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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THEOPHILOS LUIS DELIGIANNIS, JR., Plaintiff and Appellant, v. REBECCA CONTRERAS, as Deputy Sheriff, etc., et al., Defendants and Respondents.	G042039 (Super. Ct. No. 30-2008-00111772) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven L. Perk, Judge. Affirmed.

Theophilos Luis Deligiannis, Jr., in pro. per., for Plaintiff and Appellant.

Nicholas S. Chrisos, County Counsel, and Marianne Van Riper, Deputy County Counsel, for Defendants and Respondents.

* * *

Plaintiff's vehicle was impounded for 30 days pursuant to Vehicle Code section 14602.6 after he was arrested for driving with a suspended license in violation of section 14601.1, subd. (a).[1] The impound statute implements the legislative policy decision "to punish and prevent unlicensed driving." (*Samples v. Brown* (2007) 146 Cal.App.4th 787, 806 (*Samples*).)

Plaintiff requested a poststorage administrative hearing to determine the validity of the storage and to consider mitigating circumstances. The trial court determined there was substantial evidence to support the hearing officer's decision not to release the vehicle before the expiration of the 30-day period. Plaintiff never denied he had been driving with a suspended license, and his driving privileges had not been restored.

Plaintiff brings this appeal to add a new element to the poststorage administrative hearing that does not appear on the face of section 14602.6. Plaintiff would require the impounding agency to establish probable cause to tow the vehicle in the same manner as would be required in a full-blown criminal trial. This clearly is not the purpose or function of a poststorage administrative hearing, and we decline plaintiff's invitation to so rewrite the statute.

I

On August 16, 2008, plaintiff was cited for driving his 1993 Honda Accord with a suspended driver's license (§ 14601.1, subd. (a).) His car was impounded and placed on a 30-day hold. On August 18, plaintiff asked for a poststorage administrative hearing.

The poststorage administrative hearing was conducted at the Laguna Niguel City Hall before Rebecca Contreras, a hearing officer with respondent Orange County Sheriff's Department (Department). In his written statement, plaintiff averred that he had

[1] All statutory references are to the Vehicle Code, unless otherwise stated.

been stopped by Sheriff's Deputy Kirsten Winterscheid while his car was parked at a convenience store parking lot. After running his identification, Deputy Winterscheid "received information that my license was suspended and I was on informal probation." Plaintiff argued that Deputy Winterscheid lacked probable cause to arrest him for driving without a valid license because "she witnessed no violation of anything." Plaintiff did not state how long he had parked his car, or whether he had been driving it before his encounter with Deputy Winterscheid.

The hearing officer examined a computer printout from an online law enforcement and tow company tracking system to ascertain why plaintiff's vehicle was towed. She reviewed a report from the Department of Motor Vehicles (DMV) indicating that plaintiff's driver's license had been suspended since mid-November 2006 and had not been reinstated. A DMV notice listed eight additional citations for Vehicle Code violations committed by plaintiff "since you were sent the order of suspension."

Nothing in the hearing record indicates that plaintiff presented a currently valid driver's license to the hearing officer. (§ 14602.6, subd. (d)(2).)

Following her examination of plaintiff's written statement and the computer records, the hearing officer denied plaintiff's request for early release of his vehicle. "Subject is still suspended and vehicle is registered to him. There are no extenuating circumstances that would warrant a release." Plaintiff was informed that the Department would reopen the matter and release his vehicle "if you get your CDL [California driver's license] reinstated."

Plaintiff filed a verified petition for writ of administrative mandamus under Code of Civil Procedure section 1094.5 to challenge the hearing officer's failure "to establish probable cause for the arrest and reasonableness of the subsequent impoundment of the car."

The Department opposed the petition with Deputy Winterscheid's declaration that she had seen plaintiff while he was driving his car. "As I was

approaching the stop light at Crown Valley, I observed a 1993 gold Honda Accord . . . driving in the parking lot between the Blockbuster Video and the back of the 7-11 . . . ." At plaintiff's request, the trial court struck Deputy Winterscheid's declaration since it was not part of the administrative record.

Following a hearing, the trial court denied the petition and plaintiff's subsequent new trial motion.

