



NINTH CIRCUIT UPHOLDS INVENTORY SEARCH OF VEHICLE AIRBOX

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On July 14, 2016, the Ninth Circuit Court of Appeals decided *the United States v. Torres*ⁱ, in which the Ninth Circuit examined whether the inventory search of the air-box of a lawfully impounded vehicle is legal under the Fourth Amendment. The relevant facts of *Torres*, taken directly from the case, are as follows:

On April 24, 2012, Las Vegas Metropolitan Police Department ("LVMPD") officers responded to a call from dispatch regarding a domestic battery occurring in a moving car in Las Vegas, Nevada. An individual had called 911 to report a male driver pulling the hair of a female passenger. The caller told dispatch that the vehicle had turned into a private apartment complex, at which point the caller lost sight of the car.

Officer Jason Evans was the first to arrive at the complex, where he observed a Saturn Vue matching the 911 caller's description in the parking lot with two occupants, a male driver—later identified as Torres—and a female passenger named Cara Young. Officer Joseph Donaldson arrived on the scene shortly thereafter. The vehicle was found near a red zone—*i.e.* a designated no-parking-or-stopping area. According to officers, the car had been stopped in the middle of the parking lot and backed up toward the curb, with vehicles parked in stalls perpendicularly to it on both sides.

When Officer Evans approached the driver's side of the vehicle, he smelled the odor of alcohol on Torres's breath. Evans decided to investigate a possible driving-under-the-influence ("DUI") offense and had Torres exit the vehicle. Evans administered two field sobriety tests to Torres, which he failed. Consequently, Evans arrested Torres for DUI and placed him, in handcuffs, in the back of the patrol vehicle. Evans conducted a records check on Torres that revealed he was a convicted felon. It was also determined that the passenger, Young, did not have a valid driver's license. Although she told officers that the car was hers, the registration had apparently lapsed.¹ Neither Torres nor Young lived at the apartment complex. Accordingly, the officers decided to impound the car.

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Officer Donaldson performed an inventory search of the vehicle and prepared a departmental Vehicle Impound Report. The impound report contains a list of 51 "features" and requires the officer to circle the items applicable to the subject vehicle. The features to be checked include the engine, battery, and radiator, as well as the registration, radio, type of transmission, and window tinting, among other things. The report also includes space for an officer to note pre-existing damage to the vehicle, and to list any personal property found inside.

Donaldson began his search at the front driver's side door, and proceeded to check the trunk, the passenger's side, and the engine compartment. During his search, Donaldson found a hydraulic press, tools, and rolls of coins, which he noted on the impound report. Donaldson also unlatched the lid of the engine's air filter compartment, where he discovered a Sig Sauer P229 semi-automatic pistol and a holster. Upon locating the handgun, Donaldson stopped the inventory search and called LVMPD's firearms detail. Detective Robert Orth responded to the call and applied telephonically for a warrant to seize the gun. A records check was conducted on the firearm, which revealed that it had been stolen during a burglary earlier that day.

The United States Attorney for the District of Nevada filed an indictment charging Torres with one count of being a Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1). Torres filed a motion to suppress evidence of the handgun on the grounds that it was the product of an unconstitutional search and seizure. A magistrate judge conducted an evidentiary hearing on the motion to suppress at which Officer Evans, Officer Donaldson, and Detective Orth testified. Officers Evans and Donaldson testified that searching the air filter compartment is standard practice within the LVMPD, and that people commonly hide property such as money, narcotics, and weapons in automobile engine compartments. Officer Donaldson further stated that he searched the air filter because he had found contraband in engine compartments in the past.ⁱⁱ

Torres filed a motion to suppress which was denied. He pled guilty with the right to appeal the denial of his motion to suppress. He then filed a timely appeal with the Ninth Circuit Court of Appeals.

The issues on appeal were (1) whether the impound of the vehicle was legal under the Fourth Amendment and (2) whether the officer exceeded the permissible scope of a vehicle inventory and violated the Fourth Amendment by searching the air-box?

Regarding the first issue, particularly whether the impound of the vehicle was lawful under the Fourth Amendment, the court stated

The impoundment of an automobile is a seizure within the meaning of the Fourth Amendment." *Miranda v. City of Cornelius*, 429 F.3d 858, 862 (9th Cir. 2005). The Fourth Amendment proscribes warrantless searches and seizures by law enforcement officers as "*per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions.*" *Cervantes*, 703 F.3d at 1138-39 (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)).

Under the "community caretaking" doctrine, police may, without a warrant, impound and search a motor vehicle so long as they do so in conformance with the standardized procedures of the local police department and in furtherance of a community caretaking purpose, such as promoting public safety or the efficient flow of traffic. *Id.* at 1141. This requirement ensures that impoundments are conducted "on the basis of something other than suspicion of evidence of criminal activity." *Miranda*, 429 F.3d at 863 (quoting *Colorado v. Bertine*, 479 U.S. 367, 375 (1987)); see also *Florida v. Wells*, 495 U.S. 1, 4 (1990) ("[A]n inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence."). The government bears the burden of establishing that a vehicle's impoundment and search are justified under an exception to the warrant requirement. *Cervantes*, 703 F.3d at 1140-41.ⁱⁱⁱ [emphasis added]

The court then examined two department policies from LVMPD that govern vehicle impounds and inventories. The court observed that the policies allowed officers to impound the vehicle in Torres' case; particularly, the vehicle was not lawfully parked and there was not a licensed driver with the vehicle. Additionally, there was question whether the passenger, who did not have a valid license, was the actual owner of the vehicle as she claimed. This is because the vehicle was registered in a different state and the registration was expired. Additionally, the court noted that vehicle was parked in a manner that could impede emergency vehicles as well as impede other vehicles from using some of the parking lot. Further, neither Torres nor the passenger were residents of the apartment complex where Torres had parked the vehicle. As such, the court noted that the impound served the additional purpose of protecting the vehicle from vandalism or theft in the parking lot.

