

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAY LESLIE JIM, A/K/A,)
JAY LEE JIM, A/K/A LITTLE)
JAY, A/K/A LITTLE J.,)
Appellant,)
) NO. 81545
v.)
)
THE STATE OF NEVADA,)
Respondent.)
_____)

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Elizabeth A. Brown
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Appeal from the Judgment of Conviction
Fourth Judicial District Court, Elko, Nevada
The Honorable Porter, District Judge

APPELLANT'S OPENING BRIEF

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1 Weintraub an unfinished inventory search qualifies entry into a
2 vehicle? and 2) whether plain view is grounds for stopping an
3 inventory search to proceed with a warrantless search? This
4 appeal should further clarify the inventory and plain view
5 doctrines in context of a warrantless search.
6
7

8 STATEMENT OF THE ISSUES

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10 This appeal is from an Order Denying Motion to Suppress
11 based on the plain view doctrine. The Court did not consider the
12 inventory search issue because it found the officer was legally
13 present, "to turnoff vehicle or retrieve the keys," when items seized
14 came into plain view. (*App. Vol.2 page164 lines 20-25*)
15
16

17
18 1. Whether the District Court erred in denying the Motion
19 to Suppress by refusing to consider the inventory search
20 rule set out in Weintraub at 287, when the officer entered
21 the vehicle, albeit to perform a stated "inventory search"
22 but no inventory was ever completed?
23
24

25 2. Whether the District Court erred in denying the Motion
26 to Suppress holding that the officer was legally present
27
28

1 and items in view because of the officer's entry into the
2 vehicle were subject to the "plain view" exception to a
3 warrantless search?
4

5 **STATEMENT OF THE CASE**
6

7 It has come to the parties' attention that the Judgement of
8 Conviction is incorrect. The Defendant was convicted of one count
9 of TRAFFICKING IN A SCHEDULE I CONTROLLED
10 SUBSTANCE, A CATEGORY B FELONY AS DEFINED BY NRS
11 453.3385(1)(b) and one count of POSSESSION OF A
12 FIREARM BY A PROHIBITED PERSON, A CATEGORY B
13 FELONY AS DEFINED BY NRS 202.360.1.
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18 The Judgment of Conviction incorrectly states that the
19 Defendant was convicted of a TRAFFICKING IN A SCHEDULE I
20 CONTROLLED SUBSTANCE, A CATEGORY A FELONY AS
21 DEFINED BY NRS 453.3385(1)(c). The State of Nevada
22 recognizes the clerical error, and the parties agree to have the
23 matter conformed to the minutes of the court at sentencing and
24 agree to correct the error by stipulation.
25
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27

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1 The judgment of conviction was entered following an entry of
2 plea pursuant to plea agreement on the 2nd day of July 2020.
3
4 (*App. Vol. 1 pages 81-86*) Mr. Jim was sentenced to serve
5 concurrent terms of 48-120 months and 12 to 48 months in the
6
7 Nevada Department of Corrections for the crimes of Trafficking of
8
9 a Schedule 1 Controlled Substance, a Category B Felony as
10 defined by NRS 453.3385.1(b) and for Possession of a Fire Arm by
11
12 a Prohibited Person, a Category B Felony as defined by NRS
13 202.360.1. (*App. Vol. 1 pages 124-125*)

14 STATEMENT OF THE FACTS

15
16 On September 2nd, 2017, at approximately 10:20 a.m.,
17
18 Officer Chandler made a traffic stop. (*App. Vol. 2 page145 lines*
19 *16-17*) Mr. Jim was the driver and he had been warned the day
20
21 before that the vehicle had suspended plates and if he drove it
22 enforcement action would be taken. (*App. Vol. 2 page143-44;160*).
23
24 Officer Chandler made the decision to arrest Mr. Jim for traffic
25 violations and Mr. Jim's failure to appear history. (*App. Vol. 2*
26 *page145-148; page164 lines 14-19*).
27

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1 Mr. Jim was handcuffed and placed in the back of the patrol
2 car. (*App. Vol. 2 page153 line 1-9*) At that point, Sergeant Shelley
3 arrived on scene as back up cover unit. (*App. Vol. 2 page148 line*
4 *23 to page149 line 1*) After Officer Chandler arrested Mr. Jim,
5 Sergeant Shelley proceeded to impound the vehicle and take care
6 of the impound sheet. (*App. Vol. 2 page149 lines 2-7*) Sergeant
7 Shelley called for a tow truck and began an impound inventory of
8 the vehicle. (*App. Vol. 2 page 149 line 6 and page164 lines 11-23*).
9 The inventory search began with Sergeant Shelley entering the
10 driver's side door. (*App. Vol. 2 page164 lines 22-23*). Sergeant
11 Shelley saw the butt of a Glock handgun (*App. Vol. 2 page164 line*
12 *24 through page 165 line 1*). Sergeant Shelley took pictures of it,
13 removed it, photographed it on the seat, secured it in his patrol
14 car, and then the decision was made to stop the inventory and
15 seize the vehicle and apply for a search warrant. (*App Vol. 2 page*
16 *165 lines 10-16; pages 218-221*)

