the Jasuta / Schulman report

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eMail: officemanager@texindbar.org | Texas Independent Bar Association | Web Page: www.texindbar.org
1801 E. 51st St., Ste. 365-474
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Tel. 512-474-4747

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TIBA's Case of the Week

Court of Criminal Appeals

[Case Name]: ***Dylan Eugene Taylor v. The State of Texas***

- **OFFENSE**: Unlawful Possession of a Firearm by Felon
- **COUNTY**: Hays
- **COURT OF APPEALS**: Amarillo 2024
- **C/A CITATION**: 699 S.W.3d 33
- **C/A RESULT**: Conviction Reversed
- **CCA. CASE No**. PD-0877-24 **DATE OF DECISION**: October 29, 2026
- **DISPOSITION**: Court of Appeals Reversed
- **OPINION**: Judge Bert Richardson **VOTE**: 7-2
- **TRIAL COURT**: 274th D/C
- **LAWYERS**: Vikash Bhakta (Defense); Daniel Sakaida (State)

[Background Facts]: On the evening of November 28, 2020, officers from the Kyle Police Department responded to a 911 call from Appellant's ex-girlfriend from her home. The ex-girlfriend reported that Appellant, residing almost an hour away in Pflugerville, was sitting in his vehicle outside her house for hours and refusing to leave. At one point, Appellant demanded to know, via text, if there was another man in the home after a FedEx driver delivered a package. Officers Seagraves and Waters arrived and found Appellant sitting in his vehicle illegally parked next to a stop sign facing and in close proximity to the ex-girlfriend's home. Their entire encounter with Appellant was recorded on police body-worn cameras. At that time, Appellant had two active arrest warrants, and, after confirming the existence of the warrants, the officers detained Appellant and placed him under arrest.

[Inventory of Appellant's Vehicle]: Since Appellant's vehicle was illegally parked, Officer Seagraves asked Appellant if a nearby friend or relative could pick it up or if he had a preferred

towing service. Officer Seagraves also testified that he wanted to remove the vehicle from the scene to prevent Appellant from having an excuse to return. Appellant wanted to call his mother to pick up the vehicle, but the officers declined. Per police department policy, Officer Waters began an inventory search of the vehicle prior to turning over custody to the towing company. Per Appellant's request, Officer Waters removed Appellant's keys, wallet, and phone from the vehicle to travel with Appellant while in custody. Upon opening the center console, Officer Waters found a 9mm Smith & Wesson handgun with an aftermarket laser grip. The center console was not locked when Officer Waters opened it. Per standard practice, Officer Waters removed the handgun from the vehicle and had dispatch to run a check to see if Appellant was a convicted felon allowed to possess a handgun or not. Officer Waters also obtained the serial number (covered by the laser grip) to have it checked, per standard protocol, as to whether the gun was stolen or not. Officer Waters then placed the gun back in the car and photographed it, per standard practice, so that the photograph could be attached to the final inventory report and show the gun as an item found in the vehicle. During this time, Officer Waters had not yet heard back from dispatch regarding whether Appellant was in lawful possession of the gun or not. Officer Waters testified that, until he had more information, he would operate as if the gun was possessed lawfully. Accordingly, after photographing it, he placed the gun back inside the vehicle's center console. Officer Waters then continued his inventory search in the back of the vehicle. Because there were a lot of "miscellaneous items," Officer Waters elected to take pictures instead of itemizing every single item there. Per Officer Waters, taking pictures in such situations was standard practice and would show "the last way we saw the vehicle was [sic], however it was in that picture." Officer Waters testified that all pictures taken, in accordance with standard practice, were then attached to the final inventory report. The inventory report (with all pictures attached) was then printed and included in the Vehicle Inventory Slip given to the tow truck driver taking possession of the vehicle. Another copy of the inventory report was included in the Tow Vehicle Receipt which the officers kept. Although the inventory report was not signed by Appellant, Officer Waters testified that it was "not common practice" to obtain such a signature when the vehicle owner or operator was under arrest.

[**31.021 Search & Seizure / Warrantless Searches / Inventory Searches**]: Appellant was charged with Unlawful Possession of a Firearm by Felon under Section 46.04 of the Penal Code. Before trial, he filed his "Motion to Suppress and Dismiss with Prejudice" under the argument that the inventory search leading to the discovery of the firearm was unconstitutional because it failed to comply with departmental policy. The trial court conducted a hearing then denied the motion. Appellant was subsequently tried by a jury and convicted. Because he had two prior felony convictions, punishment was enhanced to a minimum of 25 years of incarceration. He was sentenced to 30 years incarceration as a habitual offender. On direct appeal, the Court of Appeals found that the inventory search deviated from police departmental policy. ***Taylor v. State***, 699 S.W.3d 33 (Tex.App. - Amarillo 2024)[see , Vol. 32, No. 34; 09/09/2024]. Relying on ***Moberg v. State***, 810 S.W.2d 190 (Tex.Cr.App. 1991), the Court of Appeals found the trial court abused its discretion in denying suppression. It then reversed and remanded the case to the trial court for

further proceedings. In its PDR, the State asked whether the Court of Appeals erred in holding that inventory searches "must not deviate" in any detail from department policy?

[Holding]: Where there is no probable cause, "an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." ***Whren v. United States***, 517 U.S. 806 (1996). "The policy or practice governing inventory searches should be designed to produce an inventory." ***Florida v. Wells***, 495 U.S. 1 (1990). *** Thus, [in ***Moberg***] this Court has held that inventory searches should not "deviate from police department policy." *** "But in forbidding uncanalized discretion to police officers conducting inventory searches, there is no reason to insist that they be conducted in a totally mechanical 'all or nothing' fashion." *** As explained by the Supreme Court [In ***Wells***], "[a] police officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself." "The allowances of the exercise of judgment based on concerns related to the purposes of the inventory search does not violate the Fourth Amendment." Accordingly, inventory searches are generally constitutional where there is "no showing that the police, who were following standardized procedures, acted in bad faith or for the sole purpose of investigation." ***Colorado v. Bertine***, 479 U.S. 367 (1987). *** [Appellant]'s case is a long way from the scenario feared by the Supreme Court. Here, there is no sign that Officer Waters "acted in bad faith or for the sole purpose of investigation." [Appellant] was already under arrest for preexisting warrants, and his vehicle was left without anyone to drive it away. Thus, towing the vehicle to be impounded was the only realistic option. Thus, there was no pretext because [Appellant]'s vehicle was always going to be towed. An inventory search was inevitable. *** To the extent that the [Appellant] complains that Officer Waters did not perfectly conform to departmental policy, we do not think these minor deviations are the type that violate the reasonableness standard of the Fourth Amendment. *** Failing to get a signature and forgetting to ask if [Appellant] had any valuables (other than his phone, wallet, and keys) are not the kind of deviations that would allow the police to utilize inventory searches as a pretext for criminal investigations. Moreover, it is understandable for police officers to forego obtaining physical signatures from arrestees that are handcuffed at the time of the inventory search. *** Finally, the totality of this inventory search served its purpose: all of the items within the vehicle were recorded into an inventory report so as to protect [Appellant]'s rights to his property, protect the police from liability for lost or stolen property, and protect the police from any potential danger. *** Under a totality of the circumstances, the inventory search of [Appellant]'s vehicle was reasonable and thus, did not violate the Fourth Amendment. Any minor deviations from official departmental policy, under the facts of this case, were not of the character to create a pretext for an ulterior criminal investigation. For these reasons, we reverse the Court of Appeals and affirm the trial court.

[Concurring / Dissenting Opinions]: According to the majority opinion, the question before the Court was whether the appellate court below was correct in requiring strict mechanical compliance with official police departmental policy to satisfy the Fourth Amendment.

Judge Lee Finley filed a dissenting opinion in which **Judge Scott Walker** joined. He pointed out that law enforcement failed to comply with the written policy concerning inventory searches in two ways. First, the officer failed to search "all areas of the vehicle." Second, the officer failed to compile a written list or inventory of the vehicle's contents. He would affirm the judgment of the Court of Appeals and dissented because "the Court "greenlights a slippery slope of inventory search non-compliance."

Sidebars

[John G. Jasuta] The dissenters are correct. Did the Court overrule ***Moberg***, or did they just forgive non-compliance with long-standing law? Again, the answer should be obvious. But the reason absolute compliance with the rules was required was so that there is no deviation from policy and no individual discretion. If there are no consequences, non-compliance will result.

[David A. Schulman] Given that, in this case, the CCA found it necessary to explain things to the 7th Court of Appeals, my guess is that the State's PDR in case number PD-0939-26, filed the same day as this opinion was delivered, will be granted and the CCA will be again telling the Amarillo Court why they were wrong in ***Shelton v. State*** [see ☙, Vol. 34, No. 34; 10/12/2026]. As an aside, I found it interesting that **nobody** at the Court noticed that Mr. Suarez, the "Appellant" at the Court below, was transmogrified into and remained the "Appellee" throughout this opinion.