II

Section 14602.6 allows a peace officer to arrest a person driving with a suspended license and to impound the vehicle for 30 days. (§ 14602.6, subd. (a)(1).) The registered vehicle owner must be provided an opportunity for a poststorage administrative hearing "to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852." (§ 14602.6, subd. (b).)[2]

Section 22852 requires a public agency who directs the storage of a vehicle to give notice of the storage and to provide a poststorage administrative hearing within 48 hours of the request, excluding weekends and holidays, to determine the validity of the storage.[3]

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[2] Section 14602.6 provides, in pertinent part: "(a)(1) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended . . . the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle. . . . A vehicle so impounded shall be impounded for 30 days. . . . [¶] . . . [¶] (b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852."

[3] Section 22852 provides, in pertinent part: "(a) Whenever an authorized member of a public agency directs the storage of a vehicle, . . . the agency or person directing the storage shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a poststorage hearing to determine the validity of the storage. . . . [¶] . . . (c) The poststorage hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The public agency may authorize its own officer or

Registered owners can secure an early release of their vehicles at a poststorage administrative hearing where they show that the suspended driver's license has been reinstated. (§ 14602.6, subd. (d)(1)(E).)[4] Conversely, they cannot obtain an early release where the driver's license remains invalid. (§ 14602.6, subd. (d)(2).)[5]

In passing section 14602.6 as part of the Safe Streets Act of 1994, the Legislature acknowledged that an estimated 720,000 California drivers continued to drive with a suspended or revoked driver's license, and that such drivers were four times as likely to be involved in fatal accidents as properly licensed drivers. (§ 14607.4, subds. (b), (c).) Civil forfeiture for a 30-day period was justified by the state's "critical interest" in "keeping unlicensed drivers from illegally driving. Seizing the vehicles used by unlicensed drivers serves a significant governmental and public interest, namely the protection of the health, safety, and welfare of Californians from the harm of unlicensed drivers, who are involved in a disproportionate number of traffic incidents, and the avoidance of the associated destruction and damage to lives and property." (§ 14607.4, subd. (f).)

In *Samples, supra,* 146 Cal.App.4th 787, the Court of Appeal rejected a constitutional challenge to this statutory scheme for impounding vehicles driven by unlicensed drivers based on claims the statute failed to prevent arbitrary and discriminatory enforcement. The *Samples* court found the statutes provided owners

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employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle."

[4] Section 14602.6, subd. (d)(1) provides, in pertinent part: "An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances: . . . [¶] . . . [¶] (E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance."

[5] Section 14602.6, subd. (d)(2) provides: "No vehicle shall be released pursuant to this subdivision without presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court."

adequate opportunities to attend a poststorage administrative hearing to "consider the validity of the impoundment and any mitigating circumstances presented at the storage hearing." (*Id.* at p. 801.) *Samples* specifically determined "the Legislature has provided adequate direction for implementing the statutory directive to impound a seized vehicle for 30 days absent a showing of mitigating circumstances." (*Id.* at p. 805.) "The statute itself expressly provides that all impounded vehicles are to be stored for 30 days absent a showing of mitigating circumstances. This provision establishing a maximum period of impoundment is an important safeguard limiting the authority of the enforcement agency and putting the public on notice of the benchmark for implementing the legislative policy decision to deter unlicensed driving by impounding the vehicle driven by an unlicensed person. In addition, as we have already discussed, this statute also expressly identifies situations which constitute mitigating circumstances as a matter of law and require early release of an impounded vehicle. These provisions are also safeguards ensuring a minimal level of consistency throughout the State." (*Id.* at p. 806.)

We examine the trial court's express and implied findings in an administrative mandate proceeding to determine whether they are supported by substantial evidence. (*Smith v. Santa Rosa Police Dept.* (2002) 97 Cal.App.4th 546, 553-554 (*Smith*).)

Substantial evidence supports the trial court's determination that plaintiff never presented mitigating circumstances to justify early release of his vehicle. Plaintiff never denied that he was driving his car on August 16, 2008 and that he did so with a suspended driver's license. Plaintiff has never claimed that his driver's license was reinstated during the 30-day period in which his vehicle was impounded. The hearing officer's determination against an early return of his vehicle is fully consistent "with the fundamental policy decision effectuated by this statute, i.e., to punish and prevent unlicensed driving." (*Samples, supra,* 146 Cal.App.4th at p. 806.)

