, for example when towing a vehicle for parking or registration violations, the handling employee should, prior to having the vehicle towed, make a good faith effort to notify the owner of the vehicle that it is subject to removal. This may be accomplished by personal contact, telephone or by leaving a notice attached to the vehicle at least 24 hours prior to removal. If a vehicle presents a hazard, such as being abandoned on the roadway, it may be towed immediately.” (Policy, § 510.2.)

the licensed owner of the vehicle is present, willing, and able to take control of any vehicle not involved in criminal activity.” (Policy, §510.2.3.) The situation presented to the officers in this case does not match any of the examples described in the policy as to when a vehicle should be towed or should be left at the scene in lieu of towing. Therefore, the officers had to determine whether “the community caretaker doctrine would reasonably suggest that the vehicle should be stored.” (*Ibid.*) As we have determined that the officers acted reasonably and consistently with their community caretaking function when they decided to impound the car, we do not believe that the officers departed from their department’s vehicle towing policy. The fact that there may have been other or less intrusive means of protecting the vehicle and its contents did not render the officers’ decision to impound the vehicle unreasonable. (*Benites, supra*, 9 Cal.App.4th at p. 325.)

The trial court did not err in denying defendant’s motion to suppress.

### **DISPOSITION**

The judgment (order of probation) is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P. J.

I CONCUR:

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DUFFY, J.\*

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\*Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Walsh, J., Dissenting

I respectfully dissent.

Unlike my colleagues, I conclude that the inventory search in this case was improper because the police failed to adhere to their own Department Towing Policy. That policy required the officers to make an effort to contact the registered owner before impounding the vehicle if the circumstances permitted it which, in my view, they did. I conclude that the officers' failure to adhere to department policy, coupled with evidence that the officers' decision to impound the vehicle was a pretext for conducting an investigatory search without probable cause, invalidated the search. Consequently, I would reverse the order on the motion to suppress.

#### **FACTS**

The procedural history and many of the facts of this case are set forth in the majority opinion. In addition to the evidence described by the majority, the following facts are relevant to my analysis.

#### ***Defendant's Offer of Proof***<sup>1</sup>

After defendant gave her identification information to Chief Solano, she told him that Melgoza was there to drive the SUV, that both she and Melgoza had permission to drive the SUV, and that the officers "could contact [her] mother, . . . Miss Ketchum, for permission to have [Melgoza] take the car." Also, when she denied consent to search, defendant asked if she was free to leave and she was told she was not. The police "huddled" for five to 10 minutes before deciding what to do with the SUV; they circled

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<sup>1</sup> Defendant's counsel proceeded by offer of proof and stated the facts to which defendant would have testified. The offer was apparently accepted by the court in lieu of defendant's testimony.

the car and peered into the windows. It looked to defendant like they wanted to search and were going to search regardless.<sup>2</sup>

### ***Testimony of Chief Solano***

Chief Solano testified that, after he stopped the SUV, he learned that it was registered to defendant's mother, Theresa Ketchum. Though he did not know Ketchum and he initially testified that defendant did not tell him Ketchum was her mother, later, he recalled that defendant had said the registered owner was a relative or a friend, and testified that it was "possible" defendant told him the owner was her mother. Ketchum, who lived in Gilroy, never came to the scene and Chief Solano did not attempt to contact her.

Chief Solano stopped defendant's vehicle at 1:05 p.m. Only six minutes later, about the time the back-up officers arrived and before learning facts that supported the decision to impound the vehicle, Chief Solano stated " 'We're going to do a search of the vehicle.' " While the traffic stop was under way, other Watsonville Police Department (WPD) officers began showing interest in the case, including Officer Mike Walker (a gang analyst) and Police Investigators Albert Lopez and Jared Pisturino. Walker called Chief Solano because he wanted Chief Solano to know that defendant was connected to a local gang. At one point, there were five officers on scene, including Officers Rodriguez, Thul, and Pisturino; gang analyst Walker; and Chief Solano. Chief Solano testified that it was not uncommon for five officers to be involved in a speeding/suspended license case. ". . . Watsonville officers frequently know players in Watsonville and that appeared to be what was happening at that particular time."

