

Honorable Catherine Shaffer

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CITY OF SEATTLE,

Respondent,

v.

STEVEN GREGORY LONG,

Appellant.

No. 17-2-15099-1 SEA

AMENDED DECISION AND ORDER ON
RALJ APPEAL

[PROPOSED]

CLERK'S ACTION REQUIRED

This appeal came on regularly for oral argument on March 2, 2018 pursuant to RALJ 8.3 before the undersigned Judge of the above entitled court, and after reviewing the record on appeal and considering the written and oral argument of the parties the court finds the following:

The Municipal Court's decision below was reversed in part and affirmed in part for the reasons stated on the record on March 2, 2018. That record has been transcribed, is attached hereto, and is fully incorporated into this order.

NOW, THEREFORE, IT IS HEREBY ORDERED that the above cause is affirmed in part and reversed in part. The Municipal Court shall refund all payments previously made by Steven Long to the City and the Time Payment Account Agreement between the City and Steven Long to make future payments is void.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

DATED this ____ day of March, 2018.



Honorable Catherine Shaffer

Presented by:

COLUMBIA LEGAL SERVICES

By: Ann m LoGerfo
Alison Bilow, WSBA #49823
Ann LoGerfo, WSBA #23043

CARNEY BADLEY SPELLMAN

By: /s/ James E. Lobsenz
James E. Lobsenz, WSBA #8787

Attorneys for Appellant Steven Gregory Long

Approved as to Form:

PETER S. HOLMES
Seattle City Attorney

By: /s/ Michael K. Ryan
Michael K. Ryan, WSBA #32091
Assistant City Attorney

Attorney for Respondent, City of Seattle

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this day I caused a copy of the foregoing to be served upon the
3 following counsel of record:

4 *Attorneys for Respondent*
5 Michael K. Ryan
6 SEATTLE CITY ATTORNEY'S OFFICE
7 701 5th Ave. St. 2050
8 Seattle, WA 98104-7097
9 michael.ryan@scattle.gov

- Via Facsimile
- Via First Class Mail
- Via Messenger
- Via Email
- Via E Filing/EService

10 I declare under penalty of perjury under the laws of the State of Washington that the
11 foregoing is true and correct.

12 DATED this 9th day of March, 2018.

13 By 
14 Annabell Joya, Legal Assistant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

CITY OF SEATTLE,)	No. 17-2-15099-1 SEA
)	
Respondent,)	
)	
v.)	
)	
STEVEN GREGORY LONG,)	
)	
Appellant.)	

VERBATIM REPORT OF PROCEEDINGS

THE HONORABLE CATHERINE SHAFFER, JUDGE, PRESIDING

MARCH 2, 2018

APPEARANCES:

For Respondent: MICHAEL RYAN
 Seattle City Attorney's Office
 701 Fifth Avenue, Suite 2050
 Seattle, WA 98104-7095
 (206) 684-8207

For Appellant: JAMES LOBSENZ
 Carney Badley Spellman, P.S.
 701 Fifth Avenue, Suite 3600
 Seattle, WA 98104-7010
 (206) 622-8020

Transcribed by: Rose Landberg
 Lickety Split Transcripts
 P.O. Box 21461
 Seattle, Washington 98111
 206-932-5025

1 March 2, 2018, 09:25:00

2 COURT: -- and fascinating issue. Let's walk
3 through what we have here.

4 In March 2014, Mr. Long was evicted from his
5 apartment, apparently because he was unable to keep up
6 with his rental payments. And I have to say, he's a
7 poster child as far as I'm concerned for a lot of other
8 people who are in this situation. We are increasingly
9 seeing a crisis with people who are unable to afford not
10 just low income but middle income housing and a
11 shrinkage of the supply of middle income and low income
12 housing. So people like Mr. Long who are now finding
13 that they cannot make rental payments and they cannot
14 find alternate housing are unfortunately a growing group
15 in our city and in our county generally. And we're part
16 of I think a national trend on this, but it's pressing
17 us in particular here.