The court then held that the impoundment of the vehicle was within LVMPD policy, the policy was sufficient to satisfy the Fourth Amendment requirements, and there were additional reasons (community caretaking) for impounding the vehicle.

The second issue before the court was whether it was lawful under the Fourth Amendment for the officer to search the air-box of the vehicle as part of the inventory search.

Regarding this issue, the court first stated

Once a vehicle has been legally impounded, the police may conduct an inventory search without a warrant. *Cervantes*, 703 F.3d at 1141 (citing *South Dakota v. Opperman*, 428 U.S. 364, 375-76 (1976)). **Like the decision to impound, the scope of the inventory search must conform to the standard procedures of the local police department.** See *Bertine*, 479 U.S. at 375. **Although a policy may accord the searching officer significant discretion to determine whether a particular recess should be searched, the policy cannot constitutionally authorize officers to "rummag[e]" for evidence of criminal activity under the guise of logging an inventory.** *Wells*, 495 U.S. at 4; see also *Cervantes*, 703 F.3d at 1141.^{iv} [emphasis added]

The court then examined the LVMPD policy regarding vehicle inventories. The court stated

The manual indicates that "all containers within the vehicle must be inventoried ... and their contents must be inventoried also." No containers are specifically designated off-limits by LVMPD policy. Thus, the LVMPD policy plainly contemplates that inventory searches of impounded vehicles will encompass closed spaces, and affords officers little to no discretion in what areas of the vehicle must be searched.^v

The court also noted that the policy has fifty-one (51) items that an officer is supposed to check during an inventory, as well as document property located in the vehicle. Included in the fifty-one (51) items are the engine, battery, and radiator, therefore the court held that it is required that an officer check the engine cabin of a vehicle, which is where the air-box is located. Further, Officer Donaldson testified that it is their standard practice to check the air-box because it is a common location for people to hide weapons and drugs.

The court then noted three cases from the United States Supreme Court that outline an officer's authority to conduct an inventory search of a vehicle during an impound.

First, the court noted that in *South Dakota v. Opperman*^{vi}, the Supreme Court held that it was reasonable for officers to search an unlocked glove compartment during an inventory to safeguard the owner's property.

Second, in *Colorado v. Bertine*^{vii}, the Supreme Court held that it was lawful for the police to search a backpack found in a van during a vehicle inventory. The court held that it safeguarded the property and protected against claims of theft, vandalism and negligence.

Third, in *Cady v. Dombrowski*^{viii}, the Supreme Court held that it was reasonable to conduct an inventory search of a vehicle for a weapon because they reasonably believed the owner of the car had a firearm in the car. The court reasoned that the government had a legitimate caretaking purpose in safeguarding the public who may be endangered if a person entered the vehicle and removed a weapon therefrom. The Supreme Court also noted that it was part of standard operating procedure at that police department to search impounded vehicles for weapons in order to protect public safety.

The Ninth Circuit then applied the three Supreme Court cases above to Torres' case. The court noted that LVMPD policy required officers to search every container. Policy also required officers to look in the engine cabin. Further, the air-box in the engine cabin is large enough to contain a weapon. Even further, according to Cady, the Supreme Court held that it was permissible for officers to conduct inventory searches for the purpose of preventing weapons from being stolen. The court then stated

In sum, the LVMPD inventory search policy appears to have been reasonably "designed to produce an inventory," and ensures sufficient uniformity to protect the owners and occupants of impounded vehicles from the risk that officers will exercise discretion in performing an inventory search only when they suspect they will uncover the fruits of criminal activity. *Wells*, 495 U.S. at 4 (explaining that officers may not conduct inventory searches solely to discover evidence of criminal activity). Accordingly, the purposes underlying the requirement of a process to discourage inventory searches from becoming a "ruse for a general rummaging" are satisfied with respect to the LVMPD policy at issue. See *id.* In fulfilling his duty to search "all containers," Officer Donaldson acted within the parameters of LVMPD policy when he unlatched the air filter compartment. For this reason, the inventory search did not violate the Fourth Amendment, and the district court

properly denied Torres's motion to exclude evidence of the firearm.^{ix}

Thus, the court held that the officers acted reasonably under the Fourth Amendment when they searched the air-box during the inventory search of Torres' vehicle.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

ⁱ No. 14-1021- (9th Cir. Decided July 14, 2016)

ⁱⁱ Id. at 4-7

ⁱⁱⁱ Id. at 8-9

^{iv} Id. at 13

^v Id. at 15

^{vi} 428 U.S. 364 (1976)

^{vii} 479 U.S. 367 (1987)

^{viii} 413 U.S. 433 (1973)

^{ix} Torres at 18