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<sup>2</sup> Though not objecting to defendant's request to proceed by offer of proof, the prosecutor objected to the last statement as speculative, argued that the officers had a right to detain defendant, and that there was enough evidence to show why the SUV was not released to Melgoza.

At 1:28 p.m., one of the officers asked dispatch to double-check whether defendant had any search terms. At 1:32 or 1:33 p.m., Officer Rodriguez asked dispatch to send a tow truck. Officer Rodriguez issued defendant a citation; she was not arrested at the scene.

### ***Testimony of Officer Rodriguez***

Officer Rodriguez verified defendant's license status, prepared the citation, and took over the investigation. After he prepared the citation, Officer Rodriguez asked defendant for permission to search the car, which she declined to give. She appeared nervous, which made him think there was reason to search. Based on his knowledge of her prior arrests, he believed he would find drugs or other contraband if he searched.

## **DISCUSSION**

### ***I. General Principles Governing Inventory Searches***

Inventory searches that are done when the police impound a vehicle “are now a well-defined exception to the warrant requirement of the Fourth Amendment.” (*Colorado v. Bertine* (1987) 479 U.S. 367, 371 (*Bertine*)). “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.” (*South Dakota v. Opperman* (1976) 428 U.S. 364, 368 (*Opperman*)). “When vehicles are impounded, local police departments generally follow a routine practice of securing and inventorying the automobiles’ contents. These procedures developed in response to three distinct needs: the protection of the owner’s property while it remains in police custody, [citation]; the protection of the police against claims or disputes over lost or stolen property, [citation]; and the protection of the police from potential danger, [citation].” (*Id.* at p. 369.) The United States Supreme Court “has consistently sustained police intrusions into automobiles impounded or otherwise in lawful police custody where the process is aimed at securing or protecting the car and its contents.” (*Id.* at p. 373.) The protection of the public entity and “public officers from claims of lost or stolen property

and the protection of the public from vandals who might find a firearm . . . or . . . contraband drugs, are also crucial.” (*Id.* at p. 376, fn. 10.) The governmental interest in securing property for which the police become responsible justifies the search. (*Bertine, supra*, 479 U.S. at pp. 372-373.) “By securing the property, the police protect[] the property from unauthorized interference. Knowledge of the precise nature of the property [guards] against claims of theft, vandalism, and negligence” and helps “avert any danger to the police or others that may [be] posed by the property.” (*Id.* at p. 373.)

A criminal defendant’s challenge to an inventory search turns on the reasonableness of the decision to impound the vehicle. (See *Opperman, supra*, 428 U.S. at p. 373.) Courts “focus on the purpose of the impound rather than the purpose of the inventory.” (*People v. Aguilar* (1991) 228 Cal.App.3d 1049, 1053 (*Aguilar*)). “[A]n inventory search conducted pursuant to an unreasonable impound is itself unreasonable.” (*People v. Williams* (2006) 145 Cal.App.4th 756, 761 (*Williams*)).

“The decision to impound the vehicle must be justified by a community caretaking function ‘other than suspicion of evidence of criminal activity’ (*Bertine, supra*, 479 U.S. at p. 375) because inventory searches are ‘conducted in the absence of probable cause’ . . . . ‘. . . The policies behind the warrant requirement are not implicated in an inventory search, [citation], nor is the related concept of probable cause . . . .’ ” (*People v. Torres* (2010) 188 Cal.App.4th 775, 787 (*Torres*), quoting *Bertine, supra*, 479 U.S. at p. 371.)

“[A]n inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. The individual police officer must not be allowed so much latitude that inventory searches are turned into ‘a purposeful and general means of discovering evidence of crime.’ ” (*Florida v. Wells* (1990) 495 U.S. 1, 4 (*Wells*) [evidence in suitcase in impounded car suppressed because state police lacked standardized policy on opening closed containers during inventory searches].)