18 So Mr. Long, like so many people, was evicted due
19 to his inability to make rental payments. And according
20 to really the entire record without any dispute, he's
21 been homeless since then. He says, and there is nothing
22 in the record to dispute it, that he's been living ever
23 since then in his 2000 GMC CR 2500 truck. I can see
24 from the photographs I have in the record that the truck
25 has a big cab and a big bed, and Mr. Long says he stored

1 his personal items and work tools. Mr. Long has
2 indicated throughout the record that he's a general
3 laborer and he's got some ability and skills in the
4 field of construction, painting, plumbing, mechanics,
5 and other labor. He has lots of tools, including a
6 power washer, ratchet sets, wrenches, drills, saws,
7 painting tools, solders, and specialty car care tools.
8 And I will say that tools like those are extraordinarily
9 valuable; they are the absolute essence of livelihood
10 for really any workman. Personal items that he says
11 he's stored in his truck included his clothing, kitchen
12 supplies, to the extent he could do any food
13 preparation, bathroom items, and bedroom items like a
14 sleeping bag, blankets, and a mattress.

15 The problems here began around the middle of the
16 summer of 2016 when Mr. Long noticed that his truck was
17 having issues operating, and he became concerned about
18 driving it further. Initially, he took it to the
19 Goodwill on Dearborn Street and parked there for a few
20 weeks, and there are no known complaints about this from
21 Goodwill. Mr. Long says he had permission to be there.
22 But then Mr. Long moved his vehicle, I'm assuming
23 because he ran out of time for Goodwill to not have a
24 problem with him being there, and he moved over to 900
25 Poplar Place in Seattle, or Popular Place, I'm not sure

1 which, and this location is near Peter's Place, which is
2 a homeless shelter.

3 Then there was an unrelated complaint about a
4 homeless encampment in the area in October of 2016. So
5 this was a few months after Mr. Long first parked in
6 this location. The officers who were checking out the
7 homeless encampment ended up talking to a business owner
8 in the area, who claimed somebody associated with the
9 truck threatened his employees with a knife. This
10 allegation has floated through this case, and so I'm
11 going to talk about what I see of it here so that
12 hopefully we can clear the air with regard to Mr. Long.

13 The business owner indicated that somebody
14 associated with the truck had threatened his employees
15 with a knife, and he pointed over to the truck where Mr.
16 Long was with a knife in his pocket. But Mr. Long's
17 version of events, which really hasn't been contradicted
18 by anybody, is that what had happened is that he had a
19 friend or an acquaintance who was socializing with him
20 at the truck, that there was hostile treatment,
21 including spitting on the truck from somebody in the
22 area, that Mr. Long's friend or associate became upset
23 with that and displayed in some way a knife, and then
24 that the altercation ended. And it sounds like it
25 actually ended fairly peacefully. Whatever went on,

1 there is nothing at all to indicate that Mr. Long did
2 anything wrong with any of his property, including a
3 knife. And none of the officers thought that he did
4 either. The officers reprimanded the business owner for
5 being late to complain about this. And then when they
6 went over and talked to Mr. Long, they didn't do
7 anything about, for example, removing his knife or
8 punishing him or writing a police report or really doing
9 anything to indicate they believed criminal activity of
10 any sort involving Mr. Long had occurred, by which I
11 mean there's nothing to indicate that Mr. Long did
12 anything wrong or criminal other than parking where he
13 didn't have City permission to park.

14 So what the officers did was resolve this by
15 telling Mr. Long "You can't stay on City property for
16 more than 72 hours," and then they called the parking
17 enforcement officer, whose disdainful attitude I think
18 bothered Mr. Long, who put a notice on Mr. Long's truck,
19 which Mr. Long then tore off. Nor did Mr. Long comply.
20 He did not remove the vehicle within 72 hours, or at
21 all.

