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No. 98824-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Respondent and Cross-Petitioner,

v.

STEVEN G. LONG,

Petitioner and Cross-Respondent.

CITY OF SEATTLE'S ANSWER TO AMICUS BRIEF OF
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON,
WASHINGTON DEFENDER ASSOCIATION, NATIONAL
HOMELESSNESS LAW CENTER, INTERFAITH TASK FORCE ON
HOMELESSNESS, HOMELESS RIGHTS ADVOCACY PROJECT,
AND PUBLIC DEFENDER ASSOCIATION

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Scott Greenstone, *Seattle Public Utilities’ waste-pumping program has cut sewage spills from homeless people’s RVs in half*, Seattle Times (Nov. 28, 2020)5

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Seattle Office of the Mayor, “Mayor Durkan Announces Additional Investments in Affordable Housing for Historical Total of \$115 Million in 2020,” available at <https://durkan.seattle.gov/2020/12/mayor-durkan-announces-additional-investments-in-affordable-housing-for-historic-total-of-115-million-in-2020-2/> (last visited February 26, 2021)4

U.S. Const. amend. IV11

Washington Const. art. I, sec. 7 *passim*

I. INTRODUCTION

The American Civil Liberties Union, together with Washington Defender Association, National Homelessness Law Center, Interfaith Task Force on Homelessness, Homeless Rights Advocacy Project, and Public Defender Association, (collectively, “the ACLU”) argues that the City of Seattle (the “City”) must obtain a warrant before towing or impounding an illegally parked vehicle. The ACLU is wrong.

II. ARGUMENT

A. The ACLU’s policy discussion is incomplete and misleading.

Before advancing any legal argument, the ACLU devotes 12 pages of its brief to discussing aspects of the homelessness crisis. There is no question that this is a very serious social problem, which the pandemic has made even worse. But the discussion in the ACLU brief misleads, and there is no basis for attacking the ordinance that Mr. Long indisputably violated.

1. The City devotes enormous resources to tackling the causes of homelessness and helping those who experience homelessness.

The City’s spending to address homelessness has grown steadily over the last several years. In its adopted budget for 2021, the City appropriated \$167 million to address the homelessness crisis.¹ This includes

¹ City of Seattle, 2021 Adopted Budget at 172 (available at <https://www.seattle.gov/Documents/Departments/FinanceDepartment/21adoptedbudget/2>)

almost \$30 million in one-time federal funds to support people experiencing homelessness during the COVID-19 pandemic.² The City's 2021 budget supports 2,300 existing shelter spaces, of which 2,100 will be in enhanced shelters or tiny house villages.³

The City has identified 24/7 enhanced shelters and tiny house villages as the most effective programs in moving individuals towards permanent housing.⁴ In February 2021, the City provided an update on more than 350 new shelter beds coming online at hotels, tiny house villages, and a new women's shelter, as well as new permanent housing resources for individuals experiencing homelessness and facing substantial barriers to housing.⁵

The City will lease two hotels for up to 12 months as temporary enhanced shelters. They are projected to reach full capacity in the spring.⁶ The Chief Seattle Club will operate a 24/7 enhanced shelter at the Kings Inn

021%20adopted%20budget%20book.pdf) (last visited February 25, 2021).

² *Id.*

³Seattle Office of the Mayor, "City Provides an Update on More Than 350 New Shelter Beds Coming Online, Including Opening of Hotels, Tiny House Villages, and an Enhanced Shelter for Women," available at <https://durkan.seattle.gov/2021/02/city-provides-an-update-on-more-than-350-new-shelter-beds-coming-online-including-opening-of-hotels-tiny-house-villages-and-an-enhanced-shelter-for-women/> (last visited February 25, 2021).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

and will provide case management and housing navigation services to American Indian/Alaska Natives facing significant barriers to housing. The Executive Hotel Pacific will also be operated as a temporary enhanced shelter with case management and housing navigation services. Both of these hotel programs will be coupled with access to permanent housing options through rapid re-housing resources, anticipated to serve up to 230 households, as well as at least 600 new permanent supportive housing units scheduled to open throughout 2021.⁷