Inventory searches are excepted from the usual rule that the police officers' "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." (*Whren v. United States* (1996) 517 U.S. 806, 812-813.)] Instead, courts will explore the police officers' subjective motives for impounding vehicles in inventory search cases, even when some objectively reasonable basis exists for impounding the vehicle. (*Torres, supra*, 188 Cal.App.4th at pp. 787-788.)

## ***II. Review of Case Law***

Inventory search cases stress one or both of two factors: (1) the need to impound the car to serve some community caretaking function, and (2) the absence of pretext. (*Torres, supra*, 188 Cal.App.4th at p. 791.) They also consider whether the search was done according to standard criteria and on the basis of something other than the suspicion of criminal activity. (*Id.* at p. 787.)

California inventory search cases fall into three categories: (1) those that upheld the search where the decision to impound served a community caretaking function and there was no evidence of pretext; (2) those that invalidated the search where the police decision to impound did not serve a community caretaking function and there was no consideration of pretext; and (3) those that invalidated the search because there was no evidence of community caretaking and clear evidence of pretext.

Cases in the first category include *People v. Benites* (1992) 9 Cal.App.4th 309 (*Benites*). The sheriff's deputy in *Benites* impounded a van after learning that both the driver and the passenger had suspended licenses. (*Id.* at p. 315.) The appellate court upheld the ensuing inventory search because the decision to impound the van was reasonable under the circumstances. It was "very late at night," the van was three miles from town on "a dark, lonely and isolated stretch of road" where it "could be vandalized," "the passenger also lacked a valid license," and "there was the possibility that [the defendant] would simply drive off once [the officer] left." (*Id.* at p. 326.) Moreover, regarding the question of pretext, the deputy did not know the defendant was a

suspect in a burglary. (*Id.* at p. 314, 315.) The court held, “the officer’s discretion to impound is clearly based on factors other than using it as a pretext to engage in a search for criminal activity.” (*Id.* at p. 327.)

In *People v. Green* (1996) 46 Cal.App.4th 367 (*Green*), police officers arrested the defendant “for driving without a driver’s license in violation of Vehicle Code section 12500. The officers impounded the vehicle as there was no other person with a valid license present to take control of the automobile while defendant was taken to jail.” (*Green*, at p. 373.) The court upheld the inventory search, noting, “[t]here is no indication that the inventory search of the car was merely a ‘ruse’ to try to discover evidence of criminal activity . . . .” (*Id.* at p. 374; see also *People v. Steeley* 210 Cal.App.3d 887, 889-890, 892 (*Steeley*.) [“It was not unreasonable for [the officer] to conclude that the appropriate way to protect the vehicle was impoundment,” as “there was no other licensed driver, the car was blocking a driveway and [the defendant] was not the registered owner of the vehicle.”]; *People v. Burch* (1986) 188 Cal.App.3d 172.)

Cases in the second category (those that have invalidated inventory searches where the police decision to impound did not serve a community caretaking function) include *Williams*. In *Williams*, the police stopped a car because the driver was not wearing a seatbelt; the driver pulled over in front of his home. A computer check revealed a warrant for the driver’s arrest and the officer arrested the driver pursuant to the outstanding warrant. (*Williams, supra*, 145 Cal.App.4th at p. 759.) Vehicle Code section 22651, subdivision (h)(1) authorized impounding the car because the driver had been arrested. (*Williams*, at p. 762.) Despite this statutory authorization, the court concluded that the search was unconstitutional because the prosecution had “made no showing that removal of the car from the street furthered a community caretaking function.” (*Id.* at p. 763.) “The car was legally parked at the curb in front of [the defendant’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 [the defendant] 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.” (*Id.* at pp. 762-763.) “By [the officer’s] own admission, he impounded [the defendant’s] car simply because he was taking [the defendant] into custody. [The officer] did not assert any community caretaking justification for the impoundment, and in light of the evidence at the hearing, no such justification existed.” (*Id.* at p. 763; accord *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 865-866 [impound did not serve a community caretaking purpose where the car was parked in the defendants’ driveway and one of the defendants had a valid license]; *U.S. v. Caseres* (9th Cir. 2008) 533 F.3d 1064, 1074-1075 [inventory search unlawful; impound did not serve any community caretaking purpose since defendant’s car was parked on the street two doors down from his home].)