22 All right. I'm going to pause here around this
23 interaction between the officers and Mr. Long, which I
24 spent quite a bit of time closely reviewing. I went
25 back and looked at the original record to see if there's

1 any more of the depositions than I'd been given as
2 attachments to the brief. And unfortunately, there
3 isn't, although I can see there are pages in the
4 depositions that I wasn't given. But from what I have
5 here, it doesn't appear that Mr. Long clearly indicated
6 to the officers that this was his home. And I can't
7 tell whether it was apparent to anybody that it was his
8 home because the photographs I have is a vehicle that
9 has the windshield covered with a sunscreen and a tarp
10 of some sort over one side of the truck. I cannot see
11 that there's anything obvious about this truck that
12 would have demonstrated to somebody this was being lived
13 in as someone's home. Mr. Long indicates,
14 understandably, that he didn't really want to say that
15 he was using his truck as his home.

16 The officers made a remark to each other about the
17 truck being similar to a house with a patio because
18 there was a tarp extended and Mr. Long apparently was
19 taking advantage of the shade under the tarp. But that
20 doesn't indicate that the officers knew this was a home.
21 All it indicates is that they made a comment about the
22 arrangements there.

23 I have complete ambiguity, frankly, about the state
24 of knowledge that anybody had that Mr. Long was using
25 his truck as a home. He says he was, and I believe him,

1 but I can't see anything that would have put the police
2 or did put the police on notice of that fact, or the
3 parking officer, who denies any memory of any of this,
4 except putting the sticker on, of this fact.

5 I zero in on this because Mr. Long did very clearly
6 state later that this was his home. And I'm going to
7 get to that in a moment. But I think it's significant
8 when I look at the City's interactions with Mr. Long
9 that this record really does not provide a basis to
10 believe that the City was notified through its officers
11 or its parking enforcement officer, or otherwise, that
12 Mr. Long was occupying the truck as his home. And I
13 don't think there was anything about the truck that
14 makes that clear from what I see in this record. I did
15 look hard at this issue, but that's what I see.

16 All right. So after this notice was applied to the
17 truck, the parking officer, despite her disdainful or
18 his disdainful attitude, actually sat on this and didn't
19 move on the notification even though the 72 hours had
20 gone by, and actually provided another four days or so.
21 When asked about this in deposition, the parking officer
22 indicated, despite having an earlier alleged disdainful
23 attitude, that it was an effort to give Mr. Long a
24 chance to get the part that he thought he needed for his
25 truck in place and get it moved. Nonetheless, it was

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

still there a week later, on October 12, 2016.

Mr. Long was not there when the parking enforcement officer returned and contacted Lincoln Towing, which is apparently Seattle's usual towing outfit. And that's significant to me because Mr. Long therefore was unable and not present to say, "That's my truck. I'm living in it" or something like that to anybody who was towing the truck. Nor is it clear from the photos I have of the truck that the City, at that point, at the time of the towing company being called, would be on notice that the truck was in fact not abandoned. It does happen that people abandon vehicles in the city, and one reason to abandon a vehicle might be because you have a parking enforcement sticker on it and it's about to be towed away.

So with that state of lack of information, the towing company, at the parking enforcement officer's request, impounded the truck and towed it away. Mr. Long didn't get back to the truck until midnight or so, and that's when he found out everything was gone except for some property that was strewn in the area, including some tarps and bicycles.

Mr. Long called 911 to find out what happened, and he discovered his truck was towed by Lincoln Towing. Again, on this record, it's silent as to whether or not

1 Mr. Long said, "That's the home I was using as my
2 shelter" or anything like that. Nor did Mr. Long go to
3 a shelter, even though there was one in the area at that
4 moment. Instead, he tried to use one of the remaining
5 tarps to build a new shelter on the location. He stuck
6 around for several hours, apparently until 3 in the
7 morning, before he finally went to St. Peter's Place,
8 which indicates to me he knew the shelter was there
9 because that's where he went to use it.

10 About six days after that, Mr. Long went to Lincoln
11 Towing to get some of his belongings, and he got a
12 notice of redemption and an impound hearing form, which
13 he followed up on, and he came before a magistrate on
14 November 2nd, 2016. A very important date from my point
15 of view because on the record before the magistrate, Mr.
16 Long explicitly said right up front, "That's my home."
17 So the City then was on notice at that point, at the
18 impoundment hearing, that in fact it had Mr. Long's home
19 in its custody.

