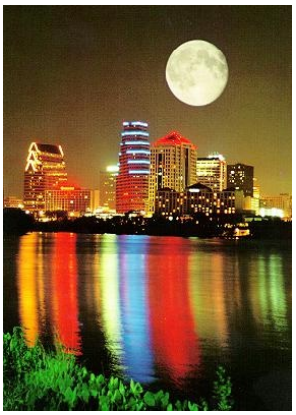

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TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783
Austin, Texas 78767
Tel. 512-850-6544

Web Site: www.texindbar.org

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

- **OFFENSE**: Possession of a Firearm by Felon
- **COUNTY**: Hays
- **C/A CASE No**. 07-23-00402-CR
- **DATE OF OPINION**: September 5, 2024 **OPINION**: Chief Justice Brian Quinn
- **DISPOSITION**: Conviction Reversed
- **TRIAL COURT**: 274th D/C; Hon. Don Burgess
- **LAWYERS**: Vikash M. Bhakta (Defense); Amanda Wilhelm (State)

[**543 Sufficiency of the Evidence / Felon in Possession**]: In late November 2020, a woman named Asia called police requesting assistance in dealing with her ex-boyfriend, Appellant. Police responded and encountered Appellant inside his car. The vehicle was parked illegally by a stop sign and at a location which permitted Appellant to spy on Asia. Being told that Appellant was the subject of one or more outstanding arrest warrants, the officers removed him from the car, placed him in handcuffs, walked him to a nearby police vehicle, sat him within it, and began investigating both Asia's complaint and the actual existence of the arrest warrants. Upon determining that warrants were outstanding, the officer placed him under arrest and decided to impound his vehicle. As part of the impoundment process, one officer began an inventory search of the car and discovered a firearm in its center console. He contacted dispatch to determine if Appellant was a felon, which status dispatch confirmed. Appellant argues that the evidence to prove he possessed the firearm is insufficient.

Holding: Viewing the record in the light most favorable to the jury's verdict, we find the following evidence. First, Appellant owned the vehicle in which the weapon was found. Second, the officers discovered him in that vehicle and mere inches from the center console within which lay the handgun. Third, the console was unlocked, rendering the weapon readily available to him. Fourth, Appellant sat alone in the car at night spying upon his ex-girlfriend. Fifth, his ex-girlfriend informed the police Appellant periodically carried a gun. Sixth, though Appellant denied the presence of a weapon in the car when asked by the police if one was within it, he directed the police to roll up its windows, lock the vehicle, and give him its keys prior to being escorted to the

nearby patrol unit. Together, these circumstances allow a rational jury to reasonably deduce, beyond reasonable doubt, that Appellant knowingly exercised care, custody, control, or management, i.e., possessed, the firearm.

[ꕥ **31.021 Search & Seizure / Warrantless Searches / Inventory Searches**]: Appellant contends the trial court erred in denying his motion to suppress evidence, i.e., the firearm, discovered during the purported inventory search of the vehicle.