In the third category of cases, the court invalidated the inventory search because the evidence suggested the decision to impound was a pretext for conducting an investigatory search without probable cause. For example, in *Aguilar*, a police officer saw defendant and others carrying what the officer suspected was a stolen television set. The individuals put the item in the trunk of a car and left in the car. The driver of the car made an illegal stop and turned right without signaling. The officer stopped the car and arrested the driver for driving with a suspended license. (*Aguilar, supra*, 228 Cal.App.3d at p. 1051.) The officer testified that “he followed [the defendant’s] car because he suspected criminal activity and wanted to investigate; he intended to stop the car as soon as he saw a traffic violation; [and] one of the reasons he had the car . . . impounded, was so he could look in the trunk (he never gave any other reasons for the impound).” (*Ibid.*) The court found the inventory search unreasonable and unconstitutional, because it was clear from the officer’s testimony that the arrest and the impound were for an investigatory motive. (*Id.* at p. 1052.) The officer “testified one, if not the only, purpose of the impound was to conduct an investigatory search.” (*Id.* at p. 1053.)

In *Torres*, the patrol deputy who stopped the defendant's pickup truck for a routine traffic violation testified that a narcotics officer had previously asked him to find a reason to stop the defendant's truck and that he decided to impound the truck so he could search for whatever narcotics-related evidence might be in the truck. (*Torres, supra*, 188 Cal.App.4th at p. 781, 792.) The court held that the inventory search was unlawful because the defendant's truck was concededly impounded for an investigatory motive and that the impound and inventory search fell within the exact type of " 'pretext concealing an investigatory police motive' " and " 'ruse for a general rummaging in order to discover incriminating evidence' " that violates the Fourth Amendment. (*Id.* at p. 792.) Although the evidence suggested a nonpretextual ground for impounding the truck because the driver was unlicensed, the court held that the statutory authorization to impound a vehicle under Vehicle Code section 14602.6 does not determine the constitutional reasonableness of an inventory search. (*Torres*, 188 Cal.App.4th at p. 790.) The evidence revealed "a concededly investigatory motive and no community caretaking function. The deputy did not testify defendant's truck was isolated, at risk of vandalism, or blocking a driveway. Nor did he testify no one could come to pick up the truck. Rather, the deputy candidly stated he impounded the truck as a pretext for searching for narcotics evidence." (*Id.* at p. 792.)

### ***III. Analysis***

Defendant contends that the inventory search here was unlawful because the decision to impound the SUV did not advance any community caretaking purpose. Defendant also contends that the impound was a pretext to search the SUV and a ruse for general rummaging to discover incriminating evidence. She argues that, from the moment she was recognized as a " 'player,' " the desire to search the SUV drove subsequent events.

I am satisfied, as set forth by the majority, that if the officers properly followed their own policies, there were some valid community caretaking reasons to impound the

SUV. I also agree with the majority that it was not unreasonable for the officers to determine whether a known ex-felon, with a history of theft and drug offenses and ties to a local gang, has outstanding warrants, search terms, or would consent to search. To the contrary, this strikes me as good police work. But I disagree with my colleagues regarding the effect of the officers' failure to comply with the Watsonville Police Department Towing Policy (Towing Policy) and the impact of the evidence of an investigatory motive to search the SUV.

Unlike the cases surveyed above, this case involves a combination of both community caretaking reasons to impound the SUV and evidence of an investigatory motive for searching the vehicle. As the court observed in *Torres*, "Inventory search jurisprudence *presumes* some objectively reasonable basis supports the impounding. The relevant question is whether the impounding was subjectively motivated by an improper investigatory purpose." (*Torres, supra*, 188 Cal.App.4th at p. 791.) In evaluating the investigatory motive in this case, one other factor comes into play: the police officers' failure to follow their own procedures, as set forth in the Towing Policy.