20 The hearing went forward. The magistrate found
21 that Mr. Long was in violation of the 72-hour ordinance.
22 He waived the cost of the fine associated with the
23 ticket, but he did impose part of the towing fee which,
24 to this court's middle class way of thinking, is quite a
25 high towing fee. I don't know why it's so high, but

1 it's a lot, even from my point of view.

2 Mr. Long told the magistrate, and this is again
3 explicit notice, "I don't have any money. Nothing."
4 And so the magistrate said, "Oh, gee, that's too bad,"
5 and set up a payment per month of \$557.12, which is,
6 again, not a small amount of money. The magistrate then
7 gave Mr. Long the impoundment vehicle release form which
8 said that the vehicle was to be released on confirmation
9 that Mr. Long sign a promissory note payable to Seattle
10 Municipal Court in the amount of \$547.12 plus interest.

11 Legally speaking, I think what occurred at this
12 point is that the attachment that the City on behalf of
13 Lincoln Towing and its own costs have placed on the
14 vehicle was lifted and replaced by this promissory note
15 and payment agreement.

16 And that same day, Mr. Long retrieved his truck.
17 He doesn't know why this happened because -- he was
18 theorizing about what the missing part was that was
19 needed to make his truck run, but he thinks something
20 about the towing process or the City's handling of his
21 vehicle put the gears together. I don't really
22 understand this. Maybe Mr. Long does. And so he was
23 able to drive his vehicle out of the impound lot. I
24 can't infer from that that it was drivable before then.
25 I don't know. Frankly, the indications from this record

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that it took six hours to tow it suggests it wasn't drivable, but whatever, okay, I just don't know.

Then Mr. Long filed a motion for a summary judgment before my new colleague, Karen Donohue, in municipal court, which was denied on May 10, 2017.

On June 28, the City made a cross-motion for summary judgment that was granted below, and the court entered judgment in favor of the City.

I have three claims before me on this fascinating appeal. The first that I'm going to address is the one that I'm going to reject, which is the substantive due process claim.

The substantive due process claim revolves around really the hardship that Mr. Long suffered in this case due to the impoundment of his vehicle. The argument is that the officers, especially I think the parking enforcement officer, violated his substantive due process rights by exposing him to a known and obvious danger with deliberate indifference to the danger they were creating.

The substantive component of the due process clause protects a person's liberty interest in his own bodily integrity. Violations of substantive due process "comprise those acts by the State that are prohibited regardless of the fairness of the procedure used to

1 implement them." That's from the Ninth Circuit decision
2 in Wood v. Ostrander.

3 Generally, liability for a violation of the right
4 to substantive due process only applies to direct harm
5 caused by a government official's individual actions,
6 and the inquiry to determine liability for a violation
7 of this right is whether the official's conduct "can
8 properly be characterized as arbitrary or conscience
9 shocking in a constitutional sense." That's from a U.S.
10 Supreme Court decision in Collins v. City of Parker
11 Heights.

12 There are two exceptions. The special relationship
13 exception, when there's a custodial situation such as
14 somebody who's in foster care or involuntarily
15 committed, which his not this situation. Mr. Long was
16 not in anybody's custody.

17 And the other exception is the State created danger
18 when an official affirmatively places the individual in
19 harm's way with deliberate indifference to a known and
20 obvious danger. How can I find that here? There's no
21 clear evidence in this record that anybody knew that Mr.
22 Long was using this truck as his home. And the claim
23 fails right there. There's no reason for the City to
24 think that a standard impound which they have delayed by
25 an extra four days is going to cause somebody to lose

1 their ability to have a shelter, particularly when that
2 person's truck is parked within walking distance of a
3 shelter. I just don't see how anybody could have known
4 that. On this record, I don't think it was clear, nor
5 did Mr. Long make it clear that the truck was his home.