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25 At the hearing on the Motion to Suppress, Sergeant Shelley
26 explained that when, as in the case with Mr. Jim, the driver of the
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1 vehicle is arrested and the driver is not the registered owner, the
2 next step is that the vehicle will be impounded (*App. Vol. 2 page*
3 *168 lines 8-25*). Sergeant Shelley further explained that Elko
4 Police Department Policy requires that when impounding a
5 vehicle, the vehicle will be secured with evidence tape and the
6 officer will follow the vehicle to the police garage where it we be
7 secured for processing (*App. Vol. 2 page 169 lines 4-9*).
8
9

10
11 When Sergeant Shelley saw what he believed to be a gun
12 and methamphetamines, the decision was made to seize it,
13 impound it and transport it to the garage to have a search
14 warrant completed. (*App page Vol. 2 169 lines 11-17*) The vehicle
15 was secured in the garage after it was searched and moved. (*App.*
16 *Vol. 2 page 178 lines 11-18*)
17
18
19

20 No inventory was ever produced. (*App. Vol. 2 page 176 lines*
21 *7-11*)
22

23 SUMMARY OF ARGUMENT

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25 The policy or practice governing inventory searches requires
26 an actual inventory. Without the inventory the search is simply a
27

1 warrantless search for discovering evidence of a crime. No
2 inventory was ever completed, and consequently, Sergeant Shelley
3 performed an illegal warrantless search. The District Court
4 errored by denying the motion to suppress.
5

6
7 ARGUMENT
8

9 Sergeant Shelley's stated purpose for being inside
10 the vehicle, to perform an inventory search, was
11 never carried out and consequently he was not in a
12 legal vantage point inside the vehicle when he saw
13 the gun and drugs.
14

15
16 The plain view doctrine is an exception to the warrant
17 requirement that allows an officer to seize items observed from a
18 lawful vantage point, to which he has a lawful right of access, and
19 which is immediately apparent as contraband or evidence of a
20 crime. Horton v. California, 496 U.S. 128 (1990).
21

22
23 The police have a duty to impound a vehicle and to inventory
24 the contents as a safeguard for the owner. Heffley v. State of
25 Nevada, 83 Nev. 100, 103 (1967). "If, however, the policing
26
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1 conduct indicates that the intention is exploratory rather than
2 inventory the fruits of that search are forbidden.” Id.
3

4 The legal question is the constitutionality of the search. The
5 Nevada Supreme Court has held that police must produce an
6 actual inventory when she or he conducts an inventory search.
7 Weintraub, at 289 (citing State v. Greenwald, 109 Nev. 808, 858
8 P.2nd 36 (1993)). In Greenwald, the Court quoted pertinent
9 language from the U.S. Supreme Court in Florida v. Wells, 495
10 U.S. 1, 4 (1990): “[A]n inventory search must not be a ruse for
11 general rummaging in order to discover incriminating evidence.”
12 Greenwald, at 810. “[T]he policy or practice governing inventory
13 searches should be designed to produce an inventory. The
14 individual officer must not be allowed so much latitude that
15 inventory searches are turned into “a purposeful and general
16 means of discovering evidence of a crime.” (quoting Colorado v.
17 Bertine, 479 U.S. 367, 376 (1987) Blackmun, J. Concurring)).” Id.
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25 Sergeant Shelley testified that when Mr. Jim was arrested
26 and placed into custody he began “an inventory impound of the
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1 vehicle.” (*App. Vol. 2 page 164 lines 15-19*) On cross Sergeant
2 Shelley testified he did not do an actual inventory and that an
3 inventory was never completed. (*App. Vol. 2 page 176 lines 7-11*)
4 Sergeant Shelley explained when he entered the driver’s side he
5 saw the butt of a Glock hand gun. (*App. vol. 2 page 164 line 22;*
6 *page 165 line 1*) Because of the evidentiary value the decision was
7 made to seize it, impound it, and transport it to the garage to have
8 a search warrant completed. (*App. Vol. 2 page 169 lines 14-17*)
9

