the Jasuta / Schulman report

Published By
eMail: officemanager@texindbar.org
Texas Independent Bar Association
1801 E. 51st St., Ste. 365-474
Austin, Texas 78723
Tel. 512-474-4747
Web Page: www.texindbar.org

Copyright © 2026 Texas Independent Bar Association, KLS Legal Services, John G. Jasuta, and David A. Schulman

It is TIBA's policy that commentators do not summarize or comment on cases in which they were involved. Clicking on a hyperlink such as the name of the judge authoring an opinion will link you to the opinion or document in your browser.

Volume 34, Number 34 ~ Monday, October 12, 2026 (Report No. 1,627)

[Case Name]: ***Kyle Lynn Shelton v. The State of Texas***

- **OFFENSE**: Possession of a Controlled Substance
- **COUNTY**: Hall
- **C/A CASE No**. 07-25-00297-CR
- **DATE OF OPINION**: September 29, 2026 **OPINION**: Justice Laura Pratt
- **DISPOSITION**: Conviction Reversed
- **TRIAL COURT**: 100th D/C; Hon. Dale Rabe
- **LAWYERS**: Sage Seal (Defense); Luke Inman (State)

[Background Facts]: In late September 2023, Texas Game Warden Zach Fisher encountered Appellant illegally driving an off-highway vehicle ("OHV") in a remote location on a trail in Caprock Canyon State Park. After running Appellant's information with the Hall County Sheriff's Office, Fisher discovered an active arrest warrant for Appellant for criminal mischief. Fisher decided to arrest Appellant based on that warrant. Fisher then had to devise a plan for taking Appellant into custody and securing Appellant's vehicles. Due to the presence of firearms in Appellant's possession, he requested assistance from the Hall County Sheriff, Tom Heck, in making the arrest. Once Sheriff Heck arrived, Fisher separated Appellant from the OHV, informed Appellant of the outstanding warrant, and placed Appellant under arrest. Appellant indicated his truck was parked by the river and had a trailer for the OHV. Appellant said he left the keys locked inside the truck because the truck had a digital combination lock on the door, which Appellant could not remember. Fisher asked Appellant if there was anyone who could take possession of the OHV and the truck, but ultimately, Fisher decided they would likely need to impound the OHV and the truck. Sheriff Heck transported Appellant to the Hall County Jail and contacted Deputy Thomas to come assist Fisher. When Thomas arrived on the scene, the officers discussed the situation. Fisher expressed concerns about Appellant illegally hunting with his rifles, and he expressed his desire to investigate the truck for evidence of any potential game hunting violations. After these discussions, the officers decided to tow Appellant's truck. At the impoundment lot, Thomas visually inspected the truck then told Fisher he had spotted a pipe in plain view. The inventory also revealed a glass pipe with black residue inside the

driver's side door pocket. The officers continued to inventory the contents of the vehicle, and Thomas eventually discovered a baggie of a crystal-like substance in the overhead sunglass holder and drug paraphernalia. The DPS crime laboratory tested the substance and determined it was 2.79 grams of methamphetamine and Appellant was charged with Possession of a Controlled Substance.

[ꕥ **31.021 Search & Seizure / Warrantless Searches or Seizures / Inventory Searches**]: Before trial, Appellant filed a motion to suppress the evidence found from the search of his truck. He argued the vehicle impoundment was pretextual and lacked legal justification, rendering the search unconstitutional and in violation of his Fourth Amendment rights. The State responded the search was lawful as part of the required inventory ancillary to the legal impoundment of Appellant's truck. The State also claimed that the impoundment was justified by Texas Parks and Wildlife Department (TPWD) policy. At hearing, Warden Fisher testified that the purpose of an inventory search is to document any valuables found in an impounded car to make sure all the contents are returned when the police release the vehicle. Warden Fisher also testified that he completed the form provided by the TPWD to document the contents of an impounded vehicle. This form requires the officer to document the specific items of personal property found in the vehicle by listing the items in columns depending on where in the car the officer finds the item. After the hearing, the trial court found that the inventory search was lawful and the evidence discovered in plain view during the inventory process provided further probable cause for the further search of Appellant's vehicle. The trial court denied Appellant's motion to suppress. At trial, Appellant re-urged the motion, which was denied by the trial court again.