The 2021 budget also includes three new tiny house villages. The first two will begin operations by the summer. In addition, the City recently opened a new 24/7 enhanced shelter for women experiencing homelessness at Seattle First Presbyterian Church. These new shelter programs coincide with recent improvements the City has made to how street outreach engages with unsheltered persons and, in particular, how outreach providers access information about nightly shelter availability and then make referrals to those open beds.⁸

Seattle's Office of Housing invested \$115.8 million in affordable housing in 2020. This investment included \$55.8 million to support 840

⁷ *Id.*

⁸ *Id.*

low-income and affordable rental and homeownership opportunities and \$60 million to create 600 new permanent supportive housing units.⁹

2. The City’s 72-hour parking limit has nothing to do with “banishment.”

The ACLU questions Seattle Municipal Code (“SMC”) 11.72.440, which limits parking in one spot to 72 hours unless otherwise posted. The ACLU suggests that this ordinance is of a piece with various police tactics and sanctions that the ACLU regards as misguided at best and illegitimate at worst. Any such insinuation is baseless.

According to the ACLU, Seattle seeks to “banish” persons whom it deems undesirable. ACLU Br. at 8–13. The article that the ACLU cites as the basis for this assertion examined the impact in 2005–07 of three “hybrid control tools”: parks exclusion orders, trespass orders, and “off-limits” orders.¹⁰ This case involves no such order. The ACLU then asserts that laws restricting vehicular residency are growing quickly around the country. But the City does not prohibit or restrict people from living in vehicles. The City

⁹ Seattle Office of the Mayor, “Mayor Durkan Announces Additional Investments in Affordable Housing for Historical Total of \$115 Million in 2020,” available at <https://durkan.seattle.gov/2020/12/mayor-durkan-announces-additional-investments-in-affordable-housing-for-historic-total-of-115-million-in-2020-2/> (last visited February 26, 2021).

¹⁰ Katherine Beckett & Steve Herbert, *Penal Boundaries: Banishment and the Expansion of Punishment*, 35 LAW & SOC. INQUIRY 1 (2010).

asks only that vehicular residents follow the same rules that apply to everyone who owns and uses a licensed motor vehicle in Seattle.

The ordinance Mr. Long violated is longstanding. It has *not* been made more stringent as part of some supposed “banishment” effort. On the contrary, the City liberalized its parking requirements in 2000. Until then, the City forbade parking vehicles on the same block for more than 24 hours. The City Council voted to treble the permitted time to give drivers more flexibility.¹¹ Seattle’s ordinance is far more liberal than the rules adopted in other jurisdictions.¹² Furthermore, the City has suspended enforcement during the pandemic,¹³ and it is now collecting waste from RVs parked on city streets.¹⁴

¹¹ Jessica Lee, *What’s with Seattle’s rule limiting on-street parking to 72 hours?* SEATTLE TIMES (Aug. 28, 2017), https://www.seattletimes.com/seattle-news/transportation/whats-with-seattles-rule-limiting-on-street-parking-to-72-hours/?utm_source=email&utm_medium=email&utm_campaign=article_left_1.1

¹² *See, e.g.*, Tacoma Mun. Code (“TMC”) 11.05.231.B (prohibiting the use of “any vehicle . . . for human habitation purposes for a period exceeding 72 hours” without a permit and requiring the vehicle to be moved at least a mile to re-start the 72-hour period); TMC 11.05.231.D, E (permits allowing one to exceed the 72-hour period are limited to recreational vehicles); Bellevue City Code 11.23.020 (24-hour parking limit); Spokane Mun. Code 16A.61.561.A, D.8 (parking limited to 24 hours in any non-residential zone and 72 hours in an area zoned solely for residential uses, but “vehicles showing evidence of use as a permanent dwelling unit” may be cited at any time and are subject to impoundment upon 24 hours’ notice).

¹³ ACLU cites the current moratorium in its discussion of alternatives to impoundment that the City should have pursued in 2016. This is wholly inappropriate. In any case, the City should not be penalized for reallocating its enforcement resources during an unprecedented economic downturn. Nor should it be deprived of an important tool to manage health, safety, and traffic flow in the future.