6 Secondly, nobody forced Mr. Long to try to struggle
7 with his tarps and set up a shelter. I'm not faulting
8 him. He's a grownup. He can make his own decisions
9 about whether he wants to be in a men's shelter or
10 whether he want's to be where he is. But to the extent
11 that that's what he did and he was chilled and cold, I
12 am truly, truly sorry that happened, but I do not see
13 how the City knowingly put him in that position. They
14 weren't there when he came home. They didn't say, "Stay
15 out here and be under this tarp" or "Try to struggle
16 with your tarps." There's nothing here indicating
17 anybody was deliberately indifferent to the situation he
18 was in when he came home and found his truck was gone.

19 I mean, there are awful cases. I've looked at lots
20 of them. I think the closest case I've seen is, would
21 be Ostrander, where the officer stopped a car, arrested
22 the driver, impounded the vehicle, and left the
23 passenger in a high crime neighborhood where the
24 passenger was raped. That's about as close as we get.
25 And the other cases I've seen are even worse. But

1 that's not this case. This is not anybody who's an
2 official deliberately exposing Mr. Long to anything.
3 Really from their point of view, it probably looked most
4 likely that this truck had been abandoned with lots of
5 stray property dumped in it. Only Mr. Long knew the
6 true value of what was taken away.

7 So I am truly sorry, Mr. Long. I apologize on
8 behalf of the government that this happened to you, but
9 I don't see a violation of your substantive due process
10 rights because I don't see that any official acted here
11 with deliberate indifference to the plight you were in.

12 All right. Let me turn to the claims I think do
13 have merit here, and those are the Excessive Fines and
14 the Homestead Act claims.

15 The first claim that I'm going to deal with, the
16 Eighth Amendment Excessive Fines clause, is based on Mr.
17 Long's argument that impounding his truck and imposing
18 the fine for the underlying traffic infraction and the
19 costs associated with removal, towing, and storage,
20 which he only agreed to pay frankly to avoid having his
21 car sold off, are disproportionate to the gravity of his
22 offense and violate the Eighth Amendment.

23 The Eighth Amendment says, "Excessive bail shall
24 not be required, nor excessive fines imposed, nor cruel
25 and unusual punishments inflicted." The clause we're

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

dealing with here is the Excessive Fines clause.

The Eighth Amendment's text is not limited to criminal cases for the excellent fact, which Mr. Lobsenz has briefed and argued at length, that its provisions date back to Magna Carte and to expressly civil protections that have been honored in common law for over a thousand years. The history of the Eighth Amendment therefore of course does not require a criminal limitation.

The word "fine" was understood to mean "a payment to a sovereign as punishment for some offense." It has been held by the U.S. Supreme Court in the Austin decision that the purpose of the Eighth Amendment, putting aside the Bail Clause, was to limit the government's power to punish. The Excessive Fines clause in particular limits the power to extract payments whether in cash or in kind as punishment for some offense.

As I think the municipal court properly recognized below, the face of the City's ordinance demonstrates that one of the purposes of the ordinance is to punish, which is to say to impose a penalty upon a person who commits the infraction of parking for more than 72 hours in one spot. The Seattle Municipal Court proviso 11.72.440(b) states, "No person shall park a vehicle on

1 any street or other municipal property for a period of
2 time longer than 72 hours unless an official posted sign
3 provides a shorter period of time or unless otherwise
4 provided by law."

5 The municipal court said below, and I heartily
6 agree, that a plain reading of the language of SMC
7 11.72.440 supports Mr. Long's argument that impound is
8 at least in part a penalty, and the court cited that
9 penalty language in SMC 11.72.440(e) which says,
10 "Vehicles in violation of this section are subject to
11 impound as provided for in chapter 11.40 SMC in addition
12 to any other penalty provided by law." So there's no
13 question at all here that what happened to Mr. Long's
14 vehicle was intended to and did operate as a penalty.

15 I'm going to zero in here on the impoundment and
16 the fines or towing fee as slightly separate items here
17 because that is significant to me.

