

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,)
v.) NO. 81545
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 REPLY BRIEF

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3 REPLY

4 1. *The State argues that “[a]n inventory search is per se*
5 *constitutional when it complies with police department*
6 *policies.”*

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9 A. An inventory search is not per se constitutional.

10 In Phillips v. State, 106 Nev 763,765 (1990) this Court
11
12 reasoned: “We emphasize the cardinal principal of search and
13 seizure law: searches conducted outside the judicial process,
14 without prior approval by magistrate or judge, are *per se*
15 unreasonable.”

16
17 “In the absence of a showing, by the State, of a true necessity
18 – that is, an imminent and substantial threat to life, health, or
19 property – the constitutionally guaranteed right to privacy must
20 prevail.” Id. (citing Nelson v. State, 96 Nev. 363 (1980)).
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1 B. The State did not follow Elko Police Department's
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3 impound policy.

4 Elko Police Department Policy does not require that keys be
5 removed prior to impound. Furthermore, even if Sergeant Shelly
6 entered to retrieve keys, upon his visual diversion to the crevasse
7 between the seat and console and observation of what he thought
8 might be a gun, he ought to have taped the doors and followed the
9 vehicle to the impound shop and awaited a warrant. Sergeant
10 Shelley stated that he began an inventory search. (*App. Vol. 2*
11 *page 164 lines 22-23*). However, no inventory was ever produced.
12 (*App. Vol. 2 page 176 lines 7-11*) No inventory was ever completed,
13 and consequently, Sergeant Shelley was not legally present in the
14 vehicle when he saw the gun and drugs.
15

16 Elko Police Department Policy requires that when
17 impounding a vehicle, the vehicle will be secured with evidence
18 tape and the officer will follow the vehicle to the police garage
19 where it will be secured for processing (*App. Vol. 2 page 169 lines 4-*
20 *9*). Sergeant Shelley did not secure the vehicle with evidence tape
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1 at the scene. The vehicle was secured in the garage after it was
2 searched and moved. (*App. Vol. 2 page 178 lines 11-18*)

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4 *2. The State argues that “even if the search and seizure were*
5 *unconstitutional, exclusion of the evidence is not an*
6 *appropriate remedy.” Davis v. United States, 131 S.Ct.*
7 *2419, 180 L.Ed. 2d 285 (2011).*

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9
10 In Davis the officer searching the vehicle was following good
11 law. While the appeal was pending the law changed. The Court
12 held that “[e]vidence obtained during a search conducted in
13 reasonable reliance on binding precedent is not subject to the
14 exclusionary rule.” *Id.* This is not our situation.

15
16
17 Police must produce an actual inventory when conducting an
18 inventory search. Weintraub, at 289 (citing State v. Greenwald,
19 109 Nev. 808, 858 P.2d 36 (1993)). Sergeant Shelley’s inventory
20 search amounted to general rummaging to discover incriminating
21 evidence. The exclusionary rule is a necessary deterrent to this
22 specific type of search. (see Greenwald, at 810.)
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1 NRS 48.025 provides that evidence obtained in violation of
2 the Constitution is inadmissible. Mapp v. Ohio, 367 U.S. 643
3 (1961) applies the exclusionary rule to the states for purposes of
4 Fourth Amendment violation. The exclusionary rule is applied to
5 those cases involving the violation of fundamental constitutional
6 rights. "[The exclusionary rule's] purpose is to deter--to compel
7 respect for the constitutional guaranty in the only effectively
8 available way--by removing the incentive to disregard it. "Elkins
9 v. United States, 364 U.S. 206, 217 (1960). Evidence obtained by
10 means of an unlawful search and seizure is not admissible against
11 an accused in a criminal prosecution. This includes the "fruit" of
12 such illegal conduct. Wong Sun v. U.S., 371 U.S. 471, 487-88
13 (1963).
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23 CONCLUSION

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25 Sergeant Shelley's search did not follow Elko Police
26 Department impound policy, and in view of the above authorities,
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1 all evidence obtained or derived from the unlawful search must be
2 excluded.
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13 CERTIFICATE OF COMPLIANCE
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15 1. I hereby certify that this brief complies with the
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17 requirements of NRAP 32(a)(5) and the type style requirements of
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11 belief, it is not frivolous or interposed for any improper
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14 particular NRAP 28(e)(1), which requires every assertion
15 in the brief regarding matters in the record to be
16 supported by a reference to the page and volume number,
17 if any, of the transcript or appendix where the matter
18 relied on is found.

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23 I understand that I may be subject to sanctions in the event
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27 requirements of the Nevada Rules of Appellate Procedure.

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10 CERTIFICATE OF SERVICE

11 (a) I hereby certify that this document was electronically
12 filed with the Nevada Supreme Court on the 26th day of January
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