[Holding]: Appellant's sole issue contends the trial court erred in denying his motion to suppress the evidence -- the controlled substance -- discovered during the purported inventory search of his truck. We agree. *** We review a motion to suppress under a bifurcated standard of review: fact findings are reviewed for an abuse of discretion, and applications of law are reviewed *de novo*. ***State v. Ruiz***, 581 S.W.3d 782 (Tex.Cr.App. 2019)[see ꕥ, Vol. 27, No. 35; 09/16/2019]. *** The State bears the burden of establishing that the police conducted a lawful inventory search. ***Moskey v. State***, 333 S.W.3d 696 (Tex.App. - Houston [1st] 2010)[see ꕥ, Vol. 18, No. 45; 11/22/2010]. In addition to proving the lawful predicate for impounding the vehicle, i.e. arrest and no reasonable alternatives to impoundment, the State must prove the impounding agency had an inventory policy, and the officers followed that policy. ***Moberg v. State***, 810 S.W.2d 190 (Tex.Cr.App. 1991). *** Here, we assume, arguendo, the lawful predicate for impounding Appellant's vehicle existed and turn our focus to the evaluation of the existence of and compliance with the TPWD's inventory and impoundment policies. This Court applied ***Moberg*** just last year in circumstances somewhat analogous to this record. In ***Taylor v. State***, 699 S.W.3d 33 (Tex.App. - Amarillo 2024)[see ꕥ, Vol. 32, No. 34; 09/09/2024], this Court reversed a denial of suppression where a written departmental policy was in evidence but where the record showed the officer's inventory became "*pro forma* and cursory" once contraband was discovered. Because the entire premise for excusing the search warrant requirement is the caretaking rationale itself, this Court held that even under a standard tolerating something less than "totally mechanical" compliance with the department policy, the substantive abandonment of the caretaking function once

evidence surfaced was fatal to the constitutionality of the search. *** ***Taylor*** at least had a written policy in the record against which we could measure the officers' conduct clause by clause. This record has no such benchmark. Warden Fisher offered only testimony that "a policy" required towing when no licensed driver was nearby and required completion of an inventory sheet before a tow company received the vehicle. No written policy or standard operating procedure was ever introduced -- not at the suppression hearing and not during trial. Warden Fisher testified that whatever governs these procedures resides in internal "General Orders" unavailable to the public. *** A bare assertion that a policy exists, without proof of its substance, does not carry the State's burden [Under ***Moberg***]. *** Where the actual terms of the policy are never placed before the court, the reviewing court has nothing against which to test compliance. We cannot know whether the policy required the officers to seek Appellant's authorization before opening containers, whether it mandated a specific documentation sequence, whether it addressed locked vehicles, or whether it constrained the officers' discretion at all. This is the precise defect ***Florida v. Wells***, 495 U.S. 1 (1990) condemned, an "uncanalized discretion" masquerading as administrative routine. *** The State did not prove the substance of a standardized inventory policy. The only officer who spoke to that policy gave testimony affirmatively showing his own conduct was not confined to the caretaking purpose of the policy. The officer who discovered the purported contraband and the controlled substance did not testify to the policy or his compliance with the policy. Thus, the trial court abused its discretion in denying Appellant's motion to suppress evidence garnered from the inventory search, and this decision fell outside the zone of reasonable disagreement. *** Because the improper search uncovered the very contraband underlying Appellant's prosecution also prevents us from deeming the error harmless.

Sidebars

[David A. Schulman] Andy: "*Barney, do not search that truck until I get a warrant*." Barney: "*But Andy, I know that old boy is up to sumpthin. I just gotta' go look*."

[John G. Jasuta] Good work but we'll see if this goes the distance.

[Ed. Note]: Citing ***Calloway v. State***, 743 S.W.2d 645 (Tex.Cr.App. 1988), the Court of Appeals noted that the trial court's decision not to suppress could nevertheless been affirmed if it was correct under any legal theory applicable to the case. The Court of Appeals, however, found no other such reason.