10 In Weintraub v. State of Nevada, 110 Nev. 287 (2011) the
11 Supreme Court of Nevada explained:
12

13 Police officers need not comply with the Fourth
14 Amendment’s probable cause and warrant requirements when
15 they are conducting an inventory search of an automobile in order
16 to further some legitimate care-taking function, however the
17 search must be carried out pursuant to standardized official
18 department procedures and must be administered in good faith in
19 order to pass constitutional muster. Weintraub, at 288, (citing
20 Colorado v. Bertine, 479 U.S. 367, 374 (1987)).
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1 Official department procedures were not administered: If
2 vehicle was impounded there should have been an inventory. If
3 there was evidentiary value, the vehicle should have been sealed
4 and towed. (*App. Vol. 2 page 224*) No inventory sheet was ever
5 produced, and contrary to the express policy (*App. Vol. 2 page 224*)
6 the vehicle was not secured at the scene but only later at the
7 impound garage. (*App. Vol. 2 page 178 lines 11-17*)

8 This was not a search incident to arrest. Officer Chandler
9 observed Mr. Jim working on the vehicle the day prior to the stop
10 and discovered at that time that the license plates were
11 suspended. Officer Chandler had warned Mr. Jim that if he drove
12 the vehicle, "enforcement action would be taken."(*App. Vol. 2 page*
13 *138 line 21 through 139 line 5; page 142 line 18 through 144 line*
14 *21*). When Mr. Jim was seen driving the next day he was
15 stopped and the decision to arrest was made. (*App. Vol. 2 page 145*
16 *line 1 thru 148 line 20*)

17 Mr. Jim complied with every command, the background
18 checks came back as having FTA's. The subsequent arrest of Mr.

1 Jim, for traffic violation and prior FTA's was purely for
2 exploratory purposes. Mr. Jim was removed from the vehicle,
3 placed in handcuffs, searched and placed in the back seat of a
4 patrol car. (*App. Vol. 2 page 153 lines 1-5*)

7 At this point, Sergeant Shelley began an impound inventory
8 search of the vehicle. (*App. vol. 2 page 164 line 14-19*) In the two
9 plus years since Mr. Jim's arrest on September 2nd, 2017, no
10 inventory has ever been produced. (*App. Vol. 2 page 176 lines 1-*
11 *12*) The initial search of the vehicle yielded no inventory and was
12 both without consent and/or warrant. Once Mr. Jim was arrested
13 and placed in restraints, any potential exigent circumstances
14 ceased to exist. With Mr. Jim "safely locked away in a police car,
15 there was no conceivable 'need' to disarm him or prevent him from
16 concealing or destroying evidence." Greenwald, at 810 (1993).
17 "Quite obviously the officer in this case was not making a search
18 incident to arrest." *Id.*, at 809.

25 Searches without warrants are presumed to be unlawful and
26 the state must demonstrate that some exception applies. As

1 explained in the Greenwald case, once Mr. Jim was locked away
2 the search incident to arrest exception is gone. No inventory was
3 produced and therefor the inventory exception also does not apply.
4
5 Greenwald, at 811.
6

7 CONCLUSION

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9 NRS 48.025 provides that evidence obtained in violation of
10 the Constitution is inadmissible. Mapp v. Ohio, 367 U.S. 643
11 (1961) applies the exclusionary rule to the states for purposes of
12 Fourth Amendment violation. The exclusionary rule is applied to
13 those cases involving the violation of fundamental constitutional
14 rights. "[The exclusionary rule's] purpose is to deter--to compel
15 respect for the constitutional guaranty in the only effectively
16 available way--by removing the incentive to disregard it. "Elkins
17 v. United States, 364 U.S. 206, 217 (1960). Evidence obtained by
18 means of an unlawful search and seizure is not admissible against
19 an accused in a criminal prosecution. This includes the "fruit" of
20 such illegal conduct. Wong Sun v. U.S., 371 U.S. 471, 487-88
21 (1963).
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1 Sergeant Shelley's search does not fall within the
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3 exception to the Fourth Amendment warrant requirement and the
4 District Court erred by denying the motion to suppress. In view
5 of the above authorities, all evidence obtained or derived from the
6
7 unlawful search must be excluded.

8
9 DATED this 25th day of November, 2020.

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21 1. I hereby certify that this brief complies with the
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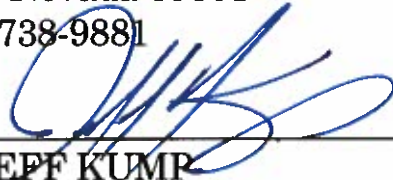
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7 Jim, NDOC # 75570, Lovelock Correctional Center, 1200 Prison
8 Rd., Lovelock, NV 89419.
9
10

11 DATED this 25th day of November 2020.
12

13 SIGNED: /s/ Jeff Kump
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