¹⁴ Scott Greenstone, *Seattle Public Utilities’ waste-pumping program has cut sewage spills from homeless people’s RVs in half*, Seattle Times (Nov. 28, 2020),

Even as it seeks to address the causes and consequences of the homelessness crisis, the City must preserve public property for public use. Restricting the City’s authority to enforce its parking laws cannot be justified as a matter of public policy or constitutional law.

B. Article I, section 7 does not require the City to apply for a warrant to impound an illegally parked vehicle.

Article I, section 7 of the Washington Constitution provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Impoundment of Mr. Long’s truck was duly authorized by law. Hence, it did not violate article I, section 7.

In *State v. Simpson*, 95 Wn.2d 170, 622 P.2d 1199 (1980), this Court held that a motor vehicle may be lawfully impounded in the following circumstances: “(1) as evidence of a crime, if the officer has probable cause to believe that it was stolen or used in the commission of a felony”; (2) as part of the “community caretaking function” performed by the police, if the removal of the vehicle is necessary and neither the defendant nor his spouse or friends are available to move it¹⁵; or (3) “as part of the police function of

<https://www.seattletimes.com/seattle-news/homeless/seattle-public-utilities-waste-pumping-program-has-cut-sewage-spills-from-homeless-peoples-rvs-in-half/>.

¹⁵ Cf. *Miranda v. City of Cornelius*, 429 F.3d 858 (9th Cir. 2005) (rejecting “community caretaking” as justification for seizing a vehicle parked in a private driveway); *id.* at 864 n.4 (“the impoundment of a legally-parked vehicle is not necessary to enforce traffic regulations and requires some additional justification”); *Sandoval v. County of Sonoma*, 912 F.3d 509 (9th Cir. 2018) (rejecting “community caretaking” as blanket justification for impounding and holding vehicles driven by persons with Mexican drivers’ licenses).

enforcing traffic regulations, if the driver has committed one of the traffic offenses for which the legislature has specifically authorized impoundment.” *Id.* at 189; accord *State v. Tyler*, 177 Wn.2d 690, 698, 302 P.3d 165 (2013). In none of these circumstances is a warrant required. The third category is the one relevant here.

In *State v. Villela*, 194 Wn.2d 451, 450 P.3d 170 (2019), this Court held that impoundment must be reasonable under the circumstances, not mandatory, and this “requires an act of judgment by the officer on the scene.” *Id.* at 460. In the case of Mr. Long’s truck, the legislative authority has specifically authorized impoundment of a vehicle if the owner fails or refuses to move it after it is parked in the same spot for 72 hours: “Vehicles in violation of this section are subject to impound as provided for in Chapter 11.30 SMC” SMC 11.72.440.E. And just as *Villela* requires, the impoundment provided for in Chapter 11.30 SMC is permissive rather than mandatory, directing officers on the scene to exercise judgment.

The contrast with *Villela* is stark. In that case, Hailey’s Law (RCW 46.55.360) required the impoundment of every vehicle driven by a person arrested for DUI, without any exceptions. Here, SMC 11.30.060 provides, in relevant part, that “[a] vehicle . . . *may be* impounded after notice of such proposed impoundment has been securely attached” (Emphasis added.) Describing the policy that underlies the City’s traffic code (11 SMC subtitle

I), SMC 11.10.040 says that the “specific intent” of the traffic code is “to place the obligation of complying with its requirements upon the owner . . . of the vehicles . . . within its scope,” and not upon the City, its officers, or employees, “for whom the *implementation or enforcement* of this subtitle *shall be discretionary and not mandatory.*” (Emphasis added.)

Mr. Long has argued that the City’s Parking Enforcement Officer did not consider alternatives to placing a notice on his truck that he needed to move it within 72 hours. But the PEO’s decision to place a 72-hour notification on Mr. Long’s truck involved no seizure at all (as required to trigger the protections of article I, section 7). After all, Mr. Long was still free to drive his truck. *Cf. State v. Johnson*, 8 Wn. App. 2d 728, 737, 440 P.3d 1032 (2019) (stating that a seizure occurs when “freedom of movement is restrained and a reasonable person would not have believed he or she is (1) free to leave . . . or (2) free to otherwise decline an officer’s request and terminate the encounter”) (citation omitted).¹⁶