III

Plaintiff minimizes his failure to prove mitigating circumstances at the poststorage administrative hearing by calling it a "red herring-issue." In his view, the "true" issue on appeal concerns "the meaning and interpretation of the phrase 'validity of the storage' in section 22852, as incorporated in section 14602.6, and whether state law provides that the administrative agency bears the burden to prove the validity of the removal of the vehicle." According to plaintiff, the impounding agency must establish at the poststorage hearing "that there was probable cause to seize the vehicle in the first place." Plaintiff also would include within this determination the question whether the impoundment of the vehicle was constitutionally warranted under the community caretaking function. (See *People v. Williams* (2006) 145 Cal.App.4th 756, 761.) Since Deputy Winterscheid neither testified nor submitted a statement at the poststorage hearing, plaintiff believes the hearing officer was duty-bound to release his vehicle, even though his driver's license had not been reinstated.

We disagree. We independently review the issue of statutory construction of section 14602.6 under a de novo standard. (*Smith*, *supra*, 97 Cal.App.4th at p. 554.)

Requiring the impounding agency at a poststorage hearing to replicate the same quantum of proof as at a suppression hearing or criminal trial would impose staggering administrative burdens. As the trial court pointed out: "I don't think that's a probable cause hearing, and I don't think it is an adjudication of the Fourth Amendment issues. . . . I tend to agree . . . that that is, in fact, a hearing is that, can we continue to store it? And if you have reinstated your license . . . and you've got a valid license, you can get it back." A poststorage administrative hearing is designed to provide a quick and expeditious method for determining whether the early release of an impounded vehicle is warranted by the facts or circumstances.

Indeed, the case law supports the notion that the initial burden of persuasion at a poststorage administrative hearing rests upon the vehicle owner: "It is up

to the owner asserting that mitigating circumstances warrant release of the vehicle before expiration of the 30-day storage period to produce evidence of such mitigating circumstances." (*Smith, supra*, 97 Cal.App.4th at p. 569.) This burden also applies to factors relating to the validity of the storage: "The owner of an impounded car must pay towing and storage charges for the release of his vehicle or suffer its loss . . . *unless he can prove that probable cause for towing and impounding his car did not exist*, in which event the towing and storage costs are generally borne by the law enforcement entity responsible for the towing. . . ." (*People v. 6344 Skyway, Paradise, California* (1999) 71 Cal.App.4th 1026, 1034, fn. 6, italics added.)

Plaintiff cites dicta in *Smith, supra*, 97 Cal.App.4th at p. 569 to argue that the impounding agency has the burden of proof to show probable cause, but the case does not stand for this proposition. (*Smith, supra*, 97 Cal.App.4th at p. 569.) "A decision is authority only for the point actually passed on by the court and directly involved in the case. General expressions in opinions that go beyond the facts of the case will not necessarily control the outcome in a subsequent suit involving different facts." (*Gomes v. County of Mendocino* (1995) 37 Cal.App.4th 977, 985.)

In *Smith*, the vehicle owner presented uncontradicted evidence at the poststorage hearing that he did not know his grandson, the driver, was unlicensed. Under these circumstances, the *Smith* court held that "the registered owner's lack of actual knowledge that the driver to whom he loaned his car was not validly licensed constitutes a mitigating circumstance under section 14602. 6, subdivision (b), warranting release of the vehicle to the registered owner before expiration of the 30-day storage period set forth in the statute." (*Smith, supra*, 97 Cal.App.4th at pp. 549-550.)

Smith, as the Department points out, only dealt with the validity of the continued storage of the registered owner's pickup truck (given the fact that he did not know that his grandson was an unlicensed driver), not whether the truck should have been towed in the first place. (*Smith, supra*, 97 Cal.App.4th at p. 553.)

Equally inapposite is plaintiff's reliance on section 22650. This statute applies to the removal of vehicles which are involved in a traffic collision, and prohibits the removal of an unattended vehicle from a highway except as expressly provided. Section 22650 is inapplicable to the impoundment of vehicles driven by unlicensed drivers.

IV

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

SILLS, P. J.

WE CONCUR:

O'LEARY, J.

FYBEL, J.