"Police officers may exercise discretion in determining whether impounding a vehicle serves their community caretaking function, 'so long as that 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 *Bertine, supra*, 479 U.S. at p. 375.) The procedures for impound and inventory need not be written. (*Steeley, supra*, 210 Cal.App.3d at p. 891.) "While written criteria may be evidence of standardization, the absence of written criteria would not mean that the procedures were not standard. By the same token, unreasonable procedures do not ipso facto become standard, and therefore legal, merely because they are contained in a written directive." (*Ibid.*) In addition, "[s]tatutes authorizing impounding under various circumstances 'may constitute a standardized policy guiding officers' discretion' . . . , though 'statutory authorization does not, in and of itself, determine the constitutional

reasonableness of the seizure.’ ” (*Torres, supra*, at p. 787, citing *Williams, supra*, 145 Cal.App.4th at pp. 762-763.)

Defendant asserts that because less intrusive measures were readily available and were “explicitly encouraged” by the Towing Policy, the officers’ departure from those procedures rendered this search unreasonable. She relies on three provisions from the Towing Policy: (1) “Nothing in this policy shall require the Department to tow a vehicle” (Towing Policy, § 510.1); (2) “The following are examples of situations where consideration should be given to leaving a vehicle at the scene in lieu of storing, provided the vehicle can be lawfully parked and left in a reasonably secured and safe condition: [¶] Traffic related warrant arrest. [¶] Situations where the vehicle was not used to further the offense for which the driver was arrested. [¶] Whenever the licensed owner of the vehicle is present, willing, and able to take control of any vehicle not involved in criminal activity. [¶] Whenever the vehicle otherwise does not need to be stored and the owner requests that it be left at the scene. In such cases the owner shall be informed that the Department will not be responsible for theft or damages” (Towing Policy, § 510.2.3); and (3) “When circumstances permit, for example when towing a vehicle for parking or registration violations, the handling employee should, prior to having the vehicle towed, make a good faith effort to notify the owner of the vehicle that it is subject to removal. This may be accomplished by personal contact, telephone, or by leaving a notice attached to the vehicle for at least 24 hours prior to removal. If a vehicle presents a hazard, such as being abandoned on the roadway, it may be towed immediately. (Towing Policy, § 510.2)” Defendant argues that the officers had alternatives to towing the SUV, including parking and locking the car or having Ketchum authorize its release to Melgoza.

Though in *Bertine*, the United States Supreme Court held that the Fourth Amendment did not require the police to pursue alternative, less intrusive means when determining whether to impound and search a vehicle, the court stressed that the

discretion to do so must be “exercised according to standard criteria”—there, as here, the department’s own policies (*Bertine, supra*, 479 U.S. 375, 376.). The defendant in *Bertine*, who was arrested for driving under the influence of alcohol, attacked two aspects of the inventory search of his van: (1) the officer’s decision to open his backpack and inventory its contents, which resulted in the discovery of drugs, drug paraphernalia, and large amounts of cash; and (2) the officer’s decision to take his van to an impound lot, as opposed to offering him the opportunity to park and lock his van in a public parking place. (*Id.* at pp. 369-370, 373-375.)

The United States Supreme Court stated, “And while giving Bertine an opportunity to make alternative arrangements would undoubtedly have been possible, . . . [¶] ‘[T]he real question is not what “could have been achieved,” but whether the *Fourth Amendment* requires such steps . . . . [¶] ‘The reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative “less intrusive” means.’ ” (*Bertine, supra*, at pp. 373-374.) “[R]easonable police regulations relating to inventory procedures administered in good faith satisfy the *Fourth Amendment*, even though courts might as a matter of hindsight be able to devise equally reasonable rules requiring a different procedure.” (*Bertine*, at p. 374.) The Supreme Court emphasized the trial court’s finding that the police department’s procedures “mandated the opening of containers and the listing of their contents” and observed that its “decisions have always adhered to the requirement that inventories be conducted according to standardized criteria.” (*Id.* at p. 374, fn. 6.) “Nothing . . . prohibits the exercise of police discretion so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity. [In *Bertine*,] the discretion afforded the . . . police was exercised in light of standardized criteria, related to the feasibility and appropriateness of parking and locking a vehicle rather than impounding it. There was no showing that the police chose

to impound Bertine's van in order to investigate suspected criminal activity.” (*Id.* at pp. 375-376.)