Holding: A police officer's inventory of the contents of an automobile is permissible under the Fourth Amendment if conducted pursuant to a lawful impoundment of the vehicle. *** That is, to qualify as a valid inventory search, the latter must be conducted in good faith and pursuant to a reasonable, standardized police procedure "designed to accomplish the 'caretaking' function." Moreover, the burden lies with the State to demonstrate the existence of an inventory policy and the officer's compliance with it. Indeed, our Court of Criminal Appeals stressed the need for compliance when saying "[t]o be lawful, an inventory search must not deviate from police department policy." ***Moberg v. State***, 810 S.W.2d 190 (Tex.Cr.App. 1991). *** The record contains evidence of 1) an official policy adopted by the Kyle Police Department concerning inventory searches and 2) an officer representing his search conformed with it. Yet, the latter is belied by undisputed testimony in the form of the officer's own admissions and a video of the search. *** As depicted in the [Kyle PD Inventory policy], the officers were obligated to ask Appellant "to remove, if possible, all valuables from the vehicle prior to impoundment." They did not do so, here. It may be that Appellant asked for his phone, car keys, and wallet prior to being detained in the patrol unit and while the officers confirmed the existence of warrants mandating his arrest. But, the officers had yet to confirm those warrants, formally arrest him, and determine whether to impound the vehicle. *** Other evidence illustrates that the search began with an officer looking around the driver's seat. Then, he opened the center console and found the weapon. Most of his time thereafter was spent attempting to discover the weapon's serial number as he awaited a response to a question posed to dispatch. That question consisted of asking if Appellant was a felon. During the interim, the officer did photograph the vehicle's interior. Yet, no effort was made to search its other closed compartments for valuables, e.g., the glove box, or looking in places where valuables could likely be. And, to the extent that effort was made to search the vehicle's trunk, the officer merely opened the compartment, lifted part of an item atop many others, and closed it. No effort was made to search anywhere near the accessible space within the trunk wherein valuables could be located; and again, the same is true of the vehicle's interior. This was so despite departmental policy directing officers to peruse "open and closed containers and compartments and any locked containers or compartments as long as the officer has a key" and extend the inventory "to all areas of the vehicle in which personal property or hazardous materials may reasonably be found." *** Nor did the officer compile a written list or inventory of the vehicle's contents. He simply photographed the interior of the car and attached the photos to a "towed vehicle receipt" which the tow operator signed. *** Simply put, once the firearm was discovered in the console, the remaining search of the vehicle became *pro forma* and cursory. Yet, discovering contraband does not relieve the officer of the obligation to complete an inventory search in compliance with departmental policy. *** One must remember that the search is warrantless and viewed as an exception to the constitutional requirement for a warrant due to its underlying policy. ***Colorado v. Bertine***, 479 U.S. 367 (1987)(acknowledging inventory searches

to be an exception to the Fourth Amendment warrant requirement given its purpose and interests involved). *** Nor can we ignore our Court of Criminal Appeals when it said [in ***Moberg***], "an inventory search **must not deviate** from police department policy." *** Much like entering the Hotel California and being unable to leave, we cannot escape the holdings of ***Moberg***, ***Bertine***, and like authority even though some may wish to. And, because the inventory search at bar substantively deviated from adopted departmental policy, the trial court abused its discretion in denying Appellant's motion to suppress evidence garnered from the search; the decision fell outside the zone of reasonable disagreement. That the search uncovered the very contraband underlying Appellant's prosecution also prevents us from deeming the error harmless; without evidence of a firearm, the State faced extreme difficulty proving Appellant possessed one. Thus, we reverse the judgment and remand the cause to the trial court for further proceedings.

> **Concurring / Dissenting Opinions**: Justice Alex Yarborough dissented, arguing that, as the inventory search was conducted "in accordance with a reasonable, standardized procedure," the inventory search was valid, and the trial court did not abuse its discretion in denying the motion to suppress.

Ed Note: The Court of Appeals rejected Appellant's ***Brady*** complaint regarding "late disclosure" of information about ownership of the firearm and the trial court's failure to grant a mistrial.

Sidebars

(**Troy McKinney**) This is really a warrantless search masquerading as an administrative inventory, as is true in far too many cases. The deviations from the stated policy and lack of subsequent policy compliance rendered the entire process an invalid inventory, though I would not be surprised if the CCA disagreed. It is at least arguable that the initial look inside the console was the beginning of what could have been a legitimate inventory. But, viewing it in its entirety, the court justifiably found otherwise. Calling it a duck does not make it so. This case highlights the need to always obtain the agency's inventory policy and get it into evidence.

(**John G. Jasuta**) All I can say to the cops, and the State, is, that's life in the fast lane. Maybe you should have looked in the glove box, or made a list.

(**David A. Schulman**) The bottom line is that the gun was discovered in an immediately conducted warrantless search. The determination by the police to deem it an inventory search came long after the weapon had been discovered.