

DISCUSSION

Under Georgia law, two alternatives exist for determining whether a particular search of a vehicle is lawful. State v. Heredia, 252 Ga. App. 89, 91 (2001). Police officers may perform an inventory search of a vehicle if it is reasonable under the Fourth Amendment, either as a search 1) incident to a lawful arrest of its occupant or 2) as an inventory search prior to a lawful impoundment. State v. Bell, 259 Ga. App. 328, 329 (2003). Whether the inventory search of the vehicle was incident to a lawful arrest is not at issue in this case; therefore, the inventory search of the vehicle must have been performed pursuant to a lawful impoundment. An impoundment need not be absolutely necessary, so long as it is reasonable under the circumstances. If the impoundment is reasonable under the circumstances, the search is lawful. Gaston v. State, 257 Ga. App. 480, 483 (2002). See also Williams v. State, 204 Ga. App. 372, 374 (1992). The ultimate test for the validity of the police officer's conduct is whether, under the circumstances then confronting the officer, his conduct was reasonable within the meaning of the Fourth Amendment. State v. Bell, 259 Ga. App. 328, 330 (2003). To determine whether an officer's conduct was reasonable within the meaning of the Fourth Amendment, courts consider the relatedness of the underlying arrest, the possibility of safely removing the vehicle, and the defendant's preference for the removal of the vehicle. Here, the deputy's decision to impound Howard's car was reasonable under the circumstances.

A. THE IMPOUNDMENT WAS DIRECTLY RELATED TO A LAWFUL ARREST

The impoundment of Howard's vehicle was directly related to his arrest for driving without a valid license and failing to provide proof of insurance. Impoundment is unreasonable where an individual's offense was unrelated to the vehicle. *State v. Lowe*, 224 Ga. App. 228, 231 (1997). The defendant in *Lowe* was arrested for obstruction of a police officer when he failed to identify his friend, who was the subject of an outstanding warrant pursuit. *Id.* at 229. The defendant's car was legally parked on private property, and police did not report seeing him around or inside of his car at the time of arrest. *Id.* at 231. Nevertheless, the officers impounded the car and conducted an inventory search that revealed drugs and weapons. *Id.* The Court found impoundment unreasonable, reasoning that the offense was unrelated to the vehicle. *Id.*

Here, the impoundment was directly related to Howard's arrest. After Howard explicitly requested an officer report of the accident, he admitted to driving the vehicle. Howard then provided the officer with an expired driver's license and invalid car insurance information. These offenses are intrinsically tied to operation of a vehicle. Unlike *Lowe*, where the defendant's vehicle played no role in his initial obstruction charge, Howard's offense was directly related to the use of his car. Because Howard's arrest was for vehicle-related offenses, the impoundment was directly related to the underlying arrest and therefore reasonable.

B. THE VEHICLE COULD NOT BE SAFELY LEFT AT THE SCENE

The impoundment was reasonable because no safe alternative existed for removing the vehicle from the scene. In considering whether impoundment was reasonable, courts consider an officer's duty to preserve traffic safety, protect an owner's valuables, and protect the police from liability claims. *Williams v. State*, 204 Ga. App. 372, 374-75. (1992). After the arrest in *Williams*, the officer arrived at the scene alone and could not safely leave the car near the roadway, so he impounded the vehicle and conducted an inventory search on the spot. *Id.* at 373. The officer did not inquire whether the defendant could make other arrangements to retrieve the car. *Id.* at 374. The court held that impoundment was reasonable to protect the defendant's property and the public from roadway obstructions. *Id.* Further, the court considered the circumstances of that night and rejected the defendant's claim that a friend could have retrieved the vehicle, reasoning that the officer was under no duty to subject himself to possible peril to accommodate the defendant. *Id.*

Howard's vehicle could not be safely left at the scene. The vehicle was disabled after striking a deer, presenting a clear traffic hazard if left on Highway 121. Like the officer in *Williams*, who guaranteed the protection of other motorists by impounding the defendant's vehicle, the arresting officer in this case worked to protect himself and the public from an obstruction on the side of the road. Howard requested a police report of the accident, which required the officer to stop the tow truck from retrieving the car. Howard then provided the officer with evidence of his illegal control of the car, thereby opening himself up to the legal ramifications. Like *Williams*, the officer in the present case did not have backup

and was surrounded by individuals who ceaselessly paced around the vehicle during the officer's review. In both cases, the officers operated based on the policies of the sheriff's department to ensure officer and public safety when they impounded the vehicle for not driving-related violations. Therefore, impoundment was reasonable.

C. THE OFFICER PROPERLY FOLLOWED DEPARTMENT POLICY DESPITE DEFENDANT'S PREFERENCE

Howard's expressed preference for his brother's assistance did not render the impoundment unreasonable. It is not necessary for an officer to impound a vehicle when the driver is arrested and shows preferences as to towing services. *Mulling v. State*, 156 Ga. App. 404, 405 (1980) (finding impoundment unreasonable where the officer permitted the defendant to select a towing service for his vehicle after being arrested but made an inventory search before the tow truck's arrival). However, police officers are not required to concede to a defendant's car retrieval demands if impoundment was reasonable, regardless of necessity. *Gaston v. State*, 257 Ga. App. 480, 483 (2002) (finding impoundment reasonable where the officers rejected the defendant's request for an aunt to retrieve his car because it was late and the car was in the roadway).

Here, as in *Gaston*, the officers were not required to accommodate Howard's request for his brother or passengers to retrieve the vehicle once they determined that impoundment was reasonable. Although Howard expressed a preference, the officers acted within their discretion to impound the car given the circumstances. Unlike *Mulling*, where the search was found unreasonable because the officer conducted an inventory search before the agreed-upon tow truck arrived, there is no indication here that the officers prematurely searched the vehicle or acted contrary to standard procedures. Therefore, Howard's preference does not make the impoundment or subsequent search unreasonable.

For the foregoing reasons, the trial court erred in granting Defendant's Motion to Suppress. The State respectfully requests that this Court reverse the trial court's order granting the Motion to Suppress.