18 The implementation of the towing fee was part of
19 the impound process, and so I don't, to my way of
20 thinking think it's insignificant to point out that it's
21 one thing to impound a vehicle, which one does not know
22 to be at the time to be a home, nor does one have
23 reasonable notice that it is a home, and it's another
24 thing to impose a really high towing fee. But the only
25 way that the towing fee went into place here is as part

1 of the impound and as, in part, a penalty. I don't deny
2 that it's partly remedial, to repay the City for the
3 towing fee, which seems to be whatever Lincoln Towing
4 feels like charging because I haven't seen it justified
5 otherwise. But having said that, clearly, the way it's
6 supposed to operate in requiring the owner of a vehicle
7 to repay that amount before they can get their car out
8 of impound and have whatever lien Lincoln Towing has
9 placed on their vehicle removed is in part a penalty.

10 I'm going to segregate these things out because in
11 this particular case, I am having trouble with the
12 argument that it's an excessive fine to impound a
13 vehicle, but I am not having trouble with the argument
14 that the imposition of the towing fee was an excessive
15 fine. So let me travel through the court's thinking
16 here.

17 The courts have oft repeated that in looking to
18 whether a fine is grossly disproportional to the gravity
19 of the defendant's offense, that the courts look at
20 three factors. First, the degree of the defendant's
21 reprehensibility or culpability. Second, the
22 relationship between the penalty and the harm to the
23 victim caused by the defendant's actions. Third, the
24 sanction imposed in other cases for comparable
25 misconduct.

1 The only part of this test which is general and not
2 individual is the third prong. The first two look
3 specifically to the person that's before the court.
4 Turning to that briefly, let me point out that Mr. Long
5 does not have much reprehensibility or culpability here
6 frankly. Parking is not something the court can get
7 deeply excited about.

8 I don't mean to trivialize the City's interest in
9 keeping its streets clear and free for traffic to move,
10 and I don't disagree that property owners can
11 legitimately complain to the City and expect action when
12 a car is parked at their curb for too long, which to me,
13 72 hours seems like a reasonable amount of time to ask
14 the car not to stick around longer than. So I don't
15 mean to trivialize what the City is saying here about
16 how it has interests in enforcing its parking laws. It
17 does of course. How does the City function without
18 parking laws?

19 But, you know, it isn't terribly reprehensible or
20 culpable to mispark or to park too long. It's just
21 not. I mean, in the scheme of bad things people can do,
22 this is real, real, real low. So the degree of
23 culpability or reprehensibility here just strikes me as
24 really minimal.

25 The second question is the relationship between the

1 penalty and the harm caused to the victim by the
2 defendant's actions. And the problem here is there
3 isn't any victim. I mean, to the extent that there was
4 a complaint here from somebody in the area, it doesn't
5 appear to be anybody connected to the exact location
6 where Mr. Long was parked. And what they were
7 complaining about didn't have to do with how long he'd
8 been parked there anyway; it had to do with this
9 incident involving frankly his friend and not him in the
10 sense of him doing anything wrong.

11 To the extent I look at the City as a victim, I
12 don't see how the City was victimized here. I could in
13 a different parking situation easily see that, but this
14 isn't that case because it doesn't look as though the
15 area where Mr. Long was parked was in very hot demand
16 for City vehicles or otherwise. So I don't see a lot of
17 relationship between the penalty here, namely, the big
18 towing fine or towing fee, and the harm to the City
19 caused by the defendant's actions.

20 I guess the City could argue here, and I'm going to
21 think about this argument for a moment, that there's a
22 relationship between the amount the City had to pay to
23 get the vehicle towed because the defendant didn't move
24 it. But here, I really have trouble because I don't
25 have anything in this record to really explain why the

1 towing fee is the amount it is, so. And I'm not really
2 willing to sign off on the City's sense that whatever
3 Lincoln Towing says it should pay, the registered owner
4 should pay. I just don't like that kind of black box
5 presentation. Sorry. The court wants more than that.

6 So all I can really say is I can't see that the
7 City really took a lot of harm here and I don't see a
8 real relationship between this penalty and the harm
9 caused to the City, whatever that may have been.

10 And then the last question is the sanction imposed
11 in other cases for comparable misconduct. And really,
12 the only thing I'm being told is "We always impose the
13 towing fee, whatever it is, on registered owners unless
14 it's somehow the City's fault." That's just not a very
15 persuasive argument for a fine that is overwhelming for
16 someone like Mr. Long.

17 And I want to talk about that for a second too,
18 because even though it's not part of the formal factors
19 that are laid out for the court in the lower court
20 decisions, I think that Justice O'Connor's dissent in
21 Browning Ferris v. Kelco Disposal is right on the money
22 when she points out that the underlying source of the
23 language in the Eighth Amendment that we are applying
24 here comes from the concern that people not be fined to
25 the point that it's unbearable. I mean, that's the

1 origin of this cause. Admittedly, the people who found
2 it unbearable were pretty rich and powerful but
3 nonetheless, the fines they were talking about were
4 extreme. And that's always where this provision of the
5 Eighth Amendment was in play was where, for a person's
6 individual circumstances, the fine was extreme.

7 I don't mean to suggest to the City that they can
8 never impound. I mean, that would be ridiculous. And I
9 certainly don't mean to suggest that the City can never
10 impose any kind of fee or fine for the cost of an
11 impoundment and a towing. But I don't think it's fair
12 to say if the City does, gee, every registered owner has
13 to pay so we never have to look at anybody's individual
14 circumstances. And, you know, in the background of this
15 case, I see the City doesn't believe that either. The
16 City has offered over and over again to give back the
17 money and to forget about the rest of Mr. Long's payment
18 obligation, but has complained that Mr. Long was
19 unwilling to accept it, which tells me the City knows
20 this is was a ridiculous fine to impose on him and it
21 offends us under the Eighth Amendment. It certainly
22 offends this court, and I am not willing to overlook how
23 huge this amount is for Mr. Long.

24 So my interpretation of the Eighth Amendment
25 provision here is this towing fee is way, way out of

1 line with the fact that Mr. Long parked in the wrong
2 place and that the City ultimately felt that they needed
3 to impound the vehicle to get it out of there.

4 And I will add to this, that I am not happy about
5 the fact that all of Mr. Long's tools were in this truck
6 because that is something on this record that goes right
7 to his future livelihood. Nobody in his position can
8 have a future livelihood if they don't have their tools.
9 Just can't happen.

10 All right. That's why I'm upholding the Eighth
11 Amendment claim, but I'm only upholding it as to the
12 payment plan that Mr. Long was required to enter into,
13 not as to the claim as to the impound. I don't think
14 it's unreasonable for the City to impound, and I don't
15 think there's any Eighth Amendment provision forbidding
16 them to do it. What I am complaining about here under
17 the Eighth Amendment is the willingness to apply a
18 towing fee of this size to somebody of Mr. Long's
19 circumstances without adjustment of a greater amount
20 than I see here. I don't think \$50 is a reasonable
21 payment plan for someone in Mr. Long's position either.
22 His income per month is something like \$300 at best.

23 All right. So I'm upholding the Eighth Amendment
24 claim and requiring the return of the amounts that Mr.
25 Long has had to pay in the past and will pay, was

1 required to pay in the future. Those funds will be
2 returned to him in their entirety.

3 With regard to the Homestead Act claim, this Act,
4 as Mr. Ryan properly pointed out to me in argument, is
5 of constitutional dimension in the sense that it is
6 enacted by article 19, section I via RCW 6.13.070 to
7 protect a person's home against either forced sale or
8 attachment. When the legislature enacted RCW 6.13. to
9 comply with our state constitutional provision which
10 states that "the legislature shall protect by law from
11 forced sale a certain portion of the homestead and other
12 property of all heads of families," the legislature used
13 the following language: "The homestead consists of real
14 or personal property that the owner uses as a
15 residence."

16 RCW 6.13.040 states, "Property described in
17 6.13.010 constitutes a homestead and is automatically
18 protected by the exemption described in RCW 6.13.070
19 from and after the time the real or personal property is
20 occupied as a principal residence by the owner."

21 RCW 6.13.070 states, "Except as provided in
22 6.13.080, the homestead is exempt from attachment and
23 from execution or forced sale for the debts of the owner
24 up to the amount specified in 6.13.030."

25 Homestead statutes are enacted as a matter of

1 public policy in the interests of humanity and thus are
2 favored in the law and accorded a liberal construction.

3 There's no question at all under the express
4 language of the Homestead Act that Mr. Long's truck met
5 that definition because it was real or personal property
6 in which he resided; specifically, personal property in
7 which he resided at the time that the truck was
8 impounded and the towing fee was imposed as a lien. And
9 in fact, this is something the legislature recognized in
10 1993, noting that because some Washington citizens live
11 on their boats or in their cars or vans, it was
12 recommended expressly to incorporate any real property
13 or personal property that a person used as a residence.

14 All right. Two legitimate legal issues are raised
15 here by the City. The first is an argument that I think
16 is absolutely right, that the Homestead Act is not
17 violated by a threatened sale, only by an actual sale.
18 And that's true. The Act talks about an actual sale,
19 not about the threat of a sale, and I will not extend
20 the Homestead Act beyond what is in the constitution or
21 its statutory language.

22 The second argument made here which I find very
23 unpersuasive is that Mr. Long doesn't get the benefit of
24 the statute unless he first files a declaration. But I
25 don't read the statute that way. I read the statute to

1 say that if a person who is not currently using their
2 home, their residence or their personal property as a
3 home intends to do so that, as to personal property, a
4 declaration is required. That is not the situation we
5 had at the time this happened to Mr. Long. It might be
6 now. Apparently Mr. Long is not in the truck right now.
7 And so if he decided to reoccupy the truck as his home,
8 he probably would have to file a declaration for the
9 City to have to honor that homestead exemption for
10 anything that happened in the future. And I think that
11 helps somewhat, but not completely, to take care of the
12 City's notice worry.

13 I think it's legitimate for Mr. Ryan to point out
14 to me "How is the City to know?" I've already made that
15 point earlier in this ruling, that I don't think the
16 City did know at the time of the impoundment that this
17 was Mr. Long's home, nor did it know about it at the
18 time the attachment was first put in place.

19 But I do think that that's sort of what we're stuck
20 with because, you know, not every residence is an
21 obvious residence either. Boats aren't, you know. But
22 I don't think that we really have a good argument from
23 the City if somebody has been living in their boat for I
24 don't know how many years and the City nonetheless
25 impounded the boat that the Homestead Exemption Act

1 didn't apply. I mean, we're just stuck with some things
2 that we don't know about because they've already been
3 protected before a notice requirement was put into the
4 law. So I think that's sort of the best we can do, is
5 that once you figure it out, then you have to implement
6 the protections of the Act.

7 The problem here is Mr. Long told the magistrate,
8 he told the City when he told the magistrate that this
9 truck was his home, and he did that before he was
10 required to enter into a payment plan to get the
11 attachment removed from his truck. And that's where the
12 Homestead Act got offended because that lien was an
13 attachment, and it was an attachment on property he had
14 said was his home. And it was in fact his home because
15 he was living in it at the time that the attachment was
16 placed. So it was an improper attachment, and his
17 property was exempt from it. And for that entirely
18 separate and independent reason, I also vacate the
19 payment plan that he was required to enter into because
20 he was exempt from it under the Homestead Act.

21 That's the ruling of the court. I uphold two of
22 the appellant's arguments in part and direct the return
23 of fees previously paid or due to be paid under the
24 payment plan. I otherwise affirm the City's ruling
25 below. Give me an order, and then on your way to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Division I you go.

Thanks, everybody.

March 2, 2018, 10:02:05

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I hereby certify that this is a true and correct record of proceedings conducted on March 2, 2018 before the Honorable Judge Catherine Shaffer in the matter of the City of Seattle v. Stephen Long, King County Cause No. 17-2-16099-1 SEA. I further certify I am in no way related to or employed by any party or counsel and I have no interest in this matter.

Dated this 7th day of March, 2018.

Rose Landberg

Rose Landberg
Court-Approved Transcriptionist
AAERT Certified, No. CET-D 664
Lickety Split Transcripts
P. O. Box 21461
Seattle, Washington 98111
(206) 932-5025
r.landberg@comcast.net