Indeed, the City *expected* that Mr. Long would relocate his truck. It warned him that, if he did not do so, it would likely be impounded. CP 844, 849–50, 107. From his first encounter with law enforcement, Mr. Long

¹⁶ The ACLU claims that, as “[t]his Court aptly noted,” Mr. Long’s property rights deserve more respect than those of someone who has been arrested. ACLU Br. at 16 n.15. What the ACLU quotes is not a statement by this Court but Justice Sanders’ solo dissent in *State v. Kirwin*, 165 Wn.2d 818, 839, 203 P.3d 1044 (2009). Moreover, Mr. Long in effect claimed a property right in the public right of way, even though he had no such right.

understood that the impoundment was not mandatory and that it could be avoided: “They also told me that my truck *might* be towed away.” CP 107 (emphasis added). Mr. Long knew he was free to move his vehicle any time after receiving the 72-hour notification. CP 107 (“My truck was then posted with a 72-hour notice stating that the vehicle would be impounded if I did not move it within that time period.”).

The ACLU asserts that the City should have explored alternatives to impoundment, such as waiting for Mr. Long to repair his truck or towing it to another street or parking area. The City gave Mr. Long 168 hours’ notice, as a full week elapsed after the notice was posted before an officer called a tow truck. These additional hours gave Mr. Long every opportunity to repair his truck if necessary and move it, thereby avoiding impoundment.¹⁷ In fact, repair was not necessary: Mr. Long drove his truck directly from the impound lot to Brier, Washington, and no one made any repairs while the truck was impounded. As the record shows, Mr. Long could have moved his vehicle at any time during the week after he received written notice and thereby avoided impoundment.¹⁸

¹⁷ *Cf. Villela*, 194 Wn.2d at 455 (stating that a reasonable alternative could include “releasing [the car] to one of . . . two passengers” to drive it away).

¹⁸ Contrary to the ACLU’s suggestion, there is no evidence that Mr. Long ever took steps to order “repair parts.” *See* ACLU Br. at 19.

With respect to the ACLU's second proffered alternative, the City lacked authority to tow Mr. Long's truck to any location other than an impound lot. Doing so, moreover, would have opened the City to potential liability. If the City had simply relocated the truck, Mr. Long might not have been able to find it. And if a vehicle was damaged or stolen after having been moved to a new location, its owner could claim that the City was responsible for the damage or theft because it moved the vehicle there. Using a tow truck to relocate a vehicle rather than impound it is not a viable option when the owner ignores repeated warnings to move the vehicle or face impoundment. It was not the City's job to move Mr. Long's truck. That was his responsibility.¹⁹

C. Residential use of a vehicle does not require different rules.

The ACLU argues that, even if towing an illegally parked vehicle after its owner refuses to move it could be considered reasonable and, hence, constitutional, the opposite conclusion follows if the vehicle is occupied as a residence. Here, too, the ACLU is wrong.

¹⁹ Even if the initial seizure was reasonable, the ACLU argues (ACLU Br. 19 at n.17), keeping Mr. Long's truck in the impound lot was not reasonable. The cases cited in support of this claim are inapposite. *State v. Williams*, 102 Wn.2d 733, 689 P.2d 1065 (1984), considered whether detaining someone for 10–35 minutes exceeded the permissible length of an investigative stop under *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). In *U.S. v. Jacobsen*, 466 U.S. 109, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984), a Federal Express employee found a bag of white powder in a damaged package and called the DEA. The Court held that conducting a field test for cocaine without a warrant was permissible. *Id.* at 122–25.

Although the protection against governmental intrusion into one's private affairs provided by article I, section 7 includes automobiles and their contents (*State v. Parker*, 139 Wn.2d 486, 494, 987 P.2d 73 (1999)), drivers and passengers have a reduced expectation of privacy.²⁰ This is true irrespective of any residential use of a vehicle. Several factors account for this diminished privacy interest: ready mobility, pervasive government regulation, and exposure to plain view. *See, e.g., Carroll v. United States*, 267 U.S. 132, 153, 45 S. Ct. 280, 69 L. Ed. 543 (1925) (ships, motor boats, wagons, and automobiles all treated differently from structures); *State v. McKinney*, 148 Wn.2d 20, 60 P.3d 46 (2002) (noting that license plate numbers were visible to police).

Although the ACLU argues that there should be an increased expectation of privacy when a vehicle is used as a residence, courts have repeatedly rejected that argument.²¹ In *State v. Johnson*, 128 Wn.2d 431, 909 P.2d 293 (1996), this Court considered whether the sleeping compartment in the cab of a tractor-trailer rig should be treated differently from the passenger's seat. The defendant argued that the sleeper area was a

²⁰ Justice Charles W. Johnson and Justice Debra L. Stephens, *Survey of Washington Search and Seizure Law: 2019 Update*, 42 SEATTLE U. L. REV. 1277, 1292 (2019).

²¹ "Under both article 1, section 7 and the Fourth Amendment, the fact that it is possible to sleep in a vehicle does not give rise to the same privacy rights that attach to fixed dwellings." Johnson and Stephens, 42 SEATTLE U. L. REV. at 1432.

temporary residence and that he had a greater privacy interest in that area.

This Court disagreed:

Vehicles traveling on public highways are subject to broad regulations not applicable to fixed residences. This broad regulation does not afford Petitioner the same heightened privacy protection in the sleeper that he would have in a fixed residence or home.

Id. at 449. *See also State v. Vrieling*, 144 Wn.2d 489, 28 P.3d 762 (2001) (officer was entitled to search the living quarters of motor home, which were accessible from the passenger compartment, as a search incident to the arrest of the driver).

In *Carney v. California*, 471 U.S. 386, 105 S. Ct. 2066, 85 L. Ed. 2d 406 (1985), the United States Supreme Court considered whether a motor home parked in a public lot should be considered to be outside the Court's automobile exception to the warrant requirement. The Court held that motor homes must be treated like other vehicles. *See id.* at 390–93 (citing ready mobility, plain view, and the pervasive regulation of vehicles capable of traveling on the public highways). The fact that the vehicle “was *capable of functioning as a home*” did not support a different result. *Id.* at 393 (emphasis in the original). The ACLU cites no case to the contrary.

D. Mr. Long waived his right to raise an article I, section 7 claim.

The ACLU mentions the manifest-error rule in a footnote (ACLU Br. at 14 n.14) but does not address the procedural hurdles to considering

Mr. Long’s argument under article 1, section 7. Constitutional claims, including claims under article 1, section 7, are waived if not timely asserted. *See, e.g., State v. Mierz*, 127 Wn.2d 460, 468, 901 P.2d 286 (1995); *State v. Garbaccio*, 151 Wn. App. 716, 731, 214 P.3d 168 (2009); *State v. Lee*, 162 Wn. App. 852, 857, 259 P.3d 294 (2011).

Mr. Long did not timely raise any article 1, section 7 claim. Instead, he made a tactical decision to avoid doing so and to allege instead a substantive due process violation, which he has now abandoned. “Manifest error” doctrine cannot revive a claim that was consciously waived. *See City’s Answer to Supp. Br. of Resp./Cross Pet. Long* (Nov. 1, 2019) at 6–10; *City of Seattle’s Supp. Br.* (Jan. 21, 2021) at 18–22.

III. CONCLUSION

This Court’s focus in deciding cases under article I, section 7 is determining “those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.” *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004) (internal quotation marks and citation omitted). Washington citizens have not assumed, nor are they entitled to assume, that they may park indefinitely in the public right of way. “Parking is not a right, but a privilege[.]” *Sandona v. City of Cle Elum*, 37 Wn.2d 831, 840, 226 P.2d 889 (1951) (internal quotation marks and citation omitted). If someone refuses to move his truck

despite an ordinance telling him he must and a notice warning him that failure to comply will subject the vehicle to impoundment, towing and impoundment naturally follow.²²

If Mr. Long is permitted to pursue his belated claim under article 1, section 7, this Court should affirm the court of appeals' dismissal of that claim.

DATED this 26th day of February 2021.

Respectfully submitted,

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²² Cf. Johnson and Stephens, 42 SEATTLE U. L. REV. at 1439 (officers may impound a vehicle to enforce traffic regulations if constitutionally reasonable “and necessary to prevent a continuing violation of a traffic offense for which the legislature has specifically authorized impoundment.”).

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