In this case, defendant challenges the lack of a good faith effort by the officers to follow “standardized criteria” by contacting Ketchum, who they knew was the registered owner of the SUV, as required by their Towing Policy. As noted previously, Towing Policy section 510.2 provided that “[w]hen circumstances permit, . . . , the handling employee should, prior to having the vehicle towed, make a good faith effort to notify the owner of the vehicle that it is subject to removal. This may be accomplished by personal contact, telephone, or by leaving a notice attached to the vehicle for at least 24 hours prior to removal.”

The record reflects that Chief Solano manifested his desire to search the SUV approximately six minutes after stopping defendant, that Watsonville police were on the scene for approximately 28 minutes before Officer Rodriguez called for the tow truck, and that the entire call lasted about an hour. At one point, there were five officers on the scene. Given the amount of time involved and the number of officers present, this certainly appears to be a situation in which “circumstances permit[ted]” the officers to “make a good faith effort to notify the owner of the vehicle that it was subject to removal” before impounding the SUV and doing the inventory search. In my view, one of the officers should have attempted to call Ketchum to determine whether she wanted the SUV towed, whether she was able to come to the scene and remove the SUV herself, or whether she would authorize Melgoza to drive the SUV from the scene.

Despite the ample time available to the officers, none of them attempted to contact Ketchum. This is particularly troubling because, though Ketchum should have been a beneficiary of this “community caretaking,” she would be forced to pay any impound fees and incur the time and inconvenience associated with getting her SUV out of impound without ever having been asked whether this was the type of caretaking she

desired.<sup>3</sup> In my view, in exercising their community caretaking duties, the police were required to consider the needs of the vehicle owner, Kethcum. Unlike the officers in *Bertine*, the officers in this case did not exercise their discretion in accordance with standard criteria expressed in the Towing Policy.

Moreover, unlike *Bertine*, where there “was no showing that the police chose to impound the [defendant’s] van in order to investigate suspected criminal activity” (*Bertine, supra*, 479 U.S. at pp. 376), there was evidence of an investigatory motive in this case. On cross-examination, Chief Solano testified that he wanted to search the SUV and that is why he asked the dispatcher more than once to check whether defendant had search terms. He also testified that, after defendant refused to consent to search, the officers talked about what to do and decided to do an inventory search. He testified that the information they had on defendant suggested that there would be something criminal in her vehicle and that the officers wanted to search the car to discover the incriminating evidence. Chief Solano stated, “I believe there was a discussion about the possibility of incriminating evidence being in there based upon her association and intelligence that I do not have the particulars of” and that this discussion occurred before they decided to impound the car. Officer Rodriguez testified that he knew defendant by reputation and that, based on his knowledge of her prior arrests, he believed that if they searched, it was likely they would find drugs or contraband.

As stated previously, under the circumstances here, there was nothing improper about asking defendant whether she was on probation or parole, whether she had search terms, or whether she would consent to search. Likewise, there was nothing improper about obtaining that information from the dispatcher. However, when those options

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<sup>3</sup> The Towing Policy contains information about how to obtain the release of an impounded vehicle and requires the payment of all applicable fees (Towing Policy, § 510.7). (See also Veh. Code, §§ 22850-22850.5, 14602.6.)

failed, the officers persisted in looking for a way to search the SUV and decided to impound the vehicle. The officers' ultimate decision to search, which they made after determining that defendant did not have search terms and would not consent to search, appears to have been prompted by an investigatory motive, improper under the circumstances of this case. This evidence of an improper investigatory motive, coupled with evidence that the officers failed to comply with their own Towing Policy by failing to contact Ketchum about the disposition of her SUV, renders the decision to impound and the resulting inventory search improper.

For these reasons, I would reverse the order on the motion to suppress and, thus, the judgment.

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WALSH, J